

March 3, 2020

The Board of County Commissioners met at 9:00 a.m. in regular session in the Commission Office of the Granite County Courthouse with Chairperson Bill Slaughter and Commissioners Scott Adler and Charles Hinkle attending. Also attending was Executive Assistant Mike Kahoe. The session convened with the pledge of allegiance.

Road and Bridge Superintendent/Solid Waste Manager Paul Alt met with the Board and gave his report. The report included an individual who is plowing snow on an unmaintained county road, which has brought complaints from snowmobilers. The Board agreed that the snow can be plowed so the individual plowing snow can get to his property. Paul Alt noted that contractors are hauling in large amounts of demolition waste to the solid waste sites and the current charge to in-district customers is not covering the cost to the county for disposal. Also, the contractors should give notice to the solid waste sites. County Attorney Blaine Bradshaw indicated that a change in the fee should be on the next Board agenda. There was also discussion on recycling of cardboard, which had been discontinued because it does not cover expenses at this time.

The Board reviewed the form for the county Encroachment Permit Applications. Paul Alt suggested a change on the location marking to include the name. Commissioner Adler moved to approve the revised application form. Commissioner Hinkle seconded the motion. There was no public comment. The motion carried unanimously.

Georgetown Lake level was reported at 6,428.97 feet, according to the USGS gage and the dam tender's report. The lake is approximately 6.36 inches below full pool. The outflow is estimated at approximately 35 cfs. Commissioner Hinkle moved not to change the outflow and Commissioner Adler seconded the motion. There was no public comment. The motion carried unanimously.

The Board reviewed the rates for employee health insurance renewal with the MACo Health Care Trust for the 2020-2021 fiscal year. It was noted that there is no premium rate increase for the medical plan or the dental plan and a 5.8% increase in the vision plan. Commissioner Adler moved to approve the employee health insurance renewal and Commissioner Hinkle seconded the motion. There was no public comment. The motion carried unanimously.

As an administrative matter, Commissioner Adler moved to have the FLAP (Federal Lands Access Program) project for a road improvement at Georgetown Lake on the agenda again and Commissioner Slaughter seconded the motion. There was no public comment. Commissioners Slaughter and Adler voted in favor of the motion and Commissioner Hinkle voted to oppose the motion.

The Board considered the draft revised Credit Card Policy for the Public Health Nurse, the Road and Bridge Superintendent and the general use credit card. County Attorney Blaine Bradshaw recommended the specific policy under the recently adopted Resolution (general policy) regarding credit cards. Commissioner Adler moved to approve the policy and

Commissioner Hinkle seconded the motion. There was no public comment. The motion carried unanimously.

The Board reviewed correspondence that the Montana Association of Counties (MACo) Worker's Compensation Trust will not be issuing new policies after June 30, 2020, which will force the county to find work comp coverage through another provider. Insurance agent, Rody Holman explained that his company, PayneWest, can represent the county through the state fund and that if the county goes with the Seitz Agency, as recommended by MACo, the loss control services provided by PayneWest would be lost. The risk retention fund dividend would not be available, but the county would still be eligible for a dividend based only on the county's experience, not the entire group's experience. Rody Holman stated that he would advocate strongly for the county as he is familiar with it after years of service as the insurance agent. Rody Holman noted that there is schedule credit which could be applied through the state fund. Commissioner Adler moved to appoint PayneWest as the exclusive agent for workers' compensation insurance coverage for Granite County. Commissioner Hinkle seconded the motion. There was no public comment. The motion carried unanimously. The Board expressed appreciation to Executive Assistant Mike Kahoe for bringing this matter to the Board's immediate attention. County Attorney Blaine Bradshaw and Scott Sylvester with the *Philipsburg Mail* newspaper attended.

The Board considered the recommendations of the Granite County Forest Management Advisory Committee (FMAC) for policy updates to be presented to the Montana Association of Counties. Commissioner Hinkle noted that the FMAC group had voted in favor of the recommendations. Commissioner Hinkle moved to accept the recommendation of FMAC on the policy updates and Commissioner Adler seconded the motion. There was no public comment. The motion carried unanimously. Scott Sylvester with the *Philipsburg Mail* newspaper attended.

Sheriff Scott Dunkerson met with the Board to report on the recent jail peer review by the Montana Sheriff's and Peace Officers Association. Sheriff Dunkerson reviewed the areas in which the jail excelled and the areas which need improvement, which included an annual fire inspection. Sheriff Dunkerson noted that the fire alarm system needs to be repaired and he plans to put that in the next fiscal year's budget request. Sheriff Dunkerson noted that the facility is 95% compliant and he is happy with the results of the review. He presented a copy of the peer review to the Board. Discussion was held on the School Resource Officer position and the recent change in the officer in the position. Sheriff Dunkerson noted that the officer was not available to spend as much time in the schools as he would like, but he will work to improve that. Also, a deputy is retiring in May and he has a person hired and in training to replace that deputy.

