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WC-0001-C-2021

December 8, 2023

Montana Water Court

**IN THE WATER COURT OF THE STATE OF MONTANA  
CONFEDERATED SALISH AND KOOTENAI TRIBES  
– MONTANA – UNITED STATES COMPACT PRELIMINARY DECREE**

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**CASE NO. WC-0001-C-2021  
OBJECTORS MOTION TO AMEND OBJECTION**

On February 3, 2023, Gunner & Beth Junge timely filed an objection to the Confederated Salish and Kootenai Tribes – Montana -United States Compact Preliminary Decree.

On October 18, 2023 the Water Court issued case management order #3 allowing for the submission of Motions to Amend existing objections no later than December 8, 2023.

Objectors now move to amend their original objection.

The purpose of this amendment is to provide the court with clarification, elaborate upon, add claims, provide information and facts that were inadvertently omitted, as well as to add and /or to correct errors in the original objection submitted to the Court.

The attached amended objection is being submitted to the court and we request the court to accept it in place of our original objection (pleading).

DATED this 8th day of December, 2023.

/s/ Gunner & Beth Junge

OBJECTORS

PO Box 591  
Thompson Falls, MT 59873  
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Case WC-001-C-2021 Objectors Motion to Amend Objection

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## CERTIFICATE OF SERVICE

This is to certify that the foregoing was served on the following persons as noted below.

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Daniel J. Decker, Melissa Schlichting, Christina M. Courville

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☐ U.S. Mail ☐ Overnight Mail ☐ Hand Delivery E-Mail ☒

Dated this 8th day of December, 2023

/s/ Gunner & Beth Junge

OBJECTORS

Case WC-001-C-2021 Objectors Motion to Amend Objection

**Property Category:**RP

**Subcategory:**Residential Property

**Geocode:**35-3091-08-1-12-20-0000

**PropertyAddress:**407 E 4TH AVE

**Primary Owner:**

THOMPSON FALLS, MT 59873

JUNGE GUNNER AND BETH

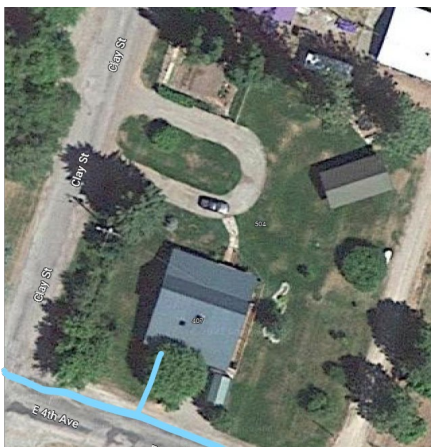
**Subdivision:**THOMPSON FALLS ORIG TOWNSITE

**Legal Description:**

THOMPSON FALLS ORIG TOWNSITE, S08, T21 N, R29 W, BLOCK 066,  
Lot 016, LOTS 16-21

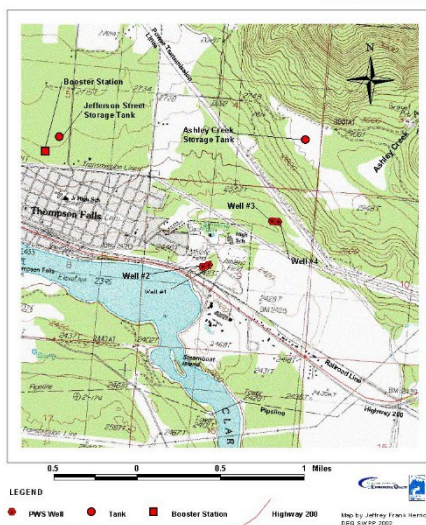
PO BOX 591

THOMPSON FLS, MT 59873-0591



**Image showing location and City water main; running parallel with East 4<sup>th</sup> Avenue; supplying home at 407 East 4<sup>th</sup> & Clay Street**

Figure 3  
Thompson Falls  
PWS Wells & Facilities



**Main water source from Ashley Creek located NE of Thompson Falls.**

**PWS ID #MT0000341**

List of Sources Thompson Falls PWS Source # 001 Source # 002  
Source # 003 Source # 004 Source # 005 Source # 006 Source # 007  
Jefferson Street Storage Tank Ashley Creek Spring Storage Tank  
Well #1 (Old Well) Considered a backup well. Well #2 (New Well)  
Well #3 Well #4 Ashley Creek Infiltration Galleries

### **OBJECTION – DISCOVERY & A HEARING MAY BE NECESSARY**

This objection is to the contents and claims of Appendix 38 of the Compact and to the water rights and administration of Appendix 1 through 38, inclusive, and the undetermined water rights of the Montana Water Rights Protection Act, dated December 27, 2020, (P.L. 116-260, Title V, Division DD) and the July 1, 2015 water rights of the CSKT and United States of America (USA) filed per MCA § 85-20-1901 and their administration. This objection highlights and is based upon an issue of what controls the

water rights and their administration? This applies to both CSKT and USA in trust for claims and administration. This objection is based upon the conflicts between the MWRPA claims and their administration and the Compact claims and their administration and any conflicts. This objection highlights the problem of added claims for tribal and USA trust water under MWRPA and no provision for administration of the same.

Although the Water Court's review of the Compact is limited to the contents of Appendix 38, its review may nevertheless extend to other sections of the Compact to the extent that they relate to the determination of water rights and their administration. Mont. Code Ann., § 85-20-1901, Art. VII – Finality B.2. This objection is to all water rights of the Confederated Salish and Kootenai Tribes (CSKT) and the United States (USA), itself or on behalf of, filed in :

- A) Appendices I through 38 of the *Preliminary Decree* filed by the Water Court in this matter, with order for commencement filed June 9, 2022; and
- B) All claims of the CSKT and USA filed by July 1, 2015, per MCA § 85-20-1901 Title VII, Division DD; and
- C) Those claims listed in the Montana Water Rights Protection Act (MWRPA) dated December 27, 2020 (P.L. 116-260, Title V, Division DD Section 10. C i B as follows; consisting of claims related to water quality; and
- D) Those provisions of the MWRPA (P.L. 116-260, Title V, Division DD, and the Compact, MCA § 85-20-1901, relating to the administration of waters of the CSKT or Allottees or the USA on behalf of the same.

This objection is based upon the claims retained by the Tribes, members of the Tribes and the USA as Trustee for one or both set forth in the Montana Water Rights Protection Act, Section 10(C), 1(B) \*(i) and (ii), and (iii) D and (iv) relating to activities affecting the quality of water including any claims under CERCLA, Clean Water Act and/or the Safe Drinking Water Act.

The State of Montana ratified and enacted the Compact in 2015. Congress did not act until December 27, 2020, and CSKT did not act until December 29, 2020.

Ratification of the Compact presumed ratification by the State of Montana, the CSKT and Congress *as agreed to by* those entities. Ratification was not intended as *modified* by any of those entities. See, Mont. Code Ann., § 85-20-1901, Art. VII – Finality A.1. The MWRPA contains numerous provisions that are either inconsistent with or otherwise conflict with the agreed upon provisions of the Compact. In that regard, the MWRPA also provides internally inconsistent provisions. First the MWRPA provides that, “***[t]o the extent that the Compact does not conflict with this Act,*** the Secretary shall execute the Compact, including all exhibits to, appendices to, and parts of the Compact requiring the signature of the Secretary.” P.L. 116-260, Title V, Division DD Section 4(b) (emphasis added). The MWRPA then inconsistently provides, “***[i]n the event of a conflict*** between the Compact and this Act, ***the provisions of this Act shall control.***” P.L. 116-260, Title V, Division DD Section 5(b)(3)) (emphasis added.)

Whatever unexplained “modifications” occurred were done *after* the State of Montana ratified the Compact in 2015, and accordingly were never agreed to. Congress’ purported “ratification,” and the subsequent purported “ratification” by CSKT, were accordingly ineffective since the State of Montana was not a party to those unidentified “modifications.”

Examples of inconsistencies between the Compact and the MWRPA and apparent modifications are noted elsewhere in the accompanying objections, but include provisions in the MWRPA that purportedly expand the definition of “Tribal Water Right,” as that term is defined in the Compact. See, e.g., P.L. 116-260, Title V, Division DD Section 5(c). Another example is the reservation of claims under CERCLA, the Clean Water Act and/or the Safe Drinking Water Act contained at P.L. 116-260, Title V, Division DD Section 10(c)(1)(B).

The issue was addressed to the United States Senate and House for the record and no answer has been provided. The objection process provided by the original Compact at MCA § 85-20-1901 provides for a review and objection process in front of the Montana Water Court. As we have no index of, or statement about, the Congressional modifications of the Compact by MWRPA, a meaningful and substantive review of the Compact agreement and its impacts is illusive if not impossible.

This problem is highlighted by Section 4, (a)(d) of MWRPA that provides, “Any amendment to the Compact is authorized, ratified and confirmed.” What amendments? What modifications? Does this include subsequent modifications? What changes are needed to “ensure that the Compact is consistent with this Act?” MWRPA Section 4(a)(d).

Until identified and distributed to all persons impacted by the Compact no meaningful evaluation or review of the agreement can occur. Our objections may be addressed when the “Compact as modified” is reviewed by all persons involved as potentially impacted by those “modifications,” including the State of Montana, since the unidentified “modifications” could not have occurred until after the State’s “ratification in 2015.

Congressional and CSKT “ratification” as contemplated by the State of Montana, CSKT, and Congress simply has not occurred since the Compact purportedly “ratified” by Congress and CSKT, is apparently not the same “Compact” that was ratified by the State of Montana. A review of the record shows no amendment by the State of Montana of the Compact between 2015 and December 27, 2020, or to date.

As these claims are not identified by source, location, volume, flow rate, or period of use, or basin, it is impossible to object to or identify them individually or by basin.

Also, this reservation of claims granted by the MWRPA Act appears to be an amendment, change, or modification of the Montana – CSKT Water Compact. No record of such change exists in the State statutes, no record of the amendment occurring as provided in MCA § 85-20-1901 exists. This problem was noticed to, and not addressed by, the USA, per the attached Exhibit 1, letter of July 1, 2020, paragraph 2.

Evidence supporting this objection is the non-existence of an amendment record by the State or CSKT and the fact that no water quality claims are identified in Appendices 1 through 38 as being for water quality.

These added claims are not included in the Appendices 1 through 38 of the Compact. Are they then an amendment or modification? Are these claims part of the July 1, 2015 claims and not identified?

Identification of these claims as part of the Appendix 1 through 38 claims, part of the July 1, 2015 filed claims, or a stand alone set of claims would also facilitate review of the revised Compact.

Additionally, the process or a process for administration of the water quality related claims is not included in the Compact of MCA 85-20-1901 or in MWRPA. (P.L. 116-260, Title V, Division DD)

This objection may be addressed by disclosure and review of the relevant information. If the solution to pollution is great quantities of dilution, it impacts all parties. This type of claim is of significant concern to many parties. If source regulation is the solution to pollution, disclosure and review will resolve some objections.

This objection is founded in large part upon Article VII C and D, part of 85-20-1901, which sections are problematic due to questions about what is the Compact.

Part C provides for dismissal of various suits and claims on issuance of a Final Decree by the Water Court. We see no path to a Final Decree until the terms of the Compact are defined or determined.

Similarly, Part D provides for dismissal of all July 1, 2015 claims from VII D(2) pursuant to Part VII C 1 c upon entry of a Final Decree that survives any appeal or avenues of appeal. A Final Decree based upon a Compact ratified with terms that are modified, inconsistent, amended, and unknown causes concern to many persons, hence these objections need to be addressed.

### **Introductory Comments to Amended Objection**

There are several criteria that the Water Court has listed for Judicial Review of the Flathead Water Compact. There are a number of erroneous assumptions.

#### **Assumption**

It is assumed that since the Montana Legislature passed the Compact in 2015 and by Congress and the President in 2020 that there is *prima facie* evidence of its **validity**. The assumption is since so many government officials have agreed or ratified this Compact, we must recognize the Compact has gone through strict scrutiny and therefore it must be valid. Another assumption was that the Compact is a Consensual Agreement whose purpose was to avoid future litigation and expense and to achieve finally on several thousand claims the Tribes might file. There are several errors to these assumptions:

1. Truth is not always measured by majority agreement or rule.
2. The majority is often proven to be wrong and laws are not based on the consensus of a few.
3. To suggest that many have scrutinized a document that is almost 700 pages long is absurd. There is good evidence that many did not thoroughly examine the Compact and followed along in its approval due to political expediency.
4. Consensual Agreements are done to avoid litigation risk and expense and to achieve finality on possible future claims.
5. Marbury v Madison 5 U.S. 137- {The Court applied constitutional boundaries to itself as well as the Legislature. Therefore any court decision is null and void if "repugnant to the Constitution".}

### **Criteria for Judicial Review**

Courts have determined some criteria for judicial review of the Compact; which are:

1. It must fair and reasonable to all parties both private and public.
2. If the Compact is the product of fraud, collusion and overreaching; then the Compact should be ruled as void.
3. Objectors shall show some kind of potential material damage either to their private property or to the public interest.
4. To be told that a decision is based not on fundamental principles and historical facts; but rather on "approximations" and "rough justice" is grossly unjust.

### **Is the Compact Analogous to a Consensual Agreement?**

Consensual agreements are usually a contractual agreement between parties. While contractual agreements may require having a Court approval, they are not usually enforced by statutory provisions and ratified by branches of government. This Compact is not analogous to a normal consensual agreement. Government representing the people in ratifying an agreement is far different than unions and individuals coming to an agreement with local governments. Furthermore, government officials are bound by the State and U.S. Constitution; which provides a check on any consensual agreements. It is clear to the objectors, that all parties to this Compact were not concerned about the unconstitutional provisions of this Compact nor were they concerned by the false revisionist history used to produce this Compact.

### **Hermeneutical Principles and the False Revisionist History and Historical Method**

The objectors shall use certain principles in our Amended Objection to buttress the objection.

Concerning the Historical Method, we list the following:

1. Primary sources such as the Hellgate Treaty, the Dawes, Act, the Flathead Allotment Act, both the U.S. and State Constitution.
2. Concerning hermeneutical principles, we list the following:
  - a. The objectors insist when using primary sources that the Plain Language Doctrine be used, no twisting of words to conform to modern realities or cultural norms.
  - b. Also, the Objectors plead that the Ignoring Doctrine not be used when reasoned arguments are made by the Objectors.
  - c. The Vagueness Doctrine is to be applied to any language within the Compact which is not clearly understood to the common man. Such specious terms include but are not limited to: "Time Immemorial," "aboriginal," "tribal reserved water rights," "homeland," "ancestral lands," "tribal sovereignty," and many others.
    - i. Since certain and inalienable rights come from God; there is no basis for claiming any purported "rights" to one of life's necessities and inalienable rights which belong to us all; rather than belonging to any "tribe" or tribes. Inalienable rights would precede any purported "tribal water rights." Article II Section 3 US Constitution
    - ii. By definition of the term "sovereign;" the CSKT is neither sovereign or ancestral as shown by the history found in the Flathead Reservation Timeline by the CSKT.

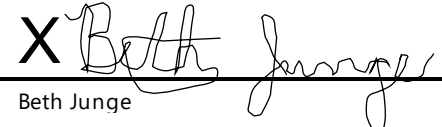
#### **(Exhibit A)**

3. The context and purpose of any Treaty and other documents be strictly applied in the common understanding of both parties at the time of writing.

- a. "Permanent Homeland" is not found in the Hellgate Treaty; or any other. It was intended for "a permanent home" for individuals and families; and not a "homeland." **(Exhibit B Article II)**
- b. "Time immemorial" is not found within any treaty; and is merely conjecture and hearsay that cannot be factually proven. Johnson & Graham's Lessee v McIntosh 21 U.S. 543 (1823) {Chief Justice John Marshall uses the term Time Immemorial but does not define it}
4. This is an unproven precedent. It will alter the policy regarding "off reservation water rights and land" of Indian reservations throughout the US. Considering the Tribe has chosen to ignore the Hellgate Treaty and the US and MT Constitutions; by choosing instead to mount an expensive propaganda campaign designed to frighten and intimidate the citizens of Montana; thereby ignoring all Montana citizens' rights to water; it is best to reject the CSKT Compact.
5. Article VIII of the Hellgate Treaty states: "The confederated tribes of Indians acknowledge their dependence upon the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens. **(Exhibit B)**
6. The vast claims of land by the Tribes are false. They had a concept of communal tribal land not private ownership. Since all tribes had this concept, clearly territorial disputes were common but they were not disputes over private ownership of land but disputes over territories. The tribes were nomadic particular when it came to hunting. No other tribe in Montana recognizes the territory of the Tribes which historically is confirmed by the Fort Laramie Treaty. The plain language doctrine tells us that the Hellgate Treaty when it comes to the issue of water gives exclusive authority to the Tribes for "fishing". Let us proclaim the common reality of today. Most tribal members and non-Indians get their food from the grocery store, not from fishing or hunting. Even in practical terms the Treaty is no more. Furthermore, the purpose of the Reservation was to assimilate the Indians to private ownership and farming.
7. The Dawes Act's purpose as to break up of "communal tribal homelands". This Timeline admits in 1904 with the Burke Act that Indian allotments were taken out of federal trust. They further state that from 1911 1934 most of the Indian allotments were now in non-Indian ownership. Therefore, in 1934, the Flathead Indian Reservation was extinguished. **(Exhibit A)**

DATED this 8<sup>th</sup> day of December, 2023

X   
Gunner Junge

X   
Beth Junge

**LIST OF EXHIBITS (3)**

**Exhibit A- (attached) CSKT TIMELINE**

**Exhibit B- (attached) The Hellgate Treaty 1855**

**Exhibit C- (attached) Summary And Conclusions CSKT v. Constitution**



## **AMENDED OBJECTION EXHIBIT A-**

### **Flathead Reservation Timeline Confederated Salish and Kootenai Tribes 2017**

The Montana Tribal Histories Reservation Timelines are collections of significant events as referenced by tribal representatives, in existing texts, and in the Montana tribal colleges' history projects. While not all-encompassing, they serve as instructional tools that accompany the text of both the history projects and the Montana Tribal Histories: Educators Resource Guide. The largest and oldest histories of Montana Tribes are still very much oral histories and remain in the collective memories of individuals. Some of that history has been lost, but much remains vibrant within community stories and narratives that have yet to be documented. The objectors submit the concern be addressed on what courts would decide if they had claimed their land or water were acquired based on oral teachings and traditions handed down for decades. In this Case, the objectors have to prove their land ownership and water right. The Court will not accept any oral proof as admissible in their case; and should not for the other parties as well.

