

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION



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Date: August 7, 2017

To: Catherine Vandermore, Montana Land and Water Alliance, Inc

CC: Vernon Finley, Chairman, CSKT Tribal Council  
Martha Williams, Director & Pat Saffel Fisheries Manager, MT Fish, Wildlife & Parks  
Sen. Pat Connell, Chairman, Water Policy Interim Committee  
Board of Directors - Montana Land and Water Alliance, Inc

RE: Response to July 25, 2017 Montana Land and Water Alliance, Inc letter concerning the former Milltown Dam Water Right(s)

Pursuant MCA 85-20-1901, the Confederated and Salish Kootenai (CSKT)-Montana (MT) Compact, ratified by the 2015 Montana Legislature, the State was directed to change the former Milltown Dam water right from a single hydroelectric power water right to two individual instream fisheries rights: 76M 94404-01 and 76M 94404-02. This action has occurred and the water right abstracts are attached for your convenience; MCA 85-20-1901 directed this action to occur on the date of state ratification:

Article III. D. 5. a: Upon the date the ratification of this Compact by the Montana Legislature becomes effective under State law, Water Right Arising Under State Law number 76M 94404-00 is changed as follows: the right is split into two separate active and enforceable Water Rights Arising Under State Law, 76M 94404-01 and 76M 94404-02, and the original water right elements are changed to support the maintenance and enhancement of fish habitat and take the form of two enforceable hydrographs. The elements of the changed and split water right are set forth in the two water rights abstracts attached hereto as Appendix 30. The measurement point for 76M 94404-01 is the USGS gage #12334550 at Turah, Montana, and the measurement point for 76M 94404-02 is the USGS gage #1234000 at Bonner, Montana.

The CSKT are not currently owners of this water right and do not become co-owners until the Effective Date of the Compact, as is specified in the owner remarks:

THE CONFEDERATED SALISH AND KOOTENAI TRIBES BECOME COOWNERS OF THIS WATER RIGHT ON THE EFFECTIVE DATE OF THE COMPACT, WHICH IS THE DATE ON WHICH THE COMPACT IS FINALLY APPROVED BY THE TRIBES, BY THE STATE, AND BY THE UNITED STATES, AND ON WHICH THE LAW OF ADMINISTRATION (APPENDIX 4 OF THE COMPACT) HAS BEEN ENACTED AND TAKEN EFFECT AS THE LAW OF THE STATE AND THE TRIBES, WHICHEVER DATE IS LATEST.

The reference to the Law of Administration is taken directly from the Compact's definition of Effective Date:

Article II. 28: Effective Date means the date on which the Compact is finally approved by the Tribes, by the State, and by the United States, and on which the Law of Administration has been enacted and taken effect as the law of the State and the Tribes, whichever date is latest.

Enactment of the Law of Administration is limited to the geographic area within the external boundaries of the Flathead Indian Reservation, but enactment is also a formal indicator of the occurrence of the Effective Date of the Compact, which again, is the date the CSKT would be added to the former Milltown Dam instream flow water rights as co-owners.

The owner remarks on the water rights that designate CSKT as the “beneficial owner” are specific to communications regarding these changed water rights and an obligation to copy the Tribes on all communications as if they had ownership even though they do not legally own the water rights before the Effective Date.

The change of the former Milltown Dam rights was directed by the Montana Legislature pursuant MCA 85-20-1901, the passage of which included opportunity for public comment during legislative hearings. MCA 85-2-402 is a statute that directs the water right change authorization process conducted by the Montana DNRC; MCA 85-2-402 does not apply to the change of the former Milltown Dam water rights and consequently, DNRC has no authority, obligation, or plans to hold hearings relating to the change of the former Milltown Dam water rights.

Regarding stakeholder involvement toward the implementation of 76M 94404-01 and 76M 94404-02, Montana Fish Wildlife and Parks (MFWP) has initiated the process specified in Article III of the Compact:

Article III. D. 5. c: The ability to enforce these rights shall be suspended for a period of 10 years from the date the ratification of this Compact by the Montana Legislature becomes effective under State law. During and after this period, 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.

Please contact Pat Saffel at (406) 542-5500 for more information regarding MFWP’s current outreach efforts to stakeholders in the Upper Clark Fork Basin.

I hope this information helps to clarify the abstracts and answer your questions relating to the former Milltown Dam water rights.

Sincerely,



John E. Tubbs, Director  
Montana Department of Natural Resources