

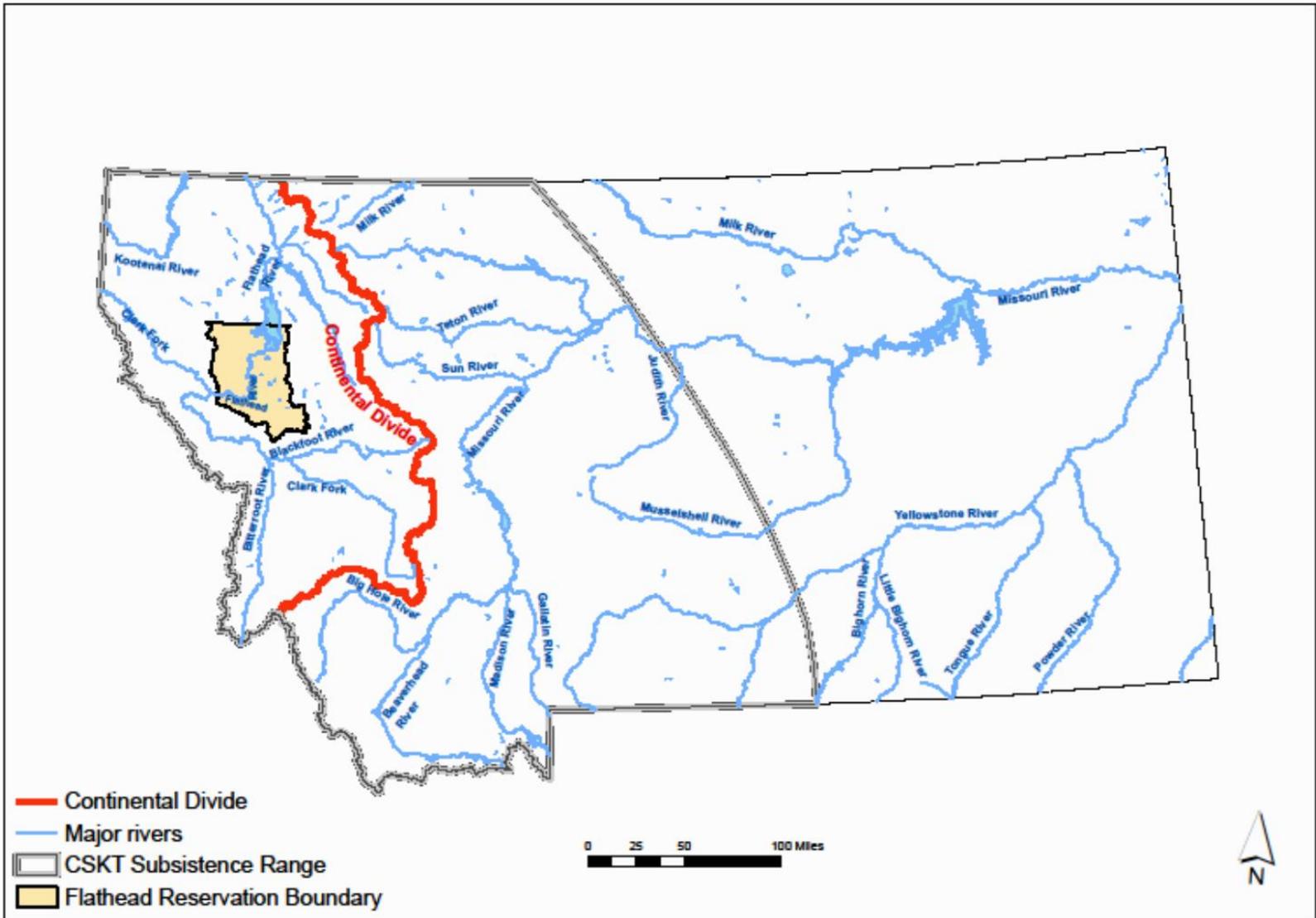
# Tribal Superfund Working Group Meeting and Site Visit Missoula, Montana September 16-18, 2025

