

[SQUEAKING]

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**STUDENT
PRESENTER:**

Thank you, everybody. I'm going to talk today about the Confederated Salish-Kootenai tribe, which I'll refer to as CSKT, tribe's compact with the state of Montana, to which the US government is also party. This compact kind of evolved over the course of a few decades and actually just started to be implemented this year. So we'll talk about how they got there.

Just to start, this is Montana. These are the various water basins in the state of Montana. This little area in the corner here is the Flathead reservation. So it's actually a fairly large chunk of land. The water rights that we're talking about today really cover the entire region of Northwest Montana, mostly west of the Continental Divide, but there are some rights that were affected by the treaty that actually are on the east side of the Continental Divide.

So we're going to talk about the history, the kind of way that these water rights came about, some of the context of the negotiations. Talk a little bit about the negotiation topics, then where they ended up. And even as I go through the history, I hope to explain, because some of the disputed rights, a lot of the questions go back to the origins of those rights, I hope to bring up some of the different disputes in the historical context and also kind of begin to shed light on the present status of them and how they came up with the negotiations based on that context.

So to quickly look a little bit at the history, the Treaty of Hellgate, which is the treaty that created the Flathead reservation in Northwest Montana, it's about a million and a quarter acres, was signed in 1855 by representatives of the US as well as the tribes that were party to the treaty. The treaty gave them the rights to that land, but it also included an unusual line which has become very important that was not included in any of the other treaties that the US government negotiated with the state of Montana.

This line is Article III: "The exclusive right of taking fish and 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." So this provision maintained that the tribes had the rights to use water that passed through some of the lands that they conceded. The part that says "the right of taking fish at all usual and accustomed places." This is the basis of what have become to be known as the tribe's off reservation water rights. And we'll talk about what those are and how those became contentious.

As was often the case with treaties of Native tribes, the US government violated the spirit and the letter of the Hellgate treaty within a number of decades. The kind of general history that pertains to all the Native American tribes is in 1887, the Dawes Act was passed, which subdivided Native reservations into individual allotments and opened reservations to settlement by whites. In particular, the Flathead reservation, this kind of accelerated after the Flathead Allotment Act of 1954, provided for the distribution and irrigation of actually a few different sizes of allotments but predominantly 160 acre allotments to Indian households. And then the rest of the acres that weren't given out were considered surplus.

And those surplus acres were available to non-tribal members. And so today actually most Flathead reservation residents are not tribal members. And there are many, both public and private non-tribal water uses, including municipal uses. For example, Polson, Montana, which is the county seat of Lake County, which is one of four counties that enters into the Flathead reservation, Polson, Montana is the seat county of Lake Montana and it's the largest town in the Flathead reservation. So I think it's just important to recognize the complexity of the land use.

The Flathead Indian Irrigation Project was a federally funded irrigation system that was developed over the course of the first half century, mostly in the '20s and '30s. And it's really a really extensive network of irrigable acres of canals, laterals, distribution systems, pumping stations, storage reservoirs that provides irrigation to all of the land that was described on the past slide, both Native uses, Native users, and municipal and non-Native users, particularly agricultural users on the reservation who are not members of the tribe. So that's what you need to know about that. Oh yeah, and it's important to note that CSKT operates a large portion of FIIP, of the Flathead Indian Irrigation Project, and has since the '80s.

So water rights. Like many western states, Montana adopted a "first in time, first in right" doctrine of prior appropriation. And until 1973, most rights in the state were use rights, which means they were exercised when someone basically took water for a beneficial use. Most of the time they never filed those rights with the county or the state. And so many rights have no paper record. Rights often spanned multiple counties. And there'd be competing claims to the same quantity of water. I mean, this became increasingly complex because rights were also kept in the county courthouses. And so even if a right was filed, you had to go to every county courthouse to figure out if there were competing rights.

So in 1972 when Montana adopted a new state constitution recognizing existing water rights, it also called upon the state legislature to quote, "establish a system of centralized records for water rights." And that's the origin of the dispute, is the status of Indian rights in the centralized record.

