



the U.S. share of the natural flow of the Milk River, then most of the options discussed in the Report can have no impact on the Tribe's water rights. The only changes that could possibly affect the Tribes' water rights would be:

1. A change in the methodology by which the natural flows are calculated, in which case the calculated natural flows may increase or decrease, or
2. A change in the Treaty or in the 1921 Order, or
3. A change in the natural flows themselves (i.e., such as due changes in the climate or some other natural change).

The FBIC wants to stress that it is not opposed to any changes in natural flow calculation methodology as long as the rights of the Tribes are fairly considered and that the Tribes are provided with every opportunity to participate in such discussions and decisions as may take place, thereby ensuring the opportunity for the Tribes to avoid harm.

With regard to number 2 above, the Report states clearly that at the present time both the U.S. and Canada want to avoid making any changes to the Treaty or the 1921 Order. This is good and since it is not likely that a change will take place in the near term this is not a critical concern. However, the FBIC wants to stress that since the Compact is silent regarding what should be done if the Treaty or 1921 Order should change, then in that event the Tribes will be compelled to meet with the State of Montana and the Federal Government to seek a fair resolution, keeping in mind that the Tribes intend to maintain the natural flow right provided by the Compact. In short, per the Compact the State would have to release water from the Milk River Project to ensure that that Tribes' water rights are met regardless of any changes to the Treaty or the 1921 Order. Nevertheless, if the State should for any reason be unable to deliver sufficient water from the Milk River Project, then the Tribes should be financially compensated for the injury to their water right. The value of the compensation should be computed based on the average yields from forgone irrigation of lands in the area.

With regard to number 3 above it is clear that all water users and authorities will have to live within the bounds set by nature.