of consumptive use in article 1(e) of the treaty. I also pointed out that the only reasoned legal opinion presented to the committee—an opinion which I believe to be correct—was to the effect that the permitted consumptive use contemplated by the treaty was riparian use, that is, use within the Columbia basin itself.

I am aware that the Secretary of State for External Affairs has asserted from time to time, with his usual tone of absolute assurance, that diversion is permitted for purposes of power generation, provided such use is only incidental and that the other uses are, as he has put it from time to time, the primary or main uses—the real and the genuine uses of the water diverted. It is significant that no reasoned legal opinion is presented to justify the addition of those words to the clear language of the treaty.

If this interpretation is so acceptable, why not submit it to the United States and get their approval of this clarification? When the Secretary of State for External Affairs and other proponents of the treaty are backed into a corner on this question of diversion they reply that the matter is of little practical consequence in any event, as the proposals for diversion are either too expensive or are far away in the future. Indeed, they say there are other sources of water for diversion which can be used more cheaply and which are more accessible. This is not the view of those who are most concerned. We heard a brief presented by the government of Saskatchewan supported in detail by the evidence of Mr. Cass-Beggs, general manager of the Saskatchewan Power Corporation and a hydro engineer of distinction. He said that a Columbia prairie diversion might well be an exceedingly important component of a water plan for the prairie provinces. It is this right of diversion, so described by Mr. Cass-Beggs, and conferred by the Boundary Waters Treaty Act of 1909 which, we say, is being given away without the payment, if I may use such an expression, of a plugged nickel.

It is true that article XIII contains provision for the diversion from the Kootenay into the Columbia of a specific amount of water after 20, 60, 80 and 100 years from the date the treaty comes into force. But this right, in the opinion of General McNaughton and others who gave evidence before the committee may also be illusory, because the building up of vested interests on the completion of the Libby dam will make the exercise of these rights impracticable, even though the legal right is there.

[Mr. Brewin.]

The essential difference between the McNaughton plan and the treaty plan is that the treaty plan includes Libby in the United States, and the construction of Libby precludes, in fact, the effective diversion of the upper Kootenay. The treaty storages are near the border. The storages proposed by the McNaughton plan are as high up on the rivers on the Canadian side as possible. The essential difference, therefore, is that under the McNaughton plan there is maximum flexibility and control of Canadian water in Canada.

The treaty plan throws away the most effective bargaining counter which Canada would have for the future. It will be necessary for us to deal again in the future with the United States but we will be deprived of our most effective bargaining power. There is no doubt that the Canadian negotiators preferred the plan which excluded Libby and had succeeded in persuading their United States counterparts to negotiate on the basis of giving up Libby, which was indeed an expensive project though significant because it ensured flow of water from the Kootenays. Why, then, did the Canadian negotiators suddenly switch from the McNaughton plan to what they themselves have described as a second best plan, a plan which included Libby and limited control over Canadian water?

The answer to this was made very clear in the evidence which was given before the committee on external affairs. As reported at page 1147 of the report of the proceedings Mr. Fulton, the chief negotiator for Canada, was asked about a press statement accredited to him and which reads as follows:

> Justice minister E. Davie Fulton, in a series of frank speeches in B.C. recently, put it in this way: "Under our constitution, B.C. is the owner of natural resources lying within provincial borders... and has therefore the right to designate which resources should be developed and in what way. This is the basic reason why High Arrow is included, and the major dams and diversion of the Kootenay river are not included in the treaty projects".

That passage was in quotation marks and Mr. Fulton acknowledged that he had said that. Then the press report went on to say:

> He also publicly admitted the salvage nature of the negotiations from that point: "B.C. having made these decisions, it was then the federal government's task to negotiate with the U.S. within the pattern thus determined...We then had to ask ourselves the final question, does this arrangement still represent an advantage to Canada?"