

**THE FLATHEAD WATER RIGHTS SETTLEMENT AND
MENDING FENCES ACT OF 2019**

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THE FLATHEAD WATER RIGHTS SETTLEMENT AND MENDING FENCES ACT OF 2019

An Act for a final resolution and settlement of the water rights claims of the Confederated Salish and Kootenai Tribes, and for other purposes.

SECTION I. SHORT TITLE.

This Act may be cited as the "Flathead Water Rights Settlement and Mending Fences Act of 2019".

SECTION II. PURPOSES OF ACT.

The purposes of this legislation are:

1. To achieve a fair, equitable, and final settlement of all claims to water rights between the citizens of and the State of Montana, the Confederated Salish and Kootenai Tribes, and the United States on behalf of the Confederated Salish and Kootenai Tribes by quantifying the Tribal federal reserved water right;
2. To develop the Tribal Water Right through the construction of new infrastructure and the rehabilitation of the Flathead Irrigation Project;
3. To settle existing disputes and remove causes of future controversy between the Tribes and the State and between Indians of the Flathead Reservation and other persons concerning waters of the Flathead River, its tributaries, Flathead Lake, and ground water including
 - A. all water claims submitted by the Tribes and by the United States on behalf of the Tribes in *United States v. Abell*, Civ. No. 79-33-M (D. Mont.) filed April 5, 1979 and in the pending adjudication in the state water court initiated pursuant to the provisions of Chapter 697, Laws of Montana 1979.
 - B. the 1951 Confederated Salish and Kootenai Tribes grievance and other claims related to water use within the Flathead Irrigation and Power Project as submitted in the sixth cause of action in Indian Claims Commission Docket 156 and the twelfth paragraph in Court of Claims Docket 50233, the two causes of action being identical that were dismissed by the Court without prejudice in 1964;
4. To direct the withdrawal by the United States and Confederated Salish and Kootenai Tribes all claims filed on behalf of the CSKT in the Montana Water Court

in June of 2015 except for those claims listed in this Act as part of the Tribal water right

5. To reaffirm Congressional Intent and statutory authority established by existing federal legislation for the integrated development of water and power on the Flathead Reservation to serve all residents of the Flathead Indian Reservation, and to provide the mechanisms necessary to reintegrate the Flathead Irrigation and Power Project for the benefit of all reservation residents.
6. To enhance, enable, and empower the self-determination of Tribal members and the local community through the development of a trade school focusing on the technical skills needed to develop the water resource, related industries, and secure a prosperous and productive reservation community.
7. To direct—
 - A. the Secretary, acting through the Bureau of Reclamation, and the Chairman of the Federal Energy Regulatory Commission, the Bureau of Indian Affairs, and other agencies; and the Heads of other Federal agencies authorized to execute and perform actions necessary to carry out and to perform all their obligations under this Act; and
 - B. To authorize the actions and appropriations necessary for the United States to meet the obligations of the United States under this Act.

SECTION III. RECITALS.

WHEREAS, the United States reserved the Flathead Indian Reservation for the Flathead and Salish, Upper Pend d'Oreilles, and Kootenay Tribes (Confederated Salish and Kootenai Tribes) by and through the 1855 Treaty of Hellgate, which was ratified by Congress on March 8, 1859 (12 Stat. 975); and

WHEREAS, under Articles 5 and 6 of the Treaty of Hellgate, the United States intended that the purposes of the reservation were to include farming and ranching; domestic, industrial and commercial uses; and

WHEREAS, under the Winters Doctrine (207 U.S. 564 (1908)), when the United States reserved the Flathead Indian Reservation, it also impliedly reserved enough water to fulfill the purposes of the reservation with the water right having the priority date of the reservation; and

WHEREAS, pursuant to Article 6 of the Treaty of Hellgate, the United States allotted the Flathead Indian Reservation in 1904 (33 Stat. 52 et seq); and to fulfill the reservation agricultural purpose and to make the reservation productive, authorized the construction of the Flathead Irrigation and Power Project in 1908 to serve both Indian allottees and settlers (35 Stat. 444, 448-450), and

WHEREAS, pursuant to Article 6 of the Treaty of Hellgate, the Flathead Reservation was opened to settlement by Presidential Proclamation in 1909, and

WHEREAS, the United States reserved and appropriated water from the Flathead River and its tributaries under the laws of the State of Montana for use by both Indian and non-Indian water users in the Flathead Irrigation and Power Project and within the exterior boundaries of the Flathead Reservation, and

WHEREAS, the United States used the Reclamation Fund, authorized by the 1902 Reclamation Act and derived from the sale of public lands, to construct the Flathead Irrigation and Power Project, and

WHEREAS, the United States entered into contracts with irrigation districts formed under state law for the repayment of construction costs of the Flathead Irrigation and Power Project, placing a federal lien on lands until the construction costs were repaid to the Reclamation Fund, and

WHEREAS, the United States constructed a well-integrated irrigation and power project consisting of Kerr Dam and other smaller reservoirs, the irrigation project including canals, laterals and storage facilities, and the power distribution system, and

WHEREAS, despite the integrated irrigation and power system, since 1985 federal agency decisions have disrupted and dissolved this integrated system and Congressional intent codified in the Act of 1908, by separating the irrigation, power system, and Kerr Dam from each other, and

WHEREAS, project water users completely repaid the construction debt for the integrated Flathead Irrigation and Power Project to the Reclamation Fund in 2004, however the liens have not been released nor has the operation and maintenance been turned over to the landowners as required by the 1908 Act, and

WHEREAS, the Confederated Salish and Kootenai Tribes were reorganized as a federally-charted corporation under the Indian Reorganization Act of 1934 (48 Stat. 984); and

WHEREAS, the Confederated Salish and Kootenai Tribes accepted Montana's civil jurisdiction over the reservation under P.L. 280; and

WHEREAS, in 1979 the United States, on its own behalf and on behalf of the Confederated Salish and Kootenai Tribes, their members and Allottees brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribes water rights claims (United States v. Abell, No. Civ-79-33-M, filed April 5, 1979) under the Winters Doctrine to fulfill the purposes of the reservation, and

WHEREAS, by means of the 1953 McCarran Amendment (43 USC 666), state courts have been found to possess adjudicatory jurisdiction over federal water rights held by the United States in trust for Indian tribes; and

WHEREAS, the state of Montana initiated the Montana General Stream Adjudication (Chapter 697 Laws of Montana) in 1979 which includes claims of the United States for the Confederated Salish and Kootenai Tribes' federal reserved water rights; and

WHEREAS, the legislature established the Montana Reserved Water Rights Compact Commission (RWRCC) to conclude compacts for the "equitable division and apportionment of waters between the State of Montana, its people and the several Indian tribes claiming reserved water rights within the state (MCA 85-2-701), and the State, its people and the federal government claiming non-Indian reserved water rights within the state (MCA 85-2-703)"; and

WHEREAS, the negotiated solution developed by the Compact Commission (MCA 85-20-1901 et. seq. and MCA 85-20-1902 et. seq.) failed to produce an equitable division and apportionment of water between the people of the state of Montana and the CSKT and United States; and

WHEREAS, the privately-negotiated solution developed by the State, United States, and the Tribes, represented as the CSKT Compact:

- Presented the details of the CSKT Compact to the public as non-negotiable and thus ignored citizen input;
- Failed to quantify the CSKT federal reserved water rights, unlawfully expanded federal reserved water rights outside the Flathead Indian Reservation, and enacted a significant taking of property rights without compensation;
- Was unconstitutionally passed by the Montana legislature in 2015 yet politically advanced to Congress; and

WHEREAS, despite these deficiencies, the CSKT Compact was introduced in the Senate by Senator Jon Tester in 2016 as S. 3013, which did not advance, but is expected to be reintroduced in 2019; and

WHEREAS, Article VII(2) of the CSKT Compact provides that any party may withdraw from the compact in 2019 under certain conditions which will be satisfied in April 2019, and

WHEREAS, notwithstanding these conditions or any other circumstance to the contrary, the citizens are aware that none of the parties intend to withdraw from the CSKT Compact, and

WHEREAS, the lack of a viable federal reserved water rights settlement for the CSKT has resulted in a jurisdictional vacuum that is preventing the adjudication of state law-based water rights which are on hold pending the resolution of the federal reserved water rights of the CSKT; and

WHEREAS, the People of the state of Montana have exhausted all legislative, administrative, and legal remedies at the State level to ensure a fair and equitable solution to, amendment of, or alternative for the CSKT Compact; and

WHEREAS, having rejected the CSKT Compact as an appropriate solution, the People of the State of Montana have nevertheless deemed it necessary to and have developed a fair and equitable solution for the federal reserved water rights of the CSKT that respects the water rights of all citizens and brings about mending of fences among our community; and

WHEREAS, the solution presented herein represents the citizen input that, if it had been seriously considered, may have materially shaped the final product emerging out of Montana as the CSKT Compact, and

WHEREAS, this alternative water settlement of the CSKT claims is a good faith effort that resolves the issue and is fair to all citizens, and if timely approved by Congress, will allow Montana's general stream adjudication to proceed to completion; and

WHEREAS, through this alternative water settlement, the People of and the state of Montana seek to secure to all citizens the quiet enjoyment and use of water for beneficial purposes under the purview of existing and customary legal systems applicable to their respective water rights;

NOW THEREFORE, BE IT RESOLVED THAT *We the People of Montana* respectfully submit the FLATHEAD WATER SETTLEMENT AND MENDING FENCES ACT of 2019 to the Congress of the United States as a First Amendment Petition for Redress to secure its equal consideration in the resolution of the water rights of the Confederated Salish and Kootenai Tribes (CSKT) of Montana.

SECTION IV. DEFINITIONS.

