



## Water Policy Interim Committee

63rd Montana Legislature

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Oct. 30, 2014

Chris Tweeten, chairman  
Reserved Water Rights Compact Commission  
1424 Ninth Ave.  
Helena, MT 59620-1601

Dear Mr. Tweeten,

The Water Policy Interim Committee (WPIC) of the Montana Legislature respectfully submits the following recommendations for consideration and inclusion in the final water rights settlement with the Confederated Salish and Kootenai Tribes.

The WPIC has demonstrated interest in the proposed water rights settlement during this legislative interim, as demonstrated by five public meetings dedicated toward the topic. In addition, the WPIC has conducted extensive analysis of the proposed settlement as proposed in 2013, including multiple staff legal analyses, numerous panels of experts and expertise, and hours of public input and testimony. The WPIC formed the CSKT Compact Technical Working Group of six water experts to examine the technical aspects of the settlement; the working group produced a 100-page technical report judging the settlement's quantitative aspects.

The committee's recommendations are as follows:

1. The committee is concerned about the historic decrease in the number of irrigated acres on the Flathead Indian Reservation, and respectfully requests the negotiations to include an investigation into why this decrease has occurred. The committee also suggests the compact includes provisions to recover lands formerly irrigated, if practicable, after operational efficiencies to the Flathead Indian Irrigation Project are completed.
2. The committee recommends the compact define a "court of competent jurisdiction" to mean "a state court or federal court, which otherwise has jurisdiction of the subject matter and the parties; or a tribal court which otherwise has such jurisdiction provided that all parties to the case consent to tribal court jurisdiction." The committee recommends that the compact commission ensures federal law provides for federal court jurisdiction.
3. The committee recommends that the Interim Technical Team, which would be created to plan future water measurements and forecasting, include local representatives and experts with the Montana Bureau of Mines and Geology, as applicable. The committee recommends the Interim Technical Team work be held accountable by the Unitary Management Board, including an appeals process to the board and to courts. The committee recommends the Interim Technical Team continue its functions through irrigation project rehabilitation and integrate related roles with the Adaptive

Management Team. The committee recommends the Interim Technical Team document their processes and conduct meetings in accordance with state open meetings and open records laws.

4. The committee recommends that county commissioners from the four counties located within the Flathead Indian Reservation select technically qualified candidates for the governor's consideration for appointment to the Unitary Management Board. The committee recommends the county commissioners use a process similar to that used to select replacement legislators.
5. The committee recommends the compact commission negotiate an increase the amount designated as DCMI water to a higher level.
6. The committee recommends that passage of the compact does not imply a consensual agreement between any individual residing on the Flathead Indian Reservation and the tribe.
7. The committee recommends the compact ensures ownership status of land on the Flathead Indian Reservation does not involuntarily change as a result of passage. This recommendation does not affect the tribe's efforts to acquire or purchase land and return land to trust status.
8. The committee recommends adoption of the proposed concept of a "delivery right authorization" to give irrigators a property right, recognizing their historic access to irrigation project water.
9. The committee recommends adoption of the proposed concept of "resource mitigation" to ensure that individual well owners negatively affected by irrigation project improvements are assured continued continued access to groundwater.
10. The committee recommends that upon successful negotiation of the compact, the compact commission and the tribe embark upon education and outreach efforts for legislators, as they consider passage of the water rights settlement during the 2015 session.
11. The committee recommends that the compact commission discuss the dual management concept and explain why that is or is not feasible.

In light of the committee's dedication toward understanding the compact, we believe these recommendations will enable the 2015 Montana Legislature to fairly consider a final settlement agreed to by the compact commission and the tribe.

Sincerely,



Sen. Chas Vincent, chairman  
Water Policy Interim Committee