In 1973, Montana passed the Water Use Act, which mandated that the Department of Natural Resources and Conservation permit new claims and manage a record of water rights. And it established a system of adjudicating pre-1973 claims. This means that all new claims had to be filed with the Department of Natural Resources and Conservation. And it began to create a bureaucratic structure for looking at all claims filed or existing even if they weren't filed prior to 1973.

In '79, the Senate Bill 76 established the Montana Water Court, which was set up initially on a 15 year term limit, although it's still around now 50 years later and they're hoping to have all the work done-- I believe the most recent estimate I saw was by 2028. But even that is questionable. And established the water court to adjudicate all pre-1973 claims.

However, while this legislation was under consideration, both the US Department of the Interior and the tribes expressed opposition to having their water rights adjudicated by a state court, because they argue that these water rights, both the federal water rights pertaining to federal lands, whether they're national parks or Bureau of Land Management lands, and also the Native water rights which were held in trust by the US government, they argue that they were not subject to state courts. And many in Montana's agricultural community also opposed the use of water courts to determine Native rights, because ranchers and others both on the reservation and off the reservation feared that extensive tribal claims would supersede their historical rights because of the "first in time" doctrine.

In response, the legislature amended the draft legislation and established the Montana Reserved Water Rights Compact Commission, which negotiates on the state's behalf. The commission was also initially authorized for a limited term, but that term was extended and extended and extended. We'll talk about where it ended up.

Just quickly, there are two kinds of tribal rights that pertain. There are federally reserved rights that were set aside by the federal government for use by the Native tribe. And these have a priority date that's equivalent to the date of the reservation's creation. So in the Flathead reservation, it's 1855. And they're governed by what's called the Winters Doctrine, which refers to the Supreme Court doctrine that said that when the US set aside land for Indian reservation, it implicitly reserved adequate water for the tribes to fulfill their livelihoods. And so this is the on-reservation rights that we're talking about that are federally reserved.

The Aboriginal rights are rights that predate a reservation and are explicitly recognized in the treaty or statute that created the reservation. And these rights have a different priority date of time immemorial. And time immemorial means, I thought that was an interesting term, what it means is time extended beyond the reach of memory, record, or tradition, indefinitely ancient beyond memory or record. So these are the off-reservation rights that were subject to that kind of the provision in the original treaty that I mentioned.

And two things to note about this. The Aboriginal rights almost by definition because of the time immemorial claim would by definition have an earlier priority date than all other claims in all other water rights in Montana because of the time immemorial date. And something similar has actually occurred, although it's been more disputed with the federally reserved rights. Given that the Flathead reservation was not open to homesteading by non-tribal members until 1909, the tribe has argued that their on-reservation rights are necessarily superior or senior, sorry, to all other on-reservation rights, regardless of whether they're Aboriginal or reserve.

But this fact, which has come to be accepted, was not accepted at the time by many non-tribal residents of the reservation, especially ranchers and other kind of large irrigators as well as a number of municipal governments and Republican state legislators who argued that this somehow constituted an unconstitutional taking under the US Constitution, under the Montana Constitution. It's not worth getting into it, but just to say that there wasn't agreement at the beginning that was the fact.

Legislation that I just discussed set up the Montana State Compact Commission. And the Compact Commission is a nine member commission appointed to four year terms, kind of in this makeup. And it created this really complex process for getting an agreement negotiated. First there were negotiations, and then the full commission once agreed upon had to vote upon the negotiations. Then it had to go to the Montana state legislature who had to ratify it. Then the tribal compact, so on the left hand column now, then had to go to the US Congress. And Congress, both the Senate and the House, had to ratify it. The president had to sign it. The tribe then had to vote to approve it.

And it then needs a kind of pro forma approval by the Montana Water Court, who issues the final decree, entering the rights agreed upon into the system that the state now manages according to the 1973 constitution. So there's a huge number of parties who have to sign on to this. At every step of the way, there have been roadblocks and issues and renegotiations as a result of the complexity of this process and just how many parties were apart.

So there are a couple of other contextual things that I want to bring up, because I think they're important to understanding the contentiousness of the conversations around the compact. Three court cases that-- I'm going to try to pronounce it. Ciotti I, II, and III, I guess. There were three court cases that were filed between 1996 and 2003 and argued before the Supreme Court. And actually the last one was only found during the actual negotiations. It was when the Supreme Court made its ruling.

