

Montana – Alberta

St. Mary and Milk Rivers

Water Management Initiative

Terms of Reference

November 2008



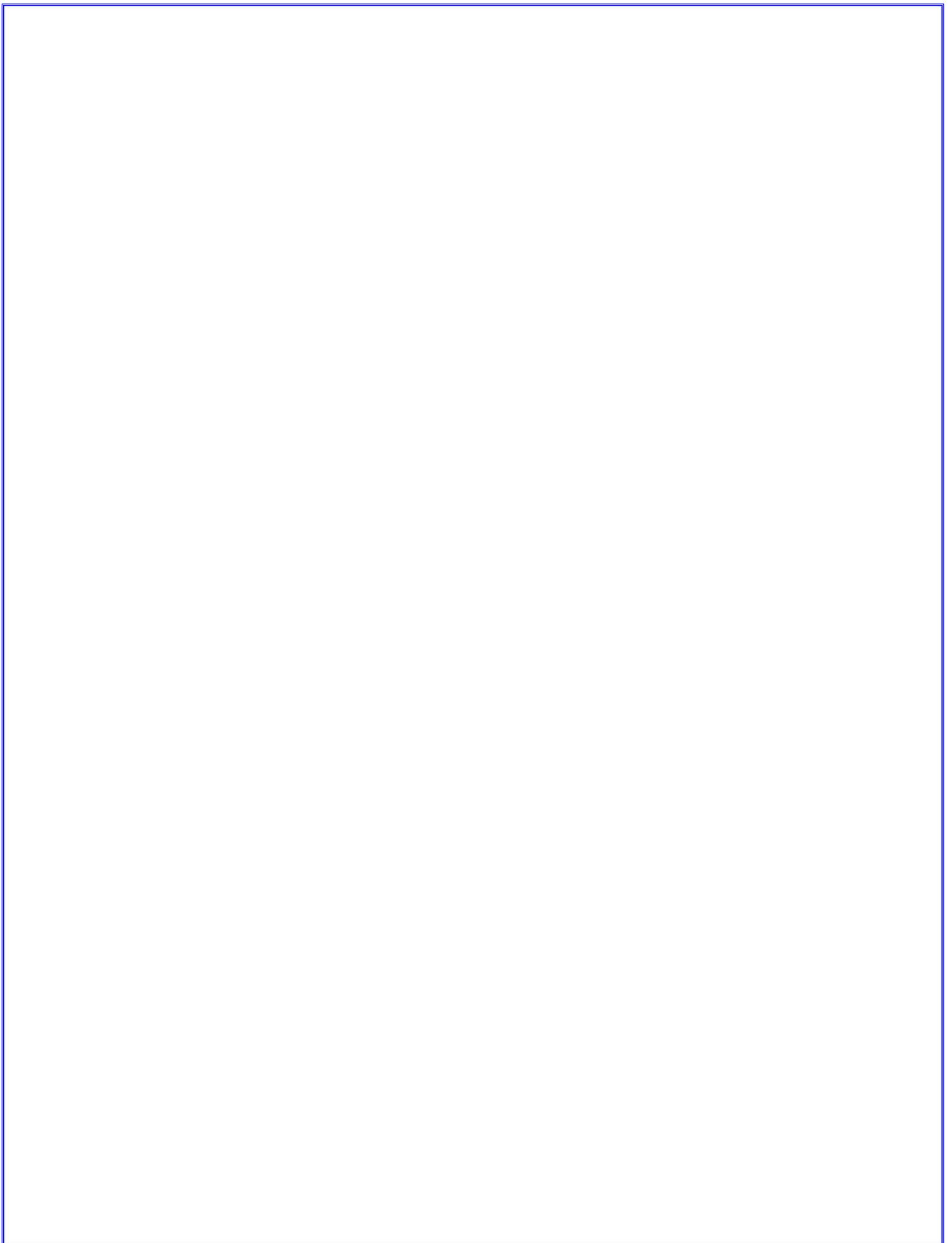
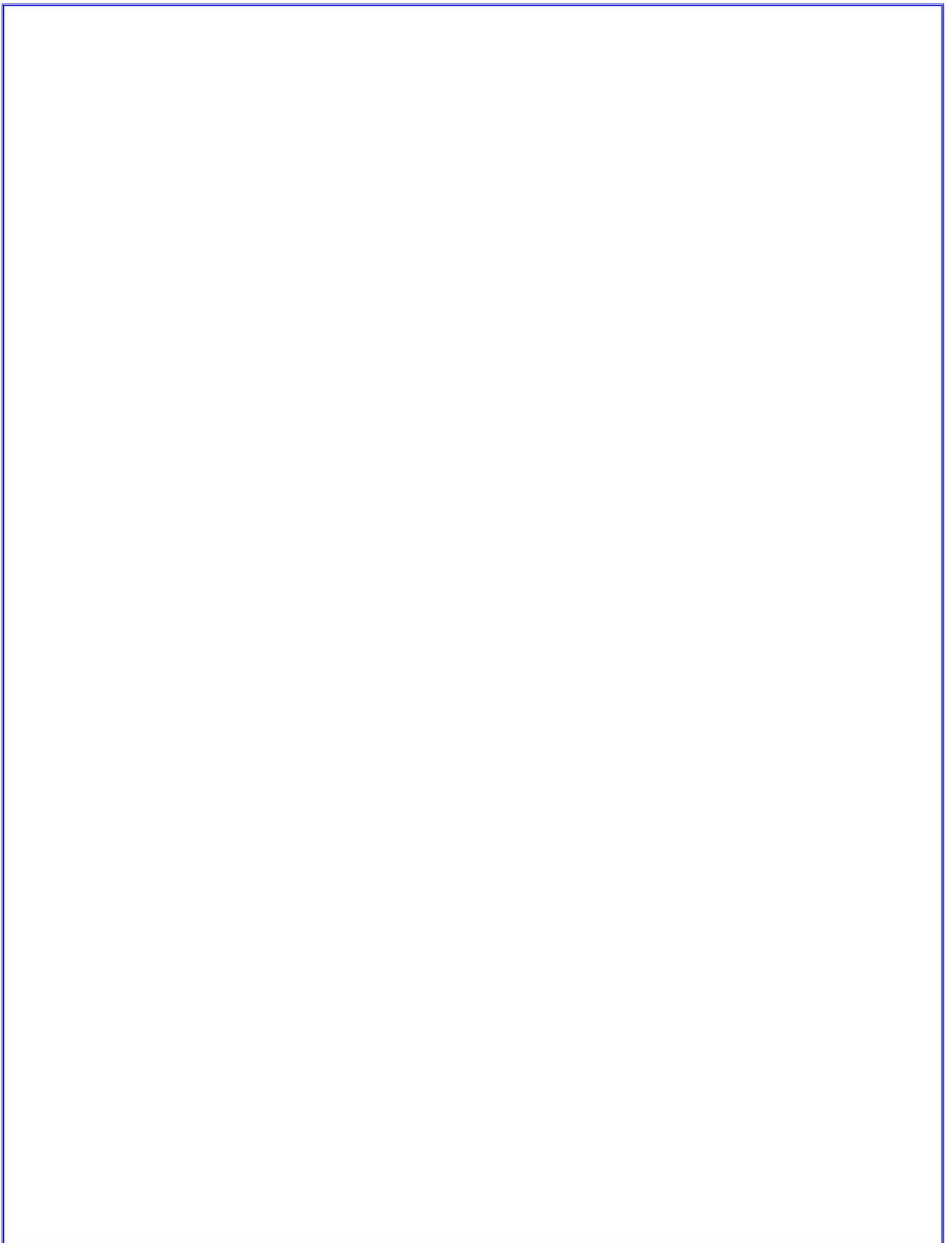


