

**Montana Land and Water Alliance, Inc**  
**P.O. Box 1061 Polson, Montana 59860**  
**4mtlandwater@gmail.com 406-552-1357**

**May 17, 2017**

Honorable Ryan Zinke, Secretary  
U.S. Department of the Interior  
1849 C Street NW MS 7229  
Washington, D.C. 20240

Subject: Appointment of Mr. Alan Mikkelsen as Deputy Commissioner of the Bureau of Reclamation

Dear Secretary Zinke:

The Montana Land and Water Alliance (MLAWA) is a grass roots organization composed of concerned citizens and irrigators who reside in Western Montana who are deeply concerned about the impacts of the proposed CSKT Compact now being litigated in the Montana Supreme Court.

We wish to inform you of our grave concern about and disappointment with your choice of Alan Mikkelsen as Deputy Commissioner of the Department of the Interior's Bureau of Reclamation. Mr. Mikkelsen once had the trust of irrigators and others when CSKT Compact negotiations began because his stated position aligned with theirs regarding ownership of the Flathead Irrigation and Power Project (FIPP) water right, delivery of historic volumes of Project water for irrigation, and the administration of project water on Project lands, 90% of which are held in fee, by the State of Montana. Please see the attached article (attachment A) written by Mr. Mikkelsen in 1993 that describes clearly his viewpoint on any compact with the CSKT and advocacy for irrigators.

Sometime prior to 2012, Mr. Mikkelsen's position changed, unbeknownst to the Project irrigators who had paid him nearly \$800,000 over a decade and the 350,000 citizens of Western Montana. Suddenly they were presented with a Compact that transferred the beneficial title of the project irrigation water to the U.S. in trust for the sole benefit of the CSKT as opposed to the project irrigators. Additionally, the volume of historic water delivered to farmland from the FIPP was reduced 50—70% and a specially-created "Law of Administration" unique to this geographical area was created, to be administered by a board of unaccountable political appointees chosen by the State and the Tribes, with no irrigator representation.

Further, the Tribes' treaty-granted off reservation access right "to take fish" was turned into a water right, and the CSKT were given "co-ownership" of many rivers in Western Montana. Mr. Mikkelsen's role in the CSKT compact was to help create a mechanism to sever the beneficial ownership of the project users' water rights and give them to the CSKT. In this regard he actually turned against the project irrigators. Please see the attached

letter (Attachment B) written by Mr. Mikkelsen in 2013 where he has completely changed his view on irrigators and irrigation in relationship to the Tribes.

After the failure of the CSKT Compact before a legislative committee in the MT 2013 legislative session, Mr. Mikkelsen began to actively undermine the Flathead Joint Board of Control (FJBC) by participating in the withdrawal of two of the irrigation districts from the FJBC. That withdrawal gutted the existing Interior-approved Memorandum of Understanding on the transfer of the FIPP project to the land owners and the Cooperative Management Entity established to manage the FIPP because the agreement was made with the FJBC. Mr. Mikkelsen then served as a paid consultant to the law firm representing the two break-away irrigation districts who immediately raised the water user's administrative fees by \$6.35.

The history and record of Mr. Mikkelsen's work as *briefly* described above render him unfit for any work on the operation, management, funding, organization or any aspect of irrigation in the FIPP or the Mission Valley Power 638 contract.

If this compact that Mr. Mikkelsen worked on is ratified, it will have devastating impacts on the agricultural economy of the western Montana and negatively impact the lives of the 350,000 citizens who reside here. Thus, the vast majority of individuals in Western Montana have no confidence in Mr. Mikkelsen's ability to fairly and objectively consider their position on these extremely significant water matters.

While we acknowledge the authority of the Secretary of the Interior to select the members of his executive team, we wish to again state our dissatisfaction with the Secretary's choice of Mr. Mikkelsen as Deputy Commissioner of the Bureau of Reclamation.

Furthermore, we respectfully request that Mr. Mikkelsen be required to recuse himself from any of the Department's activities with regard to the CSKT Compact, the Flathead Irrigation & Power Project and project turnover discussions, or the Mission Valley Power 638 contract. He has absolutely lost the trust and confidence of many of the irrigators in the FIPP, except of course those he openly favors.

Thank you for your consideration.

Sincerely,

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

cc: Bureau of Reclamation Acting Commissioner David Murillo  
Montana Congressional Delegation

## Attachment A

Reference: Missoulian

### **Tribal power grab threatens basic constitutional rights**

BY ALAN MIKKELSEN

09/30/1993

The Flathead Indian Reservation is once again embroiled in controversy over the another claim by the Confederated Salish and Kootenai Tribes that they have jurisdiction and regulatory authority over non-tribal member's activities on privately owned land. The tribes are now attempting to gain authority to be treated as a state government in order to develop water quality standards and a water quality permitting process on the reservation.

