

Hearing: 2005 Legislative Session – Agriculture Committee  
February 17, 2005  
Regarding HB 635  
Proposed by: Representative Jonathon Windy Boy

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I. History Lesson

Tribes are indigenous to the northern plains and within the entire area that is now defined as Montana. Tribes established formal relationships and entered into treaties in 1851 and 1855 with the United States government and entered into treaties in 1851 and Montana becoming a territorial government defining their aboriginal territories prior to that exist today were established by treaty with the US government prior to Montana achieving statehood in 1889. Treaty making with Tribes was ended by an act of congress in 1871. The 2<sup>nd</sup> half of the Northern Cheyenne Reservation was created by executive order in 1890 and the Rocky Boy's Reservations was created in 1916.

Federal Indian policy and the laws of the state of Montana reaffirm the federal tribal relationship that exists between the federal government and Tribes in Montana. The history of this federal tribal relationship is reaffirmed in Article 1, of the Montana Constitution.

**Montana Constitution, Article 1: COMPACT WITH THE UNITED STATES.**

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

Tribes are sovereign governments, recognized as such by the United States government and by the State of Montana. No where in the history of the State of Montana has the congress of the United States or the people of Montana moved to legally change, alter or diminish that federal tribal relationship. The state of Montana lacks the authority to

define or include Indian Reservations within the political territory of conservation districts.

## **II. Consultation**

As we enter the 21<sup>st</sup> century, we are entering into a new era of relations between state and tribal governments.

There is a need for consultation with Tribal governments.

Reference: HB 608 was passed by the 2003 legislature and enacted into Montana law on October 1, 2003.

## **III. Conservation Districts – Facts & Issues**

**Fact:** There are 58 conservation districts organized under the laws of the state of Montana.

- MCA, Title 76 - Land Resources and Use, Chapter 15 – Conservation Districts

**Fact:** The Conservation & Resource Development Division (CARDD), located within the Montana Department of Natural Resources and Conservation (DNRC), is the division responsible for providing technical, administrative, financial and legal assistance to Montana's 58 conservation districts.

**Fact:** The Montana Dept. of Natural Resources and Conservation (DNRC) has loan and grant programs available for projects sponsored by conservation districts organized under the authority of state law.

**Fact:** Tribal governments, as sovereign entities, have the ability to define subdivisions under tribal government to promulgate and carry out tribal laws and regulation as the Tribe's as self-governing entities deem necessary within the jurisdictional boundaries of Indian Reservations. Four of the Tribes in Montana have chosen to do this by establishing tribal conservation districts under their respective tribal laws. These districts are organized and carry out responsibilities for coordinating land and resources management functions that affect and impact Indian lands and the state of Montana. Some of these land and resources management function include: rangeland and resource inventories, watershed management activities, protection of water resources, and providing leadership and coordination for conservation measures very similar to conservation districts organized under state law.

- Crow Conservation District (1996)
- Blackfeet Natural Resources Conservation District (1997)
- Rocky Boy's Conservation District (1999)
- Fort Belknap Indian Community Conservation District (2001)

**Clarify: None of these tribal conservation districts are recognized under state law nor are they petitioning to create conservation districts under state authority.**

**Issue:** There is a lack of understanding of Tribes, Indian Reservation and the conservation needs on Indian lands by the Montana Dept. of Natural Resource Conservation (DNRC), the Conservation & Resource Development Division (CARDD), the Montana Association of Conservation Districts and a lack of communication and coordination with Tribes at the state level; as well as a conservation districts at the local county level and Tribes and tribal conservation districts.

This lack of communication and coordination impacts Tribes, people and resources in:

- The Crow Tribe, Crow Reservation, Crow Conservation District and the Big Horn and Yellowstone County Conservation Districts
- The Blackfeet Tribe, Blackfeet Reservation, Blackfeet Natural Resources Conservation District and The Glacier and Pondera County conservation district
- The Fort Belknap Indian Community, Fort Belknap Indian Reservation, the Fort Belknap Conservation District and the Blaine and Phillips County conservation districts
- The Chippewa Cree Tribe, the Rocky Boy's Reservation, the Rocky Boy's Conservation District and the Hill and Chouteau County conservation districts

**Issue:** Although the majority of individual Indians are tax paying citizens and residents of the state of Montana and individual Indians and Tribes are private land owners who also pay property taxes, Tribe and tribal conservation districts are not eligible to apply for loans and grant programs administered by the DNRC.

- See Reference: MT DNRC – Conservation Districts, Loan & Grant Programs

#### **IV. Objectives of HB635:**

1. Reaffirm HB608 with regard to consultation between the State of Montana and Tribes.
2. Recognize tribal conservation districts.
  - Clarify that the sovereignty and jurisdiction of the state of Montana does not grant departments of state government or its agencies, its county governments, or conservation districts the authority to super ceded or preempt federal law or impose the laws of the state upon Tribes or into the area of federal/tribal jurisdiction that exists on Indian reservations. MCA, 2-1-102

*MCA, Title 2, Chapter 1, Part 102 Sovereignty and jurisdiction of the state. The sovereignty and jurisdiction of this state extended to all places within its boundaries as established by the constitution, excepting such places as are under the exclusive jurisdiction of the United States.*

3. Reaffirm that a limitation on territory of conservation districts already exists in MCA, 76-15-216. Amend the language to include clarification regarding the placement of Indian Reservations and tribal conservation districts within the boundaries of a state established territory as defined by a Conservation & Resource Development Division as an entity of state government or by a conservation district as a political subdivision of the state without the consent or consultation with Tribes.
  - The Montana Dept. of Natural Resources & Conservation (DNRC), Conservation & Resource Development Division does not have the authority to include Indian reservations within the territory of the boundaries that define county conservation districts, nor should Conservation Districts as governmental subdivisions of the state have the ability to define that territory without the consent of tribal governments.
4. Include Tribes and tribal conservation districts within the funding mechanism outlined for financial assistance from the Conservation & Resource Development Division (CARDD) of the Montana Dept. of Natural Resources and Conservation.(DNRC).

V.

**Conclusion:**

HB608 – “Strengthening communications and building collaborative relationships will benefit both the Indian Nations and the State of Montana.”

Passage of HB 635 – recognition of tribal conservation districts - will result in establishing a platform to build relationships, and to improve communications and coordination between state and tribal governments on land, water and natural resources issues. These efforts today will lead to partnerships to address conservation needs that move beyond geo-political boundaries and impact people and the resources on Indian Reservations and within the state of Montana.