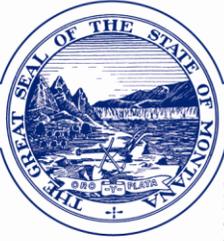


RESERVED WATER RIGHTS COMPACT COMMISSION



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July 20, 2011

John Carter
Rhonda Swaney
Legal Department
Confederated Salish & Kootenai Tribes
P.O. Box 278
Pablo, MT 59855

By E-mail

Dear John and Rhonda:

The Montana Reserved Water Rights Compact Commission (the Commission) has authorized me to transmit to you the State's formal proposal for the resolution of the Tribes' claims to off-reservation water rights. In developing this proposal, the Commission has worked with Montana Fish, Wildlife and Parks (FWP) and the Department of Natural Resources and Conservation (DNRC) to identify mechanisms to provide meaningful instream flow protections that could be recognized in a Compact for streams outside the boundaries of the Flathead Indian Reservation where the State believes the Tribes have both significant interest and colorable legal claims to non-consumptive instream uses.

These streams include the Kootenai River, the Swan River, the Bitterroot River, the Flathead River system above Kerr Dam, and the Upper Clark Fork River (the drainage area above Missoula, MT). For the mainstem of the Kootenai and Swan Rivers, the State proposes recognizing water rights with time immemorial priority dates and with one or more enforceable hydrographs set at a level appropriate to providing the biological benefits, protections to existing users and sufficient management flexibility to allow the DNRC to permit some new uses of water under the Montana Water Use Act. In addition to this mainstem water right on the Kootenai, the State proposes making the Tribes co-owners with FWP of FWP's filed use right claims on the Tobacco River and Young Creek, both tributaries to the Kootenai River.

For the Bitterroot, the State proposes making the Tribes co-owners with FWP of FWP's contract rights for the release of 15,000 acre-feet of stored water from the Painted Rocks Reservoir and 3,000 acre-feet of stored water from Lake Como, as well as of FWP's 12 claims for public recreation water rights filed in Montana's general stream adjudication. For the Flathead system, whose flows are heavily regulated by, among other things, the Biological Opinion for the Federal Columbia River Power System, we propose making the Tribes co-owners with FWP of FWP's filed water rights claims for instream flow and fish and wildlife within the Flathead system.

For the Upper Clark Fork, the State proposes making the Tribes' co-owners with FWP of the Milltown Dam water rights the State acquired through its settlement of natural resource damage litigation with the Atlantic-Richfield Company and Northwestern Energy. A critical component of this Milltown proposal is the negotiation of a management plan to ameliorate the potentially disruptive consequences of the exercise of the senior Milltown rights on junior users upstream. In addition, the State proposes making the Tribes co-owners with FWP of FWP's instream flow and recreation right claims in the Blackfoot and Clearwater Rivers.

Along with negotiating a management plan for the exercise of the Milltown rights, this proposal contemplates the need to negotiate a specific management framework for how the rights we propose to be jointly held by the Tribes and FWP will be exercised. In addition, the State intends to propose for the Joint Technical Team's initial consideration hydrographs describing the parameters of the time immemorial instream flow rights on the Kootenai and the Swan that we believe can provide a reasonable basis for a negotiated settlement. At this time, those hydrographs remain works in progress, but the State anticipates having those available for consideration within 60 days.

The State recognizes that this proposal leaves many important details to be filled in, particularly the identification of appropriate flow targets on the Kootenai and Swan Rivers, and the development of the method or methods through which the Tribes and FWP would co-own and co-exercise the various rights identified above. We have chosen this approach because we believe that, while critical, these are the sorts of details best addressed on a technical and staff level in the first instance. This proposal in many ways is best viewed as an identification of the sideboards that the State believes to be necessary to guide that work. We are firmly convinced, however, that this proposal reflects a good faith effort to resolve in a mutually acceptable manner the Tribes' treaty-based claims to off-reservation water rights for instream flows.

We look forward to discussing this proposal at our August negotiating session. Please do not hesitate to contact me if you have questions or would like additional information in advance of that meeting. Thank you for your consideration.

Sincerely,

Jay Weiner
Staff Attorney
Montana Reserved Water Rights
Compact Commission

Cc: Duane Mecham
David Harder