

## Proposed CSKT Compact is Unconstitutional

Senator Verdell Jackson, Flathead County

The Hell Gate Treaty for the Confederated Salish Kootenai Tribes secured the "right to take fish in common with the citizens of the Territory", **not a water right**; other wise, a group of Montana citizens could get a water right to protect their favorite place to fish. The Tribes' right is in common with the citizens of the Territory. Off-reservation claims do not meet the definition of a federal reserved water right which by law is restricted to the reservation land. No off reservation water rights have been previously transferred in a compact or case law.

Equal protection under the law is guaranteed in our Constitutional Republic by the Montana and U.S. Constitutions. This means that all the laws apply equally to citizens both on and off the Reservation. Montana manages river flows and administers water rights for the benefits of its citizens and is accountable to the rule of law developed by the legislature. Montana cannot turn over its constitutional and statutory responsibilities to CSKT a sovereign nation, with its own constitution and different laws that have no accountability to the Montana legislature or its citizens. The Unitary Management Ordinance of the Compact violates the equal protection clauses of the U.S. and Montana Constitutions.

Individual State based water rights are transferred to the CSKT in the proposed Compact. The tribe wants more water for in-stream flow on the Reservation based on a "robust river" standard, not on the survival of fish standard. The increased in-stream flow water will come from limiting each irrigator to 1.4 acre foot of water for each irrigated acre, (now you know why the individual water rights are important) and from water efficiency measures such as lining canals. Under state law, (which would no longer apply) transferring the use of water from irrigation to in-stream flow requires evaluation of the environmental and economic impacts before a change of use permit can be issued. Taking private water rights violates both the U.S. and Montana Constitutions.

The purpose of the federal reserved water rights compact is to quantify (justify) the amount of water needed to meet the purposes of the Reservation. The thousands of water right abstracts(made out to the Federal government and the CSKT)in the proposed Compact do not justify anything because they are not tied to a purpose of the Reservation such as irrigating additional acres of land. When the amount of water needed is quantified as required, there is enough water in the Flathead Basin to meet those needs without taking water from people who grow our food. The Flathead Irrigation Project needs more water not less.

Hungry Horse dam and all other Federal Dams in Montana have water which can be leased for future development and certainly can be used to fulfill Reservation purposes. I started the process to lease 100,000 acre feet of water out of Hungry Horse Dam for future development with Senate Bill 376 in 2007. The Compact contains 90,000 acre feet of this water. Research models show that 85% of the time the release of 90,000 acre feet of water from Hungry Horse dam would not affect other uses. Dividing the 90,000 acre feet equally between the State of Montana and CSKT would go a long way in developing a fair and equitable Compact as required by law.

The Montana legislature has not had the research necessary to properly and responsibly review this proposed Compact,1200 pages, and House Bill 629, 130 pages, because the Compact Commission has not required legal, environmental, regulatory, or economic assessments to reveal the impacts of this compact on private property values, future growth, and economic development. Without impact studies, no legislator in good conscience could pass a document of this magnitude with a \$55 million state contribution.

WATER POLICY INTERIM  
COMMITTEE. 2013-14

January 6, 2014

Ex. No. 15

This letter is in response to the heavy lobbying efforts of County Commissioners in Flathead, Lake and Missoula counties by Compact Commission members who are trying and to make it look like the majority of the people who surround the Reservation support the proposed Compact. They don't.

**The following legislators from western Montana are just some of the legislators who do not support the proposed CSKT Compact. These are some of the major issues:**

The proposed Compact, 1200 pages and House Bill 629, 130 pages were written by hydrologists and lawyers. Legislators and the general population have not been provided the legal, environmental, regulatory, or economic assessments to reveal the impacts of this Compact on private water rights, private property values, future growth, and economic development. Without impact studies no legislator in good conscience could pass a document of this magnitude with a \$55 million state contribution.

The Hell Gate Treaty for the Confederated Salish Kootenai Tribes secured the "right to take fish in common with the citizens of the Territory", **not a water right**, otherwise a group of Montana citizens could get a water right to protect their favorite place to fish. The Tribes' right is in common with the citizens of the Territory. Off-reservation claims do not meet the definition of a federal reserved water right which by law is restricted to reservation land. No off reservation water rights have been previously transferred in a compact or case law. The State of Montana manages river and stream flows, fish and wildlife and is accountable to Montana citizens and the state legislature (which both include tribal members). Montana has the water management role via the Federal and State constitutions. These functions cannot be legally delegated to the Federal Government or the Tribe.

The purpose of the federal reserved water rights compact is to quantify (justify) the amount of water needed to meet the purposes of the Reservation. The thousands of water right abstracts (made out to the Federal government and the CSKT) in the proposed Compact do not justify anything because they are not tied to a purpose of the Reservation such as irrigating additional acres of land. When the amount of water needed is quantified as required, there is enough water in the Flathead Basin to meet those needs without taking water from people who grow our food. The Flathead Irrigation Project needs more water, not less, plus water needs to be added to meet future development on the Reservation.

We cannot support the current proposed CSKT Compact because of these major issues.

Sincerely,

Representatives Mark Blasdel, Randy Brodehl, Carl Glimm, Pat Ingraham, Keith Regier,  
Jerry O'Neil, Nancy Ballance

Senators Verdell Jackson, Dee Brown, Jennifer Fielder, Jon Sonju