

Riffel, Natalie

ELECTRONICALLY FILED

From: Shelley Lustman <shelleypip@aol.com>
Sent: Monday, November 27, 2023 10:46 AM
To: Harder, David; Negose, Yosef; efile_denver.enrd@usdoj.gov; Melissa Schlichting; Daniel.Decker@cskt.org; rusche@sonosky.com; Kelly, Molly; Vanisko, Chad; Christina.Courville@cskt.org; Saye, Jean; Standish, Rochell; Watercourt (Bozeman)
Subject: [EXTERNAL] Objectors Motion to Amend (correction)
Attachments: 2023-flathead-lake-level-analysis-2 (1).pdf; mat rosendale.jpg; usda map.jpg; lake county1.pdf; lake county 1-3.pdf; Austin Knudsen letter.jpg; Affidavit.pdf; certificate of service Nov 27, 2023.pdf

WC-0001-C-2021

November 27, 2023

Montana Water Court

Categories: Natalie

**Water Court of the State of Montana
Confederated Salish and Kootenai Tribes -
Montana -United States Compact**

**Complaint #WC-0001-CO21
Montana Water court
1123 Research Dr. P O B 1389
Bozeman, Mt
59771**

**OBJECTORS MOTION TO AMEND
OBJECTION**

**Shelley lustman
1492 lower valley rd
Kalispell Montana**

against

**U.S Department of Justice Indian Resource Section
Environmental & Natural Resource
Div 999 18th St south Terrace,
Suite 370 Denver CO 80202**

**Confederated Salish & Kootenai Tribes Tribal Legal Dept
P.O.B 278 Pablo, Montana 59855**

**Montana Department of Natural Resources
1539 Eleventh ave
P.O.B 201601
Helena, Montana 59601**

Via Email

The Honorable Stephen Brown,

I Shelley Lustman now move to Amend my original objection and replace and except it in place of my original and my supplemental objections to the court, Pursuant to 85-2-222(6) MCA may file motions to amend their objections, On October 18th 2023 the water court issued a case management order 3 allowing for the submission of motions to Amend existing objections no later than December 8, 2023 The purpose of this amendment is to add claims and add facts that were inadvertently omitted, or correct and clarify in my original objection and my supplemental objection.

Jurisdiction and rules for procedure:

1. On August 10th 2023 I requested rules for procedure at the time of submitting my supplemental objection I did not received a response. I would like to be on the record that I am exercising my right to opt into common law and reserve all of my rights and remove myself from unjust provision and other codes which are contradictory or are not in harmony with my rights and justice, U.C.C.1-103.6 . Impact of my deprivation of my water rights is in Flathead county therefore I request the venue moved there, and a trial by a citizen jury.

I received your clarification order to my supplemental objections that were submitted before your case management order, and received both the inquiry and your ruling at the same time without an opportunity to respond, by mail November 7th 2023.

Pease indulge me as to the following questions as they are vague and could not find in Law for a water court. Is the creation of the Water board and its power and duties as stated in Article IV of the compact unconstitutional due to the vagueness and violation of separation of powers and overreach? What branch of government does this Water board operate? Do the members of the board take an oath to uphold the constitution? By what authority will the water board enforce its initial decisions and subpoenas? Are Due Process Rights violated by the compact and within the Water court adjudicating this case? Is a Judicial review of a Water boards final decision to a court of competent jurisdiction to be always a federal court denying the state courts to the non-Indians? I could only find the exact words in MCA 40-6-402 which refers either to District court or family court. It is obvious the tribes borrowed this definition from this text, It is defined as state or tribal court ... as long as the parties consent, where is the right for district courts settling matters of dispute? Are the Board members appointed by the tribe or tribe influence? Is the State of Montana a government or a corporation? Why is The State of Montana listed as a corporation on Dunn and Bradstreet D-U-N-S # 060278629 ? Is their a conflict with the State of Montana and the water court?

Preliminary Statement:

Sovereignty itself, remains with the people, by whom and for whom all government exists and acts -Justice Matthews, Wo vs Hopkins. This overreach to "TAKE" our water without the participation of the populace and outside of regular order requires a investigative and Supervisory Jurisdiction THE HOBBS ACT- 18 U.S.C 1951. It is public service not self service.

Any law passed by legislative authorities including any and all regulations and policies that spring from such laws must conform to-or to not be in violation of the constitution supreme law of both federal and state constitutions, otherwise such laws are not only unlawful but illegal and must be rescinded or nullified. Subjugating Montanans to egregious and un negotiated terms is an insult and harmful to tribal and non-tribal Montanans and additionally,, was not in Montana's Senate Bill 262, this is a illegal dictate. The people of Montana are watching this very carefully, and will no longer be ignored, and are united on both sides of the isle on this issue.

