

## Most Frequently Asked Questions/Assertions by County & Local Governments

### The Compact may not be used as a vehicle to take irrigation project water rights or individual irrigators' water rights and transfer them to the Tribes.

**Response:** The assertion that the quantity of water allocated to the irrigation project is significantly less than historical use is not accurate, and the Compact gives irrigators water deliveries based on historic on-farm deliveries. Under the Compact, irrigation water will be provided to irrigators pursuant to a system of River Diversion Allowances that take into account transmission losses and inefficiencies between the river diversion point and the farm turnout. In response to concerns expressed in 2013 about the accuracy of the model used to set the River Diversion Allowances, the Compact now contains provisions for an evaluation process to adjust the River Diversion Allowances to assure irrigators get the water they have historically received.

### The unitary management (the Board) set up by the Law of Administration improperly removes involvement of the state water court in administration of water rights on the reservation, treats Montana citizens within the FIP differently than citizens elsewhere, and disproportionately favors tribal representatives as to review, adjudication and control of water rights on the reservation and directs appeals from Management Board decisions to an undefined court of competent jurisdiction.

**Response:** The Tribes have reserved water rights and treaty rights under both federal and state law. Those rights affect water rights arising under State law. In light of that, the question of who administers the water rights within the Reservation was one of the questions that had to be dealt with in the Compact. Montana's Compacts with some other Tribes have set up dual administration, with the Tribes administering tribal rights and the State administering state-based rights. Even with dual administration, the State wouldn't fully control administration of water rights within the Reservation.

In this Compact, the negotiated resolution sets up a unitary administration under a five-member Board with two members selected by the Tribal Council, two by the Governor, and the fifth by the four other appointees, or, in case of a deadlock, by the Chief Judge of the U.S. District Court for the District of Montana, a balanced and practical approach that does not disproportionately favor any interest. In setting up the unitary management system, the Commission ensured that the rules the unitary administrator (the Water Management Board set up by Article IV.I.) would have to apply would be both explicitly spelled out pursuant to the Compact, to avoid disparate treatment of any water users, and consistent with State water law except where specific departures from current State law were appropriate.

The Compact does define Court of Competent Jurisdiction, and in such a way that in event of disagreements by the litigants, the Court will end up being the United States District Court rather than a State Court or Tribal Court.

The alternative to the Compact solution of unitary management would be litigation in which a court would try to find a solution, but even the court would be constrained to recognize trial rights under applicable law, meaning the solution would not be for full State control over water rights within the Reservation.