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Duncan Hollis
Office of Legal Counsel
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

Dear Mr. Hollis,

Recently I was furnished a copy of a Memorandum of Understanding (MOU) that has been signed between the State of Missouri and the Province of Manitoba.

From my perspective, the MOU raises a serious question about the propriety of such a memorandum of understanding given the constitutional limits on compacts between a state government and a foreign country. As you know, the U.S. Constitution (Article I, section 10) prohibits a state government from entering into a treaty with a foreign government, or an adjunct of a foreign government. A state may enter into a compact with a foreign government, but only if the United States Congress has expressly given consent through legislation to that compact prior to the state entering into it. The Congress has not taken that step in the case of the Missouri-Manitoba MOU.

This Memorandum of Understanding deals with the national interest of the transfer of water between two watersheds, the Hudson Bay Basin and the Missouri River Basin. Clearly the interest here is much broader than the interest of one American state or one Canadian province. Therefore, in my view an agreement in this area should be prohibited under the compact clause of the Constitution.

In addition to all of this, I understand that Manitoba has contacted other states with the interest of entering into similar Memorandums of Understanding.

From my perspective, it appears that Missouri has acted inappropriately and not in accordance with the Constitution in signing a MOU with the Province of Manitoba. I am writing today to ask for your analysis of this agreement and your determination of whether such an agreement is allowed given the constitutional ban and the lack of Congressional consent. I look forward to hearing your views.

Sincerely,



Byron L. Dorgan
United States Senator