SALISH AND KOOTENAI WATER RIGHTS SETTLEMENT

October 9, 2016
NCAI
In the 1855 Hellgate Treaty…exclusive Tribal homeland on the Flathead Indian Reservation and hunting, fishing, trapping and gathering rights throughout their aboriginal territory at all usual and accustomed places.

Beginning in 1904 Reservation was quickly allotted and homesteaded and the massive Flathead Indian Irrigation Project was constructed.
CSKT Water Rights Settlement

- CSKT, Montana, and U.S. have negotiated a proposed Compact and Ordinance.
- Quantifies CSKT water rights on and off the Reservation.
- Provides for the *unitary* administration of water rights on the Reservation.
- Recently passed MT Legislature, now needs ratification by Congress and the CSKT.
Key Aspects of the Settlement

- Quantifies the Tribes aboriginal and reserved water rights through negotiation thus avoiding litigation.
- Resolves the complex regulatory scenario on the Flathead Reservation where most water originates on Tribal lands, flows across non-Indian lands, then returns to Tribal lands: Unitary management, permits.
- Confirms a use of 1855 Tribal water right for the massive Flathead Indian Irrigation Project (FIIP) for the benefit of Indian and non-Indian irrigators.
- $55 Million state contribution — irrigation, infrastructure, and in-stream flows
Key Aspects (cont.)

- Provides for reasonable transition to local management of the FIIP and attainment of federal Endangered Species Act obligations arising from the FIIP.
- Provides for shared shortages of water in dry years.
- Protects fish and wildlife habitat across western Montana; confirming the Tribal instream flows where members have historically fished and hunted.
- Makes tens of thousands of acre feet of Hungry Horse Reservoir water available for domestic, municipal, commercial, and industrial uses by non-Indian through lease from the Tribes for nominal rental rates – this water has been previously unavailable.
CSKT Settlement would

- Protect valid existing uses as decreed by the Water Court or permitted by the DNRC prior to 1996.
- Protect existing Tribal uses, including traditional Tribal cultural and religious uses.
- Establish a process to permit new uses such as domestic, stock, wetlands, municipal, hydropower, industrial, commercial, and agricultural uses.
- Provide legal protection for post-1996 domestic wells and permits that are currently in limbo.
CSKT Settlement would

- Recognize CSKT instream flow rights on and off the Reservation.
- Establish modern, science-based irrigation water allocation for the FIIP.
- Provide funding for improved water measurement and water supply forecasting.
- Provide additional water resources for the Reservation from the Flathead River.
CSKT Settlement would

- Provide funding for fish habitat and FIIP improvements.
- Provide process for changes to existing water uses.
- Provide more local control than litigation, and other benefits with significantly lower expenditures of time, money and social disruption.
Protections for Water Users

- The CSKT Water Rights Compact would protect valid existing uses of water as decreed by the Water Court or permitted by DNRC prior to 1996.
- Provides a mechanism to protect existing wells for domestic and stockwater use.
- Provides expedited process for new domestic and stockwater wells and replacement wells.
- There is NO metering requirement for new wells serving less than three homes or business.
The Tribes and the United States would agree to relinquish their right to exercise the Tribal water right to make a call against:
- any non-irrigation water right,
- groundwater irrigators that use less than 100 gallons per minute, and
- all water rights upstream of the Reservation,
  - except for irrigation rights sourced from the mainstem of the Flathead River, including Flathead Lake, or the North, South, or Middle Forks of the Flathead River.
CSKT Treaty includes right to take fish in usual and accustomed locations.

Courts have confirmed this right to use water outside the reservation to maintain fisheries flows
- Fishery flows are instream, non-consumptive uses

CSKT is the only tribe in Montana with this treaty provision.
CSKT off-reservation water rights in proposed Compact

- Reservation boundary
- Continental Divide
- Selected rivers
- Selected towns

- Time immemorial instream flow rights
- Swan River includes tributaries in water court basin 76K
- Co-ownership with MFWP water rights includes Clearwater chain of lakes
- Contract storage rights (Painted Rocks and Lake Como Bitterroot Drainage)
- Co-ownership with MFWP - Milltown Water Right


Line shown for illustration purposes. Line does not represent extent of potential CSKT off-reservation water right claims.
Basins in which the Confederated Salish and Kootenai Tribes have filed water rights claims

Pursuant to Article VII D 2 of the CSKT Water Rights Compact the Tribes filed a Motion to stay all proceedings to adjudicate these claims with the Montana Water Court.
For More Information

- For copies of the CSKT Compact and Ordinance and more information visit

  **Montana:**

  **CSKT:**
  http://www.cskt.org/tr/nrd_waternegotiations.htm

- Contact

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