

HOUSE BILL NO. 513

INTRODUCED BY N. BALLANCE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO WATER COMPACTS; REVISING
5 THE PURPOSE, DUTIES, TERMS, MEMBERSHIP, AND COMPENSATION OF THE RESERVED WATER
6 RIGHTS COMPACT COMMISSION; CLARIFYING WHEN THE TERMS OF A COMPACT ARE EFFECTIVE AND
7 BINDING; CLARIFYING THAT THE COMMISSION NEGOTIATES ON BEHALF OF THE GOVERNOR, THE
8 LEGISLATURE, AND THE ATTORNEY GENERAL; PROVIDING FOR IMMEDIATE TERMINATION OF
9 NEGOTIATIONS OF A COMPACT UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 2-15-212,
10 85-2-701, 85-2-702, 85-2-704, AND 85-2-708, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
11 AN APPLICABILITY DATE."

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13 WHEREAS, it has been the policy of the Montana Legislature to resolve the federal reserved water rights
14 of federal reservations in Montana through the Reserved Water Rights Compact Commission; and

15 WHEREAS, the commission has completed the negotiation of federal reserved water rights of all existing
16 federal reservations of land in Montana as required by Montana's general stream adjudication, and all federal
17 reserved water rights have been filed with the Montana Water Court; and

18 WHEREAS, potential future federal reservations of land may require the determination of federal reserved
19 water rights associated with those reservations; and

20 WHEREAS, it is in the best interests of the taxpaying citizens of Montana that state resources are used
21 expeditiously to resolve federal reserved water rights issues; and

22 WHEREAS, after negotiations of federal reserved water rights are complete and a settlement has been
23 passed by the Legislature, the Department of Natural Resources and Conservation administers and implements
24 state-derived compact provisions; and

25 WHEREAS, it is in the interests of the state of Montana to protect the sovereignty of the state and of its
26 citizens in any negotiation between the state and the federal government regarding federal reserved water rights
27 and the impact on state law-based water rights; and

28 WHEREAS, it is in the best interests of the state of Montana to submit a compact to Congress that is as
29 complete as possible, having identified and resolved issues at the state level, and thus enabling federal review
30 and consideration and requiring few fixes; and



1 WHEREAS, to fulfill the legislative intent in resolving federal reserved water rights, clarification of the
2 scope and mission of the Reserved Water Rights Compact Commission would be beneficial to all; and

3 WHEREAS, such clarification would serve to codify existing commission practice in resolving the federal
4 reserved water rights of the 17 federal reservations in Montana, which would clarify the scope of the commission's
5 work products.

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7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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9 **Section 1.** Section 2-15-212, MCA, is amended to read:

10 **"2-15-212. Reserved water rights compact commission.** (1) There is created a reserved water rights
11 compact commission. In negotiations, the commission is acting on behalf of the governor, the attorney general,
12 and the legislature.

13 (2) (a) The purpose of the commission is to quantify the federal reserved water rights associated with
14 federal reservations of land in Montana, including Indian reservations. Except for maintaining the functions
15 mandated by Article IX, section 3, of the Montana constitution and administering state waters within the exterior
16 boundaries of a federal reservation, the commission may not address or include provisions for water
17 administration in a compact other than to maintain the existing dual-sovereign administrative structure adopted
18 in existing compacts.

19 (b) To the greatest extent possible, the commission shall identify the impacts of a proposed compact on
20 property rights, the environment, and the regional economy to determine whether additional studies are
21 necessary before the legislature considers the compact.

22 ~~(2)~~(3) The commission consists of seven members. Subject to 5-5-234, ~~commissioners~~ members are
23 appointed as follows:

24 (a) two members of the house of representatives appointed by the speaker of the house, one from the
25 majority party and one from the minority party;

26 (b) two members of the senate appointed by the president of the senate, one from the majority party and
27 one from the minority party;

28 (c) ~~four~~ two members designated by the governor; and

29 (d) one member designated by the attorney general.

30 ~~(3)~~(4) Legislative members of the commission are entitled to receive compensation and expenses as

1 provided in 5-2-301 for each day actually spent on commission business. The governor's office shall pay the
 2 compensation and expenses for members appointed by the governor if the appointees are not legislators or state
 3 employees. Other members are entitled to salary and expenses as state employees.

