

76M 94404-01 and 76M 94404-02 Technical Documentation

By way of the water rights compact entered into by the Confederated Salish & Kootenai Tribes, the State of Montana, and the United States of America, the former Milltown Dam water right, 76M 94404-00, is hereby split and changed, creating two separate active and enforceable water rights: 76M 94404-01, with a place of use along the reach of the Clark Fork River starting just above the confluence of the Clark Fork and Blackfoot Rivers extending upstream along the Clark Fork River to the confluence of the Clark Fork River and Allen Creek; and 76M 94404-02, with a place of use along the reach of the Blackfoot River starting just above the confluence of the Clark Fork and Blackfoot Rivers and extending along the Blackfoot River upstream to the confluence of the Blackfoot River and the East Fork of Twin Creek. The designation of a place of use of these water rights is a designation for purposes of measurement of the enforceable levels and is not a geographic limitation on the location of junior water rights against whom this right may be enforced.

These water rights maintain the original priority date of December 11, 1904.

The purpose of these water rights is the maintenance and enhancement of fish habitat.

For any analysis of the legal availability of water in basins 76F (Blackfoot River), 76G (Clark Fork above Blackfoot River), 76E (Rock Creek, Tributary to the Clark Fork River), and 76GJ (Flint Creek), these water rights shall be considered conjoined at a combined flow rate of 2,000 CFS for every day of the year, as measured downstream of the confluence of the Clark Fork and Blackfoot Rivers at the location of USGS Gage #12340500 above Missoula (46°52'38"N, 113°55'53"W, NAD27) (NWNWNW SEC 19 T13N R18W).

These water rights shall not be exercised in conjunction with any artificial diversion.

The ability to enforce these water rights shall be suspended for a period of 10 years from the date the ratification by the Montana legislature of the water rights compact entered into by the Confederated Salish & Kootenai Tribes, the State of Montana, and the United States of America, becomes effective under state law.

The enforceable levels of these water rights take the form of static distributions of unique daily flow values, one each for every day of the year for each water right. Call may be initiated on the day following a five-consecutive-day-period where four out of five average daily river flows fall below their respective daily enforceable flow values; call may persist until such time as two average daily flows of the previous five-consecutive-day-period are in excess of their respective daily enforceable flow values.

The details of each water right are described as follows:

Water Right 76M 94404-01: The owners of these water rights shall be entitled to make a call, in accordance with state law, to enforce water right number 94404-01 only against junior water

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rights in basins 76G (Clark Fork above Blackfoot River), 76E (Rock Creek, Tributary to the Clark Fork River). and 76GJ (Flint Creek), that:

- 1) Have a priority date earlier than the date on which the ratification by the Montana Legislature of the water rights compact entered into by the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States of America takes effect under state law, have a purpose of irrigation and whose source of supply is surface water;
- 2) Have a priority date earlier than the date on which the ratification by the Montanan Legislature of the water rights compact entered into by the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States of America takes effect under state law, and have a purpose of irrigation, whose source of supply is groundwater and whose flow rate is greater than 100 gallons per minute; or
- 3) Have a priority date later than the date on which the ratification by the Montana Legislature of the water rights compact entered into by the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States of America takes effect under state law.

Enforceable levels of water right 76M 94404-01 shall be measured at USGS gage #12334550 on the mainstem of the Clark Fork River at Turah Bridge, Montana (46°49'34"N, 113°48'48",NAD27) (NWNWSW SEC 1 T12N R18W), unless that USGS gage is discontinued or otherwise rendered nonfunctional at which point measurements shall be taken either at this same location or at a point downstream on the Clark Fork River as near as reasonably practicable to just above, but not below, the confluence of the Clark Fork and Blackfoot Rivers. The enforceable static individual daily flow values are described in Appendix UCF.

Water Right 76M 94404-02: The owners of these water rights shall be entitled to make a call, in accordance with state law, to enforce water right number 94404-02 only against junior water rights in basin 76F (Blackfoot River), that:

- 1) Have a priority date earlier than the date on which the ratification by the Montana Legislature of the water rights compact entered into by the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States of America takes effect under state law, have a purpose of irrigation and whose source of supply is surface water;
- 2) Have a priority date earlier than the date on which the ratification by the Montanan Legislature of the water rights compact entered into by the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States of America takes effect under state law, and have a purpose of irrigation, whose source of supply is groundwater and whose flow rate is greater than 100 gallons per minute; or

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- 3) Have a priority date later than the date on which the ratification by the Montana Legislature of the water rights compact entered into by the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States of America takes effect under state law.

