

RESERVED WATER RIGHTS COMPACT COMMISSION



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THE STATE OF MONTANA'S PROPOSAL FOR THE RESOLUTION OF THE OFF-RESERVATION WATER RIGHTS CLAIMS OF THE CONFEDERATED SALISH & KOOTENAI TRIBES

July 20, 2011



INTRODUCTION

The State of Montana (State) through the Montana Reserved Water Right Compact Commission (Compact Commission), the Confederated Salish and Kootenai Tribes (Tribes) and the United States are attempting to settle, through negotiation rather than litigation, the Tribes' water rights claims in the State of Montana. Among these claims, are ones for non-consumptive off-reservation uses to preserve the Tribes' right, recognized in the 1855 Treaty of Hell Gate, to tak[e] fish ...in common with citizens of the Territory."¹ Language in similar treaties in the Pacific Northwest have been interpreted to secure to tribes protectable rights in stream flows and other aspects of water rights to ensure that the right to take fish means more than simply the ability to dip a net into the water and have it come out empty.²

Consistent with the Compact Commission's task of reaching a quantification agreement concerning the Tribes' water rights that both appropriately recognizes the scope of those rights and also accords meaningful protections to existing water users, and with an eye toward reaching accord on off-reservation rights at a level that provides for tangible biological benefits to the affected fisheries and ecosystems and recognizes the State's need for management flexibility in basins that are not wholly appropriated, the Compact Commission has worked closely with Montana Fish, Wildlife & 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. 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 Compact Commission 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 management flexibility referenced above. For the remainder of

¹ Treaty of Hell Gate, Article 3: "The exclusive right of taking fish in all the streams running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."

² See, e.g., *United States v. Washington*, 506 F.Supp. 187, 203 (W.D.Wash.1980); *United States v. Adair*, 723 F.2d 1394 (9th Cir. 1983).

the identified rivers, the State is firmly convinced that a simple recognition in these streams of a non-consumptive right for the Tribes with a time immemorial priority date does not provide the basis for a viable negotiated settlement. However, the State believes that the approach described below is capable of providing the Tribes with meaningful instream flows for these streams in a manner that will allow the settlement to move forward in the Montana legislature.

The State also requests that this proposal also be viewed in light of the stream flow protections that already exist on numerous streams and reaches in western Montana, which individually and collectively provide important context for the analysis of the Tribes' claims to off-reservation water rights. These existing protections are depicted on the map attached hereto as Appendix A. They include protections on 63 streams in the Kootenai River basin, 107 streams in the Flathead River basin (a number which excludes those existing protections for streams within the Flathead Indian Reservation), 86 streams in the Upper Clark Fork basin and 157 streams in the Lower Clark Fork basin. These protections are provided through a variety of mechanisms that include quantification points and stream reaches protected through the National Park Service-Montana and US Forest Service-Montana water rights compacts, instream flow leases held by FWP, and instream flow and recreation water rights claims filed by FWP in Montana's general stream adjudication. Additionally, the Upper Clark Fork basin above Missoula and the Bitterroot basin have been closed to new appropriations by the Montana legislature.

DRAINAGE BY DRAINAGE APPROACHES

The Kootenai –

In some ways, the Kootenai River drainage is the most straightforward basin for recognizing the Tribes' off-reservation rights, as the existing consumptive uses in that drainage are small compared to the volume of water available. Consequently, the State proposes to recognize a tribal instream flow right in the mainstem of the Kootenai River with a time immemorial priority date. At the same time, determining the optimal way to describe this right, the reach or reaches of the river it will protect, and how it can best be enforced, is complicated by the fact that the double-peak operations of Libby Dam essentially reverse the natural hydrograph by storing water during the spring runoff and releasing water during the cold months

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for power generation and flood risk management. Thus the State is not proposing to use current flow conditions as a baseline for establishing the Tribes' for-all-time water right. At the same time, those operations have been dramatically improved over the past 5-7 years by the development and implementation (starting in 2009) of the Mainstem Amendments (or Montana Operations) included in the 2008/2010 Supplemental Biological Opinion (BiOp) for the Federal Columbia River Power System (FCRPS) that is currently in litigation before Judge Redden in Portland. The State and the Tribes have both invested significant time and resources in defending that BiOp and in advocating for the Mainstem Amendments, and the State is unwilling to do anything in this settlement that undercuts that effort.