4 ~~(4)~~(5) The commission is attached to the department of natural resources and conservation for
 5 administrative purposes only, as prescribed in 2-15-121, unless inconsistent with the provisions of Title 85,
 6 chapter 2, part 7. A sufficient and appropriate staff must be assigned to serve the commission within the budget
 7 established by the legislature. The commission staff is a principal unit within the department, and the commission
 8 shall direct and assign the staff.

9 ~~(5)~~(6) Members are appointed for 4-year terms and may be reappointed. Members may serve a
 10 maximum of two terms. A legislative member position is vacant if the person no longer serves in the legislature.
 11 The position of a member appointed by the governor or attorney general is vacant if that person is elected to the
 12 legislature. A vacancy must be filled in the manner of the original appointment.

13 (7) The commission is active only when an active federal reserved water right negotiation is under way.
 14 The governor and the legislature must reconvene the commission pursuant to 85-2-702.

15 (8) After negotiations of a federal reserved water rights have been completed and a settlement has been
 16 passed by the legislature and ratified by congress, the department of natural resources and conservation shall
 17 assume the administrative duties assigned to the state by the compact.

18 (9) For purposes of this section, "federal reserved water rights" means water rights that are reserved by
 19 the federal government to fulfill the purposes of a reservation and that are limited to the reserved land."
 20

21 **Section 2.** Section 85-2-701, MCA, is amended to read:

22 **"85-2-701. Legislative intent.** (1) Because the water and water rights within each water division are
 23 interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing
 24 water rights under the Montana Water Use Act. It is the intent of the legislature that the unified proceedings
 25 include all claimants of ~~reserved Indian water rights~~ federal reserved water rights, as defined in 2-15-212, as
 26 necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further
 27 intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts
 28 for the equitable division and apportionment of waters between the state, and its people, the federal government,
 29 and the several Indian tribes claiming federal reserved water rights within the state, while retaining constitutionally
 30 derived authorities for state water resources under Article IX of the Montana constitution.

1 (2) To the maximum extent possible, the reserved water rights compact commission established under
 2 2-15-212 should make the negotiation of water rights claimed by the federal government or Indian tribes in or
 3 affecting the basins identified by 85-2-218 its highest priority. In negotiations, the commission is acting on behalf
 4 of the governor, the legislature, and the attorney general."

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6 **Section 3.** Section 85-2-702, MCA, is amended to read:

7 **"85-2-702. Negotiation with Indian tribes.** (1) The reserved water rights compact commission, created
 8 by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to
 9 conclude compacts authorized under 85-2-701. Compact proceedings must be commenced by the commission.
 10 The commission shall serve by certified mail directed to the governing body of each tribe a written request for the
 11 initiation of negotiations under this part and a request for the designation of an authorized representative of the
 12 tribe to conduct compact negotiations. Compact negotiations commence upon receipt of the written designation
 13 from the governing body of a tribe.

14 (2) When the compact commission and the Indian tribes or their authorized representatives have agreed
 15 to a compact, they shall sign a copy and file an original copy with the department of state of the United States
 16 of America and copies with the secretary of state of Montana and with the governing body for the tribe involved.
 17 The compact is effective and binding upon all parties upon ratification by the legislature of Montana ~~and any~~
 18 ~~affected tribal governing body, and approval by the appropriate federal authority,~~ ratification by congress,
 19 approval by the water court, and approval by the affected tribal governing body, according to their procedures.
 20 No part of the compact may be implemented or funded until all ratifications and approvals have been received.

21 (3) Upon ~~its~~ a compact's ratification by the Montana legislature ~~and the tribe,~~ the terms of ~~a~~ the compact
 22 must be included in the preliminary decree as provided by 85-2-231, and unless congress modifies the compact
 23 or an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final
 24 decree without alteration. However, if ratification or approval of ~~by~~ the state legislature and the tribe has not been
 25 accomplished by July 1, 2013, all Indian claims for reserved water rights that have not been resolved by a
 26 compact must be filed with the department within 24 months. These new filings must be used in the formulation
 27 of the preliminary decree and must be given treatment similar to that given to all other filings."

