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COMMISSIONER OF  
POLITICAL PRACTICES

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## Lobbying

## Complaint Form (10/09)

Type or print in ink all information on this form except for verification signature

### Person bringing complaint (Complainant):

Complete Name Jayson Peters  
Complete Mailing Address P.O. Box 532  
Lakeside, MT 59922  
Phone Numbers: Work 406-257-4304 Home 406-250-8059

### Person or organization against whom complaint is brought (Respondent):

Complete Name Confederated Salish & Kootenai Tribes (CSKT)  
Complete Mailing Address PO Box 278, 42487 Complex Blvd.  
Pablo, Montana 59855  
Phone Numbers: Work (406) 675-2700 Home \_\_\_\_\_

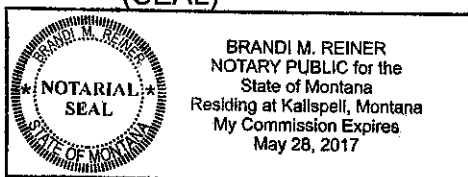
**Please complete the second page of this form and describe in detail the facts of the alledged violation.**

### Verification by oath or affirmation

State of Montana, County of Flathead

I, Jayson Peters, being duly sworn, state that the information in this Complaint is complete, true, and correct, to the best of my knowledge and belief.

[Signature]  
Signature of Complainant



Subscribed and sworn to before me this 2 day of April, 2015.

Brandi M Reiner  
Notary Public

My Commission Expires: May 28, 2017



## Complaint

CSKT, Mercury, DeMars and FARM have chosen to use Dark Money and skirt Montana Lobbying laws to hide the full amount of funds to lobby the Montana Legislature and other elected officials. This is a breach of the public trust and open government.

Currently CSKT Principal has not listed any grassroots lobbying nor have they listed any payments to Mercury as their grassroots organizer. Mercury has clear ties to CSKT lobbyist Mark Baker (see attachment labeled C). Mercury also has ties to Vicky Vadlamania which has made media buy purchases around the state of Montana on behalf of Farmers and Ranchers for Montana (see attachment I). Farmers and Ranchers for Montana are the grassroots lobbying arm of CSKT and has failed to report the full efforts of their grassroots lobbying effort and have deceived the people of Montana and their right to know who and how much money is being spent to propagandize the general public.

## History

In the early 1980's the voter of Montana approved I-85 that attempted to institute higher regulations and disclosure of Lobbying. However certain provisions of I-85 were struck down by the Supreme Court of Montana. Yet the Montana Supreme Court did acknowledge in Krivec, supra, at p. 485, the Montana Supreme Court declared that there "is an obvious public interest in the regulation and disclosure of lobbying activities."

In an opinion by former Commissioner of Political Practices Linda Vaughey in the Matter of the Complaint Against Blue Cross Blue Shield Of Montana, the Commissioner of Political Practices stated the following

"Montana Automobile Association discussed at length I-85's definition of the term "principal." Id., at pp. 390-392. Montana's Supreme Court upheld the present definition of "principal" in MCA §5-7-102(12) but declared unconstitutional a second definition which included the following groups, corporations, or entities:

(b) in the case of a person other than an individual, to solicit, directly, indirectly or by an advertising campaign, the lobbying efforts of another person.

Id., at p. 389. Montana's Supreme Court relied heavily on the U.S. Supreme Court case of United States v. Harriss, 347 U.S. 612, 74 S.Ct. 808 (1954) to declare unconstitutional the second definition of principal in I-85; however, a close reading of Montana Automobile Association and Harriss indicates that a principal who has hired a lobbyist must report organizational expenditures or payments made in support of or assistance to a lobbyist or a lobbying activity, including grassroots lobbying costs.

CSKT registered as a Principal has hired a lobbyist and has made expenditure (Mercury) to support and assist the Lobbyist (Mark Baker) to support passage of SB 262, yet they have not listed these grassroots expenditures as suggested by former Commissioner Vaughey in the opinion of Matter of the Complaint Against Blue Cross Blue Shield Of Montana.

In Harriss, supra, at p. 633 Chief Justice Warren and the majority described the lawful purpose of the Federal Act as follows:

“Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobbying Act was designed to help prevent.....”

The legislative history of the Act makes clear that, at the very least, Congress sought disclosure of such direct pressures, exerted by the lobbyists themselves or through their hirelings or through an artificially stimulated letter campaign. It is likewise clear that Congress would have intended the Act to operate on this narrower basis, even if a broader application to organizations seeking to propagandize the general public were not permissible.

Former Commissioner Vaughey expressed the following:

“The express requirements of MCA §5-7-102(10)(b), Harriss, and Montana Automobile Association recognize that payments made to support or assist a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of a lobbyist, are payments to influence official action which must be reported under the Act. Payments by a principal for a grassroots lobbying campaign (which Chief Justice Warren described in Harriss as “an artificially stimulated letter campaign”) must be reported under Montana Automobile Association, MCA §5-7-102(10)(b), and Harriss.

Based on a consideration of the substantive rulings in Montana Automobile Association and Harriss, a person must report grassroots lobbying expenditures and payments if:

1. the person becomes a principal by hiring and paying a lobbyist as defined in the Montana Lobbyist Disclosure Act;

2. the principal and/or the lobbyist are engaged in direct communication with the legislature or individual legislators to support or oppose pending or proposed legislation or legislative action; and
3. Payments are made by a principal or a lobbyist in support or of assistance to a lobbyist or a lobbying activity, including but not limited to, the direct payment of expenses incurred to support or oppose pending or proposed legislative action at the request or suggestion of the lobbyist. MCA §5-7-102(10)(b).

Within the preceding context, BCBSMT paid for grassroots lobbying efforts opposing SB 322 and HB 607. BCBSMT opposed these bills in the 1999 Legislature and engaged in direct communication with legislators to defeat these bills. BCBSMT's grassroots lobbying efforts were undertaken to support or assist BCBSMT's lobbying activity. BCBSMT was required under the Lobbyist Disclosure Act to report payments made to implement its grassroots lobbying efforts subject to the conflicting miscellaneous office expense language in ARM 44.12.207. See pp. 24-26 of this decision.

### Facts

Confederated Salish and Kootenai Tribes (CSKT) has registered with the Montana Commissioner of Political Practices for the years 2013, 2014, 2015 and 2016 as a Principal under the name "Confederated Salish & Kootenai Tribes" with the Principal Representative named Teresa Wall McDonald.

CSKT Principal on June 3<sup>rd</sup>, 2014 at a Tribal Council meeting approved a "resolution enacting a fiscal year 2014 Water Rights Budget in the amount of \$600,000" on a 7-2 vote. The Tribal council previously approved the transfer of funds from the Capital Fund for a contract with Mercury regarding water rights, the amount was not discussed nor disclosed (see attachment labeled A).

CSKT Principal on June 26<sup>th</sup>, 2014 at a Tribal Council meeting approved \$200,000 to Mercury Consulting Services and Mark Baker on a unanimous vote (see attachment labeled B).

Mark Baker has registered with the Montana Commissioner of Political Practices as a Lobbyist for the years 2014 and 2015. Mark Baker has been retained by CSKT Principal as one of two lobbyists to represent CSKT Principal's positions during the 2015 Legislature.

Mark Baker joined Mercury April 4, 2014 (see attachment labeled C).

According to Mercury "is a high-stakes, bipartisan public strategy firm. The firm provides a comprehensive suite of services that includes federal government relations, international affairs, digital influence, public opinion research, media strategy and a **bipartisan grassroots mobilization** network in all 50 states. Our firm is not just led by top talent — we distinguish ourselves by having senior talent deeply engaged in each project from start to finish, a promise

we keep to clients. The firm has an established national presence, with offices in Washington, DC, New York, California, New Jersey, Pennsylvania, Florida and North Carolina. Mercury is a part of Omnicom Group Inc. Omnicom is a leading global marketing and corporate communications company. Omnicom's branded networks and numerous specialty firms provide advertising, strategic media planning and buying, digital and interactive marketing, direct and promotional marketing, public relations and other specialty communications services to over 5,000 clients in more than 100 countries (see attachment labeled C). (www.mercuryllc.com)”

Neither Mercury nor Omnicom Group Inc. is registered as a Lobbyist or a Principal with the Montana Commissioner of Political Practices.

In late 2014 Farmers and Ranchers for Montana (FARM) was formed to create support for the approval and passage of SB262 titled “Implement CSKT water rights settlement”. As stated on FARM’s website [www. http://montanawatercompact.com](http://montanawatercompact.com), FARM is a grassroots coalition of farmers and ranchers, united with local leaders, Indian tribes, businesses and other Montanans committed to fair water policies and the approval of a Water Compact that quantifies and secures water access to the benefit of all Montanans.

FARM’s address is PO BOX 1029, Helena Montana 59624 (see attachment labeled D).

FARM is not registered as a Principal with the Montana Commissioner of Political Practices. Shelby DeMars has registered with the Montana Commissioner of Political Practices as a Lobbyist for the years 2014 and 2015.

DeMars, is also the contact person and the individual that is sending emails on behalf of FARM (see attachment E). DeMars is not registered with the Montana Commissioner of Political Practices to lobby for FARM.

DeMars has also sent an untold number of emails to elected officials and it is impossible to ascertain exactly how many and to whom. Attached is two such emails sent to elected officials and one email sent to a former legislator (see attachment labeled F,G and H).

Vicky Vadlamania is the contact person that has been purchasing media for FARM (see attachment labeled I). My source’s name has been removed from the email, however the address that was given is identical to FARM’s address. Vicky Vadlamania email contact is [vvadlamania@mercuryll.com](mailto:vvadlamania@mercuryll.com) tying her to Mercury which was hired by CSKT for the purposes of passage and approval of SB262.

FARM has been campaigning for the passage of SB262 across the state of Montana in most forms of media including but not limited to radio, direct mail, newspaper, social media and other outlets of communication to both elected officials and public (see attachment labeled J, K, L, M).

DeMars is known throughout the 2015 Legislature as a lobbyist and it is difficult to distinguish between DeMars communications with Legislators on the subject of SB262 as a hired lobbyist or a grassroots organizer.

In contacting the Internal Revenue Service, Ms. Towe (id #100739071), they do not show FARM registered with the IRS. This means that FARM is operating with unreported monies and no means of tracking where the funds are coming from and how those monies are being spent, ie. Dark Money.

Montana Code Annotated's Title 5 Chapter 7 was created for the purposes of full disclosure to the public and their right to know who is lobbying, for what purpose they are lobbying and how much money is being spent lobbying on behalf of the Principle.

**5-7-101. Purposes of chapter -- applicability.** (1) *The purposes of this chapter are to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, to provide for the licensing of lobbyists and the suspension or revocation of the licenses, to require elected officials to make public their business, financial, and occupational interests, and to require disclosure of the amounts of money spent for lobbying.*

(2) *This chapter does not subject an individual lobbying on the individual's own behalf to any reporting requirements or deprive an individual of the constitutional right to communicate with public officials.*

**5-7-102. Definitions.** The following definitions apply in this chapter:

(11) (a) "Lobbying" means:

- (i) *the practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators; and*
- (ii) *the practice of promoting or opposing official action of any public official or the legislature.*

(12) (a) "Lobbyist" means *a person who engages in the practice of lobbying.*

(13) (a) "Payment" means *distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value:*

- (i) *to a lobbyist to influence legislation or official action by an elected local official, a public official, or the legislature;*
- (ii) *directly or indirectly to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for lobbying expenses; or*
- (iii) *in support of or for assistance to a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.*

The State of Montana does not address "grassroots lobbying" nor does it define "grassroots", therefore I reviewed the federal definition of "grassroots lobbying". The definition for "grassroots lobbying" is laid out in the following federal codes.

§ 56.4911-2 Lobbying expenditures, direct lobbying communications, and grass roots lobbying communications.

(2) Grass roots lobbying communication—(i) Definition. A grass roots lobbying

communication is any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof.

(ii) Required elements. A communication will be treated as a grass roots lobbying communication under this § 56.4911–2(b)(2)(ii) if, but only if, the communication:

(A) Refers to specific legislation (see paragraph (d)(1) of this section for a

definition of the term “specific legislation”);

(B) Reflects a view on such legislation; and

(C) Encourages the recipient of the communication to take action with respect

to such legislation (see paragraph (b)(2)(iii) of this section for the definition

of encouraging the recipient to take action.

§ 4911. Tax on excess expenditures to influence legislation

(3) Grass roots expenditures

The term “grass roots expenditures” means expenditures for the purpose of influencing legislation (as defined in subsection (d) without regard to paragraph (1)(B) thereof).