And it recognized the distinction between state appropriative water rights and reserve water rights. And the ruling was that new and amended water use permits on the reservation had to show that their proposed uses would not, quote, "unreasonably interfere with a planned use for which water has already been reserved." And what the Supreme Court said again and again as this case was re-fought in different forms, and only the first one was actually called Ciotti, as it was fought in different forms, what they argued was that because the state and because private non-tribal water users couldn't show proof that their claims were not unreasonably interfering with the planned use, then that burden could not be met. And so a new water use permit could not be issued.

And so this decision had a few significant impacts. It gave the tribes, the CSKT, a significant amount of bargaining power, because municipalities and non-Indian reservations on the Flathead reservation couldn't apply to the state for new or amended beneficial use permits so long as the tribe's reserved rights remained unquantified. And the potential negative impact on the state of having to litigate each of the claims separately, to the tribal [INAUDIBLE] separately, was [INAUDIBLE]. It's also important to note because the non-Indian permit holders were frightened of not receiving sufficient water for their own uses or losing their water rights altogether because of the possibility of the tribes having reserved claims. And this generated political panic among non-Indian municipal and county politicians and amongst other irrigators in the region.

In 1982, the tribes in anticipation of negotiations with the Compact Commission collaborated with the US Geological Survey on an extensive drainage by drainage measurement program of groundwater, surface water, stream flow, river flow, minimum fill levels of different bodies of water. And so by the time the negotiations started in 2000, the US government and the tribes were in possession of an unprecedented amount of data about the water that was up for review.

I got to interview a long time tribal attorney who started his career in the early '80s and retired last year. So his career was bookended basically by this negotiation. What he said was that fact finding was a process of sharing data with the state to bring the state up to speed. And it's something that I think was interesting about the negotiations is that opposition, especially from legislators over the course of negotiations, was often ignorance, because just the knowledge was so one sided at the start of negotiations.

Finally, it's important to note that the alternative to negotiations loomed over the negotiations. The tribes of the state if they did not agree to a compact, the two sides would be forced to litigate each claim separately in the Water Court. That would have been very costly and taken many years. And it was a valid fear on the part of the non-tribal water users that they would be at risk of losing their state appropriated water rights because of the tribe's earlier priority dates. Even the tribes recognized that having to litigate their claims would be costly and burdensome.

And just to give you a sense, these are just the off-reservation claims that you see here. The left are 97 rights that as of 2018, it changed a little bit after that, as of 2018, the tribe was going to maintain off reservation. And these are the rights that the state thought the tribe had the ability to adjudicate if they didn't have a compact. And so if a compact wasn't reached, the tribe could have gone to court and litigated upwards of 10,000 different water claims across Western Montana. And as a result, there was a lot of incentive for the state to come to a settlement that both quantified the tribe's rights and also protected the junior rights of non-tribal water users so that this didn't occur and there wasn't decades of litigation over these rights.

So in terms of the negotiation topics, that the body kind of discussed, there were on-reservation rights pertaining to the irrigation project, on-reservation rights pertaining to the irrigation deliveries. So this is water from the irrigation project that has historically been used by non-tribal water users. And so their right to continue to receive that water. There was water from the Flathead system, meaning the Flathead River, its tributaries, and Flathead Lake. And then there were a number of non-consumptive rights.

Off reservation, there were instream flow rights as well as state law based non-irrigation rights, which I'll talk about a little more later. Actually one thing that I didn't put here is the other thing that was obviously a part of this was off-reservation rights claimed by non-tribal users, which is most off-reservation rights that were at risk as a result of this were by non-tribal users. And somehow I didn't put that on here. And then there was implementation. And so these were the discussions.

I'm going to put a kind of calendar in front of you. And I don't need you to read through all of it. This is the first of two pages. Because I really want to call your attention to a couple of things. So the first thing is the start date. The first negotiation sessions occurred in 2000. But in 2001, the state issued-- and this is after all three of the Ciotti I and II were done and the Ciotti III was currently before the Supreme Court. And despite that, the state issued yet another on-reservation permit during negotiations despite multiple rulings by the Supreme Court. And I think it's important just because it chose to accept a level of distrust and also the level of skepticism that the tribe had about the state's ability to and willingness to negotiate forthrightly.