Cause for Action:

Every person who, under the color of statue, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any person within the Jurisdiction thereof to the deprivation of any rights privileges, or immunities secured by the Constitution of laws, shall be liable to the party injured in an action of law, suit in equity or any other proceeding for redress U.S. code Title 42 chapter 21 subchapter 1983. Title 42 Section 1983 information 09/30/2012 Elements of a Section 1983 Claim To prevail in a claim under section 1983, the plaintiff must prove two critical points: a person subjected the plaintiff to conduct that occurred under color of state law, and this conduct deprived the plaintiff of rights, privileges, or immunities guaranteed under federal law or the U.S.

Statement of Facts:

1. The of the Inalienable Rights Article II, Section 3 "All persons are born free and and have certain inalienable rights. They include the right to clean and healthful environment and the rights of pursuing life's basic necessities", Is it true these rights are senior water rights or any time immemorial water rights? The mutual interests of deeded water right property owners and irrigators to the self interests of both lawmakers and CSKT/Energy Keepers and the entanglement of control to the few, without accountably to the populace. Energy Keepers pays lucrative dividend checks to the Confederated Salish and Kootenai tribes, which the tribes owns and operates, and both economically benefit. Lawmakers got enriched by campaign donations as per The Federal Election Commission, from the Salish and Kootenai tribes, who are derelict in their duty and dramatically abusing our system of laws and no longer enjoy the confidence of the public. Actual fraud is difficult to prove. Constructive fraud is another matter. 28-2-406 defines it as "Any breach of duty ,without fraudulent intent gains an advantage to the person in fault or anyone claiming under the person in fault by misleading another person to that persons prejudice or to the prejudice of anyone claiming that person" The intent of the tribes to use false claims, false definitions, false revisionist history to produce this compact is obvious. Collusion is tough to prove. Collusion has been defined as " agreement between two or more persons to defraud a person of its rights by forms of law" however Chris Tweeten, chairman of the reserved water rights commission stated the following in 2015, in the Affidavit of Terry Black, " The response is to remind the tribes about the grand bargain and the fact that we agreed to do this extraordinary thing, frankly with respect to agreeing to subject or remove non-Indian rights on the reservation from the jurisdiction and control of the state and place them somewhere else at the tribes request"

2. CSKT/ Energy Keepers enriching themselves with lucrative contracts selling our water/energy out of state to the peril of Montanans. CSKT/Energy Keepers could have choose to cut down their releases from the Kerr Dam ,(formally known as, now known as SKQ Dam) according to FERC license, which allows for adjustments for weather related conditions to meet lake level requirements as it has been done by water managers who plan for all weather conditions such as early melt and run off for many other years in the past . The narrative that was put out that the low water levels were just a "unfortunate coincidence

" is false, according to Hydrologist expert Dr Kate Vandermoer as per an interview with North West news, has looked at the 84 year history, and contends that the CSKT exercised their water right system in May and early June and never reached full pool which is equivalent to 2 feet of their compact water for flathead lake and has the facts behind this statement. The Tribe has the ability to adjust the outflows without going to Hungry horse as per FERC. According to multiple weather reports snow pack was better than average.

3. Enclosed is Exhibit 1, a chart of lake levels. Flood control and recreation require the lake levels to be at 2883 feet by April 15th refill to 2890 feet by may 30th and raised to full pool 2893ft by June 15th and maintained through labor day. Was the decision to send the water downstream made to maximize SKQ Dam profits? Deeded water rights owners and irrigators did not sign a contract nor vote on giving up control of our deeded water property rights ."Adaptive management provisions' for Flathead project irrigators could face reduced volume of water delivered to theirs lands. A property right is an interest protected by the constitution of law. Our State and Federal governments have a duty to protect these rights. CSKT/Energy Keepers also has a contractual duty to the terms and conditions of the FERC L-5 licenses and a duty to respect other peoples deeded water property rights in which they do not own.

4. A Compact changing state law without notice is not a defensible product (Compact), "Product" means: What was the historical sources used to produce the Compact. With terms that are extremely one sided fundamentally unlawful, overreaching and unfair to Montanans. Additionally, a priority date ignoring other obligations to Montanans seems hardly defensible, these documents was not prepared in good faith . Furthermore in Article 1-Recitals in WHEREAS we have: "pursuant to the Hellgate treaty ... the Confederated Salish and Kootenai tribes reserved the Flathead Indian reservation" This is false, the federal government reserved this land, in trust for the benefit of the Tribes.

