are 141 and 163 under this low entitlement. Now, this is not quite as damaging as it might seem at first look because the entitlement on page 99 is half of the total benefits, so the comparison would be between 82 and 141. But, it strikes me that of these total 282 megawatts 164 megawatts in the year 2002-63 appear to come from High Arrow, and it just makes me wonder where the rest of it comes from because we are committing twice as much storage as that.

The next question which I think is important here is the matter of diversions. The importance of diversions from Canada's point of view, I think, lies in the question we have to ask ourselves, namely will we, in fact, be able to divert under the treaty? I believe that this is one of the serious criticisms of the treaty in this particular passage. I believe I have quoted Mr. Macdonald as having said that the law in the Columbia river treaty has been set aside—that is, the law which is presently recognized in the Boundary Waters Treaty of 1909. I think the essential point here is not whether we will divert or not divert. But, the point is whether in fact, we will be able to divert, should we want to. In this respect I believe that the Waneta order and other actions by the United States are very relevant.

In the Waneta order and in the Waterton-Belly case the Americans have asserted their right, recognized in the Boundary Waters Treaty of 1909 to control the upstream flows. I believe they have done this for two reasons: one, to maintain their legal position and, two, to serve notice on us that we are building works downstream and creating a vested interest in full knowledge that the flows may be deprived from us, as the United States has the right to do. These are the two elements. I believe that one of the things that the Columbia river treaty does which is contrary to the practice which the United States has pursued in the past in respect of Canada is that it gives the United States tacit—or, perhaps I should say explicit—permission to create a vested interest on the Kootenay and, so long as the treaty remains in force, Canada does have the legal right to make certain diversions of the Kootenay at various periods, with this right expiring 100 years hence. Presumably under Article XVIII (2) we can do this. This is one of the exculpatory provisions of the treaty. We have a legal right to do this and we are not liable for damage claims. However, if the treaty should happen to terminate at the end of 60 years before we make the first major diversion of the Kootenay there may be some doubt whether an action for damages under the Boundaries Waters Treaty could be made.

Perhaps I may summarize what is stated from page 32 forward. Canada and the United States I think have agreed on a minimum criterion that any development of the Columbia river must satisfy. From the United States point of view this criterion is to the effect that there must be enough storage to give the United States flood protection under 1894 conditions to a maximum flow of 800,000 cubic feet per second at the dalles.

The other constraint from the point of view of the United States, with which I think we agree, is that there must be flood protection provided in the Bonners Ferry area of Idaho and the Kootenay-Creston flats areas.

To achieve the first objective, this primary flood control for the lower Columbia basin, a total of upstream storage of the order of 6.5 million acre feet is required. This is allowing for effectiveness factors, and the amount of storage which is fully effective for that purpose must be about 5.33 million acre feet.

To provide local flood control the waters of not only the Kootenay but the Bull and Elk rivers in East Kootenay must be controlled. This can be done in one of two ways. It can be done by building dams at Bull river and Dorr, or by building a dam at Libby, Montana. These I believe are the minimum agreed objectives.