

OFFICE OF THE GOVERNOR

STATE OF MONTANA

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The Honorable Dennis L. Schnornack
Chair, United States Section
International Joint Commission
1250 23rd Street N.W. Suite 100
Washington, DC, 20037

Dear Honorable Dennis Schornack:

I would like to thank you and the other Commissioners for creating the *Directive to the International St. Mary-Milk Rivers Administrative Measures Task Force*. We look forward to participate in this very important endeavor.

Even though, you have created the Directive, we still felt a need to response to Alberta's submission of August 2004 to the IJC. In its submission, Alberta responded to Montana's reasons for requesting an IJC review of the 1921 Order. Based on our review of Alberta's submittal, we wanted the opportunity to better clarify our position.

Again, I thank you for taking this very important first step to review the existing administrative procedures that implements the 1921 IJC Order. If you have any questions, please contract Rich Moy at 406-444-6633.

Sincerely,



JUDY MARTZ
Governor

Attachment

c:

Maryanne Bach, High Plains Regional Director, USBR
Bob Davis, MT State Director, USGS
Jeannie Whiteing, Attorney of the Blackfeet Tribal Council

Montana's Response to Alberta's Submittal of August 2004
November 22, 2004

The State of Montana respectfully submits these comments in response to Alberta's submission of August 2004 to the IJC. In its submission, Alberta identified its perspective in response to Montana's reasons for requesting the IJC to review the 1921 Order. Montana respectfully disagrees with a number of Alberta's assertions and feels compelled to respond. Rather than discussing each assertion, Montana has focused on a number of the more salient issues.

1. Alberta's position: *"The Order reflects the interpretation of the entire language of Article VI."*

Montana's response: The first sentence of Article VI of the Treaty states that the St. Mary and Milk Rivers and their tributaries are to be treated as one stream and are to be apportioned equally between the two countries. Nowhere in the Order, have we found language or wording where the two rivers are treated as one stream or where this one stream is apportioned equally between the two counties. Only the second sentence of the Treaty is identified and implemented in the 1921 Order. The language of the Treaty does not specify that each country's prior appropriation of water is independent of the equal apportionment specified in the first sentence.

2. Alberta's position: *"... the U.S. has not developed the infrastructure and storage capacity required to fully use its full share of the St. Mary River. As a result, the U.S. uses only about 62 percent of its entitlements of the St Mary River with the rest flowing uncaptured into Canada, resulting in Canada receiving 128 percent of its entitlement on the St. Mary."*

Montana's response: Montana has the infrastructures to divert far more water from the St. Mary River, but is unable to use the St. Mary diversion and canal to its full capacity based on limitations placed on the United States by the 1921 Order and existing Administrative Procedures. At the present time, the United States has the capacity to run 650 cfs through the canal, but the Order limits the United States to an average of about 450 cfs. With more flexible usage of Sherburne storage of 67, 854 acre-feet and by keeping the canal full, we would be able to utilize considerably more St. Mary River water.

Montana also recognizes the limitations of the Milk River irrigation project. The Governor and the Montana Congressional delegation have defined rehabilitation of the St. Mary canal and enlargement of Fresno Reservoir as a very high State priority. But this should not deter the United States from receiving its full entitlement as defined in the Treaty. With more certainty of water supply, the United States will be able to upgrade the St. Mary canal to full capacity and invest in efficiencies necessary for improving basin wide water management.

As noted in Alberta's comments, if the United States receives 62 percent of its share, then Canada must receive 138 percent, not 128 percent.

3. Alberta's position: *"Today's reality in fact is no different than conditions that existed in either 1909 at the signing of the treaty or the period prior to the 1921 Order."*

Montana's response: Today's reality is far different than that during the 1909 to 1921 period. The following is a list of reasons.

