

CULTURAL WATERWAYS ORDINANCE

**AN ORDINANCE OF THE GOVERNING BODY OF
THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION**

**AN ORDINANCE ESTABLISHING
CULTURAL WATERWAYS
AND DESIGNATING THE
LOWER FLATHEAD RIVER CULTURAL WATERWAY**

Draft of December 5, 2019
CSKT

CSKT CULTURAL WATERWAYS ORDINANCE

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Section 1. Short Title

This Ordinance may be referred to as the Cultural Waterways Ordinance or the CWO.

Section 2. Authority

This Ordinance is enacted pursuant to:

- a. the Constitution of the Confederated Salish and Kootenai Tribes of the Flathead Reservation (hereinafter “Tribes” and/or “CSKT”), Article VI, Section 1, Subsections (a), (l), (n), (t) and (u), approved by the Secretary of the Interior, October 28, 1935.
- b. Article III of the Treaty of Hellgate, July 16, 1855, 12 Stat. 975.
- c. the Tribes’ inherent tribal authority to regulate conduct that poses a serious threat to the health and welfare of the Tribes, including the authority to regulate conduct that poses a serious threat to our waterways, which are among the most valuable and fragile cultural and natural resources on the Flathead Reservation (“Reservation”).

Section 3. Findings

The Tribal Council of the Confederated Salish and Kootenai Tribes hereby finds that:

- a. Water is sacred. It is the current that runs through all of life, and through the cultures of the Séliš (Salish), Qlispé (Kalispel or Pend d’Oreille), and Ksanka (Kootenai) people.

All of the waterways of our vast aboriginal territories are of vital importance to us, and to the continuance of our traditional ways of life. Our people carry a spiritual obligation to protect our clean, abundant waters, and to maintain the free-flowing nature of those stretches of river that still remain undammed for the generations to come.

Out of respect for these waters, and for the many teachings of our elders and ancestors, the Tribes are therefore enacting the Cultural Waterways Ordinance, in order to designate certain waterways and adjoining areas located on the Reservation that the Tribes have determined need special protection or management.

- b. The self-governing capabilities, health, and welfare of the Tribes will be protected and enhanced by Tribal governmental designation, regulation, and protection of cultural waterways which are critical for the perpetuation, preservation, and continuance of Reservation cultural resource and practices, fisheries and wildlife, water quality, and the health and welfare of Tribal members and all persons residing on the Reservation.
- c. The Treaty of Hellgate July 16, 1855 (12 Stat. 975) reserved to the Tribes the exclusive right to take fish within the exterior boundaries of the Flathead Reservation. The exclusive Treaty right to fish within the Reservation confers upon the Tribes the right, duty, and responsibility to protect those Tribal interests.
- d. Rising energy demand, climate change, Reservation population growth, and increased utilization of waterways for recreation are causing adverse impacts upon the quality of Reservation waters, fisheries and wildlife habitat, and to traditional ways of life, and therefore, there exists an immediate need to regulate and manage the use of these waterways to preserve and protect them.
- e. The CSKT Tribal Council is empowered to exclude non-members from trust and tribal lands and waters of the Reservation, and to regulate, condition and limit use, recreational or otherwise, of those lands and waters. The Tribes regulate ingress and egress of non-members to these areas through a permit system contained in CSKT Hunting and Fishing Conservation Ordinance 44-D.

Section 4. Policy.

It is the policy of the CSKT Tribal Council to protect cultural waterways in need of special protection or management by designating them and regulating the activities that adversely impact the cultural and natural qualities of those waterways, including but not limited to prohibiting the construction of any additional manmade obstructions, such as dams, that would harm the free-flowing character of these waterways.

Section 5. Definition of Cultural Waterway

A *Cultural Waterway* is defined as a waterway the Tribes have determined is in need of protection, and possibly restoration, because it possesses or could possess the physical, spiritual, and environmental resources and conditions necessary for the continuance of cultural practices and activities.

