

# RESERVED WATER RIGHTS - PERTINENT LAWS AND COURT CASES REFERENCE SHEET

<b>UNITED STATES CONGRESS</b>							
<a href="#"><u>BLACKFEET OR JUDITH RIVER TREATY</u></a> of Fort Benton 1855 Ratified 1856	<a href="#"><u>HELLGATE TREATY of 1855</u></a> Ratified in 1859	<a href="#"><u>DAWES ACT of 1897</u></a> and the <a href="#"><u>FLATHEAD ALLOTMENT ACT 1904</u></a>	<a href="#"><u>INDIAN CIITZENSHIP ACT 1924</u></a>	<a href="#"><u>INDIAN REORGANIZATION ACT 1934</u></a>	<a href="#"><u>MCCARRAN AMENDMENT 1952</u></a>	<a href="#"><u>INDIAN SELF DETERMINATION ACT 1975</u></a>	
The tribes of the Blackfoot Confederacy agreed to attend the great council of Oct. 17, 1855, across the Missouri from the mouth of the Judith River. In addition to the Blackfeet tribes, delegations of Flathead, Pend d'Oreille, and Nez Perce attended.	The Treaty of Hellgate was signed on July 16, 1855 between Isaac Stevens and western Montana tribes. The tribes involved in the signing of the treaty entailed the Bitterroot Salish, Pend d'Oreille, and Kootenai.  Article 6 of the Hellgate Treaty also references the <a href="#"><u>Treaty with the Omaha</u></a> , with respect to allotment and sale of surplus lands.	The General Allotment Act, provided for allotment of reservation lands.  FLATHEAD: After allotment of land to individual households of members on the tribal rolls, the government declared the rest "surplus" and opened the reservation to homesteading. Senator Joseph M. Dixon played a key role in getting this legislation passed.	Granted full U.S. citizenship to indigenous peoples, called "Indians" in this Act. Under the Act indigenous people did not have to apply for citizenship, nor did they have to give up their tribal citizenship to become a citizen. Most tribes had communal property and in order to have a right to the land, Indians must belong to the tribe. Thus, dual citizenship was allowed	Reversal of Dawes Act's privatization of communal holdings and return to local self-government on a tribal basis. The Act also restored to Indians the management of their assets. The act did not restore to Indians land that had already been patented to individuals. Because the Act did not disturb existing private ownership of Indian reservation lands, it left a checkerboard of tribal and free land, which remains the case today.	Passed so that Federal Reserved water rights claims could be reviewed in state courts. This amendment waived federal government's sovereign immunity defense and gave consent for the government to be joined in state court suits determining the water rights of all users within a river basin.	Authorized Secretaries of Dept of Interior, Health, Education and Welfare and other agencies to enter into contracts with, and make grants directly to, federally recognized Indian tribes.  The principal goals of Act include strengthening tribal govt and enhancing Ability to provide services to their people as sovereign, self-determining governments	

<b>UNITED STATES SUPREME COURT</b>							
<a href="#"><u>UNITED STATES V WINANS 1905</u></a>	<a href="#"><u>WINTERS V UNITED STATES 1908</u></a>	<a href="#"><u>ARIZONA V CALIFORNIA SERIES OF CASES 1931-2000</u></a>	<a href="#"><u>UNITED STATES V POWERS 1939</u></a>	<a href="#"><u>CAPPAERT V. UNITED STATES 1976 AND UNITED STATES V NEW MEXICO 1978</u></a>	<a href="#"><u>MONTANA V UNITED STATES 1981</u></a>	<a href="#"><u>UNITED STATES V IDAHO 1993</u></a>	<a href="#"><u>STATE EX REL GREELY V CSKT 1985</u></a>
In 1905 the US Supreme Court upheld the tribe's right, even when the "usual and accustomed places" were outside reservation boundaries and were owned by non-Indians. The Court noted that the right to fish and to access traditional fishing grounds was not a special right granted by the government through the treaty. Rather, the treaty simply acknowledged a right the Indians already possessed and reserved it for their current and future use.	Decision that the Fort Belknap reservation had reserved water rights. It was found the water rights were implied when the reservation was created. in order to uphold provisions that had been previously stated in the treaty. These rights are exceptions to state control are Winters and Stevens Treaty water rights, creatures of federal common law. Under federal Indian law, tribal water rights are held 'in trust' for Tribes by the U.S. Government.	