Maria Stoppler, CEO/DON of Granite County Hospital District, met with the Board and presented a financial update. Including projected cash available of \$58,887, projected deposits of \$189,000, accounts payable \$(100,000), projected cash reserves of \$89,000 (seven days of operation). She also included a utilization report, comparison to prior year, a revenue analysis, a balance sheet, accounts receivable and an administrator's report dated

February 25, 2020. She noted that the accounts receivable is the lowest it has ever been and the line of credit at the local bank did need to be utilized. She reported on the CT scan and building project and noted some problems with the power company to combine the two service lines into one. She noted that the cost of the electrical cabinet and foundation necessary to hook up the power will be significant. The annual health fairs are scheduled in May in Philipsburg and Drummond.

The Board discussed the provisions of the federal Water Rights Protection Act. Commissioner Hinkle stated that the bill is so complex that it is difficult to understand. He referenced Skagit County in Washington where no new wells are allowed due to the inflows; he expressed his concern that tribes downstream in other states could make a call on junior Montana water rights. County Attorney Blaine Bradshaw said that he has reviewed the proposed bill, but still needs to research questions the Commissioners have raised. Commissioner Slaughter agreed that it is a complicated bill and that when the CSKT Compact was passed through the Montana legislature that it was thought that it couldn't be changed, but U.S. Senator Steve Daines did reintroduce a bill, similar to Senator Jon Tester's bill, which clarifies some points of the compact. Commissioner Slaughter said that his concern is the off-reservation water rights and Senator Daines' proposed bill is different than the CSKT compact and different than Tester's bill. Daines' bill gives protection in Section 10 as tribe will waive mostly all off-reservation claims "with prejudice," which is a good thing; also, water disputes will be held in state court, not in federal court. The bill is not perfect, but it is the best thing we have. He recalled that the off-reservation water rights were being bought through this bill. Patti Kanduch stated that she is against the water compact and is in favor of the People's Compact. She quoted a portion of the Stephens treaty and stated that all tribes from here to the coast had the same treaty; a federal judge determined that it had to do with salmon fishing rights, but not to do with water rights. She quoted other federal judgments regarding water rights. Commissioner Slaughter commented that the same issue was brought up in the Montana legislature, which was brought to the full House of Representatives without testimony. Commissioner Adler excused himself from the session at 1:45 p.m. Ron Catlett, Senator Daines' field representative from Kalispell, joined by speaker telephone and reviewed the history of Senator Tester's bill and the CSKT Compact and the consequences to off-reservation water rights. Mr. Catlett stated that lengthy discussions were held with federal officials and local people and attorneys to determine the best path forward. Important changes from previous proposals; tribe relinquished water rights in the Flathead basin; cases would be in state court instead of federal court; changes to water rights on the reservation; want this to be final so the tribes agreed to settle "with prejudice," which means that it can't be changed; and it is important to Granite County. He referred to the Stephens Treaty and the Treaty of the Hellgate, and took the People's Compact to a federal judge for interpretation and referred to other federal court cases. The tribes filed 10,000 water rights and in this bill the tribe relinquished 97% of water right claims; avoids thousands of Montanans having to obtain lawyers and Senator Daines thought it more prudent to settle this. The water court had been staying further adjudication and would lift the stay unless it saw significant progress in settlement; it gave three more years of the stay. Commissioner Hinkle asked if Flint Creek

and Rock Creek water rights are in the bill and Ron Catlett indicated that they are in conjunction with the tribe and the state FWP with a priority date of 1971; Milltown Dam water right has a priority date of 1904. Commissioner Hinkle reviewed that the Swinomish Tribe controlled the inflows to the Skagit River, and now there is a moratorium on well drilling. He inquired if that could happen in this case. Ron Catlett responded that this is a water compact not an MOU, this would be in federal statute and have the force of law, these are not new water rights, so there would not be the same impact. Commissioner Hinkle said that there should be a provision that people in the lower Columbia River Basin could not make a call on water in Montana. Ron Catlett noted that tribes in the lower Columbia River Basin cannot make call on this water as long as the state is within its prescribed water usage. County Attorney Blaine Bradshaw said that he would research that question and also the Skagit County issue. He noted that the state already has rights on Flint Creek and Rock Creek. Barbara Clark stated that she has small family ranch on Rock Creek and wants to know if the compact has been modified in any way. Ron Catlett replied that it is intact, and the changes are being made through the federal side of things; cannot change the fundamental body of the compact, but clarifications were made. Barbara Clark inquired if the Clark Fork Basin is intact. Claims have been relinquished with prejudice. Discussion was held on when water rights were filed. Ron Catlett noted that the tribes filed 10,000 claims across Montana after the compact was passed by the legislature. Under the bill, Section 10 states that the tribes will execute a waiver on water rights. He noted that the Clark Fork Basin is included and the tribe only retained a few water rights. Barbara Clark inquired whether Indians have water rights to Clark Fork water when it leaves the state. The minimum flow rate was discussed and Barbara Clark noted that the flow rate has dipped below the minimum flow rate often, so junior water rights could be called. Ron Catlett noted that irrigation water can be called from the main stem of the Clark Fork, not tributaries. He noted that the Milltown dam has owned that right for many years. Barbara Clark said that she believes this is not a good plan and she hopes that the people of Granite County read and understand the bill, and that Commissioner Slaughter should withdraw his letters of support. Commissioner Slaughter asked Barbara Clark what would be a better plan. Ron Catlett noted that the tribes water rights on Flint Creek are in 1971 and do not affect water rights on Flint Creek. Ron Catlett said that the tribe agreed to assert time immemorial on only a few water rights. Also, a point of clarification is that if congress doesn't take action, it will end up in state water court and then federal court. Discussion was held on how with Daines' changes these water rights are protected. Ron Catlett noted that the Klamath Decision ended up costing the users millions of dollars and the tribes won everything. County Attorney Blaine Bradshaw noted that if this is not passed that the remedy would be litigation. Elena Gagliano noted that the *Philipsburg Mail* newspaper is here. She went over a packet of information and she requested that it be included in the minutes. (That information follows this paragraph.) She referred to a letter from 2008 from FERC regarding Flint Creek Hydroelectric; imagine if the Indians come in on this; the licensing on Flint Creek was a big joke; why are the tribes being gifted water and it won't be long until the tribes claim the power from the dams; the Blackfeet Water Compact was passed by 75% of the vote, and no one had to give up any water; CSKT Compact passed by only 3 votes, which is

