

Montana Land and Water Alliance, Inc.
P.O. Box 1061
Polson, Montana 59860

June 10, 2016

SUBJECT: S. 3013 -- CONFEDERATED SALISH AND KOOTENAI TRIBES (CSKT) WATER COMPACT

Dear Senator/Congressman:

Recently Senator Jon Tester (D-MT) introduced to the Senate S. 3013, *A bill to authorize and implement the water rights compact among the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, the State of Montana, and the United States, and for other purposes*. The bill was read over the roster on May 26th and referred to the Senate Select Committee on Indian Affairs.

We write to first inform you that S. 3013 is *not* the Compact that was produced in Montana and was rewritten completely by Senator Tester. Importantly, S. 3013 does not address or resolve any of the issues in Montana.

We are also writing to apprise you that the actual, original CSKT Compact/Indian water settlement¹ has not yet made it out of the state of Montana, where it remains in court on a constitutional challenge to its ratification by the state legislature in 2015. This case will be in litigation for the foreseeable future as whatever decision is made at the District Court level will be appealed to the Montana Supreme Court.

In addition, several other constitutional issues plague the *actual* CSKT Compact and will have to be litigated. Respectfully, the issues presented in court are state-based and cannot be resolved in a federal venue. Please find attached a useful fact sheet on the actual CSKT Compact that remains in Montana.

Senator Tester was informed of these matters in February of this year, as were Chairman Barrasso of the Senate Select Committee on Indian Affairs, Chairman Bishop of the House Natural Resources Committee, and Secretary of the Interior Sally Jewel. In light of this information we are astonished that the Senator would attempt to rewrite and introduce the

¹ Actual CSKT Compact found at Montana Code Annotated 85-20-1901, 1902.

actual legislation that is still in a Montana state court and not ready for any kind of Congressional review.

Importantly, Senator Tester skipped ahead of at least one Montana and other Indian water settlements that were introduced long before the CSKT Compact and *are* ready for Congressional review. Senator Tester also increased the federal price tag for the CSKT Compact from an unsupported \$1.2 billion to \$2.3 billion dollars, while the other Montana Indian water settlements already in line for Congressional consideration have significant sums attached to them.

We respectfully submit that Senator Tester's bill, S. 3013, is irrelevant to the settlement of the water rights in Montana. The *actual* Montana-U.S.-CSKT Compact has not yet left Montana and should not be acted upon or even considered by Congress, committee, or as part of any appropriations or other bill. Please feel free to contact me at my email address 4mtlandwater@gmail.com.

Sincerely,



Catherine Vandemoer, Ph.D.
Chair, Montana Land and Water Alliance

Enclosure

FACT SHEET ON THE CSKT WATER COMPACT – JUNE 2016¹

CSKT Compact Violations	Description
<p>The CSKT Compact Violates Montana and U.S. Constitutions</p>	<ul style="list-style-type: none"> ❖ <i>Constitutionality of Montana Legislature’s 2015 vote on CSKT Compact is currently in litigation and will be for the foreseeable future.</i> <ul style="list-style-type: none"> • Article II §18- <i>State Subject to Suit</i>. Compact grants state immunity and constitution requires a 2/3 vote in each House of legislature, which was not achieved in either house ❖ <i>CSKT Compact violates other articles of the Montana Constitution.</i> <ul style="list-style-type: none"> • Article II § 17-<i>Due process of law, and § 4 Equal protection</i>. The Compact deprives individuals within the exterior boundaries of the reservation of both • Article V § 12 <i>The Legislature</i>. Referring to the “Unitary Management Ordinance”, the legislature ratified the creation of a new local law and dispensed with State law. • Article VII § 4(1), (2) & § 2 (4) <i>The Judiciary</i>. The Compact removes the Mt District and Supreme Court avenues for resolving disputes • Article VIII §-<i>Revenue and Finance</i>. Compact enables taxation without representation • Article IX § (3)<i>4 Environment and Natural Resources</i>, and Article III §1 <i>General Government</i>. The Compact delegates the state government’s constitutional authority for the administration, control and regulation of state based water resources and rights to another sovereign—the U.S. in trust for the CSKT. ❖ <i>CSKT Compact violates U.S. Constitution: Article IV §4 Republican form of Government; Article V takings without compensation; and Fourteenth Amendment equal protection</i>
<p>The Compact Violates Federal Law</p>	<ul style="list-style-type: none"> ❖ <i>The Compact violates the 1902 Reclamation Act, 1904 Flathead Allotment Act (FAA), and 1908 Amendment to the FAA, 1920 Federal Power Act, 1934 Indian Reorganization Act, the Winters Doctrine, and numerous federal contracts with irrigation districts existing since 1926</i>
<p>The CSKT Compact Destroys Irrigation</p>	<ul style="list-style-type: none"> ❖ <i>The Compact transfers bare legal title of private water rights to the United States in trust for the CSKT instead of project users and landowners, and then converts the use of 50%-70% of historic beneficial use of irrigation water in the Flathead Irrigation Project—the largest in Montana—to instream flow without demonstrated need or biological science.</i>
<p>The Compact Sets Negative Precedent for Western States through the expansion of federal reserved water rights</p>	<ul style="list-style-type: none"> ❖ <i>The effect of this compact is to condemn the historic beneficial use of water for agriculture and other water rights across private lands in the west.</i> ❖ <i>This compact may compel other Tribes to reopen or re-litigate water settlements seeking administrative jurisdiction control over state law-based water rights and uses within the exterior boundaries of their reservations regardless of land ownership.</i>

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