(d) Influencing legislation

(1) General rule

Except as otherwise provided in paragraph (2), for purposes of this section, the term “influencing legislation” means—

(A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and

(B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation.

The IRS has defined "Direct" and "Grassroots" Lobbying as:

“Direct lobbying refers to attempts to influence a legislative body through communication with a member or employee of a legislative body, or with a government official who participates in formulating legislation. Grass roots lobbying refers to attempts to influence legislation by attempting to affect the opinion of the public with respect to the legislation and encouraging the audience to take action with respect to the legislation. In either case, the communications must refer to and reflect a view on the legislation.” (<http://www.irs.gov/Charities-&-Non-Profits/Direct--and--Grass-Roots--Lobbying-Defined>)



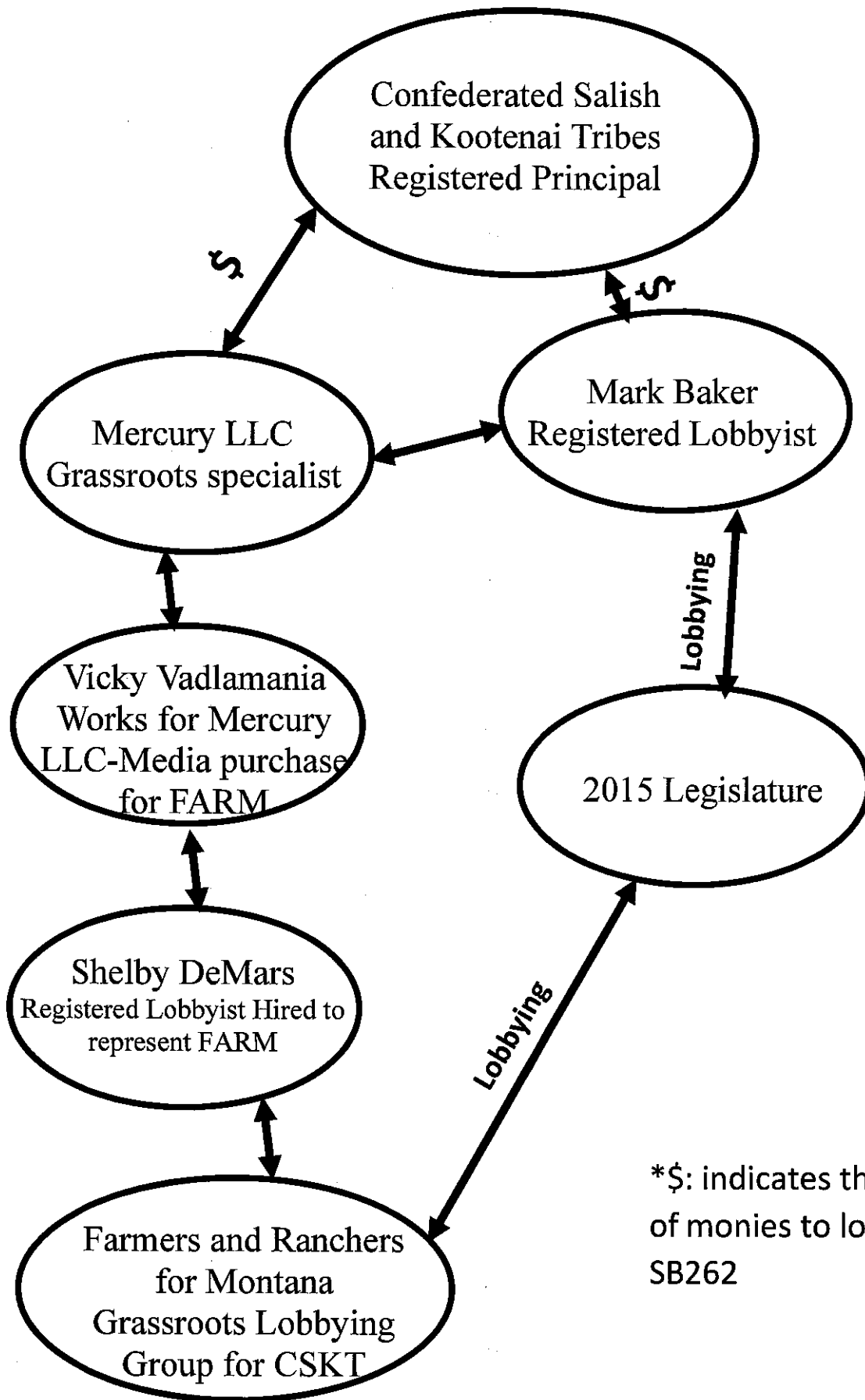
CSKT Principal, Mercury, DeMars, created FARM for the purposes of direct lobbying of the 2015 legislature and grassroots influencing of public opinion with a call to action of the public to contact their Legislators to vote for SB 262. The aforementioned players have failed to disclose all the funds used to lobby the legislature either directly or thru a grassroots lobbying call to action by the public to call their Legislators and urge them to vote for SB262. The aforementioned players have failed to comply with MCA Title 5 Chapter 7 in the promotion of high standards of ethics in the practice of lobbying and preventing unfair and unethical lobbying practices..... and to require disclosure of the amounts of money spent for lobbying.

Farmers and Ranchers for Montana (FARM) has failed to comply with MCA Title 5 Chapter 7 in the promotion of high standards of ethics in the practice of lobbying and preventing unfair and unethical lobbying practices..... and to disclosure all amounts of money spent for lobbying. FARM has failed to register as a Principle for the full disclosure of lobbying efforts for the passage of SB262.

Shelby DeMars has failed to comply with MCA Title 5 Chapter 7 in the promotion of high standards of ethics in the practice of lobbying and preventing unfair and unethical lobbying practices..... and to disclosure of the amounts of money received for lobbying on behalf of FARM and to register as their lobbyist.

CSKT Principal has failed to comply with MCA Title 5 Chapter 7 in the promotion of high standards of ethics in the practice of lobbying and preventing unfair and unethical lobbying practices..... and to disclosure all the amounts of money spent for lobbying. CSKT has only reported lobbying efforts paid to Mark Baker and Shane Morigeau and not the major effort paid to Mercury and subsequently to FARM and DeMars.

Mercury has failed to comply with MCA Title 5 Chapter 7 in the promotion of high standards of ethics in the practice of lobbying and preventing unfair and unethical lobbying practices..... and to disclosure all amounts of money spent for lobbying. Mercury has failed to register as a Principle for the full disclosure of lobbying efforts for the passage of SB262.



\*\$: indicates the flow of monies to lobby for SB262

A

**4B**  
Carole Lankford joined the meeting.

Angela McLean, Lt. Governor, and Jason Smith, Governor's Office, discussed the Main Street Montana Project. The project is an effort led by the Governor's Office in conjunction with the private sector to strengthen opportunities for private partnerships across the state to create economic development opportunities for Montanans. Ms. McLean will be here again on June 18 to discuss this project. She invited council to a meeting at Salish Kootenai College to discuss CSKT priorities. Chairman Trahan asked to be kept apprised on the Medicaid issue. Joe Antiste, Tribal Employee, discussed an employment issue. Council requested that Joe meet with the Tribal Defenders Office and will have Jami Hamel follow up.

Stan Healy, Tribal Member, expressed concern about Two Eagle River School dropping the Salish Language class. He would like the Tribes to find funding to keep that program funded. Council will follow up with Dr. Bundy.

Violet Felsman, Tribal Employee, discussed the Transportation program. She needs to depend on the transit system to transport her to and from work. Violet has attempted to resolve the issue with the Department of Human Resources Development, but the program does not go to Blue Bay. Since DHRD will not provide transportation she has to pay for a taxi to transport her to work. Council will follow up with DHRD. Shelly Fyant would like the transit policy reviewed. The program should accommodate tribal members trying to work.

Patty Matt, Tribal Member, informed council that she is disabled so she would like to have a personal home caregiver. Patty was receiving services through the VA but would like a tribal member caregiver due to problems she has had with the VA. The Elder Program age requirement is 55, although she is disabled she does not qualify for services since she is 54 years old. Council will review the policy regarding the medical disability requirement.

Tara Bigcrane, Tribal Member, requested to meet with council in executive session to discuss a personal matter.

Council reconvened into regular session.

Brian Lipscomb, Energy Keepers Inc., and Stu Levit, Legal Department, gave an update on a motion that was filed by Verdell Jackson to intervene in the transfer of the Kerr license. EKI is assessing this matter and will provide further information as it becomes available.

Vern Clairmont, Financial Management, and Rhonda Swaney, Legal Department, requested approval of a resolution enacting a fiscal year 2014 Water Rights Budget in the amount of \$600,000. The Tribal Council previously approved the transfer of funds from the Capital Fund for a contract with Mercury regarding water rights. Shelly Fyant reported on the budget committee meeting that took place on May 28.

**MOTION** by Shelly Fyant to approve by resolution the enactment of a fiscal year 2014 Water Rights Budget in the amount of \$600,000. Seconded by Leonard Gray. Carried, 7 for, 2 opposed (Leonard TwoTeeth and Terry Pitts), 0 not voting.

*Terry Pitts, for the record, "I hear and I support what the council said and the decision they made. My opposition is based on Mr. Rehberg's past relationship and opposition with CSKT. We haven't forgotten and we are watching."*

*Leonard TwoTeeth, for the record, "I don't approve of us using tribal dollars to give to a company that is owned by Denny Rehberg and I strongly, strongly oppose this."*

**RESOLUTION 14-157**

**RESOLUTION APPROVING A FISCAL YEAR 2014 WATER RIGHTS BUDGET**

**BE IT RESOLVED BY THE TRIBAL COUNCIL OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES:**

**WHEREAS**, there is a need to enact a budget for Water Rights and funds are available to appropriate for this purpose; and

**WHEREAS**, the budget will be allocated as follows:

Tribal council meeting 06/03/14

B

# MEETING MINUTES

Education of the Flathead Indian Reservation -- June 28, 2014

1B

**BE IT RESOLVED** by the Tribal Council of the Confederated Salish and Kootenai Tribes to modify the FY 2014 BIA Self-Governance Compact Budget as reflected above, and

**BE IT FURTHER RESOLVED** that the modification increases the total FY 2014 BIA Self-Governance Compact Budget from \$22,837,930.75 to \$23,916,910.75.

Patty Stevens gave an update on her community meeting. 27 people attended the meeting. Ann Sherwood and Susan Kachibach, Tribal Detenders Office, gave a presentation on probation, parole, and advanced directives. Ruth Swamy gave a history on employment. Pam contacted Chae-Kyoung Noh to publish a story on the meeting. There will be another meeting in late to continue discussion on employment.

Shelly Fyatt and Vernon Finley, Budget Committee, and Vera Chairmont, Financial Management, reported on yesterday's budget committee meeting. Items discussed were: (1) The fiscal year 2015 budget for the Legal Department, (2) Met with the professionals from Mercury Consulting Services, M/CN as a separate group and Mark Baker as a consultant. M/CN presented phase one of the water compact campaign, which includes various media campaigns, social media and focus groups. The cost of phase one is \$100,000. There is sufficient funding in the program budget. Mercury will provide regular reports. (3) The RFP from Gary Newman to be the facilitator of the Alcohol and Substance Abuse Work Group. The committee recommended having Tribal Health & Therapist Services fund this cost. (4) The indirect cost plan budget and spending authority for some of the programs. (5) The fiscal year 2015 Economic Development budget.



Rhonda Swamy, Legal Department, discussed a letter to John Metch, Montana Bureau of Mines and Geology, regarding the testimony that was provided about the compact. The letter provides updated information and requests the opportunity to speak on the data that the CSK provided.

**MOTION** by Shelly Fyatt to authorize the letter to John Metch, Montana Bureau of Mines and Geology. Seconded by Lloyd Irvine. Carried, unanimous (8 present).

Rhonda Swamy, Legal Department, discussed retro pay for Irish White, program manager for the Crime Victim Advocacy Office. The office underwent reorganization and Irish has acted as program manager since November 29, 2012. The position description was revised in July 2013, December 2013 and January 2014. The position was classified in March 2014. Irish applied for the position and effective May 20, 2014 she was moved into the position. The other employees in the office that were reclassified that fit changes in the position descriptions received retro pay. Rhonda requested retro pay for Irish back to January 24, 2014. There are sufficient funds in the budget.

**MOTION** by Vernon Finley to grant Irish White retro pay from January 24, 2014. Seconded by Shelly Fyatt. Carried, unanimous (8 present).

