

January 6, 2014

To: Water Policy Interim Committee

From: Dick Erb, Moiese

Subject: Report on the Proposed Water Rights Compact

My name is Dick Erb. I raise hay on 240 irrigated acres in Moiese Valley where we are lucky to get 3 inches of effective rainfall during the growing season. Thus the survival of our farm depends on the delivery of FIIP irrigation water.

Comments on Compact negotiating process

When my wife and I bought our farm in 1998, our lawyer and our title company made it clear that we did not have a water right on our irrigation water or planned well.

Thus, I attended many water meetings beginning with one that was held by the DNRC in late 2001 in Polson. I recall being concerned because a DNRC speaker said it will take many years to complete the negotiations. During my own government career, including at the Federal Reserve, the White house and the US Treasury department, I learned that without a target date, negotiations do not move very fast.

From May 2006 to May 2009 I served as an elected commissioner on the Flathead Irrigation District Board and the Flathead Joint Board of Control. I also read and attended some heated public meetings on a draft interim agreement. These experiences taught me more about the many difficult issues that would have to be resolved before an agreement could be reached.

I thus attended most of the public Compact negotiating sessions that were held in Polson and Pablo beginning in early 2008. Given the criticisms that have been leveled by Compact opponents against the Compact process I would like to make a few comments about that process.

First, it was an open process with key documents made available to the public early in the process including:

- A November 3, 2008 draft of the Tribes' UNITARY ADMINISTRATION AND MANAGEMENT ORDINANCE proposal
- A July 28, 2010 Water Compact Working Draft

Second, public questions and comments were encouraged during the Compact meetings and in writing (I submitted my first written comments on the UMO in June of 2010). Also, tribal, federal and state negotiators made themselves available before and after the meetings to answer questions.

Third, I was impressed by the integrity, professionalism and high quality of the tribal, federal and state professional staffs. Unfortunately Compact opponents have often resorted to character assassination, including personal attacks on a DNRC lawyer and the DNRC itself.

Finally I was surprised by the limited public attendance at the public Compact meetings. Most of the vocal critics of the Compact were not there during the earlier meetings when there was an opportunity to ask questions and submit comments.

Comments on the Report on the Proposed Water Rights Compact

At the February 26, 2013 Commission meeting I supported the Compact agreement. After reading the Commission's responses to the criticisms and questions that have been raised I feel even more comfortable supporting the Compact.

In contrast to the Compact meetings, the FJBC made a major mistake by not informing irrigators that it was engaged in water right negotiations with the CSKT. Along with many others, I publically opposed the early version of the WUA that was published in May 2012. Based on modifications proposed by the tribes, including the Measured Water Use Allowance(MWUA) concept, I supported the January 2013 version but with some qualifications.

In a number of places the Commission Report provides me greater assurance on what I think are the most important parts of the agreement:

- the Tribes are deferring the achievement of their instream flow objectives until improvements in the project, to be financed by state and federal funds, provide sufficient water to first meet the FTA and MWUA targets.
- The report reaffirms the establishment of a MWUA for irrigators who can show a need and follow efficient irrigation practices.

Given that the FJBC no longer exists, I believe the State should become a signatory to the WUA. I believe that this would provide greater confidence that the State stands behind the WUA. This would also reduce fears that state courts might challenge the WUA.

Litigation alternative

I do not want to imply that there are no uncertainties associated with the Compact and WUA agreements. But they pale in comparison to the uncertainties and risks if the Compact is not approved and it becomes necessary to go to the Water Court.

Although Compact opponents have argued that the state and federal government will pay for litigation, I think all property owners, including irrigators, will end up paying a significant portion of any legal, hydrology and fishery costs associated with litigation.

Also, I am very certain that litigation will result in less water at a higher cost in the future. Litigation also will have a negative impact on property values.

Water litigation will damage cooperation with the tribes in many spheres. I would not be surprised if our state government and legislature would be affected by the negative impact of litigation.