Milltown Water Right

May and June 2019 Community Listening Sessions
Summary Report

Table of Contents

Overview 1

Information Shared ***2***

What is the status of the Milltown Water Right? 2

How are FWP and CSKT working together? 2

What changed when FWP became owner of the Milltown Water Right? 3

What are the potential impacts of the Milltown Water Right on other water users? 4

What's next? 4

Listening Sessions – General Summary of Comments and Questions ***4***

History of the Milltown Dam 4

About the Milltown Water Right 5

The CSKT-Montana Compact 6

FWP-CSKT Enforcement of the Milltown Water Right 7

Information Needs and Next Steps 9

Listening Sessions – Key Issues by Community ***10***

Informational Needs 13

Next Steps 13

Appendix 1: The PowerPoint presented at the seven listening sessions in the Clark Fork Basin. A similar presentation was given at the Blackfoot meeting that had minor changes to address basin specific issues and conditions. 15

Appendix 2: Milltown Water Right Information Sheet 19

Appendix 3: Hydrographs of irrigation season discharge compared to the Milltown water right instream flow demands for the Clark Fork and Blackfoot Rivers 21

Overview

Montana Fish, Wildlife, and Parks (FWP) and the Confederated Salish and Kootenai Tribes (CSKT), in consultation with Montana Department of Natural Resources and Conservation (DNRC) and Upper Clark Fork Basin watershed groups, began the process of engaging water users and interested citizens in the basin about the Milltown Water Right. This was triggered by the ratification of the Water Rights Compact by the Montana Legislature in 2015. The Legislature directed the CSKT and FWP to:

"engage with other stakeholders in the Upper Clark Fork Basin on water management subjects including, but not limited to, drought planning and the exercise of these water rights in conjunction with the other water right in the Upper Clark Fork Basin."

Based on several conversations with watershed groups and Conservation Districts, FWP and CSKT initiated the stakeholder engagement process with a series of listening sessions. Seven listening sessions were held in the Upper Clark Fork River basin hosted by the Watershed Restoration Coalition of the Upper Clark Fork and one listening session in the Blackfoot River Basin hosted by the Blackfoot Drought Committee of the Blackfoot Challenge. Importantly, it was the input and guidance from these watershed groups that informed the purpose, design, structure, and timing of the listening sessions.

The objectives of the listening sessions were to:

- Share information about the Milltown Water Right and FWP and CSKT perspectives;
- Listen to the interests and concerns of stakeholders in the basin;
- Understand local water management issues;
- Begin to identify informational needs and gaps; and,
- Share next steps in the process.

The host watershed groups sent letters of invitation and a fact sheet about the Milltown Water Right (included as Appendix 1 of this report) to watershed group members. The mailing encouraged i attending the listening sessions to learn about the Milltown Water Right, and to share their questions and concerns with the FWP and the CSKT.

Two-hour, evening listening sessions were held in the communities of Gold Creek, Rocker, Racetrack (West Side), Racetrack (East Side), Avon, Deer Lodge, Anaconda, and Ovando. Approximately 95 people participated in the listening sessions. Prior to these listening sessions, updates were provided to the Granite Headwaters watershed group in Philipsburg. Roughly 30 people attended that informational session.

A general overview of the information shared by FWP and CSKT at the listening sessions is provided below; this is followed by a summary of the public comments received from each of the communities. This summary captures what was said at the eight listening sessions and does not represent the views of all citizens or water users in the listening session areas. Rather, it reflects the specific issues, concerns and experiences of those

who participated in the listening sessions. Some items may be beyond the scope of issues related to management of the Milltown Water Right.

Information Shared

The following information was provided in a PowerPoint (appendix 1) presentation by Patrick Saffel (FWP) at the beginning of each listening session.

What is the status of the Milltown Water Right?

The Milltown Water Right began as an instream hydropower right for the generation of electricity at the Milltown Dam for the Bonner lumber mill. It had a priority date of December 11, 1904. In 2008, the dam was removed as part of the cleanup and restoration of the Milltown Reservoir Sediments Superfund Site. The Montana Department of Justice, Natural Resources Damages Program acquired the water right through the Milltown Reservoir Sediments Superfund settlement, with the intent the water right would be used to support restoration of the fishery and recreational uses in the Clark Fork Basin.

In 2015, the Montana Legislature ratified the CSKT-Montana Water Rights Compact and codified the Compact as MCA 85-20-1901. Regarding the Milltown Water Right, MCA 85-20-1901 made several changes to the water right including but not limited to:

- The water right was split into two separate, active and enforceable water rights – one for each of the Clark Fork and Blackfoot rivers;
- The purpose of the water right was changed from a hydropower right to an instream fisheries habitat right;
- FWP became the owner of the water right with CSKT co-ownership anticipated upon ratification of the Compact by U.S. Congress and the CSKT; and,
- Enforcement of the Water Right is deferred for 10 years (until April 24, 2025). The deferral period allows the FWP and the CSKT to engage with stakeholders and water users in the basin to plan for exercising the water right.

FWP and CSKT have developed an information sheet describing changes to the Milltown Water Right, which is appended to this report (appendix 2).

How are FWP and CSKT working together?

FWP and CSKT are working together to advance conversations in the Upper Clark Fork and Blackfoot River Basins in an effort to build relationships, share information, and explore options to manage the Milltown Water Right in a way that can meet instream flow targets and reduce impacts to existing water uses.

The coordination effort takes direction from wording in Montana Code (MCA 85-20-1901), which stipulates that "*upon the effective date the Tribes shall be a co-owner with FWP of these water rights*," and that "*the Tribes and FWP shall engage with other stakeholders in the Upper Clark Fork Basin on water management subjects including,*

but not limited to drought planning and the exercise of these water rights in conjunction with the other water rights in the Upper Clark Fork Basin."

What changed when FWP became owner of the Milltown Water Right?
Changes are highlighted in the summary table that is included in the informational handout.

	From	**To**
Water right number	76M 94404-00	Clark Fork: 76M 94404-01 Blackfoot: 76M 94404-02
Priority Date	December 11, 1904	December 11, 1904
Purpose	Hydropower generation	Instream fishery habitat
Minimum flow rate	2,000 cubic feet/second (cfs)	Clark Fork: 500 cfs Blackfoot: 700 cfs
Maximum flow rate	2,000 cfs	Clark Fork: 833 cfs Blackfoot: 1,167 cfs
Initiation of call	Flow falls below 2,000 cfs	Flow falls below daily enforceable flow rate during 4 out of 5 consecutive days
Termination of call	Flow rises above 2,000 cfs	Flow rises above daily enforceable rates during 2 out of 5 consecutive days
Water uses susceptible to call	Any water use junior to Dec 11, 1904	Surface water irrigation and groundwater irrigation over 100 gallons/minute junior to Dec 11, 1904 Any purposed water use junior to April 24, 2015

What are the potential impacts of the Milltown Water Right on other water users?

Potential impacts to existing water uses depend on each year's water supply. At the listening sessions, FWP illustrated this with recent dry (2016) and wet-year (2011) hydrographs for the July through September irrigation water use period. Other years in that 10-year period were illustrated in a handout (appendix 3). FWP also highlighted the distribution of certain junior irrigators with a map. Some points follow:

- A greater understanding of existing water use in the Upper Clark Fork and Blackfoot Basins is required to clarify potential impacts from the Milltown Water Right;
- The number of junior priority date irrigation water rights with a diversion rate greater than 3 cfs and a place of use greater than 20 acres is approximately 940 in the Clark Fork River basin and approximately 373 in the Blackfoot River
- When looking at the most recent 10 years of streamflow record from USGS stream gages at Turah and Bonner, there was a water deficit – that is, the Milltown Right exceeded the river flows – in approximately 3 out of 10 years in the Clark Fork River at Turah and 5 out of 10 years in the Blackfoot at Bonner. This evaluation was not carried elsewhere in the basins; and
- There are many water rights that are not affected, either because they are senior priority date rights, or because the water right purpose is excluded from call. Many junior water rights may not be affected because senior rights other than the Milltown Water Right have already made call on them.

What's next?

FWP and CSKT will continue to work with watershed groups, irrigators, and other water users and stakeholders in the Upper Clark Fork and Blackfoot River basins to build shared knowledge about water management, explore options to improve water management in the future, and look for opportunities to minimize the impact of the Milltown Water Right on other water users in the basin.

Listening Sessions – General Summary of Comments and Questions

After the PowerPoint presentation described above, listening session participants shared a wide variety of questions, concerns, and ideas as they relate to the Milltown Water Right and water management in the Upper Clark Fork Basin and Blackfoot River basin. Several similar themes emerged during the listening sessions. General themes (and related questions) that were common across all communities include those listed below.

History of the Milltown Dam

Did the Milltown Dam provide water storage and flood protection?

Milltown Dam and Reservoir was a "run-of-the river" system where the amount of water coming into the system was similar to the amount going out. There was little capacity for storage, and it was not operated for storage. The dam was completed in 1908 and since that time sediments from upstream have significantly reduced the water storage capacity of the reservoir. Much of the reservoir was filled within months after beginning operation. The system produced a small amount of hydropower.

Milltown Dam and Reservoir stored a lot of contaminated sediments before it was removed. The sediments contaminated drinking water and posed a significant risk to human health in the Milltown and Bonner area. Further, aquatic life in the Clark Fork River was exposed to significant risks of hazardous substances during ice-induced scouring events, high flows, and the potential contaminated sediment release that would accompany a catastrophic dam failure. In 1983 the U.S. Environmental Protect Agency listed the Milltown Reservoir and the Clark Fork River on the National Priority List (Superfund).

Why was the Milltown Dam removed?

In 2004 the U.S. EPA issued a Record of Decision for the Milltown Reservoir Sediments Operable Unit describing the Selected Remedy for reducing risks to human health and the environment. The primary objectives of the Selected Remedy were: 1) reduce concentrations of contaminants of concern, such as arsenic and copper, to safe levels or eliminate the contaminated groundwater plume entirely; and 2) reduce the threat of contaminated sediments being transported downstream. EPA determined the objectives would be accomplished by removing the primary source of contaminated sediments in the reservoir, by removing Milltown dam to prevent future impoundment of new sediments, and by removing the reservoir that created water pressure that forced contaminates into the aquifer. This approach allows natural recovery of the aquifer over time and ensures that remaining contaminated material is secured from uncontrolled release.

Why didn't Montana Power ever make call on the hydropower right?

There were likely a number of reasons. One key reason was that water rights in the tributary basins were not adjudicated at the time. Without adjudication, it would have been an expensive and burdensome process for Montana Power (and its successor NorthWestern Energy) to enforce their water right because water rights were not well defined. Making call would have required Montana Power and NorthWestern Energy to first identify all the junior rights, evaluate the effect of a call, and likely litigate a number of those rights. Additionally, the statutory options now available did not exist in the late 1980s. The companies did claim their water right by asserting it in documents during the adjudication process. It is important to note that the water right was not abandoned because no call was made.

About the Milltown Water Right

Why was the Milltown Water Right split into two separate rights, one in each of the sub-basins?

By splitting the single right into two separate and independently enforceable rights, one for the Upper Clark Fork River and one for the Blackfoot River, each basin is protected from call from the other basin. In other words, the enforceable water right in the Blackfoot Basin can only be called in the Blackfoot Basin. Likewise, the enforceable water right in the Upper Clark Fork Basin can only be called in the Upper Clark Fork Basin. Setting enforceable daily flows for each sub-basin results in more equitable allocation between the basins during periods of drought; improves implementation of the water rights by splitting administration of the water rights into the two basins; preserves the current workings of the Blackfoot Challenge Drought Response Plan; and brings

specific focus to the upper mainstream Clark Fork River, which is chronically dewatered.

Who is susceptible to call under the Milltown Water Right?

The Milltown Water Right limits call to junior surface water irrigation rights and junior groundwater irrigation rights greater than 100 gpm. All other uses such as stockwater, domestic, municipal, commercial and industrial are protected from call. New water rights, of any purpose, that are junior to April 24, 2015 are also callable.

How were the flow rates for the enforceable hydrograph established?

Habitat measurement and river flow data indicated a minimum flow rate of 700 cfs for the Blackfoot and 600 cfs for the Clark Fork was required to sustain a healthy, mainstem fishery. 700 cfs was selected for the Blackfoot because this mirrored the existing Murphy Right. The Clark Fork River, excluding certain tributaries, did not have an existing instream flow right. The 500 cfs minimum flow rate was carefully examined and determined to be an achievable compromise to promote an instream habitat purpose, while limiting impact to existing uses of water.

What is the relationship between the Milltown Water Right and the statewide water right adjudication process?

The statewide water right adjudication process began with the creation of the Water Court in 1979 with the purpose of clarifying water rights ownership, priority dates, use types, rates, and additional water right elements. Prior to adjudication, there was no unified statewide record of water rights, creating considerable legal uncertainty. Adjudication of water rights in the Upper Clark Fork and Blackfoot basins is at various stages of completion. Current information on the adjudication process can be found on the Department of Natural Resources and Conservation website at: http://dnrc.mt.gov/divisions/water/adjudication. After adjudication is complete, water rights abstracts will be confirmed and administration of rights more efficient.

The CSKT-Montana Compact

What is the current status of the CSKT-Montana Water Compact?

On April 24 2015, the Montana Legislature ratified the CSKT-Montana Water Compact (MCA 85-20-1901), which split the Milltown Water Right into two separate, active, and enforceable water rights. The Legislature also transferred ownership of the water right to FWP through this bill. Upon ratification of the Compact by the U.S. Congress and the Tribes, the Milltown Water Right will be co-owned by FWP and CSKT.

Senate Bill 3013 (S. 3013) – Salish Kootenai Water Rights Settlement Act of 2016– a bill to authorize and implement the CSKT-Montana-United States Water Rights Compact - was introduced in the Senate by Senator Jon Tester on May 26, 2016. The bill was heard by the Senate Committee on Indian Affairs. The Committee reported S. 3013 out for federal review by the Department of Interior, Department of Justice and Office of Management and Budget pursuant to federal criteria and procedures for settlement of Indian water rights settlements. S. 3013 was subsequently revised and introduced by Senator Daines and Senator Tester into the U.S. Senate on December 10, 2019 as Senate

Bill 3019 – the Montana Water Rights Protection Act. The revisions contained in S. 3019 did not modify the Milltown Right.

FWP-CSKT Enforcement of the Milltown Water Right

What assurance does the public have that FWP and CSKT will coordinate enforcement of the Milltown Water Right?

The CSKT-MT Water Rights Compact requires the Tribes and FWP to meet at least biennially regarding the exercise of the Milltown Water Right, with the goal of establishing a joint plan for the exercise of co-owned water rights found in the Compact. Notwithstanding this planning process, the Tribes and FWP each retains the right to individually make a call based on the call criteria. However, FWP and CSKT recognize it is in their best interest to coordinate enforcement to limit confusion and burden on affected water right holders.

How do FWP and CSKT plan to enforce these water rights?

Both FWP and CSKT intend to actively manage these water rights, to include a range of water management options and the ability to enforce the rights. At this point, FWP and CSKT have not yet developed a specific plan for enforcement and are using these listening sessions to help inform their future plans and provide support for local water management. Some options include using water commissioners and/or voluntary plans that reduce water use during shortages but avoid call. Plans that reduce water use could be with individual irrigators that are junior or a community of irrigators that might include just junior users or junior and senior users. FWP and CSKT are open to alternatives that best meet irrigation and instream flow interests. There is more detail on this subject below.

There are existing water management strategies in this sub-basin – how will enforcement of the Milltown Water Right affect our own strategies?

Many sub-basins have existing water management strategies that work for that individual basin – they range from formal decrees to informal procedures. FWP and CSKT hope to learn more about these existing strategies to understand how the Milltown Water Right can fit in, and how the impact of any enforcement action could be minimized. For example, representatives from FWP and CSKT regularly participate in Blackfoot Drought Subcommittee conference calls with local irrigators to discuss strategies for mitigating real-time changes in water flow and water temperature during critical flow periods in the Blackfoot River.

What options are being considered to meet the Milltown Water Right?

The listening sessions included a significant amount of solutions-oriented discussion, and each group spent a considerable amount of time discussing various options to meet the Milltown Water Right. These options included:

- ***Using a water commissioner.*** There are several different ways water commissioners could be used in the Upper Clark Fork. This is a topic for further exploration as water management strategies are developed.

- Participants wanted to know how much a commissioner would cost and who would pay those costs.
    - These costs can be highly variable based on the length of each reach and the number of users as well as the amount of water delivered. On the Mussellshell River, commissioner fees range from $2,000 to $9,500 annually.

- How is a water commissioner put in place?
    - A water commissioner can be used if there is a demonstrated need, or upon an application to the Water Court by the owners of at least 15% of the water rights affected by the decree, or at least 15% of the flow rate of the water rights affected by the decree.

