

Most Frequently Asked Questions/Assertions by Legislators

The Compact implies that project irrigators get less water than they have been getting and that it is reduced to 1.4 acre feet per year.

Response: The Compact does not say that project irrigators get less water than they have been getting, it gives them water based on historic on-farm deliveries. The 1.4 acre feet per acre provision has been removed from the Compact, one of the changes negotiated from the previous version. That provision has been replaced with provisions that irrigation water will be provided to irrigators pursuant to a system of River Diversion Allowances that take into account transmission losses and inefficiencies between the river diversion point and the farm turnout. In response to concerns expressed in 2013 about the accuracy of the model used to set the River Diversion Allowances, the Compact now contains provisions for a process to adjust the River Diversion Allowances to assure irrigators get the water they have historically received.

With possible improvements to the irrigation ditches the Tribes get all the water savings.

Response: Under Article IV(C)(2) of the Compact, the water savings from improvements to the ditches (and other project facilities), referred to as Reallocated Water, is divided as equally as practicable between Instream Flow Rights and the Irrigation Project Water Right once the Tribes' instream flow rights are satisfied. This tiered system, which shares water savings once Target Instream Flows are achieved, takes into account that the Tribes agreed to defer the full implementation of their Instream Flow Rights in order to protect the ability of the project irrigators to receive historic farm deliveries, even though the 9th Circuit Court of Appeals rule in 1987 that the Tribes' instream flow rights are senior to the water rights associated with the Irrigation Project. The way it works is during the period in which operation and infrastructure improvements are being carried out to free up additional water to allow for both the Tribes' and project irrigators' water rights to be satisfied, the Tribes are agreeing to accept lower instream flows to ensure that project irrigator use is not displaced. So the first batch of water freed up by these improvements goes to the Tribes to allow them to achieve their full instream flow rights without impact to project irrigators, but once those rights are satisfied, any additional water savings are split equally.

Improvements to the irrigation ditches may also harm the water table and reduce capacity of nearby water wells. Will these well owners be protected?

Response: Generally, under either State water law or the Compact, if the source of supply of a well is leakage from irrigation ditches, actions by the ditch owner to reduce leakage do not subject the ditch owner to liability. However, under the Adaptive Management provisions of the Compact, the Compact Implementation Technical Team can use excess interest payments from the pumping fund to mitigate ditch improvements which reduce well yields.

Why are exempt wells being reduced from 35 gpm/10 acre feet to 35 gpm/2.4 acre feet?

Response: The 2.4 acre feet per year well limit was calculated, based on actual average use of exempt wells statewide, to be sufficient to provide ample water for a household including irrigation of .7 acres of land, and was put in place to avoid misuse of the exempt well category for non-domestic uses. This provision is the result of negotiations. At present there is no legal mechanism to recognize *any* new wells (whether above or below the 35 gpm/10 acre feet exemptions in State law) on the Reservation. In negotiating to obtain legal protection for those wells that have been drilled since 1996, the State had to come to an agreement with the Tribes over the size of the exemption going forward, and the 35 gpm/2.4 acre feet was the end result, representing a volume sufficient for domestic, household and residential irrigation purposes (.7 acres is the amount of defensible space recommended for buildings in the wildland-urban interface for fire prevention purposes). Without a Compact, any well drilled on the Reservation since August 22, 1996, does not have a legal water right under State law.

Why are the Tribes getting Control of all the water west of the continental divide?

Response: They aren't, in fact the Compact doesn't even recognize a Tribal right to control all the water on the Reservation or even the Tribal exclusive control over the administration of their own water rights. There is a recognition of some limited off-reservation rights owned by the Tribes, but the nature of those rights combined with the protections built into the Compact and the shared management through the Water Management Board, means the Tribes will have less control over water in western Montana under the Compact than they could have with judicial recognition and enforcement of their claims.

Why does the State have to pay \$55 million when it is a federal irrigation project?

Response: The State is agreeing in the Compact to pay a total of \$55 million – the majority of which (\$30 million) is to assist with pumping costs for project irrigators. The remaining \$15 million will be allocated as follows: \$4 million for water measurement; \$4 million for on-farm efficiency improvements on lands served by the project; \$4 million for on-farm stock water systems; and, \$13 million to the Tribes for aquatic and terrestrial habitat enhancement. The State is agreeing to make this contribution as part of the consideration for the various concessions the Tribes are making in the Compact. The State has made significant contributions to other Indian water rights settlements (such as the Blackfoot Tribe and Crow Tribe) as well. The State's contribution represents the value to the State of having a final determination of the Tribes' water rights and protection for existing State water uses.

The State is not the only one that will be making a monetary contribution towards settlement of the Tribes' water rights. The U.S. Government will also be required to contribute to the settlement of the Tribes water rights. Most estimate the federal contribution will exceed Congress' appropriation of \$460 million in 2010 for settlement of the Crow Tribe's water rights.