

1 HOUSE BILL NO. 636

2 INTRODUCED BY D. SALOMON

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A MEANS TO RATIFY THE WATER RIGHTS
5 COMPACT AMONG THE CONFEDERATED SALISH AND KOOTENAI TRIBES, THE STATE, AND THE
6 UNITED STATES; REQUIRING A REVIEW OF THE WATER RIGHTS SETTLEMENT; EXTENDING THE
7 SUSPENSION OF WATER RIGHT ADJUDICATION DURING NEGOTIATIONS OF INDIAN AND FEDERAL
8 RESERVED WATER RIGHTS; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 85-2-217 AND
9 85-2-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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11 WHEREAS, it is the policy of the state to seek negotiated settlements of federal and Indian reserved
12 water rights claims in Montana under Title 85, chapter 2, part 7, MCA; and

13 WHEREAS, pursuant to this policy, the Montana Reserved Water Rights Compact Commission, under
14 section 85-2-702(1), MCA, is authorized to negotiate the settlement of water rights claims filed by Indian tribes
15 or on their behalf by the United States claiming reserved waters within the State of Montana; and

16 WHEREAS, the Montana Reserved Water Rights Compact Commission, the Confederated Salish and
17 Kootenai Tribes, and the United States reached final agreement on a water rights compact on February 26, 2013,
18 but the agreement awaits ratification by the Legislature; and

19 WHEREAS, ratification of the final Confederated Salish and Kootenai Tribes water rights compact with
20 Montana is essential to provide legal certainty with regard to the water rights of Indian and non-Indian water rights
21 holders; and

22 WHEREAS, implementation of the compact will require state and federal cost-sharing, in amounts to be
23 determined by future negotiation among the parties, for the renovation and upgrading of infrastructure on the
24 reservation; and

25 WHEREAS, state law requires legislative ratification of any compact entered into pursuant to section
26 85-2-702, MCA; and

27 WHEREAS, the compact is expected to be ratified by the Legislature in 2015.

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29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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1 **NEW SECTION. Section 1. Legislative findings -- intent.** (1) The legislature finds that:

2 (a) Montana has a long, successful history of negotiating with Indian tribes water rights compacts that
3 quantify and promote development of the reserved water rights, protect state-based water right owners, and avoid
4 costly, protracted litigation;

5 (b) negotiated agreements have been ratified by the legislature with every federally recognized tribe in
6 Montana, except for the Confederated Salish and Kootenai Tribes; and

7 (c) it is in the best interests of the Confederated Salish and Kootenai Tribes, the state, and the United
8 States to ratify a water rights settlement, a goal that can be reached by a review of the compact, research and
9 legal analysis, and public outreach.

10 (2) It is the intent of the legislature:

11 (a) to ratify the compact between the Confederated Salish and Kootenai Tribes, the state, and the United
12 States in 2015;

13 (b) to provide immediate funding to start implementing provisions of the agreed-upon compact prior to
14 ratification; and

15 (c) to communicate to the Confederated Salish and Kootenai Tribes and Unites States that the provisions
16 of [this act] represent a commitment to ratify the final agreement and that alternative measures to increase
17 instream flows on the Flathead Indian Reservation are not necessary prior to 2015.

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19 **NEW SECTION. Section 2. Confederated Salish and Kootenai Tribes water rights compact**

20 **implementation account -- use.** (1) There is an account within the state special revenue fund provided for in
21 17-2-102 called the Confederated Salish and Kootenai Tribes water rights compact implementation account. The
22 department of natural resources and conservation shall administer the account.

23 (2) The department shall authorize expenditures from the Confederated Salish and Kootenai Tribes
24 water rights compact implementation account to the Confederated Salish and Kootenai Tribes pursuant to one
25 or more state-tribal cooperative agreements authorized pursuant to Title 18, chapter 11. The department shall
26 expend funds within the account as follows:

27 (a) \$8 million for the enhancement of aquatic and terrestrial habitat and costs related to water resources
28 on the Flathead Indian Reservation; and

29 (b) \$2 million for water measurement of streams and primary canals of the Flathead Indian Irrigation
30 Project, provided that the agreement reached pursuant to this subsection (2) identifies measurement standards

1 to be employed by projects funded through the agreement.

2 (3) The department shall authorize the expenditure of \$2 million in grants to the legal entity created
3 pursuant to Title 18, chapter 11, that operates the Flathead Indian Irrigation Project. The grants must be spent
4 to enhance on-farm irrigation efficiency or to pay costs related to installing a measurement program for Flathead
5 Indian Irrigation Project deliveries.

6 (4) To implement the provisions of subsection (3), the department shall ensure that:

7 (a) the water measurement and reporting program consists of a comprehensive system of measuring
8 instantaneous and cumulative on-farm diversions and recording those diversions in a central database;

9 (b) although the water measurement devices and their means of operation will vary based on the
10 particular situation at each farm, the water measurement devices universally consist of the best available and
11 appropriate technologies;

12 (c) the measurement devices use standard operating practices and are frequently checked for accuracy
13 and maintained as necessary; and

14 (d) the comprehensive system of measuring and recording diversions has the same accuracy as the flow
15 measurement program operated by the United States geological survey.

16 (5) The department shall distribute the grants provided for in subsection (3) twice a year in equal
17 amounts.

18 (6) Expenditures pursuant to this section must count toward the state contribution to settlement identified
19 in the compact.