Brought by Arizona against California to determine the rights to the Colorado River. The U.S. intervened. Other Colorado River basin states were joined or intervened in the lawsuit. As part of the allocation of the waters of the Colorado River, the Supreme Court addressed quantification of the reserved water rights of several Indian tribes along the Colorado River. The Court found that the "only feasible and fair way by which reserved water for the reservations can be measured is irrigable acreage. The Court held that the purposes of the reservation determines the quantity of the Indian reserved water right.	Many reservations escaped allotment and its consequences, but a "checkerboard" pattern of ownership on some reservations persists and presents serious complications in reserved water rights disputes. The Supreme Court ruled in 1939 that when tribal land is converted into allotments, the trust allottees succeed to some portion of tribal waters needed for agriculture.	Largely relying upon these two Supreme Court decisions, proponents of the sensitivity doctrine assert that because a federal reserved water right will frequently require a gallon-for-gallon reduction in the amount of water available to junior private appropriators, reserved rights exist only to satisfy a federal reservation's minimal needs.	Tribe may only regulate the on-reservation activities of nonmembers on non-Indian land within reservation if (1) the nonmembers enter into consensual Relationships (e.g., contracts, leases, etc.) with tribe; or (2) nonmember conduct on the reservation "threatens or has some direct effect on the political integrity, economic security, or health or welfare of tribe."  Supreme Court affirmed settled legal principles regarding submerged lands. Under Equal footing doctrine, states presumed to own submerged lands underlying lakes and rivers, including those lands located inside Indian reservations	Case in which the U.S. Supreme Court held that the United States, not the state of Idaho, held title to lands submerged under Lake Coeur d'Alene, and that the land was held in trust for the Coeur d'Alene Tribe.	Montana Supreme Court ruled that the Water Court has the authority to adjudicate water right claims on all Indian reservations. The Supreme Court further concluded that the Water Use Act is adequate on its face to adjudicate both Indian and federal reserved rights. A challenge could later be brought as to how the statutes were applied. [State ex rel. Greely v. Confederated Salish and Kootenai Tribes, 219 Mont. 76, 95, 712 P.2d 754 (1985)]

UNITED STATES CIRCUIT COURTS OF APPEAL				UNITED STATES DISTRICT COURTS			
<a href="#">CONFEDERATED COLVILLE TRIBES VS WALTON 1981</a>	<a href="#">U.S. V ADAIR 1983 ADAIR I</a>	<a href="#">UNITED STATES V ANDERSON 1984</a>		<a href="#">US V WASHINGTON (BOLDT DECISION) 1974</a>	<a href="#">U.S. v ADAIR STATE OF OREGON ADAIR II 1984</a>	<a href="#">U.S V ADAIR 2002 ADAIR III</a>	
Non-Indian successors to Indian allotments are entitled to share in the Winters rights held by Tribes. The non-Indian right (1) is based on pro rata share of irrigable tribal lands, (2) must be put to use within a reasonable time (typically 15 yrs) from date land is transferred, and (3) may be lost for non-use. If non-Indian right is lost, reverts to state, not the Tribe	The courts confirmed to the Klamath Tribes "a quantity of water flowing through the reservation not only for the purpose of supporting Klamath agriculture, but also for the purpose of maintaining the Tribe's treaty right to hunt and fish on reservation lands."	(9th Cir) land reacquired from non-Indian allottees would have the date of the reservation if right had not been lost after transfer to the non-Indian. Where water rights have been lost, rights associated with reacquisition would be as of date of repurchase. Safeguards in place to ensure tribal monitoring of non-Indian water rights will not subject non-Indians tribal jurisdiction.		Federal Judge George Boldt issues an historic ruling reaffirming the rights of Washington's Indian tribes to fish in accustomed places. The "Boldt Decision" allocates 50 percent of the annual catch to treaty tribes, which enrages other fishermen.	Held Indians entitled to as much water on Reservation lands as needed to protect their hunting and fishing rights. If preservation of these rights requires marsh be maintained as wetlands and forest be maintained on a sustained-yield basis, then Indians are entitled to whatever water is necessary to achieve those results	Oregon District Court confirmed Klamath Tribes' reserved water rights included water necessary to support gathering, hunting, fishing, and trapping rights, and priority date was time immemorial. Also stated the Klamath Basin Adjudication process should "in no event . . . reduce Tribal water right to a level below that which is necessary to support productive habitat."	