The following definitions shall apply to the Mending Fences Act of 2019:

1. “Acre-foot” or “Acre-feet” (AF): the amount of water to cover one acre of land to a depth of one foot and is equivalent to 325,851 gallons or 43,560 cubic feet of water
2. “Allottee” or “Allottees” means a person who holds a beneficial real property interest in an Indian allotment held in trust by the United States located within the reservation which was allotted pursuant to Article 6 of the Treaty of Hellgate and the Act of April 23, 1904, 33 stat. 302 as amended, or the Act of February 25, 1920, 41 Stat. 452, as amended
3. “Allottee water rights” means those water rights held individually by allottees that are managed by the Secretary of the Interior.
4. “Basin 76L” means hydrologic basin 76L, including the Flathead River below Flathead Lake, as shown in Appendix 1, within which the Flathead Indian Reservation is partially located
5. “Basin 76LJ” means hydrologic basin 76LJ, including the Flathead River to and including Flathead Lake, and its tributaries as shown in Appendix 1, within which the Flathead Indian reservation is partially located
6. “Bureau of Indian Affairs” or “BIA” means a federal agency within the Department of the Interior that works on behalf of American Indians as federal trustee, and who has operated and managed the Flathead Irrigation and Power Project since 1924. The Bureau of Indian Affairs’ mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives.
7. “Bureau of Reclamation” or “BOR” means a federal agency within the Department of the Interior that constructed and assisted the BIA in managing and operating the FIPP until 1960. The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in

the interest of the American public

8. "Confederated Salish and Kootenai Tribes" or "CSKT", or "Tribes" means a federally recognized American Indian Tribe which is organized as a federally chartered corporation under the Indian Reorganization Act (IRA) and all their officers, agents, and departments therein.
9. "Court of Competent Jurisdiction" means a State, Tribal, or federal court that has proper jurisdiction over the matter
10. "CSKT Compact" means the compact ratified by the State of Montana legislature in 2015 and codified in Montana Code as MCA 85-20-1901 and MCA 85-20-1902
11. "Deplete" or "Depletion" means a use of water that depletes the available water supply
12. "DNRC" means the Montana Department of Natural Resources and Conservation or any successor agency
13. "Effective Date" means the date on which the Flathead Water Settlement and Mending Fences Act is finally approved by the United States, the Montana Water Court, and the Tribes
14. "Federal Energy Regulatory Commission" means an agency of the United States responsible for among other things, the licensing of hydropower facilities under the Federal Power Act 16 U.S.C. Ch. 12 as amended, which created the Federal Power Commission, now the Federal Energy Regulatory Commission. FERC is the federal licensing agency for Kerr Dam.
15. "Federal reserved water right" means the amount of water necessary to fulfill the purposes of a federal reservation of land, including Indian Reservations; the right is owned by the United States in trust for Indian reservations. The priority date of the right is the date of the federal reservation
16. "Federal Water Development Group" means the entity established by the Secretary to lead and implement the development of the Tribal Water Right
17. "Flathead Allotment Act" (33 Stat. 502 et seq) The 1904 Act passed by Congress requiring the survey and allotment of lands within the Reservation and to open the remaining surplus lands to settlement.
18. "Flathead Indian Reservation" or "Reservation" means all land owned by the United States in trust for the CSKT within the exterior boundaries of the Flathead Indian Reservation.
19. "Flathead Irrigation and Power Project (FIPP)", or "Flathead Irrigation Project (FIP)", or "Flathead Indian Irrigation Project (FIIP)", or "Project" means the integrated irrigation and power project developed by the United States to irrigate lands within the Reservation pursuant to the Act of May 29, 1908, Public Law 60-156, 35 Stat. 441

(1908). The FIPP includes Kerr Dam, all canals, easements, rights-of-way, ditches, laterals, reservoirs, pumps, and hydroelectric facilities associated with irrigation, and any other related project facilities on or off the Flathead Reservation.

20. “Flathead Water Settlement and Mending Fences Act of 2019”, or “Act” means the water settlement act discussed in this legislation.
21. “Groundwater” means any water that is beneath the surface of the earth
22. “High Elevation Lakes” means existing high-elevation lakes described in Appendix 1.
23. “High Elevation Streams” means those high elevation streams unaffected by development that carry natural flow
24. “Hungry Horse Dam” means the dam that is a part of the Hungry Horse Project
25. “Indian Citizenship Act of 1924”, also known as the Snyder Act (43 U.S. Stats. At Large, Ch. 233, p. 253 (1924)), granted full U.S. citizenship to all American Indians born within the territory of the United States.
26. “Indian Reorganization Act of 1934”, also known as the Wheeler-Howard Act (48 Stat. 283 P.L. 93-383), organized the CSKT as a federally-chartered corporation under U.S. law. Section 3 of the Indian Reorganization Act provides that valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal, to any lands within any reclamation project authorized in any Indian Reservation, and applies to the reclamation project called the Flathead Irrigation and Power Project
27. “Instream Flow” means a stream flow retained in a watercourse to benefit aquatic species and the aquatic environment. Instream flow may include natural flow or streamflow affected by regulation, diversion, or other modification.
28. “Instream flow water right” means a water right for Instream Flow that is quantified for a stream reach and measured for enforcement purposes at a specified point
29. “Irrigation District” or “District” means an organization of irrigators developed under state and federal law.
30. “Lead Agency” means the Bureau of Reclamation entity charged with the implementation of the provisions of this Act
31. “Lease” means, as applied to the Tribal Water Right, an authorization for a person or persons to use any portion of the Tribal Water Right on or off the reservation for a specified purpose and time
32. “Low Cost Block of Power” (LCB) means a 15-megawatt block of power generated at Kerr Dam that is provided to the United States through the Act of 1948 for the FIPP whose cost is set at the lowest bare cost of producing power from Kerr Dam. The power is used operate pumps that divert water from the Flathead River for irrigation purposes

and the power remaining power is allocated to the United States to sell and to generate the net power revenue.

33. “McCarran Amendment” (43 U.S.C. 666) means the 1953 amendment that waived the sovereign immunity of the United States for the purpose of adjudicating federal water rights in state courts in a state’s general stream adjudication proceedings
34. “MFWP” means the Montana Department of Fish, Wildlife and Parks, or any successor agency
35. “Montana Water Use Act” (85-2 MCA) means the legislation enacted by the Montana legislature in 1973 to enable the administration and adjudication of water rights in the state
36. “Natural Flow” or “natural flow” means the rate and volume of water movement past a specified point on a natural stream, produced from a drainage area for which there have been no effects caused by diversion, storage, import, export, return flow, or changes in consumptive use
37. “New Tribal Development” means the development of a new use of the Tribal Water Right described in Article III of this Settlement according to procedures developed in the Tribal Water Code and other applicable law.
38. “Net Power Revenue” means the net power revenue generated from the sale of the remaining 15 megawatt low cost block of power from Kerr Dam after subtracting annual irrigation pumping costs.
39. “Parties” means the CSKT, the people of and State of Montana, and the United States
40. “People’s Compact” means the “Flathead Water Settlement and Mending Fences Act of 2019” discussed in this legislation
41. “Person” means an individual or any other entity, public or private, including the Tribes, the State, and the United States, and all officers, agents, and departments of each.
42. “Practicably Irrigable Acreage” or “PIA” is the amount of acreage that can be practicably irrigated on the given historic, technical, economic, and engineering considerations. PIA is the measure of the amount of water necessary to fulfill the agricultural purposes of the reservation.
43. “Project Water Rights” mean water rights reserved or appropriated from the Flathead River and tributaries by the United States for use in the federal Flathead Irrigation and Power Project. The United States holds the bare legal title of a portion of this water right in trust for the CSKT, and the other by contract with other project users for the irrigation of 134,788 acres land within the project. Also, by contract between the United States and irrigation districts, a portion of the irrigation water is used to generate hydropower for the irrigation project.

44. "Ratification Date" means the date that Congress approves this Act.
45. "Rehabilitation and Betterment" means irrigation system facility upgrades that improve project efficiency and water management, irrigation facility upgrades to reduce conveyance losses from the water source to the field, and on-farm improvements for water conservation.
46. "Reservation" - means all land within the exterior boundaries of the Indian reservation established under the Treaty between the United States and the Flathead, Salish, Kootenay, and Upper Pend d'Oreilles Indians, concluded at Hell Gate July 16, 1855 (12 Stat. 975), that is held by the United States in trust status for the CSKT as of the ratification date of this Act. It excludes all rights-of-way through the reservation and existing land patents.
47. "Secretary" means the Secretary of the United States Department of the Interior
48. "Secretarial Water Rights" means those privately held water rights awarded to individuals by the Secretary of the Interior within or near, but are not served by, the FIPP
49. "Special Master" means the legislature-appointed special master to resolve water use disputes that arise between state and tribal law in the implementation of this Act and to assist the Montana Water Court in completion of the Montana General Stream Adjudication for basins 76L and 76LJ.
50. "Special Master's Office" The office of the Special Master established in this Act
51. "State" means the State of Montana and all officers, agencies, departments and political subdivisions thereof
52. "State law-based water rights" means those water rights decreed or to be decreed by the Montana Water Court pursuant to the Montana General Stream Adjudication (85-2-234 MCA)
53. "Stock Water" means water used for livestock
54. "Tribal Council" means the duly elected governing body of the Confederated Salish and Kootenai Tribes' government, a federally-chartered corporation
55. "Tribal members" means individual enrolled members of the Confederated Salish and Kootenai Tribes
56. "Tribal Natural Resources Department" means the government subdivision of the Tribes authorized by Tribal Ordinance No. 78-B, as amended, or any successor agency
57. "Tribal Sovereignty" means the authority of the Tribes to be self-determined and to manage their own affairs under the Treaty of Hellgate, the Indian Reorganization Act of 1934, and the Indian Self-Determination and Education Assistance Act of 1973

58. “Tribal Water Administration Program” or “Tribal Water Code” means the administrative program of the Tribes developed for the management and administration of the tribal water right “Tribal Water Right” means the federal reserved water rights of the CSKT, Tribal members and Allottees that arise under federal law as set forth in Section V of this Act“
59. Tribe” or “Tribes” means the Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana. The term includes all officers, agencies and departments of the Tribes.
60. “Trust Status for land” means land that is held in trust by the United States for the benefit of the Tribe.
61. “United States” means the federal government and all officers, agencies, and departments thereof acting on behalf of its citizens and in its trust capacity on behalf of the CSKT
62. “Usufructuary Right” means the right of persons to use and enjoy the property of another, provided its substance is neither impaired nor altered; the right conveys no ownership.
63. “Walton Rights” means the water rights belonging to the successors of original Indian allotted land and carrying a priority date of 1855
64. “Wetland” means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support a type of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

SECTION V. WATER RIGHTS OF THE TRIBES

A. Confirmation of Tribal Water Rights

1. IN GENERAL: The Confederated Salish and Kootenai Tribes water rights as established by this Act are ratified, confirmed and declared valid:
 - a. The quantified water right of the Confederated Salish and Kootenai Tribes is 515,429 acre feet of water per year consisting of a federal reserved water right of 244,820 acre-feet and 270,609 acre-feet of water as a usufructuary right to instream flows within the Flathead Irrigation Project.
 - i. The federal reserved portion of the water right is based upon existing uses and the volume of water required to meet the purposes of the reservation as articulated in Articles 5 and 6 of the Treaty of Hellgate, which were filed by the United States in the Montana General Stream Adjudication in 2015 and are incorporated herein by reference as Appendices 1 and 2. These purposes include agriculture, industry, and permanent homesteads for individual Indian allottees.
 - ii. Except for ground water for current use and developed future uses, the priority date of the CSKT federal reserved water right is July 16, 1855.
 - b. The CSKT Tribal water right includes water to sustain the existing on-reservation traditional, religious, and cultural uses of water by members of the Confederated Salish and Kootenai Tribes within the reservation.
 - c. Satisfaction of Allottee rights.--Depletions resulting from the use of water on an allotment shall be accounted for as a depletion from the federal reserved water right portion of the Confederated Salish and Kootenai Tribes' water right in recognition of—
 - i. any water uses existing on an allotment as of the date of enactment of this Act and as subsequently reflected in the United States Abstracts for Historic Irrigated Acres filed in the Montana State Adjudication shown in Appendices 1 and 2;
 - ii. reasonable domestic and stock water uses put into use on an allotment; and
 - iii. any allotment water rights that may be decreased in the general stream adjudication or other appropriate forum.
 - d. The water rights of the Confederated Salish and Kootenai Tribes shall be held in trust by the United States for the use and benefit of the Tribes in accordance with this Act and shall not be subject to forfeiture or abandonment.