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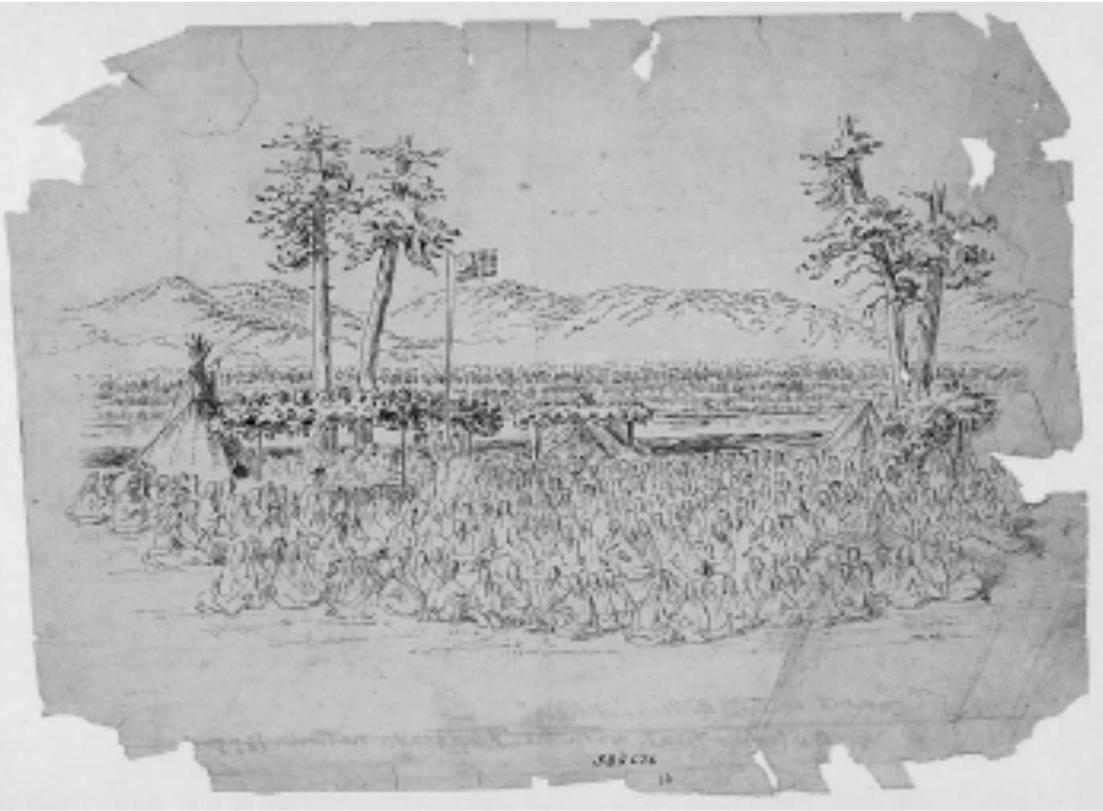


Article III Hellgate  
Treaty of July 16, 1855,  
12 Stat. 975

“ the exclusive right of  
taking fish in all the  
streams running  
through or bordering  
said reservation,” ...

“also the **right of taking  
fish** at all **usual and  
accustomed places**, in  
common with the  
citizens of the Territory”

...



Hellgate Treaty Negotiations, *Cimé* (Council Grove), July 1855.  
Gustavus Sobell drawing, courtesy National Anthropological Archives,  
Smithsonian Institution.

