SENATE JUDICIARY
Exhibit No. 7
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Bill No. SB262

The Future of Montana and Bitterroot Agriculture Depends on the CSKT Water Compact

Farmers and ranchers depend on our water to irrigate our crops, to water our livestock, to care for our families, and to run our businesses. Water doesn't just play a pivotal role in our everyday lives, it is central to our ability to exist and maintain our livelihoods. The importance of water—and the certainty of having reliable access to water—cannot be overstated.

Montana agriculture, down through the generations, has worked hard to secure and maintain reliable and defined water rights—and up until now, they have for the most part been just that—reliable, defined and certain. But in order for that certainty to continue, for all of Montana agriculture on both sides of the continental divide to have access to reliable water and defined water rights, we need our state legislature to approve the Confederated Salish & Kootenai Tribes Water Compact.

For those not familiar with the Montana water rights process and history, our state operates under the "Prior Appropriation Doctrine." Or, more commonly it's known as: "First in Time, First in Right," thus the one who can prove first use of the water has the first or senior right to continue using the water. It's important to remember that the Hellgate Treaty of 1855, guaranteeing the Salish and Kootenai tribes their aboriginal hunting and fishing rights, on and off the reservation, predates all agricultural water rights in Montana.

The latest, and much improved version of the CSKT Water Compact defines, through a cooperative agreement, the water rights provided to the CSKT by the 1855 treaty and protects the water rights and access to water for all other Montana water users, including all those who currently hold agricultural water rights. Rather than take the long and costly road of litigation, members of the Compact Commission have sought to take the high road and hammer out an agreement that will benefit all Montanans and water users, both on and off the tribal reservation.

Without such an agreement, the Tribes would have to file on all their water rights across their aboriginal lands in order to seek the definition of those rights—an area including all of Montana from Lewistown to the Idaho border. This would result in decades of litigation, upending the years of water right adjudication work already completed, and millions of additional dollars in court costs paid for by individual irrigators and Montana taxpayers. All of which can be avoided by the Compact agreement that has been made between the State of Montana and the Confederated Salish & Kootenai Tribes.

If the Compact fails, and the tribes file their claims with the Montana Water Court, Bitterroot irrigators will be severely impacted. The Bitterroot Valley is well known as one of the primary, off-reservation areas where the tribes can file such claims for it is their ancestral home.

For Bitterroot irrigators, the CSKT Water Compact is without question a good deal. The very fact that under the Compact the tribes have agreed to <u>not claim</u> any aboriginal in-stream flow rights on the Bitterroot River, is pretty remarkable. Rather, they have agreed to a co-ownership status with MT Fish, Wildlife, and Parks to four very junior in-stream flow rights on the main stem Bitterroot River that MT FWP now already holds. Additionally, they have asked to be listed as co-shareholders with MT FWP for their shares of the State-owned contract water from

Painted Rocks Reservoir and Como Lake. Under this arrangement MT FWP will retain the administrative responsibilities and duties of water delivery for fishery needs on the Bitterroot as they have done in the past.

We can only imagine the impact to agriculture if mandatory in-stream flow rates were to increase greatly under the tribes senior rights... agriculture in the Bitterroot Valley would never be the same. Fortunately, the tribes are comfortable with the past cooperative efforts between FWP and local agricultural interests to protect the river, its fishery, and agriculture as well. The tribe's primary concern for habitat protection is being met and they just want to have a collaborative seat at the table with MT FWP.

Across the state, the recently negotiated and revised Compact ensures that water users can continue to utilize their water rights as they always have and receive the same amount of water as they have historically held. Through the creation of a water market utilizing a rare opportunity… a newly available supply of water out of Hungry Horse Reservoir, and a system of shared shortages for the tribes and irrigators alike, the Compact also protects irrigators in low water years.

In summary, as irrigators in the Bitterroot, one of the areas impacted most by the Water Compact, we can say with certainty that the Compact will protect irrigators by providing them certainty in terms of water usage and access. Failing to approve the Compact this legislative session, the adjudication process would leave irrigators in the Bitterroot and across the state exposed to not only uncertain water rights, but to costly legal battles for decades to come.

We encourage all irrigators to take the time to personally review and support this Compact and the benefits it will provide to our state.

(Approximately **37,810** acres represented from the Bitterroot Valley below)

Teller Wildlife Refuge
Tucker Crossing Ranch
Etna Ditch
Union Ditch
Double Fork Ranch
Popham Ranch
Woodside Irrigation District
Valley Springs Ranch
Overturf Ditch
Spooner Ditch
Woods-Parkhurst Ditch
McPherson Farms
Painted Rocks Water Users Association
Supply Ditch
Kootenai Springs Ranch
Webfoot Ditch
Bitterroot Springs Ranch
Bitterroot Irrigation District
Hawkinson Ranch