Montana State Legislature

2013 Session

ADDITIONAL DOCUMENTS MAY INCLUDE THE FOLLWING:

- Business Report
- Roll Call – Attendance
- Standing Committee Reports
- Tabled Bills
- Fiscal Reports etc.
- Roll Call Votes
- Informational Items
- Witness Statements
- Any Documents; such as;
  - *Petitions if any.
  - *Any and all material handed end after the meeting ends.

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225 N. Roberts
Helena MT 59620-1201

BUSINESS REPORT

MONTANA HOUSE OF REPRESENTATIVES
63rd LEGISLATURE - REGULAR SESSION

HOUSE JUDICIARY COMMITTEE

Date: Wednesday, April 3, 2013
Place: Capitol

Time: 8:00 AM
Room: 137

BILLS and RESOLUTIONS HEARD:

HB 521 - Referendum requiring parental consent for an abortion for a minor - Rep. Gerald (Jerry) Bennett
HB 619 - Constitutional referendum to specify no right to abortion or its public funding - Rep. Wendy Warburton
HB 631 - Constitutional amendment on crime victims - Rep. Steve Fitzpatrick

EXECUTIVE ACTION TAKEN:

HB 521	Do pass as amended
HB 619	Do pass
HB 629	Tabled
HB 631	Do pass
HR 5	Do pass

Comments:

Krayton Kerns
REP. Krayton Kerns, Chair

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE: April 3/2013

NAME	PRESENT	ABSENT/ EXCUSED
REP. JERRY BENNETT, VICE CHAIR	X	
REP. MARGIE MACDONALD, VICE CHAIR	X	
REP. ALAN DOANE	X	
REP. CAROLYN PEASE-LOPEZ		exc
REP. KEITH REGIER	X	
REP. VIRGINIA COURT	X	
REP. CLAYTON FISCUS	X	
REP. BRIDGET SMITH	X	
REP. DENNIS LENZ	X	
REP. JENNY ECK	X	
REP. KIRK WAGONER	X	
REP. SARAH LASZLOFFY		exc
REP. WENDY WARBURTON	X	
REP. ELLIE BOLDMAN HILL	X	
REP. JERRY O'NEIL	X	
REP. JENIFER GURSKY	X	
REP. DAVID HALVORSON	X	
REP. RYAN LYNCH	X	
REP. MARK BLASDEL		exc
REP. KRAYTON KERNS, CHAIR	X	

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 619** (first reading copy -- white) **do pass**.

Signed: Krayton Kerns
Representative Krayton Kerns, Chair

- END -

Committee Vote:
Yes 12, No 8
Fiscal Note Required __

HB0619001SC.hjk

Dc 4.3
12:00

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 521** (first reading copy -- white) **do pass as amended**.

Signed: _____
Representative Krayton Kerns, Chair

And, that such amendments read:

1. Page 11, line 3 through line 4.
Strike: "the consent" on line 3 through "younger." on line 4
Insert: "on Legislative Referendum No. ___"

2. Page 11, line 5 through line 6.
Strike: "the consent" on line 5 through "younger." on line 6
Insert: "on Legislative Referendum No. ___"

- END -

Committee Vote:
Yes 12, No 8
Fiscal Note Required __

HB0521001SC.hjk

DC 4.3
12:00

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 631** (first reading copy -- white) **do pass**.

Signed: Krayton Kerns
Representative Krayton Kerns, Chair

- END -

Committee Vote:
Yes 12, No 8
Fiscal Note Required __

HB0631001SC.hjk

Dec 4.3
12:00

HOUSE STANDING COMMITTEE REPORT

April 3, 2013

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Resolution 5** (first reading copy -- white) **do pass**.

