Most Frequently Asked Questions/Assertions by Non-Indian Reservation Residents

Why does the Commission support this diminishment of citizenship status for non-tribal member state citizens who live within the Reservation?.

Response: This question assumes that the State has and properly should have full control of administration of water rights within the Reservation.

As to the first part, the State does not currently have control of administration of water rights within the Reservation, because, since 1996, the Montana Supreme Court has prevented the State of Montana from issuing new water use permits on the Reservation until tribal reserved water rights are fully quantified and determined.

As to the second part, the Tribes have reserved water rights and treaty rights under both federal and state law. Those rights affect water rights arising under State law. In light of that, the question of who administers the water rights within the Reservation is one of the questions that has to be answered by any Compact between the State and the Tribes. Montana's Compacts with some other Tribes have set up dual administration, with the Tribes administering tribal rights and the State administering state-based rights. Even with dual administration, the State wouldn't fully control administration of water rights within the Reservation. In this Compact, the negotiated resolution sets up a unitary administration under a Board that has both tribal and non-tribal membership, a practical solution given the circumstances of this Reservation. The alternative to the Compact solution to the problem would be litigation in which a court would try to find a solution, but even the court would be constrained to recognize tribal rights under applicable law, meaning the solution would not be for full State control over water rights within the Reservation.

The Compact will bring the current uncertainty to an end in a way that balances tribal and non-tribal interests and reflects the realities of the applicable law for both the Tribes and the State.

If Article VIII of the Montana constitution applies fully to these individuals and their property why would Article IX not apply fully as well? (Article VIII is taxation, Article IX is Natural Resources.)

Response: Article IX does fully apply to non-Tribal member state citizens who live within the Reservation, and the Compact doesn't change that. Article IX section 3 subsection (3) provides that "All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law." Under this section, the State owns all the water, and its job is to ensure that "its people" can use the water as set forth in applicable law. Nothing in the Compact changes that, as the Commission cannot, does not and will not negotiate over ownership. What the Compact does is make agreements as to the rights to use of water owned by the State. The Compact is also consistent with the provisions of Article IX section 3 subsection (4) that the legislature shall provide for the administration, control, and regulation of water rights and establish a system of centralized records. This is so because, in approving the Compact, the legislature will be providing for a system of administration of water, one which will create a database which operates with the State's DNRC database, to create a centralized system of records.