unconstitutional, as it should have been 75%; Hellgate Treaty does not guarantee any water; the reservation has the water it needs to make it productive; the Daines bill was written by lawyers; quotes from a letter from state Senator Verdell Jackson; would like to see a letter from the Commission opposing the Daines bill; upcoming meeting in Lake County on March 11th. Ron Catlett responded that the tribes get a consumptive water right on the reservation, but the water in the Clark Fork is non-consumptive, so the tribes cannot sell that water. Important to remember there are 599,000-acre feet of water in Hungry Horse Reservoir (consumptive right) and the bill gives 90,000 acre feet to the tribe and it must be used in the state of Montana. Commissioner Slaughter reviewed the issues that Lake County has with the bill, some of which are not the same issues that Granite County has. Elena Gagliano suggested that all of the irrigators should sue to get the compact changed; she quoted a portion of the Montana Constitution regarding tribal rights. Patti Kanduch inquired if all domestic wells would be affected and Ron Catlett responded with Section 3 of the bill. Patti Kanduch indicated that if a new well is drilled that it can be drilled only to the depth of the original well. Ron Catlett noted that there is a difference in well permits if you are on the reservation and off-reservation. Commissioner Slaughter noted that DNRC is permitting wells now deeper than 50 feet. At 2:30 p.m., the Board thanked Ron Catlett for his participation and he left the call. Dick Motta commented that he went to the legislature for the CSKT and the compact did not pass the constitutional test of 75%; no standing to give away things they do not possess; legislation was passed to adopt CSKT Compact; should not be paying federal and state dollars for something that is not owned; irrigators will have to challenge this in court; special water rights court set up for the tribes; he does not think that the Daines' bill will settle the CSKT Compact, it will require litigation; lesson in how FERC has enforced regulation on the Flint Creek Project. Commissioner Slaughter noted that the Daines' bill brings the legal battles to state court, not to federal court. A copy of Daines' legislation was given to Dick Motta and to Patti Kanduch. Elena Gagliano requested that it should be on the agenda again and that Daines' staffers should be present. Signing in were Patti Kanduch, Barbara Clark, Larry Clerk, E. Gagliano, Dick Motta and Mark Sweeney.

The information submitted by Elena Gagliano related to the previous paragraph is at the end of this day's minutes.

Public Comment: Public Health Emergency Preparedness (PHEP) Coordinator Dustin Muhly met with the Board regarding the coronavirus and the information he had submitted earlier to the Board, including an update and interim guidance on the outbreak of coronavirus 2019 (COVID-19). He agreed to make an appointment with the Board every week during the coronavirus outbreak. He noted that a million new test kits have gone out across the nation. He feels that more information will be known at the end of the week. He encouraged people to wash their hands as the best way to prevent getting the virus.

Also as public comment, Clerk and Recorder Sarah Graham informed the Board that the county's computer server is worn out and should be replaced with a new server at a cost of about \$10,000.00 from DIS. She reviewed the budget, which would be sufficient for the purchase. The Board reminded her of the county Purchasing Policy and requested that she get a server with more than enough capacity for current needs.

Correspondence: The Board noted receipt of a petition to abandon a county road at Maxville submitted by Rae McKay. The petition matter will be referred to County Attorney Blaine Bradshaw.

Commissioner Hinkle moved to approve the February 25, 2020 minutes as presented and Commissioner Slaughter seconded the motion. There was no public comment. The motion carried unanimously.

The session adjourned at 3:00 p.m.

The following documents were submitted by Elena Gagliano on March 3, 2020, to be included in the minutes for that day:

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426
August 21, 2008

OFFICE OF ENERGY PROJECTS

Project No. 12107-003 – Montana
Flint Creek Hydroelectric Project
Granite County, Montana

James Steele, Jr., Chairman
Confederated Salish and Kootenai Tribal Council
P.O. Box 278
Pablo, MT 59855

Reference: Consultation with the Confederated Salish and Kootenai Tribal Council

Dear Chairman Steele:

The Federal Energy Regulatory Commission (Commission) authorizes the construction and operation of nonfederal hydropower projects. On August 8, 2008, Granite County, filed a new license application for the construction and operation of the Flint Creek Hydroelectric Project, No. 12107-003, located on Flint Creek and Georgetown Lake in Granite and Deer Lodge Counties, near Philipsburg, Montana.

