



Greetings,

You are receiving this letter because you may have an interest in keeping apprised of the Milltown Water Right. In May and June of 2019, the Montana Department of Fish, Wildlife & Parks and the Confederated Salish and Kootenai Tribes visited with water users and others interested in discussing the Milltown Water Right. We would like to thank the Blackfoot Challenge for helping host and coordinate those meetings and all the community members who attended.

Each meeting began with an informative presentation and was followed by open dialogue with community members. Attached are excerpts of the report that documents the proceedings and outcomes. The full report can be found here:

<http://dnrc.mt.gov/milltown-instream-rights>

We received a lot of important feedback and information at our meetings. This will help us minimize the effect of the water right on agricultural operations while meeting the instream flows of the Clark Fork and Blackfoot Rivers. During the next phase of this project, we would like to better understand specific challenges to water management from individuals in their respective watersheds. We hope to implement strategies or projects that will reduce or eliminate impacts to water users and the need to make call.

We look forward to an opportunity to continue discussing the Milltown Water Right with you and your community.

Sincerely,

Stephen Begley, Water Conservation Specialist, FWP – 406-444-1229, sbegley@mt.gov
Mary Price, Science Coordinator, CSKT – 406-675-2700 ext. 1167, mary.price@cstk.org
Seth Makepeace, Hydrologist, CSKT – 406-675-2700 ext. 6255, seth.makepeace@cstk.org
Patrick Saffel, Fisheries Manager, FWP – 406-542-5507, psaffel@mt.gov

For more information on learning about how the Milltown Water Right may affect those who participate in the Blackfoot Drought Response Plan, please contact Jennifer Schoonen, Blackfoot Challenge Water Steward at 406-793-3900, or email her at jennifer@blackfootchallenge.org.

Milltown Water Right

May and June 2019 Community Listening Sessions Summary Report



Table of Contents (of the full report)

| | |
|--|----------|
| Overview | 1 |
| Information Shared..... | 2 |
| <i>What is the status of the Milltown Water Right?</i> | <i>2</i> |
| <i>How are FWP and CSKT working together?.....</i> | <i>2</i> |
| <i>What changed when FWP became owner of the Milltown Water Right?</i> | <i>3</i> |
| <i>What are the potential impacts of the Milltown Water Right on other water users?.....</i> | <i>4</i> |
| <i>What's next?</i> | <i>4</i> |
| Listening Sessions – General Summary of Comments and Questions | 4 |
| <i>History of the Milltown Dam.....</i> | <i>4</i> |
| <i>About the Milltown Water Right</i> | <i>5</i> |
| <i>The CSKT-Montana Compact.....</i> | <i>6</i> |
| <i>FWP-CSKT Enforcement of the Milltown Water Right.....</i> | <i>7</i> |
| <i>Information Needs and Next Steps</i> | <i>9</i> |
| 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 an information sheet about the Milltown Water Right (included as Appendix 2 of this report) to watershed group members. The mailing encouraged attending the listening sessions to learn about the Milltown Water Right, and to share their questions and concerns with the FWP and 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.

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 |
|--|---|
| <p>Gold Creek, MT May 1, 2019</p> <p><i>14 attendees</i> <i>79 mail-outs distributed</i></p> | <p>Water measurement – there currently is not infrastructure to measure use in Gold Creek.</p> <p>Existing water management strategies – Gold Creek basin manages their water through informal arrangements that work well.</p> <p>Water storage – can Silver Lake help meet the Milltown Water Rights, or can the height of East Fork Reservoir be increased?</p> <p>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.</p> <p>Relationship with federal government – there is concern that the federal government might be more involved in the future.</p> <p>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?</p> <p>Gold Creek as a priority stream – National Resource Damage Program listed Gold Creek as a priority stream due to high fish productivity.</p> <p>Meeting sub-basin targets – if Gold Creek is producing enough, but others are not, will Gold Creek be called upon to reduce water?</p> <p>Other topics – other topics discussed included water commissioners, water leasing, flood irrigation vs. pivots, groundwater augmentation, drought planning, adjudication, and Milltown Dam removal.</p> <p>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.</p> |
| <p>Rocker, MT (Headwaters) May 2, 2019</p> <p><i>12 attendees</i> <i>93 mail-outs distributed</i></p> | <p>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)?</p> <p>Role of Avista Utilities – what is the role of Avista when applying for a change in water use or looking for additional storage options?</p> <p>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?</p> <p>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 United States did not participate in its development, and that it included aspects that were not legal.</p> <p>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.</p> <p>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.</p> <p>Next steps – check to see if there are that many people affected in this area</p> |
| <p>Racktrack, MT (Clark Fork Main Stem)</p> | <p>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</p> |

