



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

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COMMITTEES:
NATURAL RESOURCES - CHAIR
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FISH, WILDLIFE & PARKS

Dear Senators Daines and Tester, Congressman Zinke:

In a recent Montana legislative committee meeting, we learned that the CSKT Compact is being “fast tracked” to try to secure its approval by the federal agencies and Congress in 2016. We are writing to express our serious concern that the CSKT Compact will be submitted to Congress before it has even been finalized in the state of Montana. A lawsuit challenging the constitutionality of the legislature’s vote on the Compact was filed immediately after the legislature’s vote. This lawsuit is on-going and the resolution date is unknown.¹ It is, therefore, extremely premature to submit the CSKT Compact for review and approval by Congress and we believe that rushing this compact through would do a great disservice to Montanans.

As legislators who have heard the CSKT Compact in committees and on the House and Senate floors in both the 2013 and 2015 legislative sessions, we can attest to the extremely divisive legislative issue this has been, primarily because the CSKT Compact is substantively different than all the other Tribal compacts in Montana.² Every one of the seventeen other compacts in Montana has received nearly unanimous votes in the House and Senate.

However, in 2015 the CSKT Compact “passage” was enabled by a mere three votes because of a controversial rule change in the Montana House. The constitutionality of the legislature’s 2015 vote on the CSKT compact is in litigation right now, because the Montana Constitution requires a 2/3 vote in each house of the legislature when the state seeks an exemption from its standard waiver of sovereign immunity. Thus as a result of this litigation, there is no CSKT Compact to review or to present to Congress right now.

¹ The constitutionality of the legislature’s 2015 vote passing the compact is currently in litigation in Montana’s 20th Judicial District (*FJBC v. Montana DV-15-73*) with final arguments scheduled for mid-March 2016

² Of particular concern is that the CSKT Compact that failed in the 2013 legislature was no different than the 2015 Compact submitted to the legislature, with the consequently divisive discussion that ensued. In addition there are easily discernible impacts to hundreds of thousands of Montanans, yet no substantive review of them by either federal or state negotiators and importantly, no plan to review those if the compact is passed by Congress. We believe these impacts would not be acceptable to Congress. After the Compact is actually valid, these studies are necessary to ensure the protection of Montanans from what we perceive to be gross overreach

As a matter of record, even if the clauses of interest to the lawsuit on the Compact are removed, which we argue could not be done by a court, we can attest that serious unresolved issues remain in the CSKT Compact that affect state law and our constituents. At a minimum we would expect that the customary agency deliberative process is used to evaluate and correct the Compact before it is introduced to Congress and the same process be applied in Congress as this Compact is reviewed by various committees in both the House and Senate. And certainly we would expect any hearing to include the public's opportunity to testify before every committee that considers the CSKT Compact.

We are mindful of the "rush" to accomplish administration objectives during 2016 and the other Indian water settlements before Congress at this time. However, we believe that such a "rush" would be a disservice to Montana citizens, including members of the CSKT.

Accordingly, we request your support to ensure that litigation on the CSKT Compact is complete before any consideration of this Compact by Congress. When it is out of litigation, we suggest that the CSKT Compact focus should be on ensuring the CSKT Compact receives full agency review and that it complies with House Natural Resources Committee Chairman Rob Bishop's February 26, 2015 letter before it is introduced to either house of Congress.³ Finally, if by some unfortunate circumstance the CSKT Compact is introduced to Congress prematurely, we urge you to oppose the CSKT Compact and keep us apprised of any hearing or proceeding on the CSKT Compact which would afford the opportunity for public testimony.

Thank you for your consideration.

Sincerely,

Representative Kerry White

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Chair House Natural Resources Committee

:additional Montana Legislators listed on following page

Cc: Congressman Rob Bishop, Chairman House Natural Resources Committee
Senator John Barrasso, Chairman, Senate Select Committee on Indian Affairs
Secretary Sally Jewell, Department of the Interior

³ Federal Register Vol. 55 No. 48 March 12, 1990, *Criteria and Procedures for the Participation of the Federal Government in Negotiation for the Settlement of Indian Water Claims*; Letter from Chairman Rob Bishop to Attorney General Holder and Interior Secretary Jewell, February 26, 2015.

Senate President Debby Barrett
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