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1. Introduction, Background and Geography

Introduction

Montana and Alberta have shared the water of the St. Mary and Milk Rivers for one hundred years, under Article VI of the Boundary Waters Treaty (1909).

Montana and Alberta agree that the shared water of the St. Mary and Milk Rivers is an important resource to both jurisdictions.

Montana and Alberta believe there are opportunities for the two jurisdictions to work together to improve access to this shared water.

These terms of reference define the purpose, scope, principles, objectives, membership, code of conduct, and related process matters to guide the efficient functioning of the St. Mary and Milk Rivers water management joint initiative team (Joint Initiative Team).

The Joint Initiative Team will make recommendations to the governments of Montana and Alberta on options to increase the ability of each jurisdiction to better access the shared waters of the St. Mary and Milk River systems.

Background

In April 2003, Montana Governor Judy Martz requested the International Joint Commission (IJC) to undertake a review of the IJC 1921 Order pursuant to Article VI of the Boundary Waters Treaty, regarding the sharing of water between Canada and the United States. The IJC responded by forming a St. Mary / Milk Rivers Administrative Measures Task Force which issued a report in April 2006. The IJC also suggested that Montana and Alberta begin high level, cross-border discussions regarding the use and management of the shared waters.

This Initiative, in part, is in response to the IJC's request that Montana and Alberta seek opportunities to *"explore the fundamental and interrelated issues of collaboration on the use and management of transboundary waters, cooperation on the rehabilitation of the St. Mary Canal and future arrangements for increasing the ability of each country to better access the full amount of water available to it under the current apportionment."* (see Appendix 1)

The respective water management agencies have been instructed by their governments to work together to explore opportunities and to make recommendations for the consideration of both jurisdictions.

The United States has authorized the rehabilitation of the St. Mary Diversion Works and the reinvestment in this project represents a one time opportunity for both Montana and Alberta to improve the water infrastructure that connects the St. Mary and Milk Rivers.

The focus is on the water users in the St. Mary and Milk River watersheds and their access to the water at the time it is required.

Geography

This Initiative is defined by the watersheds of the St Mary River to its confluence with the Oldman River, and the Milk River to its confluence with the Missouri River, and includes the St. Mary River Irrigation Project, for the purpose of understanding use of St. Mary River water in Alberta.

The Initiative will not discuss management options that affect the water entitlement of the Province of Saskatchewan. However, if an option being evaluated has the potential to impact Saskatchewan's entitlement, then discussions will be held with Saskatchewan in a timely manner.

2. Purpose

The purpose of this Initiative is to explore and evaluate options for improving both Montana's and Alberta's access to the shared water of the St. Mary and Milk Rivers, and to make joint recommendation(s) on preferred options to both governments for their consideration and approval.

3. Scope

The Initiative will focus on the timing and access by both jurisdictions to their share of the water in the St. Mary and Milk Rivers, under Article VI of the Boundary Waters Treaty.

There are many uses for water within the St. Mary and Milk River basins, including municipal, power production, agriculture and in-stream flow needs for the environment. All uses will be considered when evaluating options, however, this initiative will focus on the two largest uses: irrigation and in-stream flow needs for the environment.

Recommendations to modify existing treaty instruments, including the Letter of Intent, the Administrative Procedures, and the 1921 Order, may be evaluated if those instruments present a barrier to implementing preferred options.

In addition, projects that could be jointly developed for benefit on both sides of the border should be evaluated, specifically, rehabilitation of the St. Mary Canal.

Out of scope

Changes to the Boundary Waters Treaty are not the focus of this Initiative.

Water quality and ecosystem health are implicated in any water sharing option and must be understood when recommending options, but are not the focus of this Initiative.

Water right compacts negotiated by the State of Montana, Blackfeet Tribal Government, Ft. Belknap Indian Community Tribal Government, and/or the US Government are not the focus of this Initiative.

Alberta's sharing of water with Saskatchewan under the Master Agreement on Apportionment is not part of this Initiative.

4. Principles

The Boundary Waters Treaty forms the foundation for sharing the water of the St. Mary and Milk Rivers.