- A. Climate change is happening and we need to plan for its implications. The issue of climate change was not known in 1909 or 1921. Glaciers were still large in Glacier National Park and had only begun to recede. It is clearly documented by American and Canadian scientists that the glaciers in Glacier and Waterton National Parks have receded and will likely be gone in 20 years or so. Further, the issues of climate change and global warming were not discussed or considered a valid concept in 1921, but they are today.
- B. Even though reserved water rights of Native Americans were established in 1908 in the United States, all of the western states did not know the extent of these water rights until the U.S. Supreme Court began defining quantification standards for reserved water rights in the 1970's. To suggest otherwise is wrong. Further, we are now in the process of negotiating reserved water rights with the Blackfoot Tribes, and still do not know the extent of their reserved water right claims.
- C. The Endangered Species Act was passed into federal law in 1972. This became an issue because the Act contained specific requirements to protect listed species from extinction.
- D. Montana disagrees with Alberta's assertion that a review of the 1921 Order would introduce uncertainties as to the reliability of water supplies, and would act as a disincentive to investment in the region. It would remove the uncertainties that Montana and the United States have been struggling with for the past 83 years, and it would place both countries on equal footing with regard to available water supplies.
- E. Alberta argues that the infrastructure each country has available to use water in the Milk and St. Mary Rivers is not appreciably different than that known in 1915. This is not true. Alberta has the infrastructure to pump far more water from the Milk River than it did or anticipated having at the time of the 1921 Order. Alberta is using this infrastructure to pump water from the Milk River, even though much of this pumping is not accounted for in the current Administrative Procedures and is harming United States water users.
- F. In 1921, the IJC faced the difficult task of deciphering flows based on twenty years or less of hydrologic data. Today we have over 80 more years of hydrologic information to assess how the 1921 Order and Administrative Procedures have divided the flows of these the two rivers. Alberta speculates that the quantity, variability, and seasonality of flows in the Milk and St. Mary Rivers are nearly identical to that which existed in 1921, but presents no data. Because of all the water development that has occurred in the Milk and Saint Mary River Basins, analyzing whether or not flows have changed is a difficult task, but there are a

few stream gaging stations with comparable flow data for the periods prior to and following 1921. Let's take a look at two of these stations.

- The U.S. Geological Survey operates a gaging station on Swiftcurrent Creek. This station is above Lake Sherbourne and is not affected by any upstream regulation or diversion. The records for this station are relatively complete for the months of June through September for the entire 1912 to 2002 period, with the exception of 1914, for which several months of data are missing. During June through September for the 1912 to 1921 period (excluding 1914), Swiftcurrent Creek produced an average of 67,600 acre-feet of water compared to the average for the entire period of record of 57,500 acre-feet. Flows were only below the long-term median of 56,200 acre-feet during three of the nine years from 1912 to 1921. For the period of record, the highest June through September flows were produced in 1916. Table 1 compares Swiftcurrent Creek flows for the period up to the 1921 Order to those for the most recent period (1995-2003). Average flows during the early period are about 20 percent higher than those for the recent period. It is possible that the water added from melting glaciers has been masking some impacts, especially during hot, dry summers when the melt rates would be highest. Once this glacial ice is exhausted, flows in Swiftcurrent Creek may become even lower.

Table 1. Comparison of June through September flow volumes and flow percentiles for Swift Current Creek near Many Glacier during two time periods.

Early Period	Volume acre-feet	Percentile	Late Period	Volume acre-feet	Percentile
1912	52,076	63	1995	66,089	30
1913	78,820	9	1996	65,058	32
1915	51,195	65	1997	67,993	26
1916	101,918	1	1998	45,298	75
1917	75,647	14	1999	67,571	27
1918	62,948	35	2000	49,658	66
1919	41,048	85	2001	30,768	99
1920	77,912	11	2002	74,889	15
1921	67,027	28	2003	43,196	83
Average	67,621		Average	56,725	

- Rock Creek is an eastern tributary of the Milk River with headwaters in Canada. The gaging station on Rock Creek is near the international boundary, and has been operated by the U.S. Geological Survey for the periods 1916-1926 and 1957-2003. There are only a few small diversions for irrigation above the station, and flow records are available for the months of April through October. At this station, the average April through October flows for the 1916 through 1921 period were 15,860 acre-feet, compared to an average of 9,050 acre-feet for the period of record. Flows during all years prior to and including 1921 were greater than the long-term median of 5,120 acre-feet and, once again, 1916

produced the highest April through October flows for the period of record. Table 2 compares Rock Creek flows during the era of the IJC Order to those for the most recent years (1998-2003). Flows during the recent era have been much lower and total flow volumes are less than one-quarter of those for the earlier time period. These data illustrate why the impacts of drought and climate change might be greatest on prairie streams such as the Milk River and its tributaries.

Table 2. Comparison of April through October flow volumes and flow percentiles for Rock Creek near the International Boundary during two time periods.

