

Flathead Irrigator Water Use Agreement



AN UNCONSTITUTIONAL TAKING

In 1938, years before the Flathead Irrigation Project was completed, 1/2 million acre feet of water was available for irrigation. The water use agreement and compact propose that the federal government, irrigation districts, and irrigators withdraw their claims to project water in exchange for significantly reduced water deliveries. This agreement was ruled to be an unconstitutional taking (1).

IRRIGATORS HAVE PAID FOR THE PROJECT, BUT LIENS FOR ITS REPAYMENT REMAIN ON THEIR LANDS. THE WATER THEY RELY ON IS BEING TAKEN, IGNORING HISTORICAL USE AND PROMISES MADE TO HOMESTEADERS 100 YEARS AGO. So what's this really all about?

Description	2013	1938	% Var.
Project Water Available	143,885	490,859 (3)	-70.7%
Irrigated Acres	128,242	104,490 (3)	+22.7%
Water / irrigated acre (acre ft.)	1.1 (2)	4.7	-76.6%

- (1) Source: 20th District Court Ruling by Judge C.B. McNeil 02/2013.
 (2) Source 2/2013 CSKT Water Compact Appendix 5— This is average FTA for all three irrigation districts.
 (3) Source 1938 BIA Report FLATHEAD RESERVATION IRRIGATION PROJECT.

HOW MUCH WATER FOR FISH?

Although the tribe's own only 10% of the lands served by the irrigation project, **THE WATER USE AGREEMENT GIVES THEM OWNERSHIP OF EVERY DROP OF WATER IN THE PROJECT.** The governor calls this a fair agreement that provides irrigators with major "PROTECTIONS". How is less water and the forced relinquishment of project water rights considered "PROTECTION"?

The proposed compact allows the CSKT to lease the irrigation project water awarded to them. (1)

Compact Use per Water Abstracts	Priority Date	Volume ACF	% of Total
Irrigation FTA	1855	143,885 (2)	9.5%
Irrigation (available to lease)	1855	35,654 (3)	2.4%
Fish and Wildlife	Immemorial	1,330,557(4)	88.1%
Total Project Water		1,510,096 (5)	100.0%

- (1) Source: Article IV CSKT Water Compact.
 (2) Source: 2/2013 Water Use Agreement avg of 1.1 acre feet x project acres served.
 (3) Source: Water Compact Appendix 5 / Water Use Agreement (1.4-1.1) x project acres
 (4) Source: 2/2013 CSKT Water Compact Appendix 11.
 (5) Compact proposes to give the CSKT ownership of ALL project water.

NO PROOF HAS BEEN PROVIDED THAT CURRENT INSTREAM FLOWS ARE INADEQUATE FOR FISH, YET THIS AGREEMENT WILL INCREASE FLOWS 400%



Flathead Irrigation Project Instream Flows - Time Immemorial Priority Date Appendix 11 (Volumes in Acre Feet)

Project Location	Water Claim per Compact Abstracts	* Interim Instream Flows (ISF)	% Increase (Decrease)
Jocko River, North Fork below Tabor Feeder Canal	30,053	13,032	130.6%
Falls Creek below Tabor Feeder Canal	2,122	0	0.0%
S-14 Creek below Tabor Feeder Canal	217	0	0.0%
Jocko River below Upper S Canal	88,814	14,480	513.4%
Cold Creek below Upper S Canal	2,360	0	0.0%
Gold Creek below Upper S Canal	2,723	0	0.0%
Big Knife Creek below Upper Jocko S Canal	6,695	1,448	362.3%
Jocko River at K Canal	139,819	30,408	359.8%
Agency Creek below Upper Jocko J Canal	9,428	5,792	62.8%
Finley Creek East Fork below Jocko N Canal near mouth	8,823	5,792	52.3%
Schley Creek near Mouth	1,270	0	0.0%
Finley Creek below Finle E Canal near Mouth	31,864	6,154	417.8%
Jocko River below Lower Jocko S Canal	196,730	31,132	531.9%
Jocko River below Jocko J Canal	239,138	55,024	334.6%
Revais Creek below Highway 200	18,453	0	0.0%
Mission Creek below Pablo Feeder Canal	62,621	13,032	380.5%
Post Creek below McDonald Reservoir	62,930	0	0.0%
Middle Crow Creek below Pablo Feeder Canal	4,596	724	534.8%
North Crow Creek below Pablo Feeder Canal	25,441	7,240	251.4%
Mission Creek below 6C Canal above post creek	50,622	14,480	249.6%
Post Creek below F Canal	50,307	15,928	215.8%
Marsh Creek near Mouth	1,997	1,448	37.9%
South Crow Creek Below South Crow Feeder Canal	18,794	6,878	173.3%
Crow Creek below Crow Pump Canal	44,277	12,308	259.7%
Mud Creek below Ronan B Canal	9,011	579	1455.8%
Crow Creek below Moiese A Canal near Mouth	56,071	15,204	268.8%
Hellroaring Creek near Mouth	8,749	0	0.0%
Little Bitterroot River below Hubbard Reservoir	30,755	0	0.0%
Little Bitterroot River below Camas A Canal Headworks	23,731	4,344	446.3%
Mill Creek below Camas A Canal Near Mouth	11,221	0	0.0%
Hot Springs Creek below Camas C Canal near Mouth	2,168	724	199.5%
Little Bitterroot River below Hot Springs Creek	59,126	0	0.0%
Grand Total	1,330,557	270,631	391.6%

* Source: DOI Letter dated 05/22/13 (these are currently enforceable instream flows on the project)

DO NOT GET CAUGHT IN THEIR QUANTIFICATION TRAP
THE COMPACT IS SUPPOSED TO QUANTIFY ONLY THE TRIBE'S FEDERAL RESERVED WATER RIGHT.
EVERYONE ELSE'S RIGHTS ARE DETERMINED IN THE MONTANA WATER COURT.

On the Flathead reservation, the CSKT's Treaty-based exclusive right to fish has been found to include an amount of water necessary to support a fishery. In the early 1980's the Tribes began to try to secure instream flows in streams affected by the Flathead Irrigation Project and through legal action were able to order the project to provide minimum instream flows.

Water Compact claims will increase the amount of these interim instream flows by nearly 400% without the requisite studies that prove existing flows are not sufficient for the species.

Are the Tribes' requested instream flow increases based on the needs of the fish? In the October 2010 Clark River Task Force meeting, it was reported that:

These claims were based on the stream base and bank flows rather than a demonstration of the amount of water that would be put to a beneficial use for the fishery.

While there is a federal reserved water right for a fishery, there is no federal reserved water right for a 'robust river'.

DID YOU KNOW?

- Irrigation project water is not the only "on reservation" water awarded to the tribe in the compact?
The abstracts also include significant amounts of "non-project" water for fish with time immemorial priority dates, including Flathead River and all of Flathead Lake. (Source: Appendices 12, 18)
- If the compact is ratified as is, the CSKT can "lease" irrigation project water on and off the reservation by simply going through DNRC to change its use? (Source: CSKT Compact Article 4)
- The water use agreement forces irrigators to relinquish their project claims to the CSKT forever? (Source: Article 3 of the Water Use Agreement)
- That the compact awards the CSKT 52 million acre feet of water, and gives the state of Montana and 360,000 people only 11,000 acre feet for future growth and development? (Source: CSKT Compact and Abstracts)
- As of June 2014, the compact commission has not yet provided the quantification of the tribe's federal reserved water right to the public?
- That the tribe's recent lawsuit claims ownership of all the water and land within reservation boundaries, including your private fee land? (Source: CSKT Lawsuit February 2014)