

SUMMARY
UNITARY MANAGEMENT ORDINANCE
CSKT – MONTANA WATER RIGHTS COMPACT

The Compact establishes a Unitary Management Ordinance (Ordinance) and a State-Tribal Water Management Board (WMB) to govern the administration and enforcement of all water rights within the boundaries of the Flathead Reservation, filling the regulatory void that currently exists on the Reservation as a consequence of a series of Montana Supreme Court decisions.

Some important facts about the Ordinance:

- Applies equally to tribal members and non-members.
- Governs issuance of new water rights and authorizations to change existing water rights, and enforcement.
- Largely but not completely mirrors Montana Water Use Act.
- Cannot be amended unless the Tribes and State jointly agree.
- Does not apply (and the WMB does not have jurisdiction) outside the reservation.

The WMB is composed of five voting members, two appointed by the Governor, two by the Tribes, fifth by the four appointed members. A sixth, non-voting member is appointed by the US. WMB members must live on or do business within the Reservation. A Water Engineer, under the supervision of the WMB, will be responsible for the day-to-day implementation of the Ordinance and the administration of water rights on the Reservation.

Acquiring New Water Rights on the Reservation

The Ordinance provides a process for applying for and receiving new Appropriation Rights or Change in Use Authorizations in a manner that largely mirrors the existing State law processes.

The Ordinance provides for streamlined permitting of small domestic and stock uses.

- Three types of Domestic Allowance: Individual, Shared, and Development. All available with basic application form and strict time frames for approval by the Office of the Engineer. No mitigation requirements.
- Individual and Shared Domestic Allowances – up to 35 gpm & 2.4 acre feet per year (afy) and no measurement requirement.
- Development Domestic Allowance – up to 35 gpm & 10 afy and measurement requirement to protect existing users.

- Three types of Stock Water Allowance: Stock Water Well Allowances, Stock Water Pit Allowances, and Stock Water Tank Served by Surface Water Allowances.
- No mitigation or measurement required.
- Well Allowance is up to 35 gpm & 2.4 afy; Pit Allowance is up to a pit capacity of 5 af and appropriation of 10 afy; Surface Water Allowance is up to 10 gpm and 2.4 afy.

The Ordinance provides specific provisions for permitting redundant and substitute wells, geothermal heating or cooling wells, water for road construction & dust abatement, new uses from Flathead System Compact Water, and wetlands and provides for temporary emergency appropriations.

Documenting Existing Water Rights on the Reservation - Registration Process:

- **No registration is required for valid existing State-based water rights presently on record with the MT DNRC** (claims in the Adjudication, permits issued by DNRC, certificates of water right issued by DNRC).
- **No registration required for those small domestic and stock uses** filed with DNRC since 1996 (on DNRC Form 602 or 605) but ‘suspended’ due to Montana Supreme Court’s removal of DNRC’s administrative authority to grant water rights on the Reservation. These uses are automatically protected under the Compact and Ordinance.
- Registration of existing uses of the Tribal Water Right: Process for people claiming uses of the Tribal Water Right in existence on the Effective Date of the Compact to register those uses with the WMB. Registration is necessary so those uses may be administered and protected.
- Registration of certain previously unrecorded uses : 1) People with pre-1973 domestic or stock uses who did not have to and did not file a claim for those uses in the adjudication; and 2) people with post-1973 domestic or stock uses who did not file completion forms (DNRC Form 602 or 605) with the DNRC. Registration is necessary to protect and administer those uses.

Water Right Enforcement

- The Ordinance creates a process for resolution of disputes between or among water users. Disputes that are exclusively among Flathead Indian Irrigation Project (FIIP) water users remain the responsibility of the FIIP to resolve.
- Enforcement is a user-driven, locally controlled process. Complaints may be lodged with the Water Engineer and decisions appealed to the WMB. Appeal of WMB decisions available to court of competent jurisdiction.
- WMB has authority to appoint water commissioners by unanimous vote of all five voting WMB members. Powers and duties of the water commissioner are defined in the Compact and are similar to State statutes governing water commissioners.