

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9TH AVENUE P.O.BOX 201601 HELENA, MONTANA 59620-1601

# GENERAL ABSTRACT

**Water Right Number:** 76D 30063810 COMPACT  
**Version:** 1 -- ORIGINAL RIGHT  
**Version Status:**

**Owners:** USA (DEPT OF INTERIOR BUREAU OF INDIAN AFF)  
IN TRUST FOR CONFEDERATED SALISH & KOOTENAI  
TRIBES  
OF MONTANA  
911 NE 11TH AVENUE  
PORTLAND, OR 97232-4169

ALL COMMUNICATION SHALL BE COPIED TO THE CSKT TRIBAL CHAIRMAN AS THE BENEFICIAL OWNER AT PO BOX 278, PABLO, MT 59855-0278.

**Priority Date:** TIME IMMEMORIAL

**Purpose (use):** INSTREAM FISHERY

**Maximum Flow Rate:** 38,573.00 CFS

THE ENFORCEABLE LEVELS OF THIS WATER RIGHT ARE INDIVIDUAL FOR EACH CALENDAR DAY OF THE YEAR AND ARE IDENTIFIED IN THE TECHNICAL DOCUMENTATION FILED WITH THIS WATER RIGHT (SEE SCANNED FILE IN THE DNRC WATER RIGHTS DATABASE FOR WATER RIGHT NUMBER 76D 30063810).

CALL MAY BE INITIATED ON THE DAY FOLLOWING A 24-HOUR PERIOD WHERE AVERAGE DAILY RIVER FLOWS FALL BELOW THEIR RESPECTIVE DAILY ENFORCEABLE VALUE.

ENFORCEABLE LEVELS OF THIS WATER RIGHT SHALL BE MEASURED AT THE USGS GAGE #12305000 LOCATION ON THE KOOTENAI RIVER AT LEONIA, IDAHO (48°37'04"N, 116°02'47"W, NAD83) (NWNWNW SEC 20 T33N R34W). IF USGS GAGE #12305000 IS DISCONTINUED OR OTHERWISE RENDERED NONFUNCTIONAL, MEASUREMENTS SHALL BE TAKEN EITHER AT THIS SAME LOCATION OR AS NEAR TO THAT POINT AS IS REASONABLY PRACTICABLE.

**Maximum Volume:**

**Source Name:** KOOTENAI RIVER  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			5	32N	34W	LINCOLN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** INSTREAM

**Diversion Type:** PRIMARY

2			20	33N	34W	LINCOLN
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** INSTREAM

**Diversion Type:** PRIMARY

3			21	33N	34W	LINCOLN
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** INSTREAM

**Diversion Type:** PRIMARY

4			27	33N	34W	LINCOLN
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** INSTREAM

**Diversion Type:** PRIMARY

5			28	33N	34W	LINCOLN
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**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** INSTREAM

**Diversion Type:** PRIMARY

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
6			34	33N	34W	LINCOLN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** INSTREAM

**Diversion Type:** PRIMARY

**Period of Use:** JANUARY 1 to DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				5	32N	34W	LINCOLN
2				20	33N	34W	LINCOLN
3				21	33N	34W	LINCOLN
4				27	33N	34W	LINCOLN
5				28	33N	34W	LINCOLN
6				34	33N	34W	LINCOLN

**Remarks:**

THIS WATER RIGHT SHALL NOT BE EXERCISED IN CONJUNCTION WITH ANY ARTIFICIAL DIVERSION.

THE PLACE OF USE OF THIS WATER RIGHT INCLUDES THE REACH OF THE KOOTENAI RIVER STARTING AT THE POINT WHERE THE KOOTENAI RIVER CROSSES THE MONTANA IDAHO STATE BORDER (48°37'04"N, 116°02'47"W, NAD83) (NWNWNW SEC 20 T33N R34W) AND EXTENDING UPSTREAM TO THE CONFLUENCE OF THE KOOTENAI AND YAAK RIVERS (48°33'38"N, 115°58'40"W, NAD83) (SWSWSE SEC 5 T32N R34W).

SHOULD THE SUSPENSION ON ENFORCEMENT SET FORTH PURSUANT ARTICLE III.F.1.E OF THE WATER RIGHTS COMPACT ENTERED INTO BY THE CONFEDERATED SALISH & KOOTENAI TRIBES, THE STATE OF MONTANA, AND THE UNITED STATES OF AMERICA BE LIFTED, THE OWNER OF THIS WATER RIGHT SHALL BE ENTITLED TO MAKE A CALL, IN ACCORDANCE WITH STATE LAW, TO ENFORCE THIS WATER RIGHT ONLY AGAINST JUNIOR WATER RIGHTS IN BASIN 76D (KOOTENAI DRAINAGE) WHOSE POINT OF DIVERSION IS FROM THE MAINSTEM OF THE KOOTENAI RIVER AND NOT ITS TRIBUTARIES, THE PURPOSE OF WHOSE RIGHTS IS IRRIGATION AND WHOSE SOURCE OF SUPPLY IS SURFACE WATER, OR AGAINST JUNIOR USERS THE PURPOSE OF WHOSE RIGHTS IS IRRIGATION, WHOSE SOURCE OF SUPPLY IS GROUNDWATER CONNECTED TO THE MAINSTEM OF THE KOOTENAI RIVER AND WHOSE FLOW RATE IS GREATER THAN 100 GALLONS PER MINUTE.

