

Senior Water Rights Coalition

SENATE JUDICIARY

Exhibit No. S
Date: 2/16/15
Bill No. SB262

PO Box 7325

Helena, MT 59602

To: Senate Judiciary Committee

RE: SB 262 – CSKT Water Compact

My name is Krista Lee Evans and I am here today representing the Senior Water Rights Coalition. The SrWRC is made up of farmers, ranchers, irrigators, and hydropower water users. We wholeheartedly support the 2015 CSKT Compact that is outlined in SB 262.

The people of Montana have two options – settle (through the Compact) or litigate. Our membership feels very strongly that moving forward with a settlement that protects existing users both on and off the reservation is a wise path.

Montana still owns all the water in the State of Montana as provided in Article IX, Section 3 of the Montana Constitution. All off reservation water rights may have the Tribe as a user – the State still owns the water. These off reservation rights are still under the Montana water rights system and are state based rights.

Some people don't like the Federal Government involvement. Unfortunately, when the issue in front of you is a tribal reserved water right, the Federal Government will be involved. Either through settlement or through litigation. The US Government has a responsibility to the tribes. Without a Compact the tribes will file for their off reservation claims to instream flow. To think that the Federal Government will not be involved in these filings is simply silly. The Feds will be involved and they have made it clear that their goal will be the protection of bull trout. One of the biggest benefits of the CSKT Compact is that it keeps the Feds out of our rivers, streams, and tributaries. The Federal Government has agreed that ALL ESA REQUIREMENTS AS THEY RELATE TO BULL TROUT are addressed through the proposed Compact. This is significant and it is worth paying attention to. To put it simply – THIS COMPACT LIMITS FEDERAL INVOLVEMENT in Montana's waters.

All water users in the state have had two opportunities to file their claims. Those of us who did not – lost their claim. Under the Compact those on the reservation who have filed their claims will still have their day in front of the Water Court. These claims are clearly protected in Article V, B, 7 of the Compact. For those on the reservation who did not file their claims – they must be treated like off reservation water users. It is not fair to the water users of the state that followed the law to not hold all water users to the same standard.

The FIIP has been the subject of much debate and discussion. A point that is important for all to understand is that the irrigators on the FIIP will have a situation that, in all honesty, puts them in a better position than other water users in Montana irrigating under a Federal Irrigation Project. There is at least one other Federal project in Montana that has instream flow requirements. Irrigators are required to meet those instream flow requirements before water for irrigation can be used – not the case for the FIIP irrigators. They get their system repaired AND the water for instream flows comes from water that is "saved" as a result of system repair and rehabilitation. Unlike irrigators under the FIIP, other federal project irrigators have no written guarantee that irrigation water will be delivered to them. No other federal project in Montana has these same protections.

As many of you have heard us say – WE DON'T WANT TO GO TO COURT – AGAIN! Any of my members that have incorporated for any number of reasons don't have an option of not hiring an attorney. They can't represent themselves. They will be required to hire legal counsel. This will be very expensive and time consuming. We know because we've already gone through it at least once. That doesn't include the cost to the State – funded by General Fund – will be at least \$73 Million for the Water Court and DNRC portion of the adjudication. And this is a conservative estimate.

The Compact provides wet water on the ground. If the goal is to prove ownership of the project water rights then those who want that answer can still pursue that issue in court. Not sure why an entity would want a priority date junior to the Tribe's instream flow right but there is nothing in the Compact that precludes legal action by those that disagree.

Article III, D of the Compact makes it clear that "this right shall not be changed to any other or additional purpose, changed to consumptive use, or transferred to different ownership." That is very clear language that one would have to work at to misunderstand.

The Tribal off reservation water rights are either co-owned with FWP (retaining the existing FWP priority date and flow) or extremely limited in their conditions. None of the off reservation instream flow rights that will be owned by the Tribe allows for immediate call. They all have "conditions" that must be met prior to the tribe being able to make a call. Even once these conditions are met there are still significant protections for existing water users. For those that believe an instream flow right isn't a water right or that a hydropower right can't be changed to an instream flow right – take those issues to court. There isn't anything in the Compact that keeps you from doing so. Just don't drag all the rest of us into Court with you.

The CSKT Compact is good for Montana's economy, its citizens, and its water users. This is a reasonable settlement that protects our Montana water resources and our water users.

Please support the CSKT Compact as proposed in SB 262. It's reasonable, it's fair, and it's the responsible action for the Montana Legislature.

Sincerely,
Krista Lee Evans
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