

## **AGENDA**

**Confederated Salish and Kootenai Tribes  
State of Montana Reserved Water Rights Compact Commission  
& United States  
Water Rights Negotiation Session**

**9:00 a.m. Wednesday, June 27, 2012**

**KwaTaqNuk Resort**

**49708 US Highway 93 East**

**Polson, MT 59855**

**1-406-883-3636**

- 1. Opening Prayer**
- 2. Introductions**
- 3. Opening Statements**
- 4. Components of the Negotiated Settlement and How They Fit Together**
- 5. Explanation of the Proposed On-Reservation Instream Flow Protections**
- 6. Technical/Legal Working Group Update**
- 7. Public Comment & Questions on Unitary Administrative Ordinance**
- 8. Other**
- 9. Question & Answer Period**
- 10. Public Comment**
- 11. Set Next Negotiation Date**



# RESERVED WATER RIGHTS COMPACT COMMISSION

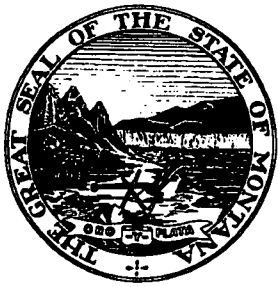
## SIGN IN SHEET FOR

MEETING CSKT NEGOTIATION SESSION

DATE JUNE 27, 2012

### PLEASE PRINT

Name	Organization	Address	City/ST/Zip	Phone
SONJA HOEGLUND	RWRCC	PO Box 201601	HELENA, MT 59620-1601	406-444-6843
Chris Tweeter	RWRCC			
DICK BARRETT	RWRCC	219 Agnes	Missoula 59801	396-3256
Carol Williams	RWRCC	3533 Lincoln Hills Pt	Missoula MT 59802	728-8735
Debby Barrett	RWRCC	18580 Hwy 324	Dillon, MT 59725	681-3177
Don Salmon	RWRCC	42400 Salmon Rd	Bozeman MT	
David Red Horse	BIA NWFO	911 N 11th Ave	Portland Or	503-231-6883
Duane Mecha	USDDI			503-231-6299
Terry Pitts	council	Palooza	MT	675-2700
Patrick A. Pierce	CSKT	Arlee	MONT 59841	546-3302



# RESERVED WATER RIGHTS COMPACT COMMISSION

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Name	Organization	Address	City/ST/Zip	Phone
Clayton D. Irvine	CSKT Council	278	Pablo MT-59855	675-2303
Jayman W. Cothran		Pimo	270 3482	
James Matt	CSKT Council		Pablo, Mont-59855	675-2700
STEVE LOZAR	CSKT TRIBAL COUNCIL	PO BOX 278	PABLO 59855	675-2700
Rich Janssen	" DITWRS	"	"	"
Joe Dwyer	CSKT	"	"	"
John Carfir	CSKT	"	"	675-2700# 1164
RON TRAHAN	CSKT	"	"	675-2700
[Signature]			Box 626, Pablo, MT	
NIKOS PASTOS	CENTER FOR WATER ADVOCACY	8101 PECK AVENUE #1009	ANCHORAGE ALASKA	99755



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Name	Organization	Address	City/ST/Zip	Phone
KAREN CONLEY		2049 SALMON PRAIRIE RD.	SWAN LAKE, MT 59911	754-2241
Dale Conley		2049 Swan Lake		754-2241
Verdell Jackson	State Senate	555 Wagner Lane,	Kalispell, MT 59901	756-8344
Mike Cuffe	MT House of Rep - HD2	P.O. Box 1695	Kureka MT 59917	293-1247
DON JACOBSON	house	26378 Old U.S. Hwy 93	ELMO, MT.	(406)849-5717
Barbara Hall	Clark Fork Coalition	1405 4th St West #4	MISSOULA MT 59801	406-542-0539
Alice Jones	CLARK FORK COALITION	140 S. 4TH ST. WEST #4	MISSOULA MT 59801	406-542-0539
JEFF King	U.S. FISH & WILDLIFE SERVICE	58355 BISON RANGE RD.	MOOSE, MT 59824	644-2211
Ed Sheets	Consultant	3055 NW Cumberland Rd	Portland OR 97210	503-222-1700
Sheila Vallejo		75398 US Hwy 93N Box 386	St. Ignatius	406-745-4250



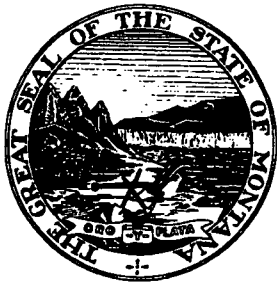
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Name	Organization	Address	City/ST/Zip	Phone
Boyd Vallojo		P.O. Box 386	St Ignatius, MT 59865	(406) 745-4250
Joe Weaselhead	CSKT	44074 Rollingwood Rd. RC	Bozeman MT 59869	406-676-2091
Francis Auld	CSKT	Box 278	Paldo, MT 59855	406 675-2700
David Passieri	Private	56708 Pope Lane St Ign.	59865	406-745-8888
John B	Shiata		59865	
Ann Brower	Lake County	1016 4th Ave E	Poken, MT 59860	883-7204
Rita Hall	self + mt for Multiple Use	285	59932	890-9996
Julia Fehrs			59911	837-1266
Shirley McHenry	Self	324 9th Ave W	Kalisnell	257 6412
GARY MCHENRY	U	1	11	11