Time Immemorial — The Creation and time of the animal people. Coyote and Fox traveled the earth preparing the world for human beings.

Traditional Life — The Salish, Pend d'Oreille, and Kootenai flourished in their aboriginal territory that included most of Montana and portions of Wyoming, Idaho, Washington, and Canada. The Salish Tribe grew, becoming so large that the people had to divide into smaller bands.

Pre-1700 — A Salish prophet, Xalfqs, Shining Shirt foresaw the coming of the "Black Robes" (Catholic Jesuits).

1650 — 1700 — The Salish and Pend d'Oreille acquired horses from the Shoshone.

1775 — Blackfeet gained continued access to firearms through Hudson's Bay Company in Canada, leading to an uneven power struggle with area tribes over a rapidly decreasing land base.

1780s — A smallpox outbreak reached a group of Salish camped in the Missoula area. The camp divided — families with smallpox and those without. One group went to the Bitterroot Valley while the other moved to the Drummond area. Only one boy in the Bitterroot camp survived the epidemic. By 1782, small pox had killed an estimated one-half to three-quarters of the Salish and Pend d' Oreille bands. The combination of the introduction of disease, firearms, and horses led to massive changes in intertribal territories. Blackfeet expansion caused eastern bands of the Salish and Pend d' Oreille to move their winter camps west of the continental divide. The Salishian people called the Tuhéxn, who occupied the Rocky Mountain front, were decimated. The survivors scattered to the west and merged with other tribes, bringing about the near extinction of a native people.

1790s — The first French and British fur traders appeared in what is now western Montana and the Flathead Indian Reservation.

1803 — In the Louisiana Purchase the United States purchased from France the right to be the only purchaser of tribal lands when and if Indians ever chose to sell any land, and

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the sovereign and commercial rights to be the only government to trade and engage in diplomatic relationships with the tribal nations in the Louisiana Territory.

1805 — The Salish allowed Lewis and Clark to enter Safish territory in the Bitterroot Valley near Darby, opening the door to fur trade in Salish territory. k<sup>w</sup>tf+ éupRrh - Salish place name meaning "Great Clearing" was located at Ross's Hole.

1809 — The Salish gained regular access to firearms through the establishment of fur trade in western Montana by David Thompson. Saleesh House, at Sáey+ k<sup>w</sup> m - Salish placename in reference to "the Sound of Falling Water" located at Thompson Falls along with Kullyspell House at Lake Pend Oreille in present day North Idaho established fur posts in Salish and Pend' Oreille aboriginal territory.

1811 — 1830 — The peak years of the Fur Trade in the Northwest which had far-reaching impacts on the ecology, economy, and culture of the people of this region. The Iroquois people arrived among the Salish people.

1811 — Kullyspell House having been built off the main travel ways was abandoned.

1831, 1835, 1837, 1839 — Years the Salish sent delegations to St. Louis to bring back the "Black Robes," the Catholic Jesuit Priests.

1841 — Father De Smet and the first Jesuit missionaries arrived in Montana, establishing St. Mary's, a mission near present day Stevensville in the Bitterroot. The Salish placename for St. Mary's is Eâé+ mß meaning wide cottonwoods.

1846 — The Oregon Treaty between the United States and Great Britain divided aboriginal territory along the current Canadian border on the 49th parallel. Millions of acres of aboriginal lands in current Canada were lost. Kootenai bands along with tribes in the Salish language family were now placed in separate jurisdictions.

1848 — The United States organized Oregon Territory, exerting jurisdiction over tribal aboriginal lands west of the continental divide.

1851 — The Fort Laramie Treaty impacted aboriginal territory east of the Rocky Mountains. The treaty failed to recognize use of Salish, Pend d'Oreille, and Kootenai aboriginal lands east of the Continental Divide.

1853 — Isaac Stevens surveyed a route for Northern Pacific Railroad.

1855 — Tribal leaders and US officials signed the Treaty of Hell Gate. Under terms of the treaty, tribal leaders ceded to the United States "title" to the vast majority of their lands west of the continental divide. Tribal leaders reserved 1.25 million acres for the Flathead Reservation, along with the "Conditional Bitterroot Reservation" for what the treaty said was to be for the tribes "exclusive use and benefit." In the treaty, the tribes also reserved rights on their ceded lands, including the right to hunt, fish, gather plants, and pasture livestock on "open and unclaimed lands." Tribal understanding of the boundaries of the Flathead Reservation was considerably different from what was actually written in the treaty, particularly the east, west, and northern boundaries.

1855 — Lane Bull/Judith River Treaty with the "Blackfoot Nation" (Piegan, Blood, Blackfoot, and Gros Ventre), the "Flathead Nation" (Flathead — Salish, Upper Pend d'Oreille, Kootenai), and Nez Perce. In an effort to establish peace among warring tribes, the US government convened treaty negotiations to establish a "Common Hunting Ground" that would be acknowledged and honored by all of the tribes. At these negotiations, Pend d'Oreille Chief Alexander told all the other Indian leaders present that the Sweetgrass Hills country "was an old road for our people. A long time ago our people belonged to this land." Alexander's statement documented tribal

homelands east of the Rocky Mountains — as other tribes moved into Montana, the Salish, Pend d'Oreille, and Kootenai were forced to concentrate their populations on the west side of the mountains.

1859— Hell Gate Treaty of 1855 was ratified by US Senate and signed by the President.

1864— First major gold rush in Montana Territory brought thousands of non-Indian people with it.

1870— \*w e} xlcin - Many Horses, Chief Victor, died out in buffalo country. His son, S} rh\ e O<sup>w</sup>02(qeys— Claws of the Small Grizzly, or Chief Charlo, succeeded him as head chief of the Bitterroot Salish.

1870s — Six buffalo calves survived a journey west to the Flathead Reservation. Eatati, Little Falcon Robe, brought the calves to the reservation. These calves eventually became the Pablo-Allard herd. Remnants of this herd sold to Canada made their way back to the reservation when the National Bison Range was formed.

1871— President Grant signed an Executive Order, requiring the Salish to leave the Bitterroot Valley and go the "Jocko" reservation. The president's action was not based on any survey or examination of the Bitterroot for a suitable place (reservation) for the Salish, as required by the 1855 Treaty of Hell Gate. Representative James Garfield was appointed by President Grant to secure the Salish removal to the Jocko Reservation.

1872— Representative Garfield met with the Salish near present-day Stevensville to secure their approval and signature on an agreement for their removal to the Jocko Reservation. Chief Charlo refused to sign. Under the terms of the agreement, the Salish were to move from the Bitterroot Valley to the Jocko Reservation (Flathead Reservation) in exchange for \$55,000, new log houses, a side of beef for every family, and plots of land designated specifically for the Salish. Salish sub-chiefs Arlee and Adolph signed the contract, but head chief Charlo, son of Victor, refused to sign, therefore making the contract invalid. When the agreement was officially presented upon Garfield's return, a signature mark, which was a forgery, appeared on the contract by Chief Charlo's typed name. Chief Charlo was enraged when he found out about this deception. The senate approved the agreement for ratification.

1873 — Chief Arlee and a few families moved to the reservation and settle near the Jocko Agency.

1875 — By fall of this year, 123 Salish had moved from the Bitterroot Valley to the reservation. The North American bison population had dwindled to about one million, due to a deliberate campaign to exterminate them. "The elders say that in the second to last year of the traditional Pend d'Oreille buffalo hunts, the hunters were able to kill only 27. The following year they killed only seven." "Going to buffalo" was becoming only a memory.

1877 — Fort Missoula established in the Bitterroot in large part due to the Nez Perce war. The non-Indians in Montana Territory feared all Indians were going to rebel against the federal government and demanded protection.

1882— Tribal leaders were pressured into signing an agreement to allow a railroad right-of-way through the reservation, relinquishing 1,430 acres of reservation lands.

1882— Railroad tracks were laid across the Flathead Reservation. Tribal leaders expressed their anger and resentment at the continuing loss of tribal homelands. "The country we gave the government is very valuable. Lots of white men made independent fortunes in my country ... We don't want the railroad to go through the reservation ... When we heard that you were coming, we made up our minds what to say to you. You seem to like your money, and we like our country; it is like our parents." Kootenai leader Eneas said, "I would like to get the Flathead Lake country back. There are things that the government promised me in that treaty that I have never seen ... We had a big country, and under those conditions we signed the treaty. Seven years after that we learned that the line of the reservation ran across the middle of Flathead Lake.... I do not wish the road to pass through the reservation. This reservation is a small country and yet you want five depots upon it ... My country was like a flower and I gave you its best part...." 1884 — Sisters of Providence boarding school was built in St. Ignatius.

1887— The Dawes General Allotment Act was passed, mandating the breaking up of communal tribal homelands and setting a course for catastrophic land loss on reservations.

1887— Boys boarding school was completed in St. Ignatius.

1890— The Ursuline nuns arrived in St. Ignatius and began a kindergarten, which eventually expanded into a grade school and high school that operated until 1972.

1890— Chief Charlo and the Salish were forcibly removed to the Jocko Reservation after 36 years of resisting removal, in the conviction that the 1855 Treaty of Hell Gate had guaranteed the Bitterroot Valley for their reservation.

1893 — Flathead Reservation Indian Agent Peter Ronan died. Indian agents that succeeded Ronan were proponents of allotment and homesteading the Flathead Indian reservation.

1895 — Congress appointed "Crow, Flathead Commission" to negotiate cession of reservation lands. Tribal leaders refused to cede any lands at any price.

1898 first Arlee July celebration was held in spite of the protests from the priests and Indian Agents. William Smead was appointed as the US Indian Agent for the Flathead Indian Reservation. Smead, as a state representative, had previously advocated for opening up the reservation to white settlement.

1901 — A small delegation of representatives of the US Government, led by Commissioner of Indian Affairs Charles Hoyt, met with tribal leaders on the reservation to discuss an offer to buy part of the northern end of the reservation. Tribal leaders refused to sell. Chief Charlo stated, "I will not sell a foot (of land)." Kootenai Chief Isaac responded, "My body is full of your people's lies. You told me I was poor and needed money, but I am not poor. What is valuable to a person is land, the earth, water, trees ... and all these belong to us ... We haven't any more land than we need, so you had better buy from somebody else."

1901 — 1904 — Agricultural production statistics of 1902 recorded there were 25,000 cultivated acres with 120,000 bushels of grain, 25,000 tons of hay, and 20,900 bushels of vegetables produced by tribal members. There were 25,000 horses, 27,000 cattle, and 600 bison owned by tribal members.

1901 — Last documented small pox outbreak among the Salish. A quarantine camp was set up near Mission Creek.

1903— Montana Congressman Joseph Dixon introduced a bill to Congress to impose the Allotment Act on the Indians of the Flathead Indian Reservation.

1903— Congress passed the Flathead Allotment Act, setting the course for the loss of over 60% of the reservation land base. Heads of household were assigned 160 acres, while single adults received 80 acres. Two rounds of allotments were held. An enrollment and census were done to assign allotments. At this time, many names were altered, as the census workers insisted on each individual having two names. Upon completion of the census, 2,390 tribal members were eligible to receive allotments. Of the 1,245,000 acres, only 245,000 were secured by allotments. The remaining grazing and agricultural lands were opened up to homesteading. Amendments to the act seized additional lands for town sites, the Indian agency, churches, reservoirs, and power sites, along with 61,000 acres for Montana school lands. The 16th and 36th section of each township were set aside for school support. Immediately following allotment, Indian owned cattle dropped to 5,000 head and the horse herd was reduced to 4,000.

1904— Chief Charlo traveled to Washington, D.C., to try to persuade the President to halt the allotment process on the Flathead Reservation.

1904— Chief Charlo sent tribal leaders Antoine Moiese and Alicot to Washington, D.C., to make another allotment protest to the President, Congress, or anyone who would listen. Indian Agent Smead forced Michel Pablo to sell buffalo. Between 1906 and 1913, buffalo were gradually rounded up and shipped to Canada, the sole purchaser.

1906 — Congress passed the Burke Act that allowed Indian allotments to be taken out of federal trust if the allottee was deemed "competent."

1908 first round of allotment of lands to tribal members was completed. After 2,400 allotments were issued, covering 228,434 acres, the remaining land was declared 'surplus.' The Salish, Pend d'Oreille, and Kootenai Tribes suffered another loss of reservation lands as a Congressional Act passed in 1908 took 16,000+ acres for a National Bison Range. The Flathead Irrigation Project bill passed, justified as aiding Indians in transition to agriculture. The project actually benefited non-Indian farmers and ranchers and harmed many native subsistence operations. Many Indians lacked the money to pay the irrigation charges, which led to allotments being seized for settlement of debts. A state game warden killed four members of a Pend d'Oreille family hunting party in Swan Valley. The game warden was killed by one of the tribal women who acted in self-defense.

1910— Chief Charlo died on January 10. In April the Flathead Reservation was officially opened up to non- Indian settlement. "Surplus" reservation lands were sold to homesteaders.

1910— Public schools began to open to serve the non-Indian homesteaders.

1911 — 1934 — By 1930, most of the Indian allotments were now in non-Indian ownership.

1917 — 1919 — The United States participation in World War I included many American Indian soldiers, among them members of the Confederated Salish and Kootenai Tribes.

1920 — A second round of allotments transferred 124,795 acres from communal Tribal ownership to individual tribal member ownership.

1924— Congress granted citizenship to American Indians.

1927— After learning of plans to construct a massive hydroelectric power plant and dam on the lower Flathead River, a coalition of non Indian reservation residents, the Rocky Mountain Power Company, the Bureau of Indian Affairs, and other profiteers attempted to take ownership of the proposed dam site.

1927— Congress affirmed the Confederated Salish and Kootenai Tribes' ownership of the proposed dam site.

1930 — Rocky Mountain Power Company secured a license from the FPC to build the hydroelectric power plant on the proposed reservation site.

1933 — Sixty percent of the original tribal allotments were lost. This land became fee land owned by non-Indians.

1933— 1942 — The Civilian Conservation Corps was funded during these years employing tribal members building trails and roads on the reservation.

1933— Congress passed the Indian Reorganization Act. This Act repealed the Dawes Act and enabled tribes to voluntarily organize and adopt federally approved constitutions and by-laws.

1933-- Confederated Salish and Kootenai Tribes organized under the 1934 Indian Reorganization Act, ratified a tribal constitution and created an elected government of ten tribal council representatives and the last two federally recognized head chiefs, Chiefs Charlo and Koostahtah. The first Tribal Council meeting was held at the Flathead

Agency in Dixon. The Council representatives were Edwin Dupuis, Alexander Clairmont, Louis Tellier, Eneas Conko, Nicolai Lassaw, Duncan (Charlie) McDonald, William Gingras,

Louis Adams Sr., Louis Couture, and Joseph Blodgett. Chief Martin Charlo and Chief Koostahtah were life members and active members of all committees. The first committees established were Land, Finance, Law and Order, Health, Labor, and Education. The council made a recommendation to designate an area of the Mission Mountains for management similar to the National Parks, keeping it undeveloped and allowing only foot and horse trails.

1933— The Confederated Salish and Kootenai Tribes (CSKT) adopted a corporate charter. A first order of business was to address issues with Montana Power Company and their license at Kerr Dam. This included appropriate rental fees, preference hiring of tribal members in the construction work. The original annual rental fee was \$140,000.

1936-1938 — Kerr Dam was built.

1941 — 1945 — Years of World War II, during which 25,000 American Indians served in the military, including many Confederated Salish and Kootenai tribal members. Indian people also worked in defense-related industries. According to late tribal elder Margaret Finley, life changed very rapidly for Indian people, "...when we got in the war with the Japanese, Pearl Harbor, right after that. Everything changed very fast, very, very fast ... how we do things together, happiness, all that. It all changed." American Indian people left their home communities — many for the first time — to serve in the war or work in defense projects. People who still held the

collective memory of an old tribal world were exposed to a global world that would forever change the country their world was now situated in.

1951— 1953 — Tribal members again enlisted in the military and served during the Korean War.

1953— House Concurrent Resolution 108, the Termination Act, targeted the

Confederated Salish and Kootenai Tribes. Termination ended a tribe's sovereign status and relationship with the federal government as a political entity. The Confederated Salish and Kootenai Tribes were at the top of the list of tribes to be terminated.

Termination was considered "voluntary" and required tribal member consent, although pressure and coercion were not uncommon.

1953— The Confederated Salish and Kootenai Tribes successfully resisted the US government's attempt to terminate their tribes and reservation.

1960— The Tribal Constitution was amended to change the blood quantum requirement for membership to one-quarter degree Salish or Kootenai or both combined. The change was not retroactive, and only applied to people born after the amendment was approved.

1960tribes entered into a Public Law 83-280 agreement with the state of Montana. This law allowed the state to assume criminal and civil jurisdiction on the reservation. Five states were mandated to this jurisdiction change and Alaska became the sixth mandatory state in 1958. Montana was not one of the mandatory states; however, the remaining 44 states, including Montana, had the option to assume jurisdiction in Indian Country. PL83-280 was amended between 1953 and 1968, allowing states to assume jurisdiction unilaterally. In response, after tribal opposition, Congress amended PL 83-280 to include a requirement for tribal consent for the jurisdiction change, and also to allow acceptance of "retrocession" of the state's assumption of jurisdiction. In 1963 the state of Montana passed legislation to allow the state to assume jurisdiction on reservations. However, by this time the law had been amended to require tribal consent. The Confederated Salish and Kootenai Tribes were the only tribe in the state to agree to PL 83-280.

1965 — The Confederated Salish and Kootenai Tribes passed a Tribal Ordinance defining the terms under which they would come under PL 83-280.

1965 — The Indian Claims Commission determined that Confederated Salish and Kootenai Tribes had not been compensated for the lands ceded in the 1855 Treaty of Hell Gate.