Early Period	Volume acre-feet	Percentile	Late Period	Volume acre-feet	Percentile
1916	34,846	2	1998	1,052	93
1917	22,766	14	1999	4,536	59
1918	5,432	46	2000	6,150	41
1919	14,863	24	2001	1,982	83
1920	8,232	39	2002	5,488	44
1921	8,395	37	2003	1,767	85
Average	15,756		Average	3,496	

4. Alberta’s position: *Average versus median flows.* Alberta uses average flows in its analysis.

Montana’s response: In its submission, Alberta consistently uses averages in its hydrologic analysis--a simplified way that can be misleading, and not consistent with techniques used in most of the West. Montana and most western states recognize that higher flows tend to skew averages so that they are generally equivalent to about the 40th percentile flow. Using only average data can be very misleading. The median flow is a much better indicator of central tendency for hydrologic data, and percentile flows are good indicators of conditions during wetter and drier years. Montana’s water shortages occur in six to seven years out of every ten years or at the 30th percentile flow and higher. We are not concerned with average and above average flows because these flows are representative of high flow years when there is generally enough water to satisfy the needs of Alberta, Saskatchewan and Montana. We are very concerned in the six to seven years out of every ten years when there is not enough water to satisfy our existing irrigation needs. New storage is generally not cost effective or feasible when you are only able to store surplus flows in one out of every four to five years. It is during these low flow years, when Montana irrigators desperately need the water, that current apportionment procedures most hurt the United States. During drier years the natural flow of the Milk River is frequently zero.

5. Alberta’s position: *“A further lengthening of the balancing period, as proposed by Montana, could effectively lead to a situation in which Montana would receive all of its Milk River entitlement in the form of uncaptured waters (what the 1915-21 hearings referred to as “waster” water) which neither Canada nor Montana would be able to capture or use.”*

Montana's response: In almost all years, Montana has enough storage to capture our entitlement if the balancing period were lengthened. Montana has 92,880 acre-feet of active storage in Fresno reservoir located above Havre and 78,950 acre-feet in Nelson below Malta in the lower Milk River Basin. In addition, there are a number of smaller reservoirs on tributaries of the Milk River in Montana. All these reservoirs are located to capture and utilize most of the known flows of the Milk River. Based on the historic record of the past 60 years, almost all the flows are used in the lower Milk River basin except for those required to keep the river channel alive. There are those rare times, however, when extreme and unanticipated rain or snow events occur, and the flows are lost downstream into the Missouri River. It is very difficult to plan for these flows as they usually occur infrequently during the spring, but they are critically needed for the spawning of Pallid Sturgeon, a species listed as endangered under the Federal Endangered Species Act. Again, the major issue for us occurs in dry years and especially during consecutive years of drought. While attending the Alberta tour in late July, we were astounded to hear that the owner of the large ½ mile sprinkler irrigation system would prefer no rain and that his entire crop would only receive water from irrigation. This is a luxury that Montana irrigators in the Milk River Basin water cannot fathom.

6. Alberta's position: *"Alberta's investigation into the feasibility of potential storage on the Milk River and the U.S. Bureau of Reclamation's activities toward the rehabilitation of the St. Mary facilities, including increasing the capacity of the U.S. St. Mary Canal back to 850 cubic feet per second, are management activities directed toward increasing each country's ability to more fully and beneficially use their share of the water of these streams."*

Montana's response: This is a minor point, but our effort to rehabilitate the St. Mary canal is based entirely on our need to rehabilitate a 100-year old structure that will probably fail if not fixed. Major sloughing into the canal has decreased its capacity from 850 cfs to about 650 cfs. As part of the rehabilitation, it only makes sense to build the canal back to its original design capacity. Unfortunately, the United States would not have the opportunity to fully utilize the canal due to limitations imposed by the Order and current Administrative Procedures.

7. Alberta's position: *"Any review of the 1921 Order would be counter productive to the development of the infrastructure required by both countries to more fully and beneficially use the waters of these rivers."*

Montana's response: A review of the 1921 Order would allow the United States and Montana to better plan for our infrastructure improvements. As noted above, a review is critical as we are not able to fully utilize the capacity of the St. Mary canal under the existing Order and Administrative Procedures. We are planning to rehabilitate the St. Mary canal and enlarging Fresno Reservoir, and having a more certain water supply would help us to justify this rehabilitation and to obtain state and federal funding.