- ***Developing a drought plan.*** Drought plans are used to describe how water use will be reduced throughout a basin when there are water shortages. These are typically voluntary plans that are used to reduce the chances of a call being made. Example plans that were discussed at the listening sessions included the Blackfoot, Jefferson, and Big Hole basins.

- ***Sharing the burden.*** Several sub-basin groups discussed the possibility of sharing the burden – shared shortages. For example, if everyone were to reduce their water use by a certain percentage, then the Milltown Water Right could be met during times of drought. This type of burden-sharing could be part of a larger drought response plan or a stand-alone strategy.

- ***Setting targets by sub-basin.*** Several groups discussed the idea of setting flow targets in each sub-basin, and then only allowing call to occur in those sub-basins when the flow targets are not being met. This would mean that sub-basins that are producing their fair share of water would be protected from call. This is seen as a local solution that respects existing water use patterns that participants in listening sessions felt merits additional exploration.

- ***Increasing water storage.*** Every sub-basin group discussed the option of increasing water storage, either through reservoir storage or, in some cases through groundwater storage, Increased water storage would allow spring and early summer flows to be stored and released more slowly over the summer irrigation season. This would potentially allow more water to be in the river at Turah and Bonner during times of drought. Options discussed included looking at the feasibility of new high mountain storage, expanding the capacity of existing reservoirs, exploring the feasibility of using existing storage capacity at Silver Lake, and increasing groundwater storage.

- ***Leasing water rights.*** Some groups discussed how water leasing might help alleviate the need to make call for the Milltown Water Right. For example, FWP could lease water rights upstream to increase the amount of water in the river at Turah and Bonner.

- ***Implementing water efficiency projects.*** Several groups discussed a number of possible projects that could help improve the efficiency of water use. For example, leaky ditches could be fixed, lined, or piped; pivots could be used where appropriate, etc., all of which would help irrigators use less water and leave more water in the river to meet the Milltown Water Right.

- ***Using flood irrigation to increase groundwater storage.*** Several groups discussed how using flood irrigation in the spring can increase groundwater storage, which can release more slowly into streams throughout the late season, depending on the physical setting in the area of interest.

What is the status of the state's water reservation claim in the Clark Fork River?
Montana statute says that the DNRC may not process or approve applications for state water reservations in the upper Clark Fork River basin.

Information Needs and Next Steps

What information and technical needs can FWP and CSKT help fill?
Groups wanted to learn more about water measurement systems and groundwater/surface water interactions. Specifically, they asked:

- What is the current status of water measurement throughout the basin and are there plans to improve water measurement?
- How can we learn more about groundwater/stream interactions and the feasibility of recharging groundwater systems in early spring through flood irrigation?

What are the next steps and is there appetite to meet again in the future?
Groups universally expressed interest in informational updates as engagement efforts and discussions continue. Listening session participants in some sub-basins began to outline their interests and organize some preliminary next steps. Participants in other meetings did not have an immediate plan for future activities. Both WRC and the Blackfoot Challenge said they would continue to play a role in informing irrigators/landowners and convening discussions.

Listening Sessions – Key Issues by Community

Although many common themes were discussed in every community (described above), there were also issues discussed that were specific to each sub-basin. These more specific sub-basin issues are described in the table below.

Location & Date	Key Issues
Gold Creek, MT May 1, 2019 *14 attendees* *79 mail-outs distributed*	***Water measurement*** – there currently is not infrastructure to measure use in Gold Creek. ***Existing water management strategies*** – Gold Creek basin manages their water through informal arrangements that work well. ***Water storage*** – can Silver Lake help meet the Milltown Water Rights, or can the height of East Fork Reservoir be increased? ***FWP and CSKT relationship*** –The Tribes and FWP discussed how the Water Rights Compact requires them to meet and confer on a regular basis with the goal of developing a joint plan regarding management of the MTWR. The Tribes and FWP also shared how preparing for these listening sessions have contributed to a good working relationship. ***Relationship with federal government*** – there is concern that the federal government might be more involved in the future. ***Single agreements with water rights holders*** – can agreements with a single user acts as a credit towards meeting the water right for that water right holder? ***Gold Creek as a priority stream*** – National Resource Damage Program listed Gold Creek as a priority stream due to high fish productivity. ***Meeting sub-basin targets*** – if Gold Creek is producing enough, but others are not, will Gold Creek be called upon to reduce water? ***Other topics*** – other topics discussed included water commissioners, water leasing, flood irrigation vs. pivots, groundwater augmentation, drought planning, adjudication, and Milltown Dam removal. ***Next steps*** – the group expressed a desire to meet as a community to discuss next steps; they also discussed mapping out current practices, which are working well, and coordinating with WRC to organize a field trip.
Rocker, MT **(Headwaters)** May 2, 2019 *12 attendees* *93 mail-outs distributed*	***Water storage*** – is there an opportunity to create more storage (e.g., increase height of East Fork Reservoir, high mountain storage, Berkley Pit and Silver Lake)? ***Role of Avista Utilities*** – what is the role of Avista when applying for a change in water use or looking for additional storage options? ***Groundwater/stream interactions*** – what is the current law on mitigating impacts to surface water from groundwater use/development; what can be learned from the studies Montana Tech is doing on the North Boulder; how can you prove someone's well is affecting your flow? ***Status of the People's Compact*** – the group discussed how the People's Compact appears to have lost momentum, that the Tribes, Montana and the Untied States did not participate in its development, and that it included aspects that were not legal. ***Information sources*** – the group discussed past information sources that might be relevant, including the MT Bureau of Mines and Geology study and a cost/benefit analysis of storage options. ***Other topics*** – other topics discussed included the enforceable hydrograph, flood irrigation vs. pivots, beaver mimicry, drought planning, adjudication, water leasing, what is susceptible to call, being a closed basin, the Columbia River Treaty, ratification, and Milltown Dam removal. ***Next steps*** – check to see if there are that many people affected in this area
Racktrack, MT **(Clark Fork Main Stem)** May 6, 2019 *7 attendees* *60 mail-outs distributed*	***CSKT interest in Milltown Water Right*** – the group discussed CSKT's interest in the Milltown Water Right as being both about the Tribes' role as a Natural Resources Trustee as part of the Natural Resource Damages Settlement for the Clark Fork River Superfund Site and the Tribes' right to take fish and all usual and accustomed places both on and off the Flathead Reservation (Hellgate Treaty of 1855)

Location & Date	Key Issues
	Water storage – is there an opportunity to create more storage (e.g., high mountain storage, Clark Fork Coalition is looking at storage in Flint Creek/Dempsey, leasing storage rights in the Upper Clark Fork, Silver Lake, learnings from Ruby and/or Painted Rocks)? ***Basin-wide vs localized solutions*** – what opportunities exist for working on basin-wide vs. more localized solutions; how do we work effectively on shared solutions when there isn't an association of water users? ***NRD funding*** – what possibilities exist to access NRD funding to improve water management and infrastructure? ***Options for meeting Milltown Water Right*** – the group discussed storage, early season flood irrigation, increased water efficiency (e.g., Morrison ditch, long ditch on Dempsey/Racetrack), and voluntary drought response plans. ***Other topics*** – other topics discussed included ratification, Milltown Dam removal, adjudication, co-ownership of the water right, and reporting to the legislature. ***Next steps*** – characterizing the typical water deficit to determine how much more water is needed and what methods could be used to make up the difference (e.g. would switching to pivots on the main stem make up the difference?).
Avon, MT **(Little Blackfoot)** May 8, 2019 *14 attendees* *108 mail-outs distributed*	***Options for meeting Milltown Water Rights*** – the group discussed using a commissioner, storage (e.g., Silver Lake), increased water efficiency, and voluntary drought response plans. ***Relationship with federal government*** – FWP and CSKT clarified that the role of the US Congress is to ratify the Compact. CSKT also clarified that the Tribes would manage and enforce the Milltown Water Right and that the Federal government would be largely absent and unlikely to participate as the Tribes' trustee. ***CSKT interest in Milltown Water Right*** – the group discussed CSKT's interest in the Milltown Water Right as being both about the Tribes' role as a Natural Resources Trustee as part of the Natural Resource Damages Settlement for the Clark Fork River Superfund Site and the Tribes' right to take fish and all usual and accustomed places both on and off the Flathead Reservation (Hellgate Treaty of 1855) ***Water storage*** – is there an opportunity to create more storage (e.g., Silver Lake, aquifer storage, potential dam sites in the Little Blackfoot, learnings from Nevada Creek Reservoir); can FWP build/manage dams; how does climate change affect water storage? ***Other topics*** – other topics discussed included the enforceable hydrograph, how call is made, water leasing, and enforcement. ***Next steps*** – the group expressed an interest in being kept up to date on the process and meeting at least annually in a similar format to this meeting.
Deer Lodge, MT **(East-side Deer Lodge Valley)** May 9, 2019 *12 attendees* *106 mail-outs distributed*	***Options for meeting Milltown Water Rights*** – the group discussed using a commissioner, storage, sharing the burden, flood irrigation vs. pivots, increased water efficiency, and voluntary drought response plans. ***High water rights*** – a high water right was defined as a water right that is used in the spring to mid-July when water levels are high; some irrigators were concerned about whether or not their high water right was at risk. ***Junior and senior water rights holders*** – the group expressed a concern that both juniors and seniors are needed to work together to manage water. ***Ensuring water makes it downstream*** – the group expressed concern that their water may be called upon but not make it all the way downstream because a more senior user could take it. ***Water storage*** – is there an opportunity to create more storage or access existing storage (e.g., Silver Lake, Berkley Pit)? ***Funding for water management*** – the group discussed that the legislature did not provide funding for projects associated with the Milltown Water Right, however a request for funds can be made. ***CSKT role*** – the group discussed that CSKT will be a co-owner of the right upon the effective date (which means the date when the Compact has been ratified by Montana, the United States and the CSKT). As co-owner, CSKT can make call separately or with

Location & Date	Key Issues
	FWP, will take a role in day-to-day management, and could support collaborative efforts like a water management plan to the legislature. ***Basin-wide vs localized solutions*** – how do we tie things together across each of the communities to have the desired benefits at the basin-wide level? ***Other topics*** – other topics discussed included water commissioners, purpose of meetings and needing water measurements at the upper end of the system. ***Next steps*** – determine how far downstream water makes it when called upon.
Anaconda, MT (Warm Springs Creek, Mill Creek, Willow Creek) May 13, 2019 *1 attendee* *79 mail-outs distributed*	***Water storage*** – is there an opportunity to create more storage (e.g., Silver Lake, Berkley Pit). ***NRD funding*** – what possibilities exist to access NRD funding to improve water management and infrastructure? ***Next steps*** – determine cause of low turn-out, determine whether further engagement in this sub-basin is warranted given low turn-out.
Racetrack, MT (West Side Deer Lodge Valley) May 14, 2019 *14 attendees* *120 mail-outs distributed*	***Water storage*** – is there an opportunity to create more storage (e.g., groundwater storage in Racetrack Creek, gravel aquifer on west side of valley)? ***Key players*** – the group discussed the key players in the Upper Clark Fork being NRD, FWP, Montana Department of Natural Resources & Conservation (DNRC), CSKT, WRC, the Department of Corrections, and the Upper Clark Fork Task Force. ***Impact of residential development*** – What is the impact of residential development on surface water and the agricultural community? ***Single agreements with water rights holders*** – can agreements with a single user acts as a credit towards meeting the water right for that water right holder? ***NRD funding*** – what possibilities exist to access NRD funding to improve water management and infrastructure? ***Change through legislation rather than the DNRC***– the group discussed that because the change to the Milltown Water Right occurred through legislation, it didn't go through the normal DNRC change process which has a notification process involved. ***Options for meeting Milltown Water Rights*** – the group discussed using a commissioner, storage, sharing the burden, and voluntary drought response plans. ***CSKT interest in Milltown Water Right*** – the group discussed CSKT's interest in the Milltown Water Right as being both about the Tribes' role as a Natural Resources Trustee as part of the Natural Resource Damages Settlement for the Clark Fork River Superfund Site and the Tribes' right to take fish and all usual and accustomed places both on and off the Flathead Reservation (Hellgate Treaty of 1855) ***Agency turn-over*** – what will FWP's role be, particularly after Mike McLane retires? ***Quinlin Slough*** – the group discussed how there is an issue here with water storage and recharge, and that an agreement with the Department of Corrections is no longer being upheld. ***Other topics*** – other topics discussed included Milltown dam removal, water leasing, history of water right, adjudication, voluntary drought management plans, effects of climate change, making call ***Next steps*** – look at drainage more closely
Ovando, MT (Blackfoot River) June 24, 2019 *26 attendees*	***Storage*** *– what storage options are available and/or feasible along the Blackfoot?* ***Milltown Dam*** *– what was the generating capacity of the dam? What was the maximum flow it could utilize?* ***Value of Ag Production / Economic Impact*** *– what is the economic impact of water used for agricultural production versus fish habitat/recreation?* ***FWP ownership*** *– how did FWP acquire the Milltown Water Right?* ***Murphy Right*** *– what's the relationship between the Milltown Water Right and FWP's existing Murphy Right on the Blackfoot River? How would these rights be managed differently from one another?* ***Restoration Activities*** *-- is there an opportunity to recognize/measure the contribution that stream corridor restoration activities have on keeping water in stream and/or keeping water at cooler temperatures as part of the discussion about the Milltown Water Right?*

Location & Date	Key Issues
	Ditch Loss / Water Conservation *– how much water could be saved through these kinds of efforts? How much financial support is available to irrigators from state and federal programs to support these efforts?* ***Existing Drought Plan*** *– the 1904 priority date of the Milltown Water Right provides the opportunity to engage additional irrigators in the existing Blackfoot Drought Plan; individual conversations with landowners are likely the best way to explore this.* ***Senior Water Rights –*** *how many Blackfoot River water rights are senior to the Milltown Water Right?* ***Longer-Term Strategies*** *– what longer term options might exist (e.g., improvements to riparian corridors) that might provide water management benefits beyond annual water use agreements?* ***Authority/Discretion*** *– how much flexibility is there (especially in cases where there is not a water commissioner) to consider voluntary water management activities to meet the Milltown Water Right?*

Informational Needs

Based on these conversations, FWP and CSKT heard the participants in the listening sessions indicate the following information needs:

1. The need for a basin-wide analysis of water management – current status, needs, and opportunities.

2. Information to inform specific management / conservation efforts – what would be the potential benefit, to what stretch of water, at what cost, etc.? (is there the potential to initiate pilot projects to advance understanding of these dynamics?)

3. A desire for online access to existing water management and conservation studies/plans as well as information on the Milltown Water Right and this process.

4. Information on the current status of water measurement throughout the basins and any plans to improve water measurement efforts.

5. Information on groundwater/stream interactions.

Next Steps

The following next steps were identified through these listening sessions:

1. Follow up with WRC and Backfoot Challenge to share this meeting summary and discuss future meetings, information needs, and next steps.

2. Review the questions that emerged during the listening sessions and provide answers to as many as possible (i.e., through this document and ongoing).

3. If feasible, integrate visual Geographic Information system (GIS) tools to illustrate water rights and water management information.

4. Explore options to link sub-basin conversations at a basin-wide scale.

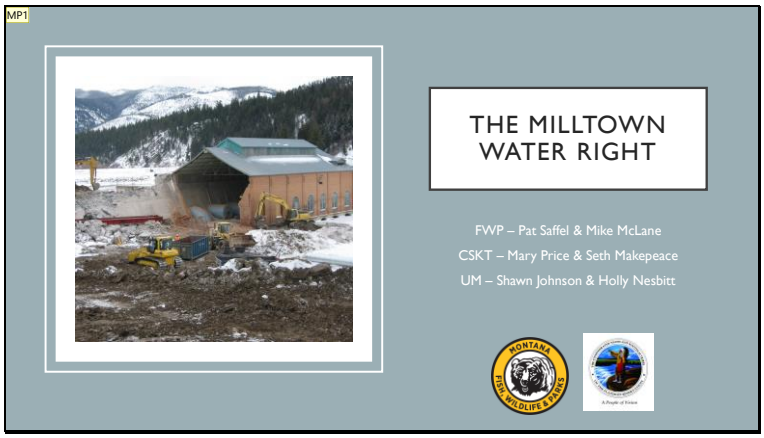
5. FWP and CSKT should explore an agreement that explains their working relationship in managing the Milltown Water Right to ensure communication and coordination of management actions. Because the water right can be called independently, there is a concern that the independent authority could lead to confusing water management planning and implementation for the water right holders and the water users. This agreement would document and continue the current collaboration.