"...the Tribes had surrendered 12, 005,000 acres to the government which were worth \$5,300,000. The total payment to the tribes, however, had only been \$593,377.82." After fees were taken out, the tribes received \$4,016,293.29 in 1967. The compensation was determined in 1855 land values. No interest was paid for the 112 years the Tribes had been deprived of the money.

1971 — The US Court of Claims found that the Flathead Allotment Act was a breach of the 1855 Treaty of Hell Gate. Compensation to the Tribes was determined in 1912 land values, totaling \$7,410,000, of which only \$1,783,549 had been paid. The balance of \$5,626,451 was paid a few years later.

1974— Tribal elders Christine Woodcock, Louise McDonald, and Annie Pierre protested the Ashley timber sale in the Mission Mountains, successfully stopping it.

1974— Two Eagle River School was founded, serving high school students with a dominant focus on cultural studies.

1975— The Culture Committee was formed and then divided into the Salish-Pend d'Oreille Culture Committee and the Kootenai Culture Committee. The Indian Self-Determination and Education Act passed, which recognized the right of Indian tribes to self-government "as domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory."

1975— Salish Kootenai College was founded. Prior to 1976, only 41 tribal members had college degrees, compared to 423 from 1976 to 1995.

1978 — The Supreme Court ruled that Tribal Courts do not have criminal jurisdiction over non-Indians, and that tribal courts DO have jurisdiction over non-Indians in matters such as permits, licensing, and environmental protection.

1981— Confederated Salish and Kootenai Tribes' Natural Resources Department was established.

1981— The Confederated Salish and Kootenai Tribal Council approved Tribal Ordinance 79A, setting aside approximately 91,778 acres of the Mission Range as the Mission Mountain Wilderness.

1984— The Tribes negotiated re-licensing of Kerr Dam, which secured the option to take control of the dam in 2015, and raised the fee from \$2.6 million to \$9 million annually, along with annual adjustments for inflation.

1984— The Tribes secured minimum stream flows to protect fisheries.

1997— The National Trust for Historic Preservation named "the Flathead Indian

Reservation one of 11 Most Endangered Places in the United States" due to the proposed radical expansion of US Highway 93.

1997— The Atlantic Richfield Company (ARCO) agreed as part of a legal settlement to pay the Confederated Salish and Kootenai Tribes \$18.3 million to restore, replace, and/or acquire the equivalent of Tribal treaty- protected resources that were injured by the release of hazardous substances in the Clark Fork River through mining and smelting in Butte and Anaconda.

1997— The "Squaw" word bill passed Montana State Legislation. The Salish and Pend d' Oreille Culture Committee begin work to rename over 20 "S" word sites with Salish place names. By 2009, 19 proposed Salish place names were approved by the US Board of Geographic Names to replace "S" word sites across Montana.

2002 — Nkwusm, the Salish Language Immersion School, opened in Arlee.

2015 — Kerr Dam administration reverted to the Confederated Salish and Kootenai Tribes and was renamed Salish Kootenai Dam.



## **The Hellgate Treaty 1855**

Articles of agreement and convention made and concluded at the treatyground at Hell Gate, in the Bitter Root Valley, this sixteenth day of July, in the year one thousand eight hundred and fifty-five, by and between Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, on the part of the United States, and the undersigned chiefs, head-men, and delegates of the confederated tribes of the Flathead, Kootenay, and Upper Pend d'Oreilles Indians, on behalf of the acting for said confederated tribes, and being duly authorized thereto by them. It being understood and agreed that the said confederated tribes do hereby constitute a nation, under the name of the Flathead Nation, with Victor, the head chief of the Flathead tribe, as the head chief of the said nation, and that the several chiefs, head-men, and delegates, whose names are signed to this treaty, do hereby, in behalf of their respective tribes, recognise Victor as said head chief.

### **ARTICLE 1.**

The said confederated tribe of Indians hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the country occupied or claimed by them, bounded and described as follows, to wit:

Commencing on the main ridge of the Rocky Mountains at the forty-ninth (49th) parallel of latitude, thence westwardly on that parallel to the divide between the Flat-bow or Kootenay River and Clarke's Fork, thence southerly and southeasterly along said divide to the one hundred and fifteenth degree of longitude, (115 degrees,) thence in a southwesterly direction to the divide between the sources of the St. Regis Borgia and the Coeur d'Alene Rivers, thence southeasterly and southerly along the main ridge of the Bitter Root Mountains to the divide between the head-waters of the Koos-koos-kee River and of the southwestern fork of the Bitter Root River, thence easterly along the divide separating the waters of the several tributaries of the Bitter Root River from the waters flowing into the Salmon and Snake Rivers to the main ridge of the Rocky Mountains, and thence northerly along said main ridge to the place of beginning.

### **ARTICLE 2.**

There is, however, reserved from the lands above ceded, for the use and occupation of the said confederated tribes, and as a general Indian reservation, upon which may be placed other friendly tribes and bands of Indians of the Territory of Washington who may agree to be consolidated with the tribes parties to this treaty, under the common designation of the Flathead Nation, with Victor, head chief of the Flathead tribe, as the head chief of the nation, the tract of land included within the following boundaries, to wit:

Commencing at the source of the main branch of the Jocko River; thence along the divide separating the waters flowing into the Bitter Root River from those flowing into the Jocko to a point on Clarke's Fork between the Camash and Horse Prairies; thence northerly to, and along the divide bounding on the west the Flathead River, to a point due west from the point half way in latitude between the northern and southern extremities of the Flathead Lake; thence on a due east course to the divide whence the Crow, the Prune, the So-ni-el-em and the Jocko Rivers take their rise, and thence southerly along said divide to the place of beginning.

All which tract shall be set apart, and, so far as necessary, surveyed and marked out for the exclusive use and benefit of said confederated tribes as an Indian reservation. Nor shall any white man, excepting those in the employment of the Indian department, be permitted to reside upon the said reservation without permission of the confederated tribes, and the superintendent and agent. And the said confederated tribes agree to remove to and settle upon the same within one year after the ratification of this treaty. In the meantime it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States, and upon any ground claimed or occupied, if with the permission of the owner or claimant.

Guaranteeing however the right to all citizens of the United States to enter upon and occupy as settlers any lands not actually occupied and cultivated by said Indians at this time, and not included in the reservation above named. And provided, That any substantial improvements heretofore made by any Indian, such as fields enclosed and cultivated and houses erected upon the lands hereby ceded, and which he may be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President of the United States, and payment made therefor in money, or improvements of an equal value be made for said Indian upon the reservation; and no Indian will be required to abandon the improvements aforesaid, now occupied by him, until their value in money or improvements of an equal value shall be furnished him as aforesaid.

### **ARTICLE 3.**

And provided, That if necessary for the public convenience roads may be run through the said reservation; and, on the other hand, the right of way with free access from the same to the nearest public highway is secured to them, as also the right in common with citizens of the United States to travel upon all public highways.

The exclusive right of taking fish in all the streams running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.

### **ARTICLE 4.**

In consideration of the above cession, the United States agree to pay to the said confederated tribes of Indians, in addition to the goods and provisions distributed to them at the time of signing this treaty the sum of one hundred and twenty thousand dollars, in the following manner - - that is to say: For the first year after the ratification hereof, thirty-six thousand dollars, to be expended under the direction of the President, in providing for their removal to the reservation, breaking up and fencing farms, building houses for them, and for such other objects as he may deem necessary. For the next four years,

six thousand dollars each year; for the next five years, five thousand dollars each year; for the next five years, four thousand dollars each year; and for the next five years, three thousand dollars each year.

All which said sums of money shall be applied to the use and benefit of the said Indians, under the direction of the President of the United States, who may from time to time determine, at his discretion, upon what beneficial objects to expend the same for them, and the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of the Indians in relation thereto.

#### **ARTICLE 5.**

The United States further agree to establish at suitable points within said reservation, within one year after the ratification hereof, an agricultural and industrial school, erecting the necessary buildings, keeping the same in repair, and providing it with furniture, books, and stationery, to be located at the agency, and to be free to the children of the said tribes, and to employ a suitable instructor or instructors. To furnish one blacksmith shop, to which shall be attached a tin and gun shop; one carpenter's shop; one wagon and ploughmaker's shop; and to keep the same in repair, and furnished with the necessary tools. To employ two farmers, one blacksmith, one tinner, one gunsmith, one carpenter, one wagon and plough maker, for the instruction of the Indians in trades, and to assist them in the same. To erect one saw-mill and one flouringmill, keeping the same in repair and furnished with the necessary tools and fixtures, and to employ two millers. To erect a hospital, keeping the same in repair, and provided with the necessary medicines and furniture, and to employ a physician; and to erect, keep in repair, and provide the necessary furniture the buildings required for the accommodation of said employees. The said buildings and establishments to be maintained and kept in repair as aforesaid, and the employees to be kept in service for the period of twenty years.

And in view of the fact that the head chiefs of the said confederated tribes of Indians are expected and will be called upon to perform many services of a public character, occupying much of their time, the United States further agree to pay to each of the Flathead, Kootenay, and Upper Pend d'Oreilles tribes five hundred dollars per year, for the term of twenty years after the ratification hereof, as a salary for such persons as the said confederated tribes may select to be their head chiefs, and to build for them at suitable points on the reservation a comfortable house, and properly furnish the same, and to plough and fence for each of them ten acres of land. The salary to be paid to, and the said houses to be occupied by, such head chiefs so long as they may be elected to that position by their tribes, and no longer. And all the expenditures and expenses contemplated in this article of this treaty shall be defrayed by the United States, and shall not be deducted from the annuities agreed to be paid to said tribes. Nor shall the cost of transporting the goods for the annuity payments be a charge upon the annuities, but shall be defrayed by the United States.

#### **ARTICLE 6.**

The President may from time to time, at his discretion, cause the whole, or such portion of such reservation as he may think proper, to be surveyed into lots, and assign the same to such individuals or families of the said confederated tribes as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable.

#### **ARTICLE 7.**

The annuities of the aforesaid confederated tribes of Indians shall not be taken to pay the debts of individuals.

#### **ARTICLE 8.**

The aforesaid confederated tribes of Indians acknowledge their dependence upon the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property taken shall be returned, or, in default thereof, or if injured or destroyed, compensation may be made by the Government out of the annuities. Nor will they make war on any other tribe except in self-defence, but will submit all matters of difference between them and other Indians to the Government of the United States, or its agent, for decision, and abide thereby. And if any of the said Indians commit any depredations on any other Indians within the jurisdiction of the United States, the same rule shall prevail as that prescribed in this article, in case of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

#### **ARTICLE 9.**

The said confederated tribes desire to exclude from their reservation the use of ardent spirits, and to prevent their people from drinking the same; and therefore it is provided that any Indian belonging to said confederated tribes of Indians who is guilty of bringing liquor into said reservation, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

#### **ARTICLE 10.**

The United States further agree to guaranty the exclusive use of the reservation provided for in this treaty, as against any claims which may be urged by the Hudson Bay Company under the provisions of the treaty between the United States and Great Britain of the fifteenth of June, eighteen hundred and forty-six, in consequence of the occupation of a trading-post on the Pru- in River by the servants of that company.

#### **ARTICLE 11.**

It is, moreover, provided that the Bitter Root Valley, above the Loo-lo Fork, shall be carefully surveyed and examined, and if it shall prove, in the judgment of the President, to be better adapted to the wants of the Flathead tribe than the general reservation provided for in this treaty, then such portions of it as may be necessary shall be set apart as a separate reservation

for the said tribe. No portion of the Bitter Root Valley, above the Loo-lo Fork, shall be opened to settlement until such examination is had and the decision of the President made known.

**ARTICLE 12.**

This treaty shall be obligatory upon the contracting parties as soon as the same shall be ratified by the President and Senate of the United States. In testimony whereof, the said Isaac I. Stevens, governor and superintendent of Indian affairs for the Territory of Washington, and the undersigned head chiefs, chiefs and principal men of the Flathead, Kootenay, and Upper Pend d'Oreilles tribes of Indians, have hereunto set their hands and seals, at the place and on the day and year hereinbefore written.

Isaac I. Stevens, (L.S.)

Governor and Superintendent Indian Affairs W.T.

Victor, head chief of the Flathead Nation, his x mark. (L.S.)

Alexander, chief of the Upper Pend d'Oreilles, his x mark. (L.S.)

Michelle, chief of the Kootenays, his x mark. (L.S.)

Ambrose, his x mark. (L.S.)

Pah-soh, his x mark. (L.S.)

Bear Track, his x mark. (L.S.)

Adolphe, his x mark. (L.S.)

Thunder, his x mark. (L.S.)

Big Canoe, his x mark. (L.S.)

Kootel Chah, his x mark. (L.S.)

Paul, his x mark. (L.S.)

Andrew, his x mark. (L.S.)

Michelle, his x mark. (L.S.)

Battiste, his x mark. (L.S.)

Kootenays

Gun Flint, his x mark. (L.S.)

Little Michelle, his x mark. (L.S.)

Paul See, his x mark. (L.S.)

Moses, his x mark. (L.S.)

James Doty, secretary.

R. H. Lansdale, Indian Agent.

W. H. Tappan, sub Indian Agent.

Henry R. Crosire,

Gustavus Sohon, Flathead Interpreter.

A. J. Hoecken, sp. mis.

William Craig.

Ratified Mar. 8, 1859.

Proclaimed Apr. 18, 1859.



**AMENDED OBJECTION EXHIBIT C-**  
**Summary And Conclusion: CSKT v. Constitution**

- The CSKT Water Compact and those responsible for it have shown a willful disregard of the rule of law, the US and MT Constitution, and the history of western Montana.
- There exists an abundance of evidence supporting the un-Constitutionality of the CSKT Water Compact; as well as showing that Montana, CSKT, and US Senator Steve Daines along with the US Congress have placed an undue burden upon the people of Montana to defend themselves and their water rights.
- The significant expansion of the federal reserved water rights; has not yet been challenged in the Montana and US Supreme Court. It ultimately must be afforded that opportunity.
- The State of Montana gave deference to CSKT and their unreasonable demands; over the majority of Montana citizens interests and welfare.
- This compact is based on flawed historical and legal assumptions, logic and process; combined with faulty claims presented in this unconstitutional and illegal document called the CSKT Water Compact.
  - The Flathead Indian Reservation is the only “open” reservation in Montana, opened by Presidential Proclamation in 1909, and 90% of the population is non-Indian. Just how much water does 10% of the population need in order to live?
  - Montana politicians allowed the Flathead Compact to be predicated upon a flawed and legally incorrect definition of the reservation, paving the way for an expansive taking of water and jurisdiction over it within reservation boundaries. In it, the Flathead Reservation is defined to include: “all **land** within the exterior boundaries of the Indian Reservation established under the July 16, 1855 Treaty of Hellgate, notwithstanding the issuance of any patent, and including rights-of-way running through the Reservation.” Define “land.” When was the last time that waterways were used by any tribal member for “rights-of-way?”
  - The compact also ignores other court ordered settlements with the tribe through the [Indian Claims Commission](#) and U.S. Court of Claims, that were related to the entirety of the tribe’s ceded lands. Once ceded it cannot be reclaimed. The terms of those settlements preclude the tribe from going after any additional damages throughout their ceded territory. In order to receive their settlement monies for these claims, the tribes signed a stipulation agreement in 1966 that specified: *“The judgment shall finally dispose of all claims or demands which petitioner has asserted or could have asserted in this case against defendant, and petitioner shall be barred from asserting all such claims or demands in any future action.”*
  - By omissions of truth and the facts, the Compact Commission exceeded their authority by creating non-existent “tribal reserved water rights” with a time immemorial priority date (Note: the Commission was authorized by the legislature to negotiate “federal reserved water rights” that are strictly limited to the purposes of the reservation of land). This was a transparent attempt to give the state legal cover for wrongly awarding vast amounts of water both on and off the reservation to the United States / CSKT with time immemorial priority dates.
- There is shown proof that the Flathead Reservation and the CSKT are not a “sovereign nation.” Neither the tribe nor the Flathead reservation were ever created to be sovereign; or defined as such in the MT and US Constitutions.
- The commission’s terminology used to fabricate “tribal reserved water rights” on and off the reservation are not supported by any treaty, Montana Constitution or the US Constitution.
- The false claim of “Time immemorial” is a recently fabricated term not supported by history or any historical documentation.
- No environmental studies have been completed to show the adverse effects of the compact on fish, wildlife, farming, recreation or Montana citizens.
- The compact illegally cedes State jurisdiction and protection to the CSKT and federal government.
- The three compacting parties have all moved in concert toward a common goal of restoring federal ownership and control over our state’s amazing and abundant water resources. As guaranteed by our US and MT Constitutions, water is necessary for life, liberty and the pursuit of happiness. The compacting parties understand that water is required for the existence of all living things and if they are able to manipulate and control the water, they also will with what people can and cannot do, as well as where they live, and cannot live.
- The “rights” of one heritage do not supersede the rights of all others.
- This compact has all the attributes of yet another age-old money laundering scheme between the compacting parties; at the expense of the American taxpayers. Congress perpetually “allows” largely unaccountable tribal governments to pretend to be “self-determined,” by funneling vast amounts of federal money into tribal treasuries for social services and other benefits “earmarked” for the Indian people that never seem to see the benefit of the “federal government’s” largesse. Under the falsehood that the tribal governments are “sovereign,” Congress seemingly “allows” them to be exempt from the same laws that apply to everyone else.

**Questions to the compacting parties:**

**1. 85-20-1901. Water rights compact entered into by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United States ratified.** This Compact is entered into by and among the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United State of America to settle all existing claims to water of or on behalf of the Confederated Salish and Kootenai Tribes within the State of Montana.