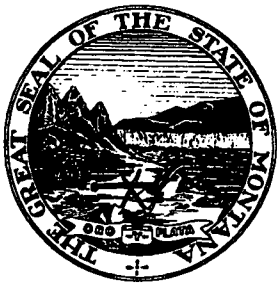
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Name	Organization	Address	City/ST/Zip	Phone
CLARENCE GEMBALA		310795 FERNDALE DR	BIGFORK, MT	8374832
Clarice Ryan	MFMU	253 Pine Needle Ln	Bigfork MT 59911	837-6929
JANNA TAYLOR	HD II	PO BOX 233	DAYTON MT 59914	849-6096
JOHNS MOON			RONAN MT 59864	
Gina Klapp	MFMU		Kal.	1551097
Brent Powell		St. Ignace	MT 59865	745-2000
LAMONT KINKADE		132 Little Ct.	Bigfork MT 59911	2494997
ROBIN MILLER		P.O. BOX 910	HOT SPRINGS 59845	741-2572
Bill Foust	CSKT	Box 378	Pablo, mt	675-2700-7209
Karen Renz	CSKT	PO Box 278	DABLO MT	676-2600



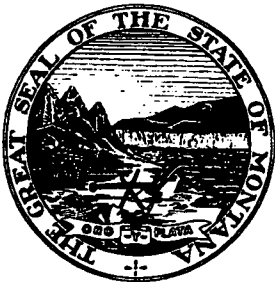
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Name	Organization	Address	City/ST/Zip	Phone
Tracy Antiste	CSKT NRD	301 Main St	Polson MT	883-2888
Bruce Farling	MONTANA Trout Unlimited	Box 7196	MSA	542-9508
Rick Smith	C-21 Bay Sky	119 Anchor	59860	471 0377
Jon + Jean Graving		43324 Eli Gap Rd	Polson 59860	883-1800
MARK Rellor	BPA	321 Fuller Ave Helena	59601	406 439-7337
Mark Nolan	Concerned citizen	PO Box 7606 Kalispell MT	59904	837-4810
Carolyn Palmquist		41119 Melita Dr.	Polson 59860	883-1866
Debra Koenig		430 Church Dr.	Kalispell, MT 59901	<del>883-1866</del>
MARK Palmquist	citizen	41119 Melita Dr	Polson MT 59860	850-509-8690
Louis Polinsky		56598 Nine Pipe Rd	St Ignatis	406-544-5103
CLINT DERR	Citizen	39321 West Post Ct. Rd.	Charlo 59824	644-2177



# RESERVED WATER RIGHTS COMPACT COMMISSION

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Name	Organization	Address	City/ST/Zip	Phone
Trudy Samuelson		St elg		
Kirk Benning		Polson		yes
Emily Lennon		Polson		
CHRISTOPHER CHAVASSE		RONAN		
Rick Jore	Self		Ronan	644-2542
Rusty Hunt			ST. IGNATIUS	
Marianne Rose	Lincoln County Commissioner	P.O. Box 2012	Eureka MT 59917	297-3139
DAN A. MADSEN - RETIRED		38601 BIRD BUTTE	59864	676-2034
Dan J. Decker	CSKT	P.O. Box 278	Pablo, MT 59855	676-2700
Beal Tucker	Valley Journal			676-8989





On Reservation Instream Flows  
Status of Instream Flow Development for Inclusion in  
CSKT Water Rights Compact

*June 27 Public Meeting, Polson*

Instream Flows

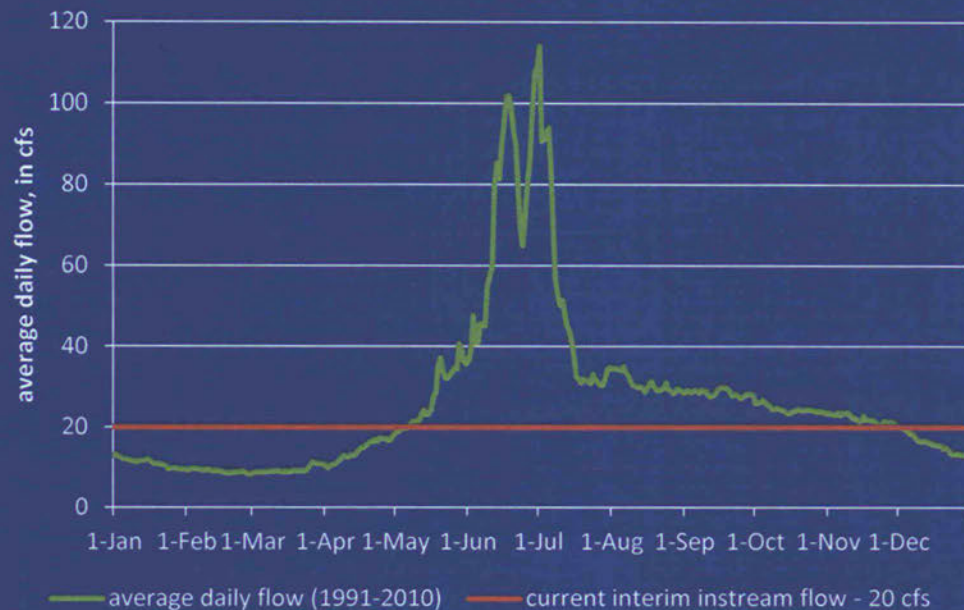
- Part of the Tribal Water Right with a fish and wildlife purpose and a time immemorial priority date
- Non consumptive water right intended to preserve flow in streams of sufficient magnitude and seasonal variability to protect: a) the Tribes Treaty rights; b) existing stream and floodplain ecology; and c) existing stream and floodplain ecologic conditions over time

