

Milltown Dam Water Rights Report to Interim Water Policy Committee

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Milltown Dam

- Power house and spillway are scheduled to be removed in 2007 and 2008 as a part of the Clark Fork River Superfund remediation.



Milltown Dam Water Rights

- When Montana Power Company (MPC) owned Milltown Dam, it filed two water right claims associated with the dam, one for power generation and one for storage.

Power Generation Claim

- DNRC Claim No. 76M 94404-00
- Purpose of the water right - power generation
- Maximum flow rate - 2,000 cfs
- Maximum volume - 1,451,556.00 acre-feet
- Period of use - January 1 through December 31
- Priority date - December 11, 1904.

Status of the Power Generation Right

- Included in a temporary preliminary decree issued for the Middle Clark Fork Basin (76M) in 1984.
- Montana Water Court will not take final action on this water right claim until final decrees are issued in all three basins above the dam, the upper and middle Clark Fork River basins (76M and 76G) and the Blackfoot River basin (76F).
- The Milltown hydro power claim continues to be subject to objection in each basin.
- DNRC received a notice of change in the claim's ownership on June 2, 2005 after NWC acquired the dam.

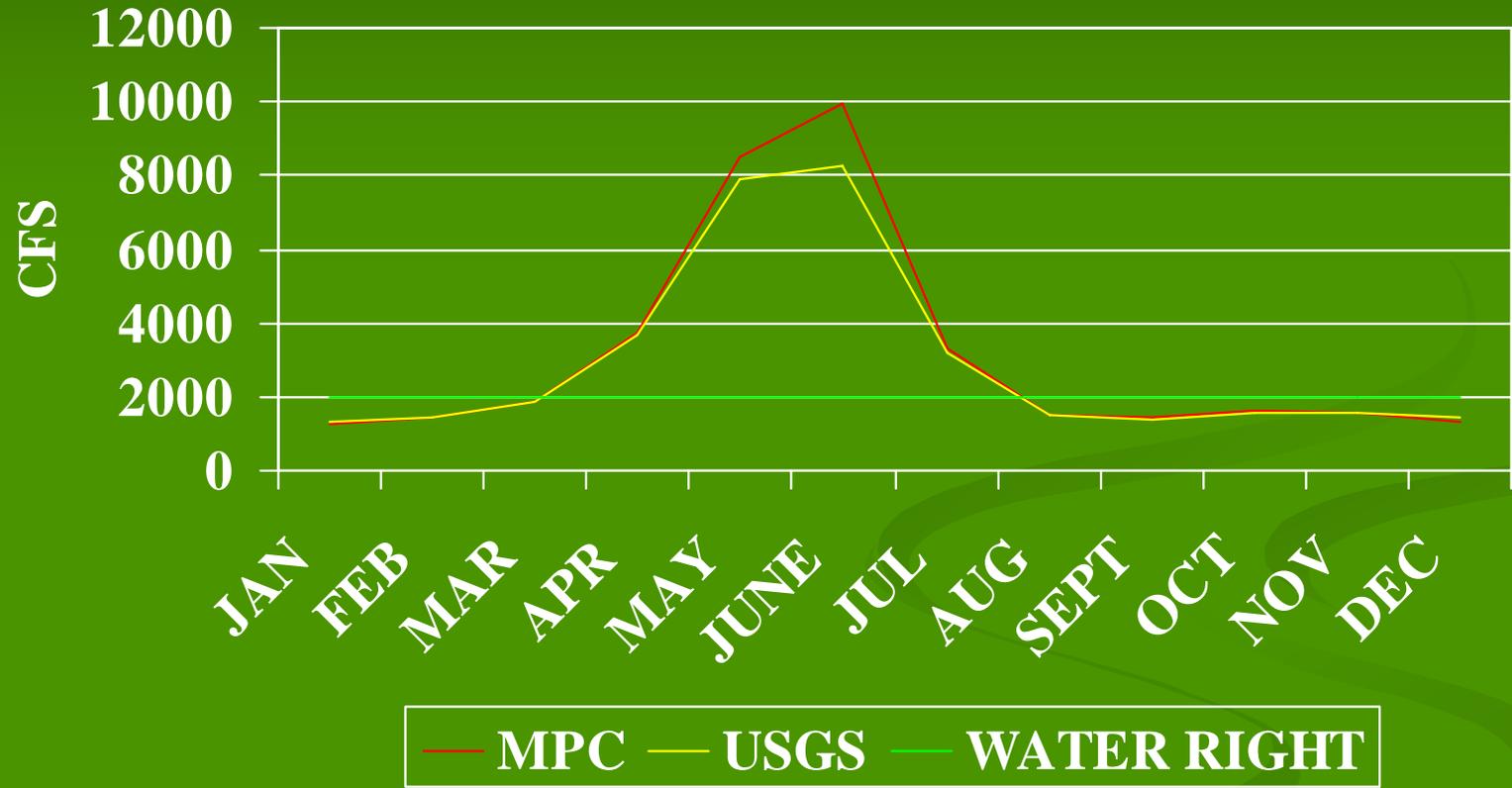
Storage Right

- Storage Claim No. 76M 94405-00
- The priority date, period of use and the point of diversion and its location are the same as for the power generation claim.
- MPC claimed a flow rate of 940 cfs up to the amount necessary to fill the storage reservoir at any time.

Status of the Storage Right

- The 1984 temporary preliminary decree for 76M, did not recognize the storage claim, and MPC objected to it.
- The DNRC abstract for the Milltown storage right claim includes two remarks:
 - The water court finds no legal basis for this purpose to be considered a beneficial use or an appropriation of water.
 - On June 7, 1985 the Montana Power Company (MPC) filed late objections to the purpose of right and "other". These will be heard after proper notice on the next objection list.