6. Listening sessions should be pursued in the lower ends of each basin, primarily in Missoula County.

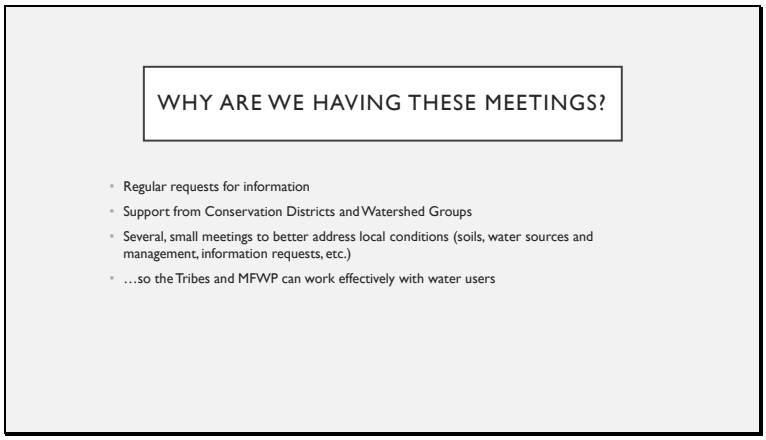
7. Based on input from the listening sessions, a water management strategy should be drafted and better communicated. Many of the comments and questions were related to the goal of delivering water to the Turah and Bonner gages where the enforcement action is triggered, much like a point of diversion would be managed. However, the goal of the water right is to maintain instream flow in the Clark Fork and Blackfoot Rivers and does not necessarily require delivery of water to the gages. How the water right will be administered should be more thoroughly investigated and explained.

Appendix 1: The PowerPoint presented at the seven listening sessions in the Clark Fork Basin. A similar presentation was given at the Blackfoot meeting that had minor changes to address basin specific issues and conditions.

Slide 1



Slide 2



Slide 3

FWP & CSKT: PARTNERS AND FUTURE CO-OWNERS

- *"Upon the effective date the Tribes shall be a co-owner with MFWP of these water rights."*
- *"The Tribes and MFWP shall engage with other stakeholders in the Upper Clark Fork Basin on water management subjects including, but not limited to drought planning and the exercise of these water rights in conjunction with the other water rights in the Upper Clark Fork Basin."*

2015 Montana Legislature

Slide 4

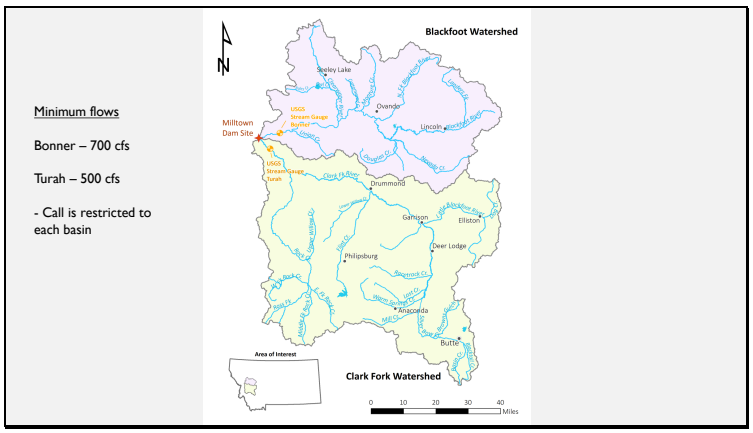
STATUS OF THE WATER RIGHT

- Montana and CSKT have agreed to a Compact (which includes the Milltown Water Right)
  - US Congress needs to ratify before Compact is final
- Changed from 2,000 cfs, hydropower right for Milltown Dam to instream flow rights in the Clark Fork and Blackfoot
- Priority dates are 1904, the same as the hydropower right
- Enforcement is deferred until 2025 to engage stakeholders and water users (e.g., this meeting)

Slide 5

	From	To
Water right number	76M 94404-00	Clark Fork: 76M 94404-01 Blackfoot: 76M 94404-02
Priority Date	December 11, 1904	December 11, 1904
Purpose	Hydropower generation	Instream fishery habitat
Minimum flow rate	2,000 cubic feet/second (cfs)	Clark Fork: 500 cfs Blackfoot: 700 cfs
Maximum flow rate	2,000 cfs	Clark Fork: 833 cfs Blackfoot: 1,167 cfs
Initiation of call	Flow falls below 2,000 cfs	Flow falls below daily enforceable flow rate during 4 out of 5 consecutive days
Termination of call	Flow rises above 2,000 cfs	Flow rises above daily enforceable rates during 2 out of 5 consecutive days
Water uses susceptible to call	Any water use junior to Dec 11, 1904	Surface water irrigation & groundwater irrigation over 100 gal./minute junior to Dec 11, 1904 Any water use junior to April 24, 2015

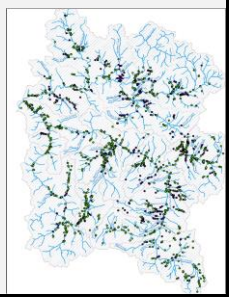
Slide 6



Slide 7

WHO, WHERE, HOW MANY AND HOW OFTEN?

- Broad distribution of junior irrigators
  - Other water uses (i.e., domestic) not affected
- Number of junior irrigators (> 3 cfs and > 20 acres)
  - Clark Fork – 940
  - Blackfoot – 373
- Frequency of water deficit in August for 10 days or more
  - Clark Fork @ Turah – 3 out of 10 years
  - Blackfoot @ Bonner – 5 out of 10 years

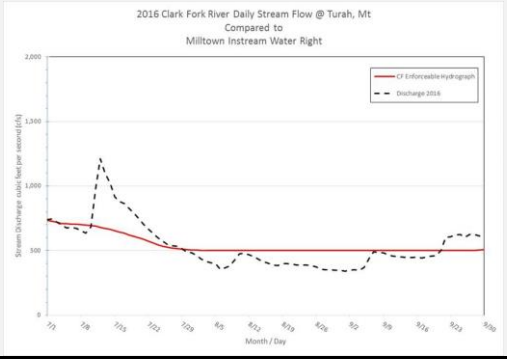


Slide 8

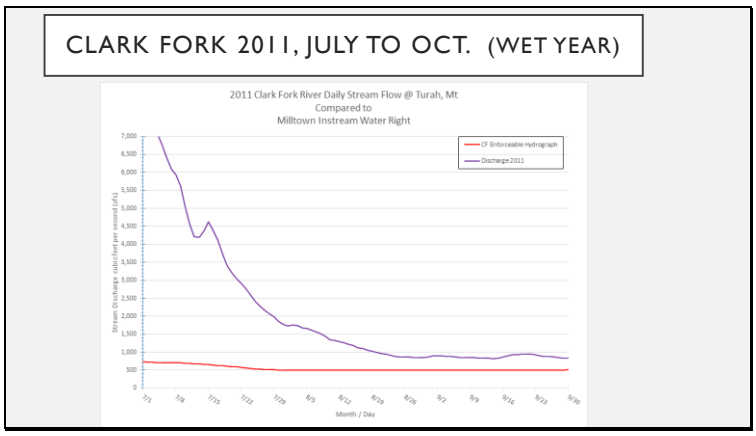
CLARK FORK 2016, JULY TO OCT. (DRY YEAR)

August
31 of 31 Deficit Days
Avg Deficit 99.55 cfs
Max Deficit 153 cfs
Min Deficit 22 cfs

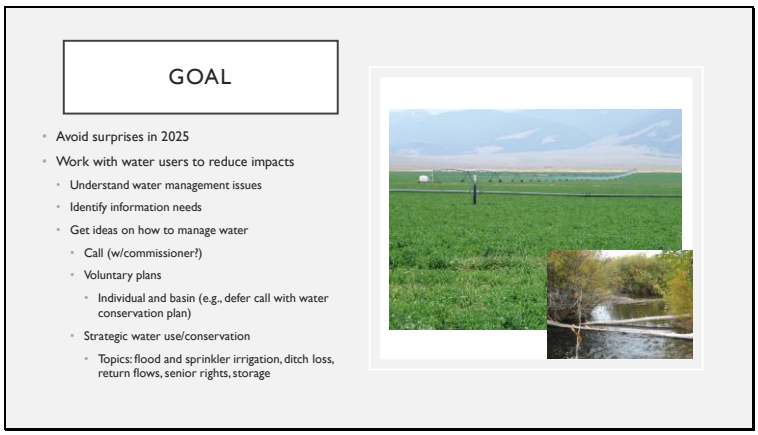
September
20 of 30 days Deficit
Avg Deficit 68.6 cfs
Max Deficit 158 cfs
Min Deficit 12 cfs



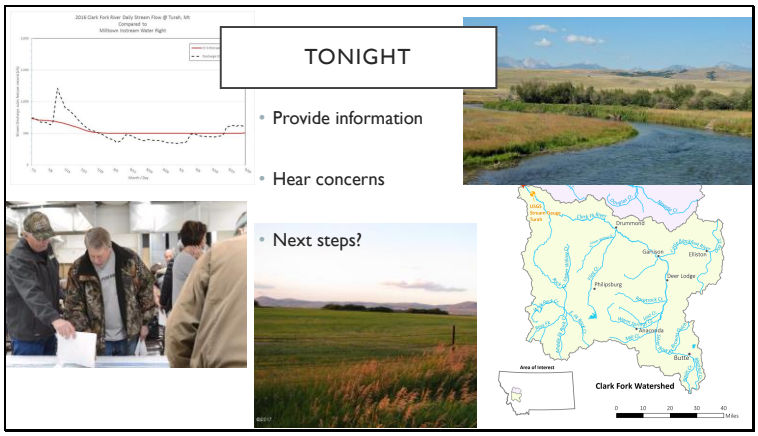
Slide 9



Slide 10



Slide 11



Appendix 2: Milltown Water Right Information Sheet

About the Milltown Water Right

MAIN POINTS

01. The Milltown Water Right was split into two rights – one for each of the Clark Fork and Blackfoot rivers. Most people still refer to these two rights as the Milltown Water Right.

02. The priority date of December 11, 1904, remains the same.

03. Enforcement of the water right is deferred until April 24, 2025.

To access the water right abstracts, visit http://dnrc.mt.gov/milltown-instream-rights

The Milltown Water Right began on December 11, 1904 as an instream hydropower right to generate electricity at the Milltown Dam for the Bonner lumber mill. The dam and its water right were later acquired by Montana Power Company for regional power supply, and then by Northwestern Energy. Throughout its history, the Milltown Water Right was continuously used for hydropower generation and was maintained as an active water right during changes in ownership. In 2008, the State acquired the water right through the Upper Clark Fork River Basin Superfund settlement with the intent the water right would be used to restore the fishery and recreational uses.

On April 24, 2015, the Montana Legislature ratified the Confederated Salish & Kootenai Tribes – Montana Water Rights Compact (MCA 85-20-1901). 85-20-1901 stipulates that 1) the Milltown Dam hydropower water right will be split into two separate, active and enforceable water rights that are owned by Fish, Wildlife & Parks (FWP); 2) upon the Effective Date[1], the Tribes will be a co-owner with FWP of these water rights; 3) enforcement of the water right will be deferred for 10 years (until April 24, 2025); and, 4) during the deferral period, FWP and the Tribes will engage with other stakeholders in the basin on water management, drought planning and the exercise of water rights with other water users and interested citizens.

As first steps, FWP and the Tribes are looking to:

- Provide accurate information on the water right;
- Hear and understand local water management issues; and,
- Identify informational needs.

The ultimate goal is to determine ways to reduce impacts to affected water users. FWP plans to report back to the Legislature on these efforts.

Changes in a nutshell...

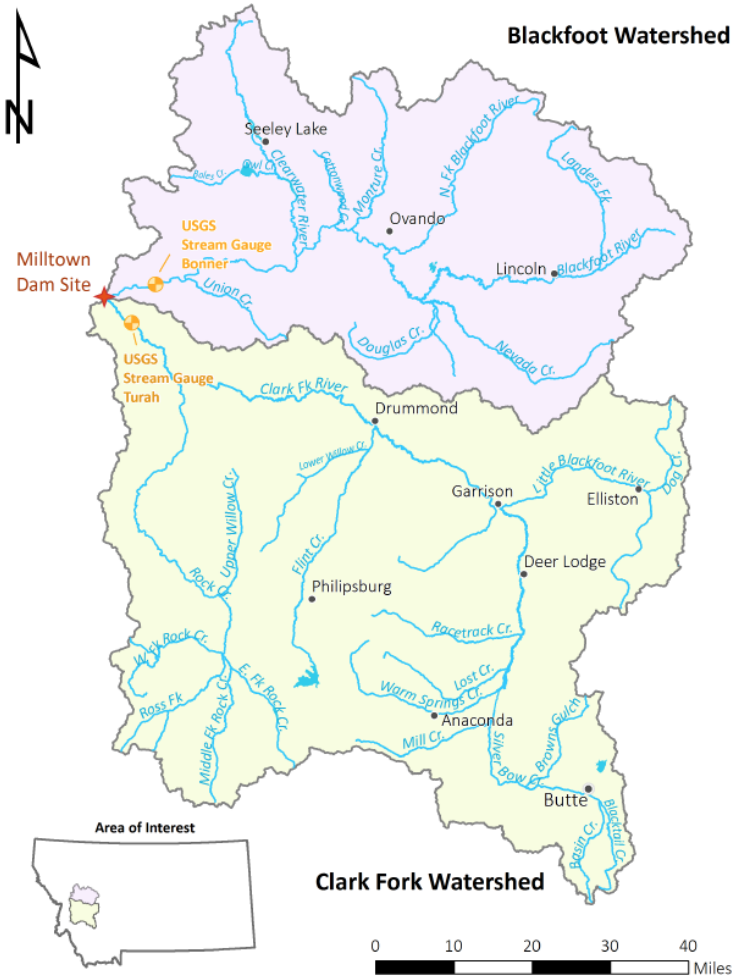
	From	To
Water right number	76M 94404-00	Clark Fork: 76M 94404-01 Blackfoot: 76M 94404-02
Purpose	Hydropower generation	Instream fishery habitat
Minimum flow rate	2,000 cubic feet/second (cfs)	Clark Fork: 500 cfs Blackfoot: 700 cfs
Maximum flow rate	2,000 cfs	Clark Fork: 833 cfs Blackfoot: 1,167 cfs
Measurement point	Below the Clark Fork & Blackfoot confluence	Clark Fork: Turah bridge Blackfoot: Bonner
Initiation of call	Flow falls below 2,000 cfs	Flow falls below daily enforceable flow rate during 4 out of 5 consecutive days
Termination of call	Flow rises above 2,000 cfs	Flow rises above daily enforceable rates during 2 out of 5 consecutive days
Water uses susceptible to call	Any water use junior to Dec 11, 1904	Surface water irrigation with a priority date between Dec 11, 1904 and Apr 24, 2015 Groundwater irrigation exceeding 100 gallons/minute with a priority date between Dec 11, 1904 and Apr 24, 2015 Any water use junior to Apr 24, 2015

[1]The Effective Date is the date the Compact is approved by the Tribes, the State and the United States.

What are the potential effects of this change?

The Milltown Water Right was split into two rights – one right for the Clark Fork River and one right for the Blackfoot River. By splitting the single right into two separate and independently enforceable rights, each basin is protected from call from the other basin. In other words, the enforceable water right in the Blackfoot Basin can only be called in the Blackfoot Basin. Likewise, the enforceable water right in the Upper Clark Fork Basin can only be called in the Upper Clark Fork Basin.