Consequently, the State suggests that the parties direct the Joint Technical Team (JTT) to look at ways that an enforceable hydrograph of a tribal Kootenai River instream flow right with a time immemorial priority date could be defined to account both for current constraints and subsequent changes over time when, for example, FCRPS operations are improved for the benefit of native Montana species and/or there is a renegotiation of the Columbia River Treaty encompassing other improved opportunities. The State will provide an option to the JTT for its consideration that meets these objectives. The State option will describe a tribal Kootenai instream flow right that also retains the DNRC's authority to permit new water uses in the Kootenai River basin (recognizing that such junior uses might not be able to be satisfied every year, but at least in wet and average conditions).

Kootenai Tributaries—

In addition to this mainstem water right, 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. Appendix B summarizes the attributes of these claimed rights. These claims on both the Tobacco River and Young Creek were included in the Water Court's March 1984 Temporary Preliminary Decree on Kootenai River, Basin 76D. These claims were also recognized in Judge Holter's decision in Case 76D-48 and 75D-49. In that decision, Judge Holter ruled that the maintenance of public fisheries is a beneficial use in Montana and was before July 1, 1973, and that FWP's claims for instream fish and wildlife purposes on Young Creek and the Tobacco River are for beneficial uses for valid appropriations of water. (He additionally held that the construction and maintenance of fish ladders, fish traps and passage

facilities constitute an appropriation by diversion.) Between a time immemorial mainstem right and co-ownership of the FWP recreation rights, the State believes that the Tribes interests in the Kootenai River drainage will be fully recognized and protected.

The Swan –

While consumptive uses take up a larger percentage of the available water supply in the Swan than the Kootenai, the Swan River drainage offers the added flexibility of being less directly impacted by dam operations than the Kootenai. Although the Swan is a tributary to the Flathead, it is not as major a contributor to FCRPS operations as the Kootenai. Thus the State proposes a similar approach in the Swan as in the Kootenai—that is, to recognize a tribal instream flow right with a time immemorial priority date in the mainstem of the Swan that: 1) provides biological benefits to the ecosystem; 2) protects existing uses; and 3) preserves for the DNRC the ability to permit some new uses that could be satisfied at least in above average water years. Again, the State will provide an option to the JTT for its consideration that meets these objectives. It is worth noting that the largest existing rights are the non-consumptive rights for hydropower held by the Pacific Power & Light Co. As they are non-consumptive, Pacific Power's rights would not conflict with the right we are proposing to recognize for the Tribes.

The Bitterroot –

In contrast to the Kootenai and Swan River drainages, the Bitterroot drainage presents a much more complicated picture. As early as 1947, the United States Department of Agriculture's Soil Conservation Service (now named the Natural Resources Conservation Service) identified significant shortages in water supply for then-existing irrigation.³ Recognition of a senior instream flow right for the Tribes in the Bitterroot would thus be too disruptive of existing uses to be a reasonable part of a negotiated settlement. Nonetheless, FWP possesses contracts for the delivery of specified volumes of water from two storage facilities in the Bitterroot drainage for instream flows, along with additional claims filed in Montana's general stream adjudication. The State proposes to make the Tribes co-owners, with FWP, of those rights as a means of providing the Tribes with recognized instream flow protections in this

³ See "Reconnaissance Conservation Report on Water Control, Use and Disposal, Bitterroot River Drainage Basin," USDA Soil Conservation Service, April 1947.

drainage. The specifics of how such co-ownership will be administered and protected would be a subject for further negotiation.

FWP has three contracts for stored water that it uses to augment Bitterroot River mainstem flows. One contract is a life-of-the-project contract from Painted Rocks reservoir for 10,000 acre-feet to be delivered during the summer and fall.⁴ Under the terms of this agreement, FWP is entitled to a 10,000 acre-foot allocation (or, if that much water was not available, 40% of the stored water delivered at the reservoir outlet). This stored water is available for release between May 1 and September 30th of each year. The term of this contract is for the useful life of the Project, as extended by any repairs and rehabilitation. FWP has a second agreement with DNRC, dated March 5, 1958,⁵ for an additional 5,000 acre-feet of stored water from Painted Rocks. The third FWP agreement is with the Bitter Root Irrigation District for a maximum of 3,000 acre feet of water out of Lake Como (the exact amount depends on annual snowpack and stream flow conditions), used primarily to supplement river flows during the fall.⁶ Adding the Tribes to these agreements as a co-party with FWP or through some other sort of shared-right-of-exercise arrangement would afford the Tribes a significant mechanism for achieving flow protection goals in the Bitterroot drainage.