Enforceable levels of water right 76M 94404-02 shall be measured at the USGS gage #12340000 near Bonner, Montana (46°53'59"N, 113°45'20",NAD27) (SESENW SEC 9 T13N R17W), unless that USGS gage is discontinued or otherwise rendered nonfunctional at which point measurements shall be taken either at this same location or at a point downstream on the Blackfoot River as near as reasonably practicable to just above, but not below, the confluence of the Clark Fork and Blackfoot Rivers. The enforceable static individual daily flow values are described in Appendix BF.

Appendix UCF

| Enforceable Daily Flows for 76M 94404-01 on the Clark Fork @ Turah Bridge, MT | | | | | | | | | | | | |
|--|-------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Day | Month | | | | | | | | | | | |
| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
| 1 | 500 | 515 | 561 | 727 | 833 | 833 | 735 | 503 | 500 | 512 | 654 | 560 |
| 2 | 500 | 518 | 568 | 731 | 833 | 833 | 727 | 501 | 500 | 516 | 655 | 553 |
| 3 | 500 | 521 | 573 | 733 | 833 | 833 | 718 | 500 | 500 | 521 | 655 | 550 |
| 4 | 500 | 524 | 582 | 734 | 833 | 833 | 710 | 500 | 500 | 527 | 656 | 547 |
| 5 | 500 | 522 | 592 | 736 | 833 | 833 | 707 | 500 | 500 | 534 | 657 | 544 |
| 6 | 500 | 520 | 602 | 741 | 833 | 833 | 705 | 500 | 500 | 540 | 657 | 542 |
| 7 | 500 | 520 | 611 | 744 | 833 | 833 | 703 | 500 | 500 | 548 | 658 | 538 |
| 8 | 500 | 520 | 618 | 747 | 833 | 833 | 702 | 500 | 500 | 556 | 659 | 534 |
| 9 | 500 | 519 | 627 | 752 | 833 | 833 | 699 | 500 | 500 | 566 | 659 | 529 |
| 10 | 500 | 518 | 633 | 760 | 833 | 833 | 695 | 500 | 500 | 577 | 660 | 524 |
| 11 | 500 | 518 | 641 | 768 | 833 | 833 | 689 | 500 | 500 | 587 | 659 | 520 |
| 12 | 500 | 519 | 651 | 775 | 833 | 833 | 680 | 500 | 500 | 597 | 659 | 516 |
| 13 | 500 | 520 | 660 | 780 | 833 | 833 | 672 | 500 | 500 | 607 | 656 | 513 |
| 14 | 503 | 524 | 667 | 785 | 833 | 833 | 663 | 500 | 500 | 617 | 654 | 511 |
| 15 | 503 | 527 | 669 | 791 | 833 | 833 | 653 | 500 | 500 | 625 | 651 | 509 |
| 16 | 503 | 527 | 673 | 796 | 833 | 833 | 644 | 500 | 500 | 631 | 645 | 509 |
| 17 | 503 | 527 | 676 | 801 | 833 | 832 | 635 | 500 | 500 | 636 | 639 | 509 |
| 18 | 503 | 526 | 676 | 804 | 833 | 831 | 622 | 500 | 500 | 641 | 633 | 509 |
| 19 | 506 | 524 | 678 | 807 | 833 | 828 | 610 | 500 | 500 | 645 | 629 | 509 |
| 20 | 509 | 524 | 681 | 812 | 833 | 822 | 598 | 500 | 500 | 649 | 625 | 508 |
| 21 | 509 | 520 | 682 | 818 | 833 | 815 | 588 | 500 | 500 | 652 | 621 | 507 |
| 22 | 509 | 522 | 685 | 822 | 833 | 808 | 573 | 500 | 500 | 654 | 617 | 506 |
| 23 | 509 | 523 | 687 | 824 | 833 | 799 | 559 | 500 | 500 | 656 | 613 | 503 |
| 24 | 511 | 523 | 689 | 827 | 833 | 790 | 546 | 500 | 500 | 657 | 608 | 500 |
| 25 | 511 | 524 | 692 | 831 | 833 | 782 | 535 | 500 | 500 | 658 | 603 | 500 |
| 26 | 511 | 527 | 695 | 833 | 833 | 775 | 526 | 500 | 500 | 656 | 596 | 500 |
| 27 | 511 | 534 | 701 | 833 | 833 | 767 | 519 | 500 | 501 | 655 | 589 | 500 |
| 28 | 513 | 542 | 706 | 833 | 833 | 759 | 514 | 500 | 502 | 655 | 583 | 500 |
| 29 | 514 | 552 | 710 | 833 | 833 | 749 | 511 | 500 | 505 | 654 | 575 | 500 |
| 30 | 514 | | 715 | 833 | 833 | 741 | 507 | 500 | 508 | 654 | 568 | 500 |
| 31 | 514 | | 720 | | 833 | | 504 | 500 | | 654 | | 500 |