2. USE.—Any use of the Tribal water right shall be governed by and subject to the terms and conditions of this Act, the Tribal Water Code, and applicable law.
3. CONFLICT.—In the event of a conflict between the CSKT Compact ratified by the state of Montana (MCA 85-20-1901 et. seq. and MCA 85-20-1902 et. seq.) and this Act, the provisions of this Act shall supersede and control.
4. AUTHORITY OF THE TRIBES.—In general, the Tribes shall have the authority to use, manage, and control the Tribal water right through a Tribal Water Code approved by the Secretary of the Interior.

B. Quantification and Use of the Tribal Water Right.

1. IN GENERAL.

- a. The CSKT shall have the right to use 515,429 acre feet (AF) of water, annually, from water sources located within Montana adjacent to or encompassed within the boundaries of the Flathead Indian Reservation as set forth in Table 1 and detailed in Appendix A, to be confirmed in the Montana general stream adjudication decree entered by Montana Water Court upon ratification of this Act.
 - i. The data for the quantification of the Tribal Water Right set forth in Table 1 is derived from a subset of the existing 2015 United States filings on behalf of itself and the CSKT in the Montana General Stream Adjudication (*U.S. v. Abell*) to support the purposes of the Flathead Reservation under the Winters Doctrine and legal decisions resulting in the partial quantification of other Tribal water rights associated with these purposes.
- b. The CSKT Tribal water rights include
 - i. Federal Reserved water rights to fulfill the agricultural purposes of the reservation, including existing irrigation, historically irrigated acreage, and future agricultural development; to maintain current and develop future fisheries instream flow water use through rehabilitation of the Flathead Irrigation Project; and high elevation lakes and streams to protect CSKT traditional uses of water. Except for ground water uses, these water rights possess an 1855 priority date
 - 1) Historically irrigated acreage. This classification includes claims for irrigation on approximately 33,000 acres of Tribal lands or individual Indian-owned trust lands described in Appendix 2. The Claim is based on the surface area acreage and location provided to the best of claimant’s ability the water claim totals 94,293 acre feet of water per year; includes current tribal irrigation within the Flathead Irrigation Project

- 2) Future Practicably Irrigable Acreage - This classification is related to future irrigation of 44,600 acres and a total 115,319 AF of water per year
 - 3) High Mountain Lakes and Headwater Streams- volumes claimed for high mountain lakes are for the “flow necessary to maintain the specified lakes at their natural level” and existing natural flow claimed for the headwater streams
- ii. Federal Reserved water rights to fulfill current and future industrial, domestic, commercial, and municipal uses of water which are derived primarily from ground water. All uses of ground water for these purposes possess a 2019 priority date.
 - 1) Current Domestic, Commercial, Municipal, Industrial - 3,043 AFY
 - 2) Future Domestic, Commercial, Municipal, Industrial - 10,594 AFY
 - 3) Future Large Industrial - 11,571 AFY
 - iii. Usufructuary water rights for instream flow inside the Flathead Irrigation Project and conserved water arising from the rehabilitation of the Project. Except for water flows arising from conservation savings these waters possess an 1855 priority date.
 - 1) Instream Flow water rights within the Flathead Irrigation Project for 270,609 AF of water as secured through the Courts in 1985 and as finally adjudicated by the Montana Water Court
 - a) The source of data for the volume of water secured through legal action is specified in the May 22, 2013 Bureau of Indian Affairs letter to CSKT Tribal Council Chairman Joe Durglo, with details found in Appendix 1
 - 2) Instream flows secured through the rehabilitation of the Flathead Irrigation Project to a maximum of 10,000 AF possess a 2019 priority date.

Table 1:
Quantification of the CSKT Federal Reserved and Legally Secured Water Rights
All Volumes, Acreage, and Rates Obtained from a Subset of the United States 2015 Filings in the
Montana General Stream Adjudication on Behalf of the CSKT (Appendix 1 & 2)

PURPOSE OF RESERVATION & TREATY SOURCE	Measure & location of water right	Acreage or instream flow rate	Volume /Rate	Source of water	Priority Date	Total Volume AF
AGRICULTURE ARTICLE 5	Future Practicably irrigable acreage	44,852	2.6 af/ac	Flathead Lake	1855	115,319
	Historic Irrigated Acreage	31,954	3.0 af/ac	Flathead River, tributaries, and ground water	1855	94,293
	Acre-feet saved through Rehabilitation of Flathead Irrigation Project	10,000 acre feet over 128,000 acres of irrigated lands	Variable	Flathead River and Tributaries	2019	10,000
	Flow rate Headwater streams	Variable	Variable	Flathead River Tributary Headwaters	1855	
	Acreage for High Mountain Lakes	1,927.4	Existing	Flathead River Tributaries	1855	
FUTURE DOMESTIC, COMMERCIAL, MUNICIPAL, INDUSTRIAL (DCMI) ARTICLE 5,6	Trade and Industry	NA	NA	Ground Water	2019	10,594
	Large Industrial	NA	NA	Surface & ground water	Grandfather	11,571
EXISTING DCMI	Existing Uses	NA	Variable	Surface & ground water	Grandfather	3,043
Non-federal reserved water right -- usufructuary water right	Legally Determined	Existing flows inside FIPP	Variable Rate	Surface water	1855	270,609
TOTAL VOLUME OF TRIBAL WATER RIGHT					VARIABLE	515,429

C. Conditions on the Use of the Tribal Water Right

1. Tribal Regulation and Management of Tribal Water Right. The Tribe shall adopt appropriate regulations and management plan, subject to the approval of the Secretary of the Interior, through which to administer, manage, protect, and develop the use of the Tribal Water Right within the Flathead Indian Reservation to meet the needs of the Tribal community and tribal economic development.
2. Deferral of Use. Except for current domestic, commercial, industrial, agricultural, and usufructuary uses of water identified in Table 1, all water uses shall be deferred until the requisite infrastructure and other required actions are completed.
3. On-Reservation Use. Except for the excluded allottee water rights, existing uses, and usufructuary water rights located within the Flathead Irrigation Project, the Tribes shall have the authority to allocate, administer, distribute, and lease the Confederated Salish and Kootenai Tribes water rights for any purpose on the Reservation in accordance with this Act and applicable tribal, state, and federal law, *provided* that the reasonable water needs of the existing Tribal community have been met.
4. Off-reservation Leasing. Off reservation leasing of the Tribal water right is subject to Congressional approval. If approved by Congress, and except for the excluded allottee water rights, existing uses, and the usufructuary water rights located within the Flathead Irrigation Project, the Tribes may allocate, distribute, and lease the Confederated Salish and Kootenai Water Rights for use off the reservation, *provided that* the point of diversion is located on the reservation. Off-reservation releases or diversions from Flathead Lake for use on the Reservation shall not be considered off-Reservation uses. Permitting and approving the first diversion point on reservation for leasing shall be governed by Tribal law and applicable state law, and the secondary diversion and use of Tribal water off the reservation shall be governed by State law.
5. Effect of non-use of the Tribal Water Right. The non-use of the Tribal Water Right on reservation shall not constitute a relinquishment, forfeiture, or abandonment of the Right.
6. Persons Entitled to use the Tribal Water Right. - The Tribal Water Right may be used by the Tribe or persons authorized to use water by the Tribe *provided that*:
 - a. Such use is in accordance with the terms of this Legislation; the Tribal Water Code, and all other applicable laws
 - b. Such use does not disrupt, impact, or harm the individual Tribal members' use of and member preferences for the use the CSKT Tribal Water Right

D. Administration of Water Rights

1. Tribal Administration of Tribal Water Right
 - a. Except as otherwise provided in this Act, the use of the Tribal Water Right shall be administered by the Tribe, and the Tribe has the final and exclusive jurisdiction to resolve all disputes between Tribal member users of the Tribal Water Right on the reservation.
 - b. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal Water Code, which shall be developed and adopted by the Tribe and submitted for approval to the Secretary of the Interior within one year after ratification of this Act. Pending the adoption and approval of the Tribal Water Code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.
 - c. In general, the CSKT water administration program shall contain scientifically-based criteria for the determination of adverse impact of the use of the Tribal Water Right on other water users, notifying the appropriate jurisdiction, and resolving issues prior to initiating litigation. The Tribe shall develop an administrative program that also includes procedures for:
 - i. Registering the existing uses of the Tribal Water Right and sharing relevant information with the state DNRC database system
 - ii. Changes in the use or point of diversion of the Tribal Water Right
 - iii. New development of the Tribal Water Right for on-reservation use and procedures for notification of the DNRC.
 - iv. Lease of the Tribal Water Right on, and off reservation if Congressionally approved, and procedures for complying with applicable state law requirements
 - v. Complying with current or new federal regulations affecting the operational use of water from Hungry Horse Reservoir and Kerr Dam
 - vi. Allowing individual Indian allottee water rights holders to opt out of the tribal water administration program and accept federal jurisdiction through the Bureau of Indian Affairs.
 - vii. Procedures for resolving disputes between Tribal users of the Tribal water right while protecting access of Tribal members to the Tribal Court and other state court venues available to all Montana citizens
 - d. Off Reservation Use of the Tribal Water Right. If approved by Congress, the off reservation use of water shall be governed by the following:

