

What Are Federal or Tribal Reserved Water Rights?

Water Fact Sheet #9



Italicized terms are defined in Fact Sheet #10

The rights to use water on federal and tribal reservations of land within Montana are known as *federal or tribal reserved water rights*, or Winters rights, named for the U.S. Supreme Court case that established the existence of these rights in 1908. The landmark *Winters v. United States* involved a dispute between the Fort Belknap Indian Community in north central Montana and upstream farmers on the Milk River. When farmers began diverting water upstream

from the reservation, this diminished water supplies for agriculture on the reservation. The dispute eventually made it to the U.S. Supreme Court. The Court sided with the tribal nations, holding that the 1855 treaty establishing the reservation had implicitly reserved an amount of water necessary to fulfill the purposes for which the reservation was established.

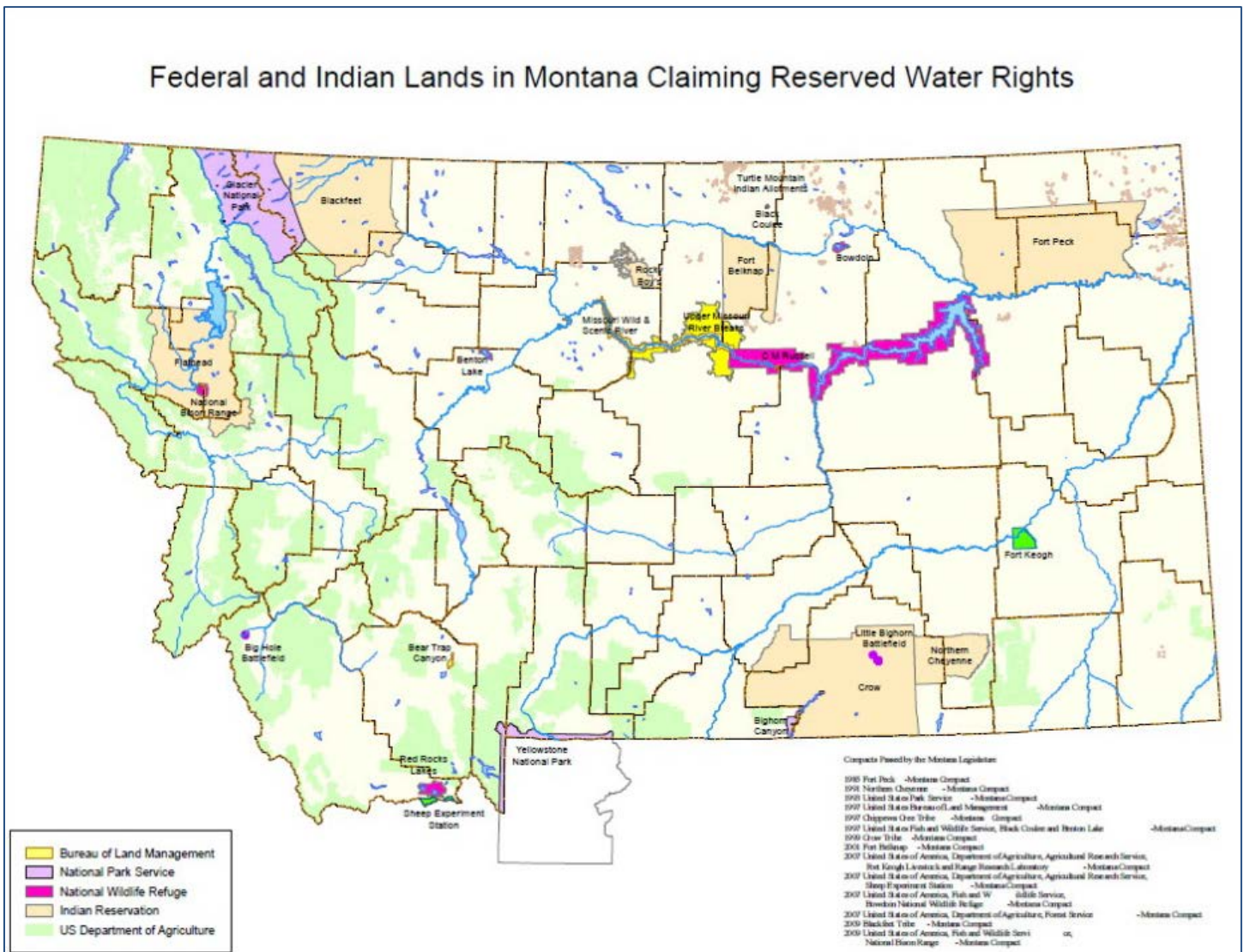


Figure 1- Locations of Federal and tribal reserved water rights in Montana

Although the principle of implied rights was originally established in the context of an Indian reservation, the rule of the case, known as the Winters Doctrine, has since been applied to any federal reservation of land requiring water to accomplish the purpose of the reservation. The Doctrine holds that with the withdrawal of land from the public domain, whether by executive order, treaty, or Act of Congress, there is an implied reservation of water sufficient to accomplish the purpose(s) for which the land was reserved. Such rights have a *priority date* of the date the reservation was established. Because the amount of water reserved is determined by the purpose(s) of the reservation, these rights are not established or determined by beneficial use, as state-based rights are. In addition, federal and tribal reserved water rights cannot be abandoned through non-use.

In Montana, reserved water rights have been claimed for seven Indian reservations, for national parks, forests, monuments, and wildlife refuges, and for federally designated wild and scenic rivers.

