

**Upper Clark Fork River Basin Steering Committee  
Meeting Summary  
November 22, 2011**

**Introductions**

Gerald Mueller, members of the Upper Clark Fork River Basin Steering Committee (Steering Committee), and others in attendance introduced themselves. Those in attendance included:

<b>Members</b>	<b>Group/Organization Represented</b>
Darryl Barton	Clark Fork River Technical Advisory Committee and the City of Deer Lodge
Jim Quigley	Little Blackfoot River
Jim Dinsmore	Granite Conservation District
Tom Mostad	Natural Resource Damage Program
Jason Lindstrom	Montana Department of Fish, Wildlife and Parks
Stan Bradshaw	Montana Trout Unlimited
Bob Benson	Clark Fork Coalition (CFC)
Dave Lewis	State Senate District 42 & Lewis and Clark County
Maureen Connor	Granite County Commissioner
Jon Sesso	Butte-Silver Bow/Legislative District 76

**Agency**

Ann Schwend	Department of Natural Resources and Conservation (DNRC)
Mike McLane	DFWP, Fishery Bureau
Jay Weiner	Attorney General's Office/Reserved Water Rights Compact Commission (RWRCC)
Bill Schultz	RWRCC

**Public**

Barbara Hall	CFC
Catherine Berg	University of Montana Environmental Studies Program
Andy Fisher	CFC

**Staff**

Gerald Mueller	Facilitator
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**Agenda**

- Review September 28, 2011 Meeting Summary
- Updates
  - Trustee Restoration Council Proposed Long Range Restoration Priorities and Fund Allocation Guidance Plan
  - Steering Committee/Clark Fork Task Force Coordinator Request for Proposal
  - Other Organizations
- Steering Committee Items for the 2012-13 Clark Fork River Basin Task Force Work Plan
- UM Graduate Student Interest in Upper Clark Fork River Basin Flow Plan
- State of Montana Proposal for Addressing CSKT Off-Reservation Water Right Claims in the Upper Clark Fork River Basin

- Public Comment
- Next Meeting

## **September 28, 2011 Meeting Summary**

The Steering Committee made no change to this meeting summary.

### **Updates**

Trustee Restoration Council Proposed Long Range Restoration Priorities and Fund Guidance Plan Document - Maureen Connor, a member of the Upper Clark Fork River Basin Advisory Committee (UCFRBAC), reported on recent action by the Trustee Restoration Council (TRC) regarding the UCFRBAC's Long Range Guidance Plan (Guidance Plan) proposal. At its meeting on November 8, 2011, the TRC adopted the November 3, 2011 redline version of the Guidance Plan proposal. The Guidance Plan is now awaiting the signature of Governor Schweitzer as the State of Montana's Natural Resource Damage Trustee. The governor's signature will trigger a two month period during which the NRD staff will produce a plan setting forth how interested parties may become involved in the development of the detailed restoration plan, which is scheduled for adoption by October 2012.

*Question - Did the TRC also adopt the restoration plans for aquatic and terrestrial resources?*

Answer - Yes, the TRC's approval of the Guidance Plan included the aquatic and terrestrial plans.

*Question - Do you know when the governor will sign the Guidance Plan?*

Answer by Jon Sesso - The governor is reviewing the Guidance Plan now and will likely sign it early next week.

Steering Committee/Clark Fork Task Force Coordinator Request for Proposal - Gerald Mueller stated that in the past, DNRC contracted with him via a sole source contract to provide facilitation/coordination services for both the Steering Committee and the Clark Fork River Basin Task Force (Task Force). This contract expires at the end of this year. The Task Force has agreed to the Steering Committee's request that the Steering Committee become a committee of the Task Force, and Steering Committee activities will be funded through the Task Force. For the next biennium, the Task Force will be funded by a Renewable Resources Grant and Loan Program (RRGLP) grant approved by the 2011 legislature. The DNRC Conservation and Resource Development Division (CARDD), which administers the RRGLP, has decided that the next facilitation/coordination contract for the Task Force must be awarded via a competitive solicitation. The Task Force is developing a request-for-proposals (RFP) that will be issued next month, so that a contract can be issued in January of next year. Ann Schwend stated that Jim Dinsmore is a member of the Task Force committee that is developing and will evaluate responses to the RFP. She asked if any other Steering Committee member would like to participate in the evaluation of the RFP responses. No other Steering Committee member volunteered.