- i. No person may initiate an off-Reservation use, transfer, or change of use of the Tribal Water Right without first applying for and receiving authorization for the use, transfer, or change of use pursuant to Tribal and Montana law in effect at the time of the application.
- ii. Any use of the Tribal Water Right involving a place of use located off the Reservation shall be considered an off-Reservation use and have a point of diversion on the Flathead Indian Reservation. Releases or diversions from Flathead Lake for use on the Reservation shall not be considered off-Reservation uses
- iii. Off-reservation diversion facilities. With respect to diversion, use, or transportation facilities located off the Reservation, the Tribe or persons using the Tribal Water Right shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the change of use, diversion siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. The use of a portion of the Tribal Water Right off reservation may commence only after all Tribal and state permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.
- iv. All off reservation uses of the Tribal Water Right shall comply with the provisions of Montana law in effect at the time of use.
- e. Tribal Water Administration and Water Rights Interaction with State Agencies
 - i. Within six months after the Tribal Water Code takes effect, the Tribe shall provide the State Department of Natural Resources and Conservation (DNRC) with notice of each use of the Tribal Water Right, including uses in existence as of the ratification date of this Act and those established since that time, which shall show:
 - 1) The person authorized to make the diversion;
 - 2) The amount of water authorized to be diverted annually;
 - 3) The amount of water authorized for annual consumption;
 - 4) The Points of diversion;
 - 5) The period of use;
 - 6) The place of use;
 - 7) The uses for which the water may be diverted; and
 - 8) The relative priority of the use as against other uses of the Tribal

Water Right.

- ii. The Tribe shall thereafter notify the State within sixty days after the end of each quarter year of all new uses of surface and groundwater authorized by the Tribe during the preceding quarter year and of all new uses of the Tribal Water Right actually commenced during that quarter year.
- iii. The Tribe shall provide the State with not less than 180-days written notice prior to the start of construction of any project to divert any portion of the Tribal Water Right from the Flathead River and its tributaries and Flathead Lake for use on the Reservation. The notice shall describe:
 - 1) any diversion, conveyance and storage facilities;
 - 2) the amounts of water to be diverted and consumed; and
 - 3) the purpose, place, and period of the proposed use.
- iv. The Tribe shall provide the State not less than 180-days advance written notice of any off-Reservation use, transfer, or change of use of the Tribal Water Right within the Clark Fork River basin. Such notice shall include sufficient documentation to demonstrate that:
 - 1) The proposed use of water is a beneficial use as defined by Montana law in effect at that time;
 - 2) The proposed means of diversion, and the construction and operation of the diversion works are adequate;
 - 3) The proposed use, transfer, or change of use will not adversely affect, except with the consent of the owner of such right:
 - a) Any water right arising under the laws of the United States, or
 - b) Any right to the use of water established pursuant to the laws of the State;
 - 4) The proposed use, transfer, or change of use does not cause any unreasonable significant adverse environmental impact; and
 - 5) Proposed uses, transfers, or changes in use in excess of 4,000 acre-feet per year and 5.5 cubic feet per second of water will not:
 - a) Impair the availability or quality of water for existing uses in the source of water from which the diversion is made;
 - b) Injure fish or wildlife populations in the source of water from

which the diversion is made.

- c) A proposed use, transfer or change of use of the Tribal Water Right may be challenged in a court of competent jurisdiction by the State or by a person whose rights are adversely affected by the proposed use, transfer, or change of use.
- d) In any such case, the Tribe shall have the burden of proving by a preponderance of the evidence that the proposed use will not impair the environment or any other water rights holder.

2. State Administration of Appropriative Water Rights

- a. Under the authority of and subject to the provisions of the Montana Water Use Act (Title 2 Chapter 2, MCA), the State shall administer all rights to the use of surface water and groundwater within the Reservation which are not a part of the Tribal Water Right, including those water rights belonging to the United States for use by the federal Flathead Irrigation and Power Project, Secretarial water rights, and Walton water rights. The State shall have the final and exclusive jurisdiction to resolve all disputes between users of rights established under state law, except within the Flathead Irrigation Project as provided below
 - i. Within the federal Flathead Irrigation Project, customary federal project administration of water uses and dispute resolution procedures between project water users within a federal irrigation project are employed prior to using state law administrative remedies and procedures.
- b. Within one year after ratification of this Act, the State shall notify the Tribe of all existing uses of surface and groundwater for which claims have been made and adjudicated in the on-going adjudication and permits issued by the State on the Flathead Indian Reservation. The notice shall state:
 - i. The person authorized to make the diversion;
 - ii. The amount of water authorized to be diverted annually;
 - iii. The amount of water authorized for annual consumption;
 - iv. The Points of diversion;
 - v. The period of use;
 - vi. The place of use;
 - vii. The uses for which the water may be diverted; and
 - viii. The priority date of the use.

- c. Thereafter, the State shall notify the Tribe within sixty days after the end of each quarter year of all new uses of surface and groundwater for which a claims have been adjudicated and permits issued by the State on the Reservation during the preceding quarter year and of all new uses of water actually commenced pursuant to the laws of the State during that quarter year on each of these sources.
3. Water Rights Adjudication and Dispute Resolution
- a. Special Master. This Act creates the position of the Flathead Special Master who is appointed by Montana Water Court under the authority and at the direction of the Montana legislature.
- i. Function. The Special Master is the independent representative of the Montana Water Court, and shall serve in a quasi-judicial capacity to resolve disputes that arise in the in the implementation of the People’s Compact-Mending Fences Act, and to hear evidence on behalf of the Water Court and make recommendations to the judge as to the final disposition of the Montana General Stream Adjudication for Hydrologic Basins 76L and 76LJ.
- ii. Qualifications. The Special Master must possess a J.D. with a minimum of ten years of experience in state water adjudication proceedings involving federal water claims and demonstrated competence in dispute resolution. The Special Master shall be drawn from a pool of candidates outside of the state of Montana.
- iii. Jurisdiction of the Special Master.
- 1) The Special Master shall have jurisdiction to resolve controversies over the right to the use of water as between the holders of the Tribal Water Right and holders of water rights arising under State Law. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Act, conflicts between the use of the Tribal Water Right and water rights arising under state law, and disputes over the application and interpretation of Article VI of this Act
- 2) The jurisdiction of the Special Master shall not extend to the administration or distribution of water on lands served by the Flathead Irrigation and Power Project nor to the diversion of water for use off the Flathead Indian Reservation
- iv. Powers and Duties.
- 1) The Special Master shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence
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and issue subpoenas to compel attendance of witness or production of documents or other evidence, and to appoint technical experts

- 2) Appointment of Water Commissioners. The Special Master shall have the authority to appoint one or more Water Commissioners to provide the day-to-day administration of water subject to this Act, including the opening and closing of headgates.
 - a) Under the jurisdiction of and rules developed by the Special Master, the Water Commissioners shall have the authority to administer and distribute water on the Reservation. The authority of the Water Commissioners as it pertains to facilities owned by the United States shall extend only to the provision of written orders to the federal representative with the authority to adjust diversion or releases, which the federal representative shall then promptly carry out, so long as the federal representative determines that execution of the order does not threaten the safety, security, or physical integrity of the facility and does not extend to opening or closing headgates.

v. Administrative Procedures

- 1) Any Tribal Water Right holder concerned that a use of water by a holder of a water right arising under state law is inconsistent with this act shall first contact the Tribal Water Management Agency. If the Tribal Water Management Agency and the DNRC are unable to resolve the issue in a manner acceptable to the Tribal Water Right holder within a reasonable time through discussion, the Tribal Water Management Agency or Tribal Water Right holder may seek relief through the Special Master
- 2) Any holder of a water right arising under state law concerned that an exercise of the tribal Water Right is inconsistent with this Act shall first contact the DNRC. If the DNRC and the Tribal Water Management Agency are unable to resolve the issue in a manner acceptable to the state water right holder within a reasonable time through discussion, the holder of the water right arising under state law may seek relief through the Special Master
- 3) Any holder of a water right arising under State law, or a portion of the Tribal Water Right, may seek technical assistance from their respective agencies to provide information for proceedings before the Special Master

- 4) The Special Master shall develop any additional procedures necessary to resolve disputes related to the implementation of this Act, including the review, enforcement and appeal of decisions of the Special Master consistent with Montana law and this Act
- 5) The Special Master's decision on a matter is presumed to be valid but can be vacated by the Court only on one of the following grounds:
 - a) The decision is not supported by substantial evidence
 - b) The decision was procured by corruption, fraud or undue means
 - c) There was evident partiality or corruption by the Special Master or any member of the Special Master's staff
 - d) The Special Master was guilty of misconduct in refusing to hear the dispute, or in refusing to hear evidence pertinent and material to the controversy, or any other clear misbehavior by which the rights of any party have been substantially prejudiced
 - e) The Special Master exceeded its authority under the terms of this Act
 - f) The decision is contrary to law
- b. Special Master's Office. This Act creates the Flathead Special Masters Office to serve the technical, research, and administrative needs of the Flathead Special Master.
 - v. Staffing. The staffing for the Special Master's Office will be experienced professionals and are determined by the Special Master based on an assessment of needs for both dispute resolution in the implementation of this Act and completing the general stream adjudication.
- c. Funding.
 - v. Until the adjudication is complete, the Special Master and the Special Master's Office shall be funded through appropriations to the Montana Water Court.
- d. Review of Water Administration Dispute Resolution
 - v. After a period of five (5) years or at the completion of the Montana general stream adjudication for Hydrologic Basins 76L and 76LJ, the Special Master shall submit a report to the Montana legislature on whether the continuation of water administration dispute resolution in these basins between matters of state and Tribal law through a special master is still required.