Signed: Krayton Kerns
Representative Krayton Kerns, Chair

- END -

Committee Vote:
Yes 13, No 7
Fiscal Note Required __

HR0005001SC.hjk

TDC 4-3
12:00

COMMITTEE FILE COPY

BILL TABLED NOTICE

HOUSE JUDICIARY COMMITTEE

The **HOUSE JUDICIARY COMMITTEE** TABLED

HB 629 - Implement negotiated water compacts with Montana tribal governments - Rep. Kathleen Williams

by motion, on **Wednesday, April 3, 2013** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

Karen Armstrong
(For the Committee)

(For the Chief Clerk of the House)

12:19 / 4-3
(Time) (Date)

April 3, 2013 (12:14pm) Karen Armstrong, Secretary Phone: 1862

HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE: 4/3/2013 BILL NO 619 MOTION NO.
MOTION: do pass

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. JERRY BENNETT, VICE CHAIR	X		
REP. MARGIE MACDONALD, VICE CHAIR		X	
REP. ALAN DOANE	X		
REP. CAROLYN PEASE-LOPEZ		X	pr
REP. KEITH REGIER	X		
REP. VIRGINIA COURT		X	
REP. CLAYTON FISCUS	X		
REP. BRIDGET SMITH		X	
REP. DENNIS LENZ	X		
REP. JENNY ECK		X	pr
REP. KIRK WAGONER	X		
REP. SARAH LASZLOFFY	X		pr
REP .WENDY WARBURTON	X		
REP. ELLIE BOLDMAN HILL		X	
REP. JERRY O'NEIL	X		
REP. JENIFER GURSKY		X	
REP. DAVID HALVORSON	X		
REP. RYAN LYNCH		X	
SPEAKER MARK BLASDEL	X		pr
REP. KRAYTON KERNS, CHAIR	X		
	12	8	

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HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE: 4/3/2013 BILL NO 521 MOTION NO.
MOTION: do pass as amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. JERRY BENNETT, VICE CHAIR	X		
REP. MARGIE MACDONALD, VICE CHAIR		X	
REP. ALAN DOANE	X		
REP. CAROLYN PEASE-LOPEZ		X	pr
REP. KEITH REGIER	X		
REP. VIRGINIA COURT		X	
REP. CLAYTON FISCUS	X		
REP. BRIDGET SMITH		X	
REP. DENNIS LENZ	X		
REP. JENNY ECK		X	pr
REP. KIRK WAGONER	X		
REP. SARAH LASZLOFFY	X		pr
REP .WENDY WARBURTON	X		
REP. ELLIE BOLDMAN HILL		X	
REP. JERRY O'NEIL	X		
REP. JENIFER GURSKY		X	
REP. DAVID HALVORSON	X		
REP. RYAN LYNCH		X	
SPEAKER MARK BLASDEL	X		
REP. KRAYTON KERNS, CHAIR	X		
	12	8	

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HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE: 4/3/2013 BILL NO 631 MOTION NO.
MOTION: do pass

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. JERRY BENNETT, VICE CHAIR	X		
REP. MARGIE MACDONALD, VICE CHAIR		X	
REP. ALAN DOANE	X		
REP. CAROLYN PEASE-LOPEZ		X	pr
REP. KEITH REGIER	X		
REP. VIRGINIA COURT		X	
REP. CLAYTON FISCUS	X		
REP. BRIDGET SMITH	X		
REP. DENNIS LENZ	X		
REP. JENNY ECK		X	pr
REP. KIRK WAGONER	X		
REP. SARAH LASZLOFFY	X		pr
REP .WENDY WARBURTON	X		
REP. ELLIE BOLDMAN HILL		X	
REP. JERRY O'NEIL		X	
REP. JENIFER GURSKY		X	
REP. DAVID HALVORSON	X		
REP. RYAN LYNCH		X	
SPEAKER MARK BLASDEL	X		pr
REP. KRAYTON KERNS, CHAIR	X		
	12	8	

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HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE: 4/3/2013 BILL NO HB 629 MOTION NO.
MOTION: do pass

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. JERRY BENNETT, VICE CHAIR		X	
REP. MARGIE MACDONALD, VICE CHAIR	X		
REP. ALAN DOANE		X	
REP. CAROLYN PEASE-LOPEZ	X		pr
REP. KEITH REGIER		X	
REP. VIRGINIA COURT	X		
REP. CLAYTON FISCUS		X	
REP. BRIDGET SMITH	X		
REP. DENNIS LENZ		X	
REP. JENNY ECK	X		pr
REP. KIRK WAGONER		X	
REP. SARAH LASZLOFFY		X	
REP .WENDY WARBURTON		X	
REP. ELLIE BOLDMAN HILL	X		
REP. JERRY O'NEIL		X	
REP. JENIFER GURSKY	X		
REP. DAVID HALVORSON		X	
REP. RYAN LYNCH	X		
SPEAKER MARK BLASDEL		X	pr
REP. KRAYTON KERNS, CHAIR		X	
	8	12	