# Superfund and Tribes

## Federal Trust Responsibility

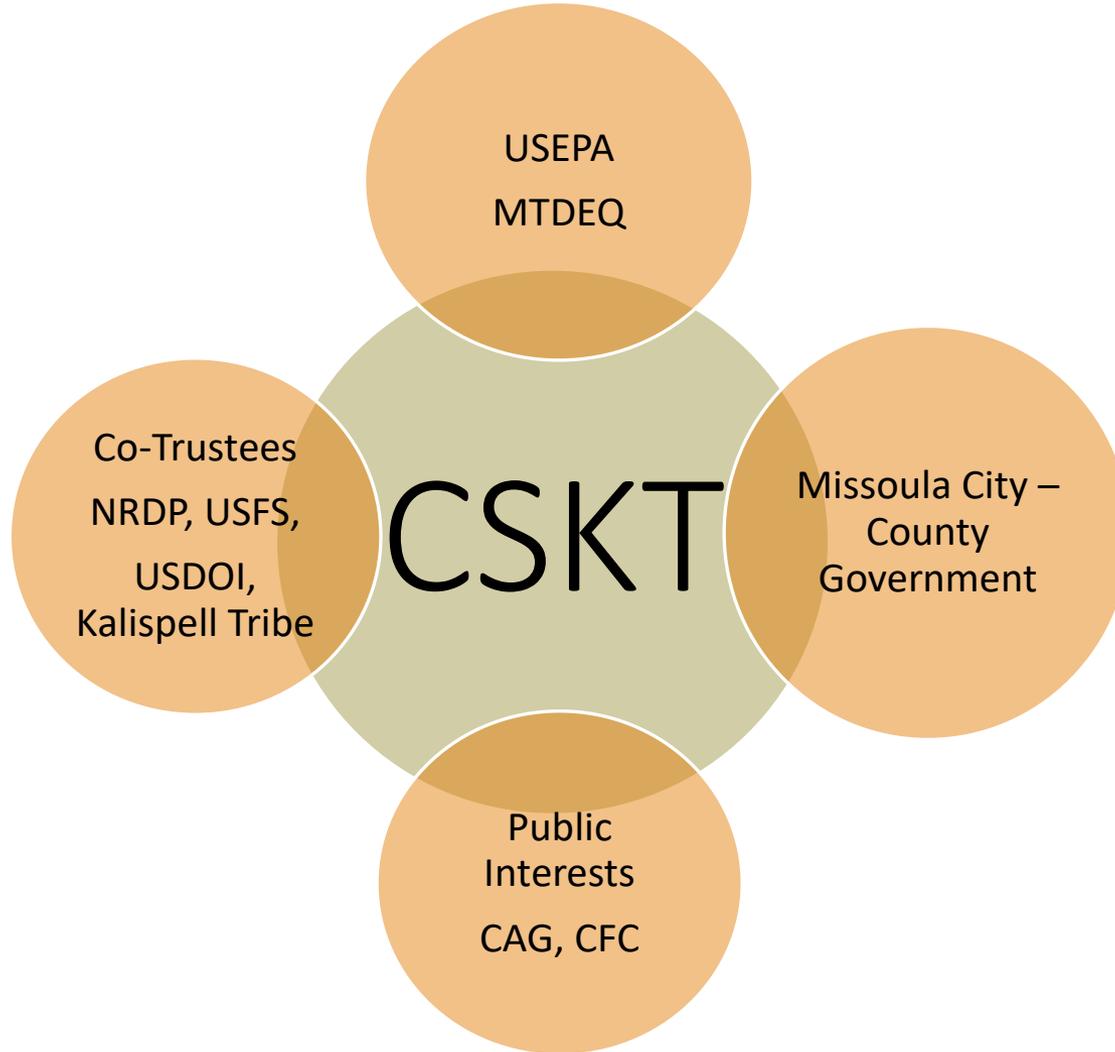
- Federal fiduciary obligation to protect treaty rights and tribal self-governance
- Requires federal agencies to conduct regular and meaningful collaboration and consultation with **tribal governments**

