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CSKT WATER COMPACT SHREDS THE HELLGATE TREATY & CONSTITUTIONS



Verdell Jackson, [Excellence in Voting](#) May 6, 2020

The Confederated Salish and Kootenai Tribes (CSKT) Reservation was established in 1855 by the Hellgate Treaty. The CSKT and Blackfeet treaties are two of the ten treaties negotiated by Isaac Stevens, Superintendent of Indian Affairs. Stevens' goal was to make reservations productive by developing farming, ranching, manufacturing and other skills on the reservations while providing the privilege to hunt and fish at places where the Indians traditionally hunted and fished off the Reservation. Stevens' dream was that Indians and non-Indians would assimilate in this 1.3 million acre paradise and there would be no discrimination.

In 1970, Montana began a state-wide water adjudication to determine each water right, how much water is allocated and the property on which it is used. The water rights are recorded, including tribal water rights. Adjudication is done by the Montana Water Court. The tribes had the choice of going through adjudication or negotiating a water rights compact which is an agreement among the Tribe, State of Montana and Federal Government. The procedure is for the tribe to develop a water compact based on their treaty which then goes to the Montana legislature and if approved goes to the U.S. Congress for final approval. These compacts include water related projects such as irrigation canals and infrastructure that make the

reservation productive. The cost of making the reservation productive is paid mainly by the Federal Government and sometimes the State of Montana. Six of the seven Montana reservations compacts have been completed.

The CSKT Compact (Senate Bill 262) has passed the Montana Legislature, but has not received final approval from the U.S. Congress because there is controversy over whether the Compact follows the Hellgate Treaty and complies with the Montana State and Federal constitutions.

On December 11, 2019 The Flathead Beacon reported that, “Tribal leaders said that in addition to ratifying the compact, the proposed legislation settles damages brought by the Federal Government for mismanaging the Tribes’ water and water rights guaranteed under the 1855 Hellgate Treaty.” The Hellgate Treaty is the 1855 peace agreement between the CSKT and the Federal Government. There is no mention of water in the Hellgate Treaty. Furthermore, there are no such damages listed in the Compact. Water was secured for reservations in 1908 by the Winters Doctrine which provided a process for obtaining water to make the reservations productive.

Article I of the Hellgate treaty makes it very clear that the CSKT can’t be granted off Reservation water rights in their water compact based on the right to hunt and fish on their aboriginal land: **“the CSKT “hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the country occupied or claimed by them...”** Note that the words cede, relinquish and convey and the words right, title, and interest were all used to make sure everyone understood that aboriginal rights were given up. Water right claims by the CSKT off their reservation do not have standing. This means that Senate Bill 262 that was passed by the Montana Legislature in 2015, but has not yet been approved by the U. S. Congress, violates the Hellgate Treaty. Additionally, S.3019 which was developed by Senator Steve Daines to solve problems in Senate Bill 262 illegally allows huge off reservation water rights to the Tribe.

As a threatening lever and legal smoke screen to get the Compact passed tribal lawyers have filed about 10,000 water right claims on most of Montana to be adjudicated. The water judge will likely rule that none of these claims have standing.

Article II established the Reservation: **“reserved from the lands above ceded, for the use and occupation of the said confederated tribes...”** The Reservation came from the land that was ceded and paid for. It is an open reservation and not a race based sovereign nation inside of a state or county. It was assumed that the reservations would not be necessary after 20 years because the Indians would be assimilated into the general population. Only about a third of the CSKT tribal members, however, (2,500) have left the reservation.

Article III: **“The exclusive right of taking fish in all the streams running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of**

erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.”

Note that the statement “right to take fish in common with the citizens of the Territory” is not a water right; otherwise Montana citizens could get a water right to protect their favorite place to fish. The Indian right is in common with the citizens of the Territory. These subsistence rights which show up in some treaties are given only to tribes known to be peaceful. A subsistence lifestyle was common among both Indians and the citizens of the territory 159 years ago, but now government programs and fast food restaurants take the place of self-sufficiency.

Article III also gives Indians the right in common with citizens of the United States to travel upon all public highways and provides the right of public convenience roads being built.

Public infrastructure such as roads, bridges and buildings are owned by the government and are to be used by all citizens. They can't be given to the Tribe or regulated by them. Signs that say Tribal members only must be removed.

Article IV and V pay CSKT for the cession: **“In consideration of the above cession, the United States agrees to pay to the Confederated tribes of Indians, in addition to the goods and provisions distributed to them at the time of signing this treaty...”** Cash payments were required and basic infrastructure such as a school, black-smith shop, saw mill, and a flouring mill were to be built and maintained for a period of 20 years.

Article VI: Once the land on the reservation was allotted, the remainder could be sold. The CSKT reservation is the only, open for settlement, reservation in Montana which was implemented in 1909.

Article VIII states: **“The confederated tribes of Indians acknowledge their dependence upon the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens.”** Crossing or working on private property outside the reservation without the consent of the owner violates Article VIII. Off Reservation CSKT water rights and (10,000 claims) also violates the article VIII.

In 1908, Congress approved homesteading on the 1.3 million acre CSKT Reservation anticipating construction of the irrigation project to make it productive and providing distribution of land and water rights free to tribal members and sold land and water rights to non-tribal members. Farmers and ranchers were slow to take advantage of the irrigation because it was hard work transforming arid land into irrigated land. It took many years to develop the massive project into what it is now: 128,242 acres of productive irrigated land, 1,300 miles of canals, laterals, and distribution systems, 3 pumping plants, 15 storage reservoirs, and a power plant on the dam at Flathead Lake. Kerr dam and the generation power plant were started in 1926.

CSKT was paid \$180,000 per year for use of the site. The power company also agreed to supply the project with electricity at a significant discount. CSKT has now purchased the dam and is selling electricity in Washington. The Reservation is presently very productive producing cattle, feed crops and vegetables.

Today the project serves as a multi-purpose water resource development. Currently, all existing reservoirs provide irrigation water for the project. Flathead Lake, Tabor, Jocko, Upper Dry Fork, Kicking Horse, Mission and Black Lake Reservoirs also provide a wide array of recreational activities, including fishing, boating, camping, and picnicking. The National Bison Range, at the southern end of the Flathead Reservation draws thousands of visitors each year for wildlife viewing and sightseeing activities. Unfortunately, the CSKT Compact will negatively impact 2000 irrigators on the Reservation and 330,000 people off Reservation in 11 counties.

The CSKT Compact which is based on Montana Senate Bill 262 and Federal bill S.3019 transfers the individual water rights of Indians and non-Indian irrigators to the Tribal Council. The Tribe by controlling water could eventually end up with most of the land in western Montana. Since the Compact transfers the state based water rights of private landowners and management of the water on the Reservation to the CSKT, the next step could be to start the destruction of the Flathead Irrigation Project by controlling the amount of water allocated to the irrigators. Without adequate water, the land is not productive, and the value drops dramatically. As the financially stressed irrigators are forced to sell their land, CSKT will be able to buy the land for pennies on the dollar and leave it idle which they have already been doing both on and off the Reservation. The option to destroy the Flathead Irrigation Project was in the original appendix of the Compact as revealed by Richard Simms, a water attorney: "in the event the annual payments described in 39(e), above, are no longer needed, such as in the event the Flathead Irrigation Project is decommissioned, all invested funds shall be dispersed for Flathead Irrigation Project removal and landscape rehabilitation." In other words, the Compact authorizes the CSKT to use the remainder of the money in the Compact to pay for the removal of the multi-billion dollar irrigation Project.

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