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July 6, 2020

Mr. Edward Amestoy
Phillips County Attorney
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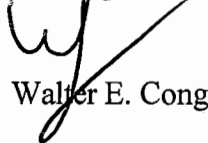
Re: Compact Bills

Dear Ed:

A copy of the latest information is attached. The legislature hearing request is interesting and would help if it would happen.

The biggest issues seem to be it' not the compact and it's a secret.

Best regards,



Walter E. Congdon

WEC:kc

Cc: Gilles Stockton



LAKE COUNTY

106 4th Ave. E.

Polson, Mt. 59860

July 1, 2020

Senate Committee on Indian Affairs
8383 Hart Senate Office Building
Washington, D.C. 20510

RE: SB-3019 - Supplement to the record

Dear Committee and Staff,

In particular, in respect to the record created June 24, 2019 in the Senate Indian Affairs Committee hearing, we offer the following comments;

- 1) SB3019 does not ratify and confirm the Montana Compact; S. 3019 provides as follows:
Page 7, Sec. 4. RATIFICATION OF THE COMPACT. (a) (1) of 3019 states "As modified by this Act, the Compact is authorized, ratified and confirmed."
We wonder "what modifications "have been made to the CSKT Water Compact? In spite of numerous requests by the County, no list of specific changes to the CSKT Compact have been provided.
Page 7, Sec. 4 RATIFICATION OF THE COMPACT. (a) (2) states "Any amendment to the compact is authorized, ratified and confirmed to ensure the compact is consistent with this Act."
What amendments have been made to the CSKT Compact? Again, no list of amendments has been provided to stakeholders.
Pages 9 and 10, SEC. 5. TRIBAL WATER RIGHT (b) (3) states "In the event of a conflict between the Compact and this Act the provisions of this Act shall control."
Specifically, what will the Settlement Act control? Does the Settlement Act control funding, enforcement of water rights, assessments of fees, etc. and does that change the CSKT Compact?
Page 7, SEC. 4 RATIFICATION OF THE COMPACT (b) (1) states "To the extent that the Compact does not conflict with this Act, the Secretary shall execute the Compact."
Have the conflicts between the Compact and Act been identified? If so, the County has not been provided any list of conflicts. What is the deal – i.e. Compact – what modifications, what conflicts? We don't know – clearly the bill does not ratify the Compact as passed by the Montana Legislature in 2015.
- 2) The Act is unclear about waiver of water claims by CSKT and USA, and the bill expands claims to include those relating to water quality per page 37, section (c) (1) (B) (i), (ii), (iii), (iv), including claims under CERCLA, Clean Water Act, or Safe Drinking Water Act.

The CSKT Compact did not include CERCLA, Clean Water Act or Safe Drinking Water Act claims, hence the Compact does not quantify or clarify the claims. The result of no

quantification or clarification of claims is that litigation will be necessary to adjudicate those claims, and those related claims are not relinquished by CSKT or USA. This impacts not only water rights but all projects using or impacting water and related resources in the Columbia and Missouri drainages.

- 3) During the hearing on S. 3019 on June 24, a representative of the Department of the Interior indicated that "an amendment with CSKT tribes as a redline amendment has been reached."

We have no idea what the amendments are and desire to reserve the ability to comment on these for the record when made available. Amendment without public review and approval of the Tribe only frustrates our ability to make substantive comments or proposals regarding the legislation and its impact on our citizens.

- 4) The Act takes private property and public property from local citizens and local governments.

a. Lake County Private property rights are affected:

SEC. 7. IRRIGATION ACTIVITIES (2) page 22, requires an easement be given by landowners, who shall as a condition of MVP service or Flathead Indian Irrigation Project shall, "grant, at no cost to USA or Tribes such easements and rights of way as may be necessary for: A. Construction activities

B. Operation of FIIP or Mission Valley Power

This increases the scope of easements far beyond rehabilitation of ditches or canals. This congressional mandate that a landowner "shall grant" Page 22, (B) (2) is a taking and does not require the Secretary of the Interior action.

It also is ironic in that Section 7, part (d) 1, (A), page 21, requires the CSKT to only give easements to USA for construction only, and only to USA.