\*\*\*\*\* Break \*\*\*\*\*

Caroline Woodworth, Tribal Lands Department, presented a request from Will Rogers (Horse King Harry) to be granted a revocable permit to create a fireworks stand on Tribal Tract T7047 in Hams as a sign of \$1,000 for the summer of 2014. The site is currently vacant. The Lands Department recommended issuing a revocable permit for the 2014 summer season at a rate of \$1,000 and add T7047 to the 2015 fireworks list. No action taken. Caroline will negotiate further and present back for consideration.

Caroline Woodworth, Tribal Lands Department, presented a request from the Charlie School District to remove three park cars from identified tribal lands as a firestarter for the Skills Program to attend a national conference. The Charlie School District would provide their own equipment to remove the park vehicles. They would use the scrap metal as a firestarter. The Lands Department staff recommended allowing the school to remove the park vehicles from identified tribal properties on the condition that the Lands Department verify ownership status and land use, verify access to these locations to avoid trespass, and the condition of the properties remain a priority to the tribe. Insurance and permits would be required. Terry Piss thought there may be some tribal member scrapers that would like to do this type of work on tribal land. Caroline advised that if there are more than three park vehicles then the tribal members scrapers can be contacted to see if they have an interest.



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#### RECENT POSTS

The Hill Names Vin Weber a Top Lobbyist

October 22nd, 2014

New York Observer Names Mike McKeon #38 on Albany's Most Powerful List

October 22nd, 2014

City And State Names Chapin Fay a '40 Under 40 Rising Star'

October 9th, 2014

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#### ARCHIVES

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2013 (13)

2011 (1)

2010 (1)

## Mark Baker Joins Mercury in an Of Counsel Role

SHARE

April 4, 2014, 6 a.m.



Washington, D.C. April 4, 2014 – Mercury is pleased to announce seasoned attorney and political advisor Mark Baker has joined the firm in an Of Counsel role. Baker joins Mercury D.C. Co-Chairman [Hon. Denny Rehberg](#), former U.S. Congressman (R-MT) in expanding the firm's national footprint in the Northwest region.

"Mark is a critical addition to the firm, with impressive experience in both national and Montana politics," said [Hon. Vin Weber](#), Partner at Mercury. "We are proud of Mercury's continued success in recruiting top talent as we expand our national network to best serve key regions across the U.S."

"I am thrilled to be joining the team at Mercury," Baker said. "The firm is widely respected among Washington's opinion leaders, and will afford me the opportunity to consult on a variety of industries and issue areas on a dual national-regional scale."

Mr. Baker, a retired officer for the U.S. Air Force, currently serves as a Managing Partner in the law firm of Anderson, Baker & Swanson, PLLC, located in Helena, Montana. Baker sits on the board of the Mountain States Legal Foundation. For the past 15 years, he has also served in a counsel role to Denny Miller Associates.

Active in Republican politics in Montana and nationally for the past 25 years, Baker serves on the National Finance Committee for the Republican National Congressional Committee. Additionally, Baker served as a member of the National Finance Committee for the Romney for President campaign in 2008 and 2012. He was also chairman of the Montana Delegation to the 2012 Republican National Convention in Tampa, Florida.

At the state level, Baker most recently served as Montana State Finance Chairman. He remains active in civic affairs, serving on the boards of the Montana Taxpayers Association, the Treasure State Resource Industry Association and the Congressional Military Academy Review Board for Congressman Steve Daines (R-MT).

Baker resides in Helena, Montana with his wife, Jennifer, and their youngest daughter, Jaci. They have three other grown children: Danielle Vert, of Hollywood, CA; Sarah Page, of Great Falls, MT; and their son, Gary Vert, of Helena, MT.

#### About Mercury

Mercury is a high-stakes, bipartisan public strategy firm. The firm provides a comprehensive suite of services that includes federal government relations, international affairs, digital influence, public opinion research, media strategy and a bipartisan grassroots mobilization network in all 50 states. Our firm is not just led by top talent – we distinguish ourselves by having senior talent deeply engaged in each project from start to finish, a promise we keep to clients. The firm has an established national presence, with offices in Washington, DC, New York, California, New Jersey, Pennsylvania, Florida and North Carolina.

Mercury is a part of [Omnicom Group Inc.](#) Omnicom is a leading global marketing and corporate communications company. Omnicom's branded networks and numerous specialty firms provide advertising, strategic media planning and buying, digital and interactive marketing, direct and promotional marketing, public relations and other specialty communications services to over 5,000 clients in more than 100 countries.

Media Contact: Jennifer Wlach, telephone: (202) 551-1440





P

The 2015 legislative session is the final opportunity for the compact to be approved. Make your voice heard to quantify and secure water access for the benefit of all Montanans.

### Will you help us take action?

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E



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## NEWS

### MT Agriculture Business Association Announces Compact Support as SB 262 Heads to House for Hearing

March 24, 2015 by FARM

**FOR IMMEDIATE RELEASE** March 24, 2015 CONTACT Shelby DeHans 406-660-1989 MT Agriculture Business Association Announces Compact Support as SB 262 Heads to House for Hearing (Helena, Mont.)—After being passed by Montana State Senate with

[Read More](#)

### CSKT water compact awaits approval in MT

March 24, 2015 by Rae Price

Carrying and retaining water use rights has been an issue for landowners for centuries. The discussion and controversy over who owns the water and is entitled to use it continues today. The issue is at the forefront in Montana as debates continues in

[Read More](#)

### Pass the Flathead water compact

March 24, 2015 by James Beach

As a Montana landowner, resident and irrigator, I want to urge our Montana legislators to support passage of the Montana water compact.

[Read More](#)



<<http://montanawatercompact.us9.list-manage.com/track/click?u=2031ba67422211c3e3375cf96&id=bbba41c765&e=45c3aa1c9e>>

\*This letter supporting the CSKT Compact was signed by Hans McPherson, rancher-owner of McPherson Farms, and the following entities representing over 37,000 acres in the Bitterroot Valley: \*Teller Wildlife Refuge, Tucker Crossing Ranch, Etna Ditch, Union Ditch, Valley Springs Ranch, Overturf Ditch, Spooner Ditch, Woods-Parkhurst Ditch, Painted Rocks Water Users Association, Supply Ditch, Kootenai Springs Ranch, Webfoot Ditch, Bitterroot Springs Ranch, Bitterroot Irrigation District, Hawkinson Ranch, Double Fork Ranch, Popham Ranch and Woodside Irrigation District.

Dillon rancher Jim Hagenbarth urges legislators to pass the Compact. Click here to read his letter: "CSKT Water Compact Process Essential to Protect Rights <<http://montanawatercompact.us9.list-manage.com/track/click?u=2031ba67422211c3e3375cf96&id=2046ca2b91&e=45c3aa1c9e>>"

Richard Erb, an irrigator in Moiese, also voiced his support of the Compact in the Daily Interlake in his letter, "Commissioners wrong to oppose Water Compact <<http://montanawatercompact.us9.list-manage.com/track/click?u=2031ba67422211c3e3375cf96&id=86095996a9&e=45c3aa1c9e>>"

\*\*\*\*\*

\*Farmers And Ranchers for Montana (FARM), is a coalition of hundreds of farmers and ranchers, united with local leaders, tribal governments, businesses, water-users, and other Montanans who support the approval of a Water Compact. \* \*For more information please visit [www.montanawatercompact.com](http://www.montanawatercompact.com)

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[image:  
Email] <[shelby@montanawatercompact.com](mailto:shelby@montanawatercompact.com)> Email  
<[shelby@montanawatercompact.com](mailto:shelby@montanawatercompact.com)>

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F-3

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F-1

From: Shelby DeMars <press@montanawatercompact.com>  
Date: Thu, Feb 12, 2015 at 2:56 PM  
Subject: CSKT Water Compact: The Week in Review  
To: XXXXXXXX

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\*The Week in Review\*

\*A compilation of news from the past week on the CSKT Water Compact\*

The Billings Gazette Editorial Board supports the CSKT Compact in their newest editorial "CSKT Water Compact Matters to Billings Region <<http://montanawatercompact.us9.list-manage2.com/track/click?u=2031ba67422211c3e3375cf96&id=f0cb652bf2&e=45c3aa1c9e>>" by Gazette Editorial Board, \*The Billings Gazette, \*2/8/15, also published in The Montana Standard <<http://montanawatercompact.us9.list-manage1.com/track/click?u=2031ba67422211c3e3375cf96&id=7eda3d4c78&e=45c3aa1c9e>>

John Youngberg, the Executive Vice President of the Montana Farm Bureau Federation weighs in on why the MFBF supports the Compact:

"A Case for the CSKT Water Compact

<<http://montanawatercompact.us9.list-manage2.com/track/click?u=2031ba67422211c3e3375cf96&id=b914f454cb&e=45c3aa1c9e>>"

by John Youngberg, \*The Daily Interlake, \*2/7/15

The Bitterroot Irrigators announced their support of the CSKT Water Compact:

"Tribal Water Compact Tension

<<http://montanawatercompact.us9.list-manage.com/track/click?u=2031ba67422211c3e3375cf96&id=694b1284f7&e=45c3aa1c9e>>"

by Bitterroot Irrigators, \*The Great Falls Tribune, \*2/6/15, also published in the Hungry Horse News.

G-6



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Farmers And Ranchers for Montana (FARM), is a coalition of over 230 farmers and ranchers, united with local leaders, tribal governments, businesses, water-users, and other Montanans who support the approval of a Water Compact.

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generation the ability to access water goes with it." *Click here to view more on the support of the: [Montana Water Resources Association](#), [Bitterroot Irrigators](#), and [Gallatin Valley Irrigators](#).*

Farmers and Ranchers for Montana (FARM), a coalition of farmers, ranchers, and water users from across the state voiced similar concerns, stating that when making their decision, House members should carefully consider the sources of the material provided to them from both sides of the issue.

"Many of the Compact opponents have misrepresented themselves as having the best interests of Montanans at heart," said Shelby DeMars, spokeswoman for FARM. "In reality, they are pushing an out-of-state agenda and they won't be the ones to pay the court costs when the litigation starts—it will be Montana farmers and ranchers."

For additional information on the groups that support the Compact and the reasons for their support, please take a moment to read just a few of the editorials that have been written on why it is critical that the Compact is ratified by the Montana State Legislature:

## EDITORIALS

["All Montanans Benefit From CSKT Compact" by Former Governor Marc Racicot](#)

["CSKT Compact Will Prevent Litigation, Protect Montanans" by Colleen Coyle](#)

["Compact Benefits Gallatin Irrigators, Future Water Users" by Walt Sales and  
Gallatin Irrigators](#)

["Future of Bitterroot Agriculture Depends on CSKT Water Compact" by Hans  
McPherson and Bitterroot Irrigators](#)

["A Case for the CSKT Water Compact" by John Youngberg, Executive Vice  
President of the Montana Farm Bureau Federation](#)

# G-5

"Revised Compact Deserves the Support of Legislature, Montanans" by Former State Representative Scott Reichner

"CSKT Compact Matters to Billings Region" by The Billings Gazette Editorial Board

"Legislature Must Approve Water Compact" by The Bozeman Daily Chronicle Editorial Board

"Time to Move Forward with Water Compact" by The Missoulian Editorial Board

## LETTERS

Letter to Legislature from the Bozeman City Commission and Mayor Jeffrey Krauss

Letter to Legislature from Former Representative Wait McNutt

## STORIES TO NOTE

CSKT Water Compact Passes Senate, Heads to House, Northern Ag Network

"Governor, County Commission 'Significantly Misunderstands' Water Compact" by Molly Priddy, The Flathead Beacon

"CSKT, State Officials Reach Flathead Water Deal" by Tristan Scott, The Flathead Beacon

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###

G-1

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**From:**  
**Date:** March 23, 2015 at 8:59:36 PM MDT  
**To:**  
**Subject:** Fwd: Release: Agriculture, Water Use Groups Urge House Members to Pass CSKT W...

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From: [press@montanawatercompact.com](mailto:press@montanawatercompact.com)  
To:  
Sent: 3/6/2015 6:25:54 P.M. Mountain Daylight Time  
Subj: Release: Agriculture, Water Use Groups Urge House Members to Pass CSKT Water Compact

Open this email for the latest news on the CSKT Water Compact

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**FARMERS AND RANCHERS  
OF MONTANA**

FOR IMMEDIATE RELEASE

March 5, 2015

G-2

CONTACT

Shelby DeMars

406-660-1969

**Agriculture, Water Use Groups Urge House Members to Pass CSKT Water Compact as Second Half of the Session Begins**

(Helena, Mont.)—As members of the Montana State Legislature return from the transmittal recess one of the issues members of the Montana House of Representatives will be facing is the ratification of the bi-partisan Confederated Salish & Kootenai Tribes Water Compact.