I think it's also important that the facilitator who was brought in 2011, Edward Sheets, I was told, and I've been trying to get in touch with him and I haven't been able to, but I was told that relatively little had been decided by the time he began working on the negotiations. And he brought order to the negotiations and served as an unbiased party with which both sides could discuss. And I think the impact of him as a neutral party is really important.

I think also just the number of years that passed between 2002 and 2005, the two sides turned their attention entirely to negotiating an interim agreement once they realized how long it would take to come to a final agreement. And then because of a number of political reasons, they abandoned the interim agreement.

When the compact failed in the state legislature in 2013, because that's what occurred, the first compact was agreed to. It went to the state legislature. It failed. And much of the opposition at the time was Republican representatives expressed some concern that the compact didn't sufficiently protect non-tribal water users. And some of it was legitimate concern, though some of it appears to have been political grandstanding. Then the state and the tribes agreed to a limited reopening. Two years later when the legislature meets again, they pass it.

And then it went to the US Congress where it sat for five years in different forms with slight amendments occurring all over the place until finally it passed as a part of the COVID-19 stimulus bill in December. And just days after that, the tribe council passed it and now it's awaiting a bureaucratic review that is expected to be simple, routine.

I was told by John Carter, the former staff attorney for the tribes, that one thing that helped the revised agreement pass two years later was extensive dialogue with a couple of key Republicans who were willing to learn more about the agreement but whose opposition in 2013 faded by 2015 once they understood the thing better. So that's I think something that I will return to at the end, but just the importance of that understanding.

So this is where they ended up. On-reservation rights were protected in a number of ways. The tribes agreed to 211 total on-reservation rights. Really detailed. I didn't get into the detail here in terms of how it's apportioned, and where it comes from, where it goes. With a priority date of 1855, they then agreed to relinquish the right to call all other on-reservation rights.

The state agreed to give the tribes ownership of the-- or to the US ownership and trust of the tribe of the irrigation project provided that the tribe continued to deliver a certain quantity of water to non-tribal water users, non-tribal irrigators who have historically used the irrigation project. And that was a really contentious part of the agreement, because a number of the non-tribal users wanted the state to retain ownership. Then there were a number of non-consumptive rights.

So one quote-- I'll skip a little bit, but one quote, I want to say this is a quote from a Big Timber rancher named Lawrence Grossfield who formed a group to help support the 2015 version of the compact, the revised version of the compact. She gave this in 2015. And she said, oh, he gave it. Sorry, Lawrence. "There wasn't much in the way two years ago of an educational effort for the press or legislatures or anybody. We're going to be out and visible and just trying to spread accurate information about the compact and the whole process." And two years later after the first agreement failed, that educational process was really important.

Off reservation, the tribes retained eight off-reservation instream flow rights as well as 58 additional rights to be co-owned by the state and the tribes with very detailed parameters. The tribe has agreed to relinquish 97%, many thousands of claims protecting the non-tribal users across Western Montana. And that was hugely important.

I want to point out one thing, which is that the map I showed you earlier of the off-reservation claims, it said on the map that there were 97 off-reservation rights in 2018 that the tribe were getting. But by the time the actual agreement was passed by the US Congress, that number had dropped to 58. And that occurred because Senator Daines of Montana basically with the tribes negotiated slight changes in order to get other senators on board, the US Senators on board. So it's interesting that even once the agreement had passed, it was agreed to by the two sides, even once the state legislature had agreed to it, four years later when it was with the US Congress, they were continuing to negotiate over minor points so that they could get this thing passed once and for all and quantify the tribe's rights.

Implementation. At the very beginning, the tribes wanted a unitary system that they controlled on reservation. Over time they came to an agreement for a unitary system that was jointly controlled. And this was unprecedented for the state who had never given up some management to one of the tribes in the state and also was a significant concession by the tribes. This joint board is currently being set up with help from the state commission. And the state agreed also to give \$50 million to a number of water measurement and irrigation efforts.

The unitary system is something that a lot of the, also again, the non-tribal irrigators were very upset about, because they felt that they would lose the ability to negotiate rights, that they felt they should not have to go to the tribe for. I'll leave it at that for now.