### Other Organizations

CFRTAC - Darryl Barton reported that the Clark Fork River Technical Assistance Committee (CFRTAC) recently hosted a tour of the Superfund cleanups at the Deer Lodge railroad trestle. The Deer Lodge mayor public works director, all three Powell County commissioners, and

members of the public participated in the tour. Although cleanup activity is relatively quiet, there is a lot going on. CFRTAC would gladly take people of tours of activity in the Deer Lodge area.

Butte-Silver Bow - Jon Sesso reported that the cleanup of Silver Bow Creek has advanced through the canyon. Improvements have been made to the Greenway trail from Rocker to Ramsay. The fish pond project in Butte has been delayed, and construction will begin in April of next year. Updates are also underway regarding the Silver Lake water system. The wooden flume from Twin Lakes to Silver Lake has been replaced. Discussions are underway with the state regarding the provision of Silver Lake water for instream flow. ARCO has given its one-year notice to terminate its water service agreement to purchase Silver Lake water for instream flow. The agreement terminates on July 1, 2012.

*Question - If the state enters into a water service agreement for instream flow in place of ARCO, will the state have to pay for the instream flow water?*

Answer - Yes. Charges under the water service agreements are set to pay for the Silver Lake operation and maintenance costs and for needed capital improvements.

*Question - Is the NRD program a possible source of funds for a state water service agreement for instream flow?*

Answer - NRD would be a logical funding source. One of the purposes of Butte-Silver Bow's original acquisition of the Silver Lake system was instream flow in the Warm Springs watershed.

*Question - Did the rates in the current water service agreements to which ARCO was a party include provisions for long-term improvements to the Silver Lake system?*

Answer - The 1997 water service agreements included in the operations and maintenance fee provision for a capital improvements and replacement program. This past spring Butte-Silver Bow released the capital improvement plan for the Silver Lake system. I discussed this plan with the Steering Committee at its June meeting. The plan includes \$55-60 million of expenditures over a ten year period. After release of the plan, ARCO gave its notice of intent to terminate its water service agreement for instream flow water. If we are able to provide water for the Montana Resources Inc. mine in Butte from alternative sources, the Silver Lake system capital costs would be less because we would not have to pipe Silver Lake water to the mine.

*Question - Have you been looking for an alternative source of water for industrial needs?*

Answer - We have been looking at alternatives to supply the mine in Butte but not for the industrial park at Ramsay. Conveying Silver Lake to the mine requires a seven mile long, uphill pipeline. If we are able to find a water source closer to the mine, additional water from Silver Lake would be available for other purposes. Silver Lake water might, for example, be a good source of drinking water if it were filtered.

*Question - So the existing water rate is not sufficient to cover the system's capital needs?*

Answer - No, it is not. Our existing customers include NorthWestern Energy, REC, MRI, and ARCO. Butte-Silver Bow expected to have more industrial customers.

*Question - Is the \$55-60 million the total cost for the priority improvements?*

Answer - This amount would include \$5 million for improvements to Meyers Dam and funding for the diversion from Twin Lakes and other flumes such as the asphalt ditch. The asphalt ditch is adequate to convey water but does not meet fish habitat needs.

*Question - So the transportation system requires the bulk of the \$55-60 million?*

Answer - More or less, plus a siphon in Silver Lake so that it can be drawn down an additional 10 feet.

*Question - What state agency has Butte-Silver Bow been discussing Silver Lake water for instream flow?*

Answer - DFWP. We have been talking with Jason Lindstrom.

*Question - How much water does Butte-Silver Bow have in Silver Lake?*

Answer - 9,400 acre-feet. We believe we have enough water for our industrial customers and instream flow.