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21 **NEW SECTION. Section 3. Flathead Indian Reservation database interoperability account -- use.**

22 (1) There is a Flathead Indian Reservation database interoperability account administered by the department of
23 natural resources and conservation within the state special revenue fund established in 17-2-102.

24 (2) Money received by the department of natural resources and conservation in the form of gifts, grants,
25 reimbursements, allocations from any source, and any interest earned must be deposited in the account.

26 (3) There must be deposited in the account \$25,000 appropriated to the department of natural resources
27 and conservation pursuant to [section 8).

28 (4) Funds in the account may be expended only when the balance reaches at least \$50,000 and may
29 be used only for the purpose of ensuring the interoperability of the water rights database maintained by the
30 department of natural resources and conservation and a database created for water rights within the Flathead

1 Indian Reservation.

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3 **NEW SECTION. Section 4. Interim review -- public outreach.** (1) The water policy interim committee,
4 provided for in 5-5-231, shall conduct a review of the February 26, 2013, water rights settlement between the
5 Confederated Salish and Kootenai Tribes, the state, and the United States and provide information about the
6 settlement to the public.

7 (2) The review must include an analysis of House Bill No. 629 as drafted for the 2013 legislature.

8 (3) The committee may request research and legal analysis from staff of the legislative services division
9 as well as any other individual or entity.

10 (4) The committee shall solicit information from the Confederated Salish and Kootenai Tribes, the state,
11 the United States, the Flathead Joint Board of Control, existing water right owners, and other stakeholders.

12 (5) The committee shall hold at least three meetings outside of Helena in communities affected by the
13 compact to provide information about the compact.

14 (6) The committee shall prepare a report to submit to the 64th legislature and may provide necessary
15 legislation to implement the water rights settlement between the Confederated Salish and Kootenai Tribes, the
16 state, and the United States.

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18 **Section 5.** Section 85-2-217, MCA, is amended to read:

19 **"85-2-217. Suspension of adjudication.** While negotiations for the conclusion of a compact under part
20 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved
21 water rights of those tribes and federal agencies that are negotiating are suspended. The obligation to file water
22 rights claims for those federal non-Indian and Indian reserved rights is also suspended. This suspension is
23 effective until July 1, ~~2013~~ 2015, as long as negotiations are continuing or ratification of a completed compact
24 is being sought. If approval by the state legislature and tribes or federal agencies has not been accomplished by
25 July 1, ~~2013~~ 2015, the suspension must terminate on that date. Upon termination of the suspension of this part,
26 the tribes and the federal agencies are subject to the special filing requirements of 85-2-702(3) and all other
27 requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal
28 agencies that choose not to negotiate their federal non-Indian and Indian reserved water rights are subject to the
29 full operation of the state adjudication system and may not benefit from the suspension provisions of this section."

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1 **Section 6.** Section 85-2-702, MCA, is amended to read:

2 **"85-2-702. Negotiation with Indian tribes.** (1) The reserved water rights compact commission, created
3 by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to
4 conclude compacts authorized under 85-2-701. Compact proceedings must be commenced by the commission.
5 The commission shall serve by certified mail directed to the governing body of each tribe a written request for the
6 initiation of negotiations under this part and a request for the designation of an authorized representative of the
7 tribe to conduct compact negotiations. Compact negotiations commence upon receipt of the written designation
8 from the governing body of a tribe.

9 (2) When the compact commission and the Indian tribes or their authorized representatives have agreed
10 to a compact, they shall sign a copy and file an original copy with the department of state of the United States
11 of America and copies with the secretary of state of Montana and with the governing body for the tribe involved.
12 The compact is effective and binding upon all parties upon ratification by the legislature of Montana and any
13 affected tribal governing body, and approval by the appropriate federal authority.

14 (3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included
15 in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under
16 85-2-233, the terms of the compact must be included in the final decree without alteration. However, if approval
17 of the state legislature and the tribe has not been accomplished by July 1, ~~2013~~ 2015, all Indian claims for
18 reserved water rights that have not been resolved by a compact must be filed with the department within 24
19 months. These new filings must be used in the formulation of the preliminary decree and must be given treatment
20 similar to that given to all other filings."

21
22 NEW SECTION. **Section 7. Fund transfer.** There is transferred \$12 million from the state general fund
23 to the Confederated Salish and Kootenai Tribes water rights compact implementation account created in [section
24 2].

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26 NEW SECTION. **Section 8. Appropriations.** (1) There is appropriated \$12 million to the department
27 of natural resources and conservation from the Confederated Salish and Kootenai Tribes water rights compact
28 implementation account for the purposes described in [section 2].

29 (2) There is appropriated \$25,000 from the general fund to the department of natural resources and
30 conservation for the biennium beginning July 1, 2013, for the purpose of ensuring the interoperability of the water

1 rights database maintained by the department of natural resources and conservation and a database created for
2 water rights within the Flathead Indian Reservation.

3 (3) There is appropriated \$40,000 from the general fund for the biennium beginning July 1, 2013, to the
4 legislative branch for the purposes described in [section 4].

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6 **NEW SECTION. Section 9. Notification to tribal government.** The secretary of state shall send a
7 copy of [this act] to the Confederated Salish and Kootenai tribal government.

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9 **NEW SECTION. Section 10. Contingent voidness.** If both House Bill No. 629 and [this act] are passed
10 and approved, then [this act] is void.

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12 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 3] are intended to be
13 codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [sections
14 1 through 3].

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16 **NEW SECTION. Section 12. Effective date.** [This act] is effective on passage and approval.

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