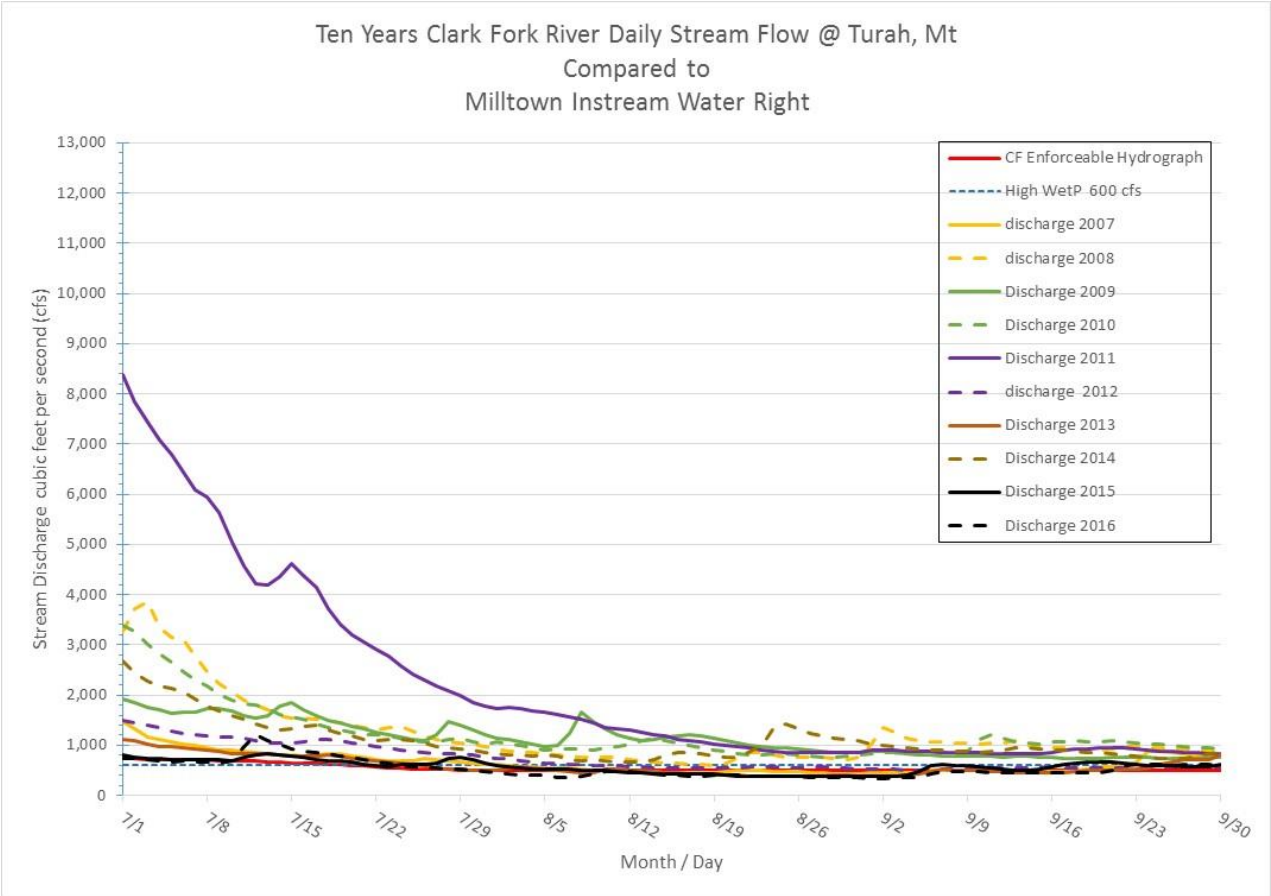
It is difficult to anticipate future call conditions for the Milltown Water Right since these depend on among other things water supply, management plans, and mitigation options. However, to provide context, FWP and the Tribes looked at the last ten years of river flow for each basin using the following scenario. We looked only at August flows and identified days where the river flows were below the trigger for the instream water right for ten consecutive days and found that this call scenario was met in five of ten years in the Blackfoot and in three of ten years in the Clark Fork.

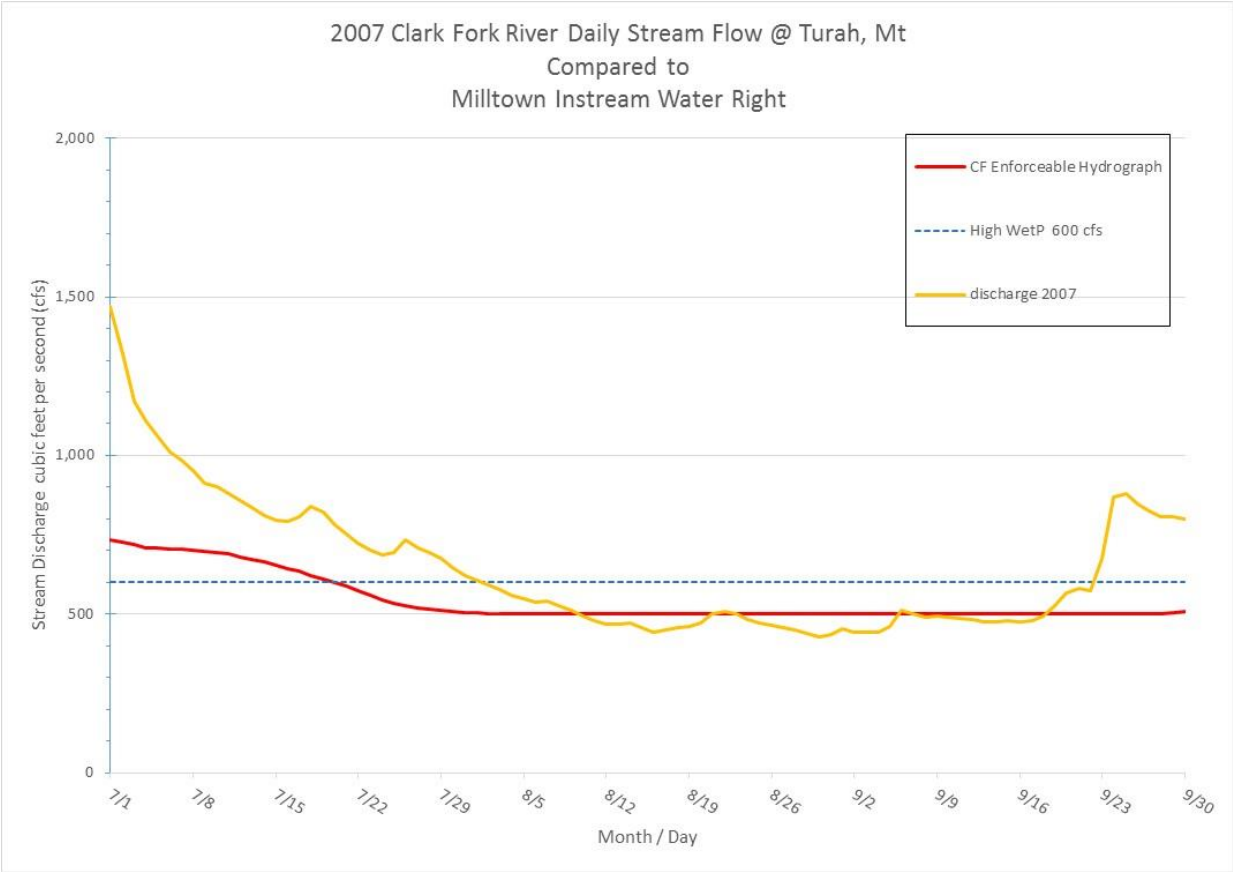


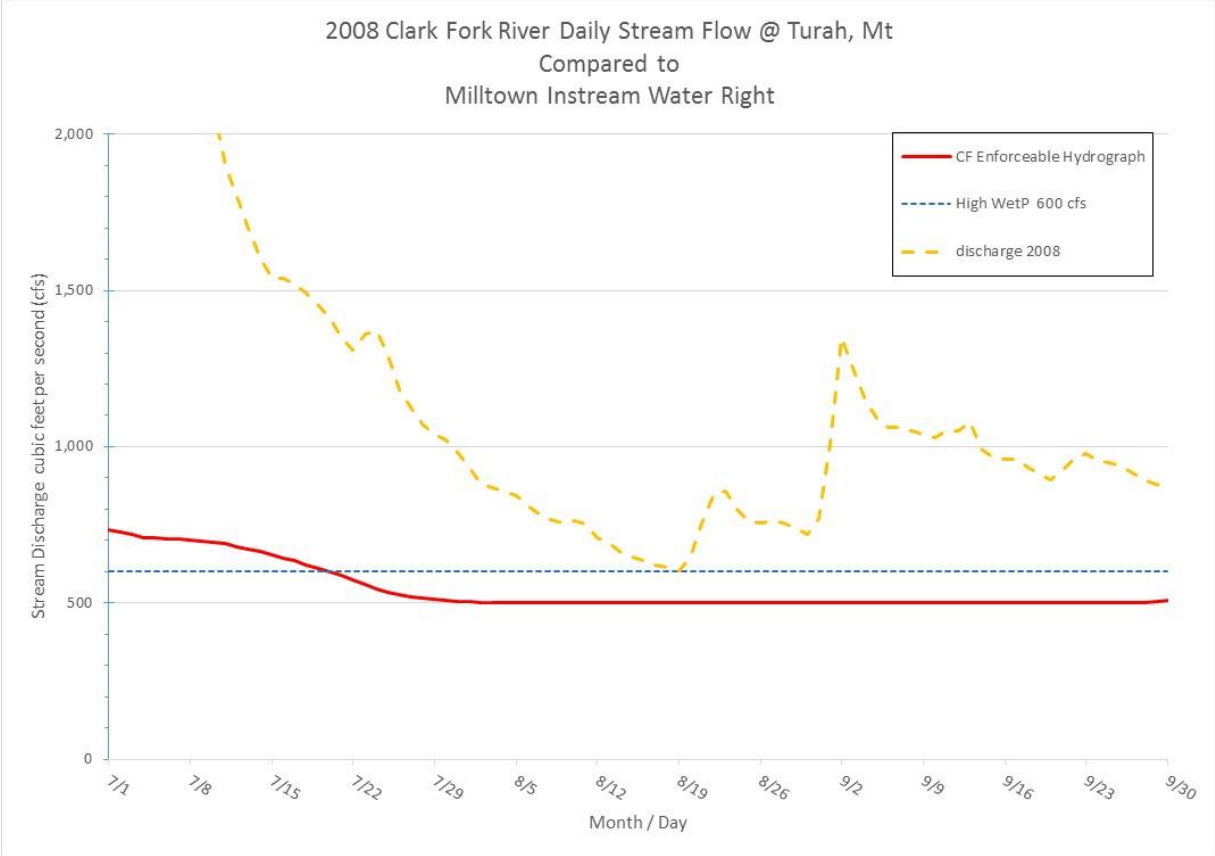
CONTACT INFORMATION

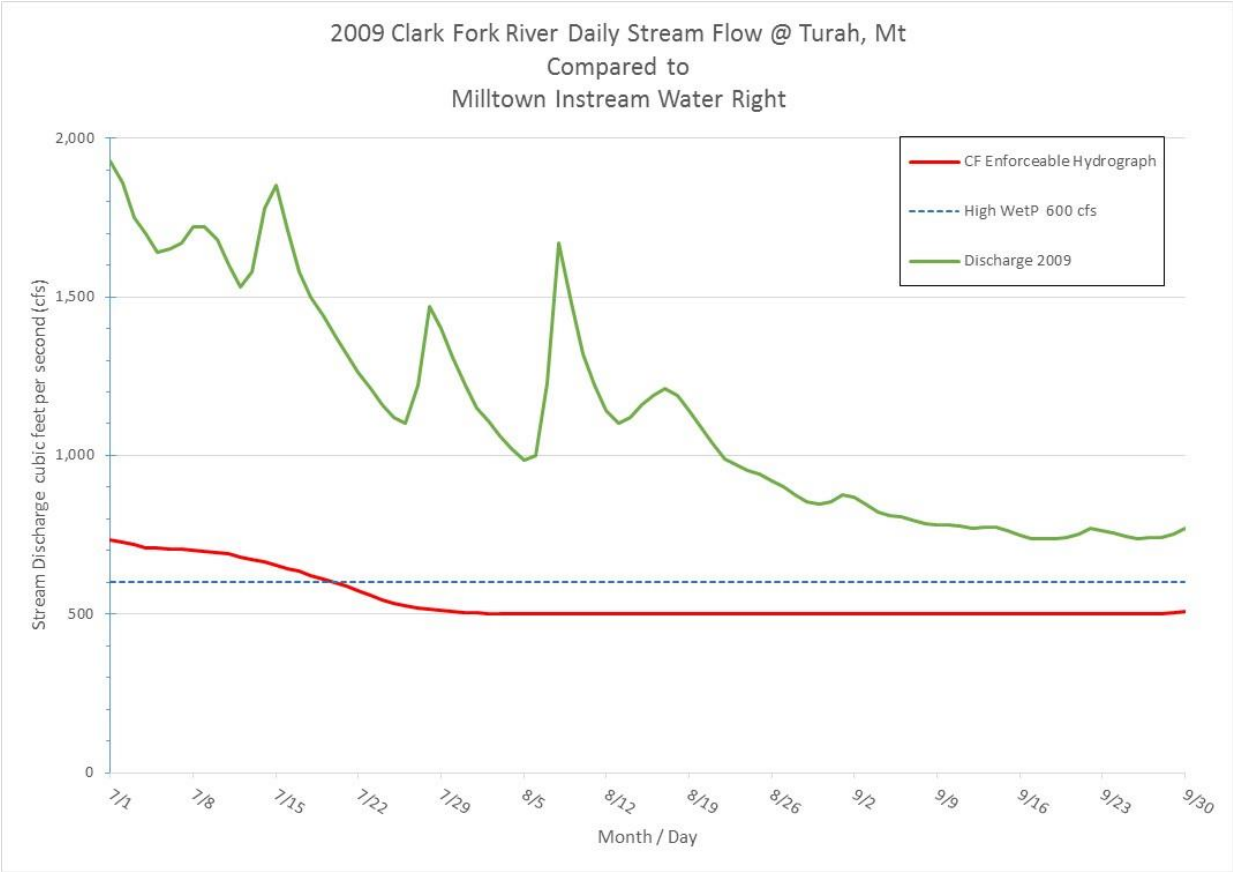
Mike McLane, Water Conservation Specialist, FWP – 406-444-1563, mmclane@mt.gov
Mary Price, Science Coordinator, CSKT – 406-675-2700 ext. 1167, mary.price@cskt.org
Seth Makepeace, Hydrologist, CSKT – 406-675-2700 ext. 6255, seth.makepeace@cskt.org
Patrick Saffel, Fisheries Manager, FWP – 406-542-5507, psaffel@mt.gov

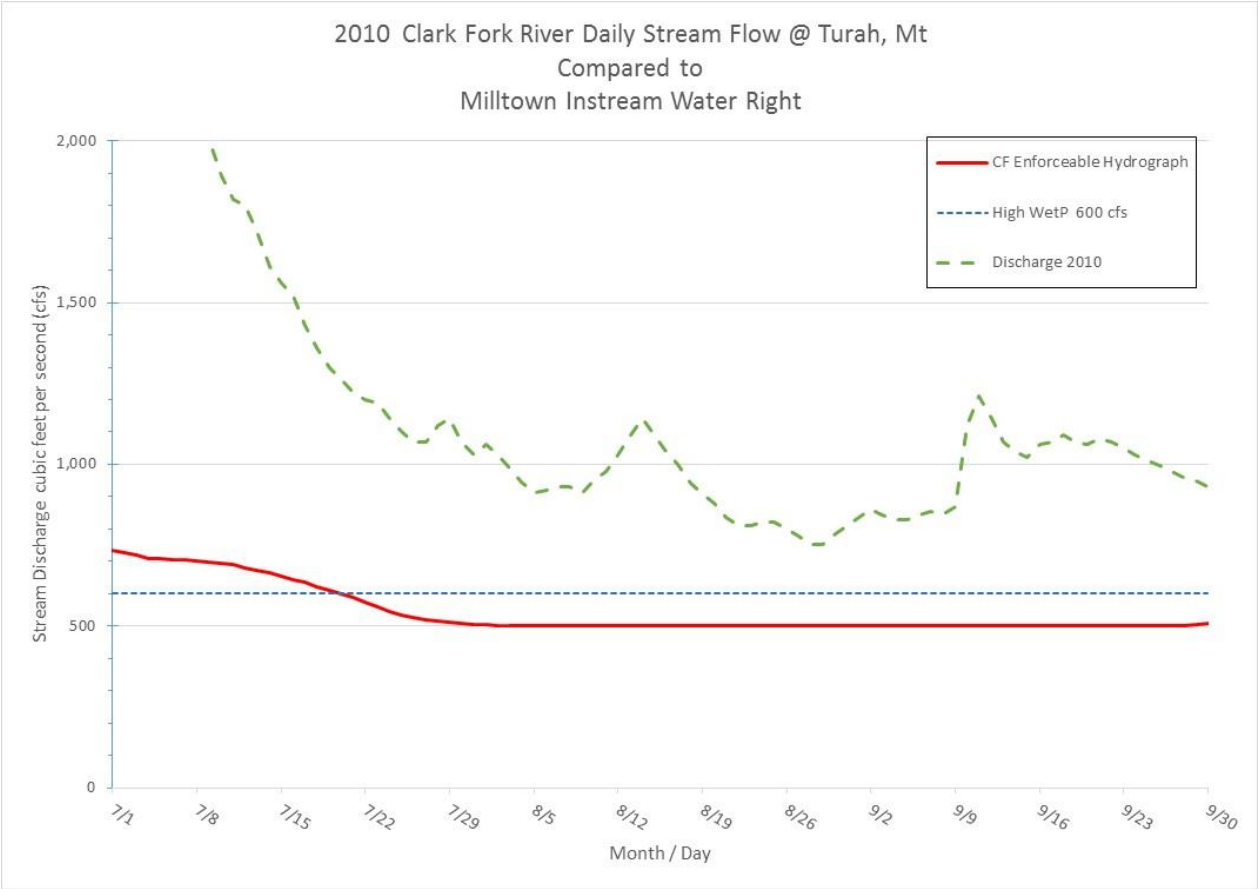
Appendix 3: Hydrographs of irrigation season discharge compared to the Milltown water right instream flow demands for the Clark Fork and Blackfoot Rivers