The purpose of this letter is to determine the extent of your interest in the resources that this project has the potential to affect and whether the Salish and Kootenai Tribal Council desires to participate in the licensing effort for this project.

Granite County's proposed Flint Creek Hydroelectric Project No 12107-003 (project) would be constructed using some of the previously licensed Flint Creek's Facilities, Project No. 1473, whose license was surrendered in 1997. As now proposed the project would consist of: (1) an existing 330-foot-long and 44-foot-high earth with masonry-core dam; (2) an existing 2,850 acre reservoir with 31,034 acre-feet of storage at elevation 6,378 feet M.S.L.; (3) a new 36-inch-diameter by 6,282-foot-long polymer and/or steel pipeline; (4) an existing 1,463-foot-long by 33-inch-diameter penstock; (5) a new 36-inch-diameter by approximately 200-foot-long buried penstock connecting the existing penstock to the new powerhouse; (6) a new

approximately 25-foot by 35-foot powerhouse containing one Pelton turbine-generator unit rated at 2 megawatts; (7) a new approximately 95-foot-long buried tailrace; (8) a new approximately 10-foot by 10-foot fenced substation located next to the powerhouse; and (9) all appurtenant structures. The proposed project would generate an average of 10 gigawatthours annually and would affect 1,266.33 acres of reservoir and federal lands within the Beaverhead-Deer Lodge National Forest.

Granite County has filed an application using the Traditional Licensing Process. The Commission's licensing process entails a comprehensive examination of the effects the proposed project would have on environmental and developmental resources. Details of the process can be found on the Commission website at www.ferc.gov. It is very important that tribes whose interests could be affected by the proposed project are fully engaged early in the process. For this reason, please tell us at your earliest convenience whether or not you would like to participate in the licensing effort for the project and whether you would like to meet with Commission staff to discuss the project.

If at all possible, we would appreciate your response by September 22, 2008. Please address the response (an original and eight copies) to:

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

The first page of the response should clearly show at the top, "**Flint Creek Hydroelectric Project, FERC No. 12107-003**". Your response may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (<http://www.ferc.gov>) under the "e-Filing" link. The Commission strongly encourages electronic filings. Additionally, you may also register online at: <http://www.ferc.gov/esubscribenow.htm> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov; call toll-free at (866) 208-3676; or, for TTY, contact (202) 502-8659.

If you have any questions or comments, please contact Frank Winchell, the Commission's cultural resource specialist assigned to the Flint Creek Hydro Project, at (202) 502-6104 or frank.winchell@ferc.gov. Dr. Winchell will contact your office shortly to follow-up on this letter.

Sincerely,

Ann F. Miles, Director
Division of Hydropower Licensing

cc: Granite County
Maureen Connor, Chairman
Board of County Commissioners
P.O. Box 925
Phillipsburg, MT 59858-0925

Alonzo A Coby, Chairman
Shoshone-Bannock Tribes
Fort Hall Reservation
P.O. Box 206
Pablo, MT 59855

Mailing List
Public Files

I was a legislator when the Blackfeet water compact was passed by a 75% vote. Federal amount added was \$471 million. At least a 67% yes vote is required by the Montana constitution. **All 6 of the previous compacts met this requirement and no one had to give up any water.**

The Blackfeet compact plan was developed over a 40 year period and the money was to be used for water related projects including new irrigation systems, improvements to existing systems and infrastructure projects that would give everyone more water.

The CSKT compact passed by only 3 votes (53% to 47%) not the required 67% votes. Montana put \$55 million in the compact and Federal government \$2.3 billion.

The Montana Water Rights Protection Act (S. 3019) carried by Senator Daines adds to Senate bill 262 which passed the Montana legislature and changes some parts of it. **S. 3019 deals with unrelated issues such as roads, land swaps, state sovereignty, and even the Bison Range.**

It got rid of 97% of the water rights, but we do not know the acre feet of the remaining 3% or where they are. One existing water right in Senate bill 262 for 290,000 acre feet takes all the available water in the Flathead headwaters and another water right in S.3019 for 90,000 acre feet takes water out of Hungry Horse Dam.

I sponsored the bill in the Montana legislature that secured this water for use by the state of Montana for future development in western Montana. It ended up in the compact and **establishes a water market for the tribal council: S. 3019, "The Tribe may use, lease, contract, exchange, or enter into other agreements for use of the water ..."** If the city of Missoula needs more city water out of the Clark Fork River, **CSKT will sell it to them or not.** This is not the purpose of the federal reserved water rights or the reservation.

It was reported in the Flathead Beacon on 12/10/2019 that the "Tribal leaders said that in addition to ratifying the compact, the proposed legislation **settles damages** brought by the Federal government for mismanaging the Tribes' water and water rights guaranteed under the **1855 Hellgate Treaty.**"

The Hellgate treaty is the peace agreement between the CSKT and the Federal Government. It does not guarantee any water. It does not mention water or water rights.