The Compact passed the Senate with a 31-19 vote and a strong base of support from both sides of the political aisle.

"The Compact protects private property rights and complies with both the Montana and U.S. Constitutions, as well as Montana water law," said Attorney General Tim Fox. "We have thoroughly evaluated the long lasting and costly impacts if the Compact is not approved and believe that passing the Compact is the best option for Montanans." [Click here for more on the Montana Attorney General's support of the Compact.](#)

One of the primary reasons that the Compact is so widely supported is for the litigation that it prevents.

"It is important to realize that the cost of this litigation will fall upon water users and not the State of Montana," said former Montana Congressman Rick Hill in a statement earlier this week. "Thousands of individual claims will have to be separately quantified through costly litigation. Thousands, perhaps tens of thousands of water users will be brought into the fight. It will cost tens of millions of dollars to fund the lawyers and experts. And it will take years, perhaps decades to settle those claims." [Click here for the entire statement.](#)

Agricultural and water use groups are among the largest supporters of the

Compact, as well as individual farmers, ranchers, and irrigators from every corner of the state.

“Certainty regarding our water resources—from the availability of stock water to irrigation water—is invaluable,” said Errol Rice, Executive Vice President of the Montana Stockgrowers Association. “It is crucial that the Compact passes in order to protect the existing water rights of the ranching community. Without it, many Montana ranchers will be forced to shoulder the burden of thousands of dollars in litigation costs.”

The Compact, SB 262, would prevent an onslaught of unnecessary litigation that would call the rights of water users from the Flathead, to Billings, and beyond into question.

“If the Compact fails to pass, the tribe is required to file claims to define their federally reserved water rights by June 30th of this year,” explained John Youngberg, Executive Vice President of the Montana Farm Bureau Federation. “There is a lot of misinformation being circulated about the Compact, but when you move beyond the fear mongering to the facts, it’s clear that a vote for the Compact is a vote to support agriculture. I urge all of the elected officials in the House to pass the Compact. The litigation that will cost our state millions if the Compact fails is not a threat—it’s an inevitability.” [Click here for the latest article on the Montana Farm Bureau Federation’s support of the Compact and the opinion editorial by Executive Vice President John Youngberg.](#)

Many supporters of the Compact are encouraging legislators to listen to their constituents—the farmers, ranchers, and irrigators who would be directly impacted if the Compact fails.

“We have major agriculture and water use groups in the state supporting the Compact,” said Mike Murphy of the Montana Water Resources Association. “A large number of those who have a significant stake in the use of irrigation water support the Compact for them and for all Montanans. It protects private property and water rights, and ensures that when you hand the farm or ranch to the next



H-1

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**From:**  
**Sent:** Tuesday, January 13, 2015 4:25 PM  
**To:**  
**Subject:** Fwd: Release: Helena Compact Commission Votes Unanimously to Support Compact

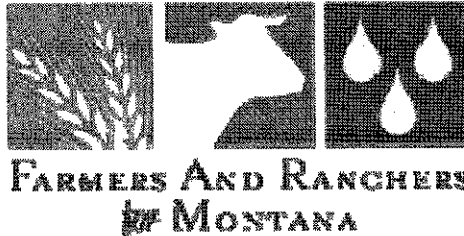
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**From:** Shelby DeMars <[press@montanawatercompact.com](mailto:press@montanawatercompact.com)>  
**Date:** January 13, 2015 at 2:06:39 PM CST  
**To:** <>  
**Subject:** Release: Helena Compact Commission Votes Unanimously to Support Compact  
**Reply-To:** Shelby DeMars <[press@montanawatercompact.com](mailto:press@montanawatercompact.com)>

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FOR IMMEDIATE RELEASE

January 13th, 2015

CONTACT

Shelby DeMars

[406-660-1969](tel:406-660-1969)

**Helena Compact Commission Votes Unanimously to Support Compact**

*The Helena Compact Commission public meeting attendees show that the Compact Commission as well as farmers, ranchers, and water users are united in overwhelming support of the Compact.*

# H-2

(Helena, Mont.)—Late last night the Montana Reserved Water Rights Compact Commission voted unanimously to pass the Compact on to be considered by the Montana State Legislature.

In attendance at the meeting were ranchers, farmers, landowners, and water users from across Montana that came to express their support for the Compact.

"The Montana Farm Bureau supports the Compact and supports Montana's farmers and ranchers," said Chelci Cremer, spokesperson for the Montana Farm Bureau Federation. "It protects the property and water rights of Montanans and provides the certainty necessary for our agriculture industry to flourish."

"The Farm Bureau conducted a rigorous review of the Water Compact and came to the same conclusion that has already been voiced by our agricultural community—that the Compact provides secure and reliable access to critical water resources and should be approved," said Walt Sales, Co-chair of Farmers And Ranchers for Montana. "Our agricultural economy is essential to the livelihood of our state—and the Compact is essential to preserving that livelihood. We need to make sure that Montanans know the facts about the tremendous benefits of the Water Compact."

The Compact will be sent to legislative services for drafting and will be introduced for legislative approval. The Legislature must pass the Compact during this legislative session to avoid litigation and in order for Congress to ratify the Compact.

*Farmers And Ranchers for Montana (FARM), is a coalition of more than 250 farmers and ranchers, united with local leaders, tribal governments, businesses, water-users, and other Montanans who support the approval of a Water Compact.*

*For more information please visit [www.montanawatercompact.com](http://www.montanawatercompact.com).*

###

H-3



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I

**From:**  
**Sent:** Thursday, March 19, 2015 10:48 AM  
**To:**  
**Subject:** Contact info

Vicky Vadlamanian  
202-261-4000  
PO Box 1029  
Helena 59624

Vvadlamanian@mercuryllc.com

# The Montana Water Compact

- Secures stable, reliable access to water
- Respects property rights
- Avoids costly lawsuits
- Provides critical Irrigation Infrastructure

Editorial: Time to move forward with water compact  
12/11/14

**Missoulian**

Top Montana Ag Groups Endorse CSKT Water Compact  
1/29/15

**THE GREAT FALLS  
TRIBUNE**

*"The Montana Legislature has one last chance to approve a negotiated water compact... The CSKT compact is important to the entire state, not just to Western Montana."*



BILLINGS GAZETTE

2/8/15



FARMERS AND RANCHERS  
for MONTANA

## Support Reasonable Common Ground.

The Montana Water Compact is Endorsed by Leading Agricultural Groups:

Montana Farm Bureau

Montana Stockgrowers Association

Montana Water Resources Association

Visit [www.MontanaWaterCompact.com](http://www.MontanaWaterCompact.com) to Learn More and Add Your Voice.



Farmers and Ranchers for Montana



@MTWaterCompact

K-1

# The Montana Water Compact Protects Existing Rights and Avoids Costly Lawsuits.

The Compact is Endorsed By:  
Montana Farm Bureau Federation  
Montana Stockgrowers Association  
Montana Water Resources Association



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✓ **Protect Existing Water and Property Rights**

✓ **Reliable Access to Water for All Montanans**

✓ **Millions of Dollars of Irrigation Infrastructure Improvements**

✓ **Stabilize Property Values**

✓ **Avoid Costly Lawsuits**

The Montana Water Compact is a fair, common sense plan. Rooted in the Constitution, it protects Montana's agricultural livelihood, secures water rights for future generations, and stabilizes property values.

Under state law, the Montana legislature must act and pass the Compact before June 30th. Otherwise, roughly 10,000 separate legal claims will be litigated across Montana, clogging water courts and saddling Montanans with unnecessary legal costs and far greater uncertainty for years to come.

That's why ranchers, farmers, Indian tribes, businesses, and others across Montana are working together in support of the Water Compact. With your help, we can make it happen.



Learn More. Sign-Up. Get Involved. Visit [www.MontanaWaterCompact.com](http://www.MontanaWaterCompact.com)

@MTWaterCompact



L-1

# The Water Compact Will Help Stabilize and Secure Montana's Future.

Top Montana  
Ag Groups Endorse  
CSKT Water Compact



1/29/15

Irrigation Groups  
Add Support to  
CSKT Water Compact



1/27/15

"Our organization is supporting the Compact. It's important to protect historic water uses on and off the reservation and provide some certainty for all water right holders in Montana."

— Gene Curry, President, Montana Stockgrowers Association, 1/27/15

"If the compact fails, irrigators and water users will be forced to shoulder the costs of the litigation that will result... Protection of water and other property rights is of utmost importance to our organization and is an important aspect of why we support passing the Compact."

— Mike Murphy, Montana Water Resources Association, 1/29/15

"The compact will protect Montana's agricultural industries and ensure water rights certainty for future generations."

— Montana Farm Bureau, 1/29/15



Learn More. Sign-up. Get Involved.  
Visit [www.MontanaWaterCompact.com](http://www.MontanaWaterCompact.com).



# Leading Agricultural Groups Are Supporting the Montana Water Compact.

*That's because the Water Compact is a fair and balanced approach that will:*

- ✓ Protect Existing Property Rights
- ✓ Provide Stable, Reliable Access to Water
- ✓ Avoid Costly Lawsuits



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L-2

# SUPPORT REASONABLE COMMON GROUND.

There's a strong agricultural tradition in Montana, which relies on secure and reliable access to water. The Montana Water Compact is a fair, bipartisan agreement that stabilizes property values, and protects existing water and property rights for water users all across Montana.

Top Montana agricultural groups warn that failure to pass the Compact presents a far worse alternative: less certainty, less stability, and hard working families and property owners forced to shoulder the costs of expensive, time-consuming litigation for years to come. That's why passing the Compact is so important for Montana's future.

"Avoid a generation of litigation, and provide certainty for agriculture producers and other water users.. Don't be confused by naysayers whose attacks on the compact are not based in law."



BILLINGS GAZETTE  
OPINION EDITORIAL - 2/8/15

Former Governor Marc Racicot:  
All Montana will benefit from CSKT Water Compact

-2/25/15

# PASS THE COMPACT.

Your State Representative Needs to Hear Your Voice.  
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WA-1

# Montana Farmers and Ranchers Agree: Pass the Water Compact.

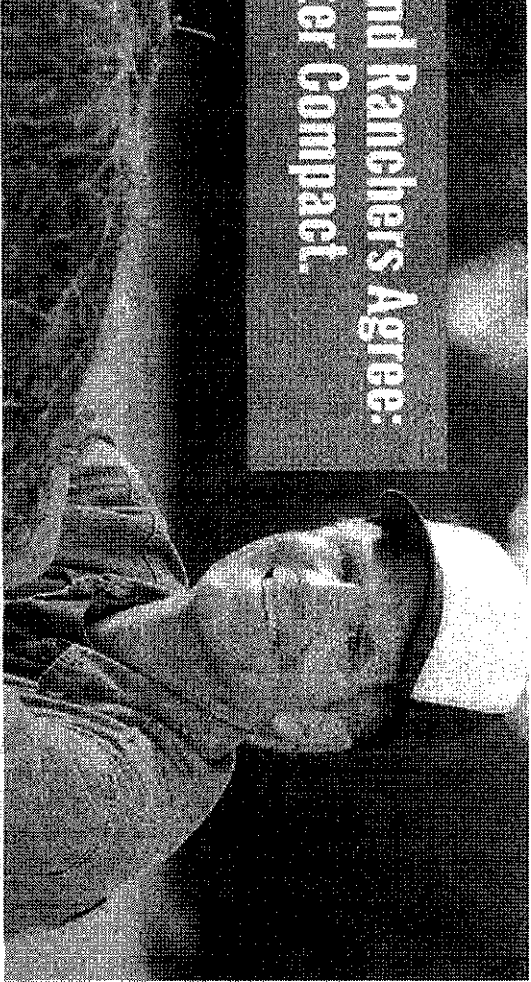
TOP MONTANA AG GROUPS ENDORSE CSKT WATER COMPACT



BILLINGS GAZETTE  
COMMUNICATIONS

1/29/15

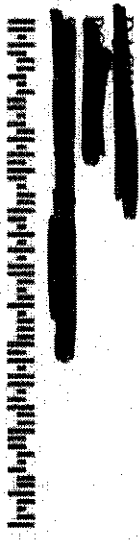
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Montana Farm Bureau Federation  
Montana Stockgrowers Association  
Montana Water Resources Association



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**MA-2**

**BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES**

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In the Matter of the	)	<b>SUMMARY OF FACTS</b>
Complaint Against Blue Cross	)	
Blue Shield of Montana	)	<b>STATEMENT OF FINDINGS</b>

---

**INTRODUCTION**

M. Susan Good of Allied Citizens for Healthcare Equity (ACHE) filed a complaint on May 3, 2000 against Blue Cross Blue Shield of Montana (BCBSMT), alleging violations of Montana laws and regulations governing lobbying. The complaint alleges that BCBSMT filed false lobbying reports with the Commissioner of Political Practices (Commissioner) during 1999.

