

*Flathead County*  
**Board of Commissioners**  
(406) 758-5503



Pamela J. Holmquist  
Gary D. Krueger  
Philip B. Mitchell

January 8, 2015

The Honorable Steve Bullock  
Office of the Governor  
State Capitol, Room 204  
P. O. Box 200801  
Helena, MT 59620-0801

Attorney General Tim Fox  
Office of the Attorney General  
215 Sanders, Third Floor  
P. O. Box 201401  
Helena, MT 59620-1401

RE: CSKT Reserved Water Rights Compact

Governor Bullock and Mr. Fox:

We oppose the proposed CSKT Reserved Water Rights Compact (CSKT Compact) as currently written. It will be harmful to Flathead County, as well to the rest of Montana and neighboring states.

This proposed CSKT Compact is the last one to be negotiated in Montana. The other six Montana reservations have entered water right compacts. Significantly, the other six compacts do not grant off-reservation water rights. The proposed CSKT Compact—for the first time—grants these off-reservation water rights to a tribe, which is a new type of water right, and not supported by the Treaty of Hellgate.

A comparison with the six other compacts demonstrates the significance of adding off-reservation water rights. The average acre feet per tribal member for the other six compacts is 88 acre feet of water. Under the proposed CSKT Compact, the average acre feet per tribal member is 6,827 acre feet of water, which is *77 times* more water than the average for the other six reservations tribal members. [We enclose a chart comparing the seven compacts.]

We strongly object to granting off-reservation water rights to the CSKT. It will have dire consequences to our citizens and businesses that own property and live in Flathead County. We consider it significant that on December 30, 2014, the Flathead Joint Board of Control of the Flathead, Mission and Jocko Valley Irrigation Districts passed a resolution “strongly oppos[ing]” the proposed CSKT Compact [copy enclosed].

We also object to Montana taxpayers writing a check to the CSKT for \$55 million. For more than a century and a half, the federal government has had sole responsibility for supporting the tribes. We have seen no justification for Montana taxpayers starting to assume this responsibility.

Finally, we have concerns that the proposed Compact may not comply with Article IX of the Montana Constitution.

Gov. Bullock  
A.G. Fox  
RE: CSKT Compact  
01/08/15  
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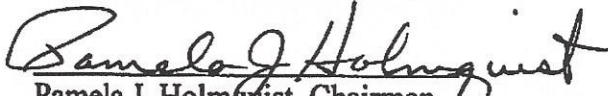
We ask that the following changes be made to the proposed Compact:

1. Provide a specific amount of water "quantification" of the federal reserved water right for the reservation, on the reservation.
2. Eliminate the mutual defense clause in Article VIII of the Compact, so that Flathead County citizens will not have to fight the State of Montana when defending their water rights.
3. Bring the Compact in compliance with Article IX of the Montana Constitution.
4. Eliminate the requirement that Montana taxpayers write a check to the CSKT for \$55 million dollars (or any amount of money).
5. That all claims of off-reservation water rights be removed from the proposed CSKT Compact.

Our hope is that the proposed Compact can be revised to identify and protect the CSKT's reserved water rights on the reservation and to protect the rights of the citizens of Flathead County. If it cannot be so revised, we urge the legislature to vote "no" on the proposed Compact and allow a resolution of these issues in the Montana General Stream Adjudication, which will lead to a fairer result.

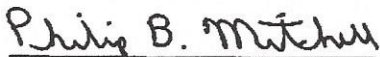
This letter supersedes the previous two letters dated January 3 and October 22, 2014.

Sincerely,  
FLATHEAD COUNTY  
BOARD OF COMMISSIONERS

  
Pamela J. Holmquist, Chairman

OPPOSED

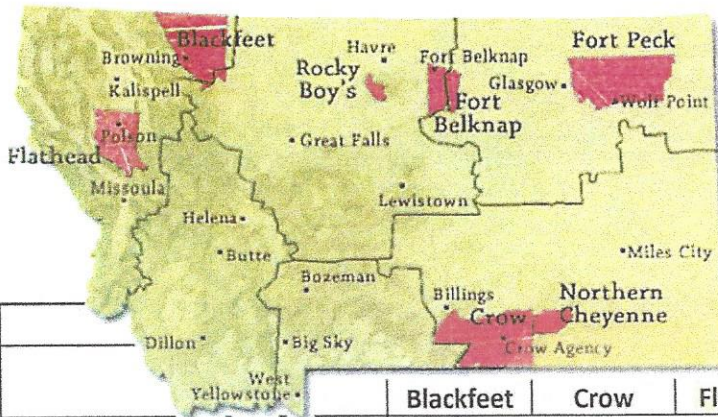
Gary D. Krueger, Member

  
Philip B. Mitchell, Member

cc: Legislators in the Montana House and Senate  
Montana County Commissioners  
Members of the Montana Reserved Water Rights Commission  
Members of the Water Policy Interim Committee  
John Tubbs, Director of the Montana Dept. of Natural Resources and Conservation