## Comprehensive Environmental Response, Compensation, and Liability Act

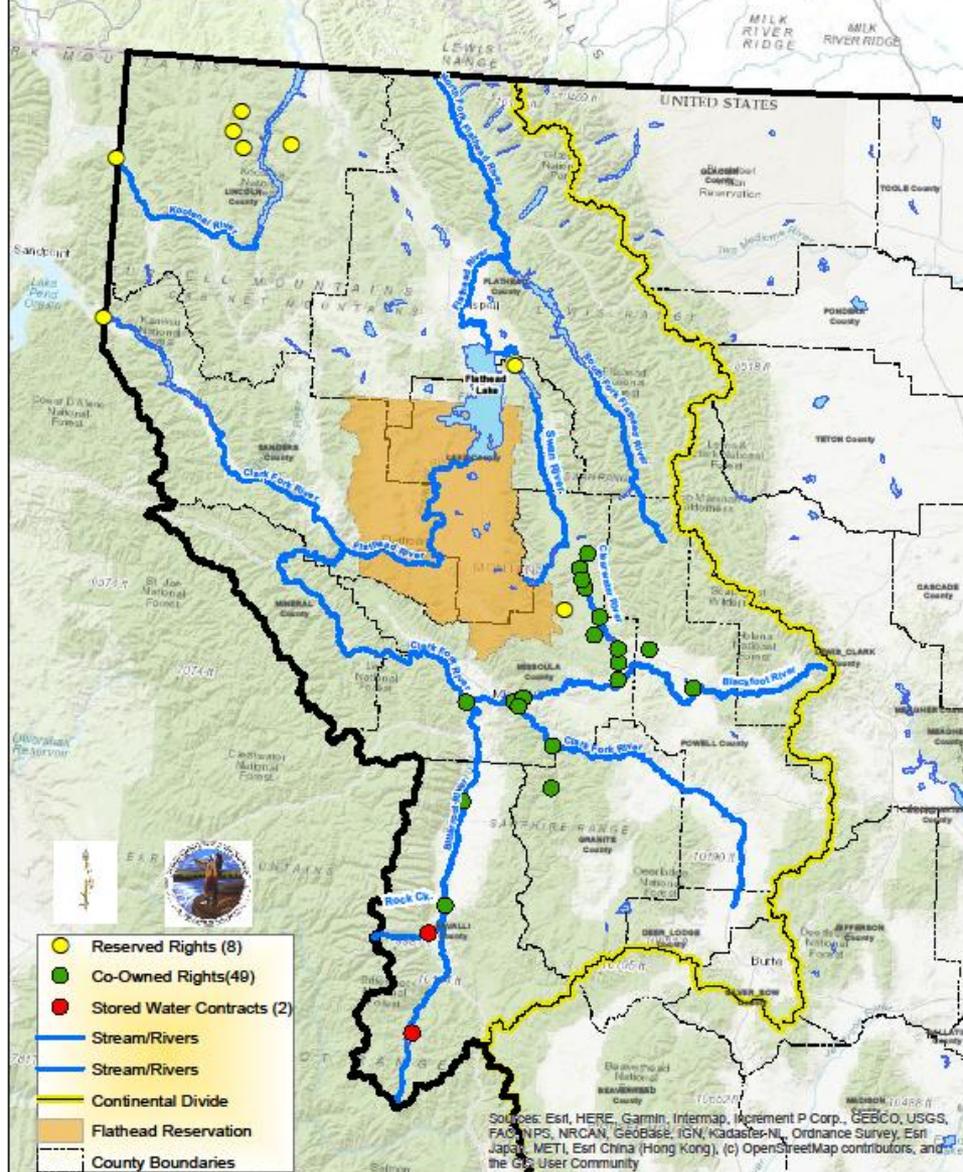
- EPA authorized to respond via removal or remediation to mitigate threats to human health and the environment
- Federal, state, tribal governments authorized to act as trustees on behalf of the public they represent to restore the injured natural resources



# Collaboration & Coordination



# CSKT Off-Reservation Instream Flow Water Rights



# 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<sup>1</sup>, 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

<sup>1</sup>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.