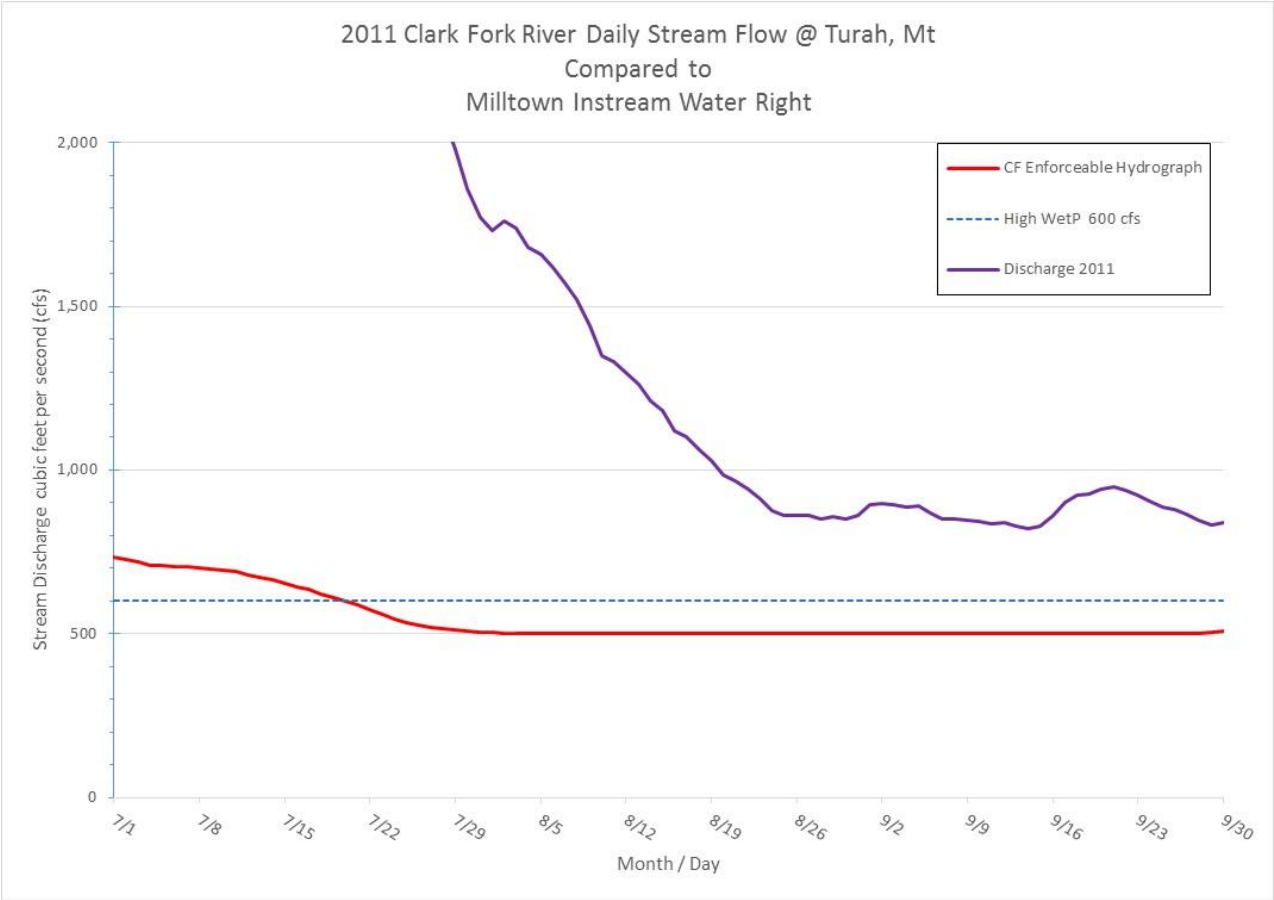


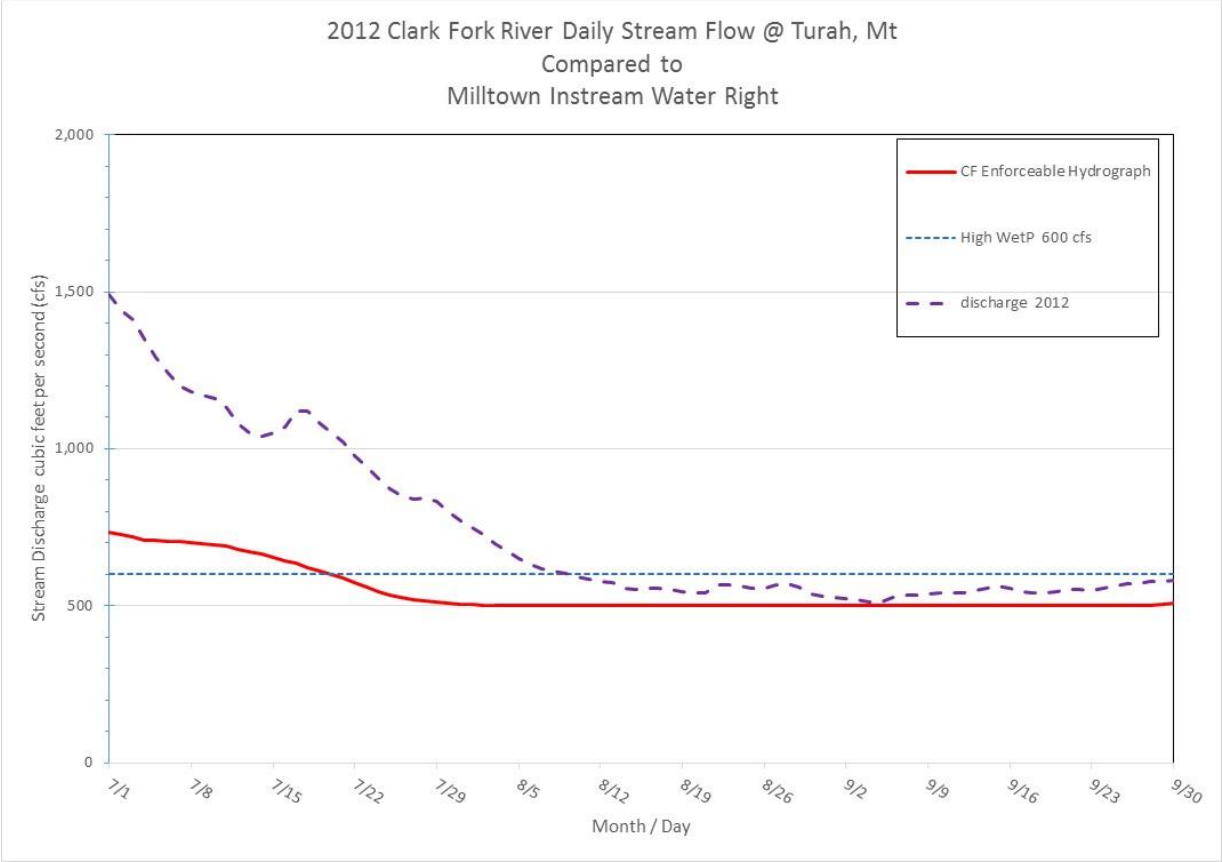

2007 Clark Fork River Daily Stream Flow @ Turah, Mt
Compared to
Milltown Instream Water Right
CF Enforceable Hydrograph
High WetP 600 cfs
discharge 2007
Stream Discharge cubic feet per second (cfs)
2,000
1,500
1,000
500
0
7/1
7/8
7/15
7/22
7/29
8/5
8/12
8/19
8/26
9/2
9/9
9/16
9/23
9/30
Month / Day

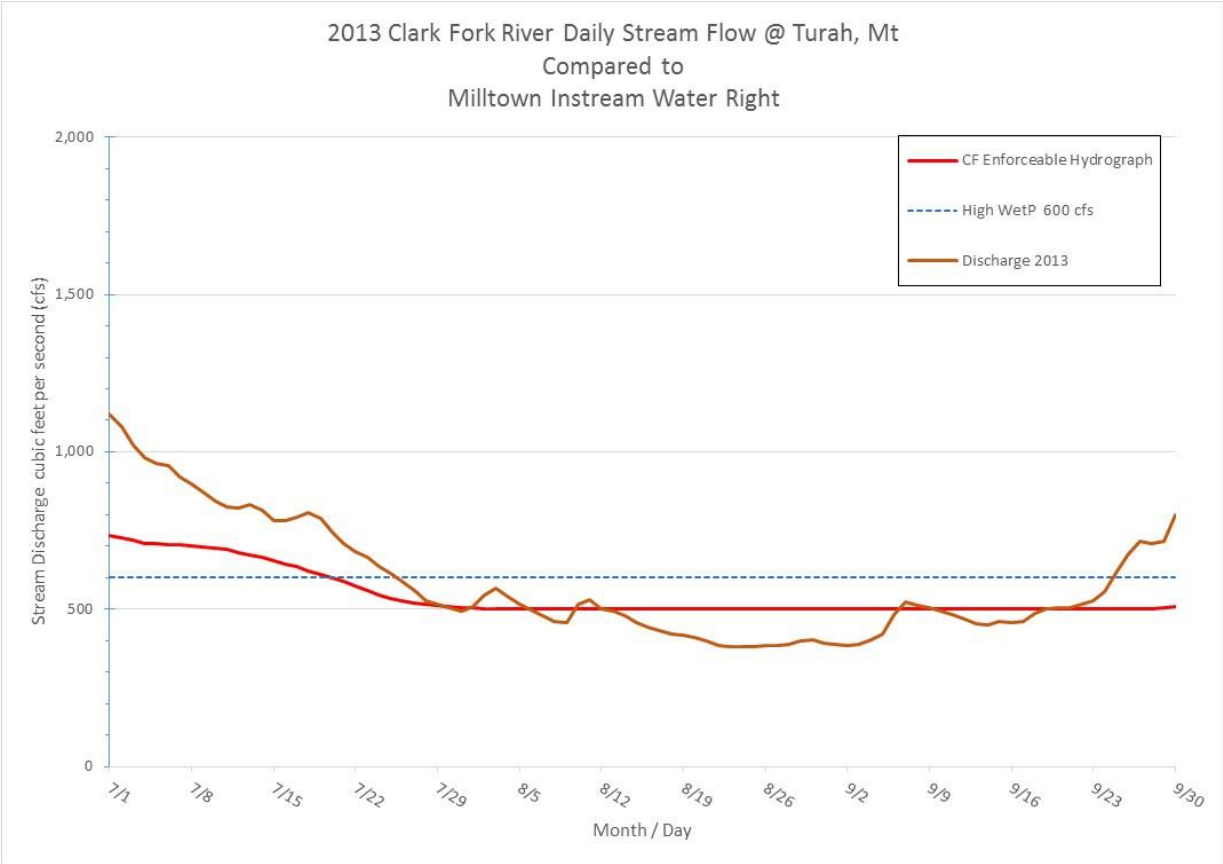

2008 Clark Fork River Daily Stream Flow @ Turah, Mt
Compared to
Milltown Instream Water Right
CF Enforceable Hydrograph
High WetP 600 cfs
discharge 2008
Stream Discharge cubic feet per second (cfs)
2,000
1,500
1,000
500
0
7/1
7/8
7/15
7/22
7/29
8/5
8/12
8/19
8/26
9/2
9/9
9/16
9/23
9/30
Month / Day


2009 Clark Fork River Daily Stream Flow @ Turah, Mt
Compared to
Milltown Instream Water Right
CF Enforceable Hydrograph
High WetP 600 cfs
Discharge 2009
Stream Discharge cubic feet per second (cfs)
2,000
1,500
1,000
500
0
7/1
7/8
7/15
7/22
7/29
8/5
8/12
8/19
8/26
9/2
9/9
9/16
9/23
9/30
Month / Day


2010 Clark Fork River Daily Stream Flow @ Turah, Mt
Compared to
Milltown Instream Water Right
CF Enforceable Hydrograph
High WetP 600 cfs
Discharge 2010
Stream Discharge cubic feet per second (cfs)
2,000
1,500
1,000
500
0
7/1
7/8
7/15
7/22
7/29
8/5
8/12
8/19
8/26
9/2
9/9
9/16
9/23
9/30
Month / Day


2011 Clark Fork River Daily Stream Flow @ Turah, Mt
Compared to
Milltown Instream Water Right
CF Enforceable Hydrograph
High WetP 600 cfs
Discharge 2011
Stream Discharge cubic feet per second (cfs)
2,000
1,500
1,000
500
0
7/1
7/8
7/15
7/22
7/29
8/5
8/12
8/19
8/26
9/2
9/9
9/16
9/23
9/30
Month / Day


2012 Clark Fork River Daily Stream Flow @ Turah, Mt
Compared to
Milltown Instream Water Right
CF Enforceable Hydrograph
High WetP 600 cfs
discharge 2012
Stream Discharge cubic feet per second (cfs)
2,000
1,500
1,000
500
0
7/1
7/8
7/15
7/22
7/29
8/5
8/12
8/19
8/26
9/2
9/9
9/16
9/23
9/30
Month / Day


2013 Clark Fork River Daily Stream Flow @ Turah, Mt
Compared to
Milltown Instream Water Right
CF Enforceable Hydrograph
High WetP 600 cfs
Discharge 2013
Stream Discharge cubic feet per second (cfs)
2,000
1,500
1,000
500
0
7/1
7/8
7/15
7/22
7/29
8/5
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8/26
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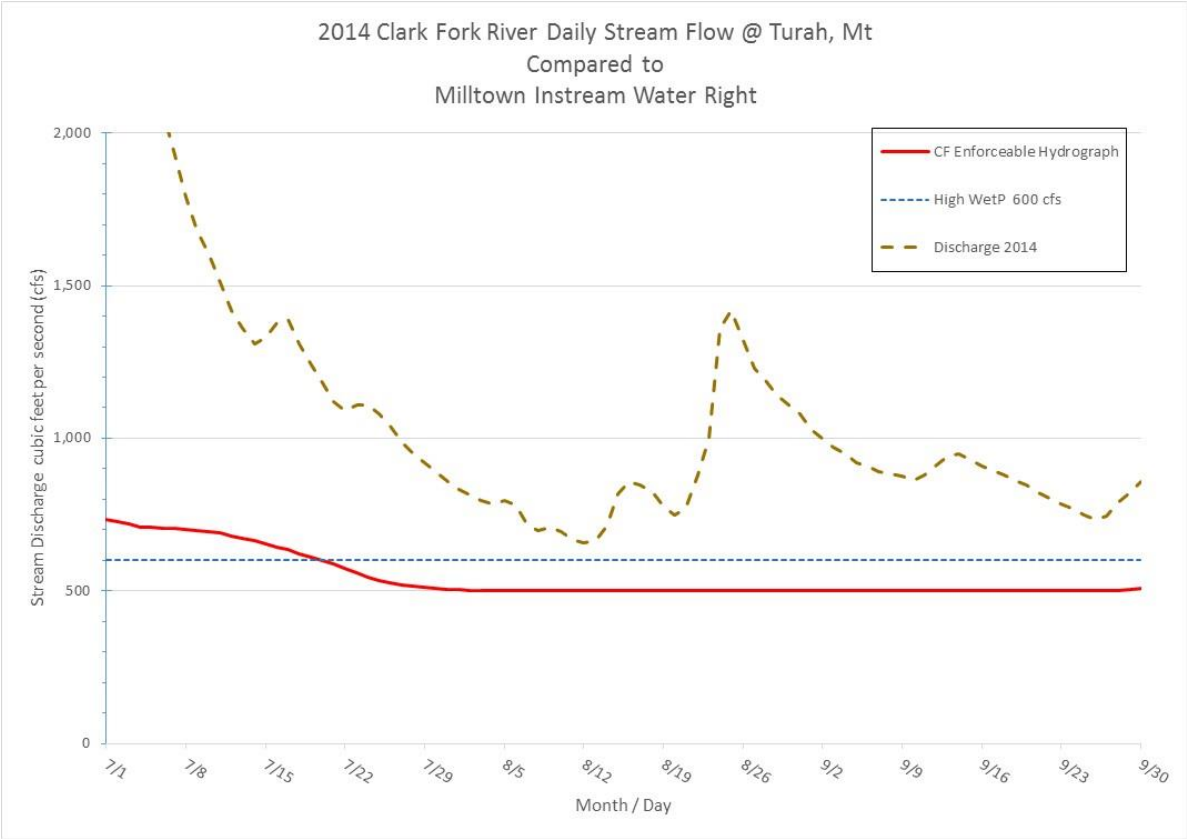
9/23
9/30
Month / Day