The Tribes instream flow rights are founded in the Treaty of Hellgate which reserves the right to take fish in all streams running through or bordering the Reservation, as well as the right to take fish in all usual and accustomed places. The ability to exercise this right is prefaced on water in a stream of sufficient quantity to sustain a fishery resource

## On Reservation Instream Flows *cont*<sup>d</sup>

Interim instream flows have been in-place at 27 locations, on streams influenced by the Federal Irrigation Project (FIIP), since the late 1980's

- Little Bitterroot Valley
- Mission Valley
- Jocko Valley

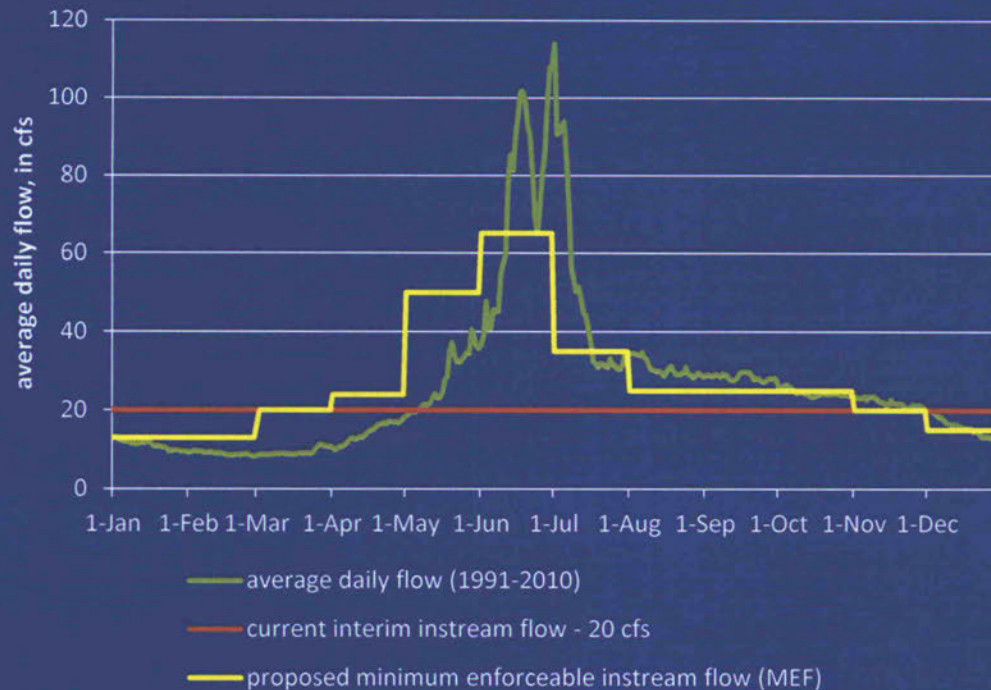


Interim instream flows are single level flows (flat line) intended to be met unless natural flow goes below the interim instream flow level

*Hydrograph for Mission Creek at Highway 93*

## On Reservation Instream Flows *cont*<sup>d</sup>

Proposed instream flows incorporate seasonal variability into each of the components of the proposed Tribal instream flows



Proposed instream flows are set to specific monthly values, but drop to natural flow when it is lower than the proposed instream flow

*Hydrograph for Mission Creek at Highway 93*

## On Reservation Instream Flows cont<sup>d</sup>

### General Structure of the Tribal Instream Flow Water Right

#### 1. Natural Instream Flow Nodes

- Defined as part of the Tribal Water Right in the Compact
- Water right abstracts, describing the water right, will be prepared for each location; these will be appended to the Compact

#### 2. FIIP Instream Flow Nodes

- Defined as part of the Tribal Water Right in the Compact
- Water right abstracts, describing the water right, will be prepared for each location; these will be appended to the Compact
- Implementation of the FIIP instream flows is described in the Stipulation Agreement regarding the federal irrigation project
- Parts of the recording and implementation of the FIIP instream flows described in the Unitary Administrative Ordinance

#### 3. Other Instream Flow Nodes

- Defined as part of the Tribal Water Right in the Compact
- Water right abstracts, describing the right, will be prepared for each location; these will be appended to the Compact
- Implementation of the non-FIIP Instream flow nodes described in the Unitary Administrative Ordinance