- a. Which Compact was ratified by a 2/3 majority of We the People of the State of Montana?
- b. Who is "Montana" referred to in MCA 85-20-1901
- c. Who represented Montana citizens during the drafting of either compact?
- d. The MT Legislature's water compact was illegally ratified (lacking 2/3 majority).
2. What is the correct definition of "time immemorial?"
  - a. Where is that found in the US or MT Constitution?
  - b. What proof is there of any current residents' ancestors of the CSKT reservation's occupation?
3. Where does the water on the Flathead reservation and all other basins come from?
  - a. Who made the oceans, lakes, rivers, streams, aquifers?
  - b. Who made the snow and rain that continuously contributes to replenishing the waters found in those Montana locations?
4. How much water does the CSKT currently use and need for their existence?
5. Where in the US or MT Constitutions does it say that any tribe is a "sovereign nation" and what does that term mean? Is the Flathead Indian Reservation currently "sovereign" by the common definition of the word?
6. IF that premise of being a "sovereign nation" were true; does that give them the right to rule or govern; or lay claim to anything and everything outside of their "sovereign nation?" Mineral rights? Timber rights? Hunting and fishing rights? Property rights?
7. Is the CSKT/Flathead reservation and its tribal residents currently self-reliant and self-sufficient as originally intended and established?
8. Can you explain the difference between "aboriginal water rights" and "reserved water rights?" (MCA85-20-1901 Article 1)
  - a. Those "rights" are being claimed in order to "fulfill the purposes of the [Hellgate] Treaty and the Reservation." What are those "purposes?"
  - b. Where in the 4 times "water is mentioned in the Hellgate Treaty; does it mention those "aboriginal" and "reserved water rights?"
  - c. The Hellgate Treaty states in ARTICLE I, *"The said confederated tribes of Indians hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the country occupied or claimed by them, bounded and described as follows, to wit: Commencing on the main ridge of the Rocky Mountains at the forty-ninth (49th) parallel of latitude, thence westwardly on that parallel to the divide between the Flat-bow or Kootenay River and Clarke's Fork; thence southerly and southeasterly along said divide to the one hundred and fifteenth degree of longitude, (115, degree) thence in a southwesterly direction to the divide between the sources of the St. Regis Borgia and the Coeur d'Alene Rivers..."*
  - d. Does the land ceded, relinquished and conveyed to the United States as well as the right, title and interest in and to the country described; not include the rivers that identify boundaries defined in the treaty?
9. How many times is "water rights" mentioned in the Hellgate Treaty? Answer: 0
10. Do any CSKT members currently live and use water from Ashley Creek or the municipal wells in Thompson Falls, MT?
11. Article II and the last paragraph of the Hellgate Treaty states: *"Guaranteeing however the right to all citizens of the United States to enter upon and occupy as settlers any lands not actually occupied and cultivated by said Indians at this time, and not including in the reservation above named. And provided. That any substantial improvements heretofore made by any Indian, such as fields enclosed and cultivated and houses erected upon the lands hereby ceded, and which he may be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President of the United States, and payment made therefor in money, or improvements of an equal value be made for said Indian upon the reservation; and no Indian will be required to abandon the improvements aforesaid, now occupied by him until their value in money or improvements of an equal value shall be furnished him as aforesaid."*
  - a. Have any of the tribal members from past generations ever been paid for property and the water rights previously?
  - b. Have any of the monetary and improvement payments guaranteed by the US government for the tribes' ceding not been made?
12. Article III Paragraph 2 of the Hellgate Treaty states: *"The exclusive right of taking fish in all the streams running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."*
  - a. Any mention of lakes, rivers or wells in that paragraph?
  - b. Does Ashley Creek or the Thompson Falls city wells "border" said reservation?
  - c. Does the CSKT intend to suggest they have rights to "open and unclaimed land?" Hunting, fishing and pasturing rights here?
13. Article VIII of the Treaty of Hellgate addresses depredation: *"The aforesaid confederated tribes of Indians acknowledge their dependence upon the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens."*
  - a. Does adversely affecting the water level in Flathead Lake and elsewhere constitute any "depredations?"
14. Indians have believed for centuries that they did not own the land (which by extension is also believed to be the usage rights to the water). When did that all change?
15. At the May 12, 2023 Flathead Project meeting, the BIA claimed that the Flathead Project "is now a fishery project." When and how does an "irrigation project" become a "fisheries project?"
16. The MT Constitution guarantees the water of Montana is for everyone living as citizens in Montana. Next year marks the 100th anniversary of the Indian Citizenship Act.
  - a. Does the US and MT Constitutions apply to the CSKT?
  - b. Since the 1924 Indian Citizenship Act was passed by Congress, do individual Indians not have the same constitutional rights and protections as ALL American citizens?
  - c. In 1934, the Indian Reorganization Act (IRA) was passed by Congress. The vast amounts of money paid out to tribes each year by the federal government under the guise of Indian Self-Determination serves to enrich the tribal government treasury, and to

impoverish the people for which it was supposedly intended, as well as the taxpayers whose money and wealth is being plundered. Why did almost immediately after the IRA was ratified, its sponsor Burton K. Wheeler, who awakened to the harm it was causing individual tribal members, [and began several attempts to repeal it](#)? Despite the fact that the Confederated Salish and Kootenai Tribes were the first tribal corporate government created under the IRA, [individual tribal members went to Congress to lobby for its repeal](#). It is notable that the newly federally chartered CSKT tribal corporate government created by the IRA, testified against the best interests of their tribal membership. All efforts to repeal the act failed. Has the become a multi-billion dollar corporation of the CSKT tribal government, once again failed to represent the majority of individual tribal members?

17. The Kerr Dam project was privately undertaken by Rocky Mountain Power to generate hydroelectric power in the area; it started construction in 1930. But, with revenues declining because of the Great Depression, the company halted construction in 1931. Montana State Treasurer James Brett went to a meeting in Atlanta in 1934 to ask President Franklin D. Roosevelt for \$5,000,000 to complete the dam. Roosevelt approved the money for the project. In 1936, the Montana Power Company restarted the project and completed it in 1938; naming it originally after Frank Kerr, president of the Montana Power Company, which undertook the construction, with federal assistance during the Great Depression in 1938.

- a. Who paid for building [Kerr Dam](#)?
- b. Would the “time immemorial” theory not apply as well to original ownership of the Kerr Dam from its creation?
- c. On September 4, 2015, the Confederated Salish and Kootenai Tribes (CSKT) reportedly paid \$18.2 million to purchase the Kerr Hydroelectric Project from NorthWestern Energy. By whose authority was the actual dam structure illegitimately sold; as well as the power revenues ceded to CSKT?
- d. Why would a company in the business of electrical energy be motivated to sell one of their best renewable energy assets?
- e. Where did the \$18.2 million the CSKT used come from? By all indications, this has the appearance of being an illegal money laundering scheme and therefore, illegitimately unconstitutional.

18. Over 50 years ago, the Indian Claims Commission, and the United States Court of Claims, all but one of the tribe’s grievances prior to the 1950’s were resolved, most with monetary settlements. Upon receipt of those settlements, the tribe was required to sign [stipulation agreement](#) that precludes them from going after the land and water in their aboriginal territory, and also from claiming water via the 10,000 claims covering 2/3 of the state of Montana. These settlements also extinguished the tribe’s aboriginal title to all of their off reservation ceded lands, and the water that exists upon them.

- a. Payment made by the United States to the CSKT in 1966 was a final settlement for their off reservation ceded lands: the Commission determined that the difference between the \$593,000 consideration paid to the tribes by the United States, and its 1859 fair-market value of \$5.3 million, was unconscionable and petitioner was entitled to recover \$4.7 million, *less whatever offsets the U.S. was entitled to under the Indian Claims Commission Act*.
- b. On November 30, 1965 the United States filed an amended answer claiming offsets of \$4.3 million. The tribes appealed, and the parties ultimately agreed that the offsets would be settled at \$275,000 conditioned by the agreement of the CSKT Tribal Government, Bureau of Indian Affairs and Indian Claims Commission, as well as plaintiff dismissal of all other appeals entered for Docket 61.
- c. On July 1, 1966 the CSKT Tribal Council unanimously voted to accept the proposed settlement by passing Tribal Resolution 1977, APPROVING AND ACCEPTING THE OFFER TO COMPROMISE AND SETTLE THE ABORIGINAL TITLE CLAIM OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES, **DOCKET NO. 61 INDIAN CLAIMS COMMISSION**.
- d. The parties entered into a stipulation agreement for final judgment that included the following condition:

**“THE JUDGMENT SHALL FINALLY DISPOSE OF ALL CLAIMS OR DEMANDS WHICH PETITIONER HAS ASSERTED OR COULD HAVE ASSERTED IN THIS CASE AGAINST DEFENDANT, AND PETITIONER SHALL BE BARRED FROM ASSERTING ALL SUCH CLAIMS OR DEMANDS IN ANY FUTURE ACTION.”**

*So how is it then, that in 2011 the state could be discussing the scope of the tribe’s water rights as “more water than exists?”*

19. Can the CSKT, State of MT, Federal Government and current Kerr Dam operator be held liable for damages incurred through mismanagement and maladministration with Flathead Lake levels being lowered in the summer of 2023?

#### Winters v. United States - Wikipedia

Supreme Court of the United State

Argued October 24, 1907

Decided January 6, 1908

Full case name Henry Winters, John W. Acker, Chris Cruse, Agnes Downs, et al., Appts. v. United States

Citations 207 U.S. 564 (more)

28 S. Ct. 207; 52 L. Ed. 340; 1908 U.S. LEXIS 1415

Holding

The decree enjoining the companies from utilizing river waters intended for a Reservation was affirmed.

Court membership

Chief Justice

Melville Fuller

Associate Justices

John M. Harlan · David J. Brewer

Edward D. White · Rufus W. Peckham

Joseph McKenna · Oliver W. Holmes Jr.

William R. Day · William H. Moody

## Case opinions

Majority McKenna, joined by Fuller, Harlan, White, Peckham, Holmes, Day, Moody

Dissent Brewer

Winters v. United States, 207 U.S. 564 (1908), was a United States Supreme Court case clarifying water rights of American Indian reservations.[1] This doctrine was meant to clearly define the water rights of indigenous people in cases where the rights were not clear.[2] The case was first argued on October 24, 1907, and a decision was reached January 6, 1908.[3] This case set the standards for the United States government to acknowledge the vitality of indigenous water rights, and how rights to the water relate to the continuing survival and self-sufficiency of indigenous people.[4]

## Background Water rights

Water rights for indigenous peoples go much further than the water itself, as the rights also control where they are allowed to fish. Water rights are extremely important to Indigenous peoples, especially those tribes living in the West, where water supplies are limited. Reservations, and those who live within them, rely on water sources for the water necessary for them to be self-sufficient. Reservations rely on streams and rivers for agricultural purposes. Not only is the water itself important to the Reservations, but also what the water contains. By having the rights to an area of water, one also gains rights to what is in the water. This gives an implied right to fish the waters. Because life relies on water, it may be fair to say that whoever controls the water ultimately has control over life on the reservation.[5]

## Riparian system

The Riparian water system is the system controlling water use in the eastern states where water is found to be more plentiful. Under this system the owner of the land bordering the source of water is entitled to use of said water.[6] This system is sufficient for the states where water is found in abundance, but in the less water-rich western states the control of water must be handled differently.

## Appropriative system

In the western part of the country, water ownership is controlled by the appropriative system. This system states that the owner of a piece of land does not automatically own the rights to water found on that land. Rights to water belong to the first user who puts the water to beneficial use. The first people to become appropriators of the water source have the right to continue using the water in the same quantity as always as long as they continue putting the water to good use. This holds true no matter how many other people wish to use the water. The latest water appropriator loses all of their water rights before any water rights are taken from the next latest appropriator.[7] The Fort Belknap Reservation in Montana, which had been created by the government in 1888, experienced issues with the appropriative water system when water flow to their reservation was being diverted to settlements of non American Indians.[8]

## Fort Belknap American Indian Reservation

The Fort Belknap Indian Reservation was created in 1888 in Montana. It was created from what had once been a much larger area of land to be set aside for tribes. The 1888 agreement neglected to mention any water rights that were reserved for the reservation in relation to the Milk River. Soon there came a huge demand for water by settlers which was an issue for the Fort Belknap American Indian reservation.[9] As non-Indian settlers began moving closer to the Fort Belknap Reservation, the settlers claimed rights to the water. The settlers did things such as building dams and reservoirs which prevented the reservation from receiving water needed for agricultural purposes.[8] The settlers used the terms of the appropriative water system to support their actions, claiming that they had appropriated the water before the Natives living on the reservation had put the water to beneficial use.[8]

## Decision

The United States Supreme Court case of Winters v. United States held that the decree enjoining the companies from utilizing river waters intended for a Reservation was affirmed. It was also held that when reservations were created by the United States government, they were created with the intention of allowing indigenous settlements to become self-reliant and self-sufficient. As reservations require water to become self-sufficient in areas such as agriculture, it was found that water rights were reserved for tribes as an implication of the treaties that created the reservations.[10]

## Majority opinion

Associate Justice Joseph McKenna delivered the majority opinion.

The Supreme Court came to the decision that the Fort Belknap reservation had reserved water rights through the 1888 agreement which created the Fort Belknap American Reservation. It was found unnecessary for the natives to have to reserve the water rights if they had already reserved the rights to the land for agricultural purposes because the natives would have no use for the farmland if they could not have access to a water source.[11] It was decided that the water rights of the Milk River were implied when the Fort Belknap Reservation was created in order to uphold provisions that had been previously stated.[12] The majority opinion was delivered to the United States Supreme Court by associate justice, Joseph McKenna. McKenna wrote that five of the defendants named in the bill failed to answer. He wrote that the other defendants who did answer filed a joint and several answer. From this answer, the case was heard and a decree was entered against all of the defendants. It was determined by the Supreme Court that the reasoning behind the establishment of reservations was to provide a permanent homeland for the natives.[13] The majority opinion found that the decree held.[14] The majority opinion was held by Chief Justice Melville W. Fuller and Associate Justices William R. Day, Oliver Wendell Holmes Jr., Joseph McKenna, William H. Moody, Rufus Wheeler Peckham, and Edward D. White.[12] After the verdict had been reached, the United States

government allocated \$25,000 to be used for the purpose of extending the irrigation system on the Milk River for use by the Fort Belknap American reservation.[15]

**Dissenting opinion-** Associate justice David J. Brewer dissented from the majority opinion.[12]

### **Implications**

The Winters court reasoned that water rights were implied in the agreement that had been made with the natives in 1888, when the reservation was created. This agreement stated that the Fort Belknap Reservation had been created with the intention of the tribal people being able to become self-sufficient. The court noted that land without water has no value, especially when the purpose of a land was to help a group become self-supporting in the way of agriculture. Therefore, a reservation of water goes along with the reservation of the land.[12] Water rights may be implied from reservations made by presidential executive order, or reservations which are created by an act of Congress.[16] Other implications of this court case include setting more of a standard for indigenous water rights along with setting a precedent for later Supreme Court cases which deal with implied water rights.

### **Winters rights**

Winters rights refers to the reserved water rights cases that followed Winters.[17]

First, that they are defined by the federal government and federal law controls them.[18]

Second, when reservations were established by either a treaty, statute, or executive order, and water rights were not specifically mentioned, a reservation of water rights was implied. These water rights apply to water sources that are either within the reservation or bordering it.[13][18]

Third, then states that the water rights are reserved as soon as the portion of the reservation cases where competing users of the water source have prior appropriation dates of said water source, they will take precedence over the indigenous rights. Only those with prior appropriation dates take precedence, those with later dates are subordinate to the reservation in question. In most cases, it is found that tribes do in general have senior priority dates for quantities of surface water than competing settlements.[18]

The amount of water reserved for the use of tribes is equal to the amount of water that would sufficiently irrigate all of the irrigable acreage within the reservation. In some cases this part of the Winters rights is extended to include water used not just for agricultural purposes, but for all purposes. For example, a Bureau of Indian Affairs document breaks down what the BIA believes to be the estimated water requirements of all different reservations, including the Fort Belknap Reservation in Montana. This document states that the Fort Belknap reservation will need water for uses such as recreation, wildlife, forestry, energy, minerals, industrial use, domestic use, and agricultural use. These uses are listed in ascending order of the amount of water estimated to be required.[19]

It is also said that Winters rights are not lost by an reservation's lack of use of the water; the rights apply even if the reservation is not using their full portion of water.[20]

### **Effects following ruling**

Although the ruling of Winters v. United States was made very clear, accounts show that water rights relating to reservations were put aside and neglected for decades after the ruling.[8] While the United States government was caught up in the emergence of non-native settlers moving west, the government seemed to turn a blind eye to many non-native settlers who were making use of water sources which, under the terms of Winters v. United States, had been reserved for reservation use.[8] The United States Supreme Court was not called upon to further define reserved water rights until the case of Arizona v. California in 1963.

### **Related cases**

Winters v. United States was a United States Supreme Court Case with many implications. One thing that makes this case so monumental is the precedent that is set by it for United States Supreme Court cases that would follow it.