5. The Compact is not a Tribal reserved water rights within the context of the Winters Doctrine, Winters v United States ,207 U.S.564 (1908) existing law precludes the claims and components of the compact including the McCarran Amendment 43 U.S.C 666 (1952) which establishes the foundation for federal reserved water rights quantification not "tribal reserved water rights". Additionally was defeated by Article VI of the Helgate treaty. Article 1 of the Hellgate treaty states the following " The said confederated tribe of Indians hereby cedes, relinquish, and convey to the United States all their right, title, and interest in and to the country occupied or claimed by them" .

Article III is an example of overreaching water rights of tribes all the way to the Kootenai River, Placid Creek, Lower Clark fork river and Swan River. Is requiring a consensual agreement by irrigators to protect themselves from a "Call" both overreaching and a seizure? See Article III.G. "Call Protection".

The Flathead Indian Reservation Allotment Act of 1904 " An act for the survey and allotment of lands now embraced within the limits of the Flathead Indian reservation in the state of Montana and sale and disposal of all surplus lands after allotment.

Violates Article 9 Sec 3 Montana Constitution " All surface, underground, flood, atmospheric, waters within the boundaries of the state are property of the state for the use of its people".

The Indian Reorganization Act of 1934 (in part) " That valid rights or claims of any persons to any lands so withdrawn, shall not be affected by this act"

Winters v. United States v. Mclutire,101F.2d 650,653 (C.C.A.9,1939) So long as the reservation was held in communal ownership, the legal title to such waters was in the United States and the equitable title in the tribe. By 1930 , most of the Indian allotments were now in non-Indian ownership.

Marbury v Madison 5 U.S. 137 Therefore any court decision is void if "repugnant to the Constitution"

Arizona vs Navaho Nation decision by U.S supreme court June of 2023 Supreme court agreed with Arizona and reversed the Ninth Circuit with a 5-4 decision The court said the following " This court will apply common law principles to infer duties not found in the text of the treaty, statue or regulation.....Here nothing in the 1868 treaty establishes a conventional trust relationship with respect to water"

6. The Compact in Article IV is unconstitutionally vague with respect to quantification, administration, enforcement and a violation a separation of powers. Sessions v Dimaya , 584 U.S 2018 " requires it to act with enough clarity that reasonable people can know what is required of them". The Reservation Unitary Management board violates the constitutional guarantees of our Republic and fail to reflect public interests and give Tribal control of all in stream flows without accountability. Our deeded water rights property are untouchable under equal protection of the law. I reject overreach of the terms of this Compact, not founded in law, unsupported historically and a process used to ratify is extremely questionable, and violates Executive order 13818 which blocks the property of persons involved in human rights abuses or corruption. If this court consents and adopts these terms it will have resounding negative effects upon deeded water rights owners throughout western Montana and the State of Montana's economy.

7. The low water levels are so concerning Congressman Mat Rosendale wrote a strong letter to commissioners see enclosed letter Exhibit 2.

8. I live on a road that is only one way out, my water way would be the only safe exit in the event of a fire which is non-navigational now, this causes additional emotional stress, see Exhibit 3 . As per the Hellgate Treaty Article 3, as waterways are guarantied public highway and the lake level impacts navigation, as well in the Treaties of 1846 and 1855.

9. The Dam and its operation are permitted and regulated by FERC, with public input and participation by citizens and agencies. Federal Energy Regulatory Commission (FERC) terms and conditions of licensing were not met in Article 9, FPA section10(a)(16U.S.C 803) notably requires " equal consideration" to purposes other than power generation, Article 12 , Article 13 and the drought management plan in Article 60. North Western Energy Management kept full pool and worked fine for many years, even in times of drought. Energy Keepers management has not been able to stabilize lake levels, The USGS (The U.S Geological Survey) illuminates this fact.

10. On July 1st 2020 Lake County entered in the record, to the Senate Committee on Indian affairs SB-3019 does not ratify and confirm the Montana Compact , I hereby incorporate this argument as it effects my property in Flathead county, see Exhibit 4 a-b. Lake County Commissioners letter entered in the record on September 15, 2023 as well as Attorney General Austin Knudsen see Exhibit 4