Enc: Comparison of Montana Indian Reservation Reserved Water Rights Compact  
Resolution 2014-4 of the Flathead Joint Board of Control of the Flathead, Mission and Jocko  
Valley Irrigation Districts





## COMPARISON OF MONTANA INDIAN RESERVATION RESERVED WATER RIGHTS COMPACTS

	RESERVATION						
	Blackfeet	Crow	Flathead	Fort Belknap	Fort Peck	Northern Cheyenne	Rocky Boy
<b>Population within Reservation Boundaries</b>	Source: 2010 US Census of Housing and Population CPH-1-28						
Tribal	8,944	5,322	7,042	2,704	6,714	4,406	3,221
Non-Tribal	1,461	1,541	21,317	147	3,294	383	102
<b>Total Population</b>	<b>10,405</b>	<b>6,863</b>	<b>28,359</b>	<b>2,851</b>	<b>10,008</b>	<b>4,789</b>	<b>3,323</b>
<b>Land w/in Reservation Boundaries (Acres)</b>	Source: Indian Education for All—MT Office of Public Instruction 2009						
Tribal Trust	311,175	404,172	653,214	210,954	413,020	326,547	122,259
Tribal Allotments	701,816	1,166,406	58,729	406,533	516,092	113,277	0
Other (State/Federal/Private)	512,721	894,336	531,057	28,089	1,164,012	4,951	0
<b>Total Land</b>	<b>1,525,712</b>	<b>2,464,914</b>	<b>1,243,000</b>	<b>645,576</b>	<b>2,093,124</b>	<b>444,775</b>	<b>122,259</b>
<b>Reserved Water Right Award (Acre Feet)</b>							
On Reservation	86,880	800,000	16,300,951	500,000	1,052,472	89,530	20,000
Off Reservation	0	0	31,774,647	0	0	0	0
<b>Total (Data Source: See Items 1 or 2 below)</b>	(1) <b>86,880</b>	(1) <b>800,000</b>	(2) <b>48,075,598</b>	(1) <b>500,000</b>	(1) <b>1,052,472</b>	(1) <b>89,530</b>	(1) <b>20,000</b>
<b>Compact Details</b>							
On Reservation Water Rights Administration	U.S./MT/Tribe	U.S./MT/Tribe	Tribe/UMO	U.S./MT/Tribe	U.S./MT/Tribe	U.S./MT/Tribe	U.S./MT/Tribe
Off Reservation Aboriginal Treaty Rights	No	No	Yes	No	No	No	No
Relinquish Irrigation Water Rights to Tribe	No	No	Yes	No	No	No	No
Ratified Montana Legislature / U.S. Senate	2009 / No	1999 / 2010	No / No	2001 / No	1985 / 1994	1991 / 1992	1997 / 1999
<b>Statistics:</b>							
Acre Feet / Tribally Owned Acre	0.09	0.51	67.53	0.81	1.13	0.20	0.16
Acre Feet / Tribal Member	9.71	150.32	6,826.98	184.91	156.76	20.32	6.21

(1) Negotiating Tribal Water Rights: Fulfilling Promises In The Arid West, By Bonnie G. Colby, John E. Thorson, Sarah Britton

(2) Flathead Reservation based upon Concerned Citizens of Western Montana analysis of the 02/13/13 compact documents on the DNRC website. Note: the commission has not provided quantification numbers for this compact and recently revised the compact documents in Appendix 12, increasing the volume of water in the compact to nearly 52 million acre feet.

**RESOLUTION OF THE FLATHEAD JOINT BOARD OF CONTROL OF THE FLATHEAD,  
MISSION AND JOCKO VALLEY IRRIGATION DISTRICTS**

**RESOLUTION NO. 2014-4**

The Flathead Joint Board of Control of the Flathead, Mission and Jocko Valley Irrigation Districts, at a meeting convened and held on December 30, 2014, at St. Ignatius, Montana, at which a quorum was present and voting throughout, hereby adopt the following:

WHEREAS, the Flathead Joint Board of Control ("FJBC"), comprised of the Flathead, Mission and Jocko Valley Irrigation Districts, represents the irrigated acreage owned in fee which comprises approximately 110,000 acres, or 90% of the acreage contained within the Flathead Irrigation Project ("FIP");

