

**SUMMARY - IMPLEMENT NEGOTIATED WATER COMPACTS WITH MONTANA TRIBAL GOVERNMENTS;
CSKT – MONTANA WATER RIGHTS COMPACT**

- The CSKT –Montana Compact consists of two main components: the Compact, and the Unitary Management Ordinance. The Compact quantifies the Tribes right and sets forth the conditions on their use; the Ordinance fills the existing on-Reservation regulatory void and provides a joint State-Tribal body to administer all water rights on the Reservation. A third document, the Flathead Indian Irrigation Project (FIIP) Water Use Agreement (WUA) addresses the use of the water rights for the FIIP (*not* private rights held by irrigators personally) and CSKT instream flow rights for streams also supplying the FIIP. The WUA is a separate agreement among the FIIP, the Tribes, and the United States. It does not require legislative approval. However, the Compact cannot be fully administered without a WUA. Aspects of an earlier draft of the WUA are presently being litigated. This bill is made subject to approval of the WUA by the FJBC with a contingent effectiveness clause.
- This document summarizes the Compact. The Compact:
- Completely protects all current water users of non-irrigation rights in all water basins on- and off-reservation from the Tribes’ exercise of their senior water rights.
- Will protect on-reservation irrigators within the FIIP through the WUA. See attached summary of the WUA.
- Protects non-project on-reservation irrigators in one of two ways: 1) by providing protection from call for an amount of water use similar to that provided for FIIP irrigators; or 2) through specific limitations on the enforceable levels of tribal instream flow rights to ensure protection of irrigation rights decreed in the Adjudication. The applicable mechanism depends on the geographical location of the water rights protected.
- Establishes a Unitary Management Ordinance to govern the administration and enforcement of all water rights within the boundaries of the Flathead Reservation. See attached summary of Ordinance.
- Provides water for the Tribes for existing and future tribal water needs, both consumptive and instream flow, to settle for all time the Tribes’ claims to reserved water rights.
- Provides for an allocation of water from the Flathead River, including 90,000 acre-feet of water stored in Hungry Horse Reservoir, for the Tribes to use or lease within the State of Montana, of which 11,000 acre-feet must be made available for lease for off-reservation mitigation of new or existing uses.
- Provides a process for the Tribes to lease portions of their water rights within the State of Montana.
- Does not change any off-reservation jurisdictional arrangement (e.g, for quantification or issuance of water rights, water quality, species management) – which remain as they presently are under state law.
- Settles off-reservation instream flow rights for the Tribes, to which they have strong legal claims as a result of particular language in the 1855 Hellgate Treaty (the right to “take fish” in the Tribes’ “usual and accustomed” locations). Federal case law interprets this treaty language to include water rights outside the reservation to maintain fisheries flows.
- CSKT are the only tribes in Montana with treaty language supporting off-reservation instream flow water rights. This settlement is not a precedent for other Montana tribes to seek to reopen their settlements to assert off-reservation water rights claims. There is specific language in this settlement on this point.
- Secures, in exchange for the rights and benefits recognized by the Compact, the waiver and relinquishment of all other reserved water rights claims the Tribes could otherwise make in Montana, including the vast majority of their potential off-reservation claims both west and east of the Continental Divide.

CSKT WATER RIGHTS-ON RESERVATION

- On-reservation instream flow rights recognized at specific measurement points. These rights are quantified in detail in Compact appendices 10, 11 and 12.
- FIIP right recognized as part of Tribal Water Right, eliminating need for a Water Court dispute over competing claims filed by US and FJBC. Exercise of FIIP right is subject to WUA. If the WUA is not ratified, the Montana Legislature’s approval of the Compact will not be effective.

- Water right from mainstem of Flathead River (“Flathead System Compact Water”) of 229,000 acre feet for future development or lease, including 90,000 acre-feet from Hungry Horse.
- The right to maintain the level of Flathead Lake at a minimum pool elevation of 2883 feet above mean sea level. This right does not allow the Tribes to divert water from or draw the lake level down below level stated, either presently or in the future. This right does not change how Lake levels are managed.
- Water rights for wetlands and high mountain lakes located on Tribal trust lands.
- Water right for Boulder Creek and Hellroaring hydroelectric projects (tribally owned).
- Water rights co-owned with MFWP or USFWS (as applicable) for wetlands on lands owned by MFWP/USFWS. Co-ownership does not convey any land management authority.
- Water rights for tribal religious and cultural uses and other existing tribal uses confirmed.
- Compact does not affect Kerr Dam water rights, which are state law-based water rights whose ownership is subject to the terms of the Kerr Dam FERC license and whose attributes will be as finally decreed by the Montana Water Court in the Adjudication.

CSKT WATER RIGHTS-OFF RESERVATION

- Off-reservation time immemorial instream flow rights on mainstems of Kootenai, Swan and Lower Clark Fork Rivers and Placid Creek. Limitations on enforcement of these rights provided in the Compact. Rights set at levels that protect existing uses and allow for future growth.
- Instream rights on four Kootenai River tributaries that lie wholly within National Forest boundaries.
- Co-ownership of various water rights held by MFWP in Bitterroot, Flathead and Blackfoot River Basins, as listed in Appendix 28 and 29.
- Co-ownership with MFWP of former Milltown Dam water right. Change in purpose of that right from hydro to fisheries made by legislative approval of Compact. Right retains 1904 priority. 10 year deferral of enforcement. Additional protections included for junior water users. MFWP will have this right whether or not it is included in the Compact.
- Beneficial interest in contracts for stored water owned by MFWP in the Bitterroot (from Painted Rocks Reservoir and Lake Como). No changes to reservoir management or existing irrigation uses.

CONTRIBUTION TO CSKT SETTLEMENT

- The Compact commits \$55 million State contribution to the CSKT settlement as allocated below:
 - \$30 million to the FIIP to help defray increased pumping costs and for other needs as part of the implementation of the FIIP Water Use Agreement;
 - \$4 million to cost-share stockwater mitigation to replace FIIP stock water deliveries outside irrigation season;
 - \$4 million for improved water measurement;
 - \$4 million to cost-share on-farm efficiency improvements on lands served by FIIP; and
 - \$13 million to Tribes for enhancement of aquatic and terrestrial habitat (part of compromise over settlement of Tribes’ on- and off-reservation instream flow water rights claims).
- Federal funding at a level to be set in the federal ratification bill. Funding level set after tribal-federal negotiations and roughly benchmarked to federal programmatic responsibilities and litigation exposure.

INDIAN WATER RIGHTS COMPACT FUNDING

- Authorizes issuance of \$55 million in General Obligation bonds for the CSKT Compact.
- Authorizes issuance of \$14 million in General Obligation bonds for the Blackfeet Compact to pay the state’s costs for water-related infrastructure projects provided for in MCA 85-20-1505;
- Authorizes issuance of \$3 million in General Obligation bonds for the Fort Belknap Compact - Peoples Creek minimum flow account, MCA 85-20-1007.