11. Montana's strict public meeting laws or Article II, Section 9 of Montana's constitution "Right to know" laws were not met. No public committee hearing was convened for the omnibus bill, and quietly snuck CSKT pact into a 5600 page spending covid bill at the last minute, and have no assurances our water rights and water levels will be protected. This conspiracy to conceal what should have been disclosed caused legal injury. Voters rejected this in 2016 and 2020, reinforces the fact this bill did not have the consent of the people of Montana, therefore fraudulent, and fraud vitiates everything. Governor Steve Bullock orchestrated a simple majority, flawed and illegal legislation, changing house rules to cram down this in the 2015 Montana legislature. See Exhibit 5, a signed and notarized Affidavit for Representative Art Wittich. Taxation without Representation is tyranny, a principle established in the Constitution. This overreach is to the detriment of the people of Montana. It creates time immemorial "Tribal reserved water rights" out of thin air and the slight of hand and a legal fiction. The doctrine behind these words is "first in time first in line" per Cheif Justice John Marshall. So which tribes really do have

right of first occupancy as they were very nomadic. For every government position the oath of office is governed by 5 U.S code 3331 and Article 6 of the Constitution .

12. On 6/28/22 the day of the recorded live video on YouTube @kevinolearly, Economic Summit was held with Kevin O'Leary, the famous investor from the TV show "Shark Tank" who espouses "data is the new oil", on stage was Martin Charlo, tribal council secretary of 1st nation leadership, CEO of Bit Zero Akbar Shanji, a crypto currency mining data center, Governor Greg Gianforte and Senator Steve Daines were all in attendance. At this forum they were bragging and celebrating that Montana has "a friendly regulatory climate to get things done" disregarding the people of Montana. Data centers requires an incredible amount of energy/water and has to run constant 24/7/365. Our water is also being shipped to other destinations as Energy Keepers signed a 15 year contract with Puget Sound Energy and began supplying energy in March. It is not a coincidence our water levels are low. These deals are extremely lucrative for everyone in involved except, shoreline water rights owners, farmers, recreation enthusiasts, Montana's boat and business owners, who were not only not compensated, were harmed and may negatively impact Montana's tourism economy and all people who work in that industry. We can not allow moving to a world where real wealth, farming, food, shelter, security, timber is being attacked, we can't eat crypto.

Damages

1. Their are substantial damages of depreciation of land valuation due to not having deeded water rights, navigational water and irrigation problems and future costs. Real estate professionals estimate 1ft of shoreline is worth 10,000 dollars, I have 735 feet of shoreline on both sides of my property. Enclosed is Exhibit E showing my stationary dock and my floating dock sitting on the bank of my shoreline due to low levels, and in jeopardy of erosion, depredation of many summer navigational activities and irrigation problems.

2. I bought my farm property at a huge premium due to the fact of having Deeded water rights, navigable water and irrigation, in my pursuit of life, liberty and property, a fifth amendment right, that was violated. Water is life, taking it is a crime against Humanity. The water was a appurtenance to the land I purchased. This is personal property right that is inalienable. Irrigation has been problematic as piping had to be extended and low pressure due to low water levels.

3. Due to the vagueness of this court, does this court have the authority to award damages? The net asset real estate value has been substantiality reduced and asking for relief in compensatory and punitive damages to include but not limited to, in the amount of four hundred ninety nine thousand dollars and my water rights will never be "Called" in perpetuity, (I strongly believe, not lawful to Call or meter).

4. This daunting task in trying to mitigate attorney fees to ensure my entire life's fruit of my labor, my property, is extremely stressful, the amount of time, aggravation, investigation, and research, disrupted my life and causes additional injury

5. Additionally, Appeal to FERC and the Secretary of the Army to enforce FERC form L-5 license conditions, this may be done by PSC, citizens, counties or others to ensure this does not happen again. The needs for energy, irrigation, Fisheries and recreation that are the backbone of Montana's economy and need to be equally and lawfully balanced as is has been for many years in the past and required by FERC.