SECTION VI: IMPLEMENTATION OF THE FLATHEAD WATER SETTLEMENT AND MENDING FENCES ACT

A. AFFIRMATION OF CONGRESSIONAL INTENT AND STATUTORY AUTHORITY FOR WATER & POWER DEVELOPMENT ON THE FLATHEAD RESERVATION AS A BASIS FOR IMPLEMENTING THE FLATHEAD WATER SETTLEMENT/MENDING FENCES ACT

1. In General. Purpose

- a. The intent of Congress and statutory authority to develop water for an integrated irrigation and power system to serve all residents within the exterior boundaries of the opened Flathead Indian Reservation as articulated in legislation below is incorporated by reference in and serves as a basis for the implementation of the Mending Fences Act
 - i. For the construction of an integrated irrigation and power system to serve all residents as part of the allotment process, serving tribal member agricultural needs, and turning over project operations to landowners after the project was repaid to the United States: Sections 13 and 14 of the Act of April 23, 1904 (33 Stat. 305 Ch. 1495) and Sections 9 and 14 of the Act of May 29, 1908 (35 Stat. 450 Ch. 216);
 - ii. For the authorization for the construction, licensing and use of Kerr Dam to serve all interests in the Flathead Reservation; and a portion of the proceeds thereof to be used to repay construction costs to the United States; and to support on-going operations and maintenance (May 29, 1908 (35 Stat. 450 Ch. 216); Irrigation Districts 1926; 1930 Senate Report Flathead Power System, the 1948 Act);
- b. For the preservation and protection of tribal fisheries, and the viability and sustainability of the reservation and family farms and ranches of the Jocko, Camas, Flathead, and Mission Valleys, Montana, for operation and maintenance of the Irrigation and Power Divisions of the Flathead Irrigation Project, Montana Sections 13 and 14 of the Act of April 23, 1904 (33 Stat. 305 Ch. 1495) and Sections 9 and 14 of the Act of May 29, 1908 (35 Stat. 450 Ch. 216)

2. Designation of Lead Agency

- a. Immediately upon of the passage of this Act, the Secretary of the Interior shall designate the Bureau of Reclamation as the lead agency for the implementation of the provisions of this Act :
 - i. Development of the Tribal Water Right
 - ii. The operation, management, and rehabilitation of the Flathead Irrigation
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Project

- iii. Reintegration of the irrigation and power elements of the Flathead Irrigation and Power Project
- iv. Transfer of Operation and Management of the Flathead Irrigation Project to Landowners

B. DEVELOPMENT OF THE TRIBAL WATER RIGHT

1. Formation, Funding and Functions of Federal Water Development Group

a. Designation.

- i. Within 180 days of the effective date of this Act, the Secretary shall designate the Lead Agency to form the “Federal Water Development Group” consisting of the Lead Agency and other Interior Agencies.
 - 1) The FWDG is staffed by employees or consultants of the federal Lead Agency, the Tribes, the state DNRC, and other agencies and entities as required. Each entity bears their own cost of participating in the FWDG
 - 2) The FWDG reports to the Lead Agency, which shall have the final decision-making authority on all actions relating to the implementation of actions to develop the Tribal Water Right

b. Funding.

- i. The FWDG infrastructure development-related actions specified in this Act are funded by CSKT Tribal Water Development Fund established pursuant to Section VII of this Act. Each agency participating in the FWDG is responsible for funding its own participation in the work of the FWDG.

c. Function.

- i. The function of the Federal Water Development Group is to implement the terms of this Act for the development of the Tribal Water Right within five (5) years of the effective date of this Act through the following actions
 - 1) Identification of CSKT priorities for water use and development in accordance with the provisions of this Act, *provided that* any modifications to the final configuration of development is approved by the Secretary
 - 2) Identification of water sources, infrastructure needs for, and costs of prioritized water development for:
 - a) The development of the 33,000 acres of CSKT historically irrigated

acreage, *provided that* such development does not disrupt existing surface or ground water uses

- b) The development of 44,000 acres of practicably irrigable acreage
 - c) Current and future industrial, domestic, commercial, municipal ground water development to support the Tribal Water Right identified in Section V of this Act.
- 3) Securing requisite federal and state environmental reviews project components as required
 - 4) Develop construction, implementation, and project management plan
 - 5) Development of the bid packages for work on these activities and execute relevant contracts for services
 - 6) Implement water development activities for the Tribal Water Right through the contracting of funds as specified under Section VII of the Act
- ii. The FWDG coordinates activities with the Irrigation Districts and state and local governments as required when the development of the Tribal Water Right interacts with the water rights of others.
 - iii. The FWDG provides an annual report to the Secretary through the Lead Agency
- b. Secretary's Annual Report to Congress
 - i. The Secretary shall report annually to Congress on the activities of the Federal Water Development Group, the status of infrastructure development activities, and expenditures from fund for tribal water development under this Act.

C. REHABILITATION OF THE FLATHEAD IRRIGATION AND POWER PROJECT

- 1. Plan for the Rehabilitation of the FIPP.
 - a. General. The purpose of the rehabilitation of the FIPP is to repair and improve the physical assets of the irrigation system
 - i. To enable more efficient irrigation water delivery and strengthen the family farms and trust-land farmed property in the Mission, Jocko, Flathead, and Camas Valleys served by the project
 - ii. To improve the agricultural productivity of farms and ranches within the FIPP and strengthen the reservation community as intended by Congress through the construction of the Project

- iii. To enable the continued protection and enhancement of the aquatic resources and habitat within the Flathead Irrigation Project through the allocation of water savings to tribal fisheries as described in Section V of this Act.
- b. Lead Agency Develops Rehabilitation Plan. Within 90 days of the effective date of this Act, the Secretary shall direct the Lead Agency to develop, oversee, and implement a five-year phased plan for the rehabilitation of the FIPP. The plan shall be produced with 180 days of the Secretary's directive.
 - i. The Lead Agency shall convene an interagency team consisting of the BIA and other Interior agencies that, in consultation with the project water users, the Tribes, and state utilize the most recent comprehensive information on and alternatives for construction priorities to
 - 1) Develop the rehabilitation construction plan, including total costs of economic and environmental assessments as required by NEPA, *provided* that any new ground water development occurs in deep aquifers and does not disrupt the existing shallow ground water and surface water hydrology.
 - 2) In addition to the relevant cost estimates controls required by Section VII of this Act, the plan will include:
 - a) A construction schedule for the phases of work estimated in the Rehabilitation Plan
 - b) Identification of workforce requirements, the workforce, and types of contracts available to achieve the most effective rehabilitation of the FIPP in consideration of available agency, local government, local expertise, job training programs, and regional expertise.
 - c) Agency oversight, contract adjustment, and reporting plan
 - 3) Design a monitoring program to identify and capture the water savings resulting from the installation of improvements to the FIPP to assess progress in irrigation efficiency improvements and for allocation of saved water to the Tribal Water Right as described in Section V of this Act.
 - a) The Lead Agency shall develop a formula for the allocation of water savings up to 10,000 acre feet allocated for Tribal fisheries and the distribution of any saved water above that to the farms and ranches within the FIPP

- ii. The Lead Agency will prepare a rehabilitation plan and Lead Agency oversight program for the Secretary's approval.
 - iii. The Secretary shall formally approve a plan for the rehabilitation of the Flathead Irrigation Project
 - 2. Execute Contracts and Agency Oversight Reporting Plan for and Implement Rehabilitation Plan
 - a. Execution of Contracts, Directives, and Project Oversight Rules.
 - i. Within 90 days the Secretary's approval of the Rehabilitation Plan, the Lead Agency shall execute the necessary contracts, directives, and project oversight rules and authorize the distribution of funds to rehabilitate the Project pursuant to contract conditions identified by the Lead Agency.
 - b. Responsibility of the Lead Agency
 - i. Provide Quarterly reports to the Irrigation Districts on the progress of irrigation rehabilitation and coordination with District maintenance activities
 - ii. Provide annual reports to the Secretary on the progress of completion of the five-year plan for the rehabilitation of the FIPP and
 - iii. Implement the Secretary's recommendations on and adjustments of these plans as required and as feasible within the budget provided for each project.
 - 3. Annual Secretary's Report to Congress Required
 - a. The Secretary shall provide an annual report to on the progress in implementing this Act, including construction progress, spending, adjustments, obstacles and solutions, administration, and recommended changes to the legislation that improve the implementation of this Act.

D. REINTEGRATION OF THE POWER AND IRRIGATION ELEMENTS OF THE FLATHEAD IRRIGATION AND POWER PROJECT

- 1. Transfer of authority to the Bureau of Reclamation as Lead Agency for FIPP
 - a. Immediately upon the passage of this Act, the Secretary shall designate the Bureau of Reclamation as the Lead Agency for all matters related to the reintegration of the Flathead Irrigation and Power Project.
 - b. The Secretary shall direct that the Lead Agency and the Bureau of Indian Affairs develop an orderly transition plan that achieves the transfer of all responsibility, activities, equipment, and data regarding the operation and management of the Flathead Irrigation and Power Project from the BIA to the

BOR within one year of the passage of this Act, including

- i. Annual operations plan including budgeting
- ii. Fiscal operations and management for irrigation and power component via Mission Valley Power
- iii. Power systems operation and management including provided by Kerr Dam
- iv. Infrastructure operation, and maintenance, including all canals, reservoirs, wells, diversion structures, rights of way, and other features necessary to operate and maintain the Flathead Irrigation and Power Project
- v. All studies conducted by any agency or private entity for the rehabilitation of the Flathead Irrigation Project, including Dam Safety information
- vi. Staffing or transition requirements
- vii. Inventory and transfer of buildings, equipment, vehicles, tools and supplies
- viii. Administrative Records, including Lien records
- ix. Water resource monitoring system, data, records

2. Recapture Kerr Dam as a Federal Facility and Reintegration with FIPP

- a. Kerr Dam taken into Trust for the CSKT. Within 30 days of the passage of this Act, and pursuant to Section 5 of the Indian Reorganization Act (48 Stat. 984) the Secretary shall direct the Bureau of Indian Affairs to initiate proceedings for the transfer Kerr Dam into trust property, held by the United States Department of the Interior in trust for the CSKT, and managed by Interior's Bureau of Reclamation, with transfer proceedings completed within 120 days of this Act.
 - i. Nothing in this Act affects the ownership or federal licensing of the Kerr Project by Energy Keepers, Inc., a subsidiary of the Confederated Salish and Kootenai Tribes under Section 17 of the Indian Reorganization Act
- b. Lead Agency incorporates Kerr into Federal Hydropower System. Upon the recapture of Kerr Dam as a federal facility, the Lead Agency shall designate it as a Reclamation facility subject to the Hayden-O'Mahoney Act with a portion of revenues to be directed to the Reclamation Fund.
 - i. The Secretary shall direct the Lead Agency to produce a study within 120 days of this designation evaluating any additional modifications to Kerr Dam operations regarding the incorporation of Kerr Dam as a federal

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facility into the Columbia Federal Hydropower System or the pending revisions to the Columbia River Treaty.