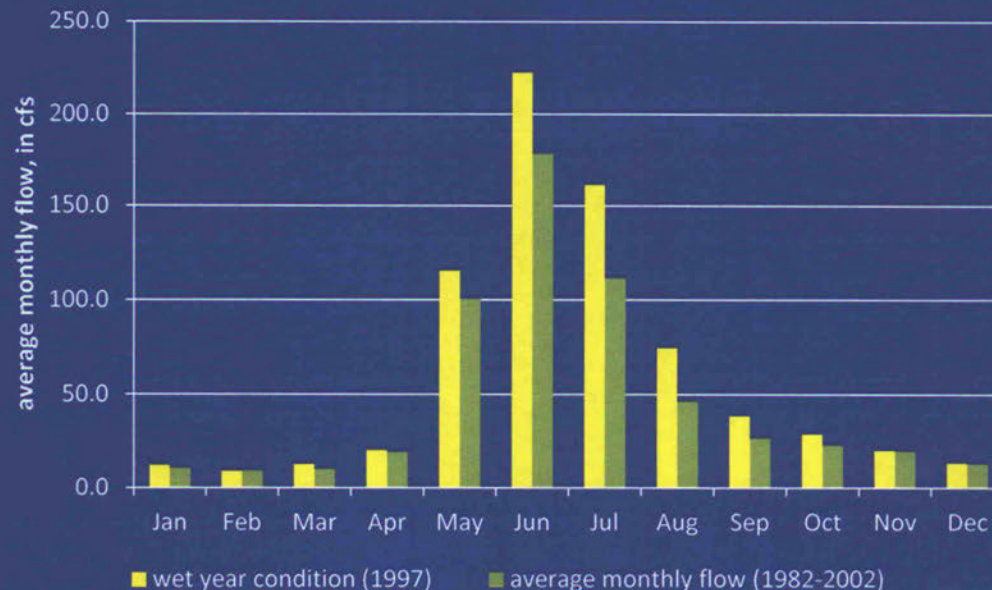
## On Reservation Instream Flows *Natural Flow Locations*

### Natural Node Instream Flows

- 102 instream flow locations
- Instream flow protections are generally located in headwater streams above existing water uses and diversions
- Where there are water rights that arise under state law above the natural node instream flow points, they are protected from call by specifically noting the water right in the abstract (~ six locations)
- The natural node instream flows are intended to be protective of the stream reach and watershed area above the node (point)
- Implementation/Enforcement of the Natural Node Instream Flows
  - Very little existing use above Natural Node Instream Flows
  - Large percentage of the land above these points is in Tribal Ownership
  - Perceive these points as protective of headwater stream flows, requiring limited action to implement and/or enforce

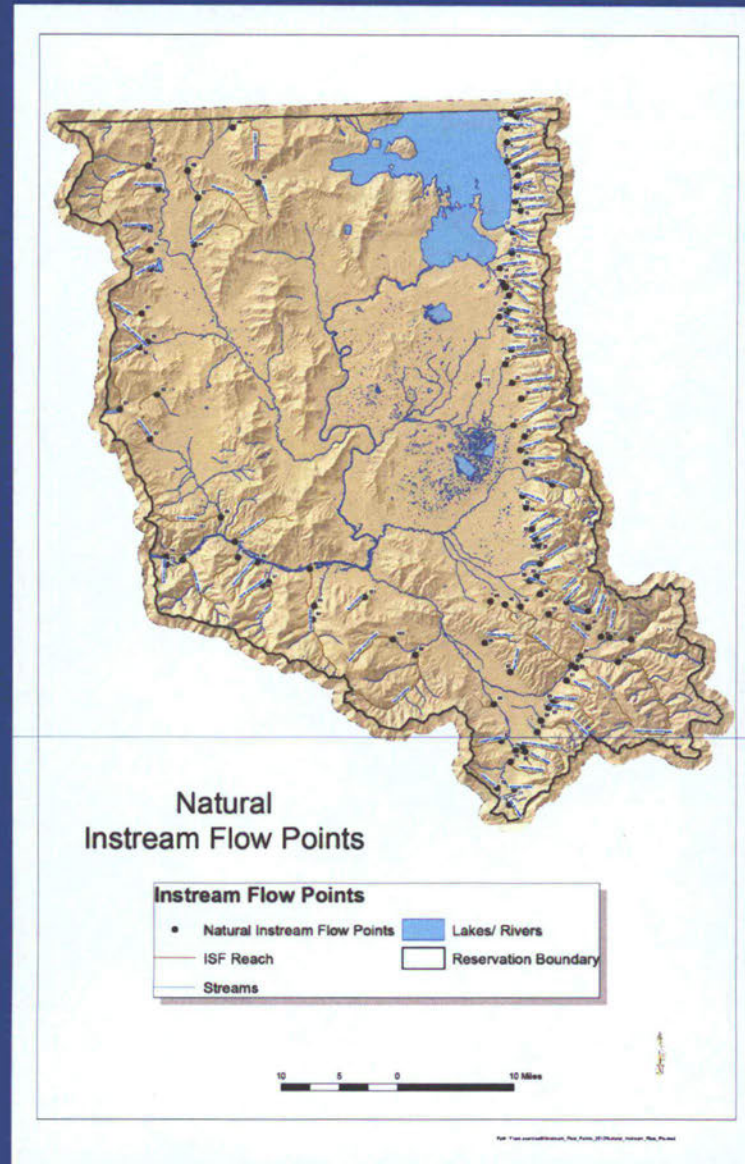
## On Reservation Instream Flows *Natural Flow Locations cont<sup>d</sup>*