The Joint Initiative Team will strive toward developing a dynamic, forward-looking, joint working relationship and aim to create enduring options for sharing the water of the St. Mary and Milk Rivers.

Water sharing options will consider implications for users in both watersheds.

Water sharing options will account for the special circumstances associated with low water years.

In evaluating options, the Joint Initiative Team must have an understanding of the procedures for managing water and making decisions in each jurisdiction.

All proposed options will be evaluated for compliance with the following treaty instruments, in the following order:

1. The Letter of Intent
2. The Administrative Procedures, and
3. The 1921 Order of the IJC

as follows:

- If the proposed options are beneficial and in accord with the treaty instruments, then the process can proceed.
- If the proposed options are beneficial but constrained by one or more of the treaty instruments, then recommendations will be made to enter into agreements that improve the instrument(s).

Options should seek to maximize and balance the long-term benefits to water users in both jurisdictions. Each jurisdiction is responsible for determining what constitutes its own long-term benefits.

Options may consider other tools that build on grass-roots cooperation and give decision makers the flexibility to meet the irrigation and in-stream flow needs of water users in both jurisdictions.

5. Objectives, Outcomes and Deliverables

Objectives

Participants in this Initiative will aim to develop a better understanding of the similarities and differences in how Montana and Alberta manage water.

This Initiative will work to identify constraints to improving access to the shared water, including differences in supply and demand; accounting for surpluses and deficits; and emerging uses.

This Initiative will link water management decision-making more closely with the needs of water users in both jurisdictions. Management flexibility is required to moderate the effects of the distinct and variable natural hydrographs in the St. Mary and Milk Rivers.

Outcomes

Montana and Alberta work together for the long-term benefit of water users and the environment in both jurisdictions.

Montana and Alberta develop an adaptive, dynamic, joint water management decision-making process driven by the needs of water users and the environment at the local level.

Opportunities for beneficial use of the water of the St. Mary and Milk River systems for people and the environment are maximized.

Water supplies for people and the environment are secured.

Montana and Alberta will recommend that the IJC closes its file on Montana's 2003 request to review the 1921 Order.

Deliverables

A report to be submitted to the governments of Montana and Alberta that:

- recommends projects, initiatives, tasks and administrative procedures necessary to improve access to the shared water,
- evaluates the options recommended and options not recommended, and
- includes a description of the positive and negative impacts, if any, associated with each option.

6. Membership and Responsibilities

Membership

Each jurisdiction will have an equal number of members that are appointed by the State and the Province from their respective jurisdictions. Membership will include those interests that will be directly affected by the Initiative. Co-chairs will be identified from the water management agencies in Montana and Alberta. Members will not be supported by alternates.

| Montana | Alberta |
|---|------------------------------------|
| Montana Department of Natural Resources & Conservation (co-chair) (1) | Alberta Environment (co-chair) (1) |

| | |
|--|---|
| Milk River – (2) | Oldman Watershed Council (2) |
| St. Mary – Blackfeet Tribe (1) | Milk River Watershed Council Canada (2) |
| Ft. Belknap Indian Community (1) | Alberta Agriculture and Rural Development (1) |
| State representative (Lt. Governor’s office) (1) | Secretariat (1) |
| Secretariat (1) | |

Additional Participants

There are other individuals and organizations that are necessary to either support the Initiative or that must be communicated with and made aware of it. They include technical support personnel, direct stakeholders, and those who will receive communication notices.

| Participant Type | Organization |
|-------------------------|--|
| Technical Support | IJC Accredited Officer(s), U.S. Bureau of Reclamation, Montana Department of Natural Resources & Conservation, Blackfeet Tribal Agencies, U.S. Army Corps of Engineers, Alberta Environment, Alberta Agriculture and Rural Development, Alberta International and Intergovernmental Relations, Canadian federal departments, other agencies as needed. |
| Direct Stakeholders | U.S. Bureau of Reclamation, U.S. Army Corps of Engineers, U.S. Geological Survey, Blackfeet Tribal Business Council, Ft. Belknap Tribal Business Council, membership of the U.S. St. Mary Rehabilitation Working Group. In Alberta, direct stakeholders are defined by the membership of the Oldman Watershed Council and Milk River Watershed Council Canada. |
| Communication Notice | International Joint Commission, Canadian federal departments, other Alberta Government Departments, U.S. Fish and Wildlife, Provincial Members of the Legislative Assembly. |