The consequence is that landowners must give much broader rights for nothing while CSKT does not.

b) Our community assets and public property rights are affected:

SEC. 8. SETTLEMENT TRUST FUND, page 29, provides the Tribes may spend funds to "plan, design, construct, operate, maintain, and replace community water distribution and wastewater treatment facilities on the Reservation."

This may include loss of existing community drinking and wastewater systems with no compensation. This will include fees for service, but how do citizens set those or afford them? This impacts both water and wastewater to include drinking water, industrial and sewage and storm water. The Act provides no process to appeal, or determine compensation to the taxpayers, entities, and fee payers who own the systems?

c) This impacts all public roads:

SEC. 8. SETTLEMENT TRUST FUNDS page 29, part (G) 14, provides, "within the supply and distribution area of FIIP or if it intersects with", Tribes may repair, rehabilitate or replace "any public or tribal culverts, bridges and roads." "Supply" is upstream sources. *No plan or contract or participation guarantee is provided for repair, rehabilitation or replacement activities for local government, or the state, or USA. Public roads include city streets, county roads, state highways like MT28, MT35, etc. and US highways 93 and 2. The concerns of convenience, planning and necessity are all real to local and other government units, who own and manage these structures. No appeal, no rules, no mechanisms for local participation in these projects are provided for in the Settlement Act. This provision violates both treaties as a right to build roads and travel is provided therein, and this provision makes impossible one or both things. This converts public property – improvements to CSKT – USA control or use.*

- 5) Why is this legislation being conducted in secret?

Lake County has tried to obtain a copy of the "CSKT Damages Report" referenced in the Act. In spite of requests to Montana Attorney General Tim Fox, Congressman Greg Gianforte, the US Department of Justice, Senator Daines, Senator Tester and the regional BIA office in Portland, no copy has been provided.

The Act is a release for claims encompassed within the Damages Report, see page 35, SEC. WAIVERS AND RELEASES. (10) (a) 3 (D).

What damages, what amount, what offsets, what interest rate? Is there an offset for depredations by either party per the treaties, an offset for reparations as provided in the treaties? Why are these questions being ignored? We cannot make substantive comments on the record for the bill without review of the "Comprehensive Damages Report" that contains the record of damages compiled by CSKT.

- 6) Land title acquisition by USA in Trust hurts local government including schools, fire, etc., and taxpayers. First SEC.12. MISCELLANEOUS PROVISIONS, page 50, (1), (G), (i) provides lands acquired pursuant to exchange will be vested in USA trust, as does private exchange, page 52, (2) (F) (i).

This provides no PILT or property tax payments for lands put in trust thereby impairing all taxpayers. Converting public land of State Trust per Section 12, i 1, page 48, to USA in Trust for CSKT impairs public use, public utilization, and public access to navigate waterways, etc., recognized by Treaties.

This may limit access by all of the public if limits similar to some existing sites limiting access to Tribal Members only are implemented.

- 7) These concerns are also summarized in the letter from Montana Cattlemen's Association that is attached, including issues surrounding a transfer of the National Bison Range.

Thank you for your consideration of these issues.

Very Truly Yours,

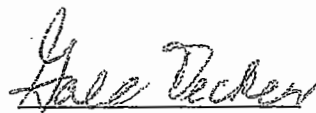
BOARD OF LAKE COUNTY COMMISSIONERS



William D. Barron, Chairman



Dave Stipe, Member



Gale Decker, Member

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With A "Steak" In Montana's Future

April 20, 2020

Senator Steve Daines
320 Hart Senate Office Building
Washington, DC 20510

Dear Senator Daines;

The Board of Directors of the Montana Cattlemen's Association has studied your proposed Bill (S 3019) which aims to finalize water rights issues between landowners in Montana and the Confederated Salish Kootenai Tribes (CSKT). We certainly applaud this effort and sincerely desire a resolution agreeable to all parties. However, we find several provisions in your bill that requires clarification and/or modification.

We are, in addition, concerned that a number of affected parties feel that their interests have not been adequately considered. The preservation of an open public process in governance is an important principle that should be adhered to in every manner possible. In this regard, MCA requests that you hold hearings to allow these citizens to express these concerns.