*Comment - The 9,400 acre-feet released over 180 days would produce a flow of 20-30 cubic feet per second (cfs).*

*Question - What is the priority date for Butte-Silver Bow's water rights associated with Silver Lake storage?*

Answer - The direct flow rights have a priority date in the early 1900s. I am not sure of the specific date.

*Question - Has the Silver Lake water been discussed in the negotiations for the reserved water right compact with the Confederated Salish and Kootenai Tribes?*

Answer by Mike McLane - I am not aware that it has.

*Question - Has the state settled the NRD claims regarding ARCO and the Uelands?*

No, discussions referred to as the Dutchman negotiations are underway. ARCO acquired the water rights associated with 3,000 acres below the Gardiner Ditch. These water rights still belong to ARCO and they and the Uelands use those rights under their contract. An NRD settlement has been on another unit, ARCO water rights from Mill and Willow Creek have been transferred to DFWP the state. These may be converted to for instream flow through the change of use process.

## **Steering Committee Items for the 2012-13 Clark Fork River Basin Task Force Work Plan**

Gerald Mueller reviewed work plan items that the Steering Committee may recommend to the Task Force for inclusion in its 2012-13. See Appendix 1 which contains his October 25, 2011 draft memorandum to the Task Force.

*Comment - Under the second goal, develop a flow plan for the upper Clark Fork River basin, there should be an objective of engaging other stakeholders.*

***Steering Committee Action - Those members of the Steering Committee present at this meeting agreed to the content of the October 25, 2011 memorandum with the addition of another objective under Goal 2 providing for engagement of other stakeholders in development of the flow plan.***

### **UM Graduate Student Interest in Upper Clark Fork River Basin Flow Plan**

Gerald Mueller stated that he has been contacted by Catherine Berg, a graduate student in the UM Environmental Studies Program, because of her interest in pursuing some aspect of the flow plan as a thesis topic for her Master of Science Degree. He invited Ms. Berg to introduce herself and discuss her interest with the Steering Committee.

Ms. Berg stated that she has an undergraduate degree in civil engineering and before returning to school at UM was a flood plain administrator for a Colorado county. Work on some aspect of a flow plan in the upper Clark Fork River basin would be of interest to her. She would need to develop a specific study plan for her Master's thesis. She asked for Steering Committee input on the following questions. The questions and Steering Committee member responses are summarized below.

- *Should Ms. Berg focus on all restoration efforts or only stream flows?*

Response - Tributaries will be critical for the flow plan. Ms. Berg should begin by compiling and assessing existing information regarding basin stream flows and can then consider narrowing her focus to flow targets for specific stream reaches.

Dennis Workman, former DFWP Region 2 Fishery Manager, did some work for the Steering Committee to evaluate dewatered reaches in the upper Clark Fork basin and produced some maps that you may want to review. DNRC may have copies of the maps. The results of Mr. Workman's work are summarized in an August 2006 Steering Committee publication, *Upper Clark River Flow Story*. Mr. Mueller noted that he has provided Ms. Berg a copy of this publication.

The Watershed Restoration Coalition has conducted a study for the Montana Department of Environmental Quality (DEQ) TMDL Program that prioritized upper Clark Fork basin tributaries for restoration. Flow was one of the issues addressed.

The NRD has also completed and adopted a restoration plan for aquatic resources in the upper Clark Fork. The Clark Fork Coalition also recently released a report setting out its strategy for restoring aquatic resources in the upper Clark Fork.

- *Should Ms. Berg focus on the area of the basin above Garrison (Reach A) or the entire upper Clark Fork basin?*

Response - DFWP addressed the entire basin in its 1986 application for reserved water rights in the upper Clark Fork Basin. DNRC completed draft and final environmental impact statements in 1987 and 1988. These documents have been scanned and are available through DNRC.