2014 Clark Fork River Daily Stream Flow @ Turah, Mt
Compared to
Milltown Instream Water Right
CF Enforceable Hydrograph
High WetP 600 cfs
Discharge 2014
Stream Discharge cubic feet per second (cfs)
2,000
1,500
1,000
500
0
7/1
7/8
7/15
7/22
7/29
8/5
8/12
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8/26
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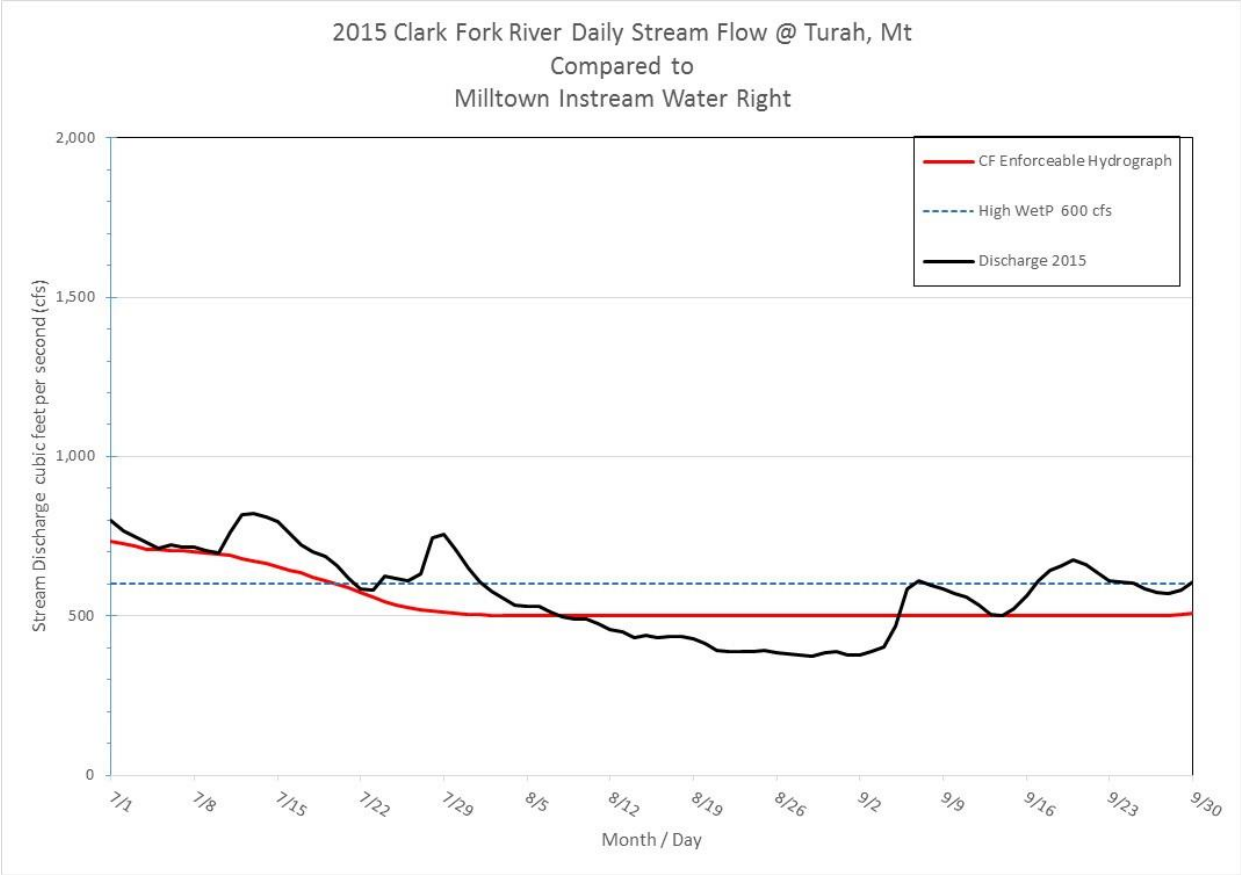
9/9
9/16
9/23
9/30
Month / Day


2015 Clark Fork River Daily Stream Flow @ Turah, Mt
Compared to
Milltown Instream Water Right
CF Enforceable Hydrograph
High WetP 600 cfs
Discharge 2015
Stream Discharge cubic feet per second (cfs)
2,000
1,500
1,000
500
0
7/1
7/8
7/15
7/22
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8/5
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8/26
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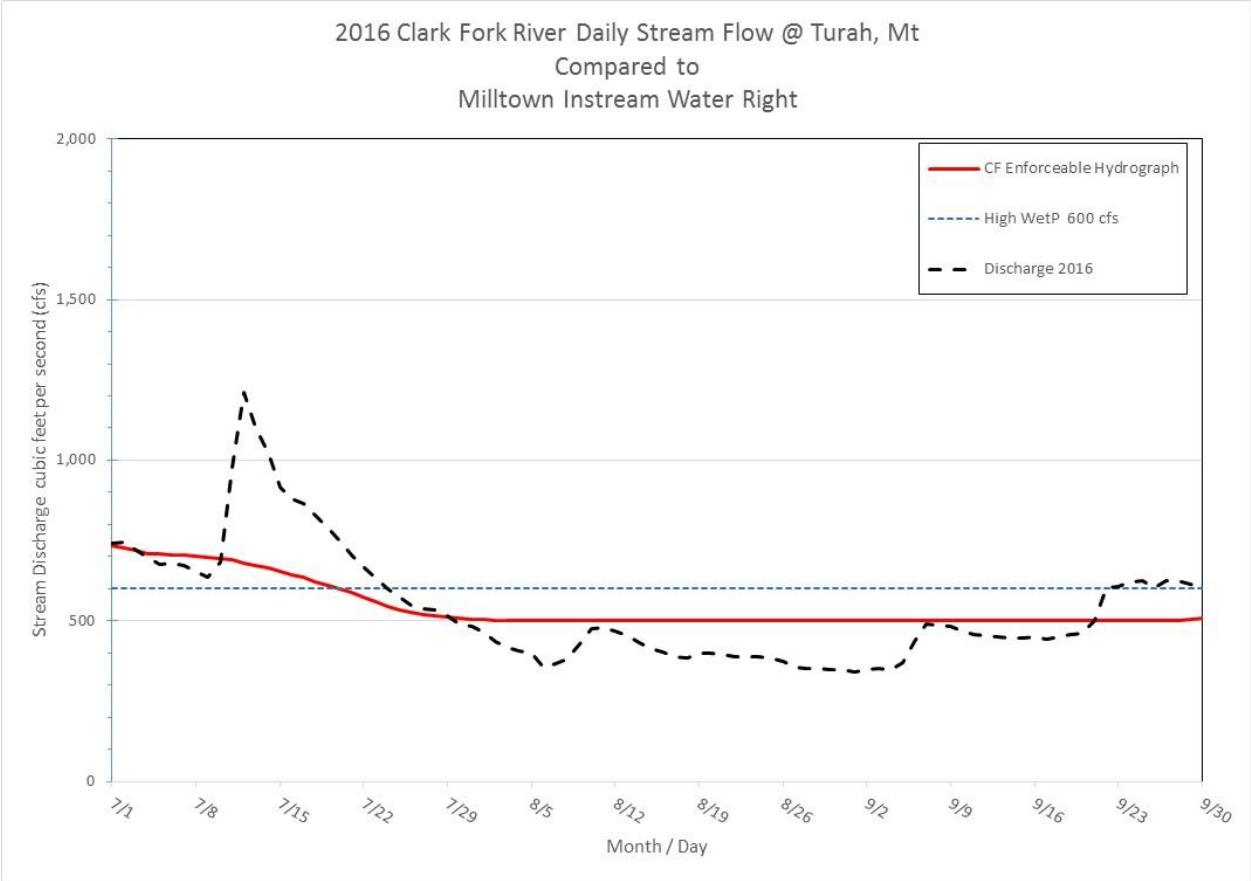
9/30
Month / Day


2016 Clark Fork River Daily Stream Flow @ Turah, Mt
Compared to
Milltown Instream Water Right
CF Enforceable Hydrograph
High WetP 600 cfs
Discharge 2016
Stream Discharge cubic feet per second (cfs)
2,000
1,500
1,000
500
0
7/1
7/8
7/15
7/22
7/29
8/5
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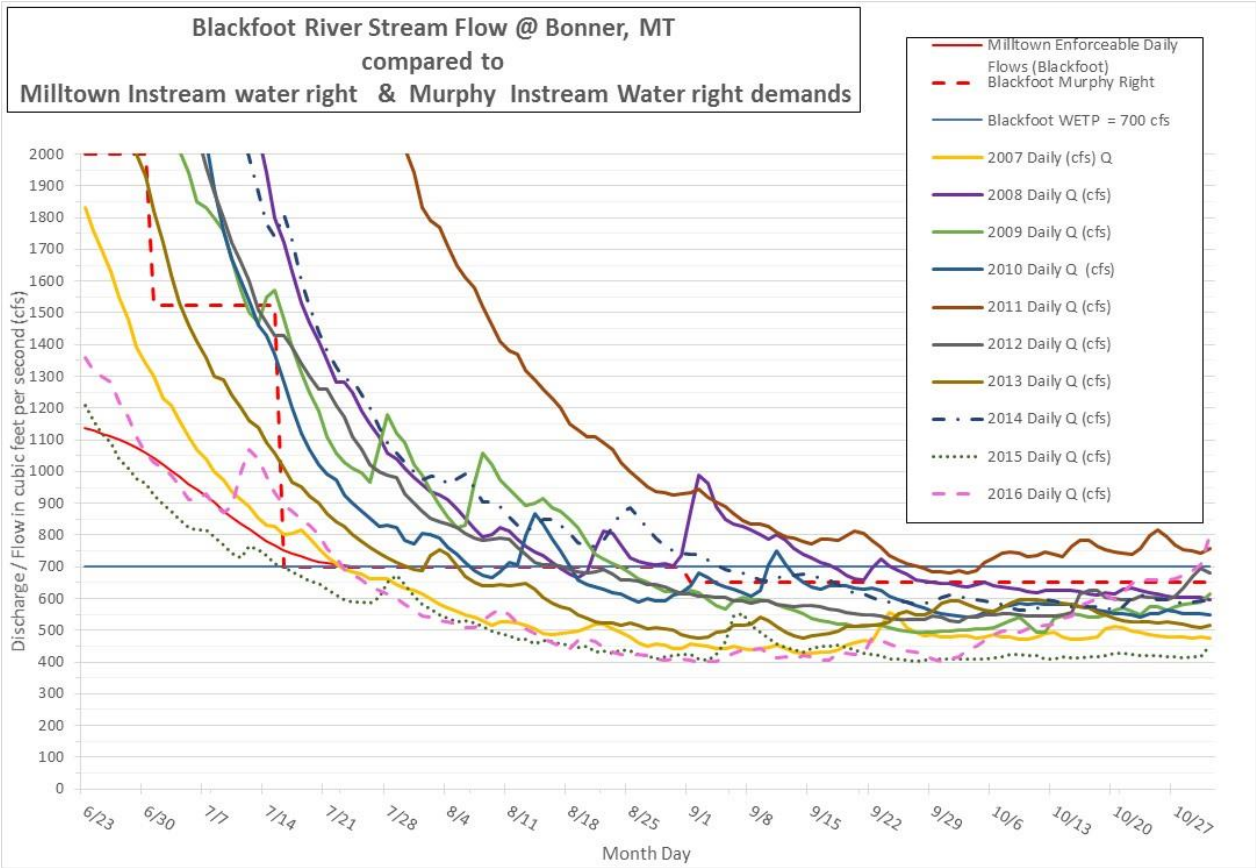
9/16
9/23
9/30
Month / Day


Blackfoot River Stream Flow @ Bonner, MT
compared to
Milltown Instream water right & Murphy Instream Water right demands
Milltown Enforceable Daily Flows (Blackfoot)
Blackfoot Murphy Right
Blackfoot WETP = 700 cfs
2007 Daily (cfs) Q
2008 Daily Q (cfs)
2009 Daily Q (cfs)
2010 Daily Q (cfs)
2011 Daily Q (cfs)
2012 Daily Q (cfs)
2013 Daily Q (cfs)
2014 Daily Q (cfs)
2015 Daily Q (cfs)
2016 Daily Q (cfs)
Discharge / Flow in cubic feet per second (cfs)
2000
1900
1800
1700
1600
1500
1400
1300
1200
1100
1000
900
800
700
600
500
400
300
200
100
0
6/23
6/30
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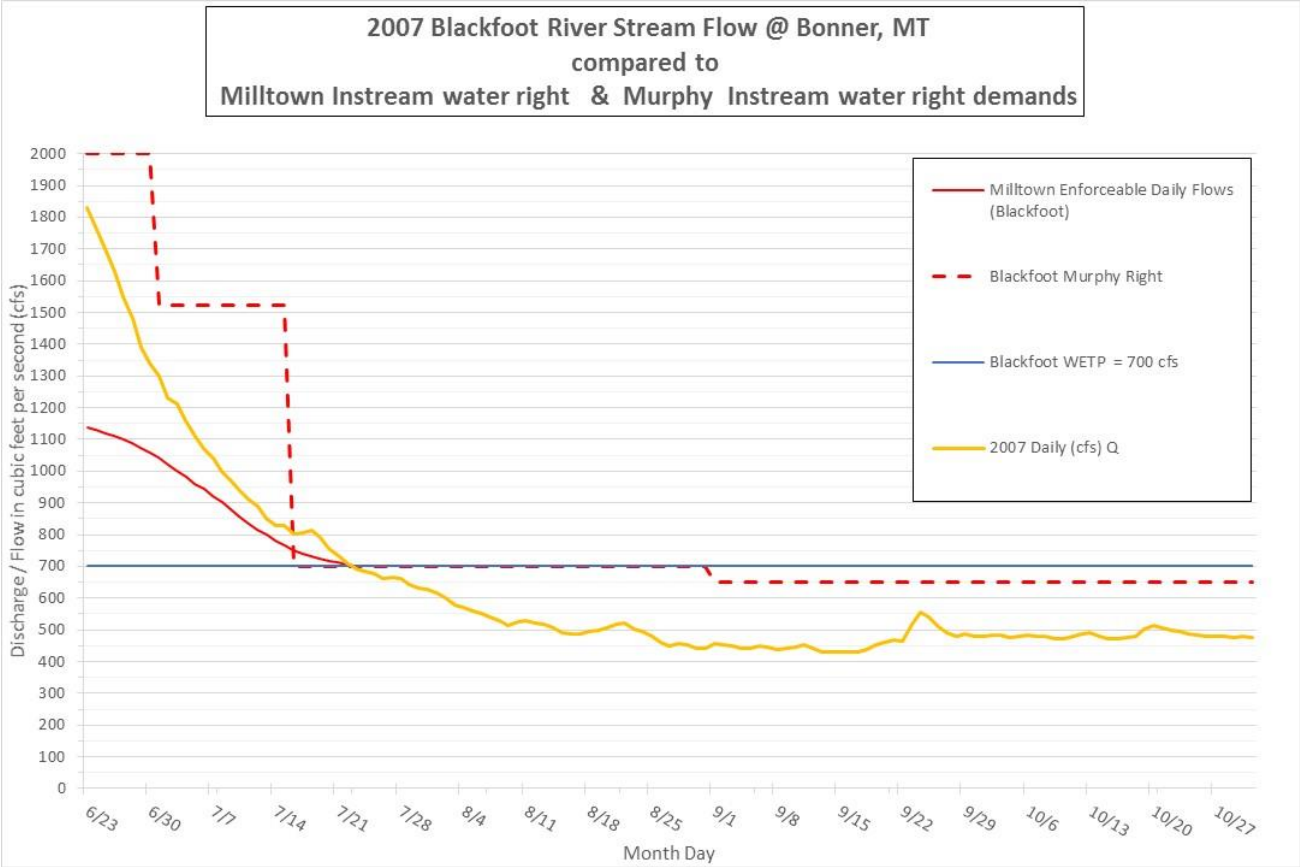
10/27
Month Day