Responsibilities

Members are expected to:

- Attend and participate in all meetings.
 - Members will notify their respective co-chair immediately if they are unable to attend a meeting.
 - Members will notify their co-chair with any concerns about an upcoming decision, if a scheduled decision is to be made at a meeting that the member cannot attend.
- Review relevant information and be prepared to fully participate in meetings.
- Fully explore and understand all the issues before reaching conclusions.
- Seek areas of agreement and uphold agreements that are reached.
- Explore all options and make recommendations.
- Seek the advice of their constituency throughout the process.
- Make every effort to represent and speak for their constituency by:

- Objectively explaining and interpreting the process and its proposed outcome to their constituency
- Keeping their constituency informed of the activities and ideas emerging from the process
- Keep their respective hierarchy of decision-makers informed on progress and seek direction as required to support upcoming decisions and recommendations.
- Maintain their values and interests.

7. Code of Conduct and Procedures

Code of Conduct and Quorum

All participants are encouraged to contribute openly to this Initiative, as full and open contribution is important to building trustworthy relationships.

Quorum – All meetings must have a quorum of participants to proceed. A quorum is a minimum of four (4) representatives from each jurisdiction.

Participants will endeavour to:

- Support a fair, transparent and collaborative process
- Treat others with courtesy and respect
- Candidly identify and share their interests while maintaining an open mind to other’s interests and the opportunity for compromise
- Listen carefully to each other, ask questions to understand and make statements to explain or educate
- Challenge ideas, not people
- Share relevant information regarding the issues under consideration, and further agree to respect the need for confidentiality of certain types of information
- Let opposing views co-exist but focus on collective goals
- Speak in terms of interests (underlying concerns) rather than positions (predetermined solutions)
- Be concise, and stay on topic
- Use a “parking lot” for issues that are external to the day’s agenda

Procedures for finding agreement

The Joint Initiative Team will seek consensus on all decisions and recommendations.

Consensus will be measured by asking participants how they feel about a particular recommendation, proposal or action according to the following method.

| Level of Support | Signified by | Meaning |
|------------------|--------------|--|
| 1 | Thumbs Up | I agree and will support this recommendation, proposal, or action. |
| 2 | Thumbs | I’m neutral or may not prefer this recommendation, |

| | | |
|---|-------------|--|
| | Sideways | proposal, or action but I will support it, either because it's not important enough to block, or because it seems to be the best solution at this time, and we reached a conclusion fairly and deliberately. |
| 3 | Thumbs Down | I cannot support this recommendation, proposal or action, but here is my suggestion on how the group might move past or address this disagreement or impasse. |

Consensus is reached if all participants respond with either 1 or 2, and the Team can proceed.

When participants disagree with a recommendation, proposal, or action or choose support level 3, they should articulate their concern to the larger group, and provide a constructive alternative(s) that seeks to accommodate the interests of all participants.

The Joint Initiative Team will continue with this procedure until consensus is achieved or the group decides to disagree.

Procedures in the event of not reaching consensus

If the Joint Initiative Team has tried in good faith but is still unable to reach consensus, and still wants to move forward on the recommendation, proposal, or action at hand, they may use the following fallback mechanisms:

- Define the issue (issue: a subject of discussion, negotiation or problem solving - the *what*, the problem to be solved)
- Identify interests (interest: one party's concerns, needs or desires underlying the issue - *why* the issue is being raised [interests may be mutual or separate]. This is the motivation to solve the problem.)
- Brainstorm options for moving ahead (option: potential - often partial - solutions to meet one or more interests - *how* the problem might be solved)
- Identify standards (standard: agreed upon qualities of an acceptable solution - that is - *how well* an option solves the problem)
- Evaluate options
- Choose an option

If the Team is unable to reach agreement on an issue, further follow-up may be assigned to a task group. The task group will attempt to develop additional proposals or actions to resolve the issue and report its recommendations to the Team.