A couple of conclusions that I want to bring up. One is that divergent knowledge is an impediment early on in negotiations. That water management should be a joint undertaking or jointly observed. I think it's really interesting that one of the major impediments in the first years was simply the fact that the state didn't have anything close to the level of understanding of the existing water on the reservation that the tribes had and that the US government had.

Second, that impartial facilitators are essential and should be utilized even before negotiations begin. That the first decade wasn't wasted. Some stuff was decided upon. But by all accounts, when Edward Sheets was brought on, things moved forward much more smoothly in a really ordered fashion and with a lot less chest beating.

And third, so when politics are bound to get in the way of an agreement's approval, it's better to include skeptical parties than to build a wall around negotiators. This is a personal thing. I think that certain state representatives and senators as well as some major irrigators might have been, if they had been educated on the negotiations prior to the document's public release, it's possible, I don't know if this is for certain, but it's possible that some of their resistance could have been mitigated. And then again, adaptive, which we've talked about before this class, adaptive governance necessitates shared control.

Finally, I didn't know what to do with this. It's one question I've been grappling with in the past days as I've been editing my doc by my written report. Which is basically, what should we make of the fact that even after the CSKT, after the tribes have negotiated with everybody in good faith they had to give up additional rights in order to get it passed by the US Congress? Is there another system, given the complexity of the process, another system that could have been set up to help create a process that wouldn't have required as much legal approval? Or is that simply a fact of history and we need to accept it? And just it's a question I'm interested in. And with that, I will open it up for comments and questions. And I know that was a lot, so thank you all.

DR. GAIN: Thank you, Aron, for the nice presentation. So now I would like to ask Husnain to make comments and feedback.

AUDIENCE: Very well done, Aron, with your presentation. You really picked a very complicated case study, because it involves a lot of stakeholders. So as it involves a lot of stakeholders, my first question would be, how do you think that all stakeholders came into one page and why do you think this treaty took so much time to finally conclude? Because it involved a lot of litigation. What was the things which were not going in the right direction before? And what was the thing which happened this time to make it in the right direction?

STUDENT PRESENTER: In terms of why it took so long, there are a couple of things. When the Water Commission was created, when the Compact Commission was created in the late '70s, they had about a little over a dozen agreements to negotiate with the federal government and with the state's tribes. And they purposefully did all of the others and then did the Flathead reservation one because the Flathead reservation was the most complicated.

And I think that actually wasn't a good thing. I think that there was a lot of study and animosity and kind of divergence that occurred in those intervening decades. In part, I think, because the tribes saw what was coming out of these other agreements and immediately began formulating alternate things, alternate ideas, because they didn't like what the other agreements were saying. And so a lot more could have been done earlier, I think, if discussions had started in the early '80s, for example, or the mid '80s.

I think the other things that impeded the timeline first is that partially because of that, the tribes came into the negotiations with a lot of preconceived notions about what the final agreement should look like. And there were a lot of news reports, for example, after their first formal negotiation session. All of these things that the tribe said that they wanted in the final agreement that the states immediately threw up their hands and said, absolutely not. And negotiations actually shut down for a year at that point.

And so if those conversations could have started in the '80s when the tribes were beginning their process of studying the water quantity, the water quality, and if the questions regarding the implementation could have been ongoing, I think a lot of anger could have been mitigated. So a part of it was just there was so much confrontation going into the agreement and very little trust.

And the other thing I think took a lot-- the second thing I want to say is that I think that the role of the negotiator was really important. Without the negotiator, a lot of the opportunity for building trust didn't occur. And they became venting sessions, the negotiations, and it wasn't always a productive thing. So that's the question.

In terms of what took so long, I think the negotiator helped a lot. And then I think eventually having-- I mean, and this is where I think the water diplomacy framework does come to bear significantly, which is that I think once the two sides did have a shared understanding of the quantity of water and all the different locations and of the various legal arguments of the potential uses, once there was that shared understanding, it was a lot easier to come to agreements, because they understood from what point they were compromising from. Whereas the tribes went into it with a lot more understanding and would put up a very hard wall to begin with. And so having that shared understanding was really important. Sorry, I think I rambled on a little bit there, but I hope I got to your questions.