STATE OF MONTANA CREATION AND WATER LAW							
<a href="#">ORGANIC ACT 1864</a>	<a href="#">1884 MT CONSTITUTION</a>	<a href="#">ENABLING ACT 1889</a>	<a href="#">1889 MT CONSTITUTION</a>	<a href="#">1972 MT CONSTITUTION ARTICLE 9 SECTION 3</a>	<a href="#">WATER USE ACT 1973</a>	<a href="#">WATER USE ACT AMENDMENTS 1979</a>	<a href="#">TRIBAL WATER COMPACTS</a>
Congressional act creating Montana, prescribed organization of territorial government. "Nothing in act shall impair rights of Indians if unextinguished by treaty, or to include any territory which, by treaty, is not to be included within the territorial limits or state jurisdiction. Such territory shall constitute no part of MT Territory until tribes signify desire to be included within it.	That the people inhabiting the Territory of Montana, by their representatives in said Convention assembled, do agree and declare that they Forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposal of the United States	Act that permitted Montana to be admitted to Union. "People agree and declare that they forever disclaim all right and title to unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by Indian tribes; until title is extinguished by U.S., and said Indian lands shall remain under jurisdiction and control of Congress "	Sec 15 – The use of all water now appropriated, or that may hereafter be appropriated for beneficial use shall be held to a public use.	1) All existing rights to water for beneficial use confirmed. (2) Use of all water that is appropriated for beneficial use, shall be held to be a public use. (3) All waters within state boundaries are property of the state for the use of its people and subject to appropriation for beneficial uses. (4) Legislature shall provide for administration, control, and regulation of water rights.	intended to enhance state control over water development and simplify the water rights record keeping system	Reserved Water Rights Compact Commission created to facilitate quantification of reserved water rights claims. The intent was to, "conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.,,"	Ratified MT Leg/US Cong 1985 / Fort Peck 1991 /1992 N Cheyenne 1997 /1999 Rocky Boys 1999 /2010 Crow Tribe 2001 / Fort Belknap 2009 / Blackfeet
VARIOUS STATE SUPREME COURT CASES						OTHER MONTANA CASES	
WYOMING - BIGHORN 1 AND 2	<a href="#">MONTANA - CIOTTI I 1996</a>	MONTANA – <a href="#">CIOTTI II CSKT V CLINCH - 1999</a>	MONTANA <a href="#">CIOTTI III CSKT V STULTS 2002</a>	IDAHO - <a href="#">US V IDAHO 2002</a>	<a href="#">STATE EX REL GREELY V CSKT 1985</a>	MONTANA- <a href="#">NAMEN I, NAMEN II</a> 70's – 80's	MONTANA <a href="#">JOINT BOARD I, JOINT BOARD II</a> - 1980's
<a href="#">Big Horn 1 (1988)</a> 1) the Wind River tribes have reserved water rights that precede all other state users, and 2) since agriculture was the original purpose of reservation, water reserved should be based on the "practicably irrigable acreage" std. <a href="#">Big Horn 2 (1992)</a> , tribes could not convert their water use from irrigation to instream flow without first following state procedures	Tribe petition to enjoin DNRC from issuing permits to non-Indians living on Reservation. Existing law required applicants to show that the new use or change in diversion will not "unreasonably interfere with a planned use for which water has been reserved. Because this burden could not be met, Tribes' water right must be quantified before any new permits could be granted	Tribes petitioned court to enjoin Montana DNRC and its director, Bud Clinch, from issuing water use permits on the Reservation until Tribes' reserved water rights had been quantified. The court accepted original jurisdiction and granted the relief requested. This decision was the 3rd time in 15 years the court defined the pervasive nature of the Tribes' reserved water rights.	Affirmed previous rulings that DNRC could not issue reservation water permits until CSKT right was quantified. Cited decisions that rights include ground water: "We cannot say it more clearly, the DNRC cannot process or issue beneficial water use permits on the Flathead Reservation until such time as the prior pre-eminent reserved water rights of the Tribes have been quantified."	Judge Wood ruled while the 1855 Nez Perce Treaty guaranteed the "right of taking fish at all usual and accustomed places in common with citizens of the territory," didn't guarantee there would be fish, and allotment in the late 1890s diminished Tribe's sovereignty over its own reservation. The Nez Perce do not have Indian reserved instream flow rights extending beyond reservation boundaries	MT Supreme Court ruled that Water Court has the authority to adjudicate water right claims on all Indian reservations. They further concluded that the Water Use Act is adequate on its face to adjudicate both Indian and federal reserved rights. A challenge could later be brought as to how the statutes were applied.	CSKT sought to regulate the manner in which non-Indians who own land bordering a navigable lake on the reservation exercise their riparian rights, and seek to enforce an ordinance they enacted in 1977 to regulate both existing and future structures on the bed and banks of the south half of Flathead Lake, held in trust for the Tribes by the U.S. and has been upheld in every federal challenge	Tribes have aboriginal fishing rights that entitle them to sufficient water to maintain fisheries within reservation boundaries, as well as for other uses. This right precedes irrigators' and other water rights on the Reservation under the "first in time, first in right" principle. State water rights and Indian reserved water rights differ in origin and definition. Indian reserved water rights are governed by federal law."