I reserve my rights without prejudice UCC1-308

Shelley Lustman
Water rights #76LJ4415-000

See Attached Exhibits 1, 2,3,,4a,4b,4,5 and certification of service

Exhibit 1

Exhibit 2

Exhibit 3

Exhibit 4a

Exhibit 4b

Exhibit 4

Exhibit5

Flathead Lake Level Analysis

	Net Flow through Flathead Lake in Cubic Feet per Second (CFS)					Flathead Lake Elevation (compared to full pool 2,893 ft)		
	Inflow			Outflow	Net Daily Flow	USGS 12371550 Kerr Dam Reservoir Elevation	Kerr Dam change in elevation feet	Kerr Dam Change in Elevation inches
	a	b	c	d	e			
Date	USGS 12380000 Swan River near Big Fork	USGS 12363500 Flathead River near Kalispell	Total Flathead Lake Inflow (a+b)	USGS 12372000 Flathead River near Polson	Net Inflow minus outflow (c-d)			
13-Jun	2,430	9,550	11,980	12,700	-720	2,892.71	-0.29	-3.48
14-Jun	2,320	9,250	11,570	12,800	-1,230	2,892.64	-0.36	-4.32
15-Jun	2,230	9,570	11,800	12,700	-900	2,892.69	-0.31	-3.72
16-Jun	2,130	9,100	11,230	12,800	-1,570	2,892.66	-0.34	-4.08
17-Jun	2,010	8,640	10,650	12,700	-2,050	2,892.65	-0.35	-4.20
18-Jun	1,930	8,770	10,700	12,700	-2,000	2,892.61	-0.39	-4.68
19-Jun	1,930	8,590	10,520	12,700	-2,180	2,893.59	0.59	7.08
20-Jun	1,890	8,180	10,070	12,800	-2,730	2,892.56	-0.44	-5.28
21-Jun	1,790	7,750	9,540	12,700	-3,160	2,892.56	-0.44	-5.28
22-Jun	1,680	7,380	9,060	12,600	-3,540	2,892.52	-0.48	-5.76
23-Jun	1,580	7,020	8,600	12,600	-4,000	2,892.46	-0.54	-6.48
24-Jun	1,500	6,690	8,190	12,700	-4,510	2,892.40	-0.60	-7.20
25-Jun	1,410	6,510	7,920	12,800	-4,880	2,892.33	-0.67	-8.04
26-Jun	1,320	6,310	7,630	12,700	-5,070	2,892.25	-0.75	-9.00
27-Jun	1,270	6,130	7,400	12,700	-5,300	2,892.18	-0.82	-9.84
28-Jun	1,220	6,030	7,250	12,700	-5,450	2,892.11	-0.89	-10.68
29-Jun	1,180	5,980	7,160	12,700	-5,540	2,892.03	-0.97	-11.64
30-Jun	1,150	5,820	6,970	12,700	-5,730	2,891.94	-1.06	-12.72
1-Jul	1,110	5,660	6,770	12,300	-5,530	2,891.83	-1.17	-14.04

NOTES: Kerr Dam controls the top 10 feet of Flathead Lake which is the dam reservoir. It equals 1.2 million acre feet of water
 A one-foot reduction of elevation of the lake equals 120,000 acre feet of water
 As of July 1, 2023 the elevation of the lake was 1.17 feet below full pool and is the equivalent of 140,400 acre feet of water
 Flood control and recreation require the lake level to be at low-pool elevation (2883 feet) by April 15, refill to 2,890 feet by May 30th, and raised to full pool (2893 feet) by June 15, and maintained at full pool through Labor Day.

Congress of the United States
Washington, DC 20515

July 20, 2023

Cemille Calimlim Touton
Commissioner, Bureau of Reclamation
U.S. Department of Transportation
1849 C St NW # 7654
Washington, DC 20240

Dear Commissioner Touton,

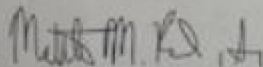
I write today to express my concern about the recent decision by the Columbia River Technical Management Team, who advises your agency, to reject Governor Gianforte's request to release *more water from the Hungry Horse Reservoir*.

This release is necessary to help stabilize the water levels of Flathead Lake, which are currently at historic lows, significantly affecting the economic stability of the small businesses surrounding the lake. Not only are the small businesses that rely on the lake's tourism affected but also the farmers in Flathead County. Farmers from Kalispell rely on water from the Flathead River to continuously fill a slough that is used to irrigate their crops. Due to the low water levels in the river, the slough has reached a diversion point and can no longer intake water. It is clear that the decision regarding Hungry Horse has impacts that ripple through the state.

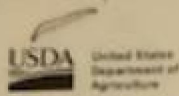
I request that your organization reconsider this decision. Simply put, we must value our citizens' livelihoods over potential harm to the fish in the reservoir. This action is not novel, as your agency made a similar move in 2001 when Flathead's water level dropped. The economic consequences of this low water level will be far-reaching, resulting in millions of dollars of infrastructure damage to docks and piers and the potential for boating accidents and injuries due to the low water levels. Furthermore, farmers are worried that they may lose hundreds of thousands of dollars' worth of crops as the slough begins to run dry. We must do everything we can to mitigate the effects and ensure that the local economies can stay afloat during this period of excess heat.

Protecting the Montanans and their way of life is the most critical issue for myself and my colleagues in Congress, and this decision to decline the Governor's request threatens many constituents throughout the state and not just in western Montana as the economic distress will have significant spreading effects throughout the state. Thank you for considering my request; I look forward to hearing back from you.

