

I. Negotiation History

Negotiations were initiated by a 2001 Tribal proposal but quickly broke down over the issue of ownership of water. The Tribal proposal asserted ownership of all water on and under Reservation, but the State could not accede to negotiations on these terms because Article IX, § 3(3) of the Montana Constitution provides that the State of Montana owns all the waters of the State for the use of its people. Negotiations resumed in 2007 when the Tribes presented a revised proposal that removed references to Tribal ownership of surface and groundwater.

The Compact was finalized in November of 2012 and presented at approximately two dozen public meetings throughout the settlement area. The Commission voted to approve the Compact in February of 2013 and it was presented to the 2013 legislature. The settlement included the following components:

- a. **Compact:** quantifies tribal water rights for consumptive and non-consumptive uses on and off Reservation and conditions those rights so as to protect existing uses to the greatest extent possible from call by the senior Tribal water rights.
- b. **Unitary Administration and Management Ordinance (UMO):** establishes structure and regulatory authority for new permits and changes of use on the Reservation and provides for a joint State-Tribal board to administer water rights on the Reservation. Modeled heavily on the Montana Water Use Act.
- c. **Water Use Agreement:** Balanced irrigation deliveries with Tribal instream flows by providing for rehabilitation and betterment of Flathead Indian Irrigation Project. Negotiated by Tribes, Flathead Joint Board of Control (FJBC), and United States (the State was not a party to the Agreement), and provided for relinquishment of FJBC claims to Project water in exchange for protections provided under Agreement. Never ratified by FJBC, which has since dissolved.

II. 2013 Legislature

The Compact was introduced in the House Judiciary Committee. Primary concerns expressed during legislative hearings cited the late date of introduction, the length and complexity of the Compact documents, the recognition of off-Reservation instream flow rights for the Tribes, the institution of the UMO, and the adequacy of protections for Project irrigators. The Compact was tabled in House Judiciary and failed to gain sixty votes needed to survive a blast motion to be heard on the House floor.

Senate Bill 265 would have extended the Tribes' filing deadline and required a study of the Compact but was vetoed by Governor Bullock. The Governor's veto letter directed the Compact Commission to prepare a report addressing the questions and concerns of the public

and legislature about the Compact. The Commission solicited public comment and prepared a report responding to the public comments and questions received in response to its request and providing an explanation of the Compact provisions. The Report was released in December of 2013¹ and was presented to the Water Policy Interim Committee at its January meeting.

III. Current Status

The failure of the Legislature to ratify the Compact triggered the filing deadline contained in Section 85-2-702(3), MCA. This section provides that if a compact was not ratified by June 30 of 2013, all water rights claims of the tribe or federal agency must be filed in the statewide general stream adjudication within 24 months, or by June 30, 2015. The 2015 legislative session therefore represents the final opportunity to ratify the Compact before the Tribes must file their claims.

The FJBC never ratified the Water use agreement they negotiated with the Tribes and the FJBC has since dissolved. The Water Use Agreement is therefore no longer a viable part of the Compact, leaving the current Compact without provisions that adequately balance the needs of Tribal instream flows with sufficient protections for irrigation deliveries.

To that end, the Governor has invited the Tribes to resume negotiations solely for the limited and narrowly defined purpose of resolving irrigation needs and Tribal instream flows on the Flathead Indian Irrigation Project.² Negotiations would be premised on the original principle underlying the Tribes' negotiations with the former FJBC: irrigation deliveries will be protected and water saved through increased Project efficiency will be devoted to Tribal instream flows. If the Tribes agree to this limited renegotiation, the Compact Commission will represent the interests of Project irrigators for purposes of negotiating provisions into the Compact that adequately protect irrigation deliveries. The Commission retains authority to negotiate on behalf of the Governor under Sections 2-15-212 and 85-2-702, MCA.

Any further negotiations will need to be completed in a timely manner so as to allow for adequate public and legislative review of the Compact well before the commencement of the 2015 Legislative Session.

¹ The Commission's Report may be viewed and downloaded at: <http://www.dnrc.mt.gov/rwrcc/Compacts/CSKT/WaterCompactReport.pdf>

² Letter from Governor Bullock to CSKT Tribal Council Chairman Trahan, Dated March 31, 2014.