

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

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A People of Vision

A Confederation of the Salish,
Pend d' Oreilles
and Kootenai Tribes

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June 7, 2013

Stanley Speaks
Northwest Regional Director
Bureau of Indian Affairs
911 NE 11th Avenue
Portland, Oregon 97232-4169

re: May 22, 2013 letter regarding instream flows

Dear Mr. Speaks:

We have prepared this letter in response to your correspondence dated May 22, 2013, which indicates that the Bureau of Indian Affairs (BIA) shall reevaluate the existing interim instream flows on the Flathead Indian Reservation prior to the 2014 irrigation season. In this letter, you identify that the BIA will consider increasing the interim instream flows to the minimum enforceable flow (MEF) levels developed through the water rights negotiation process. Further, you identify that the BIA will evaluate other flow levels through this process. In light of the current impasse in water rights negotiations, the Confederated Salish and Kootenai Tribes (CSKT) view this as a positive step in the process to protect aquatic resources on the Reservation, and also as a federal trustee responsibility confirmed by the ninth circuit court, which upheld that it is a United States responsibility to protect instream flows. However, there are several points the Tribes identify below that need to be factored into any reconsideration of the interim instream flows.

The minimum enforceable flow levels were prepared in a negotiation context, with the declared objective to develop a water budget that protected existing uses on the Flathead Indian Irrigation Project (FIIP), while improving upon streamflow conditions. As such, they represent a compromise which generally improves streamflow condition, particularly in dry years, but is far from optimal for aquatic resources. Additionally, the MEF flow values were intended to be implemented in tandem with the normal and wet year target instream flows (TIF's) to provide a range of flows, in order to be more fully protective of aquatic resources. Consequently, the Tribes recommend that the BIA evaluate and develop

protocols to implement the target instream flows in appropriate water years, during their evaluation of the interim instream flows.

At certain locations, the MEF values are lower than the interim instream flows during late summer through winter base flows. This is because the interim instream flows are greater than natural flows, especially during winter. It also reflects the above noted point that the normal and wet year target instream flows would have superseded the MEF values in certain years, leading to an increase in the late summer and winter base flows. The Tribes recommend that, if the MEF values are implemented as currently developed, a condition be applied so that the MEF value not fall below either the current interim instream flow or the natural flow. This is a necessary condition to eliminate the possibility that the re-evaluation lead to lower instream flows during critical base flow periods.

The minimum enforceable flows identified in your May 22 letter do not include all MEF locations identified in the water rights negotiation documents, but are reduced to locations where current interim instream flows are located. The additional MEF locations are on streams that are impacted by the FIIP but do not currently have any underpinning of instream flow protections. The Tribes recommend that these additional MEF sites be incorporated into the re-evaluation that will be undertaken by the BIA.

At four locations, the MEF values identified in you May 22 letter integrate two current interim instream flow sites into one site. This was done to improve operational efficiency, but also because the MEF values were intended to be enforced over stream reaches, rather than at individual points. This is demonstrated in the proposed water rights abstracts for these rights. Currently, the interim instream flows are complied with at canal regulation points. Situations occur where the interim instream flow is met at a compliance point, but not over the stream reach downstream of the compliance point. In order to gain meaningful aquatic resources protection, the MEF values should be regulated and complied with over the appropriate stream reach.

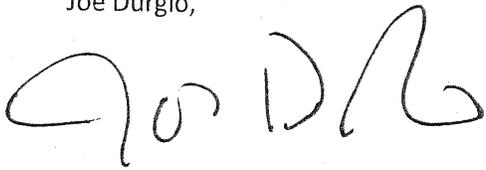
The Tribes, during the water rights negotiation process, made large concessions in the Little Bitterroot Valley by agreeing not to seek increases in instream flow values at any location in the valley. These concessions were made by weighing the full range of issues at play in the negotiation process. With the current impasse in negotiations, the benefit offsets that were under consideration are no longer available to the Tribes. Currently streamflow conditions in the Little Bitterroot River and tributaries are deplorable, and the lower approximately forty miles of the river are commonly dewatered or reduced to standing pools of water. The Tribes recurrently document the river to be dry at the mouth during the summer months. Considering this, the Tribes recommend that the MEF values reported for the Little Bitterroot River at the Camas A Canal be re-evaluated for their sufficiency to maintain aquatic resource integrity. Also, this compliance point needs to be administered over the reach extending to the confluence with Hot Springs Creek to preclude dewatering downstream of the compliance point. Further, as it relates to the Little Bitterroot River, the Tribes recommend that an instream flow compliance point be placed at the mouth of the watershed to preclude the chronic dewatering that occurs in the lower river.

Finally, during the negotiation process, the parties agreed to implement the minimum reservoir pool elevations early in the implementation phase of the agreement. The Tribes recommend that this concept not be lost, and that the BIA evaluate implementing the proposed minimum reservoir pool elevations on an interim basis.

The above points represent initial considerations after review of your May 22 letter. During re-evaluation of the interim instream flows, the Tribes may choose to expand on these points or offer additional points for consideration.

Recognizing the current impasse in water rights negotiations, the Tribes concur that the BIA should re-evaluate the suitability of the current interim instream flows and move to implement, at minimum, the minimum enforceable instream flows. The Tribes also recommend that the points detailed above, and others that may arise, be carefully considered and incorporated into any instream flow re-evaluation. If we can address any questions regarding the enclosed, please contact either John Carter or Rhonda Swaney in our Legal Department.

Sincerely,
Joe Durglo,



Chairman
CONFEDERATED SALISH AND KOOTENAI TRIBES

cc:

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