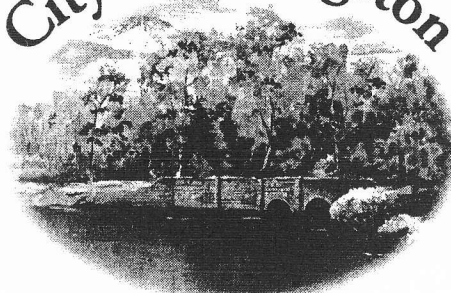


City of Livingston



Incorporated 1889

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Mr. Kerry Fee, President,
Joe Brooks Chapter of Trout Unlimited
P.O. Box 1378
Livingston, MT 59047

Re: Fleshman Creek Flow Maintenance Agreement

Dear Mr. Fee,

This letter memorializes a meeting held in my office on Monday, June 30, 2008, to discuss the City of Livingston's management of stream flows in Fleshman Creek pursuant to the June 28, 2004 Fleshman Creek Flow Maintenance Agreement. In attendance, with me, were Clint Tinsley, Public Works Director for the City of Livingston, Scott Opitz from the Montana Department of Fish, Wildlife, and Parks (FWP), and from Trout Unlimited (TU), the President and Secretary of the Joe Brooks Chapter (Kerry and Sharon Fee), the Executive Director of Montana Trout Unlimited (Bruce Farling) and the Director of Trout Unlimited's Montana Water Project (Laura Ziemer). While a range of topics relating to Fleshman Creek were discussed at the June 30, 2004 meeting -- from beavers to storm drains -- this letter focuses on the interest of TU and FWP in maintaining stream flows that benefit the aquatic community of the stream.

- 1. Flushing Flow—28 to 35 cfs.** The group revisited the channel maintenance flow previously identified to clean gravels and flush sediment through the stream system. The range for the flushing flow was reconfirmed as between 28 and 35 cfs. The timing of this flushing flow was also reconfirmed as best occurring in a window from March to May, before the Yellowstone River reaches its peak, and before the Sacajawea Park swimming pool is in operation, when the flushing flow could interfere with the pool's filter room. The duration of this flushing flow would be between 3 and 5 days annually, and will be accomplished by removing one stop plank at a time from the Sacajawea Lagoon outlet.
- 2. Minimum Flow---10 cfs.** The group identified 10 cfs as the recommended minimum flow based on the June 14, 2004, Memo from Pat Byorth to Gary Weiner. The group agreed that the Fleshman Creek Flow Maintenance Agreement should articulate that 10 cfs is the target minimum flow for Fleshman Creek, particularly in light of the difficulties experienced in recent drought years. The June 14, 2004, Byorth memo also includes a recommendation that pool maintenance requiring a reduction in flows



occur between mid- and late-May in order to avoid drying up incubating rainbow trout eggs.

The group also discussed some needs of the City of Livingston in order to better meet the Fleshman Creek Flow Maintenance Agreement:

- Clint Tinsley identified a problematic head-gate on Fleshman Creek that required nearly daily maintenance in the summer months. TU Chapter President Kerry Fee and FWP Biologist Scott Opitz agreed to accompany Clint Tinsley at another time to inspect the problematic head-gate, identify the problems associated with the head-gate and explore solutions for maintenance.
- The group discussed the rather ambiguous legal nature of the ownership of Fleshman Creek. As an old channel of the Yellowstone River, the City would assert that such ownership, and corresponding responsibility for creek flow management, probably rests with the State of Montana (not excluding the City's water rights). The City does not have the expertise, or resources, to be responsible for such issues, especially in a body of water over which its legal authority is questionable.
- The group agreed a measuring device on Fleshman Creek at the outlet of the Sacajawea Lagoon would be helpful in both monitoring and adjusting flows. TU's Montana Water Project will investigate the possibility of installing a staff gauge and developing a rating curve for the staff gauge, and will contact the City about options for moving forward.

Installation of the flow measurement gage is important to the City, as they contend that there are several other factors that impact the flows in Fleshman Creek – beyond the City's control:

- Beaver Dam Mitigation (FWP)
- Culvert/Bridge Maintenance (Park County)
- Bank Stabilization & Maintenance & Construction (Conservation District)
- Unclear property ownership of property along/in Fleshman Creek.

Therefore, measuring flow at the outlet of the Sacajawea Lagoon would document whether the City is satisfying its responsibilities regarding minimum stream flows in the Fleshman Creek. As stated above, beyond the outlet point (measuring gage), the City does not believe it is in a position of authority and/or responsibility with regard to stream flow levels.

In closing, the group discussed an annual, informal, meeting between the City of Livingston, the Department of Fish, Wildlife, and Parks, and the Joe Brooks Chapter of Trout Unlimited, each fall, to review Fleshman Creek flows and habitat issues over the summer, identify problem areas for future management, and discuss possible solutions as partners in maintaining the health of Fleshman Creek as an amenity for the City of Livingston.

Respectfully,

 7/9/8

Cc: Livingston City Commission
Public Works Director, Clint Tinsley
FWP Biologist, Scott Optiz
MTU Executive Director, Bruce Farling
TU Montana Water Project, Laura Ziemer