



**The CSKT-MT Compact: Flathead Water Management Board, Registration of Existing Uses,
Adjudication, and other Frequently Asked Questions**

October 6, 2021

1. What is the CSKT-Montana Water Compact?

The Reserved Water Rights Compact Commission (RWRCC) was established by the 1979 Montana Legislature to negotiate the water rights of Montana tribes and federal enclaves. These negotiations resulted in numerous water right agreements (i.e., compacts). The objective was to quantify federal and tribal reserved rights to contribute to the resolution of water claims through a “unified proceedings” in Montana’s adjudication of water rights. The Compact quantifies the Tribal reserved right of the Confederated Salish and Kootenai Tribes of the Flathead Reservation (“CSKT” or “Tribes”), providing certainty to Montana water users in perpetuity. It also provides funding for the rehabilitation of the Flathead Indian Irrigation Project and the flexible management of up to 90,000 acre-feet of water per year from the Flathead system, both of which will contribute to the goal of providing water to satisfy the Tribal reserved right while protecting State-based water users.

2. What is the Unitary Management and Administration Ordinance?

On the Effective Date, the [Unitary Administration and Management Ordinance](#) (“Ordinance”) took effect, and the Water Management Board (“Board”) was established. The Ordinance governs all water rights within the exterior boundaries of the Reservation.

3. What is the Flathead Water Management Board?

The Compact establishes a Water Management Board to administer the Ordinance on the Reservation. The Board has five voting members: two members selected by the Governor; two members appointed by the Tribal Council; and one member selected by the other four members. The Secretary of the Interior may appoint a sixth, non-voting member. The Compact and Ordinance describe the powers and duties of the Board.

4. What is the Office of the Engineer?

The Compact and Ordinance provide for the hiring of a Water Engineer and staff to be the technical arm of the Board. The Office of the Engineer is like a DNRC regional office in its day-to-day activities—reviewing water right applications, entering them into the DNRC water rights database, answering questions from the public, assisting with forms, etc. Unlike a regional office, however, the Office of the Engineer does not ultimately approve water right applications. These must be formally approved or denied by the Board. In essence, the Water Engineer is the professional staff, or operating arm, of the Board.

5. What is a Registration of Existing Use and why is it needed?

Regarding state-based existing uses, in the late 1990s, the Montana Supreme Court ruling in the *Ciotti* line of cases divested the Montana DNRC of regulatory jurisdiction (creating a 25-year regulatory void) to permit new water uses on the Flathead Indian Reservation until the Tribes' reserved water rights were fully quantified. To resolve this issue, the Ordinance provides registration opportunities for existing State-based water uses (Section 2-1-106 & 2-1-107). The Ordinance also provides registration opportunities for existing uses of the Tribal Water Right (Section 2-1-101 & 2-1-102).

6. What is the difference between a State-based registration and a tribal registration – which one should I file?

Only the Tribes, Tribal Members, and Allottees who have an Existing Use (as defined in the Ordinance) can file for a registration of the Tribal Water Right. Questions about Tribal registrations should be directed to the CSKT. Allottees are owners of an interest in a tract of land held in trust by the United States which was allotted pursuant to the Act of April 23, 1904, 33 Stat. 302, as amended, or the Act of February 25, 1920, 41 Stat. 452, as amended.

State-based registrations can be filed for an eligible Existing Use, so long as the person(s) filing the registration have possessory interest in the points of diversion, conveyances, and place of use.

7. What is an eligible State-based “existing use” that can be registered under the Ordinance?

Existing water uses on the Flathead Reservation developed before the Effective Date (**9/17/2021**) that were not previously filed for with DNRC may be registered with the Board for a limited, 180-day time period following the Effective Date. **See the DNRC Registration Webpage for more information (<http://dnrc.mt.gov/cskt-mt-compact-registrations>).**

8. Do I need to file for a State-based registration?

The answer to this question depends on whether you or a predecessor already filed on this water use. This registration process is designed to give State-based water users a chance to register previously unrecorded exiting uses. Recognizing the uncertainty created by the *Ciotti*¹ decisions, the parties to the Compact thought it important to provide a registration opportunity for unrecorded existing State-based uses.