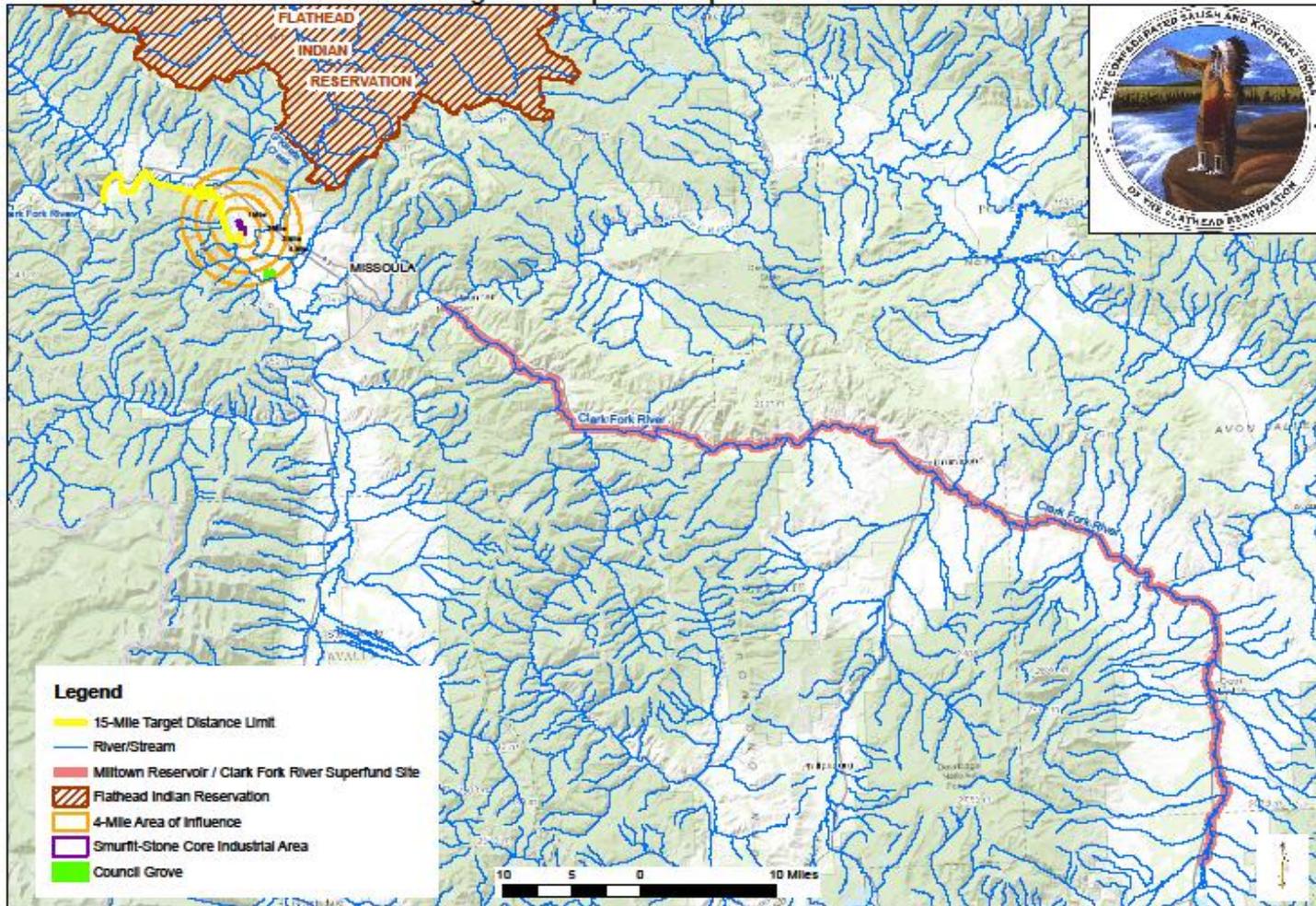
It is difficult to anticipate future call conditions for the Milltown Water Right since these depend on among other things water supply, management plans, and mitigation options. However, to provide context, FWP and the Tribes looked at the last ten years of river flow for each basin using the following 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

