

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



JOHN WALSH
LT. GOVERNOR

May 3, 2013

The Honorable Linda McCulloch
Secretary of State
State Capitol
Helena, MT 59620

Dear Secretary McCulloch:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 265 (SB 265), "AN ACT EXTENDING THE SUSPENSION OF WATER RIGHT ADJUDICATION DURING NEGOTIATIONS OF INDIAN AND FEDERAL RESERVED WATER RIGHTS; REQUIRING AN INTERIM STUDY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 85-2-217 AND 85-2-702; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

SB 265 extends the suspension of adjudication of Indian and federal water rights claims from July 1, 2013, to July 1, 2015. The bill also requires the legislative Water Policy Interim Committee (WPIC) to conduct meetings concerning the proposed compact that has been negotiated between the Confederated Salish & Kootenai Tribes (CSKT), the State of Montana, and the United States. Further, the WPIC is to prepare a study of issues related to the compact; create new legislation with regard to the compact; and make recommendations as to the adoption of the compact to the 64th Legislature.

In 1979, the Legislature created the Montana Reserved Water Rights Compact Commission (Commission) for the express purpose of negotiating quantification agreements for tribal and federal claims to water within the boundaries of this state. The Commission has successfully negotiated 18 of these federal and tribal water compacts. These compacts include two adopted this session: the Upper Missouri Breaks National Monument Water Compact and the C.M. Russell National Wildlife Refuge Water Compact. With great foresight, the Montana Legislature created a negotiation process that has proven to be highly durable and successful.

Unfortunately, SB 265 comes to my desk because the Legislature has failed – for the first time in the 34-year history of the Commission – to adopt a state-tribal compact negotiated in good faith. The proposed water compact with the CSKT is the culmination of years of negotiation, legal and technical work, and public involvement. Despite the importance of this compact to the economic future of western Montana and to the timely completion of the statewide General Stream Adjudication, the agreement was never allowed a vote on the floor of the Senate or the House.

Instead, the Legislature proposes to extend the deadline for suspension of the adjudication of tribal water rights, presumably to allow for further negotiations over the CSKT's claims.

I now veto SB 265 for the following reasons. First, the CSKT and the Commission have completed negotiations and agreed to a water compact. Both sides have made concessions. The compact is a reasonable settlement of the CSKT's water rights claims that provides necessary protections for all affected water users in Montana, including those in eastern Montana who might otherwise be impacted by the claims the CSKT could file in the Adjudication and who are wholly protected from that possibility by the compact. It was made clear during the committee hearings on this bill and on the proposed compact that there is no reason to believe the CSKT would agree to reopen negotiations. Even if further negotiations were deemed necessary or appropriate, the CSKT and the state can mutually agree to do so at any time, without SB 265.

Second, the bill unnecessarily extends the deadline for suspension of the adjudication of tribal water rights claims. Pursuant to 85-2-702 (3), the CSKT have two years to file their claims after the current suspension ends on July 1, 2013. Therefore, even without the extension contained in SB 265, the CSKT's claims do not have to be filed until July 1, 2015, after the conclusion of the 2015 legislative session. To the extent the purpose behind SB 265 is to allow time for the current compact to be better understood in advance of the 2015 session, current law allows for that process without the need for an extension. Additionally, with or without SB 265, it is entirely up to the CSKT whether and when in the next two years they file their claims. Nothing in SB 265 does or can limit the CSKT's ability to file claims at any time if they so choose. That decision will be made by the CSKT based on their own assessment of whether the state will enter into a fair compact with them.

Third, adding two more years to the suspension simply serves to delay the completion of Montana's General Stream Adjudication. In testimony to the Legislature, Water Court Chief Judge Bruce Loble has identified the lack of resolution of tribal and federal water rights claims as a critical barrier to concluding the adjudication. The CSKT's rights are the last set of tribal claims that need to be quantified. In the event the Legislature does not approve a negotiated settlement, those claims must be litigated before the Adjudication can be complete. The CSKT has estimated to the Department of Natural Resources and Conservation (DNRC) that, absent a compact, up to 10,000 claims might be filed in basins both within and outside of the Flathead Indian Reservation. Each of those claims would need to be examined by the DNRC and then issued by the Water Court as part of one or more preliminary decrees before those claims can be finally adjudicated. Moreover, those claims – to the extent they are finally adjudicated – need to be incorporated into basin-wide decrees before the Adjudication's work is finished. An additional two-year delay in filing further slows progress toward a final adjudication. Such a delay leaves state water users with tremendous uncertainty, makes it difficult to protect Montana's water from demands from neighboring states and Canada, postpones future land and water development in western Montana, and will undermine the legislative directive to the DNRC and the Water Court to ensure the issuance of all preliminary decrees by 2020.

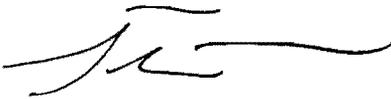
Finally, SB 265's insertion of the WPIC into the compacting process is unnecessary. The Legislature created the Commission to be the state entity responsible for negotiating water rights

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quantification agreements with Indian tribes and the United States, and nothing in SB 265 alters that arrangement. With this letter I am directing the Commission, working with DNRC, the CSKT, the Flathead Joint Board of Control, the United States, and other interested parties to prepare a comprehensive report addressing the questions raised about the compact during the 2013 legislative session. This report shall be submitted to the WPIC well in advance of the 2015 session, and made available for public review on the DNRC website. Further, I am directing the Commission and the DNRC to consult with interested parties in the preparation of this report, to ensure that it addresses all questions and concerns in as thorough and professional a manner as possible. If the compact is again considered during the 2015 legislative session, legislators and the public shall have a full and accurate understanding of its content.

SB 265 serves no useful purpose and needlessly delays the Montana General Stream Adjudication to the detriment of tens of thousands of Montana water users. For these reasons, I veto SB 265.

Sincerely,



STEVE BULLOCK
Governor

cc: Legislative Services Division
Jeff Essmann, President of the Senate
Mark Blasdel, Speaker of the House