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29 **Section 4.** Section 85-2-704, MCA, is amended to read:

30 **"85-2-704. Termination of negotiations.** (1) The commission, at the direction of the governor, the

1 attorney general, or the legislature, or any negotiating tribe or federal agency may terminate negotiations by either
 2 of the two following methods:

3 (a) providing notice to all parties 30 days in advance of the termination date. On the termination date,
 4 the suspension of the application of part 2 provided for in 85-2-217 also terminates.

5 (b) providing notice to all parties when the Montana legislature ratifies a compact. This termination date
 6 is effective immediately upon notice.

7 (2) The tribe or federal agency shall file all of its claims for reserved rights within 24 months of the
 8 termination of negotiations.

9 ~~(2)(3) Once~~ After negotiations have been terminated pursuant to subsection (1), they may be reopened
 10 only by mutual agreement of the parties."
 11

12 **Section 5.** Section 85-2-708, MCA, is amended to read:

13 **"85-2-708. Water administration interim agreements within Indian reservations.** (1) Because it
 14 appears to be to the common advantage of the state and Indian tribes to cooperate in matters involving the
 15 permitting and use of water within the exterior boundaries of an Indian reservation prior to the final adjudication
 16 of ~~Indian federal~~ reserved water rights as defined in 2-15-212, and because the state does not intend by
 17 enactment of this section to limit, expand, alter, or waive state jurisdiction to administer water rights within the
 18 exterior boundaries of an Indian reservation, pursuant to the requirements of Title 18, chapter 11, the department
 19 may negotiate and conclude an interim agreement with the tribal government of any Indian tribe in Montana prior
 20 to final adjudication of Indian reserved water rights for the purpose of implementing a water administration plan
 21 and a permitting process for the issuance of water rights and changes in water right uses within the exterior
 22 boundaries of an Indian reservation.

23 (2) Subject to subsection (4), an agreement entered into pursuant to subsection (1) must:

24 (a) provide for the retention of exclusive authority by the state to issue permits to applicants who are not
 25 members of the tribe and to issue change of use authorizations;

26 (b) provide that any permits must be issued in accordance with the criteria established by state law; and

27 (c) provide that permits may be only for new uses with a date of priority in compliance with state law.

28 (3) Prior to concluding any agreement under this section, the department shall hold public meetings, after
 29 proper public notice of the meetings has been given and the proposed agreement has been made available for
 30 public review, to afford the public an opportunity to comment on the contents of the agreement.

1 (4) The provisions of subsection (2) do not apply if a court of competent jurisdiction has held that the
2 department lacks exclusive authority to issue new water use permits within the exterior boundaries of an Indian
3 reservation pending final adjudication of ~~Indian~~ federal reserved water rights as defined in 2-15-212. In that case,
4 the department, with the approval of the governor, may enter into an interim agreement that provides for joint
5 tribal and state administration of new water uses on the reservation pending final adjudication of ~~Indian~~ federal
6 reserved water rights. Any interim agreement entered into pursuant to this subsection (4):

7 (a) must address how and whether new ground water uses for domestic and municipal purposes will be
8 granted. Except for the criterion in 85-2-311(1)(a)(ii), an interim agreement that grants new ground water uses
9 must establish criteria for new water uses that incorporate the criteria listed in 85-2-311.

10 (b) must address how and whether changes in existing appropriation rights within the exterior boundaries
11 of the reservation will be granted. An interim agreement that grants changes must establish criteria for changes
12 in existing appropriation rights that incorporate the criteria listed in 85-2-402.

13 (c) must address how and whether water use will be authorized under the interim agreement and how
14 the use will be secure and valid in the event of the termination of the interim agreement, quantification of reserved
15 water rights, or termination of negotiations of reserved water rights under 85-2-704;

16 (d) must maintain the jurisdictional claims of each party to the interim agreement;

17 (e) must protect each party against a waiver of the right to challenge the claims of each party at any time;

18 (f) may not prejudice the regulatory or adjudicatory jurisdiction of either party;

19 (g) must provide that none of the activities of each party in the negotiation or implementation of an interim
20 agreement may be used to affect the equitable or legal position of either party in any future litigation; and

21 (h) must provide that nothing in the negotiation or implementation of an interim agreement may be
22 considered as enlarging or diminishing the jurisdiction or authority of either party within the reservation."
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24 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.
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26 NEW SECTION. Section 7. Applicability. [This act] applies to compacts for reserved federal water
27 rights approved by the legislature on or after [the effective date of this act].
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