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HOUSE OF REPRESENTATIVES
Roll Call Vote
JUDICIARY COMMITTEE

DATE: 4/3/2013 BILL NO HB 5 MOTION NO._____
MOTION: do pass

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
REP. JERRY BENNETT, VICE CHAIR	X		
REP. MARGIE MACDONALD, VICE CHAIR		X	
REP. ALAN DOANE	X		
REP. CAROLYN PEASE-LOPEZ		X	pr
REP. KEITH REGIER	X		pr
REP. VIRGINIA COURT		X	
REP. CLAYTON FISCUS	X		
REP. BRIDGET SMITH	X		
REP. DENNIS LENZ	X		
REP. JENNY ECK		X	pr
REP. KIRK WAGONER	X		
REP. SARAH LASZLOFFY	X		
REP .WENDY WARBURTON	X		
REP. ELLIE BOLDMAN HILL		X	
REP. JERRY O'NEIL	X		
REP. JENIFER GURSKY		X	
REP. DAVID HALVORSON	X		
REP. RYAN LYNCH		X	
SPEAKER MARK BLASDEL	X		pr
REP. KRAYTON KERNS, CHAIR	X		
	13	7	

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AUTHORIZED
COMMITTEE PROXY

I request to be excused from the Judiciary

Committee because of other commitments. I desire to leave my proxy vote with:

Jerry Burnett

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
HB 521	Y	✓
AMD 01. AKA	X	✓
HB 619	Y	✓
HB 631	Y	✓
HB 629		X ✓
AMD		X
HR 5	X	✓

BILL/AMENDMENT	AYE	NO

mark

Rep. _____ (Signature)

Date 4/03/13

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AUTHORIZED
COMMITTEE PROXY

I request to be excused from the Judiciary

Committee because of other commitments. I desire to leave my proxy vote with:

Jenny Bennett

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
HB 521	Y	✓
AMD 01. AKA	Y	✓
~~HB~~ 619	Y	✓
HB 631	Y	✓
~~HB 629~~		~~Y~~
~~AMD~~		~~Y~~
~~HB 5~~	~~Y~~	

BILL/AMENDMENT	AYE	NO

Rep. Sarah Laszloffy (Signature)

Date 4/03/13

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AUTHORIZED
COMMITTEE PROXY

I request to be excused from the Judiciary Committee

Committee because of other commitments. I desire to leave my proxy vote with:

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO		BILL/AMENDMENT	AYE	NO
HB619		X	✓			
HB052101. AKA	X		✓			
HB521		X	✓			
HB631		X	✓			
HB629	X		✓			
HR5		X	✓			

Rep. Jenny Eck (Signature) Jenny Eck

Date 4-3-13

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AUTHORIZED
COMMITTEE PROXY

I request to be excused from the Judiciary Committee

Committee because of other commitments. I desire to leave my proxy vote with:

_____

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO		BILL/AMENDMENT	AYE	NO
HB 619		X	✓			
H3052101, AKA	X		✓			
HB 521		X	✓			
HB 631		X	✓			
HB 629	X		✓			
HR 5		X	✓			

Rep. [signature] (Signature)

Date 4-3-13

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AUTHORIZED
COMMITTEE PROXY

I request to be excused from the Judiciary

Committee because of other commitments. I desire to leave my proxy vote with:

Jerry Bennett

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
HR 3	X	

BILL/AMENDMENT	AYE	NO

Rep. Keith Regier
(Signature)