Sincerely,



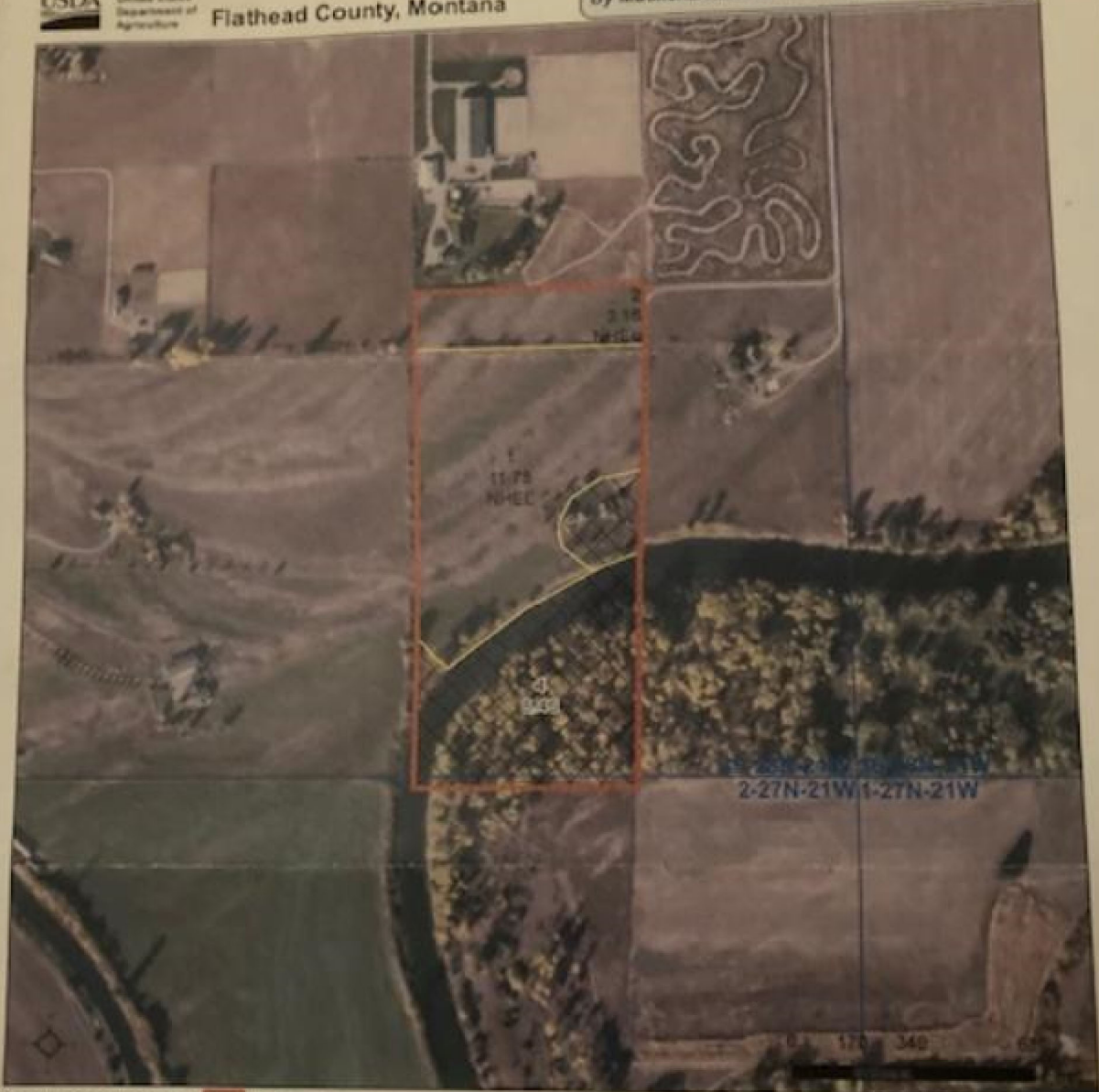
Matthew M. Rosendale, Sr.
Member of Congress



Flathead County, Montana

REVIEWED

By Mackenzie Bouma at 4:13 pm, Aug 06, 2020



Common Land Unit Tract Boundary

- Cropland
- Other Use

Wetland Determination Identifiers

- Restricted Use
- ▽ Limited Restrictions
- Exempt from Conservation
- Compliance Provisions

Tract Cropland Total: 14.94 acres

2020 Program Year

Map Created April 28, 2020
2018/2019 NAIP

Farm 6725
Tract 16690

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership, rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the risk to use and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-525 and attached maps) for more boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).



