

## **SB 262 - CSKT COMPACT**

### **Compact provisions that apply both on and off of the reservation include:**

- All stock rights are 100% protected – the Tribes cannot place a call. (p. 23, l. 7-11).
- All domestic water rights are 100% protected – the Tribes cannot place a call. (p. 23, l. 7-11).
- All municipal, industrial, commercial and all other non-irrigation water rights are 100% protected – the Tribes cannot place a call. (p. 23, l. 7-11).
- All irrigation water rights using groundwater with flows of 100 gpm or less are 100% protected – the Tribes cannot place a call. (p. 23, l. 11-15).
- The Compact cannot be used as precedent and has no effect on the water rights of other tribes or other federal reserved water rights. (p. 47, l. 5-17).
- The Tribes cannot claim any additional water rights. The water rights and other benefits contained in the Compact are in full and final satisfaction of all of the Tribes' claims to water or to the use of water. (p. 53, l. 26 – p. 54, l. 21).

### **Compact provisions that apply off of the reservation include:**

- The Tribes are not granted any water rights east of the continental divide.
- The Compact does not close any basins to new appropriations of water.
- The Flathead Reservation Water Management Board has no authority over any off-reservation water rights. (p. 40, l. 14-22).
- Lower Clark Fork River (Basins 76M & 76N) – The Tribes' instream flow water right is tied to FERC's minimum release requirements for Cabinet Gorge or Noxon Dams so no calls will result from this right. If FERC reduces the minimum release requirements, the Tribes' flow rate will also be reduced. The right cannot be changed to any other use, transferred to different ownership, or be diverted from the stream, and the Tribes cannot place a call on the tributaries to the Clark Fork. (p. 18, l. 2-23).
- Kootenai River (Basin 76D) - The Tribes' instream flow water right cannot be enforced as long as Libby Dam remains in existence. If Libby Dam is ever removed, the Tribes may not make a call on water users on the tributaries of the Kootenai River. The right cannot be changed to any

other use, transferred to different ownership, or be diverted from the stream. (p. 16, l. 9 – p. 17, l. 13).

- Kootenai River Tributaries (Basin 76D) - The Tribes are granted an instream flow water right for the Kootenai River tributaries of Big Creek, Boulder Creek, Steep Creek, and Sutton Creek. The DNRC database shows no water rights on Boulder Creek, Steep Creek, or Sutton Creek and the only rights on Big Creek are claimed by the U.S. Forest Service, which is not subject to call by the Tribes. (p. 22, l. 10 -28).
- Swan River (Basin 76K) – The Tribes’ instream flow water right on Swan Lake is measured below Pacific Power’s dam near Big Fork, MT so satisfaction of the existing hydro right will largely satisfy the tribal right. The flow rate is set at a low level which is usually exceeded. The right cannot be changed to any other use, transferred to different ownership, or be diverted from the stream. (p. 17, l. 14 – p. 18, l. 1).
- Bitterroot River (Basin 76H) – The Tribes do not receive any new water rights on the Bitterroot River. Instead, they are designated as an intended beneficiary of DFWP’s contracts for water from Painted Rocks Reservoir and Lake Como, and are granted co-ownership with DFWP of a junior July 1, 1970 instream flow water right. (p. 20, l. 25 – p. 21, l. 21 & p. 18, l. 24-28, Appendix 29).
- Flathead River, Middle Fork Flathead River, & South Fork Flathead River (Basins 76LJ, 76I, & 76J) – The Tribes do not receive any new water rights, but are granted co-ownership with DFWP of junior 1970 rights to the Flathead River and the Middle Fork, and junior 1970 and 1971 rights on the South Fork. (p. 18, l. 24 – p. 19, l. 11; Appendix 28).
- Upper Clark Fork River & Blackfoot River (Basins 76G & 76F) – The Tribes do not receive any new water rights, but are granted co-ownership with DFWP of the 1904 Milltown Dam water right for 2,000 cfs. This right is divided between the two rivers so the so the minimum enforceable flow rate on the Clark Fork River is 500 cfs and the minimum enforceable flow rate on the Blackfoot River is 700 cfs. The right to make call is suspended for a period of ten years. The Tribe is also granted a co-ownership with DFWP of a junior 1971 right on the Blackfoot River. (p. 19, l. 12 – p. 20, l. 24).
- Rock Creek River (Basin 76E) - The Tribes do not receive any new water rights, but are granted co-ownership with DFWP of a junior 1971 water right. (p. 18, l. 24 – p. 19, l. 11; Appendix 28).
- The Compact includes 90,000 acre-feet of water stored in the Hungry Horse Reservoir which the Tribes may leased on or off of the reservation

for a term not to exceed 99 years with a renewal for an addition 99 years. Any lease of water off of the reservation is treated as a change in use and processed by DNRC under Montana law. (p. 11, l. 28-30 & p. 28, l. 1-6).

