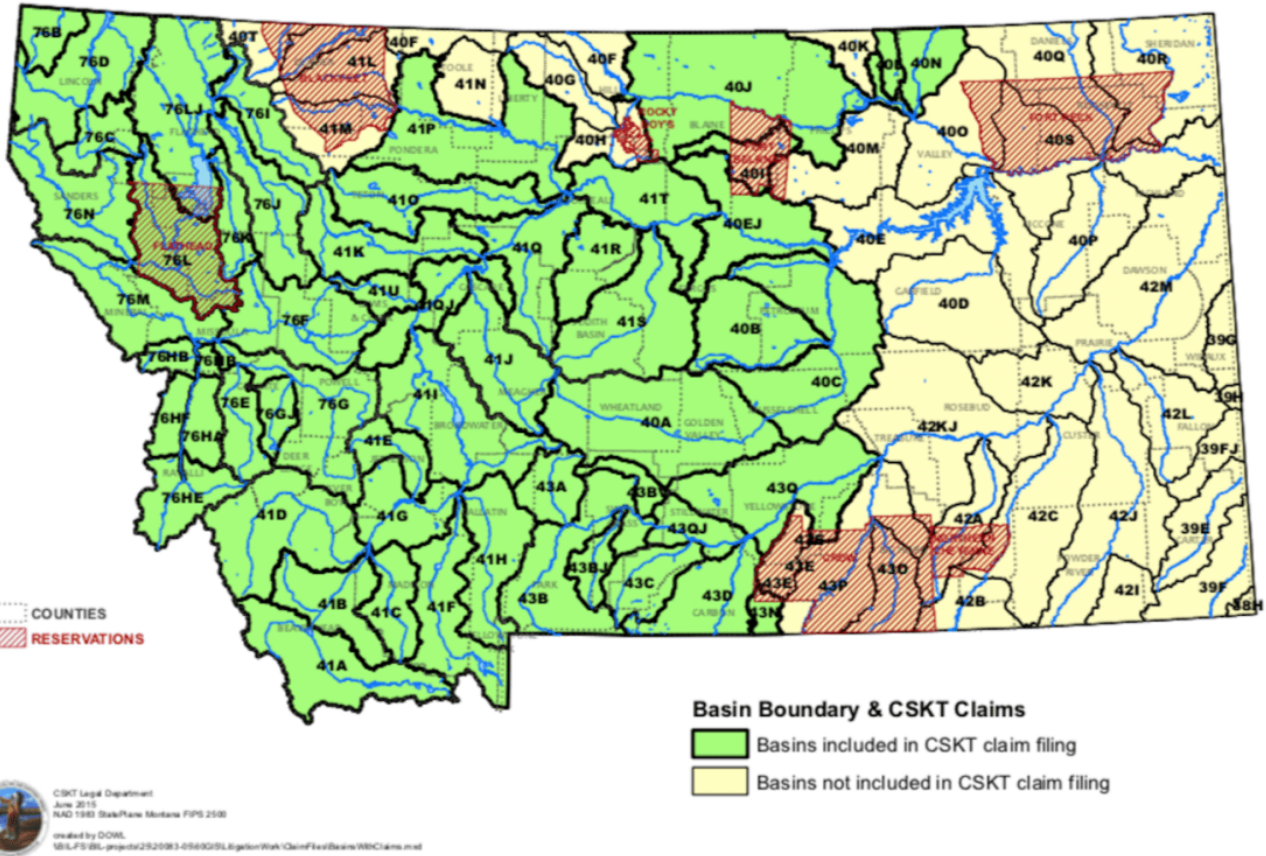


CSKT WATER COMPACT

Who's yea and who's nay on the CSKT water compact



Montana water basins in which the Confederated Salish and Kootenai Tribes have filed water rights claims that will require adjudication if the CSKT-Montana water compact is not federally approved.

By Eric Dietrich January 22, 2020

HELENA — Standing before reporters at a press event in the Montana Capitol Jan. 15, State Sen. Al Olszewski called a long-negotiated water compact between the state of Montana, the federal government, and the Confederated Salish and Kootenai Tribes “the most divisive issue in modern Montana history.”

While the compact isn’t necessarily a hot-button issue for Montana’s Democrats, that may well be true in Republican circles.

The compact, approved by the state Legislature in 2015, is an effort to reconcile Montana’s modern water rights doctrine with the 1855 Hellgate Treaty, which gives the CSKT plausible

claim to in-stream water rights beyond the borders of the Flathead Indian Reservation because it guarantees tribal members the right to fish at “all usual and accustomed places.”

Introduced by Sens. Steve Daines and Jon Tester last month, the [Montana Water Rights Protection Act](#) would resolve tribal water claims and allocate \$1.9 billion to settle federal damage claims, as well as rehabilitate the deteriorating Flathead Indian Irrigation Project. In exchange for the tribes’ agreement to relinquish claims to most off-reservation water rights, the bill would also return control of the National Bison Range on the Flathead Indian Reservation to the CSKT.