#### **Arizona v. California**

Arizona v. California was a set of 11 United States Supreme Court cases dealing with water rights.[21] These cases took place between the years of 1931 and 2006. The initial question of this case was to determine how much water from the Colorado river Arizona was entitled to. Many western states became involved in the debate over the rights of the water from the Colorado River, and finally the United States government became involved stating that several federal establishments, including five reservations, had water rights as defined by Winters v. United States.[22] This United States Supreme Court case helped to solve a problem found in the case Winters v. United States. While the United States Supreme Court case of Winters v. United States held that Reservations do have reserved water rights equal to the amount of water needed on the reservation to sufficiently irrigate all of the irrigable reservation acreage, there was always the question of how to decide what amount of water was needed to sufficiently irrigate on the reservations.[17] Arizona v. California offers the solution of adjudication to help fix this problem.[23]

#### **Arizona v. San Carlos Apache Tribe of Arizona**

This case dealt with either the United States as trustee or certain tribes asserting their rights to have certain water rights in Arizona or Montana determined in federal court. The court ruled that all limits that any federal legislation put on state-court jurisdiction over indigenous water rights were removed by the McCarran Amendment. This piece of legislation allowed state courts jurisdiction to determine indigenous water rights. This ruling included suits brought by tribes and pertaining to only indigenous claims. The decision of this case was that the judgment in each of the cases was reversed, and the cases were to be reviewed further.[24]

#### **Nevada v. United States**

This United States Supreme Court case centered around water rights involving the Truckee River. The defendants in the case were all people who used water from the Truckee River, while the plaintiff was the United States. The defendants argued against tribal use of the water in the Truckee River stating that the American tribes were not parties to the original cause of action between the United States and the non-indigenous users of the water. The court ruled that the tribes did have water rights and were allowed to make use of the water in the Truckee River.[25]

### **United States v. New Mexico**

The United States claimed to have reserved the use of water out of the Rio Mimbres stream only where necessary to preserve the environment and wildlife. For instance, to care for the timber in the forest or to secure favorable water flows. The United States Supreme Court upheld the ruling made earlier by the Supreme Court of New Mexico. This ruling stated that the United States did not have reserved rights in the Rio Mimbres stream when it came to recreational purposes.[26]

### **Cappaert v. United States**

Devils Hole cavern in Nevada became a detached part of Death Valley National Monument in 1952, by a proclamation of President Harry S. Truman made under the Antiquities Act. The cavern is home to a rare species of desert fish, the Devils Hole pupfish (*Cyprinodon diabolis*). In 1968 the Cappaerts, who were ranchers, were granted an application by the Nevada state engineer to begin using a water supply which took water from Devil's Hole cavern, which lowered water levels in the cavern and endangered the viability of the fish. The federal government sought to place limits on the Cappaerts' use of the water, so as to protect the fish from extinction.[27]

The U.S. Supreme Court ruled in favor of the United States. The Court held that the implied-reservation-of-water-rights doctrine applies to groundwater as well as surface water. The Court next reaffirmed that "Federal water rights are not dependent upon state law or state procedures and they need not be adjudicated only in state courts." Finally, the Court held that when the United States had reserved Devil's Hole in 1952, "it acquired by reservation water rights in unappropriated appurtenant water sufficient to maintain the level of the pool to preserve its scientific value" (i.e., preserve the fish, which are "objects of historic or scientific interest" under the American Antiquities Preservation Act).[27]

### **Colorado River Water Conservation Dist. v. United States**

The United States Supreme Court case Colorado River Water Conservation District v. United States concerned the abstention doctrine which helped to prevent duplicate litigation between state courts and federal courts.[28]

### **United States v. Powers**

This United States Supreme Court case occurred over the argument of tribal water rights, and whether or not the water rights are passed along with the tribal land. When reservations would sell allotments of land to non-tribe members, those to whom the land was sold would want the same proportion of the reservation's water that the previous indigenous land owner had received. The Supreme Court upheld the earlier ruling that water rights are passed along with the land, meaning that a person who purchases land from an reservation also purchases an allotment of the water source used on the reservation.[29]

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### **SCOTUS Reigns in its 2020 Oklahoma Decision**

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In an interesting turn of events, the Supreme Court reversed a lower court decision in Oklahoma vs Castro-Huerta, a case that challenged Oklahoma's jurisdiction to prosecute crimes in "Indian Country." In doing so, the decision served to somewhat reign in the overreaching (Gorsuch) [Oklahoma McGirt decision in 2020](#). McGirt determined that much of eastern Oklahoma was Indian country and, that only the federal government and tribes could prosecute Indians on those lands, while state and local authorities had no jurisdiction to prosecute. A copy of the 2020 McGirt decision can be found [at this link](#).

Justice Kavanaugh delivered the opinion of the Court, in which Roberts, Thomas, Alito and Barrett joined. Gorsuch filed a dissenting opinion joined by Breyer, Sotomayor and Kagan.

As is typical, the decision brought out the tribal propaganda machine in full force to paint the court's decision as an attack on "tribal sovereignty."

Mainstream media, such as Fox News, focused on Gorsuch's rather lengthy and passionate dissent, others called the court's decision outright racist. The Native American Rights Fund (NARF) and National Congress of American Indians (NCAI) [issued a joint statement](#): "The Supreme Court's decision today is an attack on tribal sovereignty and the hard-fought progress of our ancestors to exercise our inherent sovereignty over our own territories," said National Congress of American Indians (NCAI) President Fawn Sharp. "It was only a few months ago that Congress loudly supported tribal sovereignty and tribal criminal jurisdiction with the passage of the Violence



*Against Women's Act, reaffirming the right of Tribal Nations to protect their own people and communities, but make no mistake, today, the Supreme Court has dealt a massive blow to tribal sovereignty and Congress must, again, respond."*

Reading through the pages of the opinion we find it interesting that the tribe's notion of "tribal sovereignty" is having the federal government, or in some instances the tribe, prosecute crimes in "Indian country." That is not tribal sovereignty by any stretch of the imagination.

**While the federal government allows Indian tribes the ability to self govern their people, they do not have jurisdiction over non-Indians.**

If you've been paying attention to the water rights battle in western Montana, it is easily apparent that the goal of the tribal sovereignty initiative here is to remove state jurisdiction over all people living within a constantly expanding definition of Indian country, one bad law, one executive order, one federal agency overreach, and one unconstitutional court decision at a time.

This **death by a thousand cuts** approach means there will never be certainty for the people of western Montana as long as the "rules" keep changing and our constitutional protections are being systematically undermined through the passage of unconstitutional legislation such as the CSKT water compact.

In our case, the CSKT moved a step beyond the goal of federal jurisdiction over everyone in "Indian country" and into the territory of tribal jurisdiction over all, including non-Indians.

Through their ratification of the CSKT / Daines water compact, the bad actors in both the state and federal governments agreed that [Montana water law that is deemed to be inconsistent with the water compact will no longer apply within reservation boundaries](#).

The creation of a "Unitary Management Board", made up of tribal members and tribal advocates, should leave no doubt in anyone's mind that the tribe has complete control and jurisdiction over everyone's water.

It is not a stretch to believe that if the CSKT compact is allowed to stand, tribal jurisdiction over water could eventually be expanded well beyond the reservation's historic boundaries to include all areas of Montana west of the continental divide because of the so called "tribal reserved water rights" awarded to the tribe throughout all of western Montana.

For your reference, here is the [Oklahoma v Huerta Decision 06 29 22](#), including the Gorsuch dissent.

To learn more about the history of "Indian Country", reference our recent post, [Ever Wonder How We Got To This Place?](#)

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***BREAKING: On June 22, 2023, the U.S. Supreme Court concluded [the United States cannot be held responsible for water rights it holds in trust](#). More to come later.***

We believe this headline expresses their great concern, but it also appears to be an inaccurate assessment of the Supreme Court's opinion.

We believe today's opinion is a victory in support of Federal Reserved Water Rights and the Winter's Doctrine, and not the contrived and phony tribal reserved water rights that paved the way for the massive overreach and theft of western Montana's water as evidenced in the Flathead Compact.



***icthe4estsaid:***

***[June 22, 2023 at 1:57 pm](#)***

Gorsuch's dissent is not based in the law or the constitution (in our non attorney opinion of course), but rather it seems to be in some poorly placed emotional tribal advocacy:

Tribal endorsements of the confirmation of Neil Gorsuch for Supreme Court Justice in 2017:

Letter received by the Senate Committee of the Judiciary in 2017 supporting confirmation of Gorsuch:

[Click to access ncai-narf-gorsuch-letter-final.pdf](#)

NARF letter March 16, 2017 to Tribal Leaders and Attorneys (Gorsuch Indian Legal Analysis):

[Click to access gorsuch-indian-legal-analysis.pdf](#)

Now you have context to consider when you read the dissent on this opinion, and Gorsuch's opinions on other tribal cases that have come before SCOTUS since he was confirmed to serve on the US Supreme Court in 2017.

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## **What Tribal Sovereignty? Lloyd Meeds' Dissent 2020 Concerned Citizens of Western Montana**

***The United States is prepared to accommodate Indian interests, and to provide a substantial degree of self-determination. But there is a point beyond which it cannot go—our federal framework will not be compromised, nor will the rights of non-Indians be ignored. Where tribal aspirations collide with constitutional values, the tribe's interests must yield. Nor can the rights of the non-Indian majority be compromised to support tribal aspirations. Doing justice by Indians does not require doing injustices to non-Indians. ~ Lloyd Meeds, 1977***

On January 2, 1975, Congress created the American Indian Policy Review Commission, which was mandated to: Conduct a comprehensive review of the historical and legal developments underlying the Indian's unique relationship with the Federal Government in order to determine the nature and scope of necessary revisions in the formulation of policies and programs for the benefit of Indians.

Lloyd Meeds served as a member of the US House of Representatives from 1965 to 1979. He represented the second district of Washington as a Democrat. He sponsored the creation of the commission and was its co-chair.

The commission's final report was issued on May 17, 1977. Interestingly enough Meeds felt compelled to submit a dissenting opinion report based upon the commission's inappropriate and political findings. His dissent also explains that the commission was flawed from its inception largely due to the congressionally mandated racial makeup of those serving on it.

In light of the tribal sovereignty fraud that our federal and state governments insist are a necessary component to the negotiations of the CSKT Compact, it is all a big fat lie that is perpetuated by, you got it, the deep state officials in the federal government and the corrupt leadership of the state of Montana.

It is important for people to understand the fraudulent notion that tribal sovereignty has the same legitimacy as state and federal sovereign governments. It does not.

Below is an excerpt from Mr. Meed's dissent. A link to the full dissent document, which begins with an opening summary of the report written by the commission, can be found at the bottom of this article

The Introduction to the final report is difficult to get through, but we provided it to give you a glimpse into the content of the report itself, which is not included here. We also wanted you to see some of what Representative Meeds was dissenting to.

A copy of the complete dissent can be found at the bottom of this post. The Meed's Dissent itself begins on page 12 of 55 of the document linked below.

We hope this article helps you better understand that **tribal government sovereignty does not exist, except to the extent that we are willing to cede it to them. So why do our local, state and federal governments insist on "government to government" agreements, negotiations and other such nonsense?** That is a good question to ask them. We should also hold them accountable to an informed and truthful response, rather than their typical political doublespeak response.

**We believe that in addition to the Constitution they swear an oath to uphold and protect, the Lloyd Meeds dissent should be mandatory reading material for every elected official who comes in contact with Indian tribes during the course of their duties.**

### **SOVEREIGNTY-TRIBAL SELF-GOVERNMENT OR TERRITORIAL GOVERNMENT'**

The fundamental error of this report is that it perceives the American Indian tribe as a body politic in the nature of a sovereign as that word is used to describe the United States and the States, rather than as a body politic which the United States, through its sovereign power, permits to govern itself and order its internal affairs, but not the affairs of others. The report seeks to convert a political notion into a legal doctrine. In order to demythologize the notion of American Indian tribal sovereignty, it is essential to briefly describe American federalism.

In our Federal system, as ordained and established by the United States Constitution, there are but two sovereign entities: the United States and the States. This is obvious not only from an examination of the Constitution, its structure, and its amendments, but also from the express language of the 10<sup>th</sup> amendment which provides:

*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*

And, under the 14th amendment, all citizens of the United States who are residents of a particular State are also citizens of that State.

The Commission report (especially chapters 3 and 5), would have us believe that there is a third source of sovereign and governmental power in the United States. It argues that American Indian tribes have the characteristics of sovereignty over the lands they occupy analogous to the kind of sovereignty possessed by the United States and the States. The report describes Indian tribes as governmental units in the territorial sense. This fundamental error infects the balance of the report in a way which is contrary to American federalism and unacceptable to the United States, the States, and non-Indian citizens.

The blunt fact of the matter is that American Indian tribes are not a third set of governments in the American federal system. They are not sovereigns. The Congress of the United States has permitted them to be self-governing entities but not entities which would govern others. American Indian tribal self-government has meant that the Congress permits Indian tribes to make their own laws and be ruled by them. The erroneous view adopted by the Commission's report is that American Indian tribal self-government is territorial in nature. On the contrary, American Indian tribal self-government is purposive. The Congress has permitted Indian tribes to govern themselves for the purpose of maintaining tribal integrity and identity. But this does not mean that the Congress has permitted them to exercise general governmental powers over the lands they occupy. This is the crucial distinction which the Commission report fails to make. The Commission has failed to deal with the ultimate legal issue, which is the very subject of its charter.

In addition, the Commission has failed to make the distinction between the power of American Indian tribes to govern themselves on the lands they occupy, and their proprietary interest in those lands. Mere ownership of lands in these United States does not give rise to governmental powers. Governmental powers have as their source the State and Federal constitutions. Hence, as landowners, American Indian tribes have the same power over their lands as do other private landowners. This would include the power to exclude or to sue for trespass damages. But landowners do not have governmental powers over the land they own. Land ownership, alone, is insufficient to give rise to governmental powers. Having failed to make this distinction, the Commission seeks to bootstrap its "tribe as a government" theory by relying on ownership principles.

Indian reservations exist within the boundaries of the States and within the United States. Reservation Indians are citizens of the States in which they live and of the United States. They are subject to the laws of the United States and, but for the exercise of congressional power, reservation Indians are subject to the governmental power of the States in which they live. American Indian tribal self-government comes into play because the Congress, in exercising its powers under article I, § 8(3), of the United States Constitution, has, in general, insulated reservation Indians from State governmental power. In order to promote the preservation of their distinctive cultures and values, the Congress has decided that some American Indians should be allowed to make their own laws and be ruled by them. This does not mean that the Congress allows American Indian tribes to govern their reservations in the same way in which a State governs within its boundaries. A tribe's power is limited to governing the internal affairs of its members. The United States Supreme



Court has over and again upheld the power of the State to impose its law on non-Indians within the reservation. If American Indian tribes had the kind of sovereignty which this Commission urges, and if Indian tribal self-government were territorial rather than purposive, the States could not have jurisdiction over non-Indians within the reservation. These principles are easily demonstrated.....  
 ....Hence, to the extent American Indian tribes are permitted to exist as political units at all, it is by virtue of the laws of the United States and not any inherent right to government, either of themselves or of others.

[westernmtwaterrights.wordpress.com/2023/06/04/what-tribal-sovereignty-lloyd-meeds-dissent/](https://westernmtwaterrights.wordpress.com/2023/06/04/what-tribal-sovereignty-lloyd-meeds-dissent/)

## HOW MUCH WATER DID MONTANA CEDE TO THE UNITED STATES / CSKT IN THIS WATER COMPACT?

Montana has never provided a quantification of the tribes water right. This is because Montana doesn't want citizens or legislators to know how much water was ceded. They told us to look at their 1,000+ pages of abstracts, so we did:

[UNITED STATES TRIBAL WATER SETTLEMENTS](#)

[MONTANA TRIBAL WATER SETTLEMENTS](#)

Not one drop of water in the Flathead Compact was allocated for the CSKT tribal government, allottees or individual tribal members. 99.7% of the water awarded to the U.S. / CSKT in the compact is for fish. See chart at this link:

[TRIBAL RESERVED CLAIMS IN THE FLATHEAD COMPACT](#)

### The Flathead Water Compact Ratified by the Montana Legislature is not a federal reserved water rights settlement

Compact Appendix	# of Claims	Priority Date	Purpose	On FIR?	Acre Feet of Water			
					Tribal Reserved	Federal Reserved	Other	Total
05 FIIP WUA	3	07/16/1855	Irrigation	Y			179,539	179,539
09 Flathead System Compact Water	1	07/16/1855	Any Purpose	On / Off	229,383			229,383
10 FIIP Natural Instream Flow	102	Time Immemorial	Fish and Wildlife	Y	747,780			747,780
11 FIIP Instream Flow	33	Time Immemorial	Fish and Wildlife	Y	1,330,557			1,330,557
12 Other Instream Flow	59	Time Immemorial	Fish and Wildlife	Y	8,210,815			8,210,815
15 Minimum Reservoir Pool	2	07/16/1855	Fish and Wildlife	Y	29,583			29,583
18 Flathead Lake	1	Time Immemorial	Fish and Wildlife	On / Off	18,792,800			18,792,800
19 Boulder Creek	1	07/16/1855	Power Generation	Y			5,792	5,792
20 Hellroaring Creek	1	07/16/1855	Power Generation	Y			4,344	4,344
24 FWS Co-Owned	3	Various	Recreation	Y	3,964			3,964
25 Kootenai Mainstem	1	Time Immemorial	Fish and Wildlife	N	6,249,774			6,249,774
26 Swan River	1	Time Immemorial	Fish and Wildlife	N	506,943			506,943
27 Lower Clark Fork Basin	1	Time Immemorial	Fish and Wildlife	N	3,620,000			3,620,000
28 FWP Co-Owned Decreed	36	Various	Fish and Wildlife	N	3,002,010			3,002,010
29 FWP Co-Owned not Decreed	47	Various	Fish and Wildlife	N	11,081,315			11,081,315
30 Milltown	2	Various	Fish and Wildlife	N	1,036,074			1,036,074
32 Painted Rocks	1	Contract	Fish and Wildlife	N	10,000			10,000
33 West Fork Bitterroot	1	Contract	Fish and Wildlife	N	32,000			32,000
33 Lake Como	1	Contract	Fish and Wildlife	N	3,037			3,037
34 Placid Creek	1	Time Immemorial	Fish and Wildlife	N	7,240			7,240
35 Kootenai Basin	4	Time Immemorial	Fish and Wildlife	N	320,213			320,213
<b>Total Acre Feet of Water Precluded from Use</b>	<b>302</b>				<b>55,213,488</b>	<b>0</b>	<b>189,675</b>	<b>55,403,163</b>
<b>% of Total</b>					<b>99.7%</b>	<b>0.0%</b>	<b>0.3%</b>	<b>100.0%</b>
<b>Summary of Water Claims by Purpose</b>					<b>Tribal</b>	<b>Federal</b>	<b>Other</b>	<b>Total</b>
Irrigation	Note 1				0	0	179,539	179,539
Any Purpose	Note 2				229,383	0	0	229,383
Power Generation					0	0	10,136	10,136
Recreation					3,964	0	0	3,964
Fish and Wildlife					54,980,141	0	0	54,980,141
<b>Total Volume of Water Precluded from Use</b>	<b>Note 3</b>				<b>55,213,488</b>	<b>0</b>	<b>189,675</b>	<b>55,403,163</b>

Data Source: Flathead Water Compact Documents dated January 12, 2015

**Note 1** The Compact awards bare legal title to 100% of Flathead Irrigation Project Water to the tribe. This appendix is only to document a small set aside of water for irrigators on the project, making them **Users of the Tribal Water Right**. This is not a federal reserved water right.

**Note 2** In the compact, Montana gave to the US/CSKT 100,000 acre feet of Hungry Horse reservoir water that was intended for future growth and development of the Kalispell area. While the water rights abstract specifies the water can be for any use, the abstract indicates that the water will be leased both on and off the reservation.