8. Alberta's position: *"From the 1915-21 hearings it is apparent that the 1921 Order was based on the intent of the Treaty for each issue rather than any compromise in which one country was favored on one issue and the other on another issue."*

Montana's response: Canada's brief of October 1931 to the IJC on reviewing the Order states: *"It has already been pointed out that there were main issues before the Commission upon one issue the Commission, in effect, adopted an Order which carried out the United States' contention in its entirety; and, upon the other issue, the view advocated by the Canadian Government was accepted. The Order of 1921 was, in that sense a compromise, but a compromise based upon two mutually consistent interpretations of the Treaty."* Based on the hydrologic records of the past 80 plus years, we have received very little in the compromise and given up much.

9. Alberta's position: *"As indicated at the time, the only water uses within the Lee Creek basin were one seventy-acre irrigation project with Alberta and the municipal water supply for the Town of Cardson..."* Alberta continues; *"Today, there continues to be no identified U.S. beneficial uses with Lee Creek that would cause Canada, the downstream jurisdiction, any concern regarding the water it receives."*

Montana's response: Even though the waters of Lee Creek are not used in the Lee Creek drainage, the waters are used further downstream as part of the Southern Alberta irrigation project(s). Because Lee Creek is an international stream with most of its flow originating in the United States, Montana has standing to claim a portion of this flow. Alberta and Saskatchewan do not have standing to claim flows of the southern tributaries of the Milk River that arise and flow entirely within the United States. It continues to astonish us that in the 1921 two-part compromise, the non-international American southern tributaries of the Milk River were viewed as streams that might potentially be included in apportionment calculations, while the clearly international tributaries of the St. Mary River, such as Lee and Rolph Creeks were ignored.

Using Alberta's own argument identified above, the IJC should exclude Lee Creek and the southern tributaries of the Milk River in Montana from the apportionment. Like Montana with Lee Creek, Alberta is not able to use any of the flows of the southern tributaries of the Milk River in Montana. This in turn should cause the "prior right principle" to be removed as the controlling factor in the Order and invalidate the 1921 compromise. The United States has far more justification, based on Alberta's own argument, to exclude the southern tributaries of the Milk River because they originate and are contained wholly within the United States. As noted above, Lee Creek is an international stream where almost all the flows originate in the United States.

10. Alberta's position: *"The U.S. has never constructed the 124,000 acre-foot storage reservoir on Lower St. Mary Lake, and the diversion canal carrying U.S. entitlements from the St. Mary River to the Milk has deteriorated such that it now has a capacity of only 650 cfs. As a result, today the U.S. on average is diverting only about 62 percent of its entitlements of the flow of the St. Mary River."*

Montana's response: The 124,000 acre-foot storage project on Lower St Mary Lake was to be a joint Canadian/United States project. When Canada pulled out, the United States could not justify building the project. Further, as noted above, even though the canal can carry 650 cfs at this time, the limitations placed on the United States by the 1921 Order and Administrative Procedures preclude the United States from using the full capacity of the canal during much of the irrigation season.

11. Alberta's position: *"Most of Montana's irrigation projects rely on highly inefficient flood irrigation and require approximately 29 inches of water as compared to the average of about 14 inches applied to irrigation projects in southern Alberta."*

Montana's response: The Treaty contains no stipulation to award either country more water for being more efficient. We have made one of our planning documents available to Alberta, and they have evaluated it for a different purpose than it was intended. With respect to information in the document pertaining to the St. Mary canal and diversions of St. Mary River water into the Milk River, Alberta has reasonable interests. But the United State's irrigation infrastructure on the lower Milk River is of no consequence to Alberta, and should be of no more interest to the Province than the lower St. Mary irrigation system in Alberta is to Montana. We only comment here to clarify some of the misconceptions that have been presented by Alberta.

Most of the sprinkler irrigation across Montana is low head, highly efficient sprinkler irrigation systems, probably identical to those found in southern Alberta. The reason that most irrigators in the United States portion of the Milk River have not invested in these more efficient systems is the lack of certainty in water supply as compared to that in southern Alberta and most other areas of Montana. Such uncertainty makes it difficult to spend money on improving irrigation systems.

Further, the 29 inches noted above was taken completely out of context. The 29 inches was identified as the amount needed for a full service supply in the Milk River basin at the headgate. Nowhere in the basin is this amount of water presently available. It was used in one of the alternatives described by the Bureau of Reclamation in its scoping document. That alternative evaluated a new dam on the St. Mary River at Babb, and stated that the proposed project could provide full-service irrigation in the Milk River basin of 27.3 inches of combined rain and irrigation water at the headgate. Since this irrigation is mostly flood, there is a very high return flow factor that allows the return flows to be re-used over and over again.

