

## Overview of Public Review and Comment Process for the April 2006 Task Force Report

### Background

On April 6, 2006, the Task Force submitted its report to the International Joint Commission. The report was the outcome of 15 months of work on behalf of the Task Force. Shortly thereafter, a notice was posted to the IJC website and through various newspapers announcing the availability of the report to the public for review and comment. More than 200 bound copies of the report were distributed to interested parties and the report was posted to the IJC website. In addition, copies of the report were made available via CD-ROM format.

Review comments were requested to be provided in-writing to either of the respective co-chairs by June 30, 2006. Two public meetings were scheduled to provide a forum for interested parties to voice their comments and concerns in person to the Task Force. These public sessions were held in Havre, Montana and Lethbridge, Alberta on the evenings of May 23 and May 24, respectively. The comment period was officially closed on June 30, 2006.

### Public Meetings

Nearly 100 interested parties attended each of the public meetings and a handful of media representatives were present at both locations. The meetings were facilitated by the Task Force co-chairs and attended by the majority of the Task Force membership. In addition, IJC Commissioners Olson and Blaney, along with key staff members, were in attendance at both locations. These public sessions were structured as public meetings rather than formal public hearings, hence commentary was not recorded. Attendees who opted to address the audience were afforded approximately 10 minutes of open-microphone time and approximately 30 of the attendees at each location opted to do so. Written comments were also accepted by the Task Force at both meetings.

### Overview of Comments

The content of the oral presentations at the public meetings was generally consistent with the written commentary received (written comments were received from a total of 53 interested parties). The written comments have been electronically scanned and converted to pdf file format to facilitate handling and dissemination.

The majority of comments tend to be philosophical, rather than technical, in content. That is, although the comments ranged significantly in scope and level of detail, they can be generally categorized as either supportive of the *status quo*, or supportive of modifying the current administrative procedures. Two exceptions are perhaps noteworthy. First, the tribal or First Nations commentary (submitted by both the Blackfeet and Blood) primarily focused on issues involving their sovereign status and consequently challenge the overall validity of the Boundary Waters Treaty. Second, a small number of irrigation interests on the Frenchman River who submitted comments supported independent procedures for the Frenchman River, rather than applying general principles established for the St. Mary and Milk rivers.

In general, Alberta's interests tend to support the existing administrative provisions, while Montana's interests tend to support change, more specifically a change to an annual balancing period. Although there is a clear division with respect to the need for change, there also exists a relatively common theme throughout many of the comments which acknowledges the need for fairness, equitable treatment, and mutual benefit in considering any changes to the *status quo*. Most comments were consistent in their support of improving the methodology and accuracy of the natural flow calculations.

### Discussion

The IJC's directive to the Task Force was very specific. It instructed the Task Force to investigate the historical performance of the existing Administrative Measures and identify options for improving their performance. Accordingly, the Task Force focused its efforts on administrative improvements, although several potential options that are clearly beyond the context of Administrative Measures were also identified. A number of observations can be made with respect to administration of apportionment:

1. Any improvements to the administration of the apportioned waters will clearly require mutual cooperation and close coordination amongst the affected parties. In this spirit, the best short-term outcome for both countries might be a broadening and strengthening of cooperative institutional arrangements.
2. With respect to improved monitoring, computation, and reporting of natural flows, a long-term implementation plan should be developed and supported by all jurisdictions to address the numerous suggestions identified in the Task Force report. It was suggested by one of the key water management agencies that the respective water monitoring entities should implement a consistent approach for estimating all flows and water uses.
3. Regarding the concepts of balancing periods, surpluses, and deficits, further mutually-supported technical analysis should be conducted to more closely examine viable opportunities for improvements on both rivers.
4. Changes and improvements in monitoring the water resources and administering the apportionment will require additional effort and funding for the affected water-monitoring agencies and, to some extent, the water-management agencies in both countries. Regardless of the process ultimately used to facilitate improvements, Alberta, Saskatchewan, and Montana all expressed a desire to be more closely integrated into that process.
5. Comments were varied regarding the development and implementation of formal agreements, such as the Letter of Intent. However, to the extent such mechanisms can facilitate cooperative solutions, and effect the more beneficial use of water by both jurisdictions, their use should not be discouraged.

Many of the comments received involve issues that are beyond the realm of Administrative Measures. A summary of observations with respect to these issues follows:

1. Many of these comments deal with the 1921 Order and whether or not it is achieving what it was intended to achieve. The Task Force collected and presented a substantial amount of historical data with respect to the division of the waters of the St. Mary and Milk Rivers, including the Eastern Tributaries of the Milk River. A position by the IJC with respect to whether or not implementation of the 1921 Order (and its associated Administrative Procedures) is meeting the intent of Article VI of the Boundary Waters Treaty might serve to better guide future efforts.
2. Perhaps even more fundamental, the Task Force itself identified interpretation of the 1921 Order's key provisions as the basis for much of the divisiveness between the parties. Specifically, an interpretation by the IJC with respect to whether the 1921 Order defines an instantaneous, volume-based, or some combined volume and flow type of apportionment, would seem critical to further progress.
3. Although infrastructure improvements are clearly beyond the scope of the Task Force directive, several comments were received regarding structural enhancements. Options such as increased storage and diversion capabilities within the St. Mary and Milk River basins could provide the potential for increased operational flexibility and greater ability to optimize each country's entitlement. Additionally, the promotion of more efficient infrastructure could be beneficial to both countries by fostering a sharing of technologies and practical experience. Opportunities for shared investment improvements should not be overlooked.

4. A number of comments supported the position that the IJC should promote, within the context of the existing 1921 Order, a strategic view of sustainable water management within the basin by developing a discussion paper which explores novel and innovative approaches to optimizing beneficial use by both countries, including such aspects as market-based instruments and joint-basin operations.