Section 6. Designating Cultural Waterways

a. Designation Process

Cultural Waterways may be nominated to and designated by the Tribal Council through the following process:

1. The Tribal Natural Resources Department, Séliš-Qłispé Culture Committee, Kootenai Culture Committee, Tribal Preservation Department, members of the Tribal Council, and/or individual(s) may nominate Cultural Waterways for the consideration of the Tribal Council. Such nomination may occur after consultation with Tribal elders and research in oral histories and traditions, historical documents, and the archaeological record.
2. When nominating a new Cultural Waterway for designation by Tribal Council, the Tribal Natural Resources Department (NRD), Séliš-Qłispé Culture Committee, Kootenai Culture Committee, and Tribal Preservation Department shall develop a designation document with the following information:
 - i. A statement of purpose for the designation, including cultural information;
 - ii. An overall vision for the Cultural Waterway;
 - iii. A timetable within which NRD staff, in coordination with other CSKT departments, shall develop a management plan for the Cultural Waterway and, in accordance with the Tribal Administrative Procedures Ordinance (TAPO), any necessary regulations.
 - iv. Identification of lead staff to carry out the timetable for the management plan, regulations, and to ensure compliance with TAPO.
3. The CSKT Tribal Council shall vote on whether to approve by Resolution the designation of the proposed Cultural Waterway. Approval of the designation by Tribal Council shall initiate

the timetable for CSKT staff's development of a management plan and, if needed, regulations for the Cultural Waterway, in accordance with TAPO.

b. Development of Management Plans and Regulations for designated Cultural Waterways

Following Tribal Council approval of the designation of a Cultural Waterway, the CSKT Natural Resources Department (NRD) and its Division of Fish, Wildlife, Recreation and Conservation (FWRC) shall, within a period of time determined by Tribal Council at the time of the designation of a Cultural Waterway, and in accordance with TAPO, create or update a management plan for the Cultural Waterway. The plan will detail the policies and actions for carrying out the broad goals of cultural and environmental protection set forth in the designation of the Cultural Waterway, which may include restoration. The plan will define permitted uses and prohibited uses, and enumeration of any special provisions. In developing this plan, NRD/FWRC shall work with the Legal Department, Séliš-Qlispé Culture Committee, Kootenai Culture Committee, Tribal Preservation Department, Lands Department, Forestry Department, and any other CSKT departments relevant to the designated area.

NRD/FWRC staff, in consultation with the Legal Department and other CSKT departments, will simultaneously develop any necessary regulations and an enforcement plan for carrying out the Cultural Waterway Management Plan, including, if necessary, a permit system.

NRD/FWRC shall then submit any draft regulations to public comment as mandated in the TAPO. Once that process is complete, NRD/FWRC staff will finalize the Cultural Waterway Management Plan and regulation updates and present it to Tribal Council for final approval.

c. Reviewing and Updating Cultural Waterway Management Plans and Regulations

The management plan and regulations for each Cultural Waterway shall be reviewed by NRD as often as Tribal Council and/or NRD deems necessary, but at least every ten years. Any changes to the regulations shall be adopted pursuant to TAPO. The updated and revised management plan shall be reviewed and approved by the Culture Committees and

Preservation Department, and any other relevant departments, and then presented to Tribal Council for final action.

Section 7. Designated Cultural Waterways

a. Future designations of Cultural Waterways shall be made as amendments to Section 7 of this Ordinance.

b. Designation of the Lower Flathead River as a Cultural Waterway

The Lower Flathead River is hereby designated a Cultural Waterway. As approved and supported by CSKT Tribal Council, and in accordance with the process stipulated in Section 6(a)(1) of this Ordinance, this designation was developed and agreed to by the CSKT Natural Resources Department, Séliš-Qlispé Culture Committee, Kootenai Culture Committee, Tribal Preservation Department, Lands Department, and Forestry Department, and is hereby approved by Tribal Council.

i. Statement of Purpose

The Lower Flathead River Corridor comprises a waterway and landscape of the highest cultural importance to the Séliš, Qlispé, and Ksanka tribes. The importance of this place reaches back to the earliest beginnings of our people and to our deepest spiritual and material relationships with the lands and waters.

Tribal elders have told how, in the beginning, Coyote traveled through here and prepared the land for the human beings who were yet to come. He destroyed the monsters and made our homelands safe and good places for us to live. Coyote made the Flathead River the way it is today. And he showed us the right way to live, in a relationship of respect with each other, and with the lands and waters, and the plants and animals, that we depend upon. From these gifts, we inherited a responsibility to take care of our priceless natural and cultural heritage.

From time immemorial, the lower Flathead River has been a central part of our homeland. It has served the people as a vision-seeking ground; as a sanctuary and refuge; as a vital fishing resource; as a place to hunt, dig bitterroots and camas, pick berries, and gather medicinal herbs and roots; as a wintering and camping area; and in countless other ways. The river has always been our "road to the west," which we traveled by foot, canoe, and horseback.

