All of Montana's Indian water rights settlements involve the use of supplemental water sources to facilitate the balancing of the tribal water rights being recognized with the protections of state law-based uses. The Flathead System Compact Water Right (FSCW), set forth in Article III.C.1.c. and abstracted in Appendix 9 of the Compact, is the proposed CSKT Compact's version. The FSCW can be sourced from the mainstem of the Flathead River, Flathead Lake and the South Fork of the Flathead River, either on or off the Flathead Indian Reservation, or, with DNRC approval, it may be used downstream of the confluence of the Flathead and Clark Fork Rivers. This direct flow water right includes the use of up to 90,000 acre-feet from Hungry Horse Reservoir.

The Diversion Means and Purposes are uniquely flexible for this water right, a design that accommodates the diverse host of potential future and existing uses to be supplied by this water right:

1. State Water Mitigation Bank: Pursuant Article IV.B.7, 11,000 acre-feet of this water right can be designated by the Montana DNRC for the purposes of mitigating new or existing domestic, commercial, municipal and industrial water uses for a lease fee of $40/acre-foot/year plus inflation. and amount of water allocated at the discretion of the State that can be used to address existing limitations of legal water availability in some areas of the Clark Fork Basin.
2. Flathead Indian Irrigation Project Water Use Right Supplemental Water: the Tribes are obligated to lease water from the FSCW right for purposes supplementing River Diversion Allowances during periods of Shared Shortages as set forth in Article IV.C through F of the Compact for a lease fee of $8/acre-foot/year plus inflation plus a $25 administrative fee per lease.
3. Uses by the Tribes: FSCW provides water for the Tribes for existing and future tribal water needs, thereby settling for all time the Tribes' claims to reserved water rights.
4. Future Water Lease Options: FSCW provides the Tribes an opportunity to lease this water to water users within Montana in both the Flathead and Clark Fork River basins.
5. Keeping Water in Montana: FSCW may not be used or leased outside of Montana.
6. ESA and Columbia Treaty Compliant: FSCW has been reviewed by the Bureau of Reclamation and Army Corps of Engineers as an amount of water that can be obligated in Montana without disrupting endangered species flow augmentation requirements or flood storage obligations for Hungry Horse Reservoir.
7. Maintains off-Reservation Jurisdiction: The use of the FSCW off the Reservation may only be done under the terms and conditions of state law (e.g. for quantification or issuance of water rights, water quality, species management, etc.).
8. Tracking FSCW use: FSCW uses and leases will be accounted for in the DNRC water rights database.
9. Call Protection: this water right does not subject any existing water users to call (see FSCW exercise constraints below).

The use of FSCW is restricted as to the flow conditions required to be present along the south fork and mainstem of the Flathead River before the water right can be used. There are also conditions regarding the filling and release of water impounded by both Hungry Horse Reservoir and Flathead Lake.

The requirements to maintain these instream flow and ramping rates provide assurances that the use of FSCW will comport with the FERC licensing regulations for Kerr Dam, the Biological Opinion requirements of Hungry Horse Reservoir, the downstream Columbia River Endangered Species Act requirements, Flathead Lake Filling targets, flood storage requirements, and the Biological Constraints of Hungry Horse Reservoir. Accordingly, the Tribes are required to coordinate with the Hungry Horse Operator so as to ensure that Hungry Horse releases match depletions associated with the FSCW use during lower flow periods of the year. In contrast to a typical water right that would look to make call on junior uses during times of limited supply, the FSCW use is predicated on the mandate that the 90,000 acre-feet of storage be released in a manner so that call conditions will not occur, with the strict stipulation that should such call conditions occur, FSCW use would need to be curtailed until such time as call conditions are no longer present. In other words, the water right mandates that it mitigate its own depletive use with Hungry Horse Reservoir storage water, thereby protecting other existing water uses (regardless of purpose) from depletions associated with FSCW use.