In addition, FWP's filed rights include 12 claims for public recreation uses for the Bitterroot River. Appendix C summarizes the attributes of these claimed rights. As the public recreational use is primarily fishing (as well as recreational floating), the flow rates and volumes asserted for these claims were determined by reference to the conditions necessary to support fish habitat. Recreational right claims were authorized under a section of Senate Bill 76 enacted during the 1979 legislative session, now codified at 85-2-223, MCA. The statute provided, however, that it was not to be construed as a legislative determination of whether claimed pre-1973 recreation uses constituted beneficial use under the laws of Montana in place prior to 1973 (a necessary component of a valid water rights claim).⁷ Nevertheless, FWP intends to assert and defend these claims vigorously in Montana's general stream adjudication. The State recognizes that claimed priority dates for these water rights, 1970, is very junior, which limits the absolute

⁴ See "FWP Water Purchase Contract Painted Rocks, between FWP and DNRC," July 12, 2004 (attached hereto as Appendix G).

⁵ See "Water Purchase Contract," March 5, 1958 (attached hereto as Appendix H).

⁶ See "Agreement Between the Bitterroot Irrigation District and the United States Department of the Interior, Bureau of Reclamation for the Operation of the Enlarged Storage Pool at Lake Como," July, 1994 (attached hereto as Appendix I).

⁷ 85-2-332 MCA (2009).

value of these rights. However, sharing ownership of these claims with the CSKT offers another mechanism for meeting the Tribes' goals for instream flow protections in the Bitterroot drainage.⁸

The Flathead Basin –

For the purposes of this proposal, the Flathead Basin includes the Flathead River and its tributaries above Kerr Dam, excluding the Swan River, which is dealt with separately above. The North, Middle, and South Forks of the Flathead River, Stillwater and Whitefish River drainages are included in this portion of the proposal. Much of the flows of the Flathead Basin are determined by the operations of Hungry Horse and Kerr dams. Flow regimes established by the Flathead Lake Level Management Plan and the FCRPS BiOp provide significant protective flows on the mainstem of the Flathead River. In addition, the proposed changes to Hungry Horse allocations and operations that are being contemplated in these negotiations have the potential to augment fishery and ecological flows if the Tribes so choose. Consequently, the Compact Commission believes the Tribes' interests in this basin are largely well protected.

That said, FWP also has instream flow water rights (Murphy Rights⁹) on the Flathead River above Flathead Lake, as well as on multiple reaches of the North, South and Middle Forks of the Flathead River. The reaches, priority dates, periods and flows of these claims are presented in Appendix D. FWP has also asserted two water rights in association with Rogers Lake. (Rogers Lake lies at the headwaters of Sickler Creek which is a headwaters tributary of the Little Bitterroot River.) One is an in-lake claim for Fish and Wildlife purposes asserting a volume of 922 acre feet and a minimum lake pool.¹⁰ The second claim asserts a 4 cfs instream flow use with a 1920 priority date on the inflows to Rogers Lake.¹¹ The State recommends making the Tribes co-owners, with FWP, of those rights as a means of providing additional instream flow protections in this basin. As also noted above, the specifics of how such co-ownership will work in the administration and protection of these rights are a subject for further negotiation.

⁸ To be clear, however, in proposing co-ownership of water rights the State is *not* suggesting an approach that includes affording the Tribes shared authority in the off-reservation management of species or the off-reservation regulation of fishing and hunting (something that no court has interpreted a treaty right to include).

⁹ "Murphy Rights" is the colloquial term for instream flow rights authorized by the Montana legislature in section 85-801, R.C.M. 1947 (1969).

¹⁰ Statement of Claim for Existing Water Rights Other Uses – Fish and Wildlife, 76L 18681 00.

¹¹ Statement of Claim for Existing Water Right Other Uses – Fish and Wildlife, 76L 18680 00.