Natural flow instream flows are based on wet year conditions for the period used for analysis



*Mission Creek above Mission Reservoir – proposed natural flow instream flow based on wet year condition = yellow bars*

# On Reservation Instream Flows *Natural Flow Locations cont<sup>d</sup>*



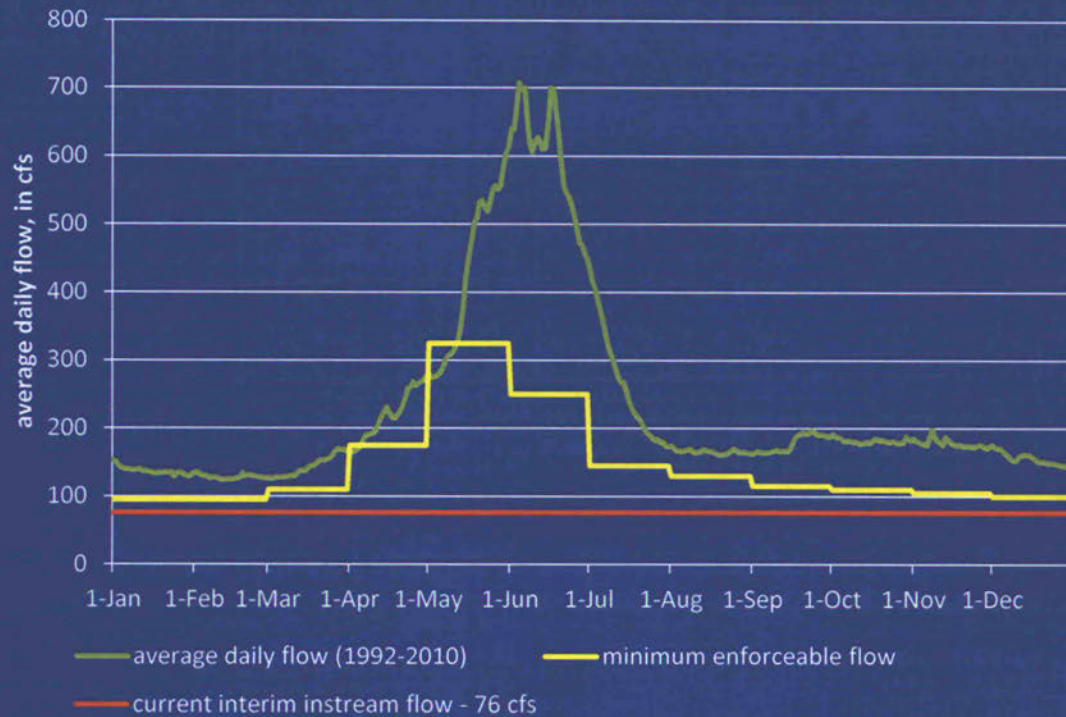


## On Reservation Instream Flows *FIIP Instream Flow Locations*

- 33 instream flow locations
- Locations are generally placed at intersection of stream and irrigation project diversions, most locations are at or near existing interim instream flow points
- FIIP instream flow nodes extend instream flow protections to a defined reach of stream
- Components of the FIIP instream flows
  - Minimum enforceable instream flows – (MEF)
  - Target instream flows for wet and normal years – (TIF)
- MEF values met in all years following a deferral period for implementation of improvements to the irrigation project
- TIF values met in corresponding normal and wet years after irrigation allocation met and following a deferral period for implementation of improvements to the irrigation project
- For both MEF and TIF, incremental increases in flow are anticipated prior to full deferral period as improvements occur

