

## 2. QUANTIFICATION

Quantification of the federal reserved water rights of the CSKT involves (1) the determination of the purpose of the reservation, and (2) determination of the volume of water necessary to fulfill the purposes of the reservation. Unlike non-Indian federal reserved water rights, Indian Tribes are afforded a measure of water to provide for future growth.

The purpose of the reservation is determined by Articles 5 and 6 of the Treaty of Hellgate (12 Stat. 975), and the amount of water required to fulfill these purposes is shown in Table 1. .

- a. *Article 5: Agricultural and Industrial: full development of FIP and other agricultural lands identified by Tribes; water for industrial purposes*
- b. *Article 6: Permanent home for fee-simple private lots to individual Indians who want them [except for existing acreage, nullified by Indian Reorganization Act of 1934]*

Table 1 also shows existing non-federal reserved water rights instream flows that the CSKT secured by legal action in 1985. These water rights are included in the body of the Tribes' total water award secured through the People's Compact.

**Table 1. Quantification of the CSKT Federal Reserved Water Rights & Legally Secured Water Rights**

| PURPOSE OF RESERVATION & TREATY SOURCE                                       | Measure of water right                       | Acreage or instream flow rate | Volume /Rate  | Source of water                | Priority Date   | Total Volume AF      |
|------------------------------------------------------------------------------|----------------------------------------------|-------------------------------|---------------|--------------------------------|-----------------|----------------------|
| <b>AGRICULTURE ARTICLE 5<sup>1</sup></b>                                     | Future Practicably irrigable acreage         | 44,852                        | 2.6 af/ac     | Flathead Lake                  | 1855            | 115,319              |
|                                                                              | Historic Irrigated Acres, FIPP <sup>2</sup>  | 31,954                        | 2.95 af/ac    | Flathead River tributaries     | 1855            | 94,293               |
|                                                                              | Rehabilitation of FIPP                       | Variable                      | Variable      | Flathead River and Tributaries | 2019            | 10,000 <sup>6</sup>  |
|                                                                              | Headwater streams <sup>5</sup>               | Variable                      | Surface water | Flathead River Tributaries     | 1855            |                      |
|                                                                              | Lakes                                        | Mountain <sup>8</sup>         | Existing      | Flathead River and Tributaries | 1855            |                      |
| <b>FUTURE DOMESTIC, COMMERCIAL, MUNICIPAL, INDUSTRIAL (DCMI) ARTICLE 5,6</b> | Trade and Industry                           | NA                            | NA            | Surface and Ground Water       | Grandfather     | 22,165 <sup>3</sup>  |
| <b>EXISTING DCMI<sup>1</sup></b>                                             | Existing Uses                                | NA                            | Variable      | Surface & Ground water         | Grandfather     | 3,043                |
|                                                                              | Existing domestic, stock and municipal wells | NA                            |               | Ground Water                   | 2019            | 14,013               |
| <b>Non-federal reserved usufructuary water right</b>                         | Legally Determined                           | Existing flows inside FIPP    | Variable Rate | Surface water                  | 1855            | 270,609 <sup>4</sup> |
| <b>TOTAL VOLUME OF TRIBAL WATER RIGHT</b>                                    |                                              |                               |               |                                | <b>VARIABLE</b> | <b>529,442</b>       |

1. U.S. claims for future irrigation filed July in MT General Stream Adjudication, 2015; water available after project infrastructure development completed & water use deferred until projects completed. 2. U.S. Claims filed in MT General Stream Adjudication, 2015. ibid note 1. 4. Legally established flow from *CSKT v. Flathead Joint Board of Control*, 1985; BIA letter to Joe Durglo Chairman, May 22, 2013; 5. 2015 CSKT Compact, Appendix 10 without FIP natural nodes. 6. Estimated maximum amount. 7. 2015 CSKT Compact, Appendix 16; 8. 2015 CSKT Compact Appendix 17