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## Clark Fork River Existing and Proposed Superfund Sites



## CSKT Perspective

The Clark Fork River is a unitary resource, not a series of operable units

Protect the River where it is healthy, restore the river where it is injured

**Memorandum of Understanding  
Restoration, Replacement or Acquisition of CFRB  
Natural Resources  
Montana – CSKT – USDOJ**

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- Procedures for consultation and coordination among the Parties.
- Procedures for protection of Tribal Cultural Resources and Tribal Religious Sites.
- Confidentiality regarding litigation matters including natural resources damages claims
- \*\*\*CSKT and FWS each a voting member of the UCFRB Remediation and Restoration Advisory Council

# Remediation Construction Activities

## MT DEQ – CSKT

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- Construction Contract Provisions regarding treatment of Undiscovered and Undocumented Historic Properties





## CSKT's vision for OU3 Smurfit- Stone Site

Remove and remediate all sources of hazardous or toxic contaminants entering the Clark Fork River, its tributaries or its floodplain via surface water or groundwater pathways



1955



And ...

Restore the ecologic and hydrologic connectivity between the Clark Fork River and its floodplain to dynamic pre-industrial development conditions



# CSKT Tribal Fisher Exposure Model

Receptor Population	Age Group	Exposure Pathways
CSKT Subsistence Fisher	<ul style="list-style-type: none"><li>• Young Child (0-6 years)</li><li>• Older Child (6-16 years)</li><li>• Adult</li></ul>	<ul style="list-style-type: none"><li>• <b>Ingestion</b> of resident trout and other freshwater finfish and shellfish.</li><li>• <b>Ingestion</b> of wildlife and plants.</li><li>• <b>Non-consumptive uses</b> of fish, wildlife or plants.</li><li>• <b>Incidental Ingestion</b> of surface soil, sediment &amp; surface water</li><li>• <b>Dermal contact</b> to surface soil, sediment &amp; surface water</li></ul>

**Table 2. Proposed fish consumption rates for evaluating current CSKT subsistence fisher exposure levels. Central Tendency Exposure (mean values) and Reasonable Maximum Exposure (95 percentile values) will be evaluated.**

	No. of Consumers	Mean (g/d)	Percentiles (g/d)		
			50%	90%	95%
<b>Nez Perce Tribe</b>					
National Cancer Institute, Tribal Fishers, Group 2 species	138	98.4	55.2	238.6	345.0
Food Frequency Questionnaire, All Tribal Consumers, Group 2 species	446	104.0	61.3	231.4	327.9
<b>Shoshone-Bannock Tribe</b>					
National Cancer Institute, Tribal Fishers, Group 2 species	134	23.3	10.2	61.5	92.6
Food Frequency Questionnaire, Tribal Fishers, Group 2 species	134	125.3	73.9	297.1	370.8

### Group 2 Species

Salmon, steelhead, resident trout, other freshwater finfish and shellfish, marine clams or mussels.

### References

- USEPA. 2016. Fish Consumption Survey of the Nez Perce Tribe.
- USEPA. 2016. Fish Consumption Survey of the Shoshone-Bannock Tribes.

## **Dietary consumption practices may increase CSKT exposure rates:**

- Fish Preparation – baking, grilling, drying, smoking, fish soups and stews.
- Skin and fatty tissue left on.
- Preference for other fish parts - fish heads, skin, tails, eggs, skeleton, muscle.
- Non-fish aquatic species consumption – freshwater mussels and crayfish.
- Roots, berries, forbs are consumed for food or medicinal purpose.
- Game species consumption - waterfowl, upland game birds, game species.

## **Non-consumption uses may increase CSKT exposure rates:**

- Non-food uses of fish and animal parts – teeth, bones, hides, shells, used for crafting materials.
- Rendered fish or animal fat for body paint.
- Exposure through traditional sweat practices.
- Plants used for crafting materials.