DR. GAIN: So Husnain, do you have further a specific question?

AUDIENCE: Yeah, one more. Yeah. It is related to the water diplomacy win-win framework. How do you think both parties agreed on this? On a win-win side, for example, I read somewhere, I was doing some research on it yesterday, and I read that the tribes were allocated the national bison range, which I think somehow was an attractive thing for them for agreeing to this treaty.

There's a secondary note with this question is, you mentioned in one of your slides that the number of non-tribes is more than the actual tribal people. So given the-- I just want to understand from you what is the percentage of tribal people there and non-tribal people. And how do you think that balances or evens out the whole treaty and things in the Montana region?

STUDENT PRESENTER: So just to clarify, the national bison range is on the Flathead reservation. So the tribes were given rights over the management of that range. But it was already on the reservation. It wasn't something off reservation that they were fighting over. It was on reservation land that was under the legal authority of the tribes but managed in trust by the federal government until this occurred. In terms of the-- sorry, what was your question about the numbers of non-tribal members?

AUDIENCE: Yeah. I wanted to know that in this whole Montana region in which the treaty is enforced, what is the percentage of the tribal people are there and the non-tribal people? How much benefit are they going to get, the non-tribal people?

STUDENT PRESENTER: So I can't remember the population of the tribe. I don't remember right now. I believe I believe it's about 8,000 and about 60% of the members live on the reservation. So I believe it's-- I don't know. The tribal members, maybe it's 5,000. I can't remember exactly right now how many tribal members live on the reservation. It's a few times that in non-tribal members. I'm not sure of the exact numbers, again, of non-tribal members who live on-reservation but it's a few times that. The town of Polson, which is the biggest town on the reservation, has a population of about three and a half thousand. There are many other small towns.

So those rights, the tribes were given-- this agreement quantified, just to clarify, maybe I didn't make this clear before, this agreement quantified the tribe's rights on the reservation. But then there's still other water. So that other water then, because the tribe's rights are quantified, can now be claimed by non-tribal users on the reservation, if that makes sense.

With regards to the irrigation project, the irrigation project included a number of delivery . schedules and those delivery schedules were specifically to provide water to non-tribal irrigators who have historically used that water. And there was a lot of disagreement about that. Those irrigators, many of them argue that the amount of water they would be allocated was insufficient and they were going to have to move their lands. And the state of Montana agreed to actually support them by helping to invest in drip agriculture and other things. But it will protect over the long term their rights, the non-tribal rights on the reservation. But the one limitation is that the tribal rights, which are quantified, now have priority.

PROFESSOR SUSSKIND: I took Husnain's question to refer to proportionality. If you look at the overall benefits that are allocated to the federal government, the state government, the tribe, and non-tribal members living on the reservation, does the final agreement reflect some kind of proportionality, equal proportion of gain? However measured, did everybody come out roughly the same relative to the gains that they got? Not in terms of how many people, but just in terms of these different categories.

STUDENT PRESENTER: Yeah. That's a good question. So in terms of number of people, I don't know. In terms of the categories, the non-irrigators on the reservation, yes. So non-irrigators meaning not the irrigation project users. The non-irrigators definitely did. The municipalities are going to have sufficient water to grow. Homeowners and developers can build again for both reservation and non-reservation and non-tribal members. There's a significant amount of enough water and now enough legal clarity that that was a gain in itself.

The group off reservation as well, I think that a lot of the off-reservation, definitely the non-tribal members of the citizens of the state gained a lot because the tribe event gave up a lot of their claims. The one area where I think there's still disagreement on and I don't have a-- I think that it's still very controversial and it will be throughout implementation-- is on-reservation irrigators I think are one group that's still a number of whom still feel like they did not have sufficient-- they did not gain sufficient protection as a result of the negotiations.

PROFESSOR SUSSKIND: Good. That's a good answer. Thank you.

DR. GAIN: Anselmo, do you have any feedback or a question to Aron?

AUDIENCE: Yes, I will be very quickly. First, Aron, congratulations for your case. Very well done. Very well. It's a complex case study. I just want to highlight some points here. I appreciate the historic context that you gave from 1855 into 2000. Also I liked to learn a lot about the "first in time, first in right" that you mentioned before that 1973. And you mentioned that the facilitator arrived in the negotiation only in 2011. But even with the facilitator, it took 9 years to reach the agreement.