THE EXERCISE OF THIS WATER RIGHT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE WATER RIGHTS COMPACT ENTERED INTO BY THE CONFEDERATED SALISH & KOOTENAI TRIBES, THE STATE OF MONTANA, AND THE UNITED STATES OF AMERICA.

THE DESIGNATION OF A PLACE OF USE OF THIS WATER RIGHT IS A DESIGNATION FOR PURPOSES OF MEASUREMENT OF THE ENFORCEABLE LEVELS AND IS NOT A GEOGRAPHIC LIMITATION ON THE LOCATION OF JUNIOR WATER RIGHTS AGAINST WHOM THIS RIGHT MAY BE ENFORCED.

THE ABILITY TO ENFORCE THIS RIGHT SHALL BE SUSPENDED SO LONG AS LIBBY DAM REMAINS IN EXISTENCE AND THE ARMY CORPS OF ENGINEERS' (ACOE) OPERATION OF THAT DAM ARE CONDUCTED CONSISTENTLY WITH THE 2008 FEDERAL COLUMBIA RIVER POWER SYSTEM BIOLOGICAL OPINION, AND THE 2010 UPDATED BIOLOGICAL OPINION, SPECIFICALLY AS DESCRIBED IN REASONABLE AND PRUDENT ALTERNATIVE ACTION (RPA) NO. 4 (STORAGE PROJECT OPERATIONS), TABLE NO. 1 (LIBBY DAM), INCLUDING THE NORTHWEST POWER AND CONSERVATION COUNCIL'S 2003 MAINSTEM AMENDMENTS TO THE COLUMBIA RIVER BASIN FISH AND WILDLIFE PROGRAM, OR ANY SUBSEQUENT BIOLOGICAL OPINION(S) GOVERNING THE SAME RPA(S) AND OPERATIONS.

IN THE EVENT OF CHANGES TO THE ACOE'S RESPONSIBILITIES UNDER THE ENDANGERED SPECIES ACT OF 1973, 16 U.S.C. 1531, ET SEQ. (ESA), SUCH AS THE DELISTING OF RESIDENT AND ANADROMOUS FISH SPECIES, THAT NO LONGER REQUIRE THE ACOE TO OPERATE LIBBY DAM PURSUANT TO ESA SECTION 7 BIOLOGICAL OPINIONS OR OTHER SUBSTANTIVE ESA REQUIREMENTS, THE UNITED STATES, ACTING THROUGH THE ACOE, THE TRIBES, AND THE STATE SHALL ESTABLISH WRITTEN PROTOCOLS AND UNDERSTANDINGS ON MEETING AND ENFORCING THE TRIBES' MAINSTEM INSTREAM FLOW RIGHT ON THE KOOTENAI RIVER WHILE ALSO ENSURING THAT THE ACOE OPERATIONS OF LIBBY DAM MEET ALL FEDERAL STATUTORY AND REGULATORY REQUIREMENTS AND OBLIGATIONS. PROVIDED HOWEVER, THAT ANY SUCH ENFORCEMENT PROTOCOL SHALL NOT ALTER THE LIMITATIONS ON CALL SET FORTH IN ARTICLE III SECTION F OF THE WATER RIGHTS COMPACT ENTERED INTO BY THE CONFEDERATED SALISH & KOOTENAI TRIBES, THE STATE OF MONTANA, AND THE UNITED STATES OF AMERICA.

THIS IS A NONCONSUMPTIVE INSTREAM WATER RIGHT; THE PURPOSE AND INSTREAM PLACE OF USE CANNOT BE CHANGED.

## 76D 30063810 Technical Documentation

By way of the water rights compact entered into by the Confederated Salish & Kootenai Tribes, the State of Montana, and the United States of America, 76D 30063810 is hereby issued, creating a new and active enforceable water right, with a place of use along the reach of the Kootenai River starting just above the point where the Kootenai River crosses the Montana Idaho State Border and extending upstream along the Kootenai River to the confluence of the Kootenai and Yaak Rivers. The designation of a place of use of this water right is a designation for purposes of measurement of the enforceable levels and is not a geographic limitation on the location of junior water rights against whom this right may be enforced.

The priority date of this water right is time immemorial.

The purpose of this water right is the maintenance and enhancement of fish habitat.

This water right shall not be exercised in conjunction with any artificial diversion.

The enforceable levels of this water right take the form of static distributions of unique daily flow values, one each for every day of the year. Call may be initiated on the day following a 24-hour period where average daily river flows fall below their respective daily enforceable value.