**Note 3** As of 01/22/2023 the compacting parties have not provided the public with a quantification of the water rights incorporated into the Flathead Compact. The figures noted above reflect the volume of water that is recorded on the water rights abstracts within the appendices to the compact. These volumes of water, coupled in most instances with a time immemorial property date will serve to preclude the use of this volume of water by all other water users.

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**Note:** We first want to qualify this article by saying that all of the time immemorial water rights awarded to the U.S. / CSKT in the Flathead Compact are fraudulent and should never have been included in the settlement. If the tribe wanted to argue “Tribal Reserved Water Rights,” that debate should have taken place in a court of law, rather than in a federal reserved water rights “negotiated” settlement under Montana law. The US / CSKT water rights in each of the western Montana river locations we looked at below are nothing more than pure government overreach by the three compacting parties: The United States, Montana, and the CSKT. These claims only exist because the compacting parties agreed to create [fraudulent “Tribal Reserved Water Rights”](#) out of thin air. The charts below demonstrate the ridiculous and precarious position that Montana has placed its citizens in by agreeing to go down this road.

We’ve been getting feedback that there are water shortages in western Montana, particularly in the Kootenai River basin. With that in mind, we decided to check and see how some of the major rivers in western Montana are faring compared to the time immemorial instream flows approved in the compact.

These charts paint a very ugly picture indeed, and the compact isn’t even in full swing yet.

**If you click on the photos below you will find a document for that particular river basin including the water compact abstract, and USGS readings for the streamflow related to that particular “claim.”**

The figures on the charts below are depicted in cubic feet per second. One cubic foot per second is the equivalent of 724 acre feet of water per year or enough water to cover one acre of land with 724 feet of water for an entire year.

Pay close attention to the far right column on each of the charts below. Anything in RED indicates that the volume of water flowing through the river that day was below the amount of water awarded to the United States / CSKT in the compact. These [shortfalls in essence have the potential to place all junior water rights \(anything that has a lesser date than time immemorial\) at risk for call](#).

You are about to see a good bit of RED, the current implications of such shortages will be uncertain for many decades to come.

We can’t help but be curious as to whether any water calls have been made, and aren’t sure at this time where to go to find that information.

We are not sure if instream flow enforcement is triggered by the compact’s effective date (already in effect) or if they are specific to the water rights abstracts in the compact.

**If no calls have been made at this point is it possible that it’s because the Flathead Compact is currently being reviewed by the water court and the compacting parties might not want to draw attention to their overreach before the water court gives the compact its blessing?**

Regardless of the status of any calls on water, it is imperative for Montanans, and for legislators and other decision makers in the state of Montana to see what our state allowed to happen with our water. The information below raises serious concerns about existing and future uses of water by most of the people living in western Montana.

We also want to point out that Article III B. of the compact [MCA 85-20-1901](#) provides for the ability to change or amend the abstracts of water rights, allowing no avenue for the public to see what those revisions may be:

*Abstracts of water right appended to this Compact are a substantive element of this Compact. The language of the abstracts, including all informational remarks, shall control in the event of any inconsistency between the Compact and the abstracts of water right; provided however, that the Parties upon written mutual agreement may make technical corrections to the abstracts prior to the Parties submission to the Montana Water Court of the motion for entry of the Proposed Decree identified in Article VII.B. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.*

Additionally, Section 4(a)(3) of the [Daines Legislation, buried within Congress’ massive HR133](#) says this about amendments to the compact and its appendices including the water rights abstracts:

*Nothing in this act precludes the Secretary from approving a modification of the Compact, including an appendix or exhibit to the Compact that is consistent with this act.*

Both SB262 and the Daines’ legislation authorize the Secretary of the Interior to make amendments to any exhibit or appendix to the compact and amendments or modifications to it.

In our non-legal but practical mind we think all of this means that not only can the compact be amended on the fly by the Secretary of the Interior, but “enforceability” can also be tied to future revisions, mandates and biological opinions.

So for all intents and purposes, the Flathead Compact is a living document that can be changed to fit the needs of the Tribal Council, the United States Department of the Interior, the DNRC, the Governor, our Congressional delegation, or other people who are driving the agenda behind this very bad deal.

With that in mind we also cannot know whether the prohibitions against call stated in the compact and the abstracts of water rights can be changed by the Secretary of the Interior per the terms of the compact and the Daines legislation.

As such it will be a moving target and people may not have the ability to see such revisions or to know if they are complying with the law as it pertains to their water needs.

### **Kootenai River:**

For the first 25 days in June, the Kootenai River streamflow has been well below historic averages, and is running about 54% below the volumes of instream flow awarded to the United States / CSKT in the Flathead Water Compact. The column on the far right of the chart below shows the daily shortage of water in cubic feet per second.

## Kootenai River Streamflow at USGS Leona Idaho Gage #1230500 Compared to CSKT Compact June 2023

CSKT Compact Daily Flow Requirements as specified in Appendix 25 Abstract # 76D 30063810													USGS Provisional Data - Discharge CFS (Mean)			Excess	
Date	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Gage	Date	CFS	Shortfall	
1	2,581	2,523	2,676	4,844	14,129	35,769	19,027	8,715	5,689	4,565	3,984	3,172	USGS	12305000	6/1/2023	19,700	-16,069
2	2,560	2,549	2,689	5,140	14,812	33,965	18,669	8,514	5,652	4,554	3,931	3,159	USGS	12305000	6/2/2023	17,100	-16,865
3	2,563	2,576	2,708	5,457	15,519	32,420	18,283	8,301	5,606	4,542	3,884	3,144	USGS	12305000	6/3/2023	15,500	-16,920
4	2,547	2,588	2,731	5,786	16,213	31,347	17,866	8,072	5,579	4,529	3,846	3,128	USGS	12305000	6/4/2023	13,400	-17,947
5	2,499	2,583	2,748	6,014	16,848	30,657	17,389	7,841	5,541	4,516	3,848	3,103	USGS	12305000	6/5/2023	12,700	-17,957
6	2,478	2,575	2,760	6,244	17,357	30,192	16,846	7,631	5,517	4,511	3,879	3,058	USGS	12305000	6/6/2023	12,500	-17,692
7	2,478	2,579	2,780	6,449	17,717	29,819	16,291	7,440	5,490	4,501	3,886	2,991	USGS	12305000	6/7/2023	12,300	-17,519
8	2,474	2,604	2,799	6,612	17,940	29,442	15,814	7,267	5,469	4,489	3,891	2,953	USGS	12305000	6/8/2023	12,200	-17,242
9	2,475	2,620	2,863	6,729	18,137	29,019	15,417	7,095	5,446	4,465	3,908	2,857	USGS	12305000	6/9/2023	12,300	-16,719
10	2,483	2,623	2,897	6,819	18,388	28,547	15,048	6,925	5,436	4,436	3,889	2,816	USGS	12305000	6/10/2023	12,500	-16,047
11	2,485	2,624	2,929	6,907	18,741	28,037	14,682	6,767	5,406	4,404	3,868	2,773	USGS	12305000	6/11/2023	12,200	-15,837
12	2,478	2,628	2,971	7,032	19,231	27,520	14,345	6,616	5,382	4,376	3,836	2,724	USGS	12305000	6/12/2023	12,000	-15,520
13	2,463	2,638	3,009	7,221	19,862	27,011	14,025	6,601	5,358	4,340	3,796	2,686	USGS	12305000	6/13/2023	11,900	-15,111
14	2,439	2,639	3,025	7,470	20,604	26,537	13,702	6,620	5,341	4,321	3,766	2,651	USGS	12305000	6/14/2023	12,000	-14,537
15	2,410	2,614	3,026	7,805	21,362	26,108	13,355	6,614	5,324	4,308	3,741	2,646	USGS	12305000	6/15/2023	12,400	-13,708
16	2,375	2,589	3,009	8,263	22,026	25,689	12,981	6,587	5,279	4,296	3,682	2,643	USGS	12305000	6/16/2023	12,000	-13,689
17	2,337	2,572	3,032	8,860	22,569	25,231	12,610	6,559	5,226	4,284	3,649	2,660	USGS	12305000	6/17/2023	11,800	-13,431
18	2,302	2,564	3,061	9,518	23,026	24,752	12,274	6,531	5,166	4,285	3,571	2,704	USGS	12305000	6/18/2023	11,700	-13,052
19	2,278	2,567	3,097	10,172	23,429	24,310	11,972	6,487	5,114	4,286	3,476	2,788	USGS	12305000	6/19/2023	11,600	-12,710
20	2,267	2,563	3,146	10,768	23,867	23,906	11,698	6,386	5,066	4,284	3,374	2,884	USGS	12305000	6/20/2023	11,500	-12,406
21	2,267	2,556	3,184	11,317	24,492	23,499	11,444	6,244	5,014	4,267	3,256	2,963	USGS	12305000	6/21/2023	11,100	-12,399
22	2,276	2,555	3,209	11,821	25,461	23,057	11,188	6,128	4,956	4,251	3,159	3,032	USGS	12305000	6/22/2023	10,800	-12,257
23	2,298	2,558	3,231	12,212	26,965	22,572	10,927	6,033	4,904	4,238	3,153	3,065	USGS	12305000	6/23/2023	10,700	-11,872
24	2,325	2,576	3,226	12,439	29,049	22,062	10,665	5,969	4,858	4,230	3,183	3,056	USGS	12305000	6/24/2023	10,600	-11,462
25	2,358	2,610	3,323	12,565	31,620	21,553	10,386	5,916	4,808	4,227	3,203	3,009	USGS	12305000	6/25/2023	10,600	-10,953
26	2,386	2,626	3,457	12,641	34,318	21,051	10,105	5,866	4,754	4,226	3,209	2,916					
27	2,408	2,640	3,599	12,725	36,564	20,577	9,847	5,826	4,699	4,214	3,203	2,813					
28	2,433	2,650	3,757	12,869	37,997	20,128	9,601	5,815	4,652	4,178	3,184	2,727					
29	2,466		4,030	13,120	38,573	19,718	9,368	5,808	4,621	4,132	3,164	2,664					
30	2,490		4,298	13,535	38,322	19,364	9,142	5,791	4,595	4,074	3,171	2,613					
31	2,508		4,568		37,338		8,923	5,746		4028		2587					

Figures are noted in Cubic Feet per Second (CFS). One cubic feet of water per second is the equivalent of 724 acre feet per year, or enough water to cover one acre of land with 724 feet of water.

Figures are noted in Cubic Feet per Second (CFS). One cubic foot of water per second is the equivalent of 724 acre feet per year, or enough water to cover one acre of land with 724 feet of water.

**Data Sources:** Kootenai River Appendix 25 Abstract 76D 30063810 (2015 Version of Compact did not have daily table, this table was included in 2013 Compact Abstract  
USGS Statistics for Leona Idaho Gage 12305000 as specified in Appendix 25 Water Rights Abstract 76D 30063810

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6/26/2023

The ruling document, the water right abstract for the Kootenai River says this:

***THE ABILITY TO ENFORCE THIS RIGHT SHALL BE SUSPENDED SO LONG AS LIBBY DAM REMAINS IN EXISTENCE AND THE ARMY CORPS OF ENGINEERS' (ACOE) OPERATION OF THAT DAM ARE CONDUCTED CONSISTENTLY WITH THE 2008 FEDERAL COLUMBIA RIVER POWER SYSTEM BIOLOGICAL OPINION, AND THE 2010 UPDATES BIOLOGICAL OPINION, SPECIFICALLY AS DESCRIBED IN REASONABLE AND PRUDENT ALTERNATIVE ACTION (RPA) NO. 4 (STORAGE PROJECT OPERATION). TABLE NO. 1 (LIBBY DAM) INCLUDING THE NORTHWEST POWER AND CONSERVATION COUNCIL'S 2003 MAIN STEM AMENDMENTS TO THE COLUMBIA RIVER BASIN FISH AND WILDLIFE PROGRAM, OR ANY SUBSEQUENT BIOLOGICAL OPINIONS(S) GOVERNING THE SAME RPA(S) AND OPERATIONS.***

We certainly hope that the above paragraph doesn't make people think that they have dodged a bullet in terms of water calls so they can go back to sleep. It is unconscionable that anyone would want to leave this ticking time bomb out there for future generations of Montanans to have to deal with.

While these instream flows may not yet be currently enforceable, we can't help but wonder if these shortages may trigger other actions by the state or the U.S. / CSKT owners of the water right to ensure that the "fish are protected" because actual flows are far less than what the compact defines as "necessary" for fisheries.

We would also like to ask if the Kootenai River water rights were being actively enforced, would these shortages technically mean that no one in the Kootenai River area of western Montana could use water because the U.S. / CSKT's time immemorial instream flows aren't met?

We look at this chart and see that the Compact mandates that every drop of water currently flowing through the Kootenai has a time immemorial priority date, and by definition that would mean that in theory for the month of June thus far, there was no available water for any existing "junior" water rights, let alone new uses of water.

A more basic question in these instream flows is that to our knowledge, there are NO scientific studies supporting these "over the top" 'instream flows'. In addition, the absolute uniformity of all flow requests in the compact further reinforces that there is no science underneath these flow values.

**Swan River:**

For most of the month of June, the Swan River Instream flows exceeded the amount of water awarded to the CSKT in the compact, however in the last three days, the Swan River didn't produce its mandated share of U.S. / CSKT water.

## Swan River Streamflows near Bigfork USGS Gage #1237000 Compared to CSKT Compact

### June 2023

CSKT Compact Daily Flow Requirements as specified in Appendix 26 Abstract # 76K 30063809													USGS Provisional Data - Discharge CFS (Mean)				Excess
Date	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Gage	Date	CFS		(Shortfall)
1	336	320	319	600	1,175	2,707	1,426	570	357	341	357	362	USGS	12370000	6/1/2023	3,030	323
2	337	319	321	626	1,211	2,648	1,395	556	355	340	357	360	USGS	12370000	6/2/2023	2,910	262
3	338	321	322	652	1,251	2,541	1,363	543	352	341	358	360	USGS	12370000	6/3/2023	2,780	239
4	338	322	324	677	1,292	2,406	1,329	532	350	341	358	359	USGS	12370000	6/4/2023	2,660	254
5	337	323	326	688	1,332	2,294	1,294	521	348	341	358	357	USGS	12370000	6/5/2023	2,530	236
6	337	323	327	700	1,369	2,273	1,257	510	345	340	359	356	USGS	12370000	6/6/2023	2,430	157
7	338	324	329	712	1,400	2,237	1,220	500	347	338	359	356	USGS	12370000	6/7/2023	2,400	163
8	337	324	331	727	1,427	2,196	1,183	490	347	338	360	357	USGS	12370000	6/8/2023	2,390	194
9	336	322	332	743	1,450	2,152	1,147	480	347	338	362	358	USGS	12370000	6/9/2023	2,490	338
10	334	320	334	757	1,470	2,120	1,111	470	347	336	363	357	USGS	12370000	6/10/2023	2,590	470
11	333	318	337	771	1,487	2,105	1,076	461	347	335	366	356	USGS	12370000	6/11/2023	2,580	475
12	334	317	341	783	1,504	2,095	1,043	451	347	335	369	357	USGS	12370000	6/12/2023	2,500	405
13	334	316	345	795	1,523	2,076	1,010	441	346	337	370	357	USGS	12370000	6/13/2023	2,430	354
14	336	313	348	806	1,542	2,062	980	433	345	339	371	357	USGS	12370000	6/14/2023	2,320	258
15	337	312	351	817	1,562	2,046	949	424	346	341	371	357	USGS	12370000	6/15/2023	2,230	184
16	339	311	356	827	1,604	2,021	919	416	347	342	372	358	USGS	12370000	6/16/2023	2,130	109
17	339	310	361	839	1,645	1,971	889	409	348	343	372	358	USGS	12370000	6/17/2023	2,010	39
18	339	310	368	854	1,671	1,899	861	402	350	344	371	357	USGS	12370000	6/18/2023	1,930	31
19	337	309	376	873	1,691	1,819	834	396	352	345	369	356	USGS	12370000	6/19/2023	1,930	111
20	335	310	384	895	1,724	1,749	808	391	355	345	366	355	USGS	12370000	6/20/2023	1,890	141
21	332	312	394	918	1,769	1,693	783	386	356	345	364	354	USGS	12370000	6/21/2023	1,790	97
22	330	313	405	944	1,821	1,662	760	382	357	346	365	352	USGS	12370000	6/22/2023	1,680	18
23	327	315	416	971	1,868	1,634	737	379	357	346	365	351	USGS	12370000	6/23/2023	1,580	-54
24	325	316	428	998	1,906	1,608	716	376	356	347	367	351	USGS	12370000	6/24/2023	1,500	-108
25	325	316	441	1,024	1,956	1,582	695	374	353	349	367	351	USGS	12370000	6/25/2023	1,410	-172
26	325	317	455	1,047	2,087	1,558	675	372	351	350	368	351					
27	325	318	469	1,069	2,251	1,535	656	370	348	351	368	351					
28	324	318	485	1,091	2,426	1,512	636	367	346	353	369	349					
29	322	318	514	1,115	2,574	1,485	618	365	344	354	367	349					
30	321		544	1,143	2,671	1,457	601	362	343	355	365	348					
31	320		573		2,716		585	359		357		346					

Figures are noted in Cubic Feet per Second (CFS). One cubic feet of water per second is the equivalent of 724 acre feet per year, or enough water to cover one acre of land with 724 feet of water.

**Data Sources:** Swan River Appendix 26 Abstract 76K 30063809 (2015 Version of Compact did not have daily table, this table was included in 2013 Compact)  
USGS Statistics for Swan River at Bigfork Gage #1237000 as specified in Appendix 26 Water Rights Abstract)

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Again we are not sure if any calls have been or will be initiated in the Bigfork and other upstream areas because of what appears to be possible shortages going into July.

The Swan River chart above begs the question as to how much water over and above the CSKT Compact threshold is necessary to sustain the current and future water needs of all of the people living on or around the Swan River?

### Lower Clark Fork River:

During the month of June thus far, this area of western Montana is providing more than enough water to cover the U.S. / CSKT instream flow claims. It is unknown whether this comfortable daily cushion will keep those living in the area of the Lower Clark Fork River from going underwater with respect to the Flathead Water Compact.

