

CSKT, United States File 10,000+ Claims

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Posted by [drkate](#) in [\(Ir\)responsible Republicans](#), [Aboriginal Title](#), [Adjudication](#), [Compact Commission](#), [Compact Documents](#), [Compact; Court action](#), [Constitution](#), [Corruption](#), [CSKT](#), [democrats](#), [Deregulation](#), [Due Process Violations](#), [Failed Negotiations](#), [Federal Government](#), [Flathead Irrigation Project Water Use Agreement](#), [Flathead Joint Board of Control](#), [Hell Gate Treaty](#), [History](#), [Hoax](#), [Impact Studies](#), [jurisdiction](#)

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On June 15 and 30, 2015 respectively, the CSKT and the United States filed claims for federal reserved water rights and “aboriginal water rights” in the Montana General Stream Adjudication. While the media reported the first set of some 2,800 claims, not a whisper was heard regarding the United State’s claims for 7,500 additional claims throughout Montana.

While the “threat” of 10,000 claims was used by the Compact Commission and various other compact supporters to threaten Montanans to support the Compact, and proponents cried to the legislators to keep them out of that litigation, *there was really never any intention of the Tribes’ dropping their aboriginal claims in eastern Montana if the Compact was passed, and even if Congress approves the Compact.*

The Tribes’ claims are presented in two (2) maps, one labeled “[Basins In Compact](#)” and “[Basins With Claims](#)”. The first map shows that all of western Montana is included in the Compact, and the second shows extensive claims extending into eastern Montana. The Tribes and United States have [said in court proceedings](#) that if Congress approves the Compact as is, they will drop those claims east of the Continental Divide.

But what does the Compact actually say?

Under Article V of the Compact (SB 262), *Disclaimers and Reservation of Rights*, section (B), *General Disclaimers*, the Compact states the following:

- Nothing in this Compact shall be construed or interpreted to:
- (5) preclude the possession, acquisition or exercise of Water Rights Arising Under State Law by the Tribes or Allotees or members of the Tribes
 - (14) to limit or prohibit the Tribes, their members or Allotees, or limit the United States in any

capacity from objecting in any general stream adjudication in the Montana Water Court to any claims to water rights on or off the Flathead Indian Reservation.

So technically, even if the Compact passes the Montana legislature and Congress, and notwithstanding any pledge to “drop” the eastern Montana claims, the Tribes and the United States still have the right to both go after state-based water rights on and off the reservation, and to object to those water rights in the general stream adjudication including all those areas listed in the misnamed “no compact” map. *This is the water in Eastern Montana.*

It appears that the Compact, intended to be “final”, *never* will be a final settlement of the CSKT or any other Tribal water compacts in Montana.

An uneasy question arises: how secure are land titles in Montana, where even title companies disclaim that they are responsible for selling you property in light of aboriginal tribal water rights? Are the CSKT disclaimers being put on other water rights permits across the state?

Laying the Foundation for Legal Challenges to Aboriginal Water Rights, CSKT Eastern Montana Claims, Time Immemorial Priority Dates, and Federal Expansion

Not lost on the MLWA is that the state of Montana and its legislators were warned about the illegality and unconstitutionality of the Compact by the thousands of people who have commented, testified, and written about this issue since 2013.

The MLWA attorneys, in a series of seven memos, discussed only a few of the legal and constitutional problems with the compact. In particular, the [10000 Claims Memo](#) shows that the CSKT claims for water rights off reservation in both eastern and western Montana are historically and legally unfounded based upon the Treaty of Hellgate, existing US Supreme Court case law, and history. No water rights were reserved for the Tribe to accompany their right to take fish in usual and accustomed places off the reservation in western Montana. Legislators on the House Judiciary Committee also easily dismantled the Tribes’ and Compact Commission arguments that any water claim existed east of the Continental Divide.

As to the warning to state officials, they of course responded that they knew about these problems with the compact, but it would be too expensive for Montanans to litigate, so they felt no need to fix anything. Well, newsflash: what kind of Montanan would allow the taking of their property rights without a fight?

No Need to Wait For Congress

In the broadest sense, once a decision is made in the *FJBC v. State* case, and if it is unfavorable to Montanans, litigation on the Compact will begin. In other words, there is no need to wait for Congressional or agency review before legal action can be taken against, at the very least, the State of Montana.

Issues regarding equal protection, failure to conduct environmental studies, violation of Montana's constitution, granting jurisdiction to a Tribe which has no legal right, wasting taxpayer money, and violation of federal laws regarding federal reserved water rights are just a few of the issues that are ripe for litigation.

It is also very clear why we won't wait. If the state of Montana was given all the evidence of unconstitutionality and illegality of this Compact and they ignored it, do you think Congress will be any different?