



Montana Legislative Services Division

Legislative Environmental Policy Office

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To: Catherine Duncan, LFD
From: Jason Mohr, LEPO
Re: Use of federal ARPA funds for water rights compact-related projects

The Montana Legislature has approved water rights settlements with federal agencies and Indian tribes claiming federal reserved water rights within the state of Montana. A federal reserved water right is a right to use water authorized by an act of Congress, a treaty, or an executive order establishing a tribal or federal reservation. These rights are confirmed by the Montana Water Court. Each of the compacts with the state's seven Indian reservation include a state contribution to the settlement.

While use of federal funding from the American Rescue Plan Act for "water projects" may or may not be authorized by the federal legislation, there are some factors to consider:

- The amount of the state's settlement depends on the compact. For example, most recently the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation contained specific amounts for specific purposes (see below). For the Blackfeet Tribe compact, the state promises to issue bonds to meet the state's settlement contribution (section 85-20-1511, MCA; also see on the next page).
- Compacts often provide for improvements to various (mostly irrigation) systems, such as the Flathead Indian Irrigation Project, the Four Horns Project for the Blackfeet Tribe, and the St. Mary diversion facilities for the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation.
- Compacts include water rights for a variety of beneficial uses, including domestic or municipal.

85-20-1901. ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. State Contribution to Settlement. The Parties agree that the State contribution to settlement shall be \$55 million. The agreement to, expenditure, or advance of any State contribution which may require authorization and appropriation of money by the Montana Legislature or allotment of funds is contingent on such appropriation or allotment being made pursuant to Article V, Section 11(4) of the Montana Constitution. The Parties recognize that the amount and structure of the State funding is contingent on action of the Montana Legislature. If the Legislature appropriates funds in a manner inconsistent with the structure contemplated by the Parties in this section, the Parties agree to meet and confer to consider adjustments to the funding structure and priorities described in Articles IV.H.1.a and b above. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

1. The State Contribution to Settlement shall be allocated as follows:
 - a. \$4 million for water measurement activities;
 - b. \$4 million for improving on-farm efficiency;
 - c. \$4 million for mitigating the loss of Stock Water deliveries from the FIIP;
 - d. \$30 million to offset pumping costs associated with Compact implementation and related projects; and

e. \$13 million to provide for aquatic and terrestrial habitat enhancement.

85-20-1511. Authorization of bonds — condition. (1) Subject to subsection (3) and upon request of the director of the department of natural resources and conservation, the board of examiners may issue and sell general obligation bonds in a principal amount not exceeding \$16.15 million, of which \$16 million is to pay the state's costs for water-related infrastructure projects within the exterior boundaries of the Blackfeet Indian reservation as provided for in 85-20-1505 and no more than \$150,000 is to pay bond issuance costs.

(2) (a) Except as provided in subsection (2)(b), the proceeds from the bonds authorized under this section must be deposited in a bond proceeds subaccount created in the Blackfeet Tribe water rights compact infrastructure account provided for in 85-20-1505.

(b) The proceeds to pay bond issuance costs must be deposited into a state special revenue account.

(3) The bonds must be sold and issued pursuant to the provisions of Title 17, chapter 5, part 8.

(4) The bonds may not be issued or sold unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the Blackfeet Tribe, the legislature, and the Congress of the United States.