One aspect of the flow plan discussed by the Steering Committee is developing a drought management plan. Drought plans have been developed for the Blackfoot, Big Hole, and Jefferson sub-basins. These areas have existing communication systems. Developing a drought

plan for the entire upper Clark Fork basin, i.e. the area above the confluence of the Blackfoot and Clark Fork Rivers, would be too big a chunk.

## **State of Montana Proposal for Addressing CSKT Off-Reservation Water Right Claims in the Upper Clark Fork River Basin**

Gerald Mueller passed out copies of Chris Tweeten's November 15 response to the Steering Committee's October 12, 2011 letter regarding the State of Montana's proposal for settling the Confederated Salish and Kootenai Tribes (CSKT) off-reservation water right claims in the upper Clark Fork River basin. A scanned version of the content of the letter is included below in Appendix 2. Mr. Mueller noted that the response addressed only one of the Steering Committee's questions, whether the State would use the compact process instead of the DNRC water right change process to change the use of the Milltown hydropower water rights. Mr. Tweeten's letter indicates that the State is considering the option to make the change through compact legislation rather than the change process.

Jay Weiner and Bill Schultz then discussed this topic. Highlights of this discussion and Steering Committee comments and questions and Mr. Weiner's and/or Mr. Schultz' replies follow.

The hydropower water rights formerly held by NorthWestern Corporation (NWC) were transferred to State ownership to settle the State of Montana's Natural Resource Damage (NRD) claims against NWC. Decisions about how the State would hold and management these assets have not been made. As Mr. Mueller noted, the State has proposed co-ownership by the CSKT and DFWP of the Milltown hydropower rights converted to an instream fishery use to settle the Tribes' off-reservation water right claims in the upper Clark Fork. Based on federal court decisions interpreting Stevens Treaties, including the Hellgate Treaty of 1855, the CSKT appear to have colorable claims to off-reservation water rights for instream flow in the upper Clark Fork.

In making the proposal for co-ownership of the Milltown water rights, the RWRCC was mindful of two objectives. First, in negotiating all of the compacts with Montana Indian Tribes and the federal government, the State seeks to protect existing water uses and stream conditions. Second, the State cannot diminish the value of the assets taken to settle its NRD claims.

Mr. Tweeten's November 15 letter does indicate that the State is considering using the compact process rather than the DNRC change process to change the purpose of use of the Milltown water rights from hydropower to another instream use, the fishery. The decision to do so, however, has not yet been made. The RWRCC sees the compact process as offering an important advantage over the DNRC change process. Because the legislature must approve the compact, elected officials rather than the DFWP and the DNRC would make the core decisions about the change.

The CSKT have not yet responded to the State's off-reservation proposal.

In broad brush terms, the RWRCC is considering the biological implications of a dual trigger for enforcement of a changed Milltown water right. The first trigger would reflect an adaptive management approach that would instigate actions similar to those in the locally developed Blackfoot drought plan, and the second would be a hard, enforceable number based on flows needed for fish survival.

The negotiating parties intend to have a completed draft compact for public consideration in June or July 2012. The RWRCC appreciates the Steering Committee's offer to help facilitate public outreach on the draft compact.

*Question - Are you considering a scale for the adaptive management trigger, such as major tributaries of the Clark Fork?*

Answer - We have not specified the scale. We will likely pursue a scale that is achievable. We are sensitive about what we lock into the compact via legislation.

*Question - You said that the State cannot diminish the value of the Milltown water right asset. Who determines what the value is?*

Answer - This is a good question. Montana does not have a developed water market for valuing water. Historically, Montana water users have paid only for the delivery of water and not for the water itself. In this case, the Milltown rights would be used for ecologically purposed flows. How to value this use is yet to be determined

*Comment - Sidestepping the water right change process is a big concern.*

Response - We are sensitive to the due process protections normally afforded by the change process.

*Question - Can the compact be negotiated by next July?*

Answer - Maybe. We are aware this is an ambitious deadline; however, deadlines tend to concentrate people's minds. We are also aware that serious public involvement is required before we take a compact to the legislature for approval.