When appropriate, external resources may be engaged to provide an independent opinion.

If none of the above helps the Joint Initiative Team make progress, the Team will seek further direction from the governments of both jurisdictions.

8. Tasks and Resources

Tasks will include:

| | Task | Resources |
|--|--|------------------------------|
| | Collect background materials (maps, reports, models) | Joint Technical Support Team |
| | Develop information on aggregate water supply, actual use, and demand by sector | Joint Technical Support Team |
| | Develop information on and recommend an appropriate hydrological modeling software | Joint Technical Support Team |
| | Evaluate options to improve access to the shared water for both jurisdictions | Joint Initiative Team |
| | Recommend options improve access to the shared water for both jurisdictions | Joint Initiative Team |

9. Schedule

Phase 2 is to start in December 2008 and be completed by April 1, 2010, to provide its first recommendations to the governments of Montana and Alberta. This leaves time for further review and analysis to be undertaken later in 2010.

The elapsed time for Initiative completion should be about 18 months, as follows:

- Learning Phase - Approximately 3 meetings over 3 months. This phase will have considerable technical support needs.
- Options Evaluation Phase - Approximately 3 or 4 meetings over 9-12 months.
- Recommendations Phase - Approximately 3 meetings over 3 months.

10. Budget

The budget for this Initiative falls within the operational budget of each jurisdiction.

International Joint Commission
Canada and United States



23 OCT 2007 RCVD

Commission mixte internationale
Canada et États-Unis

October 19, 2007

The Honorable Brian A. Schweitzer
Governor of Montana
Helena, MT 59620-0801

Premier Ed Stelmach
Office of the Premier
Room 307, Legislature Building
10800 – 97th Avenue
Edmonton, AB T5K 2B6

Dear Governor Schweitzer:

Dear Premier Stelmach:

On July 20, as a follow up to our meetings with each of you, we sent the draft of a letter, that ultimately would be directed to you, to contacts we had in your respective governments. The purpose of sending the draft (enclosed) was to seek comments on how we might improve the formal letter to the two of you. Feedback regarding our draft has been quite positive. It has included the Governor's direct response (enclosed) as well as verbal comments from Alberta. We thank you both for the prompt and serious consideration given to our draft.

Clearly there is a shared interest in beginning Governor/Premier level discussions concerning the use and management of the St. Mary/Milk Rivers. We are pleased that this is the case. We continue to believe that the approach outlined in our draft provides the best opportunity for real progress now and into the future. In particular, we think that an early initial meeting between the two of you can set the process in motion and lead to your establishment of a small group to explore the fundamental and interrelated issues of collaboration on the use and management of transboundary waters, cooperation on the rehabilitation of the St. Mary Canal, and future arrangements for increasing the ability of each country to better access the full amount of water available to it under the current apportionment. We also think that this group should initially be composed of senior officials from Montana and Alberta who have your confidence and the U.S.–Canada St. Mary and Milk Rivers field representatives who are responsible for implementing the current apportionment.

While it is important that this group be asked to report back to you in fairly short order, the experience of the group, which could be referred to as an "interim watershed council", could point the way to more comprehensive consultations or arrangements in the future.

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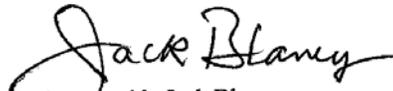
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Thank you again for meeting with us earlier this year to discuss the extremely important issues regarding water use in the St. Mary and Milk Rivers basins. All Commissioners and staff are available to provide you with additional information or any other support you might find to be helpful.

Sincerely,



The Honorable Allen I. Olson
Commissioner, U.S. Section



The Honorable Jack Blaney
Commissioner, Canadian Section

Enclosures