Date 4/03/13

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MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, April 3, 2013
HB 619 - Constitutional referendum to specify no right to abortion or its public funding
Sponsor: **Rep. Wendy Warburton**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Sarah Rossi	MCADSV		X	
Mee Wosepka	Montana Catholic Conf	X		
Lindsay Love	PPAMT		✓	
Shirley Herrin	Self	X		
Betty Babcock	Self	X		
Roland Horst	Montana Prolife Coalition	X		
[illegible]	✓ — —	X		
Derek Skees	Self	X		
Bill Myers	MT. PRO LIFE COALITION	X		
Lynsey Bowe	Blue Mountain Clinic		X	
Emily Likins	Blue Mountain Clinic		X	
Kim Leighton	NARAL		X	
Jeff Laszloffy	MT. Family Foundation	X		
Natalie Champany	Unborn Children	X		
DAVID PASSARI	Self Under God	X		
Jim Brown	SELF			X
Mike Zupanic	ACLU		✓	
Tonya Schlenker	CWA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, April 3, 2013
HB 521 - Referendum requiring parental consent for an abortion for a minor
Sponsor: **Rep. Gerald (Jerry) Bennett**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Sarah Rossi	MCADSV		X	
Lindsay Love	PPAMT		✓	
AP Lane	Self	X		
Roland Horst	MPLC	X		
Derek Sees	Self	X		
Emily Likins	Blue mountain clinic		X	
Lynsey Barke	Blue mountain clinic		X	
Kim Leighton	NARAL		X	
Jeff Laszloffy	MT. Family Foundation	X		
Natalie Champany	Children	X		
DAVID PASSKERI	Self Sovereign under God	X		
Shirley HERRIN	SELF	X		
Betty BABCOCK	SELF	X		
Nikki Zupanic	ACLU		✓	
Tony Schellhaft	CWA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, April 3, 2013
HB 638 - Referendum on unborn victim of violence act
Sponsor: **Rep. Keith Regier**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Derek Sloan	self	X		
Roland Horst	Self	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA House of Representatives
Visitors Register
HOUSE JUDICIARY COMMITTEE

Wednesday, April 3, 2013
HB 631 - Constitutional amendment on crime victims
Sponsor: **Rep. Steve Fitzpatrick**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Al Smith	MTLA		X	
Derek Sluss	Self	X		
Natalie Champoux	Self	X		
David Passieri	Self Sovereign Under God	X		
Roland Hoot	Self	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Testimony opposing HB629 dated 3-29-13

ADDITIONAL DOCUMENTS

Dear Judiciary Committee,

My name is David Passieri, I reside in Charlo Montana and I am an active real estate agent since 1989. My testimony culminates from a unique dedication to understand the intimate details of HB629 so as to best inform my clients. I have attended and video recorded nearly every public, "informational meeting" held by the Compact Commission upon the original May 2012 public draft release which allowed for a very short, 15 day, public comment period. I share with you today my experience and my confidence, not fear, in revealing some important truths uncovered.

I offer a list of opposing reasons to HB629 **and** to reinforce the fact that any settled Compact is an extraordinary outcome to an already established Constitution of Montana adjudication process. In other words, this Compact is **NOT** the only way to settle the CS&K Tribes' water rights claims. We have the Montana Water Court as our primary water rights adjudicatory process, as mandated by the Montana Constitution. This Water Court system is fully capable and indeed currently responsible to determine any outstanding claims to water rights, based solely upon hard law. Sure, it may take another 10 years, but let's please consider alternative which is the uncertainty and unintended negative economic and unconstitutional consequences that may result.

The Compact Commission speaks to the public, to the Legislature, to the heads of county and business organizations from a consistent and video recorded presumption that this is a good agreement because "you (as in the people of Montana) never had a water right to begin with, so why wouldn't you accept this agreement"? This wildly speculative bias is the cornerstone of the Compact Commission's coercive talking points and the resulting Compact set before the legislature for ratification. Is this point of view based on hard law? Please consider that this perspective is not accurate due to the following reasons:

1. The Honorable James H. Baldwin U.S. District Court Judge ruling, No. 1529, July 31, 1941, #12 states: " The waters flowing in the streams on the Flathead Indian Reservation in Montana and their tributaries were reserved by the Treaty of July 16, 1855, to the **individual** Indians of the Flathead Tribe and **not** the Tribe, and under that Treaty each member of the Flathead Tribe of Indians secured a vested right in the use of sufficient water to irrigate his irrigable lands in said Reservation to the full extent of the soil thereof...". The Tribe was not granted a water right; however individual Indians were granted a water right along with future owners of those in the chain of title, such as a Walton Rights' holder, which became recognized law through the successful Wind River, Wyoming litigation. In addition, the Lake County District Court, Honorable Judge C.B. McNeil on February 5, 2013 ruled that ON-Reservation fee patent land owners, many being descendants of original homesteaders, were granted an appurtentant irrigable water right if they are served by the Flathead Irrigation Project.