The owner of this water right shall be entitled to make a call, in accordance with State law, to enforce this water right only against junior water rights in Basin 76D (Kootenai Drainage) whose point of diversion is from the mainstem of the Kootenai River and not its tributaries, the purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is groundwater connected to the mainstem to the Kootenai River and whose flow rate is greater than 100 gallons per minute.

Enforceable levels of this water right shall be measured at the USGS gage # 12305000 location on the Kootenai River at Leonia, Idaho (48°37'04"N, 116°02'47"W, NAD83) (NWNWNW SEC 20 T33N R34W). If USGS gage # 1230500 is discontinued or otherwise rendered nonfunctional, measurements shall be taken either at this same location or as near to that point as is reasonably practicable. The enforceable static individual daily flow values are described on Page 2 of this document.

The exercise of this water right is subject to the terms and conditions of the water rights compact entered into by the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States of America.

76D 30063810 Technical Documentation

<p align="center"><b>Enforceable Daily Flows (CFS)</b>  <b>for 76D 30063810 on the Kootenai River, Montana</b></p>												
Day	Month											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	2,581	2,523	2,676	4,844	14,129	35,769	19,027	8,715	5,689	4,565	3,984	3,172
2	2,560	2,549	2,689	5,140	14,812	33,965	18,669	8,514	5,652	4,554	3,931	3,159
3	2,563	2,576	2,708	5,457	15,519	32,420	18,283	8,301	5,606	4,542	3,884	3,144
4	2,547	2,588	2,731	5,786	16,213	31,347	17,866	8,072	5,579	4,529	3,846	3,128
5	2,499	2,583	2,748	6,014	16,848	30,657	17,389	7,841	5,541	4,516	3,848	3,103
6	2,478	2,575	2,760	6,244	17,357	30,192	16,846	7,631	5,517	4,511	3,879	3,058
7	2,478	2,579	2,780	6,449	17,717	29,819	16,291	7,440	5,490	4,501	3,886	2,991
8	2,474	2,604	2,799	6,612	17,940	29,442	15,814	7,267	5,469	4,489	3,891	2,953
9	2,475	2,620	2,863	6,729	18,137	29,019	15,417	7,095	5,446	4,465	3,908	2,857
10	2,483	2,623	2,897	6,819	18,388	28,547	15,048	6,925	5,436	4,436	3,889	2,816
11	2,485	2,624	2,929	6,907	18,741	28,037	14,682	6,767	5,406	4,404	3,868	2,773
12	2,478	2,628	2,971	7,032	19,231	27,520	14,345	6,616	5,382	4,376	3,836	2,724
13	2,463	2,638	3,009	7,221	19,862	27,011	14,025	6,601	5,358	4,340	3,796	2,686
14	2,439	2,639	3,025	7,470	20,604	26,537	13,702	6,620	5,341	4,321	3,766	2,651
15	2,410	2,614	3,026	7,805	21,362	26,108	13,355	6,614	5,324	4,308	3,741	2,646
16	2,375	2,589	3,009	8,263	22,026	25,689	12,981	6,587	5,279	4,296	3,682	2,643
17	2,337	2,572	3,032	8,860	22,569	25,231	12,610	6,559	5,226	4,284	3,649	2,660
18	2,302	2,564	3,061	9,518	23,026	24,752	12,274	6,531	5,166	4,285	3,571	2,704
19	2,278	2,567	3,097	10,172	23,429	24,310	11,972	6,487	5,114	4,286	3,476	2,788
20	2,267	2,563	3,146	10,768	23,867	23,906	11,698	6,386	5,066	4,284	3,374	2,884
21	2,267	2,556	3,184	11,317	24,492	23,499	11,444	6,244	5,014	4,267	3,256	2,963
22	2,276	2,555	3,209	11,821	25,461	23,057	11,188	6,128	4,956	4,251	3,159	3,032
23	2,298	2,558	3,231	12,212	26,965	22,572	10,927	6,033	4,904	4,238	3,153	3,065
24	2,325	2,576	3,226	12,439	29,049	22,062	10,665	5,969	4,858	4,230	3,183	3,056
25	2,358	2,610	3,323	12,565	31,620	21,553	10,386	5,916	4,808	4,227	3,203	3,009
26	2,386	2,626	3,457	12,641	34,318	21,051	10,105	5,866	4,754	4,226	3,209	2,916
27	2,408	2,640	3,599	12,725	36,564	20,577	9,847	5,826	4,699	4,214	3,203	2,813
28	2,433	2,650	3,757	12,869	37,997	20,128	9,601	5,815	4,652	4,178	3,184	2,727
29	2,466		4,030	13,120	38,573	19,718	9,368	5,808	4,621	4,132	3,164	2,664
30	2,490		4,298	13,535	38,322	19,364	9,142	5,791	4,595	4,074	3,171	2,613
31	2,508		4,568		37,338		8,923	5,746		4,028		2,587