On May 4, 2000, the Commissioner advised both parties, under the provisions of Montana's lobbying laws, that either party had a right to request an administrative hearing to address the complaint. The Commissioner further advised, if an administrative hearing was not requested by either party, BCBSMT was invited to submit a written response to the complaint.

On May 16, 2000, the Commissioner notified each party that an administrative hearing had not been requested by either party, and a hearing would not be held. BCBSMT's written response to the complaint was delivered to the Commissioner on May 24, 2000. Thereafter, on June 5, 2000, the Commissioner advised each party she had determined additional information was necessary and an investigation of the complaint would ensue.

**ISSUES**

The complaint alleges that BCBSMT filed false lobbying reports during 1999 by:

(1) under-reporting payments made to its salaried employees whose duties included lobbying during the 1999 Montana Legislative Session; and



(2) failing to report payments made in connection with BCBSMT's involvement in the adoption of quality assurance rules by the Department of Public Health and Human Services (DPHHS).

### **CONCLUSION**

From the Summary of Facts and Statement of Findings set out herein, I have concluded that an action based on allegations that Blue Cross Blue Shield of Montana violated Montana's lobbying laws and regulations is not justified.

### **SUMMARY OF FACTS**

1. M. Susan Good is executive director of an organization known as Allied Citizens for Healthcare Equity (ACHE). On behalf of ACHE, Good filed a complaint against Blue Cross Blue Shield of Montana (BCBSMT), alleging that BCBSMT filed false lobbying reports with the Commissioner of Political Practices (Commissioner) during 1999. The complaint alleges that BCBSMT: 1) under-reported payments made to its salaried employees whose duties included lobbying during the 1999 Montana Legislative Session; and 2) failed to report payments made in connection with BCBSMT's involvement in the adoption of quality assurance rules by the Department of Public Health and Human Services (DPHHS).

2. BCBSMT is a Montana corporation that provides healthcare insurance services. BCBSMT has several salaried employees whose duties include lobbying. During calendar year 1999, the following BCBSMT employees engaged in lobbying activities before the Montana Legislature: Tanya Ask, Michael Becker, Chuck Butler, William Jensen, and Susan Witte.

3. Under Montana laws and regulations governing lobbying, a principal is a person (defined as including a corporation) who employs or retains a lobbyist.

Principals are required to periodically file reports with the Commissioner. These reports, designated by the Commissioner as L-5 reports, must include a record of payments made by the principal for the purpose of lobbying during the period covered by the report.

4. BCBSMT lobbyists kept track of the time they devoted to lobbying efforts. Several days before L-5 reports were due, Lore Morgan, former cost accountant for BCBSMT, e-mailed each of the lobbyists and requested information regarding the time they had spent and any expenses they had incurred related to lobbying. Based on the information she received from the lobbyists, Morgan prepared the L-5 reports and submitted them to the lobbyists for their review. She then submitted the reports to Joseph Donohoue, her supervisor and the former BCBSMT Controller. Donohoue reviewed the L-5's, signed them, and filed them with the Commissioner.

5. During calendar year 1999, BCBSMT filed L-5 reports containing the following information:

Reporting Period	Amount Reported	Lobbyists
01-01-99 to 01-31-99	\$2,573	Ask, Butler, Jensen, Witte
02-01-99 to 02-28-99	\$4,023	Ask, Butler, Jensen, Witte, Becker
03-01-99 to 03-31-99	\$2,710	Ask, Butler, Jensen, Witte, Becker
04-01-99 to 05-21-99	\$2,409	Ask, Butler, Jensen, Witte, Becker
05-22-99 to 06-16-99	\$ 0	Ask, Butler, Jensen, Witte, Becker
06-17-99 to 12-31-99	\$ 0	Ask, Butler, Jensen, Witte, Becker

**TOTAL REPORTED:      \$11,715<sup>1</sup>**

<sup>1</sup>During the 1999 session BCBSMT also made payments to two lobbyists who are not employed by BCBSMT: Aidan Myhre and Stuart Doggett. According to L-5 reports filed with the Commissioner, BCBSMT paid Myhre and Doggett a total of \$10,000 for lobbying during calendar year 1999. There is no dispute regarding the accuracy of the reports of payments made to Myhre and Doggett by BCBSMT.

6. The L-5 reports filed by BCBSMT listed each lobbyist paid during the period covered by the report, the legislative bills lobbied, and the salaries or portions of salaries paid to the lobbyists during the period. On each L-5, the salaries or portions of salaries were listed in a lump sum for all employee-lobbyists; i.e., they were not itemized to indicate what portion of the lump sum listed was attributable to the salary of each employee.

7. The L-5 reports listed in Summary Fact 5 reflect salary payments by BCBSMT to its employee-lobbyists amounting to \$9,500. The reports also list the following additional lobbying expenses:

Printing	\$ 16
Postage	\$ 53
Advertising	\$ 52
Other office expenses	\$ 12
Travel	\$1,186
Entertainment (food and beverages)	\$ 896
<b>TOTAL ADDITIONAL EXPENSES:</b>	<b><u>\$2,215</u></b>

8. According to internal records maintained by BCBSMT, the following hours were devoted to lobbying activities by the BCBSMT employee-lobbyists during calendar year 1999:

January, 1999

Ask	1 hr.
Butler	20 hrs.
Jensen	5 hrs.
Witte	10 hrs.

February, 1999

Ask	3 hrs.
Becker	11.1 hrs.
Butler	25.5 hrs.
Jensen	12.1 hrs.
Witte	16.5 hrs.

March, 1999

Ask	9.5 hrs.
Becker	7 hrs.
Butler	18 hrs.
Jensen	3 hrs.
Witte	8.5 hrs.

April and May, 1999

Butler	9 hrs.
Witte	2 hrs.

The total hours recorded for each employee-lobbyist during calendar year 1999 are:

Ask	13.5 hours
Becker	18.1 hours
Butler:	72.5 hours
Jensen	20.1 hours
Witte	<u>37.0 hours</u>

TOTAL HOURS: 161.2<sup>2</sup>

All hours listed were attributable to lobbying activities during the 1999 session of the Montana Legislature.

9. According to BCBSMT, the hourly rate attributed to each employee-lobbyist for reporting purposes is their base hourly salary plus a factor for fringe benefits and payroll taxes. The hourly rates claimed for each employee-lobbyist are:

Ask	\$46
Becker	\$65
Butler	\$70.00 to \$70.50
Jensen	\$64.91 to \$65.00
Witte	\$35.00 to \$35.06

10. At the time of this investigation, Michael Becker was the General Counsel, Vice President, and Corporate Secretary for BCBSMT. During the 1999 session of the Montana Legislature he was Assistant General Counsel and Assistant Corporate

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<sup>2</sup>This information is derived from BCBSMT's internal worksheets used to prepare the L-5 reports.



Secretary. During the session Becker's responsibilities included review of draft legislation to determine what impact, if any, the bills would have on BCBSMT's insurance programs that are collectively referred to as "the Plan." Specifically, Becker testified on Senate Bill (SB) 322 and House Bill (HB) 607. Becker was not at the Capitol building on a regular basis during the 1999 session. He continued to perform his regular duties for BCBSMT during the time the Legislature was in session.

11. SB 322 would have given the Attorney General authority to review and approve conversions of nonprofit healthcare entities to for-profit status. On behalf of BCBSMT, Becker testified in opposition to the bill on February 10, 1999 before the Senate Public Health, Safety, and Welfare Committee. He testified again when the committee met and took executive action on the bill on March 19, 1999. The bill failed to make it past second reading in the Senate.

12. Becker contends he reported the entire time he spent at hearings on SB 322. He recalled several instances in which he engaged in "walk and talk" lobbying,<sup>3</sup> and in each instance he reported the time spent with the legislators as lobbying time. Becker also reported time he spent in meetings to discuss the bill with persons who were not legislators, including a meeting with Attorney General Joe Mazurek and his Chief Counsel Chris Tweeten, and a meeting with Chuck Butler and attorney and lobbyist Tom Ebzery.

13. Chuck Butler is Vice President of Government and Public Relations for BCBSMT. During the 1999 legislative session, Butler had oversight responsibility for legislative and governmental affairs issues. While he did engage in lobbying during the session, he also continued to perform his regular job responsibilities. Butler recalled that the Attorney General's office scheduled a meeting to discuss SB 322 and invited

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<sup>3</sup>"Walk and talk" lobbying refers to lobbying-related discussions with legislators between hearings in the halls of the Capitol.

representatives of BCBSMT to attend. Butler, Becker, and Susan Witte attended the meeting. Senator Mignon Waterman was also present. The meeting consisted of an exchange of information by those present regarding the bill. Butler later reported the time spent in the meeting as lobbying. Butler also testified on SB 81, SB 209, SB 219, SB 322, SB 388, HB 156, HB 240, HB 400, HB 428, HB 512, HB 536, HB 537, and HB 538. Butler contends he reported all direct communication with legislators as lobbying, including walk and talk time, testimony, responding to questions from legislators, and meetings with legislators. He did not, however, report as lobbying the time it took to write letters to legislators.

14. On February 3, 1999, Butler wrote a letter to Representative John Witt regarding HB 131, which would have allocated money recovered by the State of Montana as a result of claims against tobacco companies to certain designated accounts. One of the accounts designated for receipt of a portion of the funds would have been for the benefit of the Montana Comprehensive Health Association (MCHA). The MCHA was created by the 1985 Legislature. It is an association whose members, by statute, include all insurers, HMO's, and health service corporations licensed to do business in Montana. As described in Butler's letter, MCHA "is the health insurer of last resort for those Montanans with very serious and costly medical conditions." The program provides "portability" coverage for persons who leave other health plans. The MCHA program is funded by premiums paid by insureds and by assessments on insurers, including BCBSMT.

15. Butler's letter to Representative Witt explained BCBSMT's "request for an appropriation of up to \$2 million" during the next biennium from tobacco claims money for the MCHA. The letter concluded with a reiteration of that plea:

On behalf of MCHA and BCBSMT, I appreciate your consideration of an appropriation from the tobacco settlement funds of \$1 million a year in each year of the biennium toward this worthwhile program. I hope to be

able to discuss this matter more with you as the legislative session progresses.

The letter to Representative Witt is two pages long and probably took less than an hour to draft. As noted, Butler did not report the time spent composing this letter as lobbying time.

16. On April 5, 1999, Butler wrote a letter to Senator Chuck Swysgood regarding SB 534, an act that generally revised the laws regarding public mental health delivery and requiring DPHHS to establish a mental health managed care system. The letter states, "We [BCBSMT] have been honored by your request to provide our input to you on SB 534." The letter then describes some laws related to managed health care passed by previous Montana legislatures and concludes:

You may be interested to know that any health plan administered by Blue Cross Blue Shield of Montana has an appeals mechanism built in to address situations where a subscriber believes medical care or payment has been wrongly denied. We think our appeals process works well.

I am sending you a thorough compilation of laws governing health plans put together by the American Association of Health Plans. I know that you will find it informative.

The letter is one page long and probably took less than half an hour to draft. Butler did not report the time spent composing this letter as lobbying time.

17. Susan Witte is Director of Government and Public Relations at BCBSMT. She engaged in lobbying activities during the 1999 legislative session but also continued to perform her regular duties during the session. Witte had several lunch meetings with legislators during which legislation was discussed. She reported the entire time for the meetings as lobbying, even though legislation was only discussed during a portion of each lunch meeting. During the session Witte testified on SB 27, SB 82, SB 99, SB 103, SB 322, SB 369, SB 388, HB 2, HB 47, HB 111, HB 384, HB 512, HB 536, and HB 607. She reported the entire time for hearings as lobbying time even though her testimony only occupied a portion of each hearing. At the request of

Representative Soft, Witte attended a meeting regarding HB 607. Several other non-legislators participated in the meeting. She reported the entire time as lobbying. Witte attended a meeting at the Attorney General's office to discuss SB 322. Butler and Becker were also present. Witte reported that time as lobbying. Witte also reported walk and talk time as lobbying.

18. Tanya Ask is Co-CEO of Montana Health, a limited liability company formed as a joint venture between BCBSMT and the Western Montana Clinic in Missoula. During the 1999 session, Ask worked primarily on SB 322 and HB 607. She reported as lobbying the time spent engaged in direct testimony on a bill, time spent responding to questions from committee members, walk and talk lobbying, all other one-on-one communications with legislators, and meetings with public officials other than legislators.