2. The Flathead Indian Reservation is an Open Reservation and Tribal water rights, though unique with in-stream flows to protect fisheries, **can** and **should** be adjudicated through the Montana Water Court as is required by the rest of the people of Montana. This Reservation does not conform to a typical Indian Reservation, especially when compared to the other 6 eastern Montana Indian Reservations. In fact, homesteaders were attracted to the Flathead Reservation in 1909 when advertisers reflected bountiful lands being available on the "Former" Flathead Indian Reservation and that the Flathead Irrigation Project will service up to 130,000 acres of land. What does the federal settlement dollars imply, which

per Chris Tweeten in June, 2012, is quoted as saying could be a "multi-billion dollar federal settlement"? Does the federal settlement imply that homesteaders are trespassers? Would adjudication require such an enormous settlement?

3. In 1993, the United States awarded the CS&K Tribes the right of full self governance rights in after meeting all the requirements of the United States Self Governance Demonstration Project. Self governance suggests that the CS&K Tribes may carry a sovereign status/government which would indeed make it an unconstitutional act for the state of Montana to contract with the CS&K Tribes. No other proclaimed self governance beyond the United States has Montana compacted with before; no other Montana tribe carries this designation. Thus, is this Compact really a Constitutional certainty?

4. No actual finite amount of water has been quantified thus failure is the result of over 12 years of the Montnana Reserved Water Rights negotiation. Wouldn't future litigation result **against** the state of Montana for entering into an agreement with the CS&K Tribes, a self governing, alleged sovereign nation, for several breaches of fiduciary commitment to the people of Montana? The first breach is in supporting the Montana **Reserved** Water Rights Compact Commission to operate outside their original scope of authority by virtue of going off the Reservation, a non reserved area of land; furthermore, in supporting outside of their scope in the creation of a consensual agreement/contract to make it feasibly legal for an acknowledged CS&K Tribal governance to govern a non tribal member in the administration of existing and future water rights claims, on and off the Reservation, thus arguably taxation without representation. This would be the first time in the USA that governance of the people would be feasibly possible and would be considered by most law abiding citizens to be unprecedented and dangerous grounds which does **not** create certainty into the future of Montana.

5. The Compact Commission coerces the audience at each On-Reservation informational meeting by stating three false statements in succession which is a possible violation of the RICO law: 1. "Any post on-reservation 1996 groundwater wells are illegal"; however, I was informed that these wells are indeed legal; The Helena DNRC informed me in the fall of 2012 that these new wells are placed in a suspense mode, an internal decision until the CS&K Tribes quantify their water right, so long as the new-well application was filed properly. 2. "This Compact will resolve the regulatory vacuum that exists on the Reservation". As has been made clear, there is NO regulatory vacuum that currently exists at the DNRC. 3. "If we do not pass this Compact then all the people of Montana may face defending their water rights claims, individually, by hiring their own attorneys to defend their state based water rights claims". However, should this Compact pass, then it is clear that any future individual litigation will become the obligation of the United States or in some cases the state of Montana to defend in court. It is very uncertain how to correct, outside of litigation, any potential legal wrongs or negative unintended Legislative consequences this forever Compact may create upon the people of Montana. To be sure, Montana will lose its state based jurisdiction to a federal based jurisdiction across most of western Montana and future litigation will not serve to unite Montana prosperity.

6. Within the Compact, Article 2 Definitions, #30 Flathead Indian Reservation or Reservation means all land within the **exterior** boundaries of the Indian Reservation established under the July 16, 1855 Treaty of Hellgate (12 Stat. 975), notwithstanding the issuance of **any** patent, and **including** rights-of-way running through the Reservation. Isn't this more legal dictum to create further uncertainties?