The Upper Clark Fork –

The centerpiece of the State’s proposal for the Upper Clark Fork basin is to grant the Tribes co-ownership, with FWP, of the water rights formerly associated with the Milltown Dam. Those rights have passed to the State’s ownership as part of the resolution of the natural resources damages claims brought against the Atlantic Richfield Company and Northwestern Energy, in the Milltown consent decree, to which the Tribes are a party.¹² It is anticipated that FWP will be the State agency designated to manage those rights for instream flow purposes. The specific parameters of this transfer, how the purpose of these rights will be changed from hydropower to instream flow, and how these rights will be exercised in the future are all subjects for further negotiations if the Tribes are open to exploring this option as a way of resolving their off-reservation claims in this basin. The direct flow hydropower right associated with Milltown asserts a diversionary demand for 2,000 cfs as the maximum flow through the facilities turbines, with a priority date of December 11, 1904. This priority date and the volume of water associated with this right make it a notable senior right in the basin. Thus this right potentially has the ability to be utilized to afford significant instream flow protections for the mainstem of the Clark Fork River.

An important consideration in the administration of these rights, however, is their potential for disruptive impacts upstream of the former Milltown Dam, particularly on Clark Fork tributary streams. To ensure a workable solution, a plan for minimizing the impacts from an exercise of the Milltown rights in strict priority is a necessary component of this proposal. In general terms, we envision establishing specific flow targets for various Clark Fork tributaries. These targets would identify both the flow needs of that given watershed or stream reach and the expected flow contribution of a drainage based upon its size and hydrology. Based on our review of the existing stream flow data, we believe that appropriately set targets can ensure that the Milltown Rights can be satisfied in a biologically productive manner while allowing individual watersheds or reaches to continue their historic water management efforts—so long as they incorporate and meet their individualized flow target. This sort of adaptive management approach has been employed with much success on the Blackfoot River, though the specific flow

¹² *United States of America v. Atlantic Richfield Company and Northwestern Corporation*, Civil Action No. CV89-039-BU-SHE.

targets and any enforcement mechanism for them here are subjects for further negotiations. The effort to utilize the Milltown rights in connection with a CSKT-Montana Compact will likely be controversial, requiring careful consideration and extensive public outreach. The State does not identify these factors to suggest that using the Milltown rights in the way suggested above is unadvisable, but rather simply to be clear that it is an issue that will be watched particularly closely by the interested public.

In any event, in addition to co-ownership of the Milltown Dam rights, the State also proposes to make the Tribes co-owners, again with FWP, of FWP's existing water rights claims in the Upper Clark Fork Basin, specifically on the Clearwater and Blackfoot Rivers. (FWP has no existing water rights claims on the mainstem of the Clark Fork River.) These rights were filed in the adjudication as either Murphy Rights or Public Recreational Use Claims. The Murphy Rights claims were filed for two mainstem reaches of the Blackfoot River and two reaches of Rock Creek, a major tributary near Clinton, Montana. Streams with associated Murphy Right Claims in the Upper Clark Fork Basin include are described in Appendix E. The Public Recreation Use claims were filed in the Blackfoot sub-basin. *See* Appendix F. These claims are all filed on lakes, all but two of which (Browns and Upsata Lake) are in the Clearwater River drainage. As the public recreational use is primarily fishing, the flow rates and volumes asserted for these claims were determined by reference to the conditions necessary to support fish habitat.

The State believes that the combination of the significant mainstem protections that the Milltown Rights could afford with FWP's filed claims in the Blackfoot and Clearwater provide a sound mechanism for vindicating the Tribes' goals in the Upper Clark Fork drainage in a negotiated settlement.

CONCLUSION

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. The foregoing pages are in many ways 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 (unique in Montana) to off-reservation instream flow water rights.

APPENDICES B-F

Appendix B –Kootenai Basin

Existing Fish, Wildlife and Parks Water Rights for Instream Flow Rights

Source & Reach	Claim Number	Priority	Period of Use	Flow (cfs)	Volume (acre feet)
Tobacco R.	76d 122345 00	2/24/1965	7/1 to 7/15	282cfs	8,388
Tobacco R.	76d 122346 00	2/24/1965	6/1 to 6/15	1263cfs	2,505
(Above stated flow is for 1 day.)					
Tobacco R.	76d 122347 00	2/24/1965	7/16 to 12/31 and 1/1 to 4 /15	100cfs	54,334
Tobacco R.	76d 122348 00	2/24/1965	4/16 to 4/30	171cfs	5,086
Tobacco R.	76d 122349 00	2/24/1965	6/1 to 6/15	703cfs	19,517
Tobacco R.	76d 122350 00	2/24/1965	6/16 to 6/30	433cfs	12,880
Tobacco R.	76d 122370 00	2/24/1965	5/16 to 5/31	692cfs	21,956
Tobacco R.	76d 122351 00	2/24/1965	5/1 to 5/15	409cfs	12,166

Protected reach begins with the confluence of Fortine Creek and Graves Creek extending downstream to the mouth of the creek at its confluence with Lake Koocanusa.