The points upon which we would like clarification or modification include:

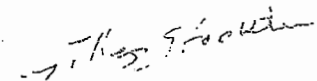
1. In your Bill, the CSKT relinquishes all water rights claims outside of their direct reservation interests (page 32). Yet under sub-section c (page 37) it states that the tribe "...shall retain ...activities affecting the quality of the water..." under the Clean Water Act, CERCLA, etc... This sub-section needs clarification. Does the tribe relinquish all water rights claims and if not - why not?
2. The National Bison Range is a 18,500-acre national treasure, open for the enjoyment of all citizens and tourists visiting Montana. We do not understand the reasoning for transferring the National Bison Range to the CSKT, and in this regard request a clarification as to why this is included in a Bill whose purpose is to settle conflicting water rights claims. If, indeed, the transfer goes ahead, we see two points that should be modified.
 - a. The provision that authorizes the transfer does not require that the CSKT continue to manage the National Bison Range in such a manner that it is freely open to all visitors. We feel that this should be clearly required as part of the agreement.
 - b. Because the bison are currently owned by the people of the United States, they are classified as "wildlife." Under no circumstances should these bison, once transferred to a private entity - like the CSKT - continue to have a wildlife legal status. Instead they should be reclassified as livestock. Our objection is based on the increasing probability that elk will infect these bison with brucellosis. If/when this happens, it is imperative that the bison come under the legal authority of the State Veterinarian who can require measures to mitigate the infection. The future of Montana's largest

industry is at risk, unless the bison's legal classification is changed to livestock. We most strenuously insist that you rectify this matter in the Bill.

3. The transfer of ownership of 36,800 acres of state lands within the Flathead Reservation poses a number of problems that also requires clarification:
 - a. These state lands include state parks that are enjoyed by all Montana citizens and school trust land that are currently leased by farmers, ranchers, and loggers. Many of these lessees have made important investments on these lands for which there is no mention of compensation. Perhaps the better approach would be to include a provision in the Bill that requires the CSKT continue to administer these lands in the same manner and under the same regulations that is used by the State of Montana?
 - b. To recompense the State for the transfer of state lands to the CSKT, the Bill proposes that federal lands from somewhere else in Montana will be transferred to the State. However, the Federal Government pays the counties a payment in lieu of taxes (PILT), refuge revenue sharing, and other forms of federal income transfers on these lands, which the counties depend upon to fund their services. How will counties make up this lost revenue?
 - c. In addition, easements for roads and utilities on these State Lands are not adequately addressed. The public and lessees should be allowed to retain those rights of way and easements and this guarantee should be included within the language of the Bill. Similarly, control over repair and maintenance of local, county, state, and federal infrastructure should be retained by those jurisdictions. We urge you to rectify these deficiencies.
4. Communication from your office indicates that this Bill settles a "new compact" that supersedes the compact negotiated by the State of Montana. Please supply us with the text for this "new compact" so that we can compare its provisions to that of the CSKT Water Compact.
5. It is not clear what jurisdiction will apply to off reservations lands or rights of way of the tribes resulting from a) expanding tribal land ownership b) expanding rights of way and c) expanding water claims? The Act does not waive U.S.A. immunity and provides no remedy for public appeals and dispute resolution, which we feel should be preserved. We request the clarification of these issues.

There are other issues that also need clarification, but since they pertain to the counties and citizens directly affected by this water rights settlement Bill, it would be better if they represent their own concerns. MCA, however, looks forward to having the issues outlined above clarified and modified where appropriate. In addition, we would very much like the opportunity to participate in hearings in order to represent the interests of Montana's cattle producers.

Sincerely yours



Gilles Stockton, President
Montana Cattlemen's Association

Cc: Senator Jon Tester
Congressman Greg Gianforte
Governor Steve Bullock



MONTANA STATE LEGISLATURE

MONTANA STATE CAPITOL
PO BOX 200500
HELENA MT 59620-0500
PHONE: (406) 444-4800

SENATOR SCOTT SALES
PRESIDENT OF THE SENATE
REPRESENTATIVE GREG HERTZ
SPEAKER OF THE HOUSE

June 30, 2020

Chairman Hoeven,

We would like to request that the Senate Committee on Indian Affairs hold a field hearing in Kalispell, Flathead County, Montana on S. 3019, the Montana Water Rights Protection Act. The combined populations of Flathead, Lake, and Sanders Counties is roughly 13% of the state population, making it an ideal location for a hearing. Furthermore, we ask that at least one such hearing be held at a time of day that would permit as many Montanans as possible to participate and have their voices heard. If a second hearing can be accommodated, we would suggest Great Falls, Cascade County, Montana as it is east of the continental divide.