Appendix BF

| Enforceable Daily Flows for 76M 94404-02 on the Blackfoot @ Bonner, MT | | | | | | | | | | | | |
|---|--------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Day | Month | | | | | | | | | | | |
| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
| 1 | 700 | 700 | 700 | 700 | 1,167 | 1,167 | 1,041 | 700 | 700 | 700 | 700 | 700 |
| 2 | 700 | 700 | 700 | 700 | 1,167 | 1,167 | 1,022 | 700 | 700 | 700 | 700 | 700 |
| 3 | 700 | 700 | 700 | 700 | 1,167 | 1,167 | 1,001 | 700 | 700 | 700 | 700 | 700 |
| 4 | 700 | 700 | 700 | 700 | 1,167 | 1,167 | 982 | 700 | 700 | 700 | 700 | 700 |
| 5 | 700 | 700 | 700 | 700 | 1,167 | 1,167 | 961 | 700 | 700 | 700 | 700 | 700 |
| 6 | 700 | 700 | 700 | 704 | 1,167 | 1,167 | 943 | 700 | 700 | 700 | 700 | 700 |
| 7 | 700 | 700 | 700 | 713 | 1,167 | 1,167 | 923 | 700 | 700 | 700 | 700 | 700 |
| 8 | 700 | 700 | 700 | 723 | 1,167 | 1,167 | 902 | 700 | 700 | 700 | 700 | 700 |
| 9 | 700 | 700 | 700 | 733 | 1,167 | 1,167 | 878 | 700 | 700 | 700 | 700 | 700 |
| 10 | 700 | 700 | 700 | 747 | 1,167 | 1,167 | 856 | 700 | 700 | 700 | 700 | 700 |
| 11 | 700 | 700 | 700 | 765 | 1,167 | 1,167 | 836 | 700 | 700 | 700 | 700 | 700 |
| 12 | 700 | 700 | 700 | 788 | 1,167 | 1,167 | 817 | 700 | 700 | 700 | 700 | 700 |
| 13 | 700 | 700 | 700 | 815 | 1,167 | 1,167 | 799 | 700 | 700 | 700 | 700 | 700 |
| 14 | 700 | 700 | 700 | 843 | 1,167 | 1,167 | 782 | 700 | 700 | 700 | 700 | 700 |
| 15 | 700 | 700 | 700 | 870 | 1,167 | 1,167 | 766 | 700 | 700 | 700 | 700 | 700 |
| 16 | 700 | 700 | 700 | 898 | 1,167 | 1,166 | 752 | 700 | 700 | 700 | 700 | 700 |
| 17 | 700 | 700 | 700 | 925 | 1,167 | 1,164 | 741 | 700 | 700 | 700 | 700 | 700 |
| 18 | 700 | 700 | 700 | 953 | 1,167 | 1,161 | 732 | 700 | 700 | 700 | 700 | 700 |
| 19 | 700 | 700 | 700 | 980 | 1,167 | 1,156 | 723 | 700 | 700 | 700 | 700 | 700 |
| 20 | 700 | 700 | 700 | 1,008 | 1,167 | 1,151 | 717 | 700 | 700 | 700 | 700 | 700 |
| 21 | 700 | 700 | 700 | 1,035 | 1,167 | 1,145 | 711 | 700 | 700 | 700 | 700 | 700 |
| 22 | 700 | 700 | 700 | 1,062 | 1,167 | 1,142 | 707 | 700 | 700 | 700 | 700 | 700 |
| 23 | 700 | 700 | 700 | 1,086 | 1,167 | 1,136 | 703 | 700 | 700 | 700 | 700 | 700 |
| 24 | 700 | 700 | 700 | 1,104 | 1,167 | 1,129 | 701 | 700 | 700 | 700 | 700 | 700 |
| 25 | 700 | 700 | 700 | 1,122 | 1,167 | 1,120 | 700 | 700 | 700 | 700 | 700 | 700 |
| 26 | 700 | 700 | 700 | 1,139 | 1,167 | 1,111 | 700 | 700 | 700 | 700 | 700 | 700 |
| 27 | 700 | 700 | 700 | 1,153 | 1,167 | 1,101 | 700 | 700 | 700 | 700 | 700 | 700 |
| 28 | 700 | 700 | 700 | 1,162 | 1,167 | 1,089 | 700 | 700 | 700 | 700 | 700 | 700 |
| 29 | 700 | 700 | 700 | 1,166 | 1,167 | 1,075 | 700 | 700 | 700 | 700 | 700 | 700 |
| 30 | 700 | | 700 | 1,167 | 1,167 | 1,059 | 700 | 700 | 700 | 700 | 700 | 700 |
| 31 | 700 | | 700 | | 1,167 | | 700 | 700 | | 700 | | 700 |