Young creek	76d 110407 00	3/19/1968	5/1 to 6/30	25 cfs	3,024
Young creek	76d 110408 00	3/19/1968	7/1 to 12/31 And 1/1 to 4/30	5 cfs	3,011

Protected reach begins with the confluence of Young Creek and South Fork of Young Creek and extends downstream to the mouth of the creek at its confluence with Lake Koocanusa.

Appendix C – Bitterroot Basin
Summary of FWP Public Recreation Water Rights

Source & Reach	Claim Number	Priority	Period of Use	Flow (cfs)	Volume (acre feet)
<i>Bitterroot River Reach 1</i>					
(Confluence with the Clark Fork River upstream to the Stevensville Bridge)					
76H 151313 00		7/1/1970	10/1 to 4/30	900	378,356
(Winter)					
76H 151306 00		7/1/1970	5/1 to 6/30	15,000	29,745
(Part of Spring Runoff – One (1) day channel flow @ 15,000 cfs)					
76H 151311 00		7/1/1970	5/1 to 6/30	7,700	916,146
(Part of Spring Runoff – Sixty (60) days channel flow @ 7,700 cfs)					
76H 151312 00		7/1/1970	7/1 to 9/30	600	109,462
(Summer Period)					
<i>Bitterroot River Reach 2</i>					
(Stevensville Bridge up stream to confluence with Sleeping Child Creek)					
76H 151316 00		7/1/1970	10/1 to 4/30	500 cfs	210,198
(Winter)					
76H 151309 00		7/1/1970	5/1 to 6/30	11,000	21,813
(Part of Spring Runoff – One (1) day channel flow @ 11,000 cfs)					
76H 151310 00		7/1/1970	5/1 to 6/30	5,500	654,390
(Part of Spring Runoff – Sixty (60) days channel flow @ 5,500 cfs)					
76H 151305 00		7/1/1970	7/1 to 9/30	300 cfs	54,731
(Summer Period)					
<i>Bitterroot River Reach 3</i>					
(From the confluence with Sleeping Child Creek upstream to the confluence of E. & West Forks)					
76H 151314 00		7/1/1970	10/1 to 4/30	350 cfs	147,139
(Winter)					
76H 151307 00		7/1/1970	5/1 to 6/30	6,000	11,898
(Part of Spring Runoff – One (1) day channel flow @ 11,000 cfs)					
76H 151315 00		7/1/1970	5/1 to 6/30	3,000	356,940
(Part of Spring Runoff – Sixty (60) days channel flow @ 5,500 cfs)					
76H 151308 00		7/1/1970	7/1 to 9/30	250 cfs	45,609
(Summer Period)					

Appendix D – Flathead Basin

Fish, Wildlife and Parks Water Rights for Instream Flow (Murphy Rights)

Table 1 Flathead River

Reach	Priority	Period	Flow (cfs)
Flathead Lake to South Fork	12/22/70	8/1 – 4/15	3,500
		4/16 – 4/30	6,650
		5/1 – 7/15	8,125
		7/16 – 7/31	5,402
South Fork to Middle Fork	12/22/70	10/1 – 3/31	1,950
		4/1 – 4/15	2,100
		4/16 – 4/30	3,597
		5/1 – 7/15	5,000
		7/16 – 7/31	3,945
		8/1 – 9/30	2,100

Table 2 Middle Fork Flathead River

Reach	Priority	Period	Flow (cfs)
Mouth to Bear Creek	12/22/70	8/1 – 4/15	850
		4/16 – 4/30	1,831
		5/1 – 7/15	2,325
		7/16 – 7/31	1,904
Bear Creek to Cox Creek	12/22/70	10/1 – 3/31	75
		4/1 – 9/30	180

Table 3 North Fork Flathead River

Reach	Priority	Period	Flow (cfs)
Middle Fork to Bowman Creek	12/22/70	10/1 – 3/31	987.5
		4/1 – 4/15	1,400
		4/16 – 4/30	1,766
		5/1 – 7/15	2,625
		7/16 – 7/31	2,041
		8/1 – 9/30	1,400
Bowman Creek to Border	12/22/70	10/1 – 3/31	625
		4/1 – 4/15	750
		4/16 – 4/30	1,100
		5/1 – 7/15	1,500
		7/16 – 7/31	1,279
		8/1 – 9/30	750