The USGS figures included in the Lower Clark Fork River document linked below show the daily mean streamflow for the last 12 months. There are numerous dates where the flow in the Lower Clark Fork fell short of the 5,000 cubic feet per second awarded to the United States / CSKT in the compact, mostly in August, November, and December of last year.



## Lower Clark Fork Streamflow below Cabinet Gorge Dam Compared to CSKT Compact June 2023

CSKT Compact Daily Flow Requirements as specified in Appendix 27 Abstract # 76N 30063808													USGS Provisional Data - Discharge CFS (Mean)				
Date	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Gage	Date	CFS	Excess (Shortfall)	
1	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/1/2023	39,500	34,500
2	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/2/2023	38,000	33,000
3	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/3/2023	31,300	26,300
4	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/4/2023	32,500	27,500
5	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/5/2023	32,400	27,400
6	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/6/2023	31,800	26,800
7	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/7/2023	33,300	28,300
8	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/8/2023	31,100	26,100
9	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/9/2023	32,400	27,400
10	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/10/2023	30,100	25,100
11	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/11/2023	30,300	25,300
12	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/12/2023	32,400	27,400
13	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/13/2023	30,800	25,800
14	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/14/2023	31,600	26,600
15	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/15/2023	34,800	29,800
16	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/16/2023	32,100	27,100
17	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/17/2023	25,200	20,200
18	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/18/2023	23,300	18,300
19	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/19/2023	26,800	21,800
20	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/20/2023	24,700	19,700
21	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/21/2023	31,600	26,600
22	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/22/2023	25,500	20,500
23	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/23/2023	28,100	23,100
24	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/24/2023	24,700	19,700
25	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	USGS	12391950	6/25/2023	20,000	15,000
26	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000					
27	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000					
28	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000					
29	5,000	5000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000					
30	5,000		5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000					
31	5,000		5,000		5,000		5,000	5,000		5,000		5,000					
<div>Figures are noted in Cubic Feet per Second (CFS). One cubic feet of water per second is the equivalent of 724 acre feet per year, or enough water to cover one acre of land with 724 feet of water.</div>																	

Figures are noted in Cubic Feet per Second (CFS). One cubic foot of water per second is the equivalent of 724 acre feet per year, or enough water to cover one acre of land with 724 feet of water.

**Data Sources:** Lower Clark Fork River Appendix 27 Abstract 7N 30063808  
USGS Statistics for Lower Clark Fork River Below Cabinet Dam Gorge in Idaho Gage #12391950 as specified in Appendix 27 Water Rights Abstract]

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The water rights abstract for the tribe's claim, also included in the document above (click photo), says this about enforcement:  
***THE OWNER OF THIS WATER RIGHT SHALL BE ENTITLED TO MAKE A CALL IN ACCORDANCE WITH STATE LAW, TO ENFORCE THIS WATER RIGHT ONLY AGAINST JUNIOR WATER RIGHTS IN BASIN 76N (LOWER CLARK FORK DRAINAGE) AND IN BASIN 76m (MIDDLE CLARK FORK DRAINAGE) WHOSE POINT OF DIVERSION IS FROM THE MAINSTEM OF THE CLARK FORK RIVER AND NOT ITS TRIBUTARIES, THE PURPOSE OF WHOSE WATER RIGHT IS IRRIGATION AND WHOSE SOURCE OF SUPPLY IS SURFACE WATER, OR AGAINST JUNIOR WATER USERS THE PURPOSE OF WHOSE RIGHTS IS IRRIGATION, WHOSE SOURCE OF WATER SUPPLY IS GROUNDWATER CONNECTED TO THE MAINSTEM OF THE CLARK FORK RIVER AND WHOSE FLOW RATE IS GREATER THAN 100 GALLONS PER MINUTE.***

### Flathead River Below Polson:

This chart was a surprise to us, and we are not exactly sure what to think about it. We offer it up as one more point of reference to the water compact big picture of things.

Our first thoughts were that these numbers are contrived, and it appears that the water at Polson is already being managed to the compact levels.

But it is also possible that the numbers at Polson could be managed to Federal Energy Regulatory Commission (FERC) procedures and regulations requirements pertaining to Kerr Dam.

Flathead River Streamflows near Polson USGS Gage #12372000 Compared to CSKT Compact  
June 2023

CSKT Compact Daily Flow Requirements as specified in Appendix 12 Abstract # 76LJ 30052827													USGS Provisional Data - Discharge CFS (Mean)				
Date	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Gage	Date	CFS	Excess (Shortfall)	
1	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/1/2023	13,500	800
2	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/2/2023	13,500	800
3	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/3/2023	12,700	0
4	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/4/2023	12,700	0
5	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/5/2023	12,700	0
6	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/6/2023	12,700	0
7	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/7/2023	12,700	0
8	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/8/2023	12,800	100
9	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/9/2023	12,700	0
10	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/10/2023	12,700	0
11	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/11/2023	12,700	0
12	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/12/2023	12,800	100
13	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/13/2023	12,700	0
14	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/14/2023	12,800	100
15	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/15/2023	12,700	0
16	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/16/2023	12,800	100
17	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/17/2023	12,700	0
18	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/18/2023	12,700	0
19	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/19/2023	12,700	0
20	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/20/2023	12,800	100
21	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/21/2023	12,700	0
22	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/22/2023	12,600	-100
23	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/23/2023	12,600	-100
24	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/24/2023	12,700	0
25	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200	USGS	12372000	6/25/2023	12,800	100
26	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200					
27	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200					
28	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200					
29	3,200	3,200	3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200					
30	3,200		3,200	3,620	10,702	12,700	7,252	3,200	3,200	3,200	3,200	3,200					
31	3,200		3,200		10,702		7,252	3,200		3,200		3,200					
Figures are noted in Cubic Feet per Second (CFS). One cubic feet of water per second is the equivalent of 724 acre feet per year, or enough water to cover one acre of land with 724 feet of water.																	

Figures are noted in Cubic Feet per Second (CFS). One cubic feet of water per second is the equivalent of 724 acre feet per year, or enough water to cover one acre of land with 724 feet of water.

Data Sources: Flathead River Appendix 12 Abstract 76L 30052827  
USGS Statistics for Flathead River at Polson Gage #12372000 (no gage specified in Appendix 12 Water Rights Abstract)

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For your reference, here is a map of the area of Flathead River that pertains to the place of use and point of diversion for water right abstract number 76L 30052827. You can click on the photo below for a larger copy:



Flathead River at Perma:

The June steamflow on the Flathead River at Perma shows that the actual flow fell short of the Compact determined and mandated instream flows for the United States / CSKT.

# Flathead River Streamflow at Perma USGS Gage #12388700 Compared to CSKT Compact

June 2023

CSKT Compact Daily Flow Requirements as specified in Appendix 12 Abstract # 76L 30052864													USGS Provisional Data - Discharge CFS (Mean)				
Date	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Gage	Date	CFS	Excess (Shortfall)	
1	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/1/2023	15,000	538
2	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/2/2023	14,600	138
3	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/3/2023	14,300	-162
4	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/4/2023	13,700	-762
5	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/5/2023	13,600	-862
6	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/6/2023	13,500	-962
7	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/7/2023	13,400	-1,062
8	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/8/2023	13,400	-1,062
9	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/9/2023	13,500	-962
10	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/10/2023	13,600	-862
11	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/11/2023	13,700	-762
12	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/12/2023	13,700	-762
13	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/13/2023	13,700	-762
14	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/14/2023	13,700	-762
15	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/15/2023	13,600	-862
16	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/16/2023	13,800	-662
17	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/17/2023	13,600	-862
18	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/18/2023	13,500	-962
19	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/19/2023	13,500	-962
20	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/20/2023	13,600	-862
21	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/21/2023	13,400	-1,062
22	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/22/2023	13,100	-1,362
23	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/23/2023	13,000	-1,462
24	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/24/2023	13,000	-1,462
25	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546	USGS	12388700	6/25/2023	13,000	-1,462
26	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546					
27	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546					
28	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546					
29	3,574	3,586	3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546					
30	3,574		3,599	4,314	11,983	14,462	8,145	3,660	3,733	3,758	3,665	3,546					
31	3,574		3,599			10,702	8,145	3,660		3,758		3,546					

Figures are noted in Cubic Feet per Second (CFS). One cubic feet of water per second is the equivalent of 724 acre feet per year, or enough water to cover one acre of land with 724 feet of water.

## Data Sources:

Flathead River Appendix 12 Abstract 76L 30052864

USGS Statistics for Flathead River ant Perma Gage #12388700 (no gage specified in Appendix 12 Water Rights Abstract)

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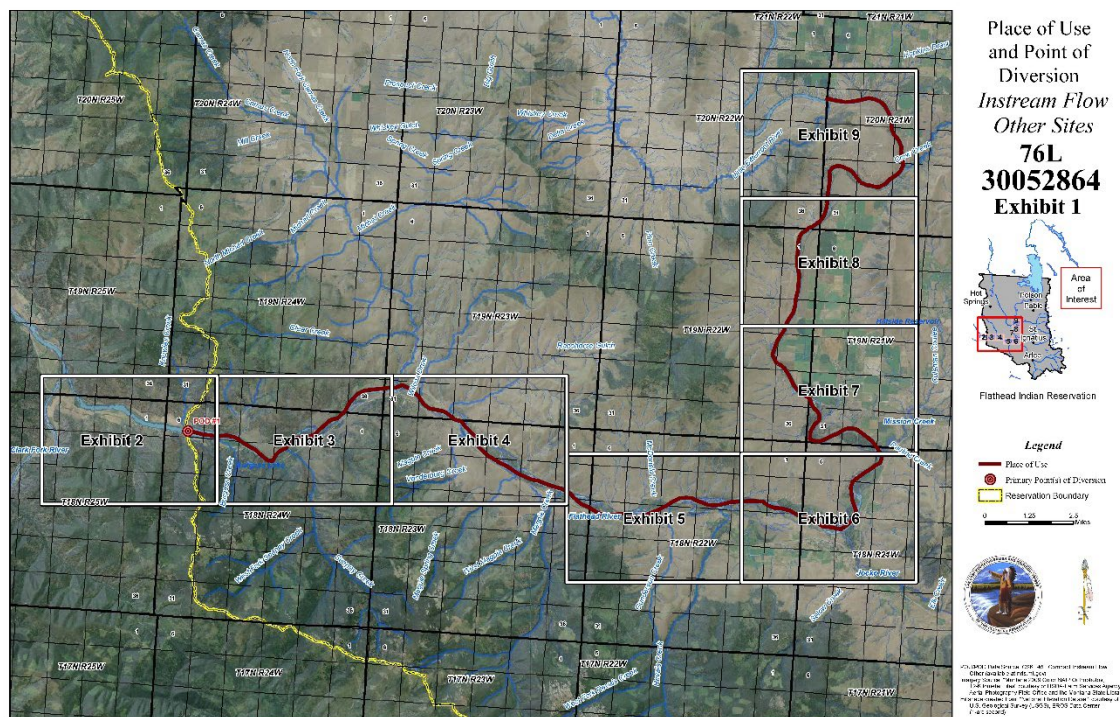
6/26/2023

It's possible that these shortfalls may be because compact flows are not yet being completely implemented or enforced, which may possibly be the reason why the actual numbers are below the compact mandated threshold. The flow at Perma depends on how much irrigation the Tribes allow to happen in the Flathead Irrigation Project, now considered by the Compact and Daines bill to be the "Flathead Fishery Project" as water is transferred from agriculture to instream flow.

Regardless it begs the question about what all of this will mean to the people living in this part of western Montana once the flows are enforced.

For reference, here is a map of the reach of the Flathead River pertaining to the U.S. / CSKT place of use and point of diversion for water rights abstract number 76L 30052864. You can click on the map for a larger photo:





We are hopeful that the information provided in this gives you a clearer picture of the difficult situation the state of Montana has placed people in with respect to their water.

These charts show a devastating picture as to non-tribal current and any future uses of water throughout western Montana.

What will happen if the compact is approved by the water court and these instream flows are in full force and effect?

Will the compact ultimately set off a domino effect of water rights calls throughout western Montana in years such as this?

It seems to us that by ceding vast amounts of water in western Montana for fisheries to the US / CSKT in the compact, and giving them a time immemorial priority date, that Montana also effectively gave them control over what happens to everyone else's uses of water as well.

## Response to a Commenter

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**Note:** this article is in response to a comment submitted to us concerning our article about Kerr Dam that can be found at this link: [Flathead Lake Levels: A Sleight of Dam?](#)

Today we received this comment concerning our article questioning whether releases of water from Kerr Dam contributed to the Flathead Lake Shortages.

The Comment says this:

*Your article does nothing except actually prove that the tribe was following their license. The minimum flows from June to July 1st are 12,700cfs. Your sheet shows they followed that to the letter. Except you chose to lead a misinformation campaign by omitting the most important part.*

*Here is the information you omitted taken directly from their license flow requirements.*

*May 16 to June 30 = Continuous at 12,700 cfs*

*July 1 to July 15 = Reduced from 12,700 cfs to 6,400 cfs at 420 cfs per day*

*Also shown in your data perfectly is they are reducing the flows 420cfs per day as required they can't simply cut the flows to 6,400. They have to taper them down with daily limits;)*

We agree with the commenter that the chart provided in the article shows that for the snapshot in time depicted, the tribe was releasing the volume of flows permitted by the FERC license.

We appreciate the commenter pointing this information out because it gives us the opportunity to now provide additional information concerning the weeks preceding June 13th when Flathead Lake levels actually began declining. These preceding weeks were not addressed in our original article.

**In the context of a lake level crisis brewing as the news articles represented, our article questioned if the tribe could have reduced releases to protect the lake levels as well as preserve the important portion of Kerr Dam reservoir water necessary for irrigation purposes.**

Certainly, there must be some flexibility with respect to releases of water from the dam to accommodate both excesses and shortages based upon the FERC license guidelines. **If nothing else, surely there is a FERC protocol that could have been followed to adjust the water releases from the dam.**

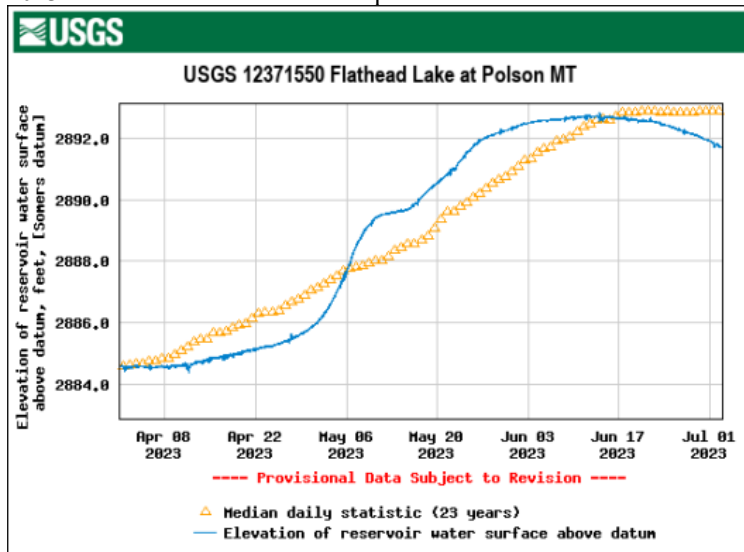
We'd also like to remind folks that the original article included a link to the FERC license for everyone to see, and we are linking it again in this post: [Kerr Dam FERC license](#)



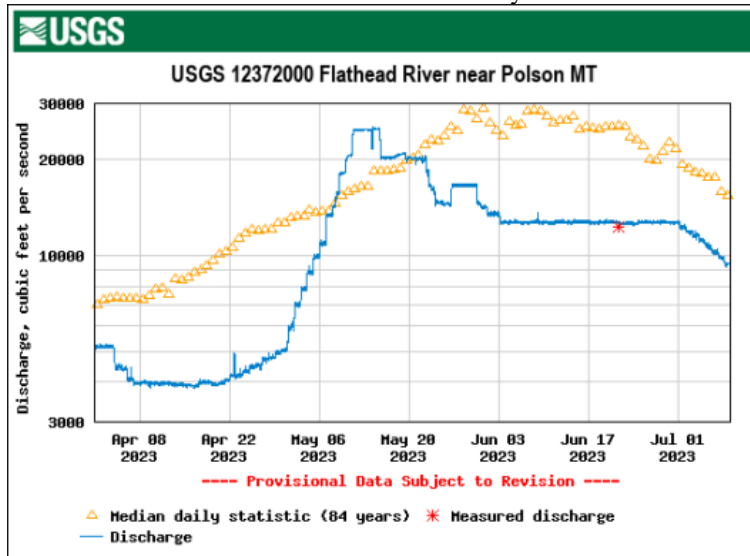
A larger timeline snapshot shows the impact of June net flows through the lake via Kerr Dam releases.

The tribe's ownership of Kerr Dam adds another layer of complexity to the picture, because due to their control of the dam, coupled with the various elements of the compact, the tribe is able to make decisions that can directly affect most of the water users living in western Montana.

With all of this in mind, we are providing you today with that larger snapshot of time that shows Flathead Lake could have been filled earlier, which in turn could have mitigated the risk of not being able to fill the lake to full pool. The diagram below shows the existing 2023 fill for Flathead Lake in comparison to the median lake levels based on a 23 year record.



Lets look at the corresponding current and median historic discharges from Kerr Dam for April through July 2023 as shown below for the Flathead River near Polson based on an 84-year record.



**These graphs show that something far different than typical occurred in 2023. As shown in the first chart, the level of Flathead Lake peaked in early June instead of July as is typical. This chart shows that the runoff that could have been stored was released instead beginning in early May.**

We have a friend who often tells us the genius in the way the United States developed the Flathead Irrigation and Power Project.

The Project was designed to ultimately be financially self sufficient, and was intended to provide a balance between irrigation water needs as well as the needs of the general public, including navigation of the lake and recreational purposes. Unfortunately in 1985 the BIA allowed the tribe to successfully decouple the power division from the irrigation project via an unlawful 638 contract, resulting in the diversion of a portion of the net power revenue derived from the low cost block of power away from irrigation and to tribal uses, rather than to maintenance of the project. [This began the deterioration and demise of the project.](#)

The BIA made it abundantly clear in their May 12, 2023 Flathead Project meeting that the Flathead Project “is now a fishery project.” Does the shift shown in the graph signal the manifestation of that “policy” outcome of the compact for Flathead Lake?