*Question - Have you had any response from the CSKT on the Off-reservation Proposal?*

Answer - No. The CSKT are waiting for the State to provide more detail on the Swan, Kootenai, and Upper Clark Fork.

*Comment - Water users are concerned about the involvement of the CSKT in basin water management.*

*Question - Where does the Water Court fit into the compact process?*

Answer - After a compact is negotiated and ratified by the three sovereigns, the State by the legislature, the Tribes by the Tribal Council, and the federal government by the Congress, the Water Court would issue a preliminary water rights decree incorporating the provisions of the compact which would be subject to notice and objections. The standard of review by the Water Court for a reserved water right compact is different than for other water right decrees. In the case of a ratified compact, the Water Court would consider whether the compact was negotiated in a reasonable arms length process by competently represented parties and if it is a fair deal.

*Question - Should we ask the Water Court what water is protectable and where the water right is enforceable?*

Answer - The Water Court is a decree court rather than an enforcement court. Its job is to determine what pre-1973 water rights are.

*Question - The adjudication has been a frustrating process. Now the CSKT rights have the prospect of reopening what we thought was settled. Why weren't tribal rights settled prior to the adjudication?*

Answer - We are aware of this frustration. Historically, Montana faced two choices to address Indian Tribe and federal government reserved water rights, litigation or negotiation. The State of Wyoming has pursued litigation to resolve water rights associated with its only reservation, the Wind River Reservation. Since the late 1970s, the State of Wyoming and the Tribes of the Wind River Reservation have had numerous cases in state and federal courts. The sovereigns in these cases, the state, tribes and federal government, have spent \$60-70 million. This amount does not include money spent by individual state water right holders. In litigation, the burden is ultimately on individual water right holders.

Montana opted for negotiation by creating the RWRCC in 1979. As already discussed, the CSKT have a Stevens Treaty with the US. This treaty includes the right to continue to hunt and fish in usual and accustomed places in common with the citizens of the territory. Courts have interpreted this provision to mean that the Indian Tribes have instream flow rights off of the reservation. The CSKT took along time to decide to negotiate. The CSKT compact is the last compact to be negotiated with Montana Indian Tribes.

In the 1980s, two court decisions clarified that Indian water rights could be adjudicated in state courts. In 1983, the US Supreme Court decision in Arizona v. San Carlos Apache Tribe, 463 U. S. 545 held that the McCarran amendment did in fact affect a waiver of tribal as well as federal sovereign immunity. In 1985, the Montana Supreme Court decision in State ex rel. Greeley v. Confederated Salish & Kootenai Tribes, 219 Mont. 76 (1985) held that the Montana General Stream Adjudication created by the Montana Water Use Act was facially adequate to comply with the McCarran amendment, such that the Montana Water Court could adjudicate Indian Water Rights claims.

*Question - Does acknowledging the CSKT off-reservation rights open up the rest of the state to CSKT instream water rights?*

Answer - Montana does not presently contemplate reaching an agreement that includes recognition of CSKT off-reservation rights east of the Continental Divide.

*Question - Do the Shoshone-Bannock Tribes have influence in Montana?*

Answer - The Shoshone-Bannock Tribes and the Nez Perce Tribes have separate compacts with the State of Idaho and the US that settled their water right claims, so that they do not have claims in Montana.

*Question - What lessons have you learned from the settlement of off-reservation claims in other states?*

Answer - The State of Idaho has not acknowledged off-reservation claims explicitly. A state district court ruled that tribal off-reservation rights were extinguished. Rather than litigating this ruling, the Idaho Indian Tribes settled with the state for considerations such as fish hatcheries and changes to state silviculture laws by increasing the size of stream buffers.

*Question - Will the CSKT compact ratification legislation be "take-it-or-leave-it" or could the legislature make changes to the compact?*

Answer - The RWRCC does not have the authority to impose a “take-it-or-leave-it” approach. If the legislature changes or rejects the compact, negotiations with the CSKT and the US would resume. The RWRCC is relying on its legislator members to help produce a product that will be acceptable to the legislature.

