**SANDERS COUNTY**
BOARD OF COMMISSIONERS

January 15, 2015

The Honorable Steve Bullock
Office of the Governor
State Capitol, Room 204
P.O. Box 200801
Helena, MT 59620-0801

Attorney General Tim Fox
Office of the Attorney General
215 Sanders, Third Floor
P.O. Box 201401
Helena, MT 59620-1401

RE: CSKT Reserved Water Rights Compact

Governor Bullock and Mr. Fox:

The eastern portion of Sanders County lies within the Flathead Reservation, and we share a portion of the Jocko and Flathead irrigation districts.

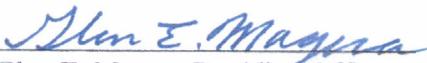
Although the Flathead Joint Board of Control (FJBC) dissolved in 2013, as of 2014 they have since reorganized. FJBC brought forward issues that have not been fully addressed and therefore we feel the negotiations are incomplete. As referenced in the attached FJBC resolution, there are many areas of concern.

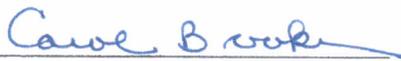
The proposed CSKT Reserved Water Rights Compact is so complex, that we are apprehensive about it being administered without all the issues being fully resolved.

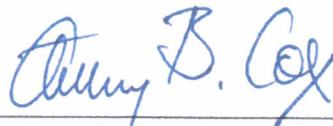
We appreciate the opportunity to comment and hope that you consider the unresolved matters.

Sincerely,

Board of Commissioners
Sanders County, Montana


Glen E. Magera, Presiding Officer


Carol Brooker, Commissioner


Anthony B. Cox, Commissioner

Enc: Resolution 2014-4 of the Flathead Joint Board of Control of the Flathead, Mission and Jocko Valley Irrigation Districts.

RESOLUTION OF THE FLATHEAD JOINT BOARD OF CONTROL OF THE FLATHEAD,
MISSION AND JOCKO VALLEY IRRIGATION DISTRICTS

RESOLUTION NO. 2014-4

The Flathead Joint Board of Control of the Flathead, Mission and Jocko Valley Irrigation Districts, at a meeting convened and held on December 30, 2014, at St. Ignatius, Montana, at which a quorum was present and voting throughout, hereby adopt the following:

WHEREAS, the Flathead Joint Board of Control ("FJBC"), comprised of the Flathead, Mission and Jocko Valley Irrigation Districts, represents the irrigated acreage owned in fee which comprises approximately 110,000 acres, or 90% of the acreage contained within the Flathead Irrigation Project ("FIP");

WHEREAS, the CSKT has failed to state the primary purpose of the reservation and to quantify their federally reserved water right;

WHEREAS, in September of 2013 the FJBC set forth its position regarding the Water Compact between the Confederated Salish and Kootenai Tribes, the United States, the State of Montana and the FJBC which had failed to pass the 2013 Montana Legislature, and requested the Montana Reserved Water Rights Compact Commission ("MRWRCC") resume negotiations of the Water Use Agreement ("WUA") contained in the 2013 Compact proposal, and requested the following concerns be addressed:

- The Water Compact may not be used as a vehicle to take Irrigation Project Water Rights or Individual Landowners' Water Rights and transfer them to the Confederated Salish and Kootenai Tribes ("CKST").
- The quantity of water allocated to the FIP in the WUA was significantly less than historical use and was based upon the Hydrologic River Operation Study System ("HYDROSS") model, a model generally used as a planning tool and which is scientifically unsound for making actual allocations of

project water and in-stream flows. Additional operational modeling was requested to address historic irrigation deliveries, extra duty water, stock water and the use of "non-quota" water. Historic data to verify historic use, requested from the BIA via FOIA, has been withheld from the FJBC.

- The Water Compact unlawfully created a Unitary Management Ordinance ("UMO") and Unitary Management Board ("UMB"), comprised of political appointees, to administer water right issues within the FIP and which eliminated judicial review, adjudication and oversight by the Montana Water Court. The UMO and UMB, as a governing body, treated citizens of the State of Montana located in the FIP differently from the rest of the citizens of the State of Montana and disproportionately vested review, adjudication and control over water and irrigation rights and use with Tribal appointed representatives. The Water Compact further directed any appeal from the UMB to an undefined "Court of Competent Jurisdiction".

WHEREAS, upon reopening of negotiations between the United States, the CKST and the State of Montana regarding the Water Compact, the FJBC was intentionally denied a presence in the negotiations;

WHEREAS, on October 8, 2014, the FJBC presented its Position Statement once again identifying the three (3) issues it previously asked the MRWRCC to address in negotiations in order to gain the FJBC's support for a renegotiated Water Compact;

WHEREAS, the FJBC received no substantive response to its concerns;

WHEREAS, on December 12, 2014 Governor Steve Bullock announced an agreement had been reached between the CKST, the State of Montana and the United States as to the Water Compact ("CKST Water Compact"), a final copy of which to date has not been distributed for review;

WHEREAS, contrary to statements made by the Governor and the Attorney General, all indications from the Compact Commission are that the

"renegotiated" Compact does not provide a water right to FIP irrigators, does not provide "historic usage" as required by the Montana Constitution (Article IX.3.1), and further violates Article IX of the Montana State Constitution by imposing the UMO on fee land irrigators within the FIP, thus treating them differently than anywhere else within the State.

NOW THEREFORE, BE IT RESOLVED:

The FJBC, comprised of the Flathead, Mission and Jocko Valley Irrigation Districts, representing the irrigated acreage owned in fee and which comprises approximately 110,000 acres, or 90% of the acreage contained within the FIP, strongly opposes passage by the 2015 Montana Legislature of the proposed CKST Water Compact as drafted, and recommends that irrigator's water rights be adjudicated by the Montana Water Court in a general stream adjudication process because the allegedly "renegotiated" Water Compact:

- Requires individual landowners, irrigators and their representatives and/or agents to relinquish any and all claims to water rights in the FIP, without their agreement or consent.
- Inherently acknowledges the initial Water Use Agreement was flawed with respect to irrigation water allocation and now replaces it with "*adaptive management*", a learning-based management method which implements irrigation water allocation by trial and error, while disregarding historical use.
- The UMO and UMB violate the Montana Constitution and the Constitution of the United States by requiring both Tribal *and* non-Tribal property owners and citizens of the State of Montana who reside on fee land within the Flathead Indian Reservation's boundaries to be governed by a different law of water administration than the rest of Montana.
- Creates a "FIP delivery entitlement statement" of unknown origin, status and legal effect.

- Fails to sufficiently define a "Court of Competent Jurisdiction", thereby creating a judicial nightmare likely to result in different courts issuing conflicting decisions and opinions as to water and irrigation rights and use within the FIP.

DATED effective December 30th, 2014.

The undersigned certifies that the above stated resolution and was passed by a majority/unanimous of the Board Members of the Flathead Joint Board of Control.

Danny Boone Cole

Wayne E. Blevins

J. Lasky