Article I of the treaty makes it very clear that the **CSKT can't be granted off Reservation water rights based on the right to hunt and fish on their aboriginal land:** "the CSKT "hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the country occupied or claimed by them..." Note that the words cede, relinquish and convey and the words right, title, and interest were all used to make sure everyone understood that aboriginal rights were given up. **Water right claims by the CSKT off their reservation do not have standing.** (This means that the 10,000 claims CSKT filed are not valid.)

Article II established the Reservation: "reserved from the lands above ceded, for the use and occupation of the said confederated tribes..." The reservation came from the land that was ceded and paid for. **It is an open reservation and not a race based sovereign nation** inside of a state or country. It was assumed that the reservations would not be necessary after 20 years

because the Indians would be **assimilated into to general population**. Only a third of the CSKT tribal members have left the reservation.

Article III: “The exclusive **right of taking fish** in 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, and of erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.” Note that the statement “**right to take fish in common with the citizens of the Territory**” is not a water right; otherwise Montana citizens could get a water right to protect their favorite place to fish. The Indian right is in common with the citizens of the Territory. These subsistence rights which show up in some treaties are given only to tribes known to be peaceful. A subsistence lifestyle was common among both Indians and the citizens of the territory 159 years ago, but now government programs and fast food restaurants take the place of self-sufficiency. Article III also gives Indians the right in common with citizens of the United States to travel upon all public highways and provides the right of public convenience roads being built.

Article IV and V pay CSKT for the cession: “In consideration of the above cession, the United States agrees to pay to the Confederated tribes of Indians, in addition to the goods and provisions distributed to them at the time of signing this treaty...” Cash payments were required and basic infrastructure such as a school, black-smith shop, saw mill, and a flouring mill were to be built and maintained for a period of 20 years.

Article VI: Once the land on the reservation was allotted, the remainder could be sold. The **CSKT reservation is the only open for settlement reservation in Montana**.

Article VIII states: “The confederated tribes of Indians acknowledge their dependence upon the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens.” **Off Reservation CSKT stream water rights, 10,000 claims are a violation of article VIII**. Also, Irrigated land that is co-owned by the tribe is subject to a water call by the CSKT (ordered to stop using water) is greatly **depreciated in value because of the uncertainty of having water**.

The CSKT Reservation got their water when the 1.3 million acre reservation was opened to **settlement in 1909 by Presidential Proclamation** with the promise that the federal government would plan and fund the construction of the Flathead Irrigation Project (FIP), along with Kerr Dam to serve all interests, Indian and non-Indian alike.

Indians were given land and water rights for irrigation and non-Indians paid for their land and water rights. Approximately 128,000 acres of land on the Reservation are irrigated with 500,000 to 750,000 acre feet of water out of the Mission Mountains supplemented with 200,000 water pumped out of the Flathead River.

The Reservation is presently very productive producing cattle, feed crops and vegetables. Also, there are over 300 streams that flow into the reservation. Water tribal rights are in place to protect the streams that have fish.

Unfortunately, Senate bill 262 in the compact gives the water rights of the Indians and non-Indian irrigators to the **Tribal Council who then would give each irrigator a water allowance of 1.4 acre feet per acre for a total of 179,000 acre feet with no assurance that**

the water would be available when needed or would be passed to heirs with the land. This is not enough water because the amount of water used in past years was 500,000 to 750,000 acre feet depending on the amount of rain.

The water comes out of the Mission Mountains supplemented with 200,000 acre feet water pumped out of the Flathead River. **The reservation already has the water needed to make the reservation productive, but the tribe has filed 10,000 water right claims throughout Montana as a threat.**

The 1500 page Senate bill 262 and 65 page S. 3019 were written by lawyers who did not follow the Hellgate Treaty or Federal and Montana constitutions. Within these two bills are hidden tools which will destroy our Constitution Republic. Indians and non-Indians are citizens of the United States and are entitled to the freedom and opportunity provided by this county.

It doesn't matter where you live. I am sick and tired of the corruption and lies, especially the ads on TV. There are problems on the CSKT reservation that need to be solved but throwing **\$55 million (state) and \$1.9 billion (Federal) dollars and thousands of acre feet of water at the problems will only make things worse.**

The Compact and the lies about adjudication have failed. It is the responsibility of our government to protect all of us. If we need to lawyer up and adjudicate, the 55 million should be enough to get a fair settlement for everyone.

Testimony to the MT House on the CSKT Water Compact

MT State Rep Theresa Manzella HD 85
Saturday, August 13, 2016

The very first thing I learned about the compact several months ago was that it gave a large and unquantified portion of Montana's water to the federal government, that has us 18 Trillion in debt, to hold in trust for the tribe, and I was an immediate "NO." And to this day, if that was all that I knew as ROCK SOLID TRUTH about this compact, that would be enough to earn a NO vote from me.

As it turns out, there are several reasons to oppose this legislation and today I'll focus on two - Off-reservation In-stream Flow Rights and Unlawful expansion of the Tribal Government authority over Non-Indians.