- ii. The Secretary shall determine the proper designation for Kerr Dam and enact that designation through the appropriate laws and procedures
- c. Kerr Dam designated as a federal hydropower facility subject to certain laws. The Secretary shall formally designate Kerr Dam/Kerr Project as a federal facility integrated with the Flathead Irrigation and Power Project as authorized by the Act of 1908, including related operational, revenue distribution and repayment provisions as specified in the Acts of 1908 through 1948 inclusive, the FERC licenses, and including a portion of whose revenues are made subject to deposit to the Reclamation Fund in accordance with the Hayden-O'Mahoney Act (43 USC 391 a-1, 392) and the 1902 Reclamation Act.
 - i. Section 2 of the 1948 Act is hereby amended to state: " The low cost block of power (LCB) and net power revenues (NPR) are permanent features of the Kerr Dam and shall be used for the six purposes outlined in the 1948 Act; and having paid for the Flathead Irrigation and Power system, the LCB and NPR shall be permanently directed toward annual operation and maintenance costs of the FIPP".
 - ii. Pursuant to such designation, the Secretary shall direct that the Lead Agency, in consultation with relevant agencies and entities
 - 1) Evaluate procedures used for the determination of the annual low cost block of power and net power revenue to be allocated to the irrigation side of the FIPP in accordance with the 1948 Act as amended in this Act to reflect the permanent use of these funds to support FIPP operation and maintenance this Act.
 - 2) Develop a plan for securing the irrigation project reserve fund as required by the 1948 Act from the revenue generated from Kerr Dam and criteria for the use of the surplus fund.
 - a) The plan will include a timeline for its capitalization and estimated transitional costs
 - 3) Determine the annual amount of funding required to be deposited in the Reclamation Fund from revenue generated at Kerr Dam
 - 4) Determine the annual amount of the Kerr Dam Reclamation Fund contribution to be distributed to Lake County in lieu of taxes to replace the lost tax revenue previously available to the county and to compensate for Secretarial actions taking lands into trust for the CSKT

- 5) Develop a team composed of BOR, BIA, EKI/CSKT, and the state of Montana to develop a plan for the federal licensing of Kerr Dam in accordance with the provisions of this Act and the information needs of the Montana public utility regulators.
 - d. Revise Kerr FERC License. The Secretary shall direct the Lead Agency to work with the Chairman of the Federal Energy Regulatory Commission for the purpose of
 - i. modifying relevant portions of the Kerr Dam FERC License to reflect ownership and co-licensee status under the provisions of this Act
 - ii. Disclosure of information to the public or public agencies
 - iii. interaction with state agencies.
 - iv. Participation in any proceedings needed by the FERC to enact these changes
 - e. Reintegrate the FIPP and Restructure Contract for Mission Valley Power. The Secretary shall direct the Lead Agency to produce a report and implementation plan within one year of the effective date of this Act through which to reintegrate the Mission Valley Power system with the Flathead Irrigation Project. The Reintegration Report will include the components of, an implementation plan, and a timeline for the following:
 - i. The replacement of the BIA with Bureau of Reclamation as the contract holder and restructuring the MVP federal contract to reflect its public services.
 - 1) Nothing in this Act shall affect the status of the CSKT as the sub-contract holder for the services provided by Mission Valley Power
 - ii. Developing a plan for restructuring the MVP contract to reflect a public utility service
 - iii. Ensuring the auditing, tracking, and delivery of the required low cost block of power and net power revenue to the irrigation side of the FIPP as part of its new contract with the CSKT for MVP.
 - iv. Develop procedures for building the irrigation/power system surplus reserve fund of the amount deemed appropriate to the project in the 1948 Act from a portion of the revenue generated from Kerr Dam
- E. TRANSFER OF OPERATIONS AND MANAGEMENT OF FIPP TO LANDOWNERS
- 1. Transfer of Responsibility to Operate and Maintain the Flathead Irrigation Project to Landowners subject to Lead Agency Oversight

- a. Contract
 - i. In general.--Not later than 1 year after the date of enactment of this Act, the Secretary shall enter into a contract with the irrigation districts under which the irrigation districts will operate and manage the project, including all rights and powers exercised by the Secretary in the operation of the project, including the right to use permanent easements purchased under the Act of May 25, 1948 (62 Stat. 269, chapter 340).
- b. Contract provisions. The Contract shall contain provisions that
 - i. Require the irrigation districts to structure their participation through
 - 1) An organization that includes representation from all irrigated fee lands within the Project in any mechanism deemed advisable by irrigators *provided that* the structure complies with state and federal law and any specifications required or added by the Lead Agency. The irrigator's organization shall be responsible for
 - a) Development of a long-term plan for the allocation of annual net power revenues to irrigation operation and maintenance costs of the irrigation project under the Act of May 25, 1948 and the language of this Act
 - b) Contractual engagement and tasking of a team of professional staff to manage, implement, track, and conduct the activities required by the operation and management of the Project, and rehabilitation as required, including specialists in fisheries and habitat biology. This specialized team is responsible also for:
 - i) The regular effective communication with and response to the Irrigation District organization, the Lead Agency, and Tribe in all matters related to the operation, management, and rehabilitation of the project
 - c) Operate the project according to the Annual Operations Plan developed by the BIA and in effect as of 2010 or any subsequent plan developed by the Lead Agency that complies with or adjusts the same in accordance with this Act.
 - d) Operate the project to ensure compliance with the existing tribal water right instream flows within the FIPP and any future adjustments made by the Lead Agency under this Act subject to the limitations of Section V of this Act
 - e) Provide an annual report to the Irrigation District organization and

Lead Agency on FIPP Operations and annual evaluations with conditions of contract

2) Property Rights

- a) In general.--Under the contract, the Secretary shall transfer to the irrigation district ownership of all equipment, machinery, office supplies, and other supplies and equipment paid for with operation and maintenance funds related to the project.
- b) Inventory list.--The Secretary shall provide the irrigation district an inventory list of all supplies and equipment at the project as of the date of enactment of this Act that were purchased with operation and maintenance funds.
- c) Water Savings resulting from irrigation conservation efforts. --The Secretary shall release to the ownership of the Irrigation Districts and CSKT all water savings resulting from designated project-wide conservation activities for fisheries and agricultural purposes as specified by the provisions of this Act.
- d) Real property.--Under the contract, the Secretary shall not transfer to the irrigation district ownership of
 - i) federal facilities associated with the FIPP
 - ii) any real property right to land or an interest in land
 - iii) any water right
- e) Water Rights—Under the Contract the Secretary shall honor the adjustments in and final adjudication of water rights in Basins 76L and 76LJ

SECTION VII: MENDING FENCES ACT SETTLEMENT ACCOUNTS

- A. Establishment.—The Secretary shall establish a trust fund, to be known as the “Confederated Salish and Kootenai Tribes / Mending Fences Act Settlement Trust Fund” (referred to in this Act as the “Trust Fund”), to be managed, partially invested, and distributed by the Secretary and to remain available until expended, consisting of the amounts deposited in the Trust Fund under this Act, together with any interest earned on those amounts, for the purpose of carrying out this Act.
- B. Accounts.—The Secretary shall establish in the Trust Fund the following accounts:
1. The CSKT-FIPP Water Damages Settlement Account—for the final settlement of damage claims by the Confederated Salish and Kootenai Tribes related to water within the Flathead Irrigation and Power Project. This fund includes damages from
 - a. 1951 Court of Claims/Indian Claims Commission: Settlement contains \$120.8 million for the use of 6.5 million acre feet of water in the FIP from 1908-1934, as shown in Table 2
 - b. Instream flow for fisheries, Flathead Irrigation Project: the settlement contains \$273.8 million as compensation for the use of water for other purposes than protection of fishery uses on the reservation from 1960 to 1985 as shown Table 2.
 2. The CSKT Water Development Projects and Administration Account—for the development and administration of the Tribal Water Right
 3. The Mending Fences Act FIPP Rehabilitation Account—for rehabilitation of the FIPP to improve irrigation efficiency and water conservation, strengthen family farms, and develop additional stream flow for tribal fisheries
 4. The Mending Fences Act Community Trade School Account—for the development of a trade school to serve the self-determination skills required to enact the provisions of this Act and serve the present and future development needs of the tribal, local, and regional community
- C. Deposits. -The Secretary shall deposit in the Trust Fund Accounts the following:
1. In the FIPP Damage Settlement Account, \$419,676,546
 2. In the CSKT Water Development Projects Account \$125,000,000
 3. In the Mending Fences FIPP Rehabilitation Account, \$200,000,000
 4. In the Mending Fences Community Trade School Account, \$30,000,000
- D. Management and interest.

1. MANAGEMENT. – Upon receipt and deposition of the funds into the specific CSKT Trust Fund Accounts, the Secretary shall manage, invest, and distribute all amounts in the CSKT-specific Trust Funds in a manner that is consistent with the investment authority of the Secretary under –
 - a. the first section of the Act of June 24, 1938 (25 U.S.C. 162a);
 - b. the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.); and
 - c. this section.
 2. INVESTMENT EARNINGS. – In addition to the deposits under this Act any investment earnings, including interest, credited to amounts held in the CSKT Accounts of the Trust Fund are authorized to be appropriated to be used in accordance with the uses described in this Act.
- E. Availability of amounts.-- Amounts appropriated to, and deposited in, the Trust Fund CSKT Water Development and Administration accounts, including any investment earnings, shall be made available to the CSKT by the Secretary pursuant to the plans, schedules, and approvals subject to the provisions of this Act.
- F. Withdrawals.—
1. WITHDRAWALS UNDER THE AMERICAN INDIAN TRUST FUND MANAGEMENT REFORM ACT OF 1994.-- The CSKT may withdraw any portion of the funds in the CSKT Water Development account in the Trust Fund on approval by the Secretary of a tribal management plan submitted by the CSKT in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).
 - a. REQUIREMENTS.—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan under this paragraph shall require that the CSKT shall spend all amounts withdrawn from the Trust Fund and any investment earnings accrued through the investments under the tribal management plan in accordance with the provisions and substance of this Act.
 - b. ENFORCEMENT.—The Secretary may carry out such judicial and administrative actions as the Secretary determines to be necessary to enforce the tribal management plan to ensure that amounts withdrawn by the CSKT from the Trust Fund under this paragraph are used in accordance with this Act.
 2. WITHDRAWALS UNDER EXPENDITURE PLAN.—The CSKT may submit to the Secretary a request to withdraw funds from the relevant Trust Fund accounts

pursuant to an approved expenditure plan.

