

The Economic Impact of the CSKT Compact as written 2013

Mission Valley/Lake County Agricultural Statistics:

Commerce and industry are headed by a strong agricultural base. Lake County ranks third in number of farms in Montana and fourth in number of cattle ranches.

1. Agriculture is Lake Counties number 4 industry, paying more than \$7,250,000 in wages.
2. Annual sales: exceeds \$37,975,000
Livestock \$21,266,000 annually
Hay, potatoes, small grains & flathead cherries \$ 16,709,00 annually
Total hay acreage is 70,000 acres; approx 53,000 irrigated
4. Lake County is #1 in Montana for certified cereal grains for seed
5. Lake County is #32 for wheat production, average of 44.6 bushels per acre, due to the excellent irrigation water.
6. Lake county produces the best certified seed potatoes in the world.
7. Lake Counties novelty crop, Flathead Cherries, attracts many visitors, enhancing our tourism industry.

The superior agricultural crops and livestock are possible due to several factors:

1. suitable soils
2. desirable climate
3. isolation from disease
4. intensive management practices
5. reliable, adequate water

The agricultural community is vital to the economy of the Mission Valley. The people behind these statistics actually PRODUCE something, highly desirable for any economy.

If the Mission Valley, Lake County, were to lose our agricultural base, we would never recover. We are too far from Missoula or Kalispell, the closest economic centers to attract families who must work. Subdivision won't be a viable option for the farmers or the land. Retirees can live anywhere. Many are already skeptical of living

within the bounds of a Indian Reservation. If the water is given to the Tribes, more doubt will be created and fewer will invest their hard earned dollars here.

Is it realistic to believe that farms will go out of business? The Tribe will never put their cards on the table so that we know what their long range plans are. But we can look at their Mission Statement which says, "we will strive to regain ownership and control of all lands within our reservation boundaries". This is very telling. If their mission statement is the long range plan, taking the water from the land is a MAJOR step towards that goal. What about the UMO – the management of the water? That will protect the irrigators and their farms! The UMO is an APPOINTED BOARD! Those who have the most to loose will be at the mercy of people they have no ability to even vote for. It is a system set up for favoritism, abuse and can put farms and ranches out of business. You say "that won't happen". Look at Klamath, it happened there.

Klamath Oregon Land/Property Values and Demand since the irrigation water has been awarded to the Tribes:

Three Real Estate Brokers, from Medford to Klamath Falls, have told me the following:

A. Randy Shaw, Broker, Klamath Falls: Irrigated land values prior \$2750 per acre, dryland \$400 per acre. That is a difference of \$2350 per acre. Sales have plummeted even in towns where irrigation is not needed. Ranch buyers have virtually disappeared, except those that can take advantage of a desperate rancher, who had to sell his cows at a loss and cannot hang on.

B. Joel Occzecki (sp), Medford, Oregon. Land that sold for \$4000 - \$6000 per acre, is now at \$1500 per acre.

C. Bob Bacon, Summit Realty, Klamath Falls: Since the future of water is unknown, real estate prices have dropped somewhere between 30-60%. Actual figures are still unknown due to lack of sales.

All of this loss of value in real estate and agricultural production caused by the Tribes getting a "judicial decreed order", giving the water rights to the Tribe.

Are we so niave that we think it will be different here? Klamath is already living with Tribal control of the water.

Western Montana's water is still under the jurisdiction of the State of Montana. We still have a chance to keep most of our water, our way of life and our fragile economy in tact.

The southern Mission Valley, where most of the farms and ranches are in Lake County are centered around the towns of Arlee, Charlo, Saint Ignatius and Ronan. All of these

towns have many vacant buildings. How can we expect growth? We can't. Must we make the same mistake, thinking somehow it will be different here?

Now let's look at what some of Montana's own DNRC has to say about "transfer of water rights". It doesn't coincide with what the Compact Commission did.

1. Montana Department of Natural Resources and Conservation Trust Land Management Division Water Rights Valuation Report dated 01.08.12

a. page 5, Legal Transferability: value of a water right dependent upon:

1. legal ability to move

2. without adverse affect to existing rights -"No Injury Rule" typically most constraining

Adverse affect criteria:

"The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued." The FJBC water rights were registered with the State of Montana, as required by law.