19. William Jensen formerly served as General Counsel and Corporate Secretary for BCBSMT. He is now retired. Jensen engaged in some lobbying for BCBSMT during the 1999 session. He testified on HB 536, HB 537, and HB 538. He reported as lobbying the time spent testifying on bills, direct contact with legislators (including lunch meetings during which legislation is discussed), and time spent preparing written communication with legislators (including e-mails).

20. Russ Ritter is on the Board of Directors of BCBSMT. His employer is Washington Company. Ritter appeared as a lobbyist for Washington Company during the 1999 session of the Montana Legislature. He testified in opposition to SB 322, noting that his employer was opposed based on the costs that Washington Company, which is self-insured, would incur. There is no evidence that Ritter engaged in any lobbying for BCBSMT during the 1999 session of the Montana Legislature.

21. Richard Brown is on the Board of Directors of BCBSMT. He is the Chief Executive Officer of the Livingston Memorial Hospital. Brown prepared written testimony regarding SB 322. He was not paid to prepare the written testimony. As he

was unable to attend the hearing regarding SB 322, he asked Chuck Butler to read his prepared testimony into the record. There is no evidence that Brown engaged in any lobbying for BCBSMT during the 1999 session of the Montana Legislature.

22. BCBSMT engaged in grassroots lobbying with respect to SB 322 and HB 607. On SB 322 the grassroots lobbying primarily consisted of communications by e-mail and facsimile with lobbyists from other organizations with similar interests. The grassroots lobbying effort on HB 607 also consisted of communications with lobbyists from other organizations, as well as organizing testimony with various members of the medical community across Montana. Additionally, BCBSMT lobbyists requested BCBSMT's Regional Managers to ask employees to contact their legislators and oppose the legislation. In its publication, *The Montana Legislative Review*, BCBSMT asked readers to contact their legislators to oppose HB 607.

23. Prior to instituting formal rulemaking proceedings, DPHHS invited BCBSMT and other interested parties to participate in work sessions to develop administrative rules pertaining to network adequacy in managed care. On July 22, 1999, DPHHS issued a formal Notice of Public Hearing on the proposed adoption of rules regarding that same subject matter. The Notice, which scheduled a public hearing for August 11, 1999, contained a paragraph stating that interested persons could submit their data, views, or arguments either orally or in writing at the hearing, or in written form prior to the hearing. In response to the invitation in the Notice, BCBSMT and other interested parties submitted to DPHHS information and comments regarding the proposed rules. The rules were adopted with an effective date of October 1, 1999. BCBSMT did not report any lobbying time or expense associated with its submission of information and comments pertaining to the rules.

24. The Children, Families, Health, and Human Services Legislative Interim Committee (Committee) registered an objection to one of the network adequacy for managed care rules adopted by DPHHS. The Committee convened a meeting to

discuss the rule in November 1999. Apparently the discussion primarily involved whether the Committee's objection was timely and whether the Committee had jurisdiction to suspend the rule. Representatives of BCBSMT appeared and supported the legal position taken by DPHHS. Ultimately the Committee voted to take no further action with respect to its objection to the rule. BCBSMT did not report any lobbying time or expense associated with its appearance before the Committee.

## STATEMENT OF FINDINGS

### Overview

Montana Code Annotated (MCA) §§5-7-101 to 5-7-305 govern lobbying in Montana. MCA §5-7-305 provides the Commissioner, the Attorney General, and county attorneys with jurisdiction to enforce the provisions of Montana law regulating lobbying.

The complaint alleges that BCBSMT knowingly filed false lobbying reports in violation of MCA §5-7-209, which provides:

**Payments prohibited unless reported -- penalty for failure to report or for false statement.** A principal may not make payments to influence official action by any public official unless that principal files the reports required under this chapter. A principal who fails to file a required report is subject to the penalty provided in 5-7-305 as well as any civil action provided for in that section. A principal who knowingly files a false, erroneous, or incomplete statement commits the offense of unsworn falsification to authorities.

A "principal" is defined as a person (including a corporation) who employs a lobbyist. MCA §5-7-102(12). "Lobbying" is the practice of promoting or opposing the introduction or enactment of legislation before the legislature or members of the legislature by a person other than a member of the legislature or a public official. "Lobbying" is also the practice of promoting or opposing official action by any public official. MCA §5-7-102(6)(a) and (b). A "lobbyist" is a person who engages in the practice of lobbying for hire. MCA §5-7-102(8)(a). "Lobbying for hire" includes "activities of the officers, agents,

attorneys, or employees of a principal who are paid, reimbursed, or retained by the principal and whose duties include lobbying.” MCA §5-7-102(7).

Applying these definitions to the facts set out in the Summary of Facts, it is clear that BCBSMT is a principal and employees Ask, Becker, Butler, Jensen, and Witte acted as its lobbyists during the 1999 session of the Montana Legislature. Pursuant to MCA §5-7-208, BCBSMT was required to file with the Commissioner periodic reports of all payments made for the purpose of lobbying. BCBSMT timely filed reports reflecting salary payments of \$9,500 to its employee-lobbyists and \$2,215 in additional expenses pertaining to lobbying. The complaint alleges that BCBSMT under-reported its 1999 lobbying expenditures and payments.

Montana’s Lobbyist Disclosure Initiative (I-85) was approved by the Montana electorate in the November 1980 election. I-85 was immediately the subject of two legal challenges resulting in two 1981 Montana Supreme Court decisions. See Montana Automobile Association v. Greely, 193 Mont. 378, 632 P. 2d 300 (1981); and State Bar of Montana v. Krivec, 193 Mont. 477, 632 P. 2d 707 (1981). After this initial flurry of litigation and rulemaking proceedings to implement I-85, there have been only infrequent but failed attempts to enact legislation or adopt rules clarifying provisions of the Montana Lobbyist Disclosure Act and rules. See, e.g., Common Cause of Montana v. Argenbright, 276 Mont. 382, 917 P. 2d 425 (1996); and Montana Common Cause’s April 29, 1994 Petition for Rulemaking filed with the Commissioner of Political Practices.

The history of various rulemaking proceedings conducted by my predecessors, which includes lobbyist surveys conducted by Montana Common Cause, establishes that there is great disparity of opinion among lobbyists and principals about the reporting requirements under Montana’s Lobbyist Disclosure Act. See, e.g., Montana Common Cause’s April 29, 1994 Petition for Rulemaking. The great disparity of opinion has not been addressed by the legislature, the courts, or my predecessors over the past two decades. Most of the Act’s rules in effect today were adopted in 1982 and have not

been amended over the past 19 years. See, e.g., Administrative Rules of Montana (ARM) 44.12.101, 103, 201, 203, 205, 207, 209, 211, 213, and 215. In the 21 years since I-85 was adopted, this is the first complaint ever filed alleging that a principal has failed to properly report lobbying expenditures.

The investigation of this complaint confirms that the complainant and BCBSMT have a substantial difference of opinion about the reporting requirements of the Act and rules. Even within BCBSMT, lobbyists had varying opinions about what should be reported and the amount to be reported. Unfortunately, the Act's rules are sometimes inconsistent with the Act or ambiguous. Nevertheless, Montana's Supreme Court has ruled that the purpose of I-85 is to "provide for the disclosure of money spent to influence action of public officials" and that this purpose was "not frustrated" by the Court's decision to invalidate several provisions of I-85. Montana Automobile Association, supra, at p. 399. Montana's highest court also held that "the statewide vote on I-85 is a demonstration of a compelling state interest" establishing the need for disclosure of lobbying expenditures. Id., at p. 384. In Krivec, supra, at p. 485, the Montana Supreme Court declared that there "is an obvious public interest in the regulation and disclosure of lobbying activities."

### **Legislative Lobbying**

The following legislative lobbying reporting requirements are clear and unambiguous under Montana's Lobbyist Disclosure Act and rules:

1. All of the time spent by a lobbyist in direct communication with a legislator or legislative committee to support or oppose legislation or legislative or administrative action must be reported as a lobbying expenditure. ARM 44.12.102(2)(a), (2)(c)(i), ARM 44.12.102(1)(c) and MCA §5-7-102(6). This lobbying expenditure reporting obligation applies even if a legislator is involved in taking administrative action as



defined in ARM 44.12.102(1)(a); for example, a legislator who serves on an executive branch advisory council that is created to draft or develop policy, practice, or rules is subject to the lobbying definitions in ARM 44.12.102(2)(a).

2. A lobbyist or individual employed by a principal who attends a legislative hearing does not have to report attendance at the hearing as a lobbying expenditure if:

- a. testimony is not presented;
- b. there is no personal contact with a member of the committee or the committee involving lobbying; and
- c. the lobbyist or individual employed by a principal does not sign the legislative committee's sign-in sheet as a proponent or opponent. MCA §5-7-102(8)(b)(ii) and Commissioner Argenbright's December 17, 1993 Declaratory Ruling.

3. Lobbying legislators on issues and matters other than the passage or defeat of legislation is reportable under Montana's Lobbyist Disclosure Act and rules. MCA §5-7-102(6)(b) defines lobbying to include "promoting or opposing official action by a public official." The term "official action" includes administrative action or legislative action. ARM 44.12.102(1)(e). The term "legislative action" includes not only the introduction or enactment of legislation but acts "that result in the creation of law or declaration of public policy, and other actions of the legislature authorized by Article V of the Montana Constitution." ARM 44.12.102(1)(c). Lobbyists and principals who lobby legislators and legislative committees performing legislative functions under Article V of the Montana Constitution must report these lobbying expenses in the same manner that lobbying expenses are reported when supporting or opposing the enactment of legislation. For

example, BCBSMT's appearance before an interim legislative committee (see Summary Fact 24) to oppose the committee's possible objection to a rule being adopted by DPHHS is legislative lobbying and should have been reported as a legislative lobbying expenditure. The interim committee was performing an official legislative function under the Montana Administrative Procedure Act (MAPA). BCBSMT appeared at the committee's meeting and opposed the committee's proposed action. This was a reportable lobbying expenditure. Similarly, lobbying to support or oppose audit conclusions in reports prepared by the Legislative Audit Committee or financial reports prepared by the Legislative Finance Committee are reportable lobbying expenses.

4. Lobbyists and principals who direct that expenditures be made "in support of or assistance to a lobbyist or a lobbying activity" must report those expenditures. MCA §5-7-102(10)(b). MCA §5-7-208(5) requires that each lobbying report filed by a principal must list all payments for lobbying in each of the following categories:

- (i) printing;
- (ii) advertising, including production costs;
- (iii) postage;
- (iv) travel expenses;
- (v) salaries and fees, including allowances, rewards, and contingency fees;
- (vi) entertainment, including all foods and refreshments;
- (vii) telephone and telegraph; and
- (viii) other office expenses;....

Under these provisions of the Act, the principal or lobbyist who pays an attorney to analyze a bill and presents the written opinion to a legislative committee or distributes the opinion to a legislator as part of walk and talk lobbying must report the cost of the attorney's opinion as a lobbying expenditure. Similarly, payments made to prepare a fact sheet or other written material used in legislative floor debate or a legislative

committee executive session must be reported. Lobbying reports for these expenditures must include the payments made to employees or consultants and payment for any of the items listed in MCA §5-7-208(5)(a).

BCBSMT's 1999 legislative lobbying strategy included a "grassroots" component that focused primarily on opposition to SB 322 and HB 607. See Summary Fact 22. The grassroots efforts included such activities as requests for assistance from BCBSMT employees and district representatives, and electronic communications with other lobbying groups. BCBSMT reported no expenditures or payments for its grassroots lobbying efforts. BCBSMT should have reported the organizational costs of these grassroots efforts.

Montana Automobile Association discussed at length I-85's definition of the term "principal." Id., at pp. 390-392. Montana's Supreme Court upheld the present definition of "principal" in MCA §5-7-102(12) but declared unconstitutional a second definition which included the following groups, corporations, or entities:

(b) in the case of a person other than an individual, to solicit, directly, indirectly or by an advertising campaign, the lobbying efforts of another person.

Id., at p. 389. Montana's Supreme Court relied heavily on the U.S. Supreme Court case of United States v. Harriss, 347 U.S. 612, 74 S.Ct. 808 (1954) to declare unconstitutional the second definition of principal in I-85; however, a close reading of Montana Automobile Association and Harriss indicates that a principal who has hired a lobbyist must report organizational expenditures or payments made in support of or assistance to a lobbyist or a lobbying activity, including grassroots lobbying costs.