Failure to pass the compact, supporters argue, could land thousands of tribal water claims across Montana in court. Regardless, the settlement has been opposed by Olszewski and a handful of other Republicans, who argue that the compact terms are based on a flawed legal premise and cause unnecessary harm to western Montana property owners.

As the Daines-Tester bill awaits action in Washington, D.C., here’s where key players stand:

MONTANA’S FEDERAL DELEGATION

Sen. Steve Daines, Republican *SUPPORT*

Daines, up for re-election this fall, introduced the federal legislation intended to implement the settlement Dec. 11.

“We’ve reached a historic compromise on a century-old dispute that protects the water rights of all Montanans,” Daines said in a Dec. 5 phone interview with the Montana Free Press. “We’ve reached a new agreement that addressed my concerns, that addressed those of many others in the agriculture community, and attempts to address the concerns of some of those who have been opposed to the compact.”

Sen. Jon Tester, Democrat *SUPPORT*

Tester, who introduced an unsuccessful bill to enact the compact in 2016, is the lead co-sponsor on the Daines-introduced bill.

“This bill will help bring years of uncertainty for the Confederated Salish & Kootenai Tribes, taxpayers, farmers, and ranchers to an end,” Tester said a joint statement with Daines Dec. 11. “I’m glad the CSKT Water Compact now has the backing of folks on both sides of the aisle as well as the Trump Administration — so we can move full-steam ahead to honor our trust and treaty responsibilities, prevent costly litigation, boost economic development in the region, and give long-overdue peace of mind to everyone in Northwest Montana who uses our state’s most valuable resource.”

Rep. Greg Gianforte, Republican *UNCOMMITTED*

Gianforte spokesman Travis Hall said this week that the congressman is “encouraged” by the settlement bill and monitoring it as it moves through the U.S. Senate. He said Gianforte hasn’t decided whether to support the bill, which could be amended before it comes to a vote in the House.

“Greg believes we need an agreement that avoids litigation,” Hall wrote in an email. “He’s encouraged by the progress of this settlement that provides certainty to water users throughout the state and fixes many problems with the original compact.”

CONFEDERATED SALISH AND KOOTENAI TRIBES

CSKT Tribal Council Chairman Ronald Trahan *SUPPORT*

“This will work and get the job done. This bill will ensure the protection of vital resources while seeing to the needs of the greater community,” Trahan [said in a statement published by Char-Koosta News](#). “The Tribes on this reservation have worked hard to be good neighbors and sometimes that means making tough decisions which serve the entire community.”

TRUMP ADMINISTRATION

President Donald Trump hasn’t weighed in on the CSKT compact, but his top attorney and top public lands manager have [signaled their support for the settlement](#) in general terms.

U.S. Secretary of the Interior David Bernhardt *SUPPORT*

In [a Nov. 18, 2019 letter to Daines](#), Bernhardt wrote: “As a general policy matter, for more than 30 years the United States has supported resolving Indian reserved water right claims through negotiations rather than protracted and divisive litigation. I am informed that during the course of negotiating and reviewing the CSKT Compact, concerns and objections were raised about whether proposed Compact terms appropriately resolved the Tribes’ claims and about the perceived impacts that the Compact could have on non-Indian water right holders. These concerns are important, and it is my understanding that these concerns were considered and evaluated during the negotiations.”

U.S. Attorney General William Barr *SUPPORT*

Speaking at a Nov. 22 press conference in Kalispell, Barr said that complicated agreements like the water compact are best arrived at through negotiation, rather than litigation, adding that litigation could be time-consuming, costly, and risky for everyone involved.

“People should not assume that they’re going to end up with a better deal” through litigation, he said.

STATE OFFICIALS

Montana Gov. Steve Bullock, Democrat *SUPPORT*

“I am encouraged that the U.S. Senate now has bipartisan support to at long last advance the Confederated Salish and Kootenai Tribes (CSKT) Water Compact and provide certainty for water users across Montana,” Bullock said [in a Dec. 5 statement](#). “I urge Congress to move swiftly to advance this important legislation.”

Montana Department of Natural Resources and Conservation Director John Tubbs *SUPPORT*

Tubbs, who also served as a water policy official in the Obama administration, told Montana Free Press in December that he agreed with the Trump administration's analysis of the water compact issue, calling Bernhardt's letter "historic."

"We agree with the secretary's conclusions that it's an appropriate settlement, that it's time to move this issue forward, and that it is all within the context of federal statute and court decisions," he said.

CANDIDATES FOR MONTANA GOVERNOR

U.S. Rep. Greg Gianforte, Republican *UNCOMMITTED*

See above

Montana Attorney General Tim Fox, Republican *SUPPORT*

"President Trump's administration is backing the CSKT water compact and there is bipartisan support from Montana's congressional delegation, so it's time to get this done," Fox said [in a Dec. 5 statement](#) from the Attorney General's Office. "I am grateful to Senators Daines and Tester for their support of the compact passed by the 2015 Montana Legislature. I call upon Congress to ratify it as soon as possible."