Lake County Commissioners

409-653-7204

LAKE COUNTY

330 4th Ave. E.

Pulaski, MT 59807

EXHIBIT
4a-c

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; 5. 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.

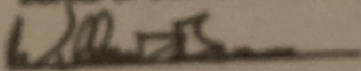
- 6) Land title acquisition by USA in Trust hurts local government including schools, fire, etc., and taxpayers. First SEC. 12. MISCELLANEOUS PROVISIONS, page 50, (1), (G), (I) provides lands acquired pursuant to exchange will be vested in USA trust, as does private exchange, page 52, (2) (F) (I). This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

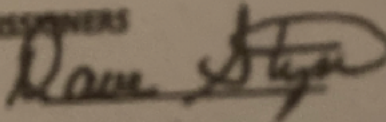
Thank you for your consideration of these issues.

Very Truly Yours,

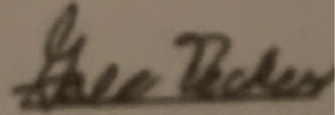
BOARD OF LAKE COUNTY COMMISSIONERS



William D. Barron, Chairman



Dave Sitpe, Member



Gale Decker, Member

enc



STATE OF MONTANA

AUSTIN KNUDSEN
ATTORNEY GENERAL

215 NORTH
SANDERS STREET
P.O. Box 201401
HELENA, MT
59620-1401

May 30, 2023

Brian Mercier
Regional Director
Northwest Regional Office BIA
911 NE 11th Avenue
Portland, OR 97232

Larry Nelson
Manager
220 Project Drive
St. Ignatius, MT 59865

RE: Confederated Salish and Kootenai Tribal Water Compact

Director Mercier and Manager Nelson,

I have recently been informed by members of the Mission and Jocko Irrigation District that the Bureau of Indian Affairs intends to begin immediate implementation of the Confederated Salish and Kootenai Tribal (CSKT) water compact.

While I understand that the CSKT water compact has been adopted by the Montana Legislature and ratified by the United States Senate, significant legal issues still surround it. These issues are, at least in part, being litigated in the Montana State Water Court. I request that the BIA delay implementation of the CSKT water compact until the Montana Water Court has completed its work and these issues have been resolved.

Sincerely,

Austin Knudsen

Art Wittich
280 West Kagy Blvd.
Suite D-324
Bozeman, MT 59715
Ph. (406) 585-5598
artw@montana.com

IN THE WATER COURT OF THE STATE OF MONTANA
CONFEDERATED SALISH AND KOOTENAI TRIBES – MONTANA – UNITED
STATES COMPACT

CASE NO. WC-0001-C-2021

AFFIDAVIT

I, Art Wittich, do swear and say:

1. I was the elected in 2014 as Representative for House District 68, and served during the 2015 Montana Legislative Session when the Flathead Reservation Water Compact (“Compact”) came up for ratification.
2. I served on the House Rules Committee during the 2015 Legislative Session.
3. During this session, SB 262 was introduced, and entitled “*An act ratifying water rights compact entered into by the confederated Salish and Kootenai tribes of the Flathead reservation, the State of Montana, and the United States of America; creating a unitary administration and management ordinance to govern water rights on the Flathead Reservation*”.
4. The minority party, which whole heartily supported the Compact, was well aware that they would have to overcome opposition to the Compact even before the Session started, because during the 2013 Session a similar bill ratifying the Compact failed in Committee.
5. As such, at the beginning of the 2015 Session the House minority party, and just enough cross over members of the majority party, demanded a quid pro quo for the election of Speaker Knutson, namely a temporary amendment to the Rules for just the 2015 Session.

6. Their Rule amendment, later codified as new 40-90 (2), allowed a simple majority to request to withdraw six tabled bills from a committee on to the House Floor for 2nd reading, instead of the traditional 3/5 majority under Rule 40-90 (which was subsequently codified as sub section (1)), as shown below:

H40-90. Legislation withdrawn from committee. (1) Except as provided in subsection (2), legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting. (2) For the 2015 Session, the majority party leadership and the minority party leadership may each make up to six separate requests to withdraw a bill from a House committee, and these requests require only a simple majority of those present and voting to withdraw a bill from a House committee.