- a. **REQUIREMENTS.**—To be eligible to withdraw funds under an expenditure plan under this paragraph, the CSKT shall submit to the Secretary for approval an expenditure plan for any portion of the relevant accounts of the Trust Fund that the CSKT elects to withdraw pursuant to this paragraph, subject to the condition that the funds shall be used for the purposes described in this Act.
 - b. **INCLUSIONS.**— An expenditure plan under this paragraph shall include a description of the manner and purpose for which the amounts proposed to be withdrawn from the Trust Fund will be used by the CSKT.
 - c. **APPROVAL.**—On receipt of an expenditure plan under this paragraph, the Secretary shall approve the plan, if the Secretary determines that the plan—
 - i. is reasonable;
 - ii. is consistent with, and will be used for, the purposes of this Act; and
 - iii. contains a schedule which described that tasks will be completed within 18 months of receipt of withdrawn amounts.
 - d. **ENFORCEMENT.**—The Secretary may carry out such judicial and administrative actions as the Secretary determines to be necessary to enforce an expenditure plan to ensure that amounts disbursed under this paragraph are used in accordance with this Act.
- G. **Effect of Act.**—Nothing in this Act gives the CSKT the right to judicial review of a determination of the Secretary regarding whether to approve a tribal management plan or an expenditure plan except under subchapter II of chapter 5, and chapter 7 of Title 5, United States Code (commonly known as the “Administrative Procedure Act”).
- H. **Uses.**—Amounts from the Trust Fund shall be used for the following purposes:
1. In the CSKT FIPP Damage Settlement Account, the amounts made available to the Secretary pursuant to Section VIII.A.1, will be used as follows:
 - a. the Secretary shall distribute 85 per centum thereof in equal per capita shares directly to each person who is enrolled or entitled to be enrolled on the date of this Act; no later than six months after this Act becomes law.
 - i. Any part of such funds that may be distributed to members of the Tribes shall not be subject to Federal or State income tax.
 - ii. Sums payable under this Act to enrollees or their heirs or legatees who are less than eighteen years of age or who are under a legal disability shall

be paid in accordance with such procedures, including the establishment of trusts, as the Secretary of the Interior determines appropriate to protect the best interests of such persons.

- b. The remaining 15 per centum of funds after the per capita payment is made to individual tribal members, will be available for withdrawal by the CSKT on approval by the Secretary of a tribal management plan submitted by the tribe in accordance with the American Trust Fund management Reform Act of 1994 (25 U.S.C. 4001 et seq.).
2. In the CSKT Water Development Projects and Administration Account, the amounts made available pursuant to Section VIII.A.2, the CSKT may withdraw any portion of the funds in the account on approval by the Secretary of a tribal management plan submitted by the tribe in accordance with the American Trust Fund management Reform Act of 1994 (25 U.S.C. 4001 et seq.). This account shall be used to plan, design, construct CSKT water development projects and to conduct related activities, including compliance with Federal environmental laws. It shall also be used for the administration of the Tribal Water Right and for the administration of the CSKT water development projects during and after their construction. The CSKT may withdraw any portion of the funds in the account on approval by the Secretary of the CSKT Tribal Management Plan
 3. In the Mending Fences FIPP Rehabilitation Account, the amounts made available pursuant to Section VIII.A.3. This account is to be made available to the Lead Agency for the purposes of rehabilitation of the Flathead Irrigation and Power Project as specified in this Act. The Lead Agency may withdraw any portion of funds from this account as required to implement the approved rehabilitation plan developed under this Act
 4. In the Mending Fences Community Trade School Account, the amounts made available pursuant to Section VIII.A.4. This account is to be made available to the Lead Agency for the purposes of constructing and developing the Mission Valley Community Trade School as specified in this Act
- I. LIABILITY.—The Secretary and the Secretary of the Treasury shall not be liable for the expenditure or investment of any amounts withdrawn from the Trust Fund by the CSKT.
 - J. EXPENDITURE REPORTS.—The CSKT shall submit to the Secretary annually an expenditure report describing accomplishments and amounts spent from the use of withdrawals from the CSKT Water Development and Water Administration accounts under a tribal management plan or an expenditure plan as described in this Act.

**Table 2
People's Compact Mending Fences Act of 2019 / Flathead Water Rights Settlement Summary**

	Note	Water (acre feet)	Tribal Programs	Tribal Member Per Capita	CSKT Water Development Fund	FIPP Rehabilitation / Fund	Trade School	Grand Total Settlement
DAMAGES:								
Agriculture Water	1	6,489,600	\$18,124,711	\$102,706,693				\$120,831,404
Instream Flows	2	7,035,834	\$ 41,076,771	\$232,768,371				\$ 273,845,143
Deferment of Water	3		\$ 3,750,000	\$ 21,250,000				\$ 25,000,000
Total Damages		13,525,434	\$62,951,482	\$356,725,064				\$419,676,546
DEVELOP CSKT WATER RIGHT:								
Develop CSKT Water Rights	4a				\$100,000,000			\$100,000,000
Administrative Costs	4b				\$ 25,000,000			\$25,000,000
Flathead Irrigation Project								
Rehabilitation	4c					\$200,000,000		\$200,000,000
Total Water Rights Development					\$125,000,000	\$200,000,000		\$325,000,000
OTHER								
Trade School							\$30,000,000	\$30,000,000
GRAND TOTAL		505,677 af/yr	\$ 62,951,482	\$356,725,064	\$125,000,000	\$200,000,000	\$30,000,000	\$774,676,546
# Tribal Members				7,500				
Estimated Per Capita				\$47,563				

Notes:

1 Damages Agriculture Water	75% completion of project acres=96,000 ac x 2.6 af /acre from 1909-1934 at present value of \$65/af adjusted for inflation + simple interest
2 Damages Instream Flow	Current ISF's of 270,600 af from completion of project 1960-1985 at present value of \$65/ af adjusted for inflation + simple interest
3 Deferment of Water Use	Estimated deferred use of water use until project infrastructure completed [Table 1]
4 CSKT Water Right Development	4a) cost to develop 44,900 acres of PIA per June 2015 US Claims filed with state of Montana. Example calculation: Two 300 ft wells per section and providing 2 af /ac for 75 sections or 150 wells and pumps@ \$100K per well, a total of \$36 million. Added to that are 4 pivots per section at \$75 K per pivot plus other miscellaneous costs for full development estimated at \$100m 4b) Using S.3013 Agriculture Development Amounts. S.3013 p 41 Implementation x 20% (because administration will only be with respect to the CSKT water rights) 4c) Irrigation Training & Research Center, Cal Poly U, 2015. Project Modernization Plan, List of Project rehab priorities @\$188.8 million. Added inflation factor of 1.07 to get to 2018 dollars at \$200 million

SECTION VIII. AUTHORIZATION OF APPROPRIATIONS.

- A. Authorization.—There are authorized to be appropriated to the Secretary— the following amounts taken from the Reclamation fund generally, and the Reclamation Water Settlements Fund created under 43 U.S.C. § 407. Federal financial contributions in this Article will be budgeted for, subject to the availability of funds, by October 1 of the year following the ratification of this Act by Congress over a period not to exceed ten years.
1. For deposit in the CSKT FIPP Damage Settlement Account, \$419,676,546 for the final settlement of damage claims by the Confederated Salish and Kootenai Tribes related to water within the Flathead Irrigation and Power Project. Said funds shall be retained until expended, withdrawn, or reverted to the Treasury;
 2. For deposit in the CSKT Water Development Projects and Administration Account, \$125,000,000, which funds shall be retained until expended, withdrawn, or reverted to the Reclamation Water Settlement Fund of the Treasury;
 3. For deposit in the CSKT Mending Fences FIPP Rehabilitation Account, \$200,000,000, which funds shall be retained until expended, withdrawn, or reverted to the Reclamation Fund of the Treasury; and
 4. For deposit in the CSKT Mending Fences Community Trade School Account, \$30,000,000, which funds shall be retained until expended, withdrawn, or reverted to the Reclamation Fund of the Treasury.
- B. Implementation costs.—There are authorized to be appropriated non-trust funds in the amount of \$1,000,000 to assist the United States with costs associated with implementation of this Act, including a Bureau of Reclamation study and analysis of the feasibility of turning ownership of the Flathead Irrigation and Power Project Infrastructure over to the Irrigation Districts.
- C. State cost share.—The State of Montana shall contribute no funds to this settlement of claims, other than costs associated with the establishment and funding of the Special Master’s Office and resolution of disputes, completion of the general stream adjudication with the Montana Water Court, and the costs associated with the withdrawal of United States and CSKT claims directed by this Act.
- D. Fluctuation in Costs.—
1. IN GENERAL.—The amount authorized to be appropriated under this Act shall be increased or decreased, as appropriate, by such amounts as may be justified by reason of ordinary fluctuations in costs occurring after the date of enactment of this Act as indicated by the Bureau of Reclamation Construction Cost Index—

Composite Trend.

2. REPETITION.—The adjustment process under this subsection shall be repeated for each subsequent amount appropriated until the amount authorized, as adjusted, has been appropriated.
3. PERIOD OF INDEXING.—The period of indexing adjustment for any increment of funding shall end on the date on which funds are deposited into the Trust Fund.

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SECTION IX. OBLIGATIONS OF THE PARTIES

A. General

1. In addition to the specific duties outlined in this Act, the parties to this Act are obligated to undertake the following tasks within the timeframe identified in and upon the ratification of this Act by Congress and the entry of a final decree by the Montana Water Court in the Montana General Stream Adjudication.

B. State of Montana

1. Article 3 Treaty of Hellgate. The people and the state of Montana recognize that Article 3 of the Treaty of Hellgate granted the CSKT the right to take fish, hunt, and gather foods in their aboriginal territory, and recognize that this right was granted in common with the citizens of the territory. Therefore, the state of Montana reaffirms the state's Article IX Constitutional requirements and statutory obligations to manage and protect the fish and wildlife resources of the state for all citizens.
2. Special Master. The State of Montana legislature shall establish, fund and staff the Flathead Special Master's Office to both resolve disputes that arise between state and tribal law arising from the implementation of this Act and to assist the Montana Water Court in finishing the general stream adjudication for hydrologic basins 76L and 76LJ
 - a. The term of the Special Master shall be ten (10) years
3. Repeal the CSKT Compact. The Montana legislature shall repeal the CSKT Compact as codified in MCA 85-20-1901 et. seq. and MCA 85-20-1902 et. Seq.