## On Reservation Instream Flows *FIIP Instream Flow Locations cont<sup>d</sup>*

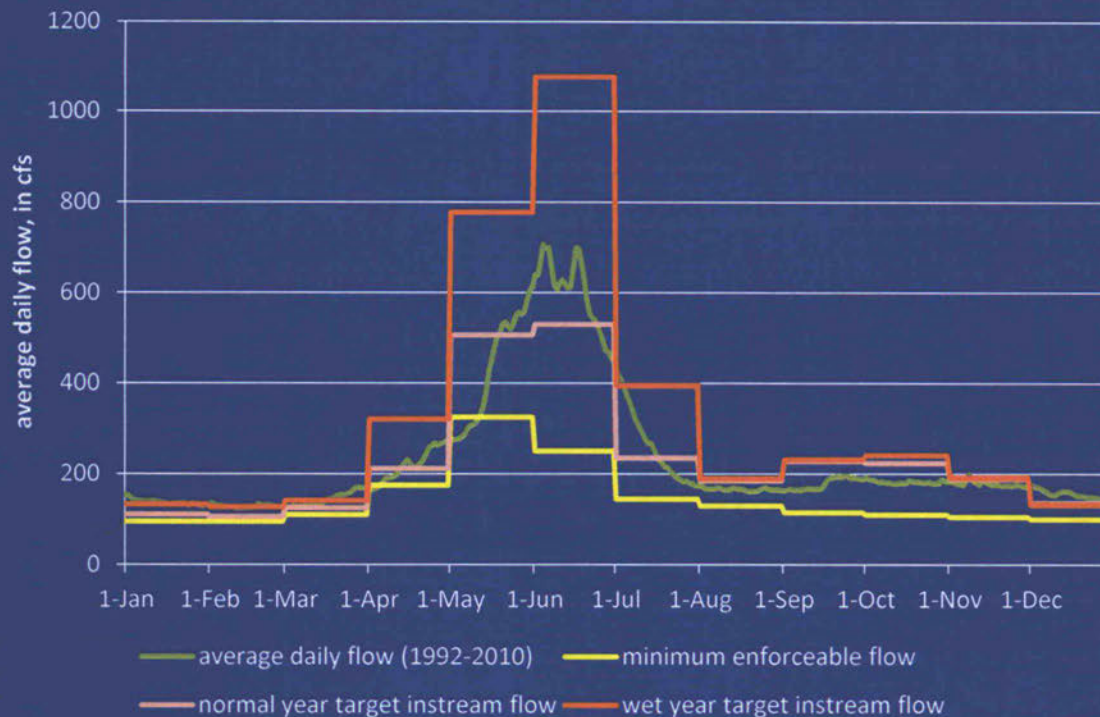
Hydrograph Type	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
MEF	95	95	110	175	325	250	145	130	115	110	105	100
Normal Year	111	106	125	212	507	530	235	185	228	224	188	136
Wet Year	133	127	141	321	778	1,075	395	190	232	241	191	132
Water Right	133	127	141	321	778	1,075	395	190	232	241	191	136



**Jocko River below Lower Jocko J Canal above mouth, all in cfs**

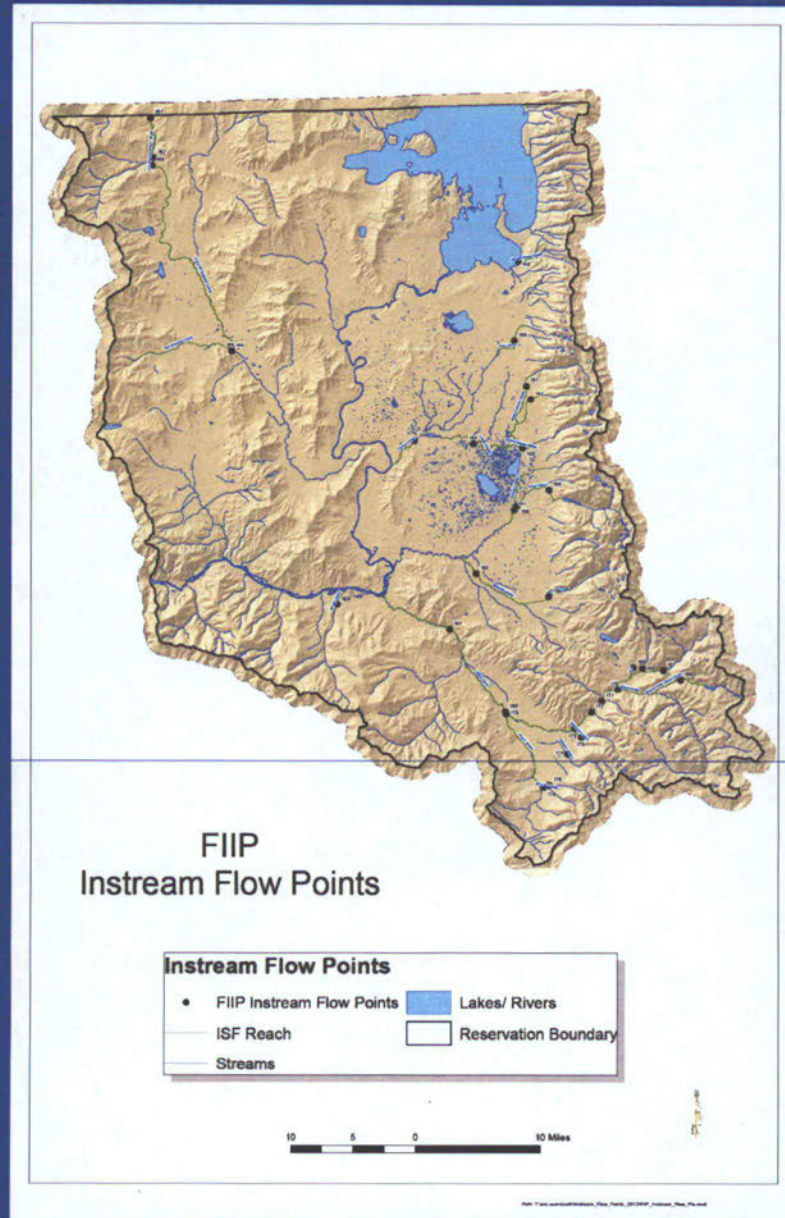
## On Reservation Instream Flows *FIIP Instream Flow Locations cont<sup>d</sup>*