For millennia, tribal ancestors cared for this place, doing their best to ensure that it would be passed down to future generations in a pristine and beautiful condition. This has been carried on in recent decades, as the Tribes have conducted the annual River Honoring along the banks of the Flathead River, praying for its protection and teaching young people about its value. For tribal people today, the river is a unique place where they still have the freedom to swim, canoe, fish, hunt, pray, and play in an unspoiled part of our homeland.

The lower Flathead River's cultural importance is tied to its continuing ecological health. It is home to dozens of species of plants that we rely upon for food and medicine in our traditional way of life. The river and river corridor also provide habitat for many animals of cultural importance, including bull trout, westslope cutthroat trout, frogs, turtles, otters, mink, deer, bears, mountain lions, beavers, coyotes, geese, ducks, swans, eagles, hawks, osprey, grouse, and numerous other species.

The river remains a place where we are able to stay connected with the natural world and with the ancestors. It is a vital haven for our efforts to pass on our cultures to the generations to come.

Maintaining the remaining free-flowing stretches, and the open, wild character of the river and surrounding area is crucial to the survival and well-being of the Tribes and the perpetuation of our cultures, there is hereby established the Lower Flathead River

Cultural Waterway; and this Waterway, described herein, shall be administered to protect, preserve, and restore its cultural and environmental values.

ii. Vision of the Lower Flathead River Cultural Waterway

- a. It is the principal vision of this Ordinance to protect and preserve the Lower Flathead River Cultural Waterway in perpetuity as a Tribal traditional cultural sanctuary and an area of land preserved in a generally natural condition. The Lower Flathead River Cultural Waterway shall be devoted to the purposes of subsistence, spiritual, recreational, scenic, scientific, educational, conservation, and historical use consistent with the spirit of protecting traditional cultural use, which include ensuring that such traditional cultural uses, and the native plants and animals and other natural resources upon which they depend, are protected and sustained for all future generations.
- b. Climate change poses a serious threat to the Tribes. Healthy ecosystems can help to mitigate and reduce these impacts. Therefore, the Lower Flathead River shall be managed in a way that reduces emissions of greenhouse gases wherever practicable.
- c. There shall be no additional dams constructed on the Lower Flathead River.
- d. There shall be no mining within the Lower Flathead River watershed, except as allowed by regulation.
- e. Environmental restoration, such as bank and wetland restoration, shall be permitted within the Lower Flathead River watershed.
- f. For purposes of Tribal Ordinance 59A, grazing of pack and saddle stock that is not associated with any type of commercial use within designated areas of the Lower Flathead River Cultural Waterway and Protected Area may be authorized as deemed appropriate by regulation.
- g. Pumping, agricultural development, and other facilities may be authorized as deemed appropriate by the Tribal Council. Council shall designate any such facility by amendment to this Ordinance.

iii. Development of the Lower Flathead River Management Plan and Regulations

Within one year of passage of this Ordinance, NRD / FWRC shall develop a draft Lower Flathead River Management Plan and any necessary regulations, in coordination with the Legal Department, Séliš-Qlispé Culture Committee, Kootenai Culture Committee, Tribal Preservation Department, Lands Department, and Forestry Department. The management plan and, if needed, regulations shall define permitted uses, prohibited uses, delineate any necessary boundaries for such uses, and identify any special provisions. The management plan may address the specific tribal land concerns within the Lower Flathead River watershed of grazing, weeds and invasive species, development, mining, recreational infrastructure, such as roads and campsites, and climate change. The management plan shall address restoration of damaged resources within the Lower Flathead River watershed.

If applicable, NRD / FWRC shall then submit the draft regulations to public comment as mandated in the Tribal Administrative Procedures Act (TAPO). Once that process is complete, NRD/FWRC staff will finalize the management plan and regulations, if any, and present it to Tribal Council for final approval.

iv. Timetable for Reviewing and Updating Management Plan and Regulations

NRD / FWRC shall review and update the Lower Flathead River Cultural Waterway Management Plan and regulations, if any, as often as Tribal Council and/or NRD deems necessary, but at least every ten years. NRD / FWRC shall consult with the CSKT departments listed in section iii above. Any changes to the regulations shall be adopted pursuant to TAPO. The updated and revised management plan shall be reviewed and approved by the Culture Committees and Preservation and then presented to Tribal Council for final approval.