Who Has the Right to Montana's Water?

How should Montana balance historical water rights, tribal sovereignty, economic needs, & conservation?

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and bands of Indians of the Territory of Washington who may agree to be consolidated with the tribes parties to this treaty, under the common designation of the Flathead nation, with Victor, head chief of the Flathead tribe, as the head chief of the nation, the tract of land included within the following boundaries, to wit:

Boundaries.

Commencing at the source of the main branch of the Jocko River; thence along the divide separating the waters flowing into the Bitter Root River from those flowing into the Jocko to a point on Clarke's Fork between the Camash and Horse prairies; thence northerly to, and along the divide bounding on the west the Flathead River, to a point due west from the point half way in latitude between the northern and southern extremities of the Flathead Lake; thence on a due east course to the divide whence the Crow, the Prune, the So-ni-el-em and the Jocko Rivers take their rise, and thence southerly along said divide to the place of beginning.

Whites not to reside thereon unless, &c.

All which tract shall be set apart, and, so far as necessary, surveyed and marked out for the exclusive use and benefit of said confederated tribes as an Indian reservation. Nor shall any white man, excepting those in the employment of the Indian department, be permitted to reside upon the said reservation without permission of the confederated tribes, and the superintendent and agent. And the said confederated tribes agree to remove to and settle upon the same within one year after the ratification of this treaty. In the meantime it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States, and upon any ground claimed or occupied if with the permission of the owner or claimant.

Indians to be allowed for improvements on lands ceded.

Guaranteeing however the right to all citizens of the United States to enter upon and occupy as settlers any lands not actually occupied and cultivated by said Indians at this time, and not included in the reservation above named. *And provided*, That any substantial improvements heretofore made by any Indian, such as fields enclosed and cultivated and houses erected upon the lands hereby ceded, and which he may be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President of the United States, and payment made therefor in money, or improvements of an equal value be made for said Indian upon the reservation; and no Indian will be required to abandon the improvements aforesaid, now occupied by him, until their value in money or improvements of an equal value shall be furnished him as aforesaid.

Roads may be made through reservation.

ARTICLE III. *And provided*, That if necessary for the public convenience roads may be run through the said reservation; and, on the other hand, the right of way with free access from the same to the nearest public highway is secured to them; as also the right in common with citizens of the United States to travel upon all public highways.

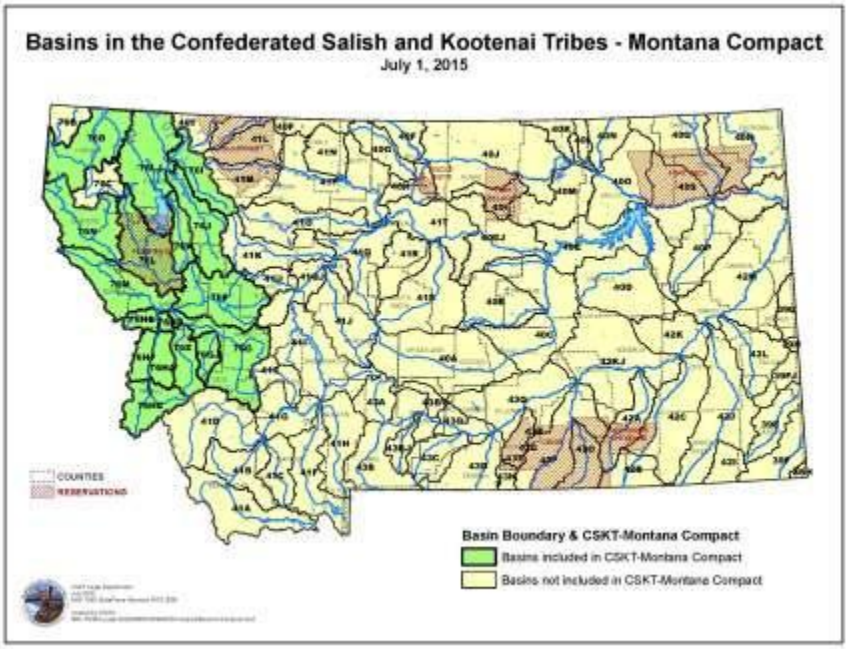
Rights and privileges of Indians.

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.

Payments by the United States.

ARTICLE IV. In consideration of the above cession, the United States agree to pay to the said confederated tribes of Indians, in addition to the goods and provisions distributed to them at the time of signing this treaty the sum of one hundred and twenty thousand dollars in the following manner — that is to say: For the first year after the ratification hereof, thirty-six thousand dollars, to be expended under the direction of the President in providing for their removal to the reservation, breaking up and fencing farms, building houses for them, and for such other objects as he may deem necessary. For the next four years, six thousand dollars each year; for the next five years, five thousand dollars each year; for

[Treaty of Hellgate (1855)](#) The treaty between the United States and the Bitterroot Salish, Pend d'Oreille, and Kootenai tribes provides historical context for tribal land, resource, and sovereignty questions. Articles 2 and 3 deal primarily with water issues.



Confederated Salish and Kootenai Tribes-Montana Water Rights Compact This map illustrates how historical claims and contemporary water management policies impact water use decisions between the Confederated Salish and Kootenai Tribes, the state of Montana, and the United States.

Contextual Paragraph

Water has shaped Montana's history, economy, and ecosystems. Long before Montana became a state, indigenous tribes maintained relationships with the region's rivers, streams, and wetlands. In 1855, the Treaty of Hellgate established an agreement between the United States and the Bitterroot Salish, Pend d'Oreille, and Kootenai tribes. Among other things, the treaty addressed water rights, including fishing rights. These provisions became part of the historical and legal foundation for later questions about tribal sovereignty and natural resources.

As settlement, agriculture, mining, and other industries expanded, competition for water increased. Montana's water law generally follows the principle of *prior appropriation*: water users with older, established rights generally have priority over users with newer rights. Tribal reserved water rights have a distinct legal basis connected to treaties and the establishment of reservations.

Today, the Confederated Salish and Kootenai Tribes (CSKT), the state of Montana, and the federal government have addressed water rights through the CSKT-Montana Water Rights Compact. The agreement focuses on water rights and management across the state. A map of the compact's basins helps show where the agreement applies, but the map alone cannot explain the history or legal basis of the rights involved.

These sources raise questions about how historical agreements continue to matter, how geography shapes water management, and how Montana can balance tribal sovereignty, existing water users, economic needs, and healthy aquatic ecosystems.

Key Questions

1. What do Articles II and III of the Treaty of Hellgate reveal about the land and rights reserved to the tribes in 1855?
2. What does the map show about the basins included in and excluded from the modern CSKT-Montana Water Rights Compact? What does it help us understand about the geographic scope of water management?
3. How do the treaty and the modern compact represent different stages in the history of tribal water rights in Montana? What questions about continuity and change do the sources raise?
4. Whose interests are represented in the treaty and the modern compact? What additional perspectives or information would help us understand the agreements and their effects?
5. Why might a water agreement need to account for tribal sovereignty, existing water users, and ecological health alongside legal rights and human water use?

Assessment

1. How do the Treaty of Hellgate and the modern CSKT-Montana Water Rights Compact help explain the relationship between tribal sovereignty, water rights, and conservation in Montana? Use evidence from the treaty and map, along with evidence from the compact and/or environmental science, to support your response.
2. Imagine that streamflow in one of Montana's river basins declines significantly during a summer drought. Identify two possible effects on the aquatic ecosystem. What scientific data would help water managers evaluate the situation and make

informed decisions while accounting for the rights and needs of different water users?