It is the May – early June releases that could very well have made a difference between the lake reaching its full pool and the shortfalls we are currently experiencing. These same releases exceeded the FERC license restraints, but had they been more in line with the license restraints, could have averted the lake shortages.

This raises concerns that the Compact, coupled with tribal ownership of the dam allows them to do what they want.

Here are the data in a numbers tabulation that includes the Kerr Dam release guidelines as well as Flathead Lake elevation levels.

# Flathead Lake Inflow and Outflow Analysis 5/1/2023-7/08/2023

Date	Swan River near Bigfork (cfs)	Flathead River Near Kalispell (cfs)	Inflow (cfs) a + b	Outflow Flathead River nr Polson (cfs)	Net outflow (cfs) c - d	Release Guidelines FERC License (cfs)	Outflow Compared to FERC Max (cfs) d - 12,700	Net Outflow converted to Acre Feet of Water (acft) g x 2	Flathead Lake Elevation Level at Kerr
	a	b	c	d	e	f	g	h	i
05/01/23	1,740	28,800	30,540	5,900	14,640	5000-12700	(6,800)	(13,600)	2,886.04
05/02/23	2,160	25,000	27,160	6,940	20,220	5000-12700	(5,760)	(11,520)	2,886.29
05/03/23	2,810	29,800	32,610	7,800	24,810	5000-12700	(4,800)	(9,600)	2,886.63
05/04/23	3,450	32,300	35,750	8,810	26,940	5000-12700	(3,890)	(7,780)	2,887.03
05/05/23	3,980	34,600	38,580	9,910	28,670	5000-12700	(2,790)	(5,580)	2,887.46
05/06/23	4,470	35,500	39,970	10,900	29,070	5000-12700	(1,800)	(3,600)	2,887.97
05/07/23	4,990	33,800	38,790	13,300	25,490	5000-12700	600	1,200	2,888.50
05/08/23	5,160	29,400	34,560	15,000	19,560	5000-12700	2,300	4,600	2,888.90
05/09/23	4,800	26,300	31,100	18,000	13,100	5000-12700	5,300	10,600	2,889.17
05/10/23	4,300	24,100	28,400	20,400	8,000	5000-12700	7,700	15,400	2,889.41
05/11/23	3,790	22,800	26,590	24,400	2,190	5000-12700	11,700	23,400	2,889.51
05/12/23	3,420	22,600	26,020	24,800	1,220	5000-12700	12,300	24,200	2,889.56
05/13/23	3,190	22,900	26,090	24,900	1,190	5000-12700	12,200	24,400	2,889.61
05/14/23	3,110	24,000	27,110	24,800	2,310	5000-12700	12,300	24,200	2,889.65
05/15/23	3,190	25,700	28,890	22,300	6,590	5000-12700	9,600	19,200	2,889.70
05/16/23	3,380	28,700	32,080	20,300	11,780	12700	7,600	15,200	2,889.85
05/17/23	3,790	30,500	34,290	20,400	13,890	12700	7,700	15,400	2,890.07
05/18/23	4,100	38,600	42,700	20,800	21,900	12700	8,100	16,200	2,890.28
05/19/23	4,440	26,300	31,740	20,500	10,840	12700	7,800	15,600	2,890.47
05/20/23	4,420	27,100	31,520	20,300	11,220	12700	7,600	15,200	2,890.65
05/21/23	4,420	27,700	32,120	20,100	12,020	12700	7,400	14,800	2,890.83
05/22/23	4,490	27,800	32,290	19,300	12,990	12700	6,400	12,800	2,890.99
05/23/23	4,560	27,000	31,560	16,200	15,360	12700	3,500	7,000	2,891.25
05/24/23	4,490	24,000	28,490	14,700	13,790	12700	2,600	5,200	2,891.50
05/25/23	4,190	21,600	25,790	14,500	11,290	12700	1,800	3,600	2,891.72
05/26/23	3,860	20,200	24,060	15,500	8,560	12700	2,800	5,600	2,891.90
05/27/23	3,590	18,500	22,090	16,600	5,490	12700	3,500	7,000	2,892.02
05/28/23	3,390	16,900	20,290	16,600	3,690	12700	3,500	7,000	2,892.11
05/29/23	3,280	15,600	18,880	16,600	2,280	12700	3,500	7,000	2,892.18
05/30/23	3,190	15,300	18,490	15,600	2,890	12700	2,900	5,800	2,892.25
05/31/23	3,100	14,600	17,700	14,200	3,500	12700	2,500	5,000	2,892.32
06/01/23	3,030	13,500	16,530	13,500	3,030	12700	800	1,600	2,892.39
06/02/23	2,910	12,600	15,510	13,500	2,010	12700	800	1,600	2,892.46
06/03/23	2,780	11,700	14,480	12,700	1,780	12700	0	0	2,892.51
06/04/23	2,660	11,000	13,660	12,700	960	12700	0	0	2,892.55
06/05/23	2,530	10,700	13,230	12,700	520	12700	0	0	2,892.57
06/06/23	2,430	10,400	12,830	12,700	130	12700	0	0	2,892.59
06/07/23	2,400	10,300	12,500	12,700	-200	12700	0	0	2,892.60
06/08/23	2,390	9,820	12,210	12,800	-590	12700	100	200	2,892.62

Page 1 of 2

The photo above of a expanded two page table detailing Flathead Lake Inflow and Outflow between May 1, 2023 – July 8, 2023 using the latest USGS figures.

It highlights 27 days of water releases that exceeded FERC release guidelines. It also shows that beginning on July 1, 2023, the tribe began lowering releases as per the FERC license guidelines.

The conversion of the excess water released from cubic feet per second to acre feet, also shows that the volume of “excess” water releases is very close to the 229,383 of Flathead Compact System Water awarded to the United States / CSKT in Appendix 9 of the compact. While we can’t know if the tribe took its Flathead Compact System water during this period, what we are seeing is the same effect as if they had, resulting in an approximate two foot reduction in the Flathead Lake level.

Again, our sincerest thanks to the commenter for reminding us to be more careful with respect to the snapshot in time we should have depicted to better show what took place with Kerr Dam releases and Flathead Lake levels during the spring and summer of 2023.

We also want to remind you that we are not saying that there aren’t water shortages in western Montana because of a natural drought weather pattern. We simply are questioning whether these effects could have been mitigated in order maintain Flathead Lake levels and to store water for irrigation needs later in the season. Since the Compact allows the CSKT to use this water at any time of the year and provides for no reporting, there is no possible way to know if this was a miscalculation, mismanagement, or if it was intentional.

None of this negates the serious questions that were asked in the original article concerning the ability to control levels of water that could create shortages of water through Kerr Dam releases and the future impacts if the water compact stands and its provisions are fully enforced.

If anything, all of this should raise serious questions about the lack of accountability the compacting parties have with respect to the mess that they have created for western Montana.

Perhaps it is time to assess, yes, actually study the impacts and conflicts that are represented in the Flathead Water Compact, especially in light of the tribe’s ownership and control of Kerr Dam.

Through its support of the Flathead Water Compact, Montana is also a complicit party in the massive transfer of wealth and attempted surrender of the sovereignty of its citizens via its Unitary Management provisions.

**The question we must begin asking is what did Montana’s leadership get in return for ceding its natural resources and the sovereignty of its citizens to the federal government? Perhaps the vast amount of money flowing through Montana’s state treasury with federal strings attached is just the tip of an iceberg of benefits to our state government “political class.”**

These people will ultimately have to be held responsible for the harm they are imposing upon the people of Montana.

- Former governors Mark Racicot, Brian Schweitzer and Steve Bullock
- Current governor and former U.S. Representative Greg Gianforte,
- Former Attorney Generals Steve Bullock and Tim Fox
- The leadership of the Compact Commission
- The Montana DNRC and Fish, Wildlife and Parks
- U.S. Congressional delegation, Steve Daines, Jon Tester

- Former U.S. Representative Denny Rehberg
- Every legislator that voted in support of the Flathead Water Compact
  - [House Vote](#)
  - [Senate Vote](#)

“In the end, we all may have to stand upon the principle that any laws that are repugnant to the Constitution are null and void. When the time comes, the compact will only win the day if we the people acquiesce to it.”- icthe4est

mattson-v-montana-power-company.pdf

¶ 10 The 1930 and 1985 dam licenses authorize the dam operator to regulate Flathead Lake between elevations 2,883 and 2,893 feet above mean sea level. In this connection, Frank M. Kerr (RMPC's vice president and general manager at the time) testified before the Federal Power Commission in October 1929 concerning RMPC's application to develop power on Flathead Lake and the Flathead River. He acknowledged that there had been "a good deal of controversy and discussion as to the effect of high water in the lake" and that a great deal of study had been conducted on the subject. Noting that "no one wants to buy or pay for any damage that can possibly be avoided," Kerr testified that the result of these things that I have described has indicated to us as businessmen and as engineers that the elevation 2,893 is the logical development in the interest of everyone that may be concerned. Unquestionably this takes some land, but nothing of importance except at the north end of the lake, where the delta of the Flathead River has made a large area very flat. Kerr further testified that he had been asked the question many times as to what effect this storage at 2,893 will have upon the lake shore in general, and in order to use an expression that I thought would be best understood by a layman, I have said to these people that "If you will build or do anything on your property in the light of your experience as to what elevations of the lake have prevailed heretofore, you will in no way be affected by the new conditions."

¶ 11 In 1962, MPC and the U.S. Army Corps of Engineers entered into a Memorandum of Understanding which specified procedures for the regulation of Flathead Lake in the interests of flood control, recreational needs, and power-production needs. As amended in 1965, the Memorandum provides that, conditions permitting, the lake will be drawn down to elevation 2,883 feet by April 15 and then raised to elevation 2,890 feet by Memorial Day and to elevation 2,893 feet by June 15. The Memorandum also provides that when the lake reaches elevation 2,886 feet in a moderate or major flood year, the dam operator will gradually open the spill-gates to maintain free flow and will not close the gates until after the danger of exceeding elevation 2,893 feet has passed. The Federal Power Commission subsequently approved these procedures, see Montana Power Co., 35 F.P.C. 250 (1966), and the Federal Energy Regulatory Commission incorporated the Memorandum of Understanding into the 1985 license issued jointly to MPC and the Tribes. PPLM reports that Kerr Dam has been operated in substantially the same manner since 1938 and in accordance with the Memorandum of Understanding since 1962.

<https://westernmtwaterrights.files.wordpress.com/2023/08/mattson-v-montana-power-company.pdf>

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ALL RIGHTS COME FROM GOD. NOT MAN. THEREFORE, THE GOD WHO MADE THE OCEANS AND WATER HAS GIVEN US EVERYTHING THAT PERTAINS TO LIFE AND GODLINESS. HE SUPPLIES ALL OUR NEEDS AND HAS GIVEN US WATER RIGHTS THAT PREDATE ANY THEORIES OR CLAIMS OF ‘TIME IMMEMORIAL.’

1. The tribe's 1966 off reservation Indian Claims Commission settlement legally precludes the tribe from claiming any off-reservation water right claims in the compact.
  - a. The historic record shows that the compacting parties ignored the stipulation agreement signed by the CSKT tribes in 1966, when they accepted a \$4.4 million dollar settlement from their 1950 Indian Claims Commission lawsuit pertaining to their off reservation ceded lands:
  - b. In 1950, the CSKT filed a petition with the Indian Claims Commission related to off reservation lands ceded to the United States in the 1855 Hellgate Treaty. The petition claimed that the payment given to the tribe for the off reservation ceded lands was unconscionable. This petition became docket number 61, and was referred to as the CSKT Indian Title or Aboriginal Title Claim.
  - c. Between 1959 and 1965, the court went through an intensive land classification and valuation process that included appraisers from both sides. It is abundantly clear that the valuation of the land undertaken by the court assessed the lands with the value of the water that was appurtenant to them.
  - d. In 1966, the CSKT Tribal Council unanimously voted to accept the proposed settlement by passing Tribal Resolution 1977, APPROVING AND ACCEPTING THE OFFER TO COMPROMISE AND SETTLE THE ABORIGINAL TITLE CLAIM OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES, DOCKET NO. 61 INDIAN CLAIMS COMMISSION.
  - e. Because the Indian Claims Commission was created for the purpose of providing a final resolution to tribal grievances, in order to receive their settlement, the CSKT was required to enter into a stipulation agreement for final judgment that included the following language:
 

*“The judgment shall finally dispose of all claims or demands which petitioner has asserted or could have asserted in this case against defendant, and petitioner shall be barred from asserting all such claims or demands in any future action.”*
  - f. This stipulation agreement was part of the official Indian Claims Commission court proceeding. A copy of the stipulation agreement can be found [at this link](#).
  - g. For additional details and information, see [Docket 61: The CSKT Off Reservation Aboriginal Title Claim](#)

2. Having been parties to the Indian Claims Commission lawsuit and settlement, the United States and CSKT absolutely were aware of the tribes' stipulation agreement. They know that the tribe is precluded from going after any
  - a. off reservation claims which were asserted in the case and
  - b. any claims that could have been asserted.
3. Tribal Reserved Water Rights do not exist.
  - a. Federal reserved water rights are for a discrete amount of water necessary to fulfill the purposes for the federal government reservation of the Flathead Reservation. These water rights are supposed to carry a priority date of 1859.
  - b. There should be no water rights in the compact pertaining to private lands within the boundaries of the Presidentially opened Flathead Reservation
  - c. There should be no water rights in the compact for water outside of the reservation boundaries.
4. **A federal reserved water right can only exist on land controlled by the federal government.**

# Quantification of Indian Federal Reserved Water Rights in the United States \*

RESERVATION / TRIBE	STATE	ACU / Yr	Fed 50/50	RESERVATION / TRIBE	STATE	ACU / Yr	Fed 50/50
Akwesasne (Fraternal)	NY	5,467	1,174.2	Nequoma (Ind)	CA	48,102	5,006.5
Alamo (Ind)	TX	85,000	17,000	Nequoma (Ind)	CA	48,000	5,000
Blackfoot	MT	10,000	2,000	Pawnee (Ind)	NE	0	0
Columbia River (Ind)	OR	788,138	157,627	Rocky Boy	MT	33,000	6,600
Columbia (Ind)	CO	29,000	5,800	Salt River (Ind)	UT	122,400	12,240
Crow	MT	997,000	199,400	Salt River (Ind)	UT	97,000	19,400
Flathead (Ind)	MT	13,588	2,717.6	Salt River (Ind)	UT	0	0
Flathead (Ind)	MT	** 254,637	50,927.4	Shoshone (Ind)	WY	4,000	800
Flathead (Ind)	MT	506,000	101,200	Shoshone (Ind)	WY	11,000	2,200
Fort Belknap (Ind)	MT	500,000	100,000	Shoshone (Ind)	WY	9,000	1,800
Fort Hall	ID	33,531	6,706.2	Tribal (Ind)	CA	64,000	6,400
Fort McHenry	MT	38,280	7,656	Western (Ind)	CA	50,000	5,000
Fort Peck (Ind)	MT	1,852,472	370,494.4	Western (Ind)	CA	32,000	3,200
Fort Peck (Ind)	MT	855,500	171,100	Western (Ind)	CA	39,000	3,900
Gila River (Ind)	AZ	82,500	16,500	Western (Ind)	CA	67,000	6,700
Headwaters (Ind)	MT	118,188	23,637.6	Western (Ind)	CA	67,000	6,700
Headwaters (Ind)	MT	50,000	10,000	Western (Ind)	CA	67,000	6,700
Headwaters (Ind)	MT	84,803	16,960.6	Western (Ind)	CA	67,000	6,700

**FOOTNOTES:** \* This table is a preliminary quantification of Indian Federal Reserved Water Rights in the United States. It is based on the best available information at the time of preparation. It is not intended to be a final or definitive statement of the rights of any tribe or reservation. The rights of any tribe or reservation are determined by the U.S. Supreme Court. The rights of any tribe or reservation are determined by the U.S. Supreme Court. The rights of any tribe or reservation are determined by the U.S. Supreme Court.

**THE PEOPLE'S COMPACT:** This is a preliminary quantification of Indian Federal Reserved Water Rights in the United States. It is based on the best available information at the time of preparation. It is not intended to be a final or definitive statement of the rights of any tribe or reservation. The rights of any tribe or reservation are determined by the U.S. Supreme Court. The rights of any tribe or reservation are determined by the U.S. Supreme Court. The rights of any tribe or reservation are determined by the U.S. Supreme Court.

1. The term "unique obligation" is often used in regards to the Tribes, but very little of an equal "unique obligation" to non-Indian citizens when it comes to equal protection, separation of powers, and due process. It appears this "unique obligation" is discriminatory to the non-Indians; and does not apply due to the "superior water rights of the Tribes". So, the "unique obligation" to non-Indians is exceeded by the claims of the Tribes. As a result, the state must ignore "equal protection arguments." Some attorneys have even argued that the law makes distinctions when it comes to equal protection. What this law is (usually court decisions) is not stated but the objectors state that the US Constitution necessarily exceeds any such distinction.
2. Therefore, the private constitutional rights of the objectors have been materially and publicly injured due to this "unique obligation."
3. Much of the provisions concerning the powers and duties of the Water Management Board are vague and confusing. This is true of other issues such as a "court of competent jurisdiction". Just on the vagueness doctrine this Compact should be declared void.
4. The collusion, fraud, and overreaching by the Montana Legislature has been shown by the objector. This has been done perhaps unwittingly and in some people, in ignorance. However to prove constructive fraud, the objector does not have to prove a malicious intent. To ignorantly - either by guilt, willfulness or lack of due diligence - accept the claims of the Tribes, to accept their revisionist history, to deny the extinguishing of the Flathead Reservation, to give exclusive authority to the Water Management Board, to deny Article IX of the Montana Constitution applies to the Reservation (even though the writers of the 1972 Constitution were cognizant of the Reservation), to distort the meaning of ownership, to provide false definitions all of this shows collusion, fraud and overreaching.
5. In Conclusion, the Compact is not fair or adequate. It has unconstitutional provisions, faulty definitions, and is the product of fraud, collusion and overreaching. It violates the private constitutional rights of the objectors and should be nullified and declared void.