7. Existing 'valid' water users are protected in this Compact. What is a 'valid' water user? This legal dictum has future litigious implications, which persists throughout the Compact. Where is the certainty?

Furthermore, homesteaders are not acknowledged in this agreement by way of Walton Right or fee patent deed protections which both clearly indicate appurtenant water rights, an unquestionable real property right. From the perspective of a real property owner, where is the certainty of enhanced property values when a basic recognized property right no longer exists with the land?

8. Two water rights, on and off the reservation... one compact? How can this be when the Hellgate Treaty of 1859 (date ratified) does not reserve any lands outside of the Indian Reservation. Article 3 of the Hellgate Treaty, regarding Off-Reservation fishing provides for the Indians to: "the right of taking fish at all usual and accustomed places, in **common** with citizens of the Territory...upon open and unclaimed land". An implication to share fishing rights in common with the people off the Reservation is **NOT** an off-reservation right to own any water right whatsoever. Yet the people of Montana are coerced to believe that all the lands within the exterior boundaries of the Indian Reservation are subject to an Indian legal ownership of all the water which is simply not true within any Supreme Court ruling.

9. Within the Compact, Article 3 – Water Rights of the Tribes Section B defines Abstracts of Water Right: ...the language of the abstracts, including all informational remarks, shall control in the event of any inconsistency between the Compact and the abstracts of water right... in other words, the Abstracts appear to have a greater authority and yet these 1000+ pages are not even provided to the Legislature for easy review.

10. The Compact Commission uses further coercion in claiming that the state of Wyoming spent 30 years in litigation and is still litigating. What the Compact Commission does not say is that approximately the first 20 years were spent in the Wyoming litigation determining if a bona fide Indian water right even existed. Montana has no such dispute; it is clear that the individual Tribal member has a water right. Thereafter, in Wyoming, it was approximately 10 more years of litigation to determine that the Wind River Tribal Water Right would be 500,000 acre feet resulting in a non tribal water right with an equal quantity of water registering the same 500,000 acre feet. Furthermore, the individual Indian water right would be administered by the Tribe and the state based water rights would be administered by the state of Wyoming, not an unprecedented new administration system to allow a legally feasible way for Tribal governance of non tribal members. Also, what is not said is that the greatest amount of water ever awarded to any tribe collectively on behalf of their individual members is 1 million acre feet per year. This Compact awards an unquantified amount of water right; however the 1000+ pages of Abstracts of Water Right will conclude an amount totaling over 48 million acre feet of water per year; an amount nearly 50 times greater than any tribe ever awarded. Is it possible that the Compact Commission fears revealing the total real amount of water being taken without due process through the Water Court system?

11. This Compact is **NOT** the only way to settle these outstanding Tribal water rights claims, especially if we have no credible way to determine any aspect of the potential harm this proposed governmental action will have on the human environment. There is no appropriate document for a proper analysis such as an Environmental Impact Assessment along with an Economic Impact Analysis. Wikipedia claims that an Environmental Impact Assessment, an EIA, often times is developed by the party lobbying for the legislative or regulatory change and this is driven by a need to fully understand the impact of government action on the economy and impacted industries such. An EIA would also communicate the merits or detraction of the proposed action in a manner **easily** understood by the public, in this case the people of Montana. At these informational meetings which I diligently recorded, my query was simple and direct... is there, for public review, a complete Environmental Impact Assessment (EIA), which I am

told, may trigger an economic impact analysis? The answers consistently given were **NO** with the following three explanations: **1.** Why would we, when you, (as in the people of Montana), never had the water rights to begin with! **2.** We didn't see the need to waste tax payer money and precious time for such a report. **3.** Per Mr. Jay Wiener, and I paraphrase, we have been granted a 'Categorical Exclusion" since this is a settlement of litigation, which in itself, is not a triggering event for NEPA or MEPA, or in other words an EIA.

12. Who really represents the people of Montana? When Mr. Tweeten was asked, does he represent the people of Montana, his answer was "**NO, I represent the Governor**". Who then represents the people of Montana, the Montana Constitution and the United States Constitution within this process? Future and irrigator water users are not protected, in truth, they have become the target?