WHEREAS, the CSKT has failed to state the primary purpose of the reservation and to quantify their federally reserved water right;

WHEREAS, in September of 2013 the FJBC set forth its position regarding the Water Compact between the Confederated Salish and Kootenai Tribes, the United States, the State of Montana and the FJBC which had failed to pass the 2013 Montana Legislature, and requested the Montana Reserved Water Rights Compact Commission ("MRWRCC") resume negotiations of the Water Use Agreement ("WUA") contained in the 2013 Compact proposal, and requested the following concerns be addressed:

- The Water Compact may not be used as a vehicle to take Irrigation Project Water Rights or Individual Landowners' Water Rights and transfer them to the Confederated Salish and Kootenai Tribes ("CKST").
- The quantity of water allocated to the FIP in the WUA was significantly less than historical use and was based upon the Hydrologic River Operation Study System ("HYDROSS") model, a model generally used as a planning tool and which is scientifically unsound for making actual allocations of



project water and in-stream flows. Additional operational modeling was requested to address historic irrigation deliveries, extra duty water, stock water and the use of "non-quota" water. Historic data to verify historic use, requested from the BIA via FOIA, has been withheld from the FJBC.

- The Water Compact unlawfully created a Unitary Management Ordinance ("UMO") and Unitary Management Board ("UMB"), comprised of political appointees, to administer water right issues within the FIP and which eliminated judicial review, adjudication and oversight by the Montana Water Court. The UMO and UMB, as a governing body, treated citizens of the State of Montana located in the FIP differently from the rest of the citizens of the State of Montana and disproportionately vested review, adjudication and control over water and irrigation rights and use with Tribal appointed representatives. The Water Compact further directed any appeal from the UMB to an undefined "Court of Competent Jurisdiction".

WHEREAS, upon reopening of negotiations between the United States, the CKST and the State of Montana regarding the Water Compact, the FJBC was intentionally denied a presence in the negotiations;

WHEREAS, on October 8, 2014, the FJBC presented its Position Statement once again identifying the three (3) issues it previously asked the MRWRCC to address in negotiations in order to gain the FJBC's support for a renegotiated Water Compact;

WHEREAS, the FJBC received no substantive response to its concerns;

WHEREAS, on December 12, 2014 Governor Steve Bullock announced an agreement had been reached between the CKST, the State of Montana and the United States as to the Water Compact ("CKST Water Compact"), a final copy of which to date has not been distributed for review;

WHEREAS, contrary to statements made by the Governor and the Attorney General, all indications from the Compact Commission are that the

**“renegotiated” Compact does not provide a water right to FIP irrigators, does not provide “historic usage” as required by the Montana Constitution (Article IX.3.1), and further violates Article IX of the Montana State Constitution by imposing the UMO on fee land irrigators within the FIP, thus treating them differently than anywhere else within the State.**

**NOW THEREFORE, BE IT RESOLVED:**

**The FJBC, comprised of the Flathead, Mission and Jocko Valley Irrigation Districts, representing the irrigated acreage owned in fee and which comprises approximately 110,000 acres, or 90% of the acreage contained within the FIP, strongly opposes passage by the 2015 Montana Legislature of the proposed CKST Water Compact as drafted, and recommends that irrigator’s water rights be adjudicated by the Montana Water Court in a general stream adjudication process because the allegedly “renegotiated” Water Compact:**

- **Requires individual landowners, irrigators and their representatives and/or agents to relinquish any and all claims to water rights in the FIP, without their agreement or consent.**
- **Inherently acknowledges the initial Water Use Agreement was flawed with respect to irrigation water allocation and now replaces it with “*adaptive management*”, a learning-based management method which implements irrigation water allocation by trial and error, while disregarding historical use.**
- **The UMO and UMB violate the Montana Constitution and the Constitution of the United States by requiring both Tribal *and* non-Tribal property owners and citizens of the State of Montana who reside on fee land within the Flathead Indian Reservation’s boundaries to be governed by a different law of water administration than the rest of Montana.**
- **Creates a “FIP delivery entitlement statement” of unknown origin, status and legal effect.**

- Fails to sufficiently define a "Court of Competent Jurisdiction", thereby creating a judicial nightmare likely to result in different courts issuing conflicting decisions and opinions as to water and irrigation rights and use within the FIP.

DATED effective December 30<sup>th</sup>, 2014.

The undersigned certifies that the above stated resolution and was passed by a majority/unanimous of the Board Members of the Flathead Joint Board of Control.

Danny Boone Cole

Wayne E. Blevins

John Laskowski