Montana's Reserved Water Rights Compact Commission (Commission) was established by the Montana Legislature in 1979 as part of the state-wide general stream adjudication process. The Commission is authorized to negotiate settlements with federal agencies and Indian tribes claiming federal reserved water rights within the state of Montana. The Commission includes nine members, each serving a four-year term. Two are appointed by the Speaker of the House, two by the President of the Senate, one by the Attorney General's office and four by the Governor's

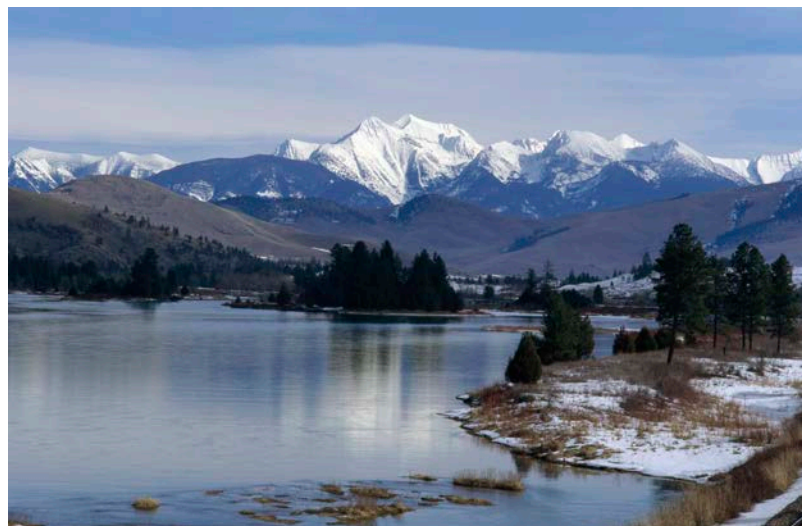
office. The Commission negotiates on behalf of the Governor's Office and represents the interests of Montana water users. The DNRC staff supports the Commission.

The requirement to file claims with the Montana Water Court in statewide general stream adjudication process is suspended for the tribal nations and the federal agencies pending the resolution of all negotiations by the Commission. This suspension ends June 30, 2015. Tribes and federal agencies for which no compact has been ratified must file their claims by that date.

Settlements negotiated by the Commission on behalf of Montana must be ratified by the Montana Legislature, appropriate federal authorities and also Tribal Councils in the case of settlements. In cases where federal appropriations are needed to implement provisions of the settlement, congressional approval is required. Once approved, the compacts are sent to the Water Court to be decreed.

Citizen participation is an essential element of each settlement negotiation. It ensures that the Commission's deliberations on behalf of Montana address the concerns of the public.

So far, there have been 18 compacts negotiated by the Commission and approved by the Legislature. The Legislature has approved compacts for seven Indian reservations in Montana, as well as for five federal agencies administering federal lands in the state.



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