State Sen. Al Olszewski, Republican *OPPOSE*

Olszewski, of Kalispell, headlined the Jan. 15 press event, where he and a handful of other elected Republicans urged Daines to withdraw the compact bill. Despite federal legal precedent to the contrary, he argued the compact is based on a flawed interpretation of the Hellgate Treaty.

"Our constitutional water rights are worth fighting for, even if it means going to court," he said.

Lt. Gov. Mike Cooney, Democrat *SUPPORT*

"Folks here in Montana — on both sides of the aisle — worked very hard to pass the CSKT Water Compact and it's time for Congress to stop putting up roadblocks and do the same," Cooney said in a statement provided by his campaign Jan. 22.

Other candidates for governor

Philanthropy consultant Whitney Williams and House Minority Leader Casey Schreiner don't appear to have taken public positions on the federal CSKT bill, and didn't immediately respond to press inquiries Jan. 22.

Schreiner, of Great Falls, voted for [state-level legislation](#) implementing the CSKT water compact as a state representative in 2015.

AGRICULTURAL GROUPS

Montana Farm Bureau *SUPPORT*

"The Montana Farm Bureau Federation and its members support the CSKT water compact passed by the Montana Legislature in 2015," MFBF Executive Director John Youngberg [said in a Dec. 16 release](#). "This compact eliminates the need to individually litigate thousands of water

rights claims, provides Flathead irrigators with a quantity of water that matches their historical usage, frees cities and other non-agricultural users from calls in drought years, and provides the CSKT with a fair settlement of their reserved water rights claims.”

Montana Farmers Union *SUPPORT*

“Thanks to this legislation Montana water users are one step closer to bringing to fruition decades of negotiations on settling water rights affecting up to 73% of Montana’s irrigated acres,” MFU President Walter Schweitzer [said in a Dec. 16 release](#). “Stakeholders from all over Montana put in countless hours working on this solution to a centuries-old problem.”

ENVIRONMENTAL GROUPS

Montana Wilderness Association *SUPPORT*

“We commend both Sens. Tester and Daines for introducing the bill, and we’re pleased that the legislation will also enable the CSKT to manage the National Bison Range,” [Deputy Director John Todd said in a Dec. 11 statement](#). “This corrects an injustice, of the range having been taken away from the CSKT, and it gives the tribes the opportunity to incorporate the range into its rich network of conservation areas.”

OTHERS

State Rep. Kerry White, Republican *SUPPORT*

White, of Bozeman, voted against the state version of the water compact in 2015, but wrote [in a Jan. 15 opinion column published by the Missoula Current](#) that the Daines-introduced federal bill had won his support.

“As someone who previously opposed the state-passed compact and federal legislation, I am supportive of the MWRPA,” White wrote. “I can attest to the fact that Daines has been in the middle of negotiations, and this proposal includes significant concessions from the CSKT, concessions that were significant enough for me to now back the proposal.”

State Sen. Dee Brown, Republican *OPPOSE*

Brown, of Hungry Horse, joined Olszewski Jan. 15 in questioning the nexus between water rights and the Hellgate Treaty, saying the treaty’s fishing provision shouldn’t apply because some other sections of the treaty, including one prohibiting liquor consumption on what’s now the Flathead Indian Reservation, are archaic.

“We can’t selectively say what is and what isn’t” in the treaty, she said.

Lake County Commissioner Gale Decker, Republican *OPPOSE*

At the anti-compact press event Jan. 15, Decker said Lake County government is concerned that jobs created by compact spending would bring an influx of workers and crime.

“We’re worried about our law enforcement, our drug trafficking, our human trafficking,” he said.

State Rep. Joe Read, Republican *OPPOSE*

“All I see is that this is a damaging proposal for Lake County and it’s a damaging proposal for the people I represent,” Read, of Ronan, said Jan. 15. “It doesn’t matter whether they are tribal or non-tribal — I represent all of them and I heartily disagree with this water compact.”

Montana Public Service Commissioner Randy Pinocci, Republican *OPPOSE*

Pinocci, who represents north-central Montana on the state utility regulation board, and opposed the compact as a state representative in 2015, also spoke at the anti-compact press event.

“Make no mistake — this is a loss of property rights,” he said.

In a broadcast interview [with NorthWest Liberty News Jan. 17](#), Pinocci also floated the idea of mounting a primary challenge against Daines over the senator’s support for the compact.

“If the listeners are wondering what we need to do, somebody needs to step up to the plate and say, ‘I am going to file against Steve Daines — and I am going to repeal this compact,’” he said. “I’m about half-tempted to file against Steve Daines myself.”