2007 Blackfoot River Stream Flow @ Bonner, MT
compared to
Milltown Instream water right & Murphy Instream water right demands
Milltown Enforceable Daily Flows (Blackfoot)
Blackfoot Murphy Right
Blackfoot WETP = 700 cfs
2007 Daily (cfs) Q
Discharge / Flow in cubic feet per second (cfs)
Month Day
2000
1900
1800
1700
1600
1500
1400
1300
1200
1100
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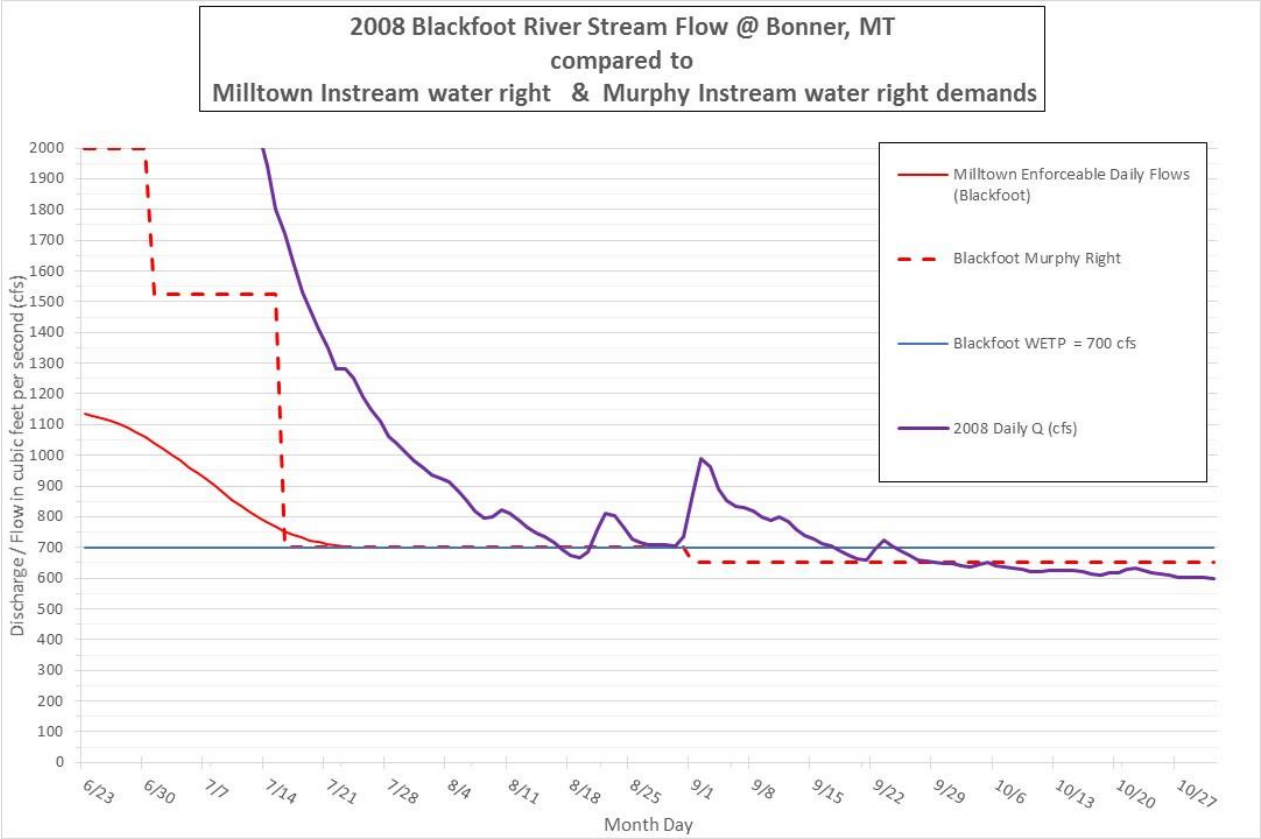
2008 Blackfoot River Stream Flow @ Bonner, MT
compared to
Milltown Instream water right & Murphy Instream water right demands
Milltown Enforceable Daily Flows (Blackfoot)
Blackfoot Murphy Right
Blackfoot WETP = 700 cfs
2008 Daily Q (cfs)
Discharge / Flow in cubic feet per second (cfs)
Month Day
0
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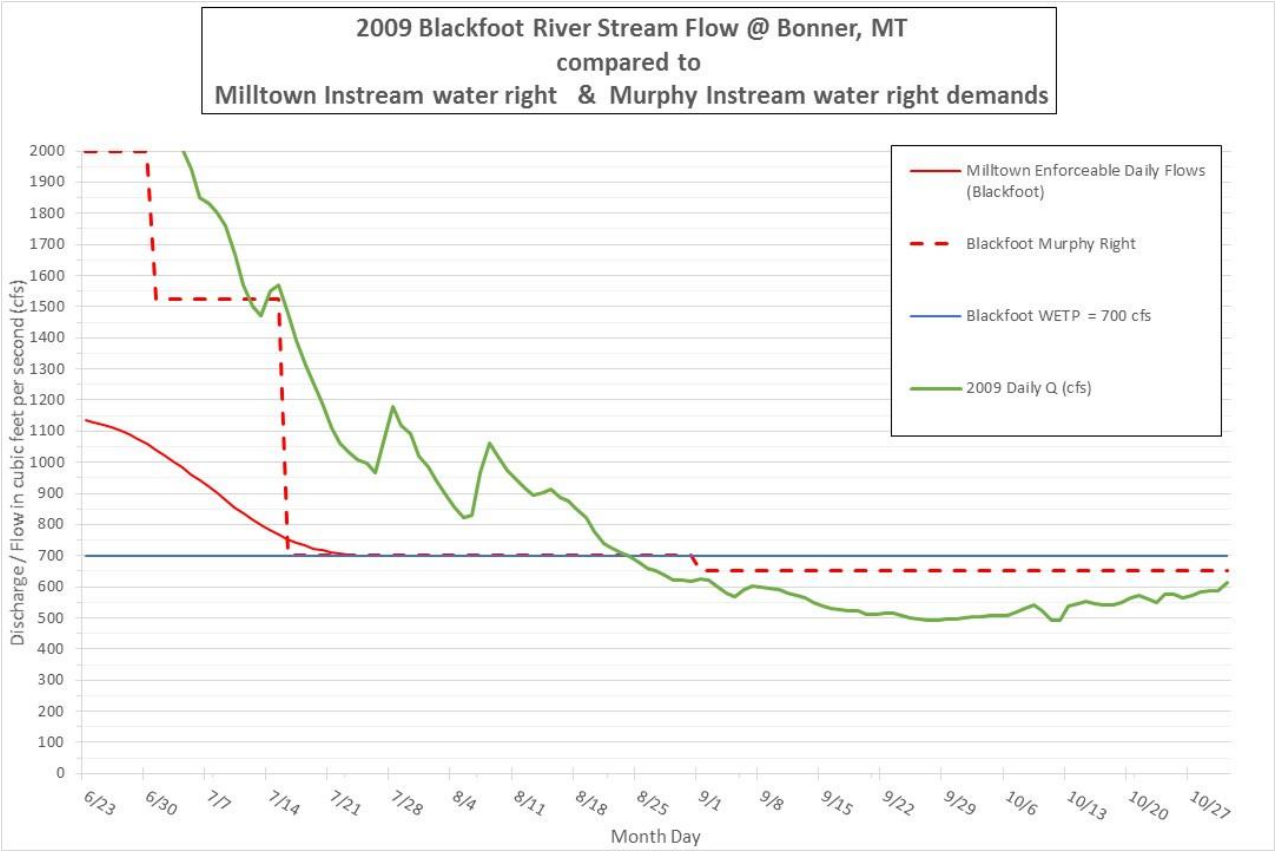
2009 Blackfoot River Stream Flow @ Bonner, MT
compared to
Milltown Instream water right & Murphy Instream water right demands
Milltown Enforceable Daily Flows (Blackfoot)
Blackfoot Murphy Right
Blackfoot WETP = 700 cfs
2009 Daily Q (cfs)
Discharge / Flow in cubic feet per second (cfs)
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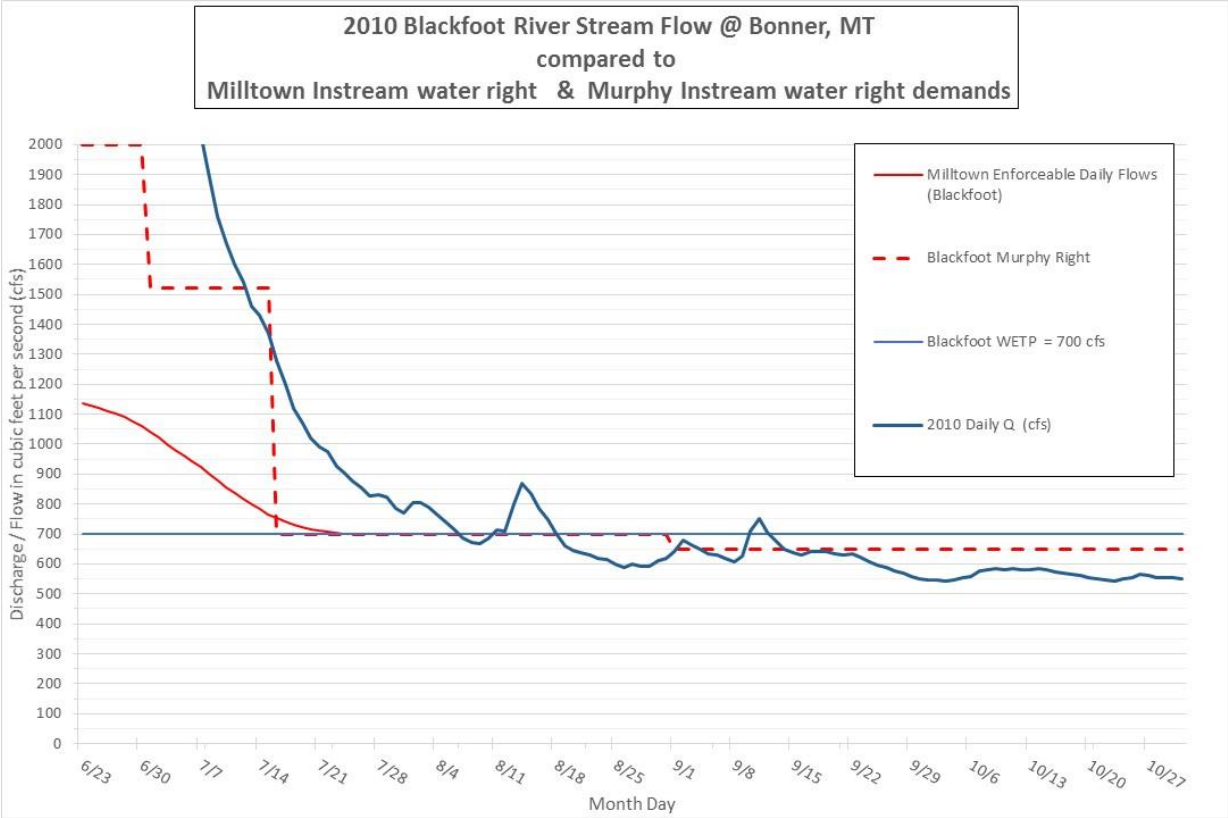
2010 Blackfoot River Stream Flow @ Bonner, MT
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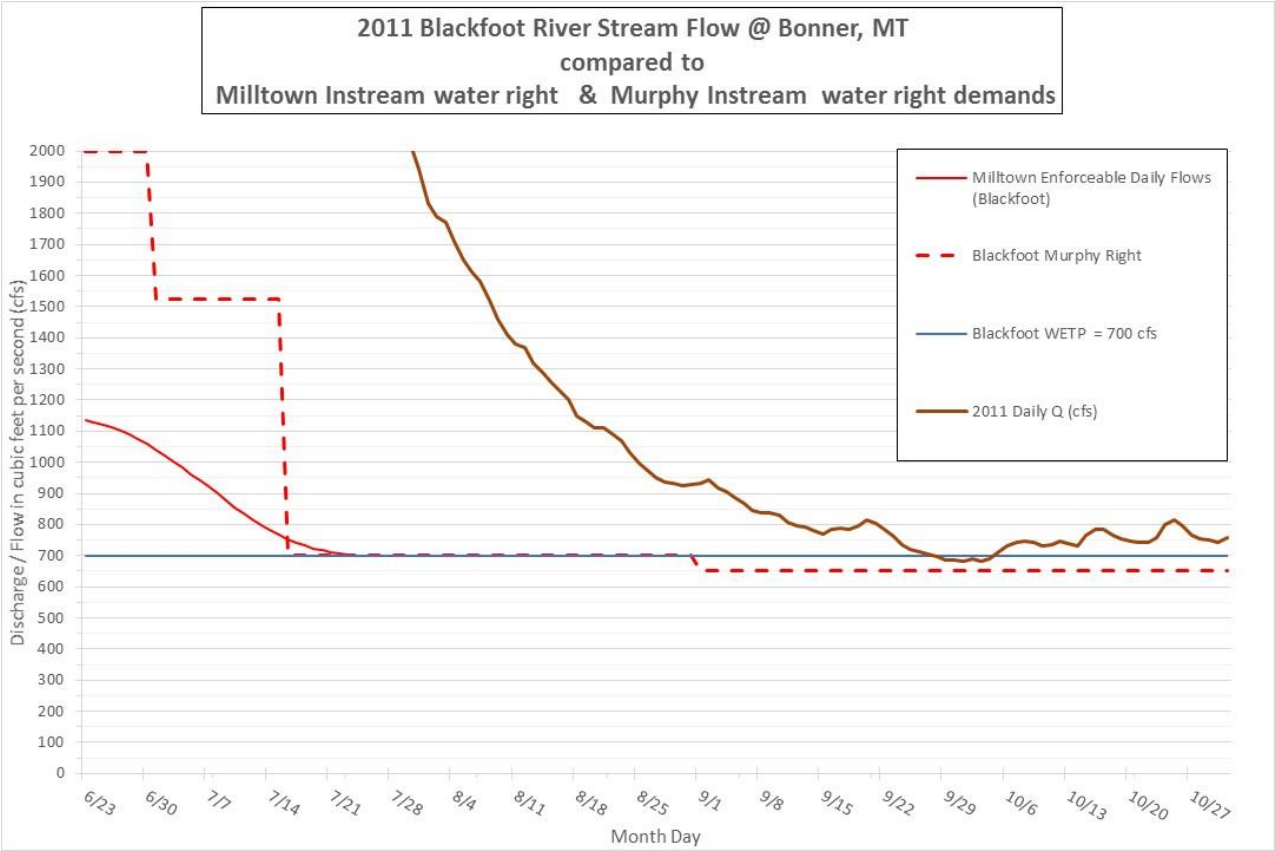
2011 Blackfoot River Stream Flow @ Bonner, MT
compared to
Milltown Instream water right & Murphy Instream water right demands
Milltown Enforceable Daily Flows (Blackfoot)
Blackfoot Murphy Right
Blackfoot WETP = 700 cfs
2011 Daily Q (cfs)
Discharge / Flow in cubic feet per second (cfs)
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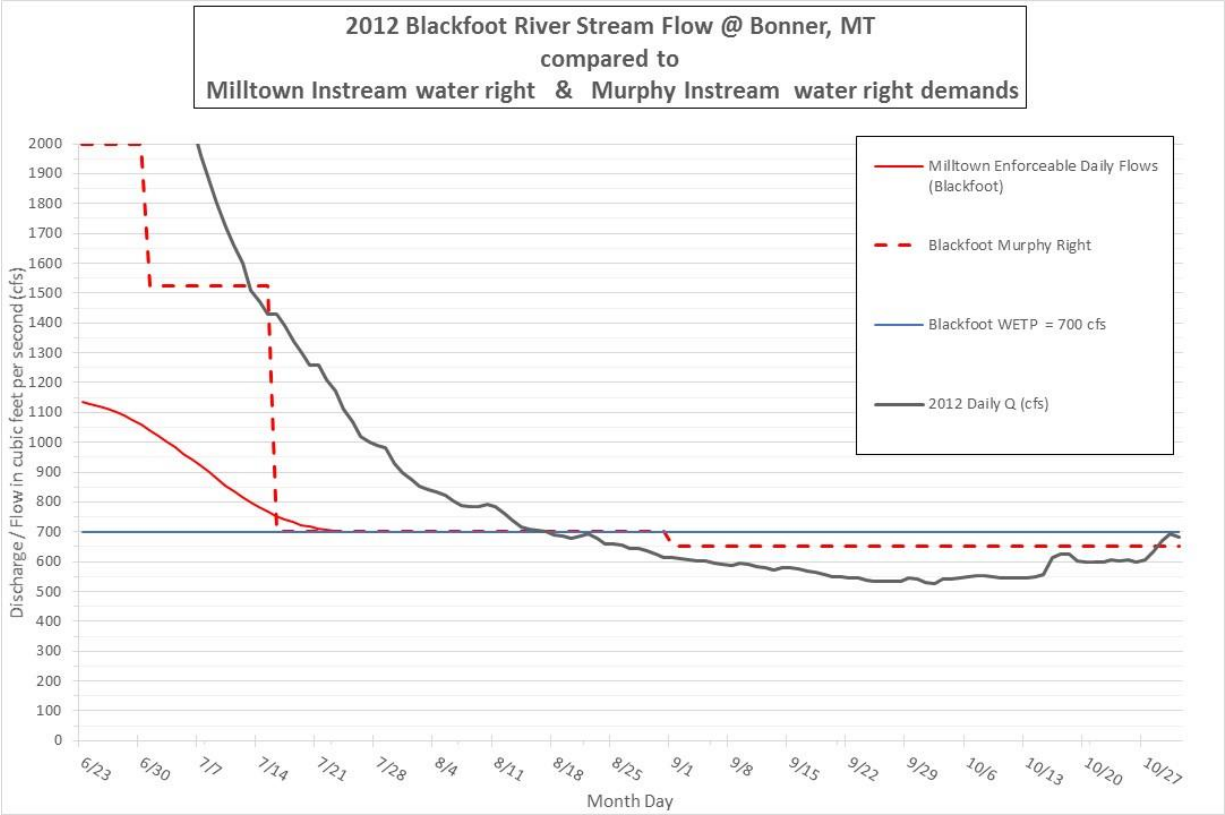
2012 Blackfoot River Stream Flow @ Bonner, MT