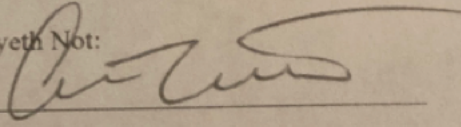
7. The stated intent and all discussion on the temporary change to allow withdrawal by a simple majority concerned "tabled" bills, which traditionally precluded further action by the Floor. The new rule advocates termed their 6 bills "silver bullets."
8. Notably, the codification of the temporary rule change was to Rule 40-90, not Rule 40-100.
9. After SB 262 passed the Senate, the House Judiciary Committee then heard the bill.
10. In Executive Session, House Judiciary Committee issued a "not concurred as amended" decision on SB 262. This is commonly referred to as an "adverse committee report." This differs from tabling a bill.
11. An Adverse Committee Report is specifically addressed in the House Rule 40-100, which states in paragraph (2):

A recommendation of "do not pass" or "be not concurred in" must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

12. On April 13th, Minority Leader Representative Chuck Hunter, rose to address the chairman/speaker to request to place SB 262 as one of their six "silver bullet" bills as per House Rule 40-90 (2), arguing it should be excepted from the traditional 60-vote requirement. As such, Hunter was asking the House to reject the adverse committee report without obtaining the required 60 votes.

13. Speaker Knudsen referred to House Rule 70-50 which gave him the authority to interpret the rule. He stated House Rule 40-90 (2) did not supersede House Rule 40-100 (2).
14. Rep. Hunter then "appealed" the Speaker's ruling, to effectively rewrite the Rules as approved by the House before the Session, and applying a simple majority for an "appeal" to effectively change the super majority rules. Utilizing such a simple majority "appeal" process absurdly negates any existing rule that requires a super majority vote, which mocks and violates the Rules.
15. House Rule 40-100 (2) still was in effect when Rep. Hunter requested SB 262 to be withdrawn for 2nd reading on the 76th Legislative Day under the grand pre session compromise. Overcoming the "adverse committee report" still required 60 votes.
16. Notably, Rep. Hunter's appeal of the Speaker's ruling to withdraw the bill only received 52 votes. The subsequent 2nd reading concurrence on April 15th only received 53 votes. The bill never received the requisite super majority of 60 votes to overcome the committee action, and so its substantive consideration by the Floor, "approval" on the Floor, and passage into law, violated the traditional, and even as amended, House Rules.

Further Affiant Sayeth Not:

_____ 

11/14/23

Art Wittich

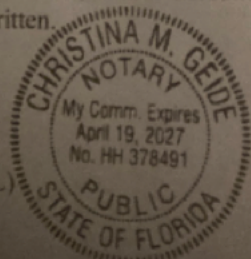
Date

STATE OF Florida)

: ss.

County of Monroe)

This instrument was acknowledged before me on the 14 day of November, 2023 by Arthur Wittich as the name of party on behalf of whom instrument was executed, known to me to be the person whose name is subscribed to the within instrument. Proof of MTD
 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove first written



(NOTARIAL SEAL)

Signed: Christina M. Geide
 Printed Name: Christina M. Geide
 Notary Public for the State of Florida
 Residing at Rancho Key, Florida
 My Commission expires: 4/19/2027

CERTIFICATE OF SERVICE

This is to certify that the foregoing was served on the following persons as noted below.

Montana Water Court
1123 Research Drive P.O. Box 1389 Bozeman, MT 59771-1389
watercourt@mt.gov
 U.S. Mail Overnight Mail Hand Delivery Facsimile E-Mail

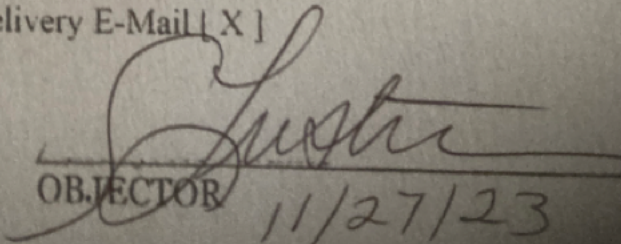
David W. Harder Senior Atty for Legal Issues
U.S. Dept. of Justice Indian Resources Section Environment & Natural Resources Division
999 18th Street South Terrace, Suite 370 Denver, Colorado 80202
David.harder@usdoj.gov
efile_denver.enrd@usdoj.gov
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P.O. Box 201601 Helena, MT 59601
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Jean.Save@mt.gov
 U.S. Mail Overnight Mail Hand Delivery E-Mail

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Daniel J. Decker, Melissa Schlichting, Christina M. Courville
Confederated Salish & Kootenai Tribes
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Melissa.Schlichting@cskt.org
Christina.Courville@cskt.org
daniel.decker@cskt.org
 U.S. Mail Overnight Mail Hand Delivery E-Mail

Dated this ^{November} 27 day of Month, 2023


OBJECTOR

11/27/23