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10 March 2014

The Honorable Tim Fox
Attorney General of the State of Montana
Department of Justice
P. O. Box 201401
Helena, Montana 59620-1401

Re: Confederated Salish and Kootenai Tribes v. Montana Water Court, 20th Judicial District, Three Irrigation Districts, Numerous individual water rights claimants, Secretary of the Department of Interior, and Bureau of Indian Affairs—CV-14-44-M-DLC

Dear Mr. Attorney General Fox:

The Confederated Salish and Kootenai Tribes (CSKT) filed the above-referenced suit in United States District Court, Missoula Division, February 27, 2014. This suit alleges a number of claims that pose a threat to the fundamental rights, including property rights (both water rights and real property rights), of Montanans, especially in western Montana. Moreover, it also poses a fundamental threat to the sovereignty of the State of Montana over its water and its adjudication and administration of water rights, including its longstanding and well-established authority over the adjudication of water rights in the State, including on and around the Flathead Indian Reservation. It also inappropriately and baselessly questions the impartiality and competence of Montana State Courts.

In this suit, the CSKT claim to own legal title to **all of the water** on, under, and flowing through the Flathead Reservation. Moreover, they claim to own legal title to **all of the water rights** to such water that is delivered to my clients, and other irrigators, by the Flathead Irrigation Project. That is, they claim to own the water right to the entire amount of water delivered by the Flathead Project to irrigate about 127,000 acres, 90% of which is owned in fee by individuals, encompassing approximately 2,000 farms and ranches. This is the largest irrigation project in Montana. To be direct and very clear, these farmers and ranchers, including those I represent as the lawyer for the Flathead Irrigation District, include both tribal members and nonmembers. Thus, from our perspective this is **emphatically not** a matter of Indian v. non-Indian. Everyone

potentially affected here are, equally, Montana citizens, and all are equally entitled to the protection of its constitution, its government, and its courts.

Based on the CSKT's novel and unsupported "complete tribal ownership" theory, the suit first attempts to enjoin two Montana judicial institutions, the Water Court and the 20th Judicial District Court, from determining three cases now properly before them. In essence, the theory is that since the CSKT would prefer to have water rights issues in which they are interested decided by the federal courts-- based on their unsubtle and insupportable presumption that the State courts are biased and incompetent--the longstanding state and federal policies reposing those matters in the state courts should be disregarded and these courts should be subject to a federal declaratory ruling and injunction preventing them from exercising their clear, unquestioned jurisdiction.

As you know, Mr. Attorney General, your office has historically been steadfast in defending the integrity and application of the State of Montana's water rights adjudication and the State's sovereign authority to conduct that adjudication from attacks such as this, dating back to the start of the State's general stream adjudication in the 1970's. That steadfast defense has included direct advocacy in numerous courts, including the United States Supreme Court, by your predecessors for Montana's sovereign authority to adjudicate these rights. *See Colorado River Water Conservation District, et al. v. United States*, 424 U.S. 800 (1974) (brief of *amicus curiae* State of Montana filed by Attorney General Robert L. Woodahl); *Arizona, et al. v. San Carlos Apache Tribe of Arizona, et al.*, 463 U.S. 545 (1983) (merits brief and argument on behalf of State of Montana presented by Attorney General Michael T. Greeley); *State of Montana, ex rel Greely v. Water Court of the State of Montana*, 691 P.2d 833 (1984) (Attorney General Greely sought and received Montana Supreme Court supervisory control to decide whether the Water Court has jurisdiction to adjudicate federally-based water rights and whether the State's statutory adjudication process, the Water Use Act, is legally adequate under the McCarran Amendment to adjudicate those rights); *State of Montana, ex rel Greely v. CSKT, et al.*, 712 P.2d 254 (1985) (Supreme Court holds the Water Court has jurisdiction to adjudicate federally-based water rights and the Water Use Act is facially adequate under the McCarran Amendment to adjudicate them).

This most recent attack by the CSKT requires and warrants a similarly vigorous defense. If such a defense is mounted, I am confident it will be successful, as were the efforts of previous Attorney Generals. Montana has invested vast amounts of state resources to establish a tribunal compliant with the strictures of the McCarran Amendment, and we must be vigilant in defending and protecting those investments and the State's objectives in making them, not to mention the State's sovereignty which protects its citizens' unique rights under Montana's constitution.

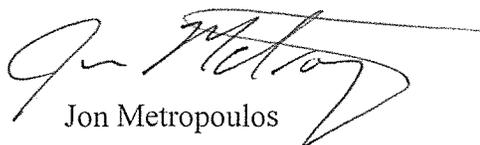
Additionally, in the Complaint the CSKT assert claims that, if successful, could undermine all individual (member and nonmember) claims to water rights on the Reservation, as well as to the State of Montana's sovereign ownership of all the waters in the State. *See* Mont. Const. Art. IX, Sec. 3(3). Additionally, taken to its logical end, they could also undermine the fee title of every person who owns real property on the

Reservation by way of a patent from the United States. Moreover, it will render the State of Montana's sovereignty on the Reservation a dead letter, at least as to the fundamental rights of equal and full access to the Courts, as my clients and many others will have been prevented from accessing the courts of this state to protect their property and rights, simply because the CSKT managed to persuade the federal courts that their preference for federal adjudication of their claims ought to prevail over my clients' rights, not very subtly insulting the competence and impartiality of both the Water Court and the 20th Judicial District Court.

Mr. Attorney General, as the state official with the responsibility and authority to defend the State's sovereign interests and institutions, I ask you on behalf of my client, the Flathead Irrigation District, and the hundreds of member and non-member irrigators and their farm and ranch families, to intervene in this federal suit to defend the State of Montana's sovereign prerogatives at issue here. These include its constitutional ownership of water within the state and the constitutional requirement to administer water rights, as well as its courts' jurisdiction to adjudicate these issues and its citizens' legal right to invoke the jurisdiction of its courts.

General Fox, I do not think I have overstated the threats posed by this suit to my clients' rights and property interests. Nor do I think I have overstated the adverse consequences it poses for the State of Montana, its judicial institutions, its significant investments in the Water Right Adjudication, its constitutional ownership of water, and its sovereignty, which is the vital authority that preserves its citizens' unique rights under the State constitution. It is my hope that you will view this suit as I do. My clients, frankly, and other Montanans, need the State of Montana's help.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Metropoulos", with a long, sweeping horizontal line extending to the right.

Jon Metropoulos