

SENATE BILL 450 (2007)

To: Chairman Walter McNutt and Natural Resources Committee Members
From: John Carter, Confederated Salish and Kootenai Tribes, Tribal Attorney
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Date: 3/9/2007

THE BILL

1. Amends 87-2-217, MCA by changing the codified Compact Commission termination date of July 1, 2009 to July 1, 2011.
2. Amends 87-2-702 (3), MCA by changing the codified Compact Commission termination date of July 1, 2009 to July 1, 2011, and change the codified period of time for Tribes and the United States to file claims from "within 6 months" of termination to read "within 60 months" of termination of the Compact Commission.
3. Amends 87-2-704, MCA by changing the codified filing period from 6 months to 60 months.

PURPOSE OF THE LEGISLATION

To extend the life of the Montana Reserved Water Rights Compact Commission (Commission) for two years and to provide equity in claim filing time frames between non-Indian state-based claims and Indian reserved water rights claims.

JUSTIFICATION

A. Extending the Life of the Compact Commission

1. The Legislature created the Commission in 1979 to negotiate, rather than litigate, reserved water rights claims of the United States and of the Indian Tribes in Montana. Since its inception, the Commission has successfully negotiated and compacted the reserved water rights claims of the Fort Peck, Crow, Fort Belknap, Northern Cheyenne and Rocky Boy Indian Reservations. IT has also completed compacts with the National Park Service (Yellowstone, Glacier, Big Horn Canyon Recreation Area, Big Hole National Battlefield), the United States Bureau of Land Management (Bear Trap Canyon Recreation Area, Missouri River Wild and Scenic River) and the United States Fish and Wildlife Service (Black Coolee, Benton Lake and Red Rock Lakes National Wildlife Refuges). In addition, the 2007 Senate passed unanimously SB 248, a water rights compact with the United States Forest Service for all Forest Service lands throughout Montana.

2. The current Montana Water Court adjudications were initiated with passage of the Montana Water Use Act in 1973. The State has been divided into ninety basins for purposes of the adjudication. To date the Water Court has issued final water rights decrees in six basins in south-eastern Montana. Those final decrees may be reopened for further adjudication under recent provisions of state law. There are no final Water Court decrees on the remaining eighty-four basins.

3. The Commission has achieved finality in reserved water rights for extensive areas in Montana, with the promise of millions of acres of Forest Service land in the near future. On the other hand, the six final Water Court decrees discussed above are subject to re-examination.

4. Publicly available financial information obtained from the DNRC in Helena demonstrates that since 1980 the combined expenditures of the Water Court and DNRC assistance to the Water Court to adjudicate non-federal and non-Indian water right claims has cost citizens of Montana approximately **\$30,000,000** dollars. Citizens of Montana have paid less than **\$10,000,000** dollars for the work of the Compact Commission.

5. On a pure cost/benefit analysis, the effectiveness of the Commission can not be contested. However, if the Commission is allowed to sunset in 2009, the litigation expense to the State of Montana and all State citizens, the Tribes and the United States will be astronomical. By comparison, water rights adjudication on the Wind River Indian Reservation started in 1979 and is ongoing today. While there is no absolute cost accounting due to the privacy rights of non-governmental litigants, it is anecdotally reported to have cost in the range of **\$20,000,000** dollars to date.

6. A Congressionally-ratified Tribal water rights compact affords Montana great protection against down-stream states taking water from Montana.

7. The Commission has yet to negotiate compacts with the Blackfeet Nation and the Confederated Salish and Kootenai Tribes, and if history teaches, those negotiations will take more than two years.

8. With termination of the Commission in two years as a matter of present law, an extension now could stem the tide of "brain drain" of competent Commission staff seeking a stable employment future elsewhere.

B. Extending the Time to File Claims

9. Under the Water Use Act, any private individual claiming a water right that existed prior to 1973 was allowed three years to file such claim with the DNRC. See 85-2-212, MCA. This time frame applied even if a claimant had only 1 small claim. When that time frame proved insufficient, the Legislature extended, under certain circumstances, the time to file for an additional 14 years. See, 85-2-221 (3), MCA.

10. Under 85-2-702, MCA, all Indian and federal reserved water rights claims must be filed within 6 months of termination of compact negotiations or they are deemed lost forever. The Confederated Salish and Kootenai Tribes anticipate filing over five thousand separate water rights claims should a compact elude them. Simple fairness supports extending the time in which to file those claims.