The Federal 1904 Act (requiring the survey of all lands on reservations) and the Federal 1908 Act that amended the 1904 Act, stating that "prioritizing the construction of all irrigation systems within the reservation, regardless of Indian ownership and removed the 1904's Acts limitation on proceeds from the sale of surplus lands being used to construct irrigation projects solely for the benefit of Indians on Reservations." Clearly, since 1908 the irrigation system has been for all residents, the majority who are non-Indian.

Here is information from DNRC, 01-08-12 regarding Water Rights Valuation:

2. Land Price Differential Analysis Irrigated vs Non-Irrigated crop land values.

Page 35 Agricultural Region Valuation Methodologies (5 methods for agricultural region of State of Montana)

1. In 2000, the differential was \$1,390 per acre and has increased to \$2,174 per acre in 2010.

**The land price differential does not consider all the factors that drive land values to isolate the value contribution of water. The values exhibited (page 35) in the remaining 4 analysis range from \$42 to \$3614 per AF.

As a Real Estate Broker in the Mission Valley, my experience is that irrigated land, with wheelines and/or pivots is valued between \$3000 - \$4000 per acre. Dryland is \$800 to \$1000 per acre. (this dryland value applies to agricultural use)

Real Estate Trends in Lake County: All uses depend heavily on irrigation:

1. Farm units are becoming larger and less diversified
2. Mid sized farms are decreasing due to production limitations & competition
3. Organic farms are increasing
4. Small and part time farms, partially supported by owners working additional jobs, are increasing, with emphasis on alternative crops: strawberries, raspberries, lettuce, cantaloupe and other melons, tomatoes, chickens and eggs, onions & garlic

Today's agriculture is a complex and technologically advanced business. Farming requires intense management, complex financial borrowing, and marketing. To survive and prosper today is more complicated and the risks are bigger, requiring certainty of water to minimize risks. Other risks remain: Weather, drought, disease, insect infestations, weeds, market demands and public opinion (we saw what happened when Oprah attacked the beef industry).

We are very fortunate to have top quality producers in Lake County that care for and manage the land to it's fullest potential.

Lake County Annual Average Wages Compared: (Source: Mt. Dept of Labor)

Lake County	\$30,279
Montana:	\$34,589
US:	\$46,742

Employment:

Confederated Salish Kootenai Tribes: Largest employer in Lake County

Diversity of employment at CSKT: unknown, but all employment ads state: "CSKT is a Tribal Preference Employer". I believe all other business's are Equal Opportunity.

What about NEPA or MEPA?

When considering the economic impact of this Compact, one must ask "Why didn't the Compact Commission request a MEPA review?"

MEPA documents state the purpose is "to protect the right to use and enjoy private property free of undue government regulation" in addition to protecting the environment. (A December, 2013 Gallup Poll shows 72% of American's believe "Big Government" is a bigger threat than big business or big labor).

MEPA goes on to say, "Better decisions should be balanced decisions. Balanced decisions maintain Montana's clean and healthful environment without compromising the ability of people to pursue their livelihoods as enumerated in MEPA and the Constitution." Further states, "As we guide Montana's development, we must use all of the scientific, technological and sociological expertise available to us. This is our responsibility... We must avoid creating emotionally explosive situations that have occurred in the past and, indeed, are present right now in some of our communities... We must seek that often elusive middle ground between purely preservationist philosophy and purely exploitative philosophy, and indeed we must soon find that middle ground".

The middle ground is a Compact that is "fair and equitable" to all. The Tribe is entitled to their Federal Reserved Water and possibly more. The irrigators are entitled to their water and their water rights. No one should give up either of those rights. The stress that the Water Compact Commission has caused is damaging and unnecessary. None of the people on the Commission will have to live with the consequences of the unfair, unbalanced agreement they have forced upon us.

We trusted that the Compact Commission would represent the citizens of the State of Montana. We trusted that would be done. It did not happen. They agreed to give up OUR valuable water rights. But, with the help of the WPIC Committee, you have the ability to recommend that negotiations with the Tribe and the State and Federal Governments be re-opened. If the Tribe says they will not negotiate, as they have in the past. That is their choice. We will be prepared to go to the Water Court and present our substantial set of documents and let the court decide. If the Tribe is willing to negotiate, then let it begin quickly..

With the help of the WPIC