12. Alberta's position: *Alberta states on page 19 that "the U.S. has been relying on unused Canadian entitlements in the Milk River to meet part of its irrigation requirements". And on page 20 states that "in recognition of the U.S. entitlements on the St. Mary River, Canada's water management and development plans were and continue to be based on Canada's legal entitlements as defined by the 1921 Order, rather than any unused portion of U.S. entitlements."*

Montana's response: Alberta tries to make a distinction where there is no difference. We see no reason to keep secret the fact that Montana irrigators use as much of the Milk River water that crosses the international boundary as they reasonably can. This is entirely rational; there is nothing in the Treaty that prohibits it. Does Alberta imply that it makes United States excess St. Mary River deliveries off limits to its irrigators? If Alberta uses any of these excess waters, then it must be to "meet part of its irrigation requirements" that would not otherwise be met.

13. Alberta's position: *"The 1921 Order defined Canadian and U.S. entitlements to the waters of the St. Mary and Milk Rivers. The fact that Canadian water use is considerably greater today than identified in 1920 is merely a reflection that, following the 1921 Order which defined its entitlement Canada has proceeded to make the capital investments required to more fully, beneficially and efficiently utilize its share of the waters of these two streams, thus permitting an expansion in irrigated acres."*

Montana's Response: Any further development of water in the Milk River basin by Alberta will only worsen U.S. shortages in the Milk River, which already exist in seven years out of every ten years. As noted in Governor Martz's letter of September 7, 2004, the natural flows of the Milk River in July and August are only able to meet Alberta's demand about 10 percent of the time. This means Alberta is using St. Mary River water that has been diverted through the canal without cost for the remaining 90 percent of the time during late summer. We do not begrudge Alberta's desires to improve its economy by investing in irrigation. But Alberta's ambitions in the Milk River Basin are harming Montana water users, and further developments by the Province will occur at the expense of Montana water users.

On page 7 of its submission, Alberta states that it has only developed the capacity to capture and use 7 percent of its entitlement on the Milk River. This is not entirely true. In Table 1 of its submission, Alberta calculates its average Milk River entitlement as 39,428 acre feet. Alberta's *Milk River Basin Preliminary Feasibility Study, Draft Report* dated October 15, 2003, indicates that Canadians irrigate 3,138 hectares (8,601 acres) with Milk River water. On page 11 of its submittal, Alberta states that the "duty" of water in the Province is now approximately 14 inches. It would follow then that Alberta has the capacity to use about 10,000 acre-feet of water per year in the Milk River Basin. This would amount to nearly 25 percent of its 39,428 acre-feet average entitlement rather than the 7 percent claimed. The irony is that what Alberta is saying is not entirely false. A considerable portion of the water it uses from the Milk River is not Milk River water; rather it is St. Mary River water that has been diverted into the Milk River by the United States.

Alberta deflects contentions regarding its water use on the Milk River by characterizing them as "minor computational problems," and implies that the U.S. "continues to receive flows that is greater than its entitlement in the Milk River." This simplistic way of operating has created significant harm by taking water away from Montana irrigators during the heat of the late summer when they need it most. Please keep in mind that the

current Administrative Procedures generally require that deficits incurred during one bi-monthly accounting period be made up during the following.

14. Alberta's position: Dealing with the meaning of prior appropriation Alberta stated, *"Equal sharing would apply only to water remaining after each country took its prior appropriation. Based on this interpretation, Canada argued that, since it had allocated nearly all of the flow of the St. Mary River and much of the Milk River prior to 1909, it should be entitled to a greater allocation than was reflected in the Treaty"*[emphasis added].

Montana's Response: Both countries can pick and choose language to quote from within the thousand pages of testimony between 1915 and 1920 to justify their position. But the above statement by Alberta on this issue is the primary issue and our primary concern. Alberta states "...it [Alberta] should be entitled to a greater allocation than was reflected in the Treaty." We feel very strongly that the language of the Treaty must be the foundation of the Order and not an interpretation or compromise advocated by Canada. Canada should not be entitled to a greater allocation than that stated in the Treaty, which is the case with the 1921 Order.

