

## Montana Water Rights Protection Act FAQs

Q: What is the Montana Water Rights Protection Act?

A: The federal Montana Water Rights Protection Act (MWRPA) authorizes and confirms the water rights settlement entered into by the United States, the State of Montana, and the Confederated Salish and Kootenai Tribes of the Flathead Reservation of Montana (CSKT Compact).

Q: What does the MWRPA have to do with a land exchange?

A: Section 13(j) of the MWRPA authorizes the exchange of up to 36,808 acres of state trust lands within the boundaries of the Flathead Reservation for federal public lands within Montana managed by the U.S. Secretary of Agriculture (such as Forest Service lands) or Interior (such as Bureau of Land Management lands). See pp. 1856-1859 of the Consolidated Appropriations Act of 2021 (Public Law 116-260) available here: [PUBL260A.PS \(congress.gov\)](#).

Q: Why is this happening now?

A: The MWRPA was part of a larger package of bills signed into law by the President on December 27, 2020, known as Public Law 116-260. The provisions of Public Law 116-260 governing the CSKT Compact became effective September 17, 2021 and are now being implemented.

Q: When is the exchange going to happen?

A: Land exchanges between states and the federal government are lengthy processes. The MWRPA requires that the Secretaries of the Departments of Agriculture and Interior prioritize exchanges of federal public land and Montana state trust lands during the next five years.

Q: What does “state trust land” mean in the MWRPA?

A: “State trust land” is defined in the MWRPA as approximately 36,808 acres of land located within the boundaries of the Flathead Reservation obtained by the State of Montana pursuant to the 1889 Montana Enabling Act, the 1904 Flathead Allotment Act, or the 1920 Mineral Leasing Act. “State trust land” does not include state parks owned or controlled by the Montana Department of Fish, Wildlife and Parks. Not all state trust lands within the Flathead Reservation will be eligible for or participate in the exchange.

After reviewing current ownership information, the Montana Department of Natural Resources and Conservation (DNRC) has determined that there are approximately 29,200 surface acres of state trust land within the boundaries of the Flathead Reservation. A map of those lands is available at <http://dnrc.mt.gov/divisions/trust/docs/montana-dnrc-and-cskt-exchange-planning-map-72x96-reduced.pdf>. Although there are additional mineral acres held in trust by DNRC, only surface acres are eligible for exchange.

Q: What benefits will the State recognize by participating in the land exchange?

A: Some state trust lands within the Reservation are difficult to access and are scattered in a checkerboard fashion throughout the landscape, making management difficult. It may be in the trust's best interest to replace these lands with consolidated lands that have better access and greater revenue generating opportunities for the benefit of the trust beneficiaries.

Q: What will happen to my lease?

A: If you have a leasehold interest in state trust lands, DNRC will be reaching out to you to determine whether your land is eligible and appropriate to participate in the exchange. If your leased land is selected and approved for participation in the exchange, your lease would terminate on March 1 in the year following the exchange, with some exceptions. Future agreements for leasing would then be handled by CSKT or the Bureau of Indian Affairs (BIA), subject to applicable Tribal or federal rules.

Q: What will happen to my lease if my leased property does not participate in the exchange? If your leased land is not included in the exchange, your lease will continue to be administered much as it has been in the past, subject to the direction of the DNRC and the Board of Land Commissioners (Land Board).

Q: What if I hold a license with DNRC and not a lease?

A: Licenses are temporary authorizations that are secondary to the primary use of the state trust land, such as a grazing license on state trust land primarily leased for timber. In most cases, licenses would be cancelled before a proposed land exchange is finalized. It would then be up to the CSKT or BIA to determine whether and how to authorize those uses in the future.

Q: What criteria does the State consider for land exchanges?

A: The Land Board considers a number of criteria before approving any proposed land exchanges, including value, revenue generation, long-term appreciation, and water features. Lands acquired must also provide public access and consolidate state trust land holdings where feasible. Land exchange criteria can be found in the Land Board's Land Exchange Policy here: [Microsoft Word - Land Exchange Policy final 1 12-05.doc \(mt.gov\)](#).

Q: What are the federal and state procedures for a land exchange to occur?

A: The MWRPA states that any exchange shall be conducted in accordance with Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), available here: [The Federal Land Policy and Management Act of 1976 as amended \(blm.gov\)](#). All exchange of state trust lands shall be in accordance with the Land Board's Land Exchange Policy, available here: [Microsoft Word - Land Exchange Policy final 1 12-05.doc \(mt.gov\)](#)

Q: Can I purchase the land?

A: The Land Board occasionally sells state trust lands meeting certain criteria, including cabin and home sites. The DNRC will be contacting cabin and home site lessees with more information about the cabin and home site purchase program.

Q: If the land is exchanged, what happens to my privately-owned property located on the lease?

A: Your privately-owned property can be removed if your lease is terminated as a result of the exchange. In addition, state law has provisions to compensate for privately-owned improvements (such as fences) that remain after a lease is terminated, and the value of those improvements will be considered under MWRPA in the appraisal process.

Q: How does this affect state parks or other state-owned lands within the Reservation?

A: Only state trust lands administered by the DNRC on behalf of the Land Board are potentially affected by the land exchange. Lands under the control of the Department of Fish, Wildlife and Parks or other state agencies are not subject to MWRPA's land exchange provision.

Q: Will there be an opportunity for public comment and input?

A: Yes. All proposed land exchanges under the MWRPA will be subject to both the Montana and National Environmental Policy Acts. The Montana Environmental Policy Act (MEPA) and the National Environmental Policy Act (NEPA) provide multiple opportunities for public involvement and comment. In addition, decisions by the Land Board are public meetings with public comment opportunities.

Q: Who should I contact with questions?

A: Please contact Kelly Motichka Agriculture and Grazing Bureau Chief, at (406) 444-3847 or Ryan Weiss, Real Estate Management Bureau Chief, at (406) 444-3844.