I am 100% in favor, for the CS&K Tribes water rights to be quantified. I am also 100% confident that the Compact Commission has exceeded its authority, broken the Open Committee Law in a least one meeting and the RICO Law through the public threat of individual litigation should this Compact not pass.

I have read and reread this Compact. It will diminish the quality of my life and my ability to support my family. This Compact will further erode my dream to be united with my neighbors, my community, my state and thus my country, forever. This Compact does not embrace property rights, hard law court interpretation or an equitable process of negotiation. Please oppose HB629, in favor for a continuation of the adjudication process pursuant the Constitution and the Water Court. This is not unchartered territory as the Compact Commission would have the people believe. Much can be extracted from the nearly complete Wyoming litigation. Thank you for your service to the people of Montana.

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CSKT Water Compact

The Hellgate Treaty of 1855: The confederated tribes ceded and relinquish all their right, title, and interest in and to the country occupied or claimed by them (i.e. aboriginal lands) in exchange for the Flathead reservation. The Treaty defines the reservation boundaries.

Winters decision 1908: Tribal water rights were recognized and addressed. Tribal members who lived on the reservation were provided water for agricultural lands on the reservation. The court further held that such rights were to be quantified under an objective standard, termed "practicably irrigable acreage" or PIA. The water right for the Flathead reservation has never been quantified.

In 1904 the Allotment Act of 1887 (Dawes Act), and the subsequent Homestead Act opened the Flathead reservation to non-Indians in 1910. These Federal Land allotments included water rights.

The Reserved Water Rights Compact Commission (RWRCC) has completed compacts with six tribal reservations. The RWCC points to the Hellgate Treaty of 1855 excerpt "the right of taking fish at all usual and accustomed places, in common with citizens of the Territory" to explain the inclusion of off reservation water rights in the CSKT compact. There is no mention of Tribal water rights in the Treaty. We should recognize that unlike the other six reservations the Flathead Reservation is governed by the CSKT and is a sovereign nation (receiving full self-governance rights in 1993). This creates many legal and constitutional issues. The CSKT government was heavily involved in the drafting of the compact proposed by RWRCC.

There are presently 7,024 tribal members. There has never been a complaint or testimony to my knowledge that a tribal member has been denied or unable to obtain the water needed for agricultural on the reservation nor have they defined the purpose or need for water rights contained in the CSKT proposed compact. The tribe owns 15% of the approx. 128,000 designated agricultural acres on the reservation or 19,200 acres. The irrigation water need per acre on designated agricultural land on the reservation (worst case) is 3acft. (19,200ac X 3acft equals 57,600acft needed for irrigation of tribal lands on the reservation. The RWRCC compact would re-establish CSKT nation control and ownership of water rights to off reservation water resources in 11 Western Counties affecting 350,000 Montanans. (Repeat) **The Tribes right, title, and interest in and to the country occupied or claimed by them (i.e. aboriginal lands) was ceded and relinquished with the signing of the Hellgate Treaty of 1855.**

It is illegal and unconstitutional for the Federal Government or the State of Montana to enter into compacts (contracts) with other nations. This compact will transfer water rights from Montana based jurisdiction to a Federal based jurisdiction i.e. BIA and Department of Interior. The CSKT proposed compact FIP agreement would illegally take water consumption rights from agricultural lands located on the Reservation owned by non-native Montanans.

Locally, the proposed compact would give co-ownership of the Painted Rocks and Lake Como Reservoirs to the CSKT government. FWP presently does a fine job of managing these resources without an added layer of control.

The RWRCC proposed compact has far too many legal and constitutional issues, and has failed to include the adjudication or hearing of 350,000 Montanans in 11 Counties. There is too much doubt and uncertainty as to the outcome of this compact to move it forward.

I encourage all Montanans to get involved to protect our valuable water resources and water rights which provide for our existence and support of our economy. I ask Montana State Representatives to protect and maintain ownership of Montana water resources, Montana State Constitution Article IX **Section 3.**

Richard Coleman
Hamilton