Harriss involved a legal challenge to the Federal Regulation of Lobbying Act. 2

U.S.C. §261, et seq.. Montana Automobile Association correctly notes that Harriss narrowly construed the phrase “to influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States” to mean “direct communication with members of Congress on pending or proposed federal legislation.” Montana Automobile Association, supra, at pp. 390 and 391. Omitted from Montana Automobile Association’s discussion of Harriss was the full import and breadth of the U.S. Supreme Court decision.

Chief Justice Earl Warren delivered the 5-3 majority opinion of the U.S. Supreme Court in Harriss.<sup>4</sup> The majority concluded that in construing the Federal Act “narrowly to avoid unconstitutional doubts, we must also avoid a construction that would seriously impair the effectiveness of the Act in coping with the problem it was designed to alleviate.” Harriss, supra, at p. 623. Chief Justice Warren and the majority described the lawful purpose of the Federal Act as follows:

Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobbying Act was designed to help prevent.

Emphasis added. Id., at p. 625. The Federal Act “merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose” and, like the Federal Corrupt Practices Act, was enacted “to maintain the integrity of a basic governmental process.” Id. The Federal Act,

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<sup>4</sup> Famous Montana lawyer and politician Burton K. Wheeler defended Harriss, who was charged in a seven-count information with violating the Federal Regulation of Lobbying Act.

according to Chief Justice Warren, did not violate the freedom to speak, publish, and petition guaranteed by the First Amendment. Id.

The majority opinion specifically addressed the issue of whether an entity lobbying the Congress via direct communication with members of Congress on pending or proposed legislation must report organizational expenses soliciting others to lobby Congress. Chief Justice Warren concluded that:

The legislative history of the Act makes clear that, at the very least, Congress sought disclosure of such direct pressures, exerted by the lobbyists themselves or through their hirelings or through an artificially stimulated letter campaign. It is likewise clear that Congress would have intended the Act to operate on this narrower basis, even if a broader application to organizations seeking to propagandize the general public were not permissible.

Emphasis added. Id., at pp. 620 and 621.

Chief Justice Warren also made it clear that the “principal purpose” language of the Federal Act could not be used to shield an organization that was soliciting lobbying funds and involved in direct communication with Congress from reporting those contributions received and payments made under the Federal Act. The Chief Justice ruled that an entity which is involved in lobbying as only one of its main activities must report the payments made for lobbying activities to avoid a construction of the Act that would “seriously impair the effectiveness” of the Federal Regulation of Lobbying Act. Id., at pp. 622 and 623.

The dissenters in Harriss left no doubt that the majority opinion required a principal engaged in lobbying to report money spent to induce others to lobby Congress. Justice William Douglas, whose dissent was joined by Justice Hugo Black, described the majority ruling as follows:

It is contended that the Act plainly applies

--to persons who pay others to present views to Congress either in committee hearings or by letters or other communications to Congress or Congressmen and

--to persons who spend money to induce others to communicate with Congress.

The [majority of the] Court adopts that view, with one minor limitation which the Court places on the Act—that only persons who solicit, collect, or receive money are included.

Id., at p. 629.

Justice Douglas criticized the majority for what he believed was an impermissible narrowing of the Federal Act “as applying only to those who are paid to ‘buttonhole’ Congressmen or who collect and expend moneys to get others to do so.” Id., at p. 632. Justice Jackson’s dissent contained a similar criticism. Id., at pp. 633-636.

Montana Automobile Association is consistent with the substantive decision reached by the United States Supreme Court in Harriss. Montana’s Supreme Court listed the five examples used by Justice Douglas in his dissenting opinion in Harriss to address the “organizational actions” of unions, churches, farm organizations, business organizations, and other entities (but not individuals) urging members, readers, or recipients to contact a public official to support or oppose a law. Montana Automobile Association, supra, at pp. 390 and 391. The Montana Supreme Court declared unconstitutional I-85’s expansive attempt to require groups, corporations, businesses, or entities other than an individual to report as a “principal” if the entity solicited, directly or indirectly, others to contact lawmakers supporting or opposing legislation, Id., at p. 391; but in concluding that it could find no compelling state interest for the all-encompassing second definition of principal in I-85, Montana’s highest court stated, consistent with the

majority opinion in Harriss, that the “fundamental purposes of the Initiative are accomplished by including, as a principal, the person who hires a lobbyist.” Id., at p. 392. Montana Automobile Association clearly recognized the distinction between an organization’s efforts to induce others to lobby public officials when a lobbyist or lobbying activity is not involved and a grassroots lobbying campaign that is induced, directed, and financed by a lobbyist and the lobbyist’s principal.

The express requirements of MCA §5-7-102(10)(b), Harriss, and Montana Automobile Association recognize that payments made to support or assist a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of a lobbyist, are payments to influence official action which must be reported under the Act. Payments by a principal for a grassroots lobbying campaign (which Chief Justice Warren described in Harriss as “an artificially stimulated letter campaign”) must be reported under Montana Automobile Association, MCA §5-7-102(10)(b), and Harriss.

Based on a consideration of the substantive rulings in Montana Automobile Association and Harriss, a person must report grassroots lobbying expenditures and payments if:

1. the person becomes a principal by hiring and paying a lobbyist as defined in the Montana Lobbyist Disclosure Act;
2. the principal and/or the lobbyist are engaged in direct communication with the legislature or individual legislators to support or oppose pending or proposed

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legislation or legislative action;<sup>5</sup> and

3. Payments are made by a principal or a lobbyist in support or of assistance to a lobbyist or a lobbying activity, including but not limited to, the direct payment of expenses incurred to support or oppose pending or proposed legislative action at the request or suggestion of the lobbyist. MCA §5-7-102(10)(b).

Within the preceding context, BCBSMT paid for grassroots lobbying efforts opposing SB 322 and HB 607. BCBSMT opposed these bills in the 1999 Legislature and engaged in direct communication with legislators to defeat these bills. BCBSMT's grassroots lobbying efforts were undertaken to support or assist BCBSMT's lobbying activity. BCBSMT was required under the Lobbyist Disclosure Act to report payments made to implement its grassroots lobbying efforts subject to the conflicting miscellaneous office expense language in ARM 44.12.207. See pp. 24-26 of this decision.

Contrary to the clear and unambiguous provisions of the Montana Lobbyist Disclosure Act and rules just discussed, there are serious inconsistencies and ambiguities on several issues directly related to the complaint and investigation in this matter. The Montana Supreme Court has noted that the provisions of the Act governing lobbying, since they are penal in nature, "must be sufficiently definite to give a person of ordinary intelligence fair notice that his conduct is forbidden." Montana Automobile Association, supra, at p. 394. Unfortunately, the following rules do not give fair notice of what conduct is forbidden:

1. ARM 44.12.102(2) defines what constitutes lobbying under the Act. The provisions of the rule specifying how appearances before a legislative committee must

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<sup>5</sup> Non-legislative lobbying issues and problems are discussed on pp. 29-33 of this decision.

be reported are riddled with inconsistencies. §(2)(b) requires a lobbyist to report only the time “to present oral or written testimony promoting or opposing official action by any public official or group of public officials, including the legislature or a committee of the legislature.” Conversely, §(2)(c)(ii) and (2)(d) require a lobbyist to report all time spent at interim legislative committee meetings or meetings with public officials if the lobbyist has direct communication with the legislators or public officials to promote or oppose official action. In other words, if a lobbyist presents ten minutes of testimony to a legislative committee but the hearing lasts three hours, §(2)(c)(ii) and (2)(d) require the lobbyist to report three hours of lobbying. §(2)(b) only requires the lobbyist to report ten minutes.

The five BCBSMT lobbyists exemplified the inconsistent requirements of ARM 44.12.102(2). Becker and Witte reported all time spent at a committee hearing if they testified. Butler, Ask, and Jensen only reported the time spent testifying and answering questions at legislative committee hearings. Both interpretations are correct under the conflicting definitions of lobbying in 44.12.102(2). The rule should be amended to eliminate this fundamental internal conflict.

2. There is great confusion regarding the use of legislative committee sign-in sheets. For example, some individuals believe sign-in sheets constitute part of the official record of the hearing and, as such, are direct communication with the committee members and constitute reportable lobbying time. Other individuals believe sign-in sheets are for the convenience of committee secretaries when preparing minutes. One former legislator said she reviewed the sign-in sheets on a regular basis. Another current two-term legislator said she considered sign-in sheets to be a reference tool for

the committee secretary; and, as a legislator, she does not refer to them. All of these interpretations beg the question of what amount of time should be reported if a lobbyist signs a sign-in sheet as a proponent or opponent but immediately leaves the hearing or stays for only a portion of the hearing. This issue should be addressed in the Act's rules.

3. ARM 44.12.101 creates two exemptions from the definition of lobbying contained in the Act. §(1) exempts a lobbyist from reporting appearances before the legislature or a legislative committee "in response to a subpoena or written request to appear from the presiding official of the body...." Summary Fact 16 indicates that BCBSMT received a request from Senator Chuck Swysgood, Chairman of the Senate Finance Committee in 1999, to provide input on SB 534. BCBSMT sent a letter to Senator Swysgood in response to his oral request for information. Does a response to an oral request for information from a legislator fall within the "written request to appear" exemption in ARM 44.12.101(1)? A strict application of 44.12.101(1) would result in lobbyists being subject to enforcement action for responding to oral requests for information from legislators if the lobbyist/principal did not report the response effort as a lobbying payment. This Commissioner is reluctant to initiate enforcement action against a lobbyist who responds to an oral request for information from a legislator, especially when BCBSMT's letter "providing input" on SB 534 does not appear to be a letter supporting or opposing the legislation.

ARM 44.12.101(2) contains a much broader exemption from the definition of lobbying. §(2) states that a response to "a public invitation for comment" is not lobbying. The exemption does not specify who must issue the public invitation for comment or

describe what constitutes a public invitation for comment. For example, is a legislative hearing on a bill considered a public invitation for comment? If a legislative committee only invites certain lobbyists or groups to provide information but does not solicit comments from the public in general, is the solicitation a public invitation? Lobbyists and principals should not be put in the position of having to guess when a response to an invitation for comment, whether oral or written, is a public invitation. The exemptions in 44.12.101 should be revisited, refined, and subjected to a thorough public discussion by lobbyists, principals, and the public.

4. MCA §5-7-212 governs the audit of lobbying reports by the Commissioner. §5-7-212(1) requires a lobbyist to provide records to the principal substantiating lobbying activities and the principal “is required to obtain and keep for a period of 3 years from the date of filing all records supporting the reports filed under 5-7-208.” ARM 44.12.103 requires a lobbyist “to maintain records relating to information required to be reported” and to transmit the records to the principal for timely reporting. The Act and rules provide no details about the content of the records that must be maintained. For example, must records document on a daily basis which hearings the lobbyist attended, which legislators have been lobbied, and the total time spent on lobbying activities? Or, is it sufficient to maintain monthly summaries of lobbying activities? What records are required to verify and support walk and talk lobbying? These and related issues should be addressed in rules that promote uniformity of reporting and facilitate audits of lobbying payments under MCA §5-7-212.

5. ARM 44.12.207 specifies what must be reported as “other office expenses” under MCA §5-7-208(5)(a). The rule properly recognizes that “expenses related to or

incurred in....the support of a lobbyist” must be reported. ARM 44.12.207(1). The same subsection, however, also states that regular and recurring “expenses such as rent, utilities and staff time need not be reported unless lobbying is the primary purpose of the organization.” §2 of 44.12.207 specifies that an organization’s primary purpose is not lobbying unless “over 75% of its yearly budget is allocated to lobbying efforts.” There are several problems with this rule.

First, the rule impermissibly restricts the reporting of lobbying payments for miscellaneous office expenditures by inserting a “primary purpose” test in Title 5, Chapter 7. Nothing in the Lobbyist Disclosure Act authorizes the adoption of a “primary purpose” test for determining when payments for lobbying activities should be reported.<sup>6</sup>

Second, ARM 44.12.207 creates discriminatory lobbyist reporting requirements. A small organization or a sole proprietor who meets the “primary purpose” test in the rule is required to report miscellaneous office expenses (rent, utilities, and staff time) even though the amount of such expenses may be substantially less than similar expenses incurred by a large business entity that does not meet the primary purpose test. BCBSMT, for example, does not spend 75% of its yearly budget on lobbying efforts and, therefore, does not have to report such miscellaneous office expenses as rent, utilities, and staff time allocated to lobbying activities under ARM 44.12.207. Nevertheless, BCBSMT most likely spends significant amounts providing office space for five lobbyists, support staff, and the equipment and utilities to support BCBSMT’s lobbying activities, including grassroots lobbying efforts.

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<sup>6</sup> MCA §5-7-102(7) excludes from the definition of “lobbying for hire” payments of less than \$1,000 per calendar year for personal living and travel expenses if that is the only compensation paid to a lobbyist. Otherwise, lobbying payments must be reported and nothing in the Act suggests that reporting of lobbying payments can be conditioned on a “primary purpose” test.