**Table 3: Flathead Flow Minimums below Hungry Horse Dam (USGS gage 12362500) and Columbia Falls (USGS gage 12363000)**

| If the April-August | below Hungry Horse Dam | below Columbia Falls |
|---|---|---|
| greater than 1,790 KAF | 900 cfs | 3,500 cfs |
| 1,190-1,790 KAF | 400-900 cfs | 3,200-3,500 cfs |
| less than 1,190 KAF | 400 cfs | 3,200 cfs |

**Table 4: Hungry Horse Dam Ramping Rates**

| If the discharge below Columbia Falls is: | Ramping UP may not exceed: |
|---|---|
| greater than 10,000 cfs | 12,000 cfs /day |
| 8,000 – 10,000 cfs | 3,600 cfs / day |
| below 8,000 cfs | 1,800 cfs / day |
| **If the discharge below Columbia Falls is:** | **Ramping DOWN may not exceed:** |
| greater than 12,000 cfs | 5,000 cfs /day |
| 8,000 – 12,000 cfs | 2,000 cfs / day |
| 6,000 – 8,000 cfs | 1,000 cfs / day |
| below 6,000 cfs | 600 cfs / day |

**Table 6. Flathead River Ramping Below Kerr Dam at U.S. Geological Survey gage 12372000**

| If the required release from Flathead Lake is: | Ramping may not exceed: |
|---|---|
| greater than 40,000 cfs | 10,000 cfs / day |
| 20,000 – 40,000 cfs | 5,000 cfs / day |
| 10,000 – 20,000 cfs | 2,500 cfs / day |
| 5,000 – 10,000 cfs | 1,000 cfs / day |
| below 5,000 cfs | 500 cfs /day |

## Table 5: Minimum Flathead River Flows Below Kerr Dam (U.S. Geological Survey gage 12372000)

**Flathead River Mainstem Minimum Flow Daily Values As Measured at USGS Gage #12372000 Below Kerr Dam**

| | Month | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Da | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
| 1 | 3200 | 3200 | 3200 | 3200 | 5510 | 12700 | 12280 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 2 | 3200 | 3200 | 3200 | 3200 | 6020 | 12700 | 11860 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 3 | 3200 | 3200 | 3200 | 3200 | 6530 | 12700 | 11440 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 4 | 3200 | 3200 | 3200 | 3200 | 7040 | 12700 | 11020 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 5 | 3200 | 3200 | 3200 | 3200 | 7550 | 12700 | 10600 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 6 | 3200 | 3200 | 3200 | 3200 | 8060 | 12700 | 10180 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 7 | 3200 | 3200 | 3200 | 3200 | 8570 | 12700 | 9760 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 8 | 3200 | 3200 | 3200 | 3200 | 9080 | 12700 | 9340 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 9 | 3200 | 3200 | 3200 | 3200 | 9590 | 12700 | 8920 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 10 | 3200 | 3200 | 3200 | 3200 | 10100 | 12700 | 8500 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 11 | 3200 | 3200 | 3200 | 3200 | 10610 | 12700 | 8080 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 12 | 3200 | 3200 | 3200 | 3200 | 11120 | 12700 | 7660 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 13 | 3200 | 3200 | 3200 | 3200 | 11630 | 12700 | 7240 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 14 | 3200 | 3200 | 3200 | 3200 | 12140 | 12700 | 6820 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 15 | 3200 | 3200 | 3200 | 3200 | 12650 | 12700 | 6400 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 16 | 3200 | 3200 | 3200 | 3320 | 12700 | 12700 | 6200 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 17 | 3200 | 3200 | 3200 | 3440 | 12700 | 12700 | 6000 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 18 | 3200 | 3200 | 3200 | 3560 | 12700 | 12700 | 5800 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 19 | 3200 | 3200 | 3200 | 3680 | 12700 | 12700 | 5600 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 20 | 3200 | 3200 | 3200 | 3800 | 12700 | 12700 | 5400 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 21 | 3200 | 3200 | 3200 | 3920 | 12700 | 12700 | 5200 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 22 | 3200 | 3200 | 3200 | 4040 | 12700 | 12700 | 5000 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 23 | 3200 | 3200 | 3200 | 4160 | 12700 | 12700 | 4800 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 24 | 3200 | 3200 | 3200 | 4280 | 12700 | 12700 | 4600 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 25 | 3200 | 3200 | 3200 | 4400 | 12700 | 12700 | 4400 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 26 | 3200 | 3200 | 3200 | 4520 | 12700 | 12700 | 4200 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 27 | 3200 | 3200 | 3200 | 4640 | 12700 | 12700 | 4000 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 28 | 3200 | 3200 | 3200 | 4760 | 12700 | 12700 | 3800 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 29 | 3200 | 3200 | 3200 | 4880 | 12700 | 12700 | 3600 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 30 | 3200 | | 3200 | 5000 | 12700 | 12700 | 3400 | 3200 | 3200 | 3200 | 3200 | 3200 |
| 31 | 3200 | | 3200 | | 12700 | 12700 | 3200 | 3200 | | 3200 | | 3200 |