| Location & Date | Key Issues |
|--|--|
| <p>May 6, 2019</p> <p><i>7 attendees</i> <i>60 mail-outs distributed</i></p> | <p>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)</p> <p>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)?</p> <p>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?</p> <p>NRD funding – what possibilities exist to access NRD funding to improve water management and infrastructure?</p> <p>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.</p> <p>Other topics – other topics discussed included ratification, Milltown Dam removal, adjudication, co-ownership of the water right, and reporting to the legislature.</p> <p>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?).</p> |
| <p>Avon, MT (Little Blackfoot) May 8, 2019</p> <p><i>14 attendees</i> <i>108 mail-outs distributed</i></p> | <p>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.</p> <p>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.</p> <p>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)</p> <p>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?</p> <p>Other topics – other topics discussed included the enforceable hydrograph, how call is made, water leasing, and enforcement.</p> <p>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.</p> |
| <p>Deer Lodge, MT (East-side Deer Lodge Valley) May 9, 2019</p> <p><i>12 attendees</i> <i>106 mail-outs distributed</i></p> | <p>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.</p> <p>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.</p> <p>Junior and senior water rights holders – the group expressed a concern that both juniors and seniors are needed to work together to manage water.</p> <p>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.</p> <p>Water storage – is there an opportunity to create more storage or access existing storage (e.g., Silver Lake, Berkley Pit)?</p> <p>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.</p> <p>CSKT role – the group discussed that CSKT will be a co-owner of the right upon the</p> |

| Location & Date | Key Issues |
|---|--|
| | <p>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 FWP, will take a role in day-to-day management, and could support collaborative efforts like a water management plan to the legislature.</p> <p>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?</p> <p>Other topics – other topics discussed included water commissioners, purpose of meetings and needing water measurements at the upper end of the system.</p> <p>Next steps – determine how far downstream water makes it when called upon.</p> |
| <p>Anaconda, MT (Warm Springs Creek, Mill Creek, Willow Creek) May 13, 2019</p> <p><i>1 attendee</i> <i>79 mail-outs distributed</i></p> | <p>Water storage – is there an opportunity to create more storage (e.g., Silver Lake, Berkley Pit).</p> <p>NRD funding – what possibilities exist to access NRD funding to improve water management and infrastructure?</p> <p>Next steps – determine cause of low turn-out, determine whether further engagement in this sub-basin is warranted given low turn-out.</p> |
| <p>Racetrack, MT (West Side Deer Lodge Valley) May 14, 2019</p> <p><i>14 attendees</i> <i>120 mail-outs distributed</i></p> | <p>Water storage – is there an opportunity to create more storage (e.g., groundwater storage in Racetrack Creek, gravel aquifer on west side of valley)?</p> <p>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.</p> <p>Impact of residential development – What is the impact of residential development on surface water and the agricultural community?</p> <p>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?</p> <p>NRD funding – what possibilities exist to access NRD funding to improve water management and infrastructure?</p> <p>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.</p> <p>Options for meeting Milltown Water Rights – the group discussed using a commissioner, storage, sharing the burden, and voluntary drought response plans.</p> <p>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)</p> <p>Agency turn-over – what will FWP's role be, particularly after Mike McLane retires?</p> <p>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.</p> <p>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</p> <p>Next steps – look at drainage more closely</p> |
| <p>Ovando, MT (Blackfoot River) June 24, 2019</p> <p><i>26 attendees</i></p> | <p>Storage – what storage options are available and/or feasible along the Blackfoot?</p> <p>Milltown Dam – what was the generating capacity of the dam? What was the maximum flow it could utilize?</p> <p>Value of Ag Production / Economic Impact – what is the economic impact of water used for agricultural production versus fish habitat/recreation?</p> <p>FWP ownership – how did FWP acquire the Milltown Water Right?</p> <p>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?</p> <p>Restoration Activities -- is there an opportunity to recognize/measure the contribution that stream corridor restoration activities have on keeping water in stream and/or</p> |

| Location & Date | Key Issues |
|-----------------|--|
| | <p><i>keeping water at cooler temperatures as part of the discussion about the Milltown Water Right?</i></p> <p>Ditch Loss / Water Conservation – <i>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?</i></p> <p>Existing Drought Plan – <i>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.</i></p> <p>Senior Water Rights – <i>how many Blackfoot River water rights are senior to the Milltown Water Right?</i></p> <p>Longer-Term Strategies – <i>what longer term options might exist (e.g., improvements to riparian corridors) that might provide water management benefits beyond annual water use agreements?</i></p> <p>Authority/Discretion – <i>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?</i></p> |