Third, the rule as presently written conflicts with MCA §5-7-102(10)(b) that clearly requires that payments “in support of or assistance to a lobbyist or a lobbying activity” be reported. Chief Justice Earl Warren correctly determined in Harriss, supra, at pp. 623 and 625, that a “primary purpose” test cannot be used to “seriously impair the effectiveness” of a lobbyist disclosure act that has been enacted to maintain the integrity of a basic governmental process. ARM 44.12.207 must be reexamined in a public process that will require that miscellaneous office expenses be uniformly and fairly reported by all principals and lobbyists.

A comprehensive examination of BCBSMT’s records relating to its legislative lobbying efforts during the 1999 session of the Montana Legislature and interviews with BCBSMT’s officials and employees revealed instances in which an activity of one of its lobbyists should have been reported as lobbying but was not.

Chuck Butler wrote a letter to Representative John Witt urging his consideration of an appropriation from tobacco settlement funds of \$1 million per year during the next biennium to fund MCHA. Summary Facts 14 and 15. Butler’s letter specifically referenced HB 131, which would have allocated money recovered by the State of Montana as a result of claims against the tobacco companies to certain designated accounts, including an account for the benefit of MCHA. The letter drafted and sent by Butler constitutes lobbying under Montana’s statutes and rules since it was direct communication with a legislator to promote legislative action. See MCA §5-7-102(6)(a); and ARM 44.12.102(1)(b) and 44.12.102(2)(a).

BCBSMT also under-reported some of the time devoted to legislative lobbying, as reflected on its internal worksheets referenced in footnote 2. ARM 44.12.203(1)(b)

provides that if a lobbyist "is a full-time employee or officer of the principal, and his duties include lobbying, the salary may be allocated on a daily basis or on an hourly basis." BCBSMT chose to allocate and report the salaries of its employee-lobbyists on an hourly basis, which is permissible under the rule; however, ARM 44.12.203(1)(b) provides that if an employee-lobbyist's salary is computed on an hourly basis, "a fraction of an hour shall be counted as an hour."

On its L-5 covering the period February 1 to February 28, 1999, BCBSMT reported the following hours and hourly salaries:

Ask	3. hrs. @ \$46.00/hr.
Becker	11.1 hrs. @ \$65.00/hr.
Butler	25.5 hrs. @ \$70.50/hr.
Jensen	12.1 hrs. @ \$65.00/hr.
Witte	16.5 hrs. @ \$35.00/hr.

On its L-5 covering the period March 1 to March 31, 1999, BCBSMT reported the following hours and hourly salaries:

Ask	9.5 hrs. @ \$46/hr.
Becker	7. hrs. @ \$65/hr.
Butler	18. hrs. @ \$70/hr.
Jensen	3. hrs. @ \$65/hr.
Witte	8.5 hrs. @ \$35/hr.

The fractional hours should have been reported as whole hours. Thus, the lobbying payments reported for salaries for these two reporting periods should have been increased as follows:

Ask	.5 additional hour @ \$46.00/hr.:	total \$23
Becker	.9 additional hour @ \$65.00/hr.:	total \$58.50
Butler	.5 additional hour @ \$70.50/hr.:	total \$35.25
Jensen	.9 additional hour @ \$65.00/hr.:	total \$58.50
Witte	1. additional hour @ \$35.00/hr.:	total \$35

TOTAL UNDER-REPORTED:	<u>\$210.25</u>
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BCBSMT's meeting with the Attorney General and his Chief Counsel regarding SB 322 could be construed as both legislative and non-legislative lobbying.<sup>7</sup> Senator Mignon Waterman, sponsor of SB 322, attended the meeting. The meeting consisted of an exchange of information regarding SB 322. Summary Fact 13. It is unclear whether BCBSMT used the meeting to lobby Senator Waterman by expressing its opposition to SB 322, but there is no need to make that determination under the facts of this matter. The BCBSMT lobbyists who attended the meeting reported the time spent at the SB 322 meeting as a legislative lobbying expense.

Michael Becker reported time he spent in a meeting with Butler and attorney and lobbyist Tom Ebzery as a legislative lobbying expense. Summary Fact 12. BCBSMT's reporting of Becker's time in this meeting as a legislative lobbying expense constitutes over-reporting and is not necessary because meetings between a principal and its lobbyist or between lobbyists representing different principals to determine whether to support or oppose legislative or administrative action are not reportable lobbying expenditures under the rationale of Montana Automobile Association, *supra*.

I-85, as enacted, required principals and lobbyists to report "original and derivative research" as a lobbying expense. The Montana Supreme Court determined that this reporting requirement was "too indefinite for a principal to ever be assured that he or she has fully complied with this section." *Id.*, at p. 395. The "indefiniteness" of the original and derivative research reporting requirement was reflected in the I-85 language allowing such lobbying costs to be "estimated if necessary." *Id.* This provision of I-85 was declared "void for vagueness" and the Court recognized the right

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<sup>7</sup> The question of whether BCBSMT's meeting with the Attorney General and his Chief Counsel constituted non-legislative lobbying is discussed on pp. 32 and 33 of this decision.



of a principal and its lobbyist to acquire information and internally consider that information for the purpose of developing a lobbying position. Such position development and research activities are not reportable lobbying activities under Montana Automobile Association; however, once a lobbying position is taken and internal organizational expenditures are made to support or assist a lobbyist or a lobbying activity, see MCA §5-7-102(10)(b), such expenditures must be reported under MCA §5-7-208(5).

This same distinction is reflected in the Montana Supreme Court's analysis of the "news media" lobbyist reporting requirement in I-85. The Court voided an I-85 requirement that a principal must report payment for "news media." Id. Montana Automobile Association concluded that lobbying expenditures for newsletters, leaflets, other printing and advertising, including production costs, had to be reported under other provisions of I-85. Id. and MCA §5-7-208(5). The Court said it could not determine what additional information had to be reported under "news media" costs and rejected the notion that "news-worthy" activities of a principal or lobbyist were reportable. Id. Montana's highest court reaffirmed, however, that newsletter, printing, leaflet, and advertising expenditures made to support a lobbyist or a lobbying activity are reportable under MCA §5-7-208(5). Id.

### **Non-Legislative Lobbying**

The complaint alleges that BCBSMT failed to report expenditures related to involvement in DPHHS's adoption of quality assurance rules. In order to address this allegation, it is first important to define what constitutes non-legislative lobbying. MCA §5-7-102(6) defines two types of lobbying:

(a) the practice of promoting or opposing the introduction or enactment of legislation before the legislature by a person other than a member of the legislature or a public official; and

(b) the practice of promoting or opposing official action by any public official.

§(b) defines what has commonly been referred to as “non-legislative lobbying.” See State Bar of Montana v. Krivec, 193 Mont. 477, 480, 632 P.2d 707, 709 (1981). The rules implementing the statutes governing lobbying provide some guidance regarding the concept of non-legislative lobbying. “Official action” is defined as “legislative action or administrative action, or both, depending on the context in which the phrase is used.”

ARM 44.12.102(1)(e). “Administrative action” means:

any action taken by a public official in any agency, department, division, office, board, or commission of state government with regard to any proposal for or drafting, development, or consideration of a policy, practice, or rule to be published and used by the official or agency. “Administrative action” does not include actions that are judicial, quasi-judicial, or ministerial in nature.

ARM 44.12.102(1)(a).

Applying these definitions, one who is paid, reimbursed, or retained by a principal to promote or oppose “administrative action” is engaging in lobbying. “Administrative action” includes the drafting, development, or consideration of rules to be published and used by an agency. In 1999 DPHHS invited BCBSMT and other interested parties to participate in work sessions to develop rules regarding network adequacy in managed care. DPHHS then issued a formal Notice of Public Hearing on the proposed adoption of rules addressing that subject matter, with a written invitation permitting interested parties to submit their “data, views, or arguments” concerning the proposed rules.

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directs, but after a discretion in its nature judicial, the function is termed quasi-judicial....  
(Citation omitted.)

Where a power rests in judgment or discretion, so that it is of a judicial nature or character, but does not involve the exercise of the functions of a judge, or is conferred upon an officer other than a judicial officer, the expression used is generally "quasi-judicial" ... The officer may not in strictness be a judge; still, if his powers are discretionary, to be exerted or withheld according to his own view of what is necessary and proper, they are in their nature judicial.

Id., at p. 483.

Although the adoption of rules under MAPA might be more appropriately classified as a "quasi-legislative" function, the Krivec definition of "quasi-judicial" encompasses rulemaking under MAPA. A public official's ultimate decision to propose, adopt, amend, or reject proposed rules under MAPA is a duty involving the consideration of facts and law, constituting an exercise of discretion akin to the exercise of a judicial function. The judicial nature of rule hearings is reflected in the Attorney General's model rules, which give the presiding officer or the rule maker the right to "question or examine" witnesses. ARM 1.3.207(2)(a)(v). The presiding officer may also allow other persons to question witnesses at rulemaking hearings. Participation in MAPA-related rule proceedings falls within the Krivec definition of a quasi-judicial function and is exempt from the reporting requirements of the Montana Lobbyist Disclosure Act.

BCBSMT's meeting with the Attorney General and his Chief Counsel to discuss SB 322 may fall within the definition of administrative action in ARM 44.12.102(1)(a). Both the Attorney General and his Chief Counsel are "public officials" under MCA §5-7-102(13), and the subject of the meeting does not appear to fall within the quasi-judicial exemption of the Act; however, the issue of whether BCBSMT should have reported the meeting as a non-legislative lobbying expenditure does not have to be resolved because BCBSMT's lobbyists reported the meeting as a legislative lobbying

expenditure. See p. 28 of this decision. Nothing in the Act or rules requires that a lobbyist and principal double-report such meetings as both a legislative and non-legislative lobbying expenditure.

The preceding discussion of BCBSMT's meeting with the Attorney General illustrates the fact that non-legislative lobbying requirements have been virtually ignored since the enactment of I-85. A cursory review of lobbying reports filed over the past two decades indicates that very few principals, if any, report non-legislative lobbying payments and expenditures. It is a subject that should receive a thorough public discussion and consideration of rules defining what constitutes reportable non-legislative lobbying activities. The Krivec Court expressed great confidence that the Commissioner of Political Practices would adopt rules "properly applying to lobbying activities covered by....[I-85]." Krivec, at p. 485. I pledge my best effort to explore rulemaking proposals that will address and define non-legislative lobbying.

### **Conclusion**

Based on the preceding, BCBSMT failed to report the following lobbying payments/expenditures:

1. \$70.00 of Butler's time to prepare a letter supporting HB 131;
2. \$210.25 of under-reported lobbying time based on improper application of the hourly fee requirements in ARM 44.12.203(1)(b);
3. An undetermined amount of expenditures for grassroots lobbying actions on SB 322 and HB 607; however, BCBSMT's obligation to report grassroots lobbying actions described in this decision is mitigated, if not eliminated, by the conflicting miscellaneous office expense exclusion in ARM 44.12.207, see pp. 24-26 of this decision; and
4. Approximately \$175.00 for time spent by BCBSMT's lobbyists opposing the Children, Families, Health and Human Services Legislative Interim Committee proposed action described in Summary Fact 24.

Despite the finding that BCBSMT violated several lobbyist reporting requirements, I have concluded that a civil or criminal action against BCBSMT is not warranted for the following reasons:

1. My investigation leads me to believe that BCBSMT made a good faith effort to comply with Montana's Lobbyist Disclosure Act and rules. In several instances, BCBSMT reported activities that did not have to be reported.

2. There are significant ambiguities and inconsistencies in existing rules that make it unlikely that a civil or criminal enforcement action would be successful.

As an alternative to pursuing civil or criminal enforcement action, I will commit the available but finite resources of my office to a public resolution of the present ambiguities, inconsistencies, and problems with Montana's Lobbyist Disclosure Act and rules. It is my sincere desire that lobbyists, principals, and the public can come to a meaningful resolution of fundamental issues and that the Montana electorate's desire for public disclosure of lobbying expenditures can be fulfilled.

This decision is issued this \_\_\_\_\_ day of April, 2001.

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Linda L. Vaughey  
Commissioner

NOTICE: MCA §5-7-305(3) confers concurrent jurisdiction to prosecute violations of the Montana Lobbyist Disclosure Act on the Attorney General or the County Attorney of the county in which a violation takes place. A copy of this decision is being sent on this date to the Honorable Mike McGrath, Attorney General, and Mr. Leo Gallagher, Lewis and Clark County Attorney.