Now...I've attended the presentations by the proponents of the compact, and one thing I can say for them is they are polished presenters. But unfortunately, I'm still left with more questions than answers. Maybe that's because I am ignorant of the subject matter, or maybe it's because the proponents failed to make their case in a clear and effective manner that the avg citizen can understand. But either way, if you want my vote on a 1100 page bill that takes MT's water away from some citizens and gives it to others, FOREVER MORE, you'd better be prepared to make me understand. And quite frankly, after sitting through the presentations and 10 1/2 hours of hearing on Sat, the proponents have failed to do so. I'm still left with a tremendous level of discomfort.

So I started my research at ground zero with the question of who owns the water. MT owns the water and our constitution says so. But, unfortunately it's not so simple because we're actually dealing with three overlapping sovereigns- The state of Montana, the United States of America, and the Salish Kooteni Tribe. Well, there's a good cluster to try to sort out - who's dominate when you have multiple sovereigns.

The proponents of the compact would like us to believe that it's the tribe based on the Hellgate Treaty of 1855 and the cute lil rhyme - "first in time, is first in line." OK, I can buy that and as yet, I haven't seen any deeded water rights earlier than 1855.

What I have seen are deeds for land, that clearly includes water rights, signed by Franklin D Roosevelt, himself, which brings us to the fourth sovereign - The private property owner who has legally purchased property on the reservation. They own it, and have worked the land for multiple generations. They've paid their taxes as contributing members of our society. They've done their part to feed Americans healthy, reasonably priced food. And now, 160 years into this we're going to tell that Montana citizen that they'll be giving up their titled property right in exchange for a "delivery entitlement certificate" that will be administered, and governed by the tribe of which they are not a part of, and we're gonna try to convince them it's a really good deal for them? Not this cowgirl. That's got to be some kind of illegal. How about a "regulatory taking." This is clearly an assault on private property rights, and exactly what I came here to fight against. (slow down) This compact proposes that the State of Montana expand the authority and jurisdiction of tribal governments over non-members and non-indians where federal law has specifically prohibited it. People, the Montana legislature does not have the authority to remove constitutional provisions and statutory protections from it's citizens, nor would I EVER want too.

Furthermore, we are being asked to create a completely new type of federal water right using the wording from the Hellgate Treaty that states that the tribes have a right to take fish. And from those simple words that even a horse trainer can understand, the proponents of this compact would like us to believe that the right to take fish, equates to an aboriginal, time immemorial, tribal reserved,

federal water right.

Again, they are asking the MT State legislature to conjure up... and I do mean conjure up... a federal water right where currently one does not exist. We simply do not have that authority.

This thing reeks of private property assaults and big government over reach, and it is being promoted by big government lovers, as has been clearly demonstrated through the voting records this session.

I might be a simple cowgirl, but here's what I know: With the Simi Valley as our example - No water, no crops. No crops, no food. No water, no crops, no life. Private Property values will be destroyed. This will go to court either way, so the argument that we have to pass it to avoid costly litigation is completely invalid. And when it does, I believe it will be found to be a "regulatory taking" and deemed unconstitutional.

My answer is NO. Just say WHOA to the big government runaway.

Dictionary.

Title: legal ownership of an asset or property specified as a clear and enforceable title.

Ownership: Having complete dominion, title or property right in a thing or claim.

Meet the New Compact, Same as the Old Compact

by Catherine Vandemoer, Ph.D. in Guest Posted on
12/17/2019 02:21 PM

This article, originally published on Dec. 17, 2019, on the Western Montana Water Rights WordPress site, is published again here in its entirety, unedited, with permission of the author:

*Catherine Vandemoer, Ph.D.
Water Resource Consultant
Chair, Montana Land and Water Alliance
Polson, MT
4mtlandwater@gmail.com*

Meet the New Compact, Same as the Old Compact

The fiction that Senator Daines would like us to believe is that the Senator “solved” the CSKT Compact problem with his erroneously-named “Montana Water Rights Protection Act”. Quite the contrary, the Senator did not solve the problem. The Senator put forth structurally the same bill that Senator Tester did: he accepted the CSKT Compact in full, “wrapped” it into the “new” Daines Compact, and then added “new” and more “goodies” than even the democrat did!

As with the Tester bill, the intent of the Daines Compact is to have us all now be distracted by the “goodies” and forget about the documented problems with and substance of the provisions of the original CSKT Compact, whose true economic, environmental, and nation-wide legal precedent-setting impacts have never been examined. Witness the cover letter by Interior Secretary’ Bernhardt to the “inquiry” of Senator Daines. The same talking points we have heard for eight years.

Sprinkled into the public relations campaign are the statements that the bill “removes 97% of the off-reservation water rights” but fails to mention that this “97%” only refers

As it turns out, everything that Senator Daines put in his "Fake News" press release IS Fake News itself:

- The Tribes gave up 97% of their off-reservation claims--no, they didn't. They kept them all, including the 10,000 claims, but will "convey" co-ownership of their water to the State of Montana. (Source: *Tribal Council Minutes January 2020*)
- The Daines bill protects Montana water rights--no, it doesn't. It protects only the federal government's claim to water over 2/3 of the state of Montana, using an Indian Water Settlement as cover
- Transfer of the Bison Range to the CSKT will not create west-wide precedent for the transfer of other national treasures to tribes--wrong, it will. The Senator's plan includes a statement that "the transfer will not create any precedent"...are you kidding me? Of course it will, and a simple statement is just that, simple.
- The Flathead Irrigation Project is an Indian irrigation project--incorrect again; the Flathead Project was authorized in 1908 to serve everyone regardless of land status. Currently the BIA is mismanaging the project revenues, which are earmarked for irrigation purposes, and is committing waste fraud and abuse with federal and private dollars. Senator Daines is ignoring these, thereby supporting waste, fraud and abuse in a federal irrigation project.
- \$1.9 billion dollars in "damages" is owed to the CSKT by the United States. Incorrect again, and the Senator foolishly includes a BIA/Tribal " damage report" which he has not read nor does he understand.