- DNRC received a notice of change in the claim's ownership on June 2, 2005 after NWC acquired the dam.

STREAMFLOW AT MILLTOWN DAM



Stream Flow Records

- Average Conditions – Clark Fork Above Missoula Streamflow Exceeds 2000 Cfs
 - Last 10 Days Of March
 - All Of April, May, & June
 - All But The Last 4 Days Of July
 - Exceeds 2000 Cfs 130 Days

Consent Decree Water Right Provisions

- The Consent Decree provides that NWC must appraise and attempt to sell the Milltown water rights to meet a portion of a \$1.4 million obligation owed to the State.
- The State has the right to approve a sale of the rights.
- NWE must offer any unsold portion of the water rights to the State no later than 925 days following February 8, 2006, the effective date of the Consent Decree.
- The State then has 365 days following the completion of the remedial action or 1290 days after the effective date of the Consent Decree, whichever is later, to accept the water rights in whole or in part.

Consent Decree Water Right Provisions

- If the State does not accept the water rights, then NWC must offer them to the United States and the Confederated Salish and Kootenai Tribes.
- These other parties would then have one year from the date of the offer to accept it in whole or part.
- Which ever governmental entity accepts the water rights must guarantee that they will not be changed to a consumptive use.
- As of August 2007, NWC had completed but not made public an appraisal of the Milltown Dam water rights

Water Right Change Authorization

- The removal of the dam will mean that the purpose of the existing rights will no longer be valid cease to exist.
- If the Milltown Dam rights are not to be lost kept alive, they must go through the change process.

Water Right Change Authorization

- Necessary For Change In POD, POU, Purpose, Or Storage.
- Assure Proposed Change Not Adversely Affect Existing Water Rights.
- Water Right Limited By Historic Beneficial Use.

Upper Clark Fork River Basin Steering Committee Milltown Dam Water Rights Paper

- Paper to identify and explore alternatives regarding the purpose and ownership of the existing water rights and the implications of the alternatives for upper basin water users.