To the uninformed, this may be most logical and understandable. After all, aren't we talking about an Indian reservation here? Surprisingly the answer to that question from the Supreme Court of the United States is no. On June 14, the Supreme Court issued its latest and most important decision (South Dakota vs. Bourland) in a modern trilogy of cases involving tribal civil jurisdiction over non-members. In the Bourland case, Montana vs. United States (1982) and Brendale vs. Yakima Nation (1989), the court has spoken directly to the issue of whether Indian tribes have any civil jurisdiction over non-Indian activities on private, fee-owned land.

In all three decisions, involving hunting, fishing, and land and water resources, the court has clearly stated that the affected tribes do not possess such power. On the Flathead Reservation, however, the Confederated Salish and Kootenai Tribes continue to grasp for power, ignoring such decisions. This incessant grasping for power by the tribes thus provokes the reservation population (18,000 non-Indians, 3,000 Indians), who simply do not want to be subjected to a government in which they have not right of participation. (The vast majority of land located on the valley floors of the reservation is privately owned by non-Indians.) Given the rulings from the Supreme Court, an 85% non-Indian population, a huge amount of privately owned land and an aggressive tribal government, conflict is nearly inevitable.

Land use and water use regulation involves the most fundamental principles on which the U.S. Constitution rests and which the Montana Constitution accords even greater protection. It involves not only the exercise of police power, but also affects property rights, civil rights and political rights. Some people view these rights and the arguments aimed at protecting them as merely a cloak for what are racist views. This is an easy charge to make, and an extremely difficult charge to disprove, and it is extremely unfair to force people to be put to this test.

It is undoubtedly true that some people do have racist motivations for their opposition to the tribal government's control. They are few in number. It is also true however, that even these odious people enjoy all the protections our laws provide. Among the most basic and fundamental of these protections are those involving property rights, political rights and civil rights. This is a legal fact applicable to all – no matter what their motivation. Any implication that opposition to tribal controls is rooted in racism is to be expressly rejected. These are fundamental principles involved in this debate that are enshrined in our Constitution. The legitimate opposition to tribal authority over non-member fee land, which includes the majority of reservation residents, will not accept capitulation to the tribes' incessant and (under the controlling federal law) extreme demands for power over their lives as the proper means to avert a conflict.

The Flathead Reservation is a homeland of the Indian people. Although many tribal advocates will refuse to acknowledge it, this area is also a homeland for non-Indian people. Whether you were born here or moved here, if you have an emotional, cultural, or ancestral attachment to this area, it is your homeland. That it may be a tragedy to Indian people that this now a shared homeland cannot be debated. However, the wrongs that were visited upon the Indian people yesterday cannot be corrected by visiting more wrongs on the non-Indian people today. Until an acknowledgement is made of the need for self-rule for all people, non-Indian as well as Indian, the situation here will only continue to drift into greater conflict and extremism from elements of both sides.

The state of Montana needs to maintain a strong presence on the Flathead Reservation, in order to assure that the rights on non-tribal members to participate in the government that controls their activities be preserved.

END

## Attachment B

Reference: *Missoulian April 24, 2013*

### Flathead water compact: Don't be misled, read the agreement

Apr 24, 2013 Alan Mikkelsen

There continue to be lies and falsehoods written about the Flathead Reservation Compact and the irrigation project Water Use Agreement. Absolutely nowhere in either document do the Confederated Salish and Kootenai Tribes claim all water on and off the reservation belongs to them. Yet some people persist in the lies, apparently to continue to promote fear and hysteria. Read the compact and Water Use Agreement on the Department of Natural Resources and Conservation, CSKT or Flathead Joint Board of Control websites.

Fear says this: We are losing our water rights. We are losing our property rights. The tribes will control us.

Reality says this: Nobody is losing their water right or right to use water. The compact does not do anything at all to affect property rights. The compact does not allow the CSKT to control or meter your well. The compact creates a true partnership in administration between the state of Montana and the CSKT.

Reality also says this: Failure to approve this compact means two things. First it means litigation. That litigation will have a chilling effect on all development in western Montana. When the CKST file their claims with the Water Court, DNRC is likely to be proscribed from issuing any further permits for either surface or groundwater development in western Montana, until the CSKT water rights are quantified. This could take decades. Second, failure of this compact will consign the Flathead Indian Irrigation Project, the largest irrigation project in Montana, to a slide into oblivion. Failure means that pumping costs on the Flathead River Pumping Plant will increase 200-300 percent in 2015. O&M rates will see a significant increase in order to meet the repairs needed to keep water running, or water deliveries will cease.

Support the compact and a positive, cooperative future for all of western Montana.

*Alan Mikkelsen, St. Ignatius*