*Question - The RWRCC is supposed to sunset in 2013. What happens if the compact negotiations have not been completed by then or the legislature rejects the proposed compact?*

Answer - If the negotiations are close to completion, the life of the RWRCC might be extended or another negotiating entity such as the governor or attorney general might be designated by the legislature. The legislation that extended the RWRCC to 2013 also extended the date by which the CSKT must file its water right claims in state court in the event that negotiations are not successful. The claims must be filed within 24 months of the termination of negotiations. Rejection of the compact might lead to resuming the litigation.

*Question - Does DFWP have a position regarding co-ownership of water rights and contracts with the CSKT?*

Answer by Mike McLane - I do not know what DFWP final position will be. We have had internal discussions that contemplate an ownership condition where either party would have equal authority to seek enforcement of the co-owned rights or contracts.

### **Public Comment**

There was no additional public comment.

### **Next Meeting**

The next meeting was scheduled for Wednesday, January 25, 2012 at a location in Deer Lodge to be announced.

**Appendix 1**  
**Upper Clark Fork River Basin Steering Committee**  
**C/O Gerald Mueller**  
**440 Evans**  
**Missoula, MT 59801**  
**(406)543-0026**

**MEMORANDUM**

**Date:** October 25, 2011

**To:** Clark Fork River Basin Task Force

**From:** Gerald Mueller

**RE:** Work Plan for the Upper Clark Fork River Basin Steering Committee

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The Upper Clark Fork River Basin Steering Committee requests that the Task Force include the following in its work plan for the coming biennium.

Goal #1 - Fulfill the Steering Committee's legislative mandate set forth in  $\blacktriangle$ 85-2-338 MCA. (Please see attached statutory mandate).

Objective 1A - Provide a forum for all interests to communicate about water issues.

Task 1A1 - Convene Steering Committee meetings approximately quarterly through fiscal year 2012-2013 to provide the required forum.

Objective 1B - Provide education about water law and water management issues.

Task 1B1 - Conduct outreach and education regarding the State's proposal to settle the Confederated Salish and Kootenai Tribes' off-reservation water right claims in the upper Clark Fork.

Objective 1C - Identify short-term and long-term water management issues and problems and identify alternatives for resolving them.

Task 1C1 - Use Steering Committee meetings to identify water management issues and problems and alternatives for resolving them.

Task 1C2 - Monitor water supply and drought conditions in the basin.

Goal #2 - Develop a flow plan for the upper Clark Fork River basin that would identify target flows for the mainstem river and major tributaries in the upper basin, water sources to meet the targets, and specific actions necessary to secure the sources.

Objective 2A - Compile existing information on the following:

Task 2A1 - Mainstem and major tributary hydrographs;

Task 2A2 - Dewatered reaches of the upper Clark Fork River mainstem and major tributaries;

Task 2A3 - Existing water rights;

Task 2A4 - Fish flow needs;

Task 2A5 - Remediation and restoration needs;

Task 2A6 - Drought plans; and  
Task 2A7 - Ongoing efforts to increase instream flow.

Objective 2B - Develop flow targets.

Objective 2C - Identify and evaluate potential water sources to meet flow targets.

Task 2C1 - Identify potential water sources from the from existing and increased water storage, increased water conveyance and use efficiency, ground water, and water right changes.

Task 2C2 - Evaluate the potential water sources.

Task 2C3 - Identify funding sources.

Objective 2D Develop a drought plan for the upper Clark Fork River basin that addresses the mainstem and major tributaries.

85-2-338. Upper Clark Fork River basin steering committee – membership and duties -- comprehensive management plan. (1) There is an Upper Clark Fork River basin steering committee. The steering committee has 22 members, who must be appointed as follows:

(a) Each of the six conservation districts in the basin may appoint a member.

(b) Each of the six county commissions in the basin may appoint a member.

(c) The department director shall appoint the remaining 10 committee members and any additional committee members not appointed under subsections (1)(a) and (1)(b) and shall ensure that committee membership includes a balance of affected basin interests and is in conformance with subsection (2).

