

AGAI Ripple

AGAIMT.com

AGAI's mission is to be the guardian and advocate of the Gallatin River system and its historically decreed water rights.

In keeping with membership communication, we are providing some information to help you understand the CSKT Water Compact. While no one knows what direction the compact may take AGAI feels it is very important to keep updated and understand the possible impacts to our membership as the process unfolds. The following are excerpts from the CSKT Water Compact Report; this report is available online at

<http://leg.mt.gov/content/Committees/Interim/2013-2014/Water-Policy/Meetings/Jan-2014/RWRCC-WaterCompactReport.pdf>

**Note: The following is intended to inform AGAI members & initiate dialogue.
The AGAI board has NOT taken a position on this matter at this time.**

Montana Reserved Water Rights Compact Commission

Who is on Montana Reserved Water Rights Compact Commission

Chris Tweeten, *Chairman*, Senator Debby Barrett, Senator Dick Barrett, Dorothy Bradley, Mark DeBruycker, Gene J. Etchart, Richard Kirn, Representative Daniel Salomon, Representative Kathleen Williams

What does the Compact Commission Do?

The Montana Reserved Water Rights Compact Commission (Commission) was established by the Legislature in 1979 to negotiate on behalf of the Governor to represent the interests of state water users in negotiations with Tribes and the federal government for the equitable division and apportionment of the waters of the State of Montana. The Commission has completed seventeen Compacts with six tribes and five federal agencies in Montana.

What happens if the Compact fails?

The legal requirement that the Tribes file their claims in the state wide general stream adjudication was stayed pending resolution of the Tribes' Claims through the negotiation process. This stay expired on July 1, 2013, after the Montana Legislature failed to ratify the Compact. As a result, the Tribes must file their claims no later than June 30, 2015. The Tribes have notified the Commission that they are preparing claims for filing in the event that the Montana Legislature does not ratify a negotiated settlement in 2015. Courts have already upheld the Tribes' interim instream flows against the Flathead Joint Board of Control (FJBC), finding that the instream flow rights have a priority date of "time immemorial" and must be satisfied before project deliveries. In addition to these "time immemorial" instream flow rights, the Tribes have significant on-reservation water rights with an 1855 priority date. ON A RECENT NOTE, THE TRIBE'S LEGAL STAFF NOTIFIED THE LEGISLATIVE WATER POLICY COMMITTEE ON JANUARY 6, 2014 THAT THEY ARE IN THE PROCESS OF PREPARING THEIR CLAIMS FOR FILING IN THE WATER COURT.

Continued on backside

Montana Reserved Water Rights Compact Commission

Although the Tribes' claims for off-reservation treaty-based instream flow rights are less certain, the Tribes have indicated that their claims in the adjudication to such rights will be far more extensive and widespread than the eight individual and fourteen co-owned rights that would be decreed under the Compact. Such claims constitute prima facie proof of their contents, meaning that they will be accepted as claimed by the Water Court unless other water users successfully object. This places the burden of objecting squarely on the shoulders of individual water users. The Commission believes, based on its legal analysis, that some of the claims will be found valid, and will have accompanying "time immemorial" priority dates.

To summarize, the most significant consequences of failure to ratify the Compact are:

- Protections for existing junior water rights contained in the Compact will be lost;
- State water right holders will be required to defend their water right claims, which is time-consuming, costly, and uncertain;
- DNRC may be unable to legitimize domestic uses developed on the Reservation since August 1996;
- The ensuing Montana water adjudication process could result in different priority dates for different water users on the Flathead Indian Irrigation Project, which could require expensive modifications to the canals and irrigation ditches and result in calls being made both by the Tribes for instream flows and by more senior irrigation users;
- The Montana water adjudication process will not include funding to fix the irrigation project infrastructure or improve water supplies on the Reservation;
- Basin closure is a likely outcome.

FROM THE GALLATIN PERSPECTIVE, WATER USERS WILL BE REQUIRED TO ONCE AGAIN FILE OBJECTIONS IN THE WATER ADJUDICATION PROCESS TO TRY TO PROTECT THEIR DECREED WATER RIGHTS. AS MOST ARE AWARE, THIS IS A VERY TIME CONSUMING AND OFTEN EXPENSIVE PROCESS.

Please visit our website www.agaimt.com for more information on activity regarding respective subjects.

AGAI monthly meetings are held on the last Thursday of the month at the Garden Café at 11am.

Visit with us if you have any remarks or concerns - we WANT your feedback.