See the “Water Rights Query System Instructions” document linked on the DNRC Registrations webpage (<http://dnrc.mt.gov/divisions/water/water-compact-implementation-program/docs/cskt/registrations/water-right-query-instructions.pdf>).

¹ See *Confederated Salish & Kootenai Tribes v. Clinch*, 2007 MT 63, ¶ 34, 336 Mont. 302, 317, 158 P.3d 377, 387 (overruled by *In re Est. of Big Spring* on other grounds) (citing *Matter of Beneficial Water Use Permits*, 278 Mont. 50, 923 P.2d 1073 (1996) (*Ciotti*); *Salish and Kootenai Tribes v. Clinch*, 1999 MT 342, 297 Mont. 448, 992 P.2d 244 (*Clinch*); *Salish and Kootenai Tribes v. Stults*, 2002 MT 280, 312 Mont. 420, 59 P.3d 1093 (*Stults*)).

9. If the Effective Date of the Compact (9/17/2021) triggers the opportunity to register State-based existing uses, how does the public file registrations when the Board is not yet formed?

DNRC's Water Resources Division Regional Offices in Kalispell and Missoula will accept these registration forms on behalf of the Board for the 180-day time period following the Effective Date. Fees will be paid to "DNRC for the benefit of the FWMB." Forms and fees will be transferred by DNRC to the Board and Office of the Engineer after they become operational.

10. How long do I have to file a registration for a State-based existing use?

The filing period for eligible existing uses is limited to 180 days starting on September 17, 2021 and ending on March 16, 2022.

11. Until the Board and Office of the Engineer are operational, is there a way to apply for new water rights or change in use authorizations on the Reservation?

No, there is no way to apply for new water rights or changes in use until the Board and Office of the Engineer are operational. As a practical matter, this regulatory status quo has existed on the Reservation since the Montana Supreme Court decision in *Ciotti*² in August of 1996. DNRC will not accept any applications for new appropriations developed after the Effective Date or changes to existing water rights and will instead instruct the public to wait for the formation of the Water Management Board and to apply to the Board once it is operational.

12. When can I apply for water uses developed after the Effective Date?

All water uses developed after the Effective Date (09/17/2021) require pre-approval from the Board, so the Board must form and the Office of the Engineer must be operational before new developments occur. DNRC will not accept any water use applications for water developed after the Effective Date.

13. When will the Water Management Board form and be open for business?

Board members are to be appointed within six months of the Effective Date, by March 16, 2022. It is difficult to estimate how many days or months it will take for the Board and Office of the Engineer to become operational. Once the Board has been formed, the Board will establish the Office of the Engineer.

² See *Confederated Salish & Kootenai Tribes v. Clinch*, 2007 MT 63, ¶ 34, 336 Mont. 302, 317, 158 P.3d 377, 387 (overruled by *In re Est. of Big Spring* on other grounds) (citing *Matter of Beneficial Water Use Permits*, 278 Mont. 50, 923 P.2d 1073 (1996) (*Ciotti*); *Salish and Kootenai Tribes v. Clinch*, 1999 MT 342, 297 Mont. 448, 992 P.2d 244 (*Clinch*); *Salish and Kootenai Tribes v. Stults*, 2002 MT 280, 312 Mont. 420, 59 P.3d 1093 (*Stults*)).

14. Does the Water Management Board have jurisdiction over water rights located off the Reservation?

No. The Board's jurisdiction is limited to water rights located within the exterior boundaries of the Flathead Indian Reservation.

15. How does the Effective Date or the formation of the Board affect the Montana Water Court's jurisdiction to adjudicate water rights located on the Reservation?

The Effective Date alters nothing regarding the Montana Water Court's jurisdiction to adjudicate State-based water right claims filed in the general statewide adjudication for water uses located on the Flathead Indian Reservation (or elsewhere).

16. Does the Water Court review the Compact and can people file objections with the Water Court?

Within 180 days of the Effective Date (by 3/16/2022), the Parties to the Compact shall file in the general adjudication the proposed decree for the Montana Water Court's approval.

For questions not addressed here, feel free to contact DNRC Compact Implementation Staff:

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