## Fish Consumption Rates

### EPA Human Health Risk Assessment for Smurfit Site OU3

#### Recreational Fisher

North Dakota (USEPA 2011)

12 g/day (6 g/day child)

#### Tribal Fisher

Mean g/day

Percentiles g/day

50%

90%

95%

Nez Perce Tribe (EPA 2016)

National Cancer Institute

98.4

55.2

239

345

Shoshone-Bannock Tribe (EPA 2016)

National Cancer Institute

23.3 (11.5 child)

10.2

61.5

92.6

### EPA Guidance for Assessing Chemical Contaminant Data for Use in Fish Consumption Advisories

#### Recreational Fisher

17.5 g/day

#### Tribal Fisher

142.4 g/day

# Upper Clark Fork River Basin Settlement Agreement

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➤ **1999 Streamside Tailings Operable Unit Consent Decree**

(US – Montana - CSKT – ARCO)

➤ **Memorandum of Agreement Regarding Restoration, Replacement, or Acquisition of Natural Resources in the Clark Fork River Basin**

(USDOJ FWS – CSKT – MT NRDP)

➤ **Letter of Agreement for survey & protection of Tribal Cultural Resources implicated by potential remediation and restoration**

(EPA – CSKT)

# 1999 Streamside Tailings OU Consent Decree

## US – Montana - CSKT – ARCO

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### **Damages Settlement: \$18.4 MM**

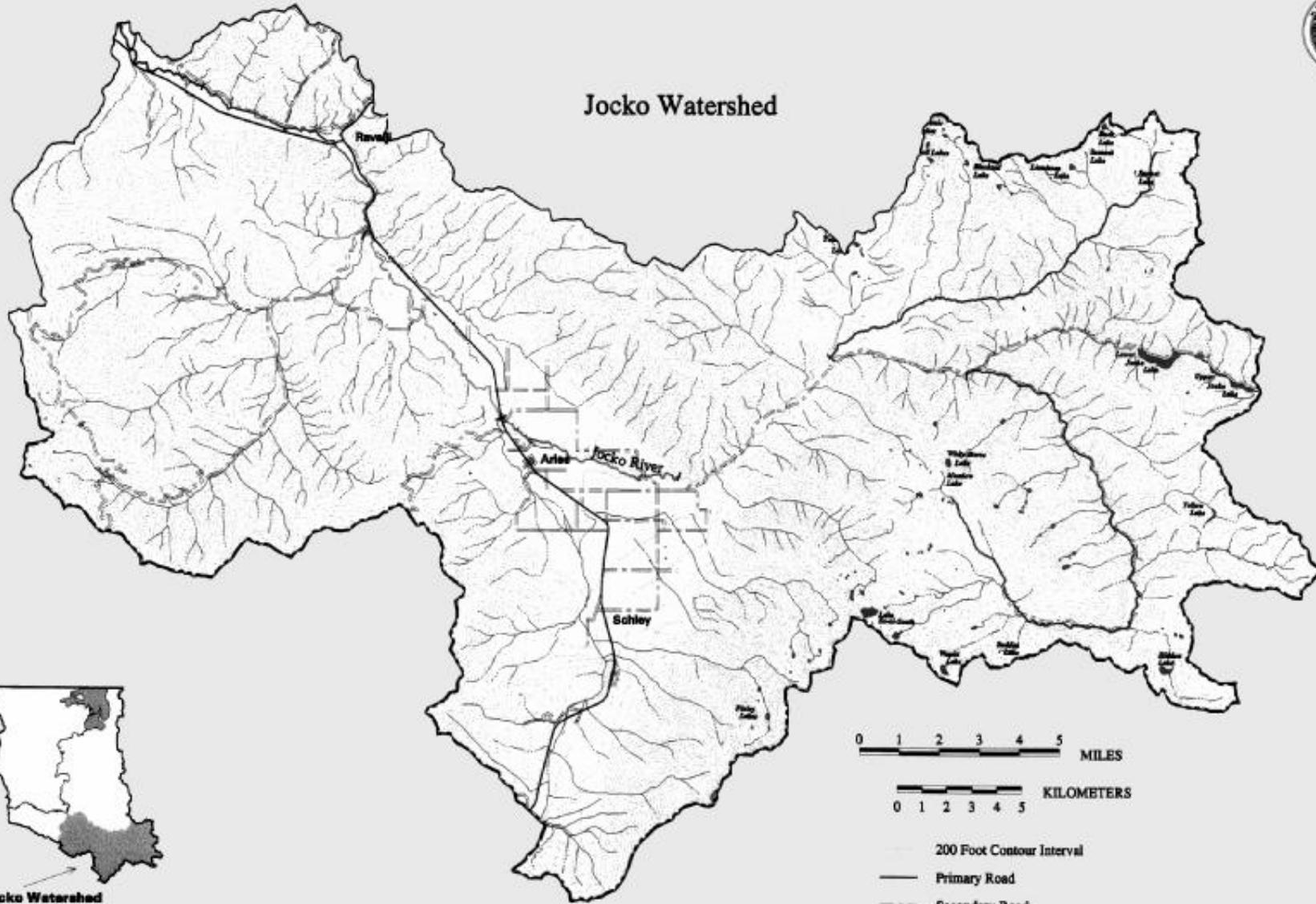
- Bull Trout Habitat: \$1.2 MM
- Wetland / Riparian: \$6.4 MM
- Land Protection: \$10.4MM