- The Tribes' stored water from Hungry Horse Reservoir includes 11,000 acre-feet that may be leased for mitigation of net depletions arising from new or existing domestic, commercial, municipal, or industrial uses of water within the Flathead or Clark Fork Basins. The price is set at \$40 per acre-foot with an inflation index. DNRC has the responsibility to determine if, when, where, and how much mitigation water is needed for any proposed new development. (p. 32, l. 20 – p. 34, l. 18).

**Compact provisions that apply on the reservation include:**

- Priority date for Flathead Indian Irrigation Project (FIIP) is July 16, 1855. (p. 11, l. 2).
- FIIP may serve up to 135,000 acres. (p. 10, l. 28-29).
- The Tribes relinquish the right to make a call against state-based irrigation water rights on the reservation within the FIIP influence area if the owners enter into consensual agreements setting forth the amount of water protected and requiring diversions to be measured and limited to the irrigation season. (p. 23, l. 17 – p. 25, l. 17, Appendix 2).
- The enforceable target instream flow schedule must be based on a water budget that allows valid on-reservation water rights to be exercised. Water users may object to the instream flow schedule if it will have an adverse effect on the objector's water right. (p. 13, l. 19-23 & p. 85, l. 29 – p. 86, l. 3).
- River diversion allowances are set for the Flathead Indian Irrigation Project. Implementation of the diversion amounts are delayed until operational improvements are made to the irrigation project. (p. 35, l. 28 – p. 36, l. 11, Appendix 3.4).
- River diversion allowances will be evaluated by the Compact Implementation Technical Team to ensure their adequacy to meet historic farm deliveries once all operational improvements have occurred. If measured diversions to farm turnouts do not meet historic farm deliveries, actual diversions shall be adjusted and additional water will be provided through an increase of the Flathead River pumping plant diversion. (p. 36, l. 12-22).
- The Compact Implementation Technical Team consists of members appointed by the Tribes, U.S., State of Montana, FIIP project operator, and

FIIP irrigators. The FIIP irrigator member must own a minimum of 40 acres served by the FIIP and must have ten years of experience in irrigated agriculture. (p. 38, l. 8-14, Appendix 3.5)

- Shared Shortages - When water supplies are inadequate to simultaneously satisfy an enforceable instream flow water right and a corresponding river diversion allowance, shared shortages provision are activated by the Compact Implementation Technical Team to maintain the river diversion allowance. (p. 37, l. 4 – p. 38, l. 1).
- During periods of shared shortages, the Tribes must make water available for short-term lease at the cost of \$8 per acre-foot plus a \$25 administrative fee per lease. These prices are indexed for inflation. (p. 30, l. 21 – p. 31, l. 6).
- The Compact Implementation Technical Team is required to implement an adaptive management and water measurement program to carry out the provisions of the Compact. (p. 38, l. 8-11, Appendix 3.5).
- Each owner of assessed land within FIIP is entitled to receive a delivery entitlement statement which runs with the land. (p. 36, l. 27 – p. 37, l. 3).
- The Compact includes a State contribution of \$55 million which includes \$12 million for operational improvements including stock mitigation, on-farm efficiencies, and water measurement; \$30 million for pumping water from the Flathead River; and \$13 million for habitat improvement. (p. 50, l. 6-14).
- The Tribes agree to make low cost power from Kerr Dam available in an amount necessary to pump approximately 46,000 acre-feet of water per year to the FIIP. (p. 39, l. 11 – p. 40, l. 12).
- The Compact also include rehabilitation and betterment projects which are intended to be funded by federal appropriations. (p. 35, l. 7-8, Appendix 3.6)
- The Flathead Reservation Water Management Board has jurisdiction within the reservation to resolve controversies regarding the Compact. The board consist of two voting members appointed by the Governor, two members appointed by the tribal council, and one selected by the other four members. The Governor’s appointment must come from nominations made by the county commissioners of Lake, Sanders, Missoula, and Flathead Counties. (p. 40, l. 13 – p. 41, l. 23).