Hydrograph Type	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
MEF	95	95	110	175	325	250	145	130	115	110	105	100
Normal Year	111	106	125	212	507	530	235	185	228	224	188	136
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Water Right	133	127	141	321	778	1,075	395	190	232	241	191	136



**Jocko River below Lower Jocko J Canal above mouth, all in cfs**

# On Reservation Instream Flows FIIP Instream Flow Locations cont<sup>d</sup>



## On Reservation Instream Flows FIIP Instream Flow Locations cont<sup>d</sup>

### Implementation/Enforcement of the FIIP Instream Flows

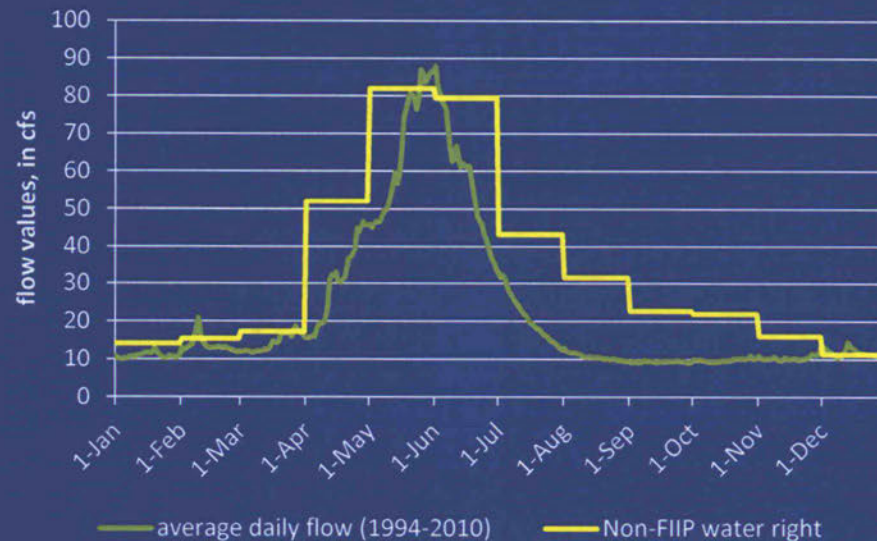
- Enforcement of the current interim instream flows will be maintained until new minimum enforceable instream flows are met
- Minimum instream flows (MEF values) will be enforced for stream reaches following a deferral period to allow for both operational and rehabilitation and betterment improvements
- Target normal and wet year instream flows will be managed for based on individual water year conditions
- Enforcement of MEF values, and management to TIF values, will require full coordination with the operator of the irrigation project

## On Reservation Instream Flows *Other Instream Flow Locations* *cont<sup>d</sup>*

- 49 instream flow locations
- Locations are generally placed downstream of diversions/private canals that are not part of the FIIP infrastructure and that serve water rights arising under state law
- The Compact and appended water rights abstracts will define the seasonal instream flow water right values for the Non-FIIP category of the Tribal instream flows
- The Unitary Administrative Ordinance will define the procedure to implement the Non-FIIP instream flow water right
- Generally –
  - a) Implementation follows Montana Water Court Decree Process
  - b) Areas to implement follow a Tribal priority scheme
  - c) Process will involve some form of public notice/engagement for affected water rights
  - d) The enforceable Non-FIIP instream flows will be based on objective hydrologic evaluation of area hydrology and valid water rights