STUDENT PRESENTER: So to clarify, it actually took-- so the facilitator arrived in 2011. They reached their first agreement in 2013. So that was when they reached the agreement. Then as a result, the result of the state legislature voting it down, they renegotiated the agreement in 2015. And at that point, it was just sitting in Congress. So they weren't negotiating anymore. There were some minor things that were changed, and the facilitator is actually still involved. But it actually only took two years with him to reach that agreement.

AUDIENCE: Oh, two years. Oh, great. Aron, you don't have to do it here, because I know Gemma has to present the Columbia presentation, but if you can describe more in your paper the negotiation process with the Compact Commission, I like a lot the slide you post there with the 90 members. And if you can compare with the water managed board, that's only having five members, right? Six members, but only five can vote. It's only-- I really appreciate. Congratulations.

STUDENT PRESENTER: Thank you. Trying to understand the negotiation process has been really tricky. I've read and I've heard that there are transcripts of the negotiations out there, but I've actually called around. I've called the DRC and a number of other people who would probably do them, and I've emailed people who mentioned them, who have cited them, and I can't find them. I have a lot of the, what's it called, the topic lists, but not the-- but not the transcripts themselves, which is a disappointment.

DR. GAIN: So any other question or comments from Flora or Gemma? OK.

STUDENT PRESENTER: Thank you all. Appreciate your feedback.

DR. GAIN: Yes. Maybe before Larry, I would like to ask one thing. So how does national politics played a role? Because I learned that the corporation-- the state legislator, specifically the Republican legislator, is not in favor of this water right issue. And there is some issue within the Republican and there are some conflicts. So how does it play a role in the negotiation process in this treaty?

PROFESSOR SUSSKIND: I defy anybody to explain that. Anybody. I don't care who they are. Because there's what the system is designed to do and there's what the political system actually does. And what it actually does is a function of who has the majority and who's in leadership in the executive branch. And it doesn't matter what it says on paper about what is a state's right, what is a national government's right, what is executive, what is legislative. Doesn't matter. It all changes every time there's a shift in power and relationships.

So there is no way to answer the question about what is this crazy intergovernmental system we have supposed to do relative to Indian rights. Because you then also have the court entering. We have these three branches. And the Supreme Court got involved in this case at one stage, as you heard from Aron. And you have the state legislature and you have the federal government legislature, the Congress. But you also have the agencies. And the agencies have responsibilities for the tribes, the Interior Department.

It is an insanely complicated system, and it's very hard to know what's going on even when it's happening, because it's not transparent. And people make all kinds of private deals and other issues get traded off against the issue you're interested in. And you don't even know that that's why somebody voted a certain way. They didn't care about the issue, but they got something from somebody else for something else. So unraveling all of that, I mean, I think Aron did a wonderful job, as best you can do, of at least getting a timeline and looking at the outcomes. But the process? I mean, even with the transcript, it's indecipherable.

And everything related to Native Americans in the United States doesn't go the way the law says it's supposed to. Every treaty has been broken, continues to be broken. Every promise, everything that the US government promised and committed to, none of it's been upheld. And so yeah, I can point to what the system says. And somebody can hold up a treaty and say, look here. I'm guaranteed certain rights. Yeah, well, try to get it enforced. So it's the complexity of the US intergovernmental system and the extent to which it's really not transparent, what's happening, make it impossible to answer your question.

DR. GAIN: Thanks. So maybe for the final paper, I would like to ask, because this is one of the treaty that is successful recently in terms of water treaty. So maybe you can share very specific lessons learned from the negotiation process. I think that would be much more helpful in terms of water diplomacy aspect. I think as this is very new kind of treaty that is successful and how the process works and what are the general lesson learned. I think that would be much more interesting things.

PROFESSOR SUSSKIND: I really liked the four concluding points that you had. I think those were very strong. And as long as in the text you will elaborate on them slightly, but as four concluding points in terms of what can be learned from this case, I think they're terrific.

STUDENT Thank you.

PRESENTER: