

TRIBAL WATER COMPACTS

Tribal water compacts are formal agreements for the equitable division and apportionment of waters between the State and the several Indian Tribes claiming reserved water rights within the state and between the State and the federal government claiming non-Indian reserved waters within the state. All compacts must be approved by the Legislature and Congress prior to implementation.

The state has worked to secure water rights agreements with the Montana tribes for decades. These negotiations are time consuming and costly endeavors, and are pursued by all parties as an alternative to litigation. Tribal water compacts provide for the equitable division and apportionment of waters between the state and the tribes. To finalize the compacts, the federal government must enter into the agreement. To date, the Montana legislature has approved the:

- Ft. Peck-MT Compact, 1985
- Northern Cheyenne-MT Compact, 1991
- Chippewa Cree Tribe-MT Compact, 1997
- Crow Tribe-MT Compact, 1999
- Ft. Belknap-MT Compact, 2001
- Blackfeet Tribe MT Compact, 2009

Congress has ratified the first four of those compacts but has yet to ratify the Ft. Belknap and Blackfeet Tribal compacts. One last tribal compact awaiting approval by the legislature is the agreement with the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Reservation. The Reserved Water Rights Compact Commission approved a CSKT compact and in February, 2013 recommended the settlement to the Legislature for approval during the 2013 Legislative Session.

The executive proposed HB 629 as a vehicle to adopt the Reserved Water Rights Compact Commission recommendation for settlement of the CSKT Water Compact, but the legislation failed to win the approval of the 2013 Legislature. The consequences of the failure of HB629 are unclear. The Compact Commission plans to issue a report on issues raised during the session to the Water Policy Interim Committee. The tribes may exercise their right to file claims in court or wait for legislation to ratify the compact to be proposed in a future session.

With uncertainty of the ability to pass HB 629, the legislature provided \$17 million of appropriations in HB 6 to fulfill the state's financial obligation for two existing/authorized tribal water compacts: the Ft. Belknap Tribal compact (\$3 million) and the Blackfeet Tribal compact (\$14 million). These two compacts have not yet been ratified by Congress, and Congressional action on both compacts is dependent on state funding being in place. The state may not expend funds on water infrastructure projects for the two state-authorized compacts until the Congress has ratified the compacts. In past sessions, the legislature has authorized the issuance of general obligation bonds to partially cover the state's obligation on the compacts, including:

- \$9.5 million for the Ft. Belknap compact
- \$16.0 million for the Blackfeet compact

Explicitly stated in the bonding legislation for the Blackfeet compact and assumed for the Ft. Belknap compact, the bonds will not be issued or sold unless a water rights compact has been finally ratified by all parties, including Congress. The state is anticipating Congressional action on the Ft. Belknap compact in FY 2018 and the Blackfeet compact in FY 2015 (per HB 629 fiscal note). The appropriations included in HB 6 will fully fund the state's financial obligation for the two compacts.