## On Reservation Instream Flows *Other Instream Flow Locations* cont<sup>d</sup>

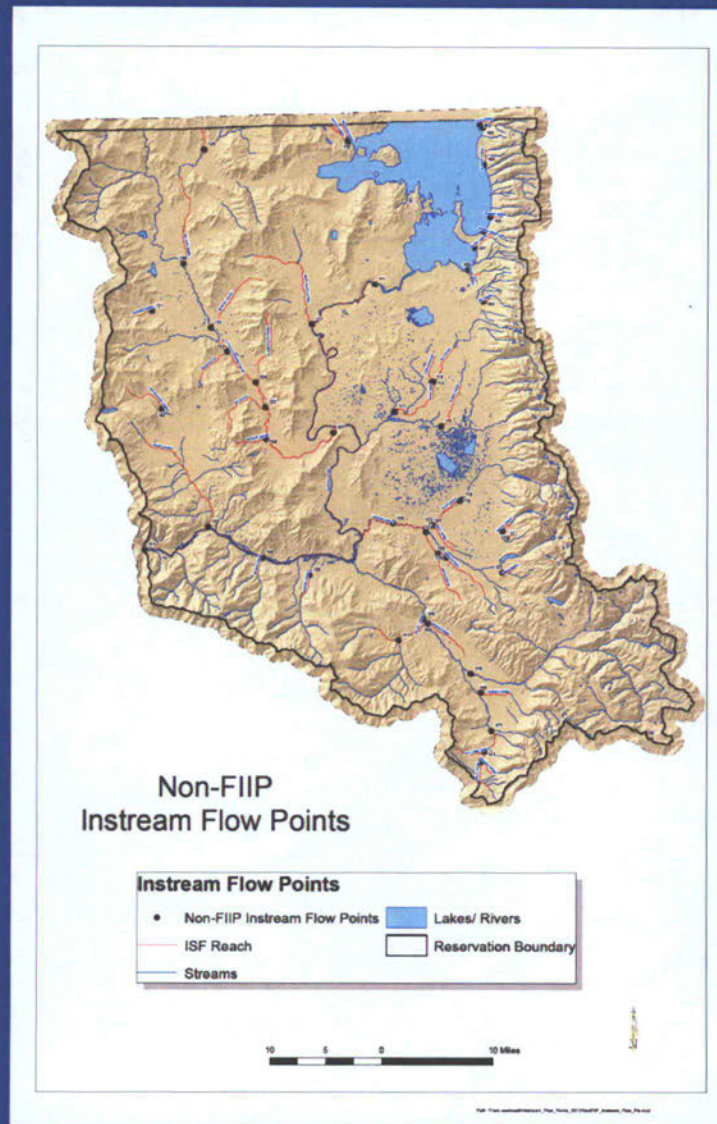
Water right for Non-FIIP instream flows based on wet year conditions



*Valley Creek above the mouth*

*Enforceable instream flow values based on procedure to be outlined in Unitary Administrative Ordinance*

# On Reservation Instream Flows *Other Instream Flow Locations* cont<sup>d</sup>





# **Components of the Negotiated Settlement and How They Fit Together**

June 27, 2012

# Background

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- ◆ The Montana General Stream Adjudication requires the resolution of all pre-1973 claims to water rights in Montana
  - This includes federal reserved water rights claimed by Indian tribes and the United States
- ◆ Tribal water rights can be resolved through litigation or through settlement
- ◆ The Montana legislature directed the Compact Commission to work with the Tribes and the US to reach a negotiated settlement of the Tribes' water rights claims

# 2008 CSKT Proposal

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- ◆ Protect existing verified uses of water
- ◆ Additional water to meet tribal needs, including in-stream flows
- ◆ Unified administration of water uses

# Why Do We Need a Settlement?

- ◆ Status quo is not an option for the future
- ◆ The Adjudication will determine rights, including CSKT rights.
- ◆ In the absence of a settlement, long and costly litigation may be required.

# Reserved Water Rights

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- ◆ The 1908 Supreme Court held that when the United States sets aside land for an Indian reservation, a quantity of water is reserved which is necessary to fulfill that specific federal purpose.
- ◆ Montana has finished six other compacts with Montana tribes; this is the last one.

# Parties to Settlement

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- ◆ The three primary parties each have important interests and responsibilities.
  - State of Montana
  - Confederated Salish & Kootenai Tribes
  - The United States government

# Benefits

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- ◆ Protects verified existing uses, including tribal member uses
- ◆ Allows new permits, such as new domestic allowance and stock water use
- ◆ Provides legal protection for pending domestic wells and permits that are currently in limbo
- ◆ Recognizes instream flow rights on and off the Reservation

# Benefits (continued)

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- ◆ Provides additional water resources for the Reservation
- ◆ Funding for habitat and FIIP improvements
- ◆ Settlement provides more benefits than litigation
- ◆ Settlement provides more local control than litigation



# Key Issues for Settlement

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- ◆ How to resolve all CSKT Tribal water right claims.
- ◆ How to administer all water rights on the reservation in the future.
- ◆ What should be the State and Federal monetary contributions to the settlement

# Settlement Package

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- ◆ Compact
- ◆ Unitary Administration Ordinance
- ◆ FIIP Water Use Agreement
- ◆ State, Tribal, and Federal legislation

# Compact

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- ◆ Confirms and quantifies all Tribal Water Rights
- ◆ Establishes the foundation for administering water rights on the Reservation
- ◆ Will be decreed by the Montana Water court as a final settlement of the water rights

# Unitary Administrative Ordinance

- ◆ Creates a joint administration board
- ◆ Administers all water rights on the Reservation
- ◆ Authorizes future water uses on the Reservation

# FIIP Water Use Agreement

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- ◆ Draft agreement among Tribes, FJBC, and US on how to exercise the Tribal water right for the Flathead Indian Irrigation Project
- ◆ Establishes a betterment program that will use tribal settlement dollars

# State, Tribal and Federal Legislation

- ◆ All parties will need legislative approval of the settlement

# Other Key Parts

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- ◆ Compact System Water & use of Hungry Horse Reservoir
- ◆ Off-Reservation water claims settlement proposal by State and counter proposal by CSKT
- ◆ On-Reservation instream flow rights

# Next Steps

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- ◆ Parties working to complete draft documents.
- ◆ Public meetings and comment.
- ◆ Address comments and finalize settlement.
- ◆ Introduce legislation in Montana 2013 legislative session.