Table 4 South Fork Flathead River

Reach	Priority	Period	Flow (cfs)
Hungry Horse Reservoir to Powell/Flathead County Line	12/22/70	10/1 – 3/31	600
		4/1 – 4/15	700
		4/16 – 4/30	1,180
		5/1 – 7/15	1,750
		7/16 – 7/31	943
		8/1 – 9/30	700
Powell/Flathead County Line to Headwaters	12/22/70	4/1 – 9/30	270
		10/1 – 3/31	100

**Appendix E – Upper Clark Fork Basin
Fish, Wildlife and Park’s Instream Flow Values (Murphy Rights)
Blackfoot Watershed**

River Reach Tributary	Water Right #	Priority	Period of use	Flows	Volume
Blackfoot River Reach 2, mouth to confluence with Clearwater River	98984	1/6/1971	9/1 to 3/31	650 cfs	273257
	98985	1/6/1971	4/1-4/15	700 cfs	20822
	98988	1/6/1971	4/16 to 4/30	1,130 cfs	33612
	98987	1/6/1971	5/1 to 6/30	2,000 cfs	241926
	98989	1/6/1971	7/1 to 7/15	1,523 cfs	45302
	98986	1/6/1971	7/1 to 8/31	700 cfs	65241
Blackfoot River #1 mouth of Clearwater to Mouth of N. FK. Blackfoot	149464	1/6/1971	9/1/ 3/1	360 cfs,	151343
	149463	1/6/1971	4/1 to 4/30	500 cfs	29745
	149465	1/6/1971	5/1 to 5/15	837 cfs	24897
	149462	1/6/1971	5/16 to 6/15	1,750 cfs,	107578
	149461	1/6/1971	6/16 to 6/30	1,423 cfs,	42327
	149460	1/6/1971	7/1 to 7/15	848 cfs,	25244
	149459	1/6/1971	7/16 to 8/31	500 cfs	46601

**Fish, Wildlife and Park’s Instream Flow Values (Murphy Rights)
Rock Creek Watershed**

River Reach Tributary	Water Right #	Priority	Period of use	Flows	Volume
Rock Creek Mouth upstream to Ranch Creek	133209		7/16 to 4/30	250 cfs	143272
	133211		5/1 to 5/15	454 cfs	13504
	133213		5/16 to 5/31	975 cfs	30935
	133214		6/1 to 6/15	925 cfs	27544
	133212		6/16 to 6/30	766 cfs	22785
	133210		7/1 to 7/15	382 cfs	11363
Rock Creek – Ranch Cr to Headwaters	133219		7/16 to 4/30	150 cfs	85963
	133216		5/1 to 5/15	454 cfs	13504
	133217		5/16 to 5/31	975 cfs	30935
	133215		6/1 to 6/15	926 cfs	27544
	133208		6/16 to 6/30	766 cfs	22785
	133218		7/1 to 7/15	382 cfs	11363

Appendix F – Upper Clark Fork**Blackfoot Basin- FWP Public Recreational Water Right**

<i>Source</i>	<i>Claim #</i>	<i>Use</i>	<i>Type of Right</i>	<i>Flow (cfs)</i>	<i>Volume Ac./Ft./Yr.</i>	<i>Priority</i>
Harpers Lake	149321-00	Recreation	Use	5	273	5/24/1933
Clearwater (Lake Inez)	149466-00	Recreation	Use	1,500	101,500	8/7/1928
Clearwater (Lake Alva)	149467-00	Recreation	Use	500	88,013	9/5/1928
Clearwater (Rainy Lake)	149468-00	Recreation	Use	300	23,105	5/7/1931
Clearwater (Salmon L.)	149469-00	Recreation	Use	2,800	141,749	9/13/1928
Clearwater Lake	149470-00	Recreation	Use	25	10,399	9/30/1936
Clearwater (Seeley Lake)	149471 00	Recreation	Use	1,500	203,091	9/20/1928
Owl Creek (Placid Lake)	149472-00	Recreation	Use	800	104,741	9/15/1928
Ward Creek (Browns L.)	149411-00	Recreation	Use	50	7,273	5/14/1928
Upsata Lake	167412-00	Fish & Wildlife	Use	5	1,477.9	5/27/1958