(2) Steering committee members must be selected on the basis of their knowledge of water use, water management, fish, wildlife, recreation, water quality, and water conservation. Representation on the committee must include but is not limited to representatives from affected:

(a) agriculture;

(b) conservation districts;

(c) departments of state government;

(d) environmental organizations;

(e) industries;

(f) local governments;

(g) reservation applicants;

(h) utilities; and

(i) water users not otherwise represented.

(3) Except as provided in subsection (4), steering committee members shall serve 4-year terms and may serve more than one term.

(4) Initial term lengths must be staggered in conformance with the following:

(a) conservation district appointees shall initially serve for 4 years;

(b) county commissioner appointees shall initially serve for 2 years; and

(c) as determined by the department, half of the department appointees shall initially serve for 2 years and the remainder shall initially serve for 4 years.

(5) The steering committee, consistent with the Upper Clark Fork River basin comprehensive management plan, shall:

(a) review the Upper Clark Fork River basin closure and exceptions as provided in 85-2-336 no less than every 5 years after April 14, 1995, and make recommendations to the legislature regarding necessary changes;

(b) prepare and submit a report evaluating the Upper Clark Fork River basin instream flow pilot program as provided in 85-2-439;

(c) prepare and submit a report concerning the relationship between surface water and ground water and the cumulative impacts of ground water withdrawals in each subbasin;

(d) provide a forum for all interests to communicate about water issues;

(e) provide education about water law and water management issues;

(f) identify short-term and long-term water management issues and problems and identify alternatives for resolving them;

(g) identify the potential beneficiaries of and a funding mechanism for new and expanded water storage sites;

(h) assist in facilitating the resolution of water-related disputes;

(i) provide coordination with other basin management and planning efforts;

(j) advise government agencies about water management and permitting activities;

(k) consult with local governments within the Upper Clark Fork River basin; and

(l) report periodically to the legislature.

History: En. Sec. 4, Ch. 741, L. 1991; amd. Sec. 3, Ch. 487, L. 1995; amd. Sec. 2, Ch. 353, L. 1997.

**Appendix 2**  
**RESERVED WATER RIGHTS**  
**COMPACT COMMISSION**

November 15, 2011

Upper Clark Fork Steering Committee  
c/o Gerald Mueller  
440 Evans  
Missoula MT 59801

RE: Reply to October 12, 2011 Letter- State's CSKT Off Reservation Proposal

Dear Mr. Mueller:

Thank you for your letter. You raise important issues and questions pertaining to the ultimate settlement of the off-reservation water right for the Confederated Salish and Kootenai Tribes (the "Tribes"). We are sensitive to your concerns regarding the schedule for negotiations and adequate time for public review. As noted in the proposal cover letter that accompanied our transmission of the proposal to the Tribes, there are many details that remain to be worked out. The Compact Commission is currently working closely with Montana Fish Wildlife and Parks and the DNRCIS Water Resources Division to fill in these gaps. We will make this information public as we share it with the Tribes. Many of these gaps go directly to questions identified in the bullet points in your letter, and we expect to be able to address those questions more directly in the near future.

Regarding your question on the process of changing the use of the Milltown hydropower water rights, you are correct that one option being considered is to make the change through compact legislation, rather than through the DNRC change process. As noted in the proposal, however, "[t]he specific parameters of the 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...."

We appreciate your offer for the Steering Committee to help facilitate discussion of the Off-Reservation Proposal in the Upper Clark Fork Basin. We intend to provide for public meetings throughout the basin and will work with you to ensure Upper Clark Fork water users have substantial opportunity for review and comment. In formatting these meetings we will keep your offer to facilitate in mind.

Please contact me or the RWRCC staff as you have additional questions or comments.

Regards,

Chris D. Tweeten, Chairman  
Reserved Water Rights Compact Commission

RWRCC, 1625 Eleventh Avenue, P0 Box 201601, Helens, MI 59620-1601, Phone (406) 444-6841, Fax (406) 444.6721