### **Jocko Basin Restoration: \$19.6 MM**

- Bull Trout Habitat: \$1.5 MM
  - **35 km mainstem + 40 km tributaries**
- Wetland / Riparian: \$8.9 MM
  - **826 Acres increasing over time**
- Land Protection: \$9.1 MM
  - **1759 Ac acquired / 4296 Ac managed**
- Long Term O&M: \$4 MM
  - **\$140 K annually in perpetuity**



# Jocko Watershed



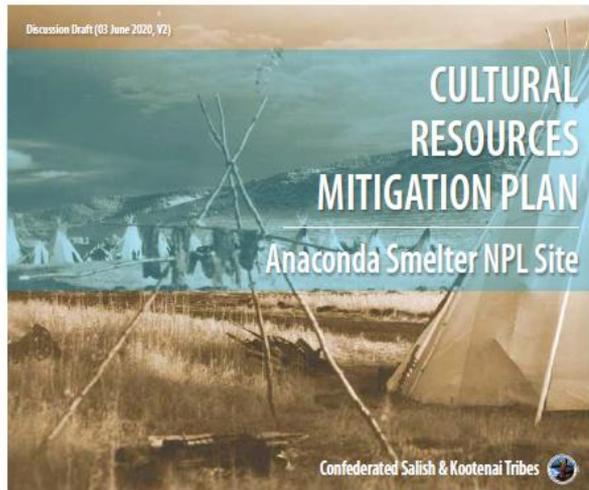
Jocko Watershed



- 200 Foot Contour Interval
- Primary Road
- - - Secondary Road

Map location = (KERR\DATA\ARCOS\JOCKO\JOCKO\_ARCO.MAP)  
Map created on January 13, 2000 by peting

# Anaconda Smelter NPL Site Cultural Resources Mitigation



- **Purpose:** Mitigate impacts to Tribal Cultural Resources from historic smelting operations and unavoidable impacts from EPA and ARCO remediation actions.
- **Objective:** Restore and perpetuate CSKT culture and language, and understanding of the Tribe's culture and history.
- **Project:** Selis-Qlispe Ethnogeography website & app.
- **Project:** On-site CSKT Cultural Resources Officer to document Undiscovered & Undocumented TCRs impacted by remediation actions.