

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

P.O. BOX 278
Pablo, Montana 59855
(406) 275-2700
FAX (406) 275-2806
www.cskt.org



A People of Vision

A Confederation of the Salish,
Pend d' Oreille
and Kootenai Tribes

TRIBAL COUNCIL MEMBERS:

Shelly R. Fyant -Chairwoman
Anita L. Matt -Vice Chair
Ellie Bundy McLeod - Secretary
Martin Charlo -Treasurer
Len Two Teeth
D. Fred Matt
Carole Lankford
James "Bing" Matt
Charmel R. Gillin
Mike Dolson

September 9, 2021

Dear Ms. Brundage:

The Confederated Salish and Kootenai Tribes (CSKT or Tribes) consulted with EPA Region 8 on September 1, 2021 regarding EPA's plan to propose a rule about allowing for tribal input regarding water quality standards in waters where tribes have reserved rights. CSKT is submitting this follow-up letter indicating our general support for this proposed rule and providing additional information relevant to this rule and its potential implementation.

As we noted in the consultation, CSKT has a treaty right to take fish from all usual and accustomed places.¹ This includes numerous waters within our aboriginal territory, which includes all of western Montana, the Upper Yellowstone and Upper Missouri River Basins in eastern Montana, and portions of Wyoming, Idaho, Washington, and Canada. In order for CSKT tribal members to exercise these treaty rights, there must be water quality sufficient to support fisheries that are safe for human consumption. Thus, we would support a rule that allows tribes to have input in water quality standards wherever tribes have reserved rights, and regardless of the location of their current reservation. For CSKT, that would mean the ability to give input to water quality standards for certain waters in Wyoming, Idaho, and Washington even though the Flathead Reservation does not lie within any of those states.

Additionally, we offer two examples where a rule like the one EPA is proposing would help the Tribes protect our reserved treaty fishing rights by advocating for better water quality.

First, the Clark Fork River just south of the Flathead Reservation near Missoula is within the Tribes' ancestral territory, and one of the usual and accustomed places where tribal members have a right to take fish. However, due to poor water quality and the presence of dioxins, furans, and PCBs, there is a fish consumption advisory for all fish species for a 148-mile stretch on the Clark Fork River.² Obviously, the right to take fish necessarily implies the right to eat that

¹ 1855 Hellgate Treaty, Article 3.

² State agencies advise against consuming fish caught in 148-mile stretch of the Clark Fork River, Char-Koosta News, April 15, 2021, http://www.charkoosta.com/news/state-agencies-advise-against-consuming-fish-caught-in-148-mile-stretch-of-the-clark-fork/article_f010c1d0-9e04-11eb-962a-1bd5f813f378.html.

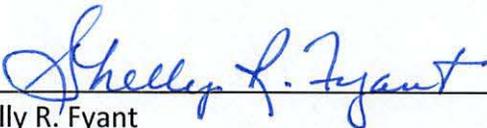
fish. When tribal members cannot eat fish that they catch from the usual and accustomed places, the Tribes' reserved treaty right to do so is clearly diminished. Thus, the Tribes support any and all efforts by the federal government to improve water quality in the Clark Fork and anywhere within our ancestral territory, in recognition of its trust responsibility and treaty obligations to CSKT.

Second, water often rarely corresponds with political boundaries; activities that pollute the water in one area almost always have impacts to water elsewhere. While the Tribes have the authority to set water quality standards on our own Reservation, there are numerous streams that run from state or other land onto the Reservation. If water entering the Reservation does not meet the Tribes' water quality standards, this makes it difficult for us to protect even our own Reservation waters. An excellent example of this is Flathead Lake, where half of the lake is on the Reservation and the other half is not. In order to protect water quality for the entire lake, the Tribes must have input into the State of Montana's water quality standards for the northern half of the lake.

In summary, for CSKT's Treaty rights to be recognized, we need water quality standards that protect fisheries that are safe for human consumption. Thus, we are in support of a rule that would allow the Tribes to have greater input in setting water quality standards throughout our aboriginal territory in all the Tribes' usual and accustomed places, and more broadly, we are in support of any efforts the federal government can take to improve water quality to ensure that our Treaty rights are recognized and honored into the future.

Please do not hesitate to reach out if we can provide further information or if you have any questions. Thank you for reaching out to consult with us early in this process. We look forward to working with you on a government-government basis as the process proceeds.

Sincerely,



Shelly R. Fyant
Tribal Council Chairwoman