



# United States Department of the Interior

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JAN 15 2004

Mr. Terry Breese  
 Director, Office of Canadian Affairs  
 United States Department of State  
 Room HST-3917  
 2201 C Street, NW  
 Washington, D.C. 20520

Dear Mr. Breese:

On April 10, 2003, Montana Governor Judy Martz sent a letter to Mr. Dennis Schornack, chairman of the United States Section of the International Joint Commission, requesting a review of the 1921 Order relating to the 1909 Boundary Waters Treaty. The 1921 Order set forth the prescription for apportioning the natural stream flow of the St. Mary and Milk rivers. The accredited officers of Canada and the United States, through their respective field representatives, have apportioned the natural stream flow of the two rivers according to the terms of the 1921 Order for over 80 years. The United States Geological Survey provides the accredited officer and the field representative for the United States.

The State of Montana contends that the apportionment prescription of the International Joint Commission in its 1921 Order does not meet the intent of the Boundary Waters Treaty. Specifically, Montana interprets the Treaty to mean that the United States is entitled to receive 50 percent of the combined flows of the St. Mary and Milk rivers. It appears the current apportionment is providing something less than 50 percent; therefore, Montana, and thus the United States, does not receive its share of natural flow entitled under the Treaty.

Governor Martz's request has merit. The Bureau of Reclamation's Milk River Project (110,000 irrigated acres), and the Ft. Belknap Indian Reservation (10,400 acres irrigated acres), are the primary users of the United States' share of the two rivers. These and other water users in the Milk River Basin frequently experience water shortages that could be alleviated by additional water. If the International Joint Commission reviews the 1921 Order and the Montana position prevailed, the United States could gain additional natural flow to help alleviate shortages and may gain additional flexibility to provide water for settlement of some of the Federal reserved water rights for Indian reservations in the region.

The Department of the Interior supports Montana's request to re-evaluate the apportionment of the St. Mary and Milk rivers as prescribed in the 1921 Order. Reclamation has specific interests because it owns the Milk River Project facilities. In addition, several Interior bureaus (Bureau of Indian Affairs, Reclamation, and the Solicitors Office) participate in the Federal teams

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negotiating the reserved water rights settlements for the Fort Belknap Reservation and the Blackfeet Reservation. Should the International Joint Commission decide to review the 1921 Order, Interior is willing to designate Reclamation as Interior's formal representative to provide any technical assistance or review requested by the International Joint Commission.

If you have any questions, please contact Ms. Maryanne Bach, Great Plains Regional Director, at 406-247-7600.

Sincerely,

Bennett W. Raley  
Assistant Secretary  
for Water and Science