compared to
Milltown Instream water right & Murphy Instream water right demands
Milltown Enforceable Daily Flows (Blackfoot)
Blackfoot Murphy Right
Blackfoot WETP = 700 cfs
2012 Daily Q (cfs)
Discharge / Flow in cubic feet per second (cfs)
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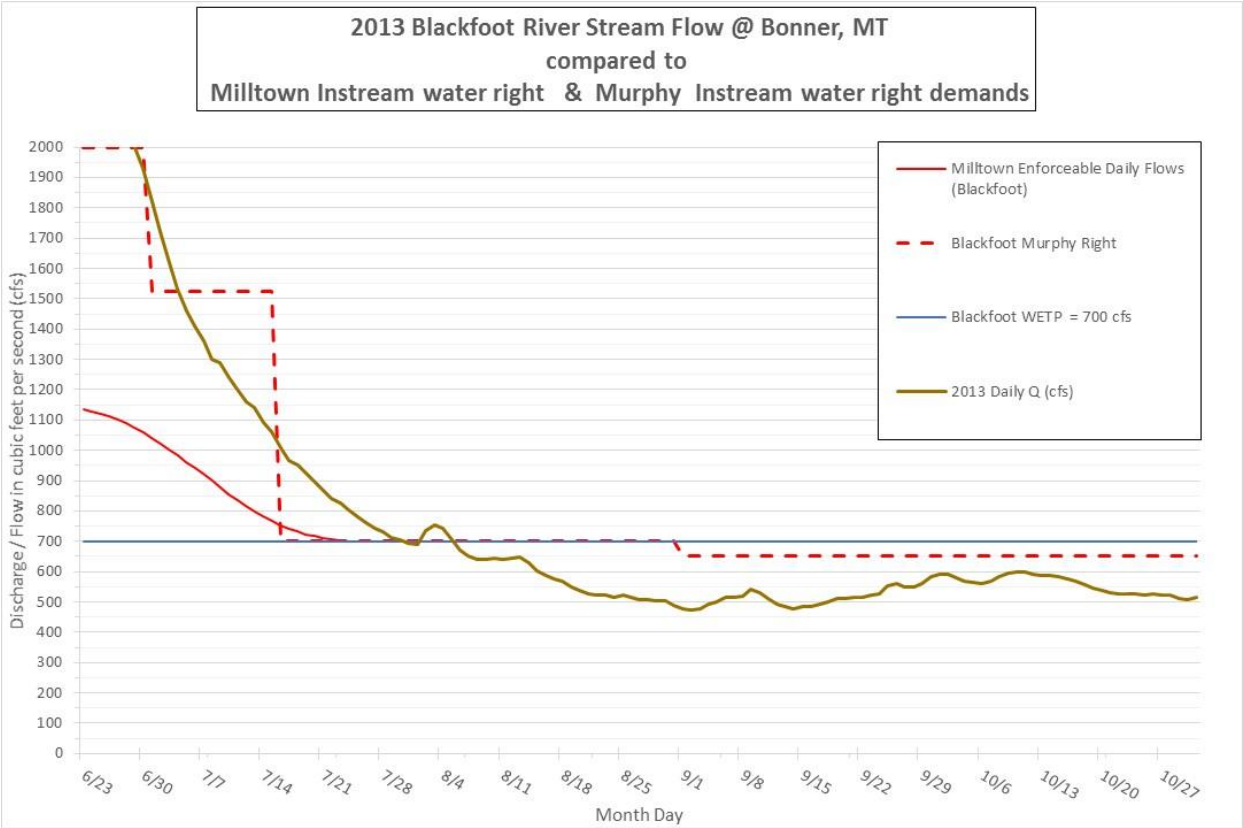
2013 Blackfoot River Stream Flow @ Bonner, MT
compared to
Milltown Instream water right & Murphy Instream water right demands
Milltown Enforceable Daily Flows (Blackfoot)
Blackfoot Murphy Right
Blackfoot WETP = 700 cfs
2013 Daily Q (cfs)
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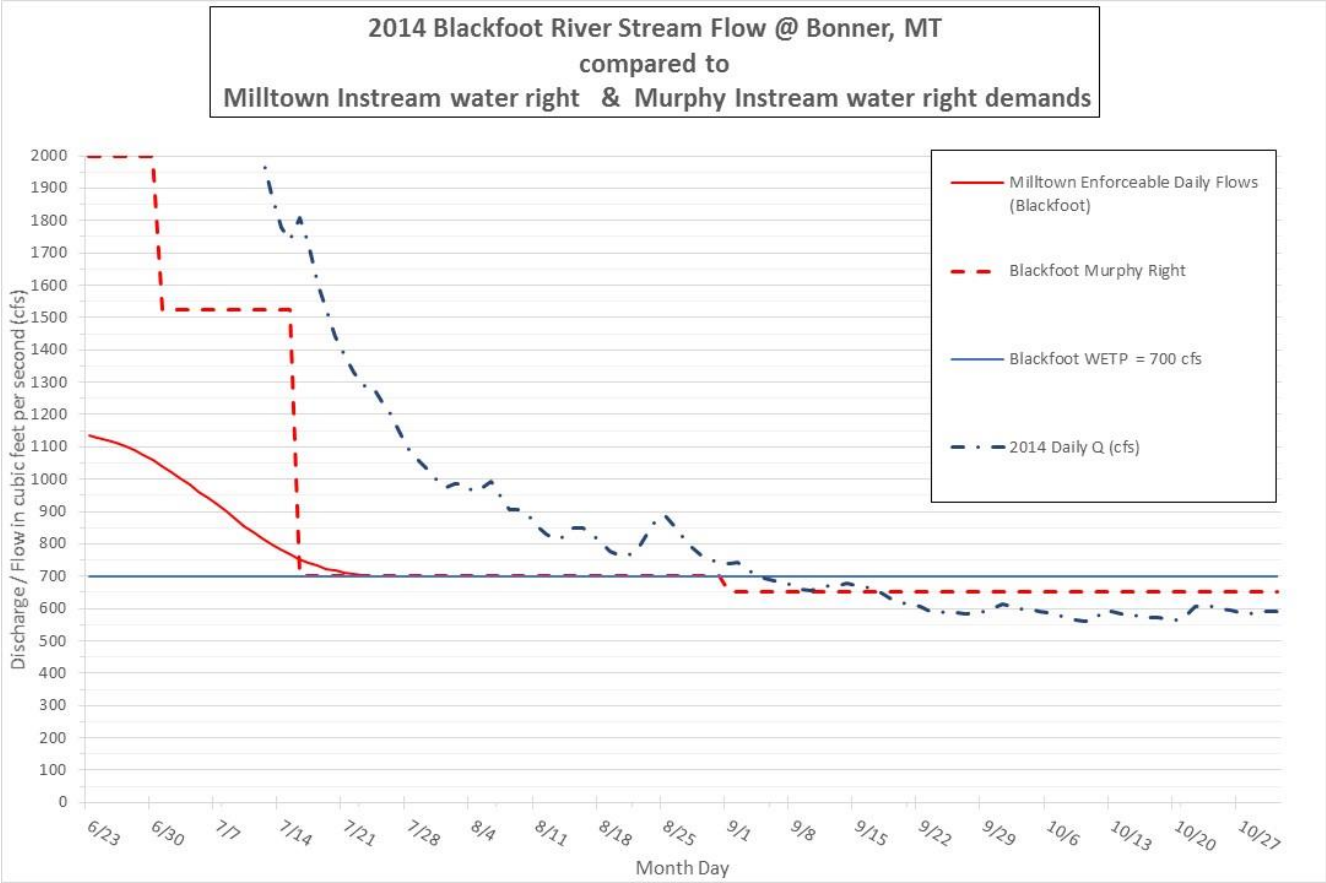
2014 Blackfoot River Stream Flow @ Bonner, MT
compared to
Milltown Instream water right & Murphy Instream water right demands
Milltown Enforceable Daily Flows (Blackfoot)
Blackfoot Murphy Right
Blackfoot WETP = 700 cfs
2014 Daily Q (cfs)
Discharge / Flow in cubic feet per second (cfs)
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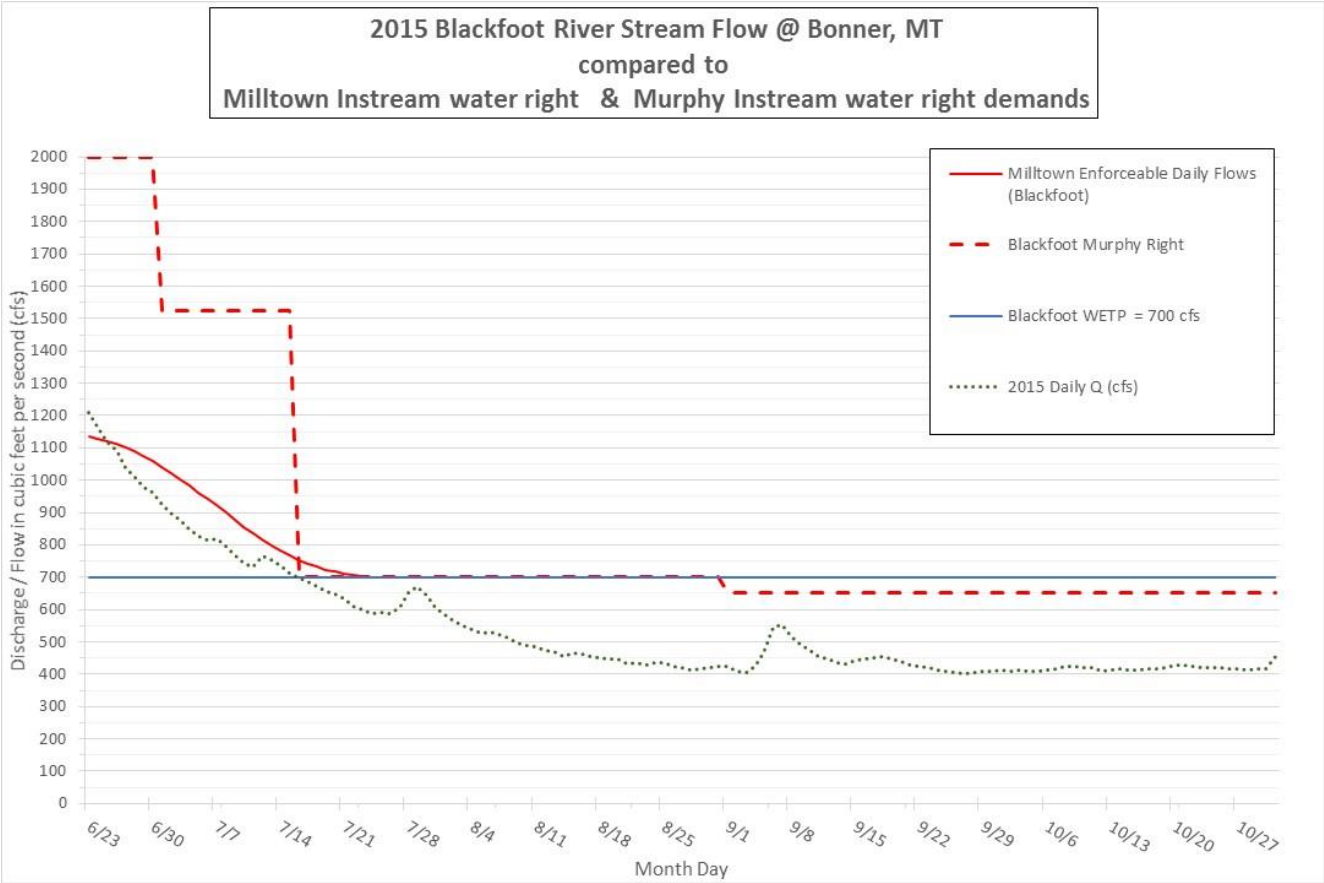
2015 Blackfoot River Stream Flow @ Bonner, MT
compared to
Milltown Instream water right & Murphy Instream water right demands
Milltown Enforceable Daily Flows (Blackfoot)
Blackfoot Murphy Right
Blackfoot WETP = 700 cfs
2015 Daily Q (cfs)
Discharge / Flow in cubic feet per second (cfs)
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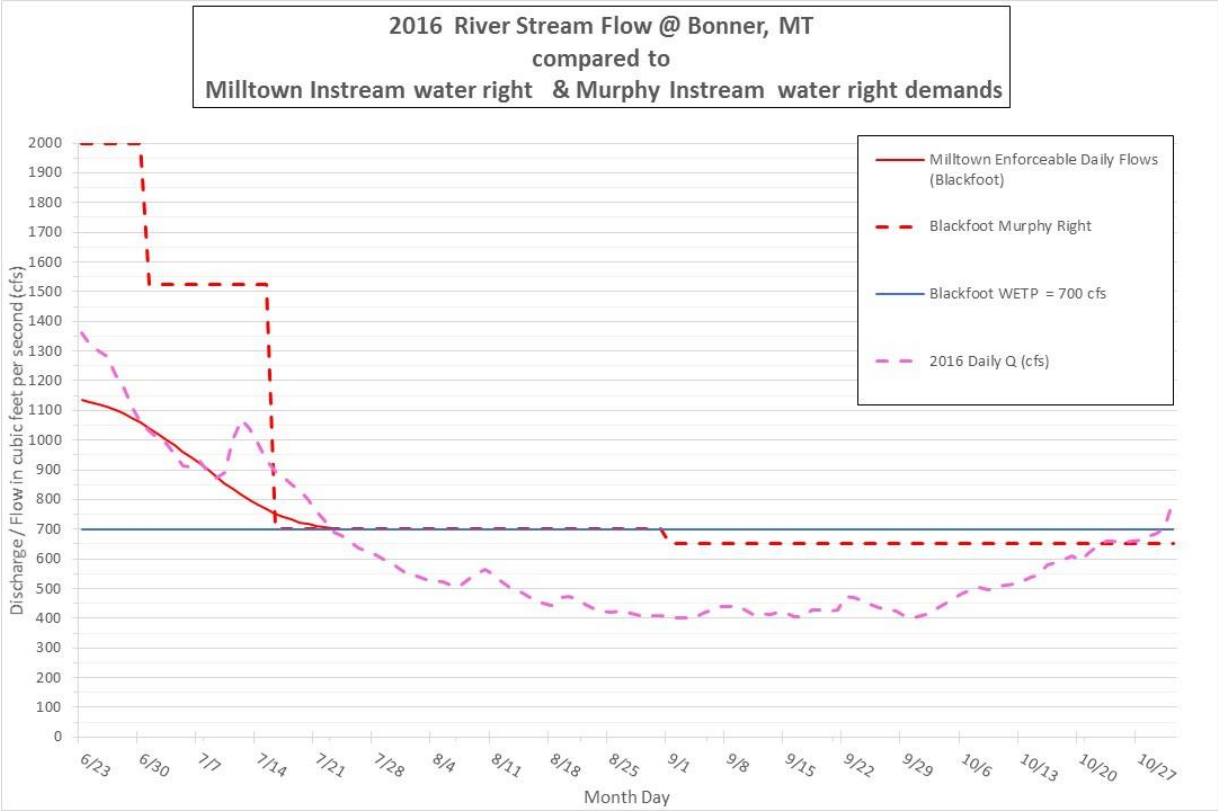
2016 River Stream Flow @ Bonner, MT
compared to
Milltown Instream water right & Murphy Instream water right demands
Milltown Enforceable Daily Flows (Blackfoot)
Blackfoot Murphy Right
Blackfoot WETP = 700 cfs
2016 Daily Q (cfs)
Discharge / Flow in cubic feet per second (cfs)
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