C. The United States

1. Certify and finalize the federal reserved water rights claims of the United States on behalf of the CSKT in conjunction with the CSKT, Department of Justice, and the Montana Water Court
2. Withdrawal of Claims. The United States shall withdraw claims in the Montana Water Court as follows:
 - a. All off-reservation claims in eastern and western Montana that were filed on behalf of itself or the CSKT in July 2015 except for U.S. hydropower claims
 - b. Competing 2015 claims for water in the FIPP that overlap with the U.S. properly-filed 1982 claims
 - c. All competing claims for state law-based water rights that were filed on behalf of the CSKT

- d. All claims to ground water on behalf of the CSKT except for the existing Tribal uses of ground water and future proposed uses under this Act

D. The Confederated Salish and Kootenai Tribes

- 1. Withdrawal of water claims
 - a. The CSKT shall withdraw all claims to off-reservation surface and ground water in western and eastern Montana filed in the Montana Water Court
 - b. The CSKT shall withdraw all competing claims to surface water filed for the FIPP, Kerr Dam, irrigation reservoirs, and hydropower facilities
 - c. Except for existing Tribal uses and those claims included in this Act, the CSKT shall withdraw all claims to ground water on the reservation
- 2. Stipulation Agreement
 - a. The CSKT shall sign a stipulation agreement that forever bars the Tribe from seeking any and all claims to water for all uses in the state of Montana

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SECTION X: FINALITY AND EFFECTIVENESS OF SETTLEMENT

A. Finality

1. This settlement represents the final resolution of the federal reserved water rights of the United States on behalf of the CSKT on the Flathead Indian Reservation and the CSKT previous claims against the United States including:
 - a. Claims filed before the U.S. Court of Claims action on the use of water in the FIPP
 - b. United States v. Abell (United States v. Abell, No. Civ-79-33-M, filed April 5, 1979)
 - c. All claims filed in the Montana General Stream Adjudication that are not included in this Act
2. The water rights and other benefits confirmed to the CSKT in this Settlement are in full and final satisfaction of and are intended to be in replacement of and substitutions for all claims to water or to the use of water by the Tribes, tribal members and allottees; and the United States on behalf of the Tribes, tribal members and allottees as of the Effective Date.

B. Ratification and Effectiveness of this Act.

1. This Act shall not become effective until ratification by the United States Congress and approved by the CSKT and State of Montana.

C. Incorporation into Decrees and Disposition of Federal Suits.

1. Within sixty days after the completion date, the parties shall petition for incorporation of this Act into a decree in the Montana Water Court proceeding commenced in accordance with 43 U.S.C. 666.
2. Upon the issuance of a final decree by the State water court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall within thirty days execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in United States v. Abell and in the 2015 filing of the 10,000 claims the Montana General Stream Adjudication with prejudice.
3. This Act shall be filed as a consent decree in the federal suits only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgment binding upon the State of Montana that the State courts lack jurisdiction over, or that the State court proceedings are inadequate to adjudicate, some or all of the water rights asserted in the federal suits.

SECTION XI: BINDING EFFECT

- A. Upon the effectiveness of any provision of this Act, its terms will be binding:
1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification, or authorization is to be determined by Montana law;
 2. Upon the Tribe and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe, or any right arising under tribal law; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification or authorization is to be determined by tribal law; and
 3. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification or authorization is to be determined by federal law, and further provided that nothing contained in this Act affects any claim of any Indian tribe, or of persons claiming water through that tribe, or the right of any Indian tribe, or persons claiming water through that tribe, to pursue a claim to any water from any source based on any theory of right or entitlement.

SECTION XII. WAIVERS AND RELEASES.

A. In General

1. The Tribe and the United States as trustee for the Tribe hereby relinquish forever any and all claims, in existence on the ratification date of this Act, to water within the State of Montana, including the water rights on privately held lands within the historic boundaries of the reservation. The relinquishment includes, but is not limited to, any claim for water derived from aboriginal use of land or water, any Indian treaties, any Act of Congress, and any executive act of the United States.

B. WAIVER AND RELEASE OF CLAIMS BY THE CSKT AND THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE CSKT.—

1. In General

- a. Subject to the retention of rights set forth in this Act, and in return for confirmation of the CSKT water rights and other benefits set forth in this Act, the CSKT, on behalf of itself and the members of the CSKT (other than members in their capacity as allottees), and the United States, acting as trustee for the CSKT and members of the CSKT (other than members in their capacity as allottees), are authorized and directed to execute a waiver and release of—
 - i. all claims for water rights within Montana based on any and all legal theories that the CSKT or the United States acting in its trust capacity for the CSKT, asserted, or could have asserted, at any time in any proceeding, including to the general stream adjudication, up to and including the enforceability date, except to the extent that such rights are recognized in this Act; and
 - ii. all claims for damages, losses, or injuries to water rights or claims of interference with, diversion, or taking of water rights (including claims for injury to lands resulting from such damages, losses, injuries, interference with, diversion, or taking of water rights) within Montana against the State, or any person, entity, corporation, or municipality, that accrued at any time up to and including the enforceability date.
 - iii. Claims by the CSKT against the United States.—The CSKT, on behalf of itself and its members (other than members in their capacity as allottees), shall execute a waiver and release of—
 - 1) all claims the CSKT may have against the United States relating in any manner to claims for water rights in or water of Montana that the

United States acting in its trust capacity for the CSKT asserted, or could have asserted, in any proceeding, including the general stream adjudication;

- 2) all claims the CSKT may have against the United States relating in any manner to damages, losses, or injuries to water, water rights, land, or other resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights; claims relating to interference with, diversion, or taking of water; or claims relating to failure to protect, acquire, replace, or develop water or water rights) within Montana that first accrued at any time up to and including the enforceability date;
 - 3) all claims the CSKT may have against the United States relating in any manner to the litigation of claims relating to the CSKT's water rights in proceedings in Montana; and
 - 4) all claims the CSKT may have against the United States relating in any manner to the negotiation, execution, or the adoption of this Act.
2. Reservation of rights and retention of claims by the CSKT and the United States. Notwithstanding the waivers and releases authorized in this Act, the CSKT, and the United States acting in its trust capacity for the CSKT, retain—
- a. all claims for injuries to and the enforcement of this Act and the final decree entered in the Montana general stream adjudication, through such legal and equitable remedies as may be available in the decree court or the Federal District Court for the District of Montana;
 - b. all rights to use and protect water rights acquired after the enforceability date;
 - c. all claims relating to activities affecting the quality of water, including any claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq. (including claims for damages to natural resources)), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Endangered Species Act (16 U.S.C. § 1531 et seq.); the regulations implementing those Acts, and the common law;
 - d. all claims for water rights, and claims for injury to water rights, in states other than the State of Montana;
 - e. all claims, including environmental claims, under any laws (including regulations and the common law) relating to human health, safety, or the

environment; and

- f. all rights, remedies, privileges, immunities, and powers not specifically waived and released pursuant to this Act.

C. Effect.—Nothing in this Act—

1. affects the ability of the United States acting in its sovereign capacity to take actions authorized by law, including any laws relating to health, safety, or the environment, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Endangered Species Act (16 U.S.C. § 1531 et seq.) and the regulations implementing those laws;
2. affects the ability of the United States to take actions in its capacity as trustee for any other Indian tribe or allottee;
3. confers jurisdiction on any State court to—
 - a. interpret Federal law regarding health, safety, or the environment or determine the duties of the United States or other parties pursuant to such Federal law; and
 - b. conduct judicial review of Federal agency action; or
4. modifies, conflicts with, preempts, or otherwise affects—
 - a. Treaty of Hellgate, July 16, 1855, Stat. 975 (1859)
 - b. The Indian Reorganization Act
 - c. Numerous Federal enactments relating to the Flathead Indian Reservation and the Flathead Indian Irrigation Project located there, including but not limited to the Act of April 23, 1904, Public Law 58-159, 33 Stat. 302 (1904) (the 1904 Act); the Act of May 29, 1908, Public Law 60-156, 35 Stat. 444 (1908) (the 1908 Act); the Act of May 10, 1926, 44 Stat. 453, 464 (1926); the Act of May 25, 1948, Public Law 80-554, 62 Stat. 269, (1948) (the 1948 Act)
 - d. Other Montana compacts

D. Tolling of claims.—

1. IN GENERAL.—Each applicable period of limitation and time-based equitable defense relating to a claim waived by the CSKT described in this section shall be tolled for the period beginning on the date of enactment of this Act and ending on the enforceability date.

2. EFFECT OF SUBSECTION.—Nothing in this subsection revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act.
3. LIMITATION.—Nothing in this section precludes the tolling of any period of limitations or any time-based equitable defense under any other applicable law.

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SECTION XIII. MISCELLANEOUS PROVISIONS.

- A. Precedent.—Nothing in this Act establishes any standard for the quantification or litigation of Federal reserved water rights or any other Indian water claims of any other Indian tribe in any other judicial or administrative proceeding.
- B. Other Indian tribes.—Nothing in this Act shall be construed in any way to quantify or otherwise adversely affect the water rights, claims, or entitlements to water of any Indian tribe, band, or community, other than the CSKT.

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SECTION XIV. RELATION TO ALLOTTEES.

- A. No effect on claims of allottees.—Nothing in this Act shall affect the rights or claims of allottees, or the United States, acting in its capacity as trustee for or on behalf of allottees, for water rights or damages related to lands allotted by the United States to allottees, except as provided in this Act.
- B. Relationship of decree to allottees.—Allottees, or the United States, acting in its capacity as trustee for allottees, are not bound by any decree entered in the general stream adjudication confirming the CSKT water rights and shall not be precluded from making claims to water rights in the general stream adjudication. Allottees, or the United States, acting in its capacity for allottees, may make claims, and such claims may be adjudicated, as individual water rights in the general stream adjudication.

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SECTION XV: ANTIDEFICIENCY.

- A. The United States shall not be liable for any failure to carry out any obligation or activity authorized by this Act, including any obligation or activity under this Act, if adequate appropriations are not provided expressly by Congress to carry out the purposes of this Act.

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