Further, Montana's has water rights that were filed prior to 1908 to irrigate approximately 142,130 acres for a total annual irrigation diversion requirement of 474,716 acre-feet. It is interesting to note that this prior irrigation requirement is slightly greater than one-half of the annual median combined volume of the St. Mary and Milk Rivers of 462,567 acre-feet (1949-2002). In other words, at the signing of the Treaty, Montana had prior water rights to slight more than one-half of the annual median combined flow volume of the two rivers. In addition, these pre-1908 water rights do not include the reserved water rights of the Blackfeet, Rocky Boy or Fort Belknap Tribes who claim pre-1908 water rights for water from the St. Mary and Milk Rivers and their tributaries. For example, the Fort Belknap Tribes have reserved water rights for 645 cfs annually of the natural flow of the Milk River: 125 cfs from March 1 to October 31 and an additional 520 cfs from January 1 through December 31 with a 1855 priority date. The Tribes also have reserved water rights on the southern tributaries of the Milk River such as Peoples and Beaver Creeks.

15 Alberta's position: *"An assessment of precipitation data for Havre indicates moderately higher precipitation in the 1909-26 period than in subsequent years, the station was however discontinued in 1960. A review of precipitation trends for Cut Bank, Montana and for several sites in Alberta (including Lethbridge, Medicine Hat, and Cardston) do not indicate any significant change."*

Montana's response: The Havre station was not discontinued; it was moved about 4 miles to the airport and remains there to this day. Our statistical analysis found that this move did not result in a change of the nature of the data. When Canadian representatives asked us for these data, we sent it to them, and informed them that the station had been moved. We included the statistics that justified why we thought the data from the Havre and Havre airport stations could be combined and used for the entire period.

The Havre station correlated very well with the station at Helena that also has 100 years of record and shows similar precipitation trends. We could find no other stations with one hundred years of continuous precipitation data that we could use for this analysis. The Cut Bank station has regular monthly precipitation records starting about 1909, but data are missing for part of 1916 and most of 1917. Canadian representatives have not shared their data with us for the Lethbridge, Medicine Hat, and Cardston stations, so we cannot comment as to whether or not these data show trends.

We never intended at this time to present definitive conclusions on how the climate has changed since the 1921 Order was established. We only wanted to point out that there is sufficient evidence to warrant an assessment by the IJC of how climate changes have affected available water supplies for both countries.

16. Alberta's position: *"In the [Montana] presentation made at the July 2004 Public Meeting in Havre, Montana, the word "receives" was used synonymously to "to entitled" and will be addressed in that context."*

Montana's response: Montana made a clear distinction between the water the United States was entitled to and the amount of water received. In almost all cases, the United States received less than its entitlement under the existing 1921 Order and Administrative Procedures.

17. Alberta's position: In its analysis Alberta compared the U.S. and Canada entitlements to a percentage of the natural flow separately in St. Mary and Milk River basins.

Montana's Response: This type of analysis is contrary to the language of the Treaty, which specifies that the two rivers be treated as one stream, and it is misleading. Alberta's analysis is like comparing an orange to a watermelon and stating they are equal. Based on data from 1990 to 2003, the total volume of water during the irrigation season in the St. Mary River Basin is nine times greater than in the Milk River Basin. As stated by Montana at the Lethbridge hearing, Montana was entitled to $\frac{3}{4}$ of 1.2 cfs of the natural flow of the Milk River Basin in August of 2000 as compared to Alberta's entitlement of $\frac{3}{4}$ of 512 cfs from the natural flow of the St. Mary in the same month.

The Milk River is primarily a prairie stream where the precipitation is generally less than 15 inches per year, and it contains only a small amount of mid-elevation contributing area. In contrast, the St. Mary River originates at high elevations in Glacier Park that receive some of the highest precipitation in Montana: up to 60 to 85 inches per year. The hydrologic record shows that flows in the Milk River are far more variable and less reliable than those produced by the St. Mary River. On page 28 of its submittal, Alberta states that the United States considered the Milk River as being the more important stream. This is not true. We always have recognized what is obvious: that the St. Mary River is a far larger and more reliable producer of water than the Milk River.

In summary, Alberta's contentions only reinforce the fact that the 1921 Order has resulted in an apportionment of flows to its advantage. When it was proposed that the Order be reopened in 1927, Canadian representatives politely declined--arguing that not enough time had elapsed. We now have over 80 years of data to assess how the Order works, and the data show that the Order and Administrative Procedures have resulted in the waters being allocated in the wrong way for too long. It is time for the IJC to review the Order and make modifications so that the waters are allocated equally in the way specified by the Treaty.