Along with the two-thirds of Montanans that could be negatively impacted by passage of this legislation, we believe it is imperative that your committee members have the opportunity to hear from those who stand to lose so much. Signed nearly 165 years ago, the original Hellgate Treaty has no mention of water rights for the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation. If passed, this legislation will set a precedent for tribes across the nation, and perhaps into Canada as well, looking to pursue similar action – making it all the more prudent to hold a field hearing in Montana's Flathead Valley. During your committee's hearing on June 24, 2020, comments by multiple senators, such as Maria Cantwell, indicate that this will be a model for other tribes going forward.

We appreciate your consideration and look forward to working with you to ensure that this proposed field hearing is a success.

Respectfully,

Sen. Mark Blasdel (R-Kalispell)
President Pro Tempore
Vice Chair, Rules Committee

Sen. Cary Smith (R-Billings)
Senate Majority Whip
Vice Chair, Finance & Claims Committee
Vice Chair, Public Health, Welfare & Safety Committee

Rep. Mark Noland (R-Bigfork)
Chair, Business & Labor Committee

Rep. Forrest Mandeville (R-Columbus)
Chair, State Administration Committee
Vice Chair, Rules Committee

Rep. Dan Bartel (R-Lewistown)
Chair, Joint Subcommittee on General Government
Vice Chair, Appropriations Committee

Rep. Wendy McKamey (R-Great Falls)
Chair, State Administration & Veterans' Affairs Interim Committee
Vice Chair, State Administration Committee

Rep. Theresa Manzella (R-Hamilton)
Vice Chair, Natural Resources Committee

Rep. Matt Regier (R-Kalispell)
Chair, Joint Subcommittee on Judicial Branch, Law Enforcement, & Justice
Vice Chair, Legislative Administration Committee

Rep. Bob Brown (R-Thompson Falls)
Chair, Fish, Wildlife, & Parks Committee
Member, Water Policy Interim Committee

Rep. Derek Skees (R-Kalispell)
Chair, Energy & Telecommunications Interim Committee
Chair, Rules Committee
Vice Chair, Ethics Committee
Vice Chair, Federal Relations, Energy, & Telecommunications Committee

Rep. Peggy Webb (R-Billings)

Rep. Tom Burnett (R-Bozeman)

Rep. Greg DeVries (R-Jefferson City)

Rep. Lola Sheldon Galloway (R-Great Falls)

Sen. Dee Brown (R-Hungry Horse)
Chair, Legislative Audit Committee
Chair, State Administration Committee
Chair, Committee on Committees
Vice Chair, Business & Labor Committee

Sen. Al Olszewski, MD (R-Kalispell)
Vice Chair, Joint Subcommittee on Health & Human Services

Sen. Roger Webb (R-Billings)
Chair, Tax Committee

Sen. Jennifer Fielder (R-Thompson Falls)
Chair, Fish & Game Committee

Sen. Keith Regier (R-Kalispell)
Chair, Judiciary Committee
Chair, Ethics Committee

Sen. David Howard (R-Park City)
Chair, Public Health, Welfare, & Safety Committee
Vice Chair, Ethics Committee

Sen. Mike Lang (R-Malta)
Chair, Local Government Committee
Vice Chair, Joint Subcommittee on General Government
Vice Chair, Agriculture, Livestock, & Irrigation Committee

Sen. Kenneth Bogner (R-Miles City)

Sen. Bob Keenan (R-Bigfork)

Rep. Brad Tschida (R-Missoula)
House Majority Leader

Rep. Carl Glimm (R-Kila)
Chair, Appropriations Committee
Member, Water Policy Interim Committee

Rep. Alan Redfield (R-Livingston)
Chair, Taxation Committee
Chair, Revenue Interim Committee

Rep. John Fuller (R-Kalispell)
Chair, Tax Committee