Note: If these are indeed 'damages' of the United States, then the proper formula for delivering those damages is 80% distributed per capita to tribal members, and 20% goes to the Tribal government. The Daines plan has it all going to the Tribal Council with no oversight. Who

- The Daines bill is an agreement between the United States and the Tribes, with Montana having no say. Sorry, King Daines, you don't have the authority to negotiate away Montana's water rights just with the Tribes. And, you have no authority to do anything without Montana's review because you include SB 262 as part of your bill.

There is no doubt that the Daines-Tester CSKT Compact is a disaster for Montana. The mode of convincing people--endless propaganda, mistruths, outright lies---and the rush to pass this horrible bill is all the information you need to know it cannot be supported.

At this point there is realistically no difference between Steve Daines and Jon Tester--both of them are captured by and afraid of the Tribes, needy for their money, and do not want to be called a racist. For these things, both Senators are willing to give up on their constituents for their own craven political purposes including the lust for power. Who this potentially could hurt is President Trump and his republican majority in the Senate. Does Daines want to risk that?

Let's add Tim Fox and Greg Gianforte to this list of the "uniparty". They have all demonstrated they just don't care about Montana citizens, and they are willing to shade the truth to accomplish their very narrow goals for themselves.

Keep writing to the White House <http://www.whitehouse.gov>, let the President know that Senator Daines is using him for cover to support the theft of water in Montana.

The next clear action you can do is not to vote for any of these politicians in the primary on June 2. Let's see how many votes the democrats get vs the votes that Daines gets in particular.

Let's remember as well that the Senator was given a plan to work with, called the People's Compact. He tossed it out the window, just like his constituents.

Steve Daines will be an easy pick-off if Steve Bullock enters the Senate race. It will not be a loss for Montana--at least we know where Bullock is coming from. When the Senator stabbed his constituents in the back with a smile on his face, he lost all credibility. Daines has lost his mantle and authority to govern and to represent the Great State of Montana.

Time to take our government back!

Subject: Chart water US Indians & MT
From: "Elena" <ph15016@blackfoot.net>
Date: 2/28/2020, 9:28 AM

Quantification of Indian Federal Reserved Water Rights in the United States *

RESERVATION / TRIBE	STATE	ACF / Yr	Fed \$ (Millions)	RESERVATION / TRIBE	STATE	ACF/ Yr	Fed \$ (Millions)
Aamont (Pueblos)	NM	6,467	\$174.3	Northern Ute	CA	481,035	\$198.5
Ak Chin	AZ	85,000	\$101.1	Pechanga Mission Indians	CA	4,994	\$28.5
Blackfeet	MT	50,000	\$420.0	Pyramid Lake Paiute	NV	0	\$65.0
Colorado River (5) (Litigation)	AZ	783,134	Not Avail	Rocky Boy	MT	20,000	\$46.0
Colorado Ute	CO	70,000	\$49.5	Salt River Pima Maricopa	AZ	122,400	\$47.5
Crow	MT	697,000	\$461.0	San Carlos Apache	AZ	67,965	\$41.4
Fallon Paiute	NV	10,588	\$43.0	San Luis Rey	CA	0	\$30.0
Flathead (Government Compact)	MT	** 27,744,657	\$2,335.0	Shivwit Paiute	UT	4,000	\$24.0
Flathead (People's Compact)	MT	508,000	\$600-\$775	Shoshone Paiute	ID/NV	114,082	\$60.0
Fort Belknap (U.S. has not Ratified)	MT	500,000	\$547.0	Taos Pueblo	NM	9,628	\$124.0
Fort Hall	ID	581,331	\$22.0	Tohono O'Odham	AZ	66,000	\$39.8
Fort McDowell	AZ	36,350	\$23.0	Soboba Luiseno Indians	CA	9,000	\$21.0
Fort Peck (U.S. has not ratified)	MT	1,052,472	\$0.0	Warm Springs (Litigation)	OR	325,800	Not Avail
Gila River ***	AZ	653,500	\$2,328.3	White Mtn Apache	AZ	99,000	\$327.2
Jicarilla Apache	NM	40,000	\$6.0	Wind River (Litigation)	WY	510,000	Not Avail
Navaho Nation	NM	535,330	\$984.1	Yavapai Prescott	AZ	1,550	\$2.0
Nez Perce (Settled Litigation)	ID	50,000	\$121.3	Zuni	AZ	10,600	\$19.3
Northern Cheyenne	MT	83,830	\$73.0				

GOVERNMENT COMPACT: CSKT claim is 4 times more water than all other tribes combined and 145 times more water than the average for all other tribes. Control points for Flathead claims would preclude the use of between 28 and 48 million acf of water for consumptive and non-consumptive uses. Montana has not provided a total volume of water as of November, 2018.

THE PEOPLE'S COMPACT: does a proper quantification of federal reserved water rights for the CSKT, and includes no off reservation claims. Its settlement provisions bring both the volume of water and settlement funds in line with other tribes throughout the United States who have settled their water claims.

Data Sources: Negotiating Tribal Water Rights, Colby, Thorson, Britton, 2005; Arizona Water Atlas; Settlements Approved by Congress 2011 (www.westgov.org); 2015 CSKT Water Compact Abstracts, Jon Tester SB 3013 and 11/27/2017 Congressional Research Svc Report, Indian Water Rights Settlements by Charles V. Stern, People's Compact I

NOTES:
 * Indian Federal Reserved Rights Quantification determined through litigation or negotiation.
 ** Flathead PARTIAL QUANTIFICATION determined using (Appendices 5,15 (FIP & Reservoirs), Appendix 9 (Hungry Horse only), Appendix 18 (Flathead Lake less Kerr), Appendix 25 (Kootenai), and Appendix 27 (Lower Clark Fork).
 *** Gila River expenses were estimated to be \$445 million at settlement. This figure is amount to be made available thru FY2046

© 2018 Concerned Citizens of Western Montana

2018 COMPARISON OF MONTANA INDIAN RESERVATION WATER COMPACTS with CSKT Partial Quantification

	RESERVATION							
	Blackfeet	Crow	Flathead Gov't Compact	Flathead People's Compact	Fort Belknap	Fort Peck	N Cheyenne	Rocky Boy
Population within Reservation Boundaries	<small>Source: 2010 US Census of Housing and Population CPW-1-19</small>							
Tribal	8,944	5,322	7,042	7,042	2,704	6,714	4,406	3,221
Non-Tribal	1,461	1,541	21,317	21,317	147	3,294	383	102
Total Population	10,405	6,863	28,359	28,359	2,851	10,008	4,789	3,323
Land w/in Reservation Boundaries (Acres)	<small>Source: Indian Education for All—MT Office of Public Instruction 2005</small>							
Tribal Trust	311,175	404,172	653,214	653,214	210,954	413,020	326,547	122,259
Tribal Allotments	701,816	1,166,406	58,729	58,729	406,533	516,092	113,277	0
Other (State/Federal/Private)	512,721	894,336	531,057	531,057	28,089	1,164,012	4,951	0
Total Land	1,525,712	2,464,914	1,243,000	1,243,000	645,576	2,093,124	444,775	122,259
Reserved Water Right Award (Acre Feet)								
On Reservation	50,000	697,000	8,996,983	508,000	500,000	1,052,472	83,830	20,000
Off Reservation	0	0	18,747,674	0	0	0	0	0
Total (See Source: See Items 1, 3, 4 below)	(1) 50,000	(1) 697,000	(2) 27,744,657	(4) 508,000	(1) 500,000	(1) 1,052,472	(1) 83,830	(1) 20,000
Compact Details								
Federal Settlement Money (Millions)	\$420.0	\$461.0	\$2335.0	\$600-\$775	(3) \$547.0	\$0.0	\$73.0	\$45.0
State Settlement Money (Millions)	\$49.0	\$15.0	\$55.0	\$0.0	\$17.5	Unknown	\$21.8	\$55
On Reservation Water Rights Administration	Dual	Dual	Tribe/UMD	Dual	Dual	Dual	Dual	Dual
Off Reservation Aboriginal Treaty Rights	No	No	Yes	No	No	No	No	No
Relinquish Irrigation Water Rights to Tribe	No	No	Yes	No	No	No	No	No
Ratified Montana Legislature / U.S. Senate	2009 / 2016	1999 / 2010	2015 / No	No/ No	2001 / No	1985 / No	1991 / 1992	1997 / 1999
Statistics:								
Acre Feet / Tribally Owned Acre	0.05	0.44	38.97	.71	0.81	1.13	0.19	0.16
Acre Feet / Tribal Member	5.59	130.97	3,939.88	72.13	184.91	156.75	19.02	6.21

(1) Incorporating Tribal Water Rights: Fulfilling Promises in The Arid West, by Dennis G. Cooley, John E. Thorsen, Sarah Britton and Congressional Research Service Report dated 11/27/2017 by Charles V. Stern
 (2) Flathead Reservation based upon Concerned Citizens of Western Montana analysis of the 03/12/15 compact documents on the DWR website. This is a partial quantification of the amount of water awarded to the CSKT in the compact. Note: as of August 2018 the commission has not provided quantification numbers for CSKT compact. Legislators voted on the compact without being provided with the volumes of water awarded. Volumes differ from the 2018 version of this chart because the CSKT numbers represent on the updated version include only a PARTIAL QUANTIFICATION.
 (3) Fort Belknap federal settlements amount per 2019, submitted by Jon Teator in 2018, rest of state figures come from testimony of Jay Winter to Congress: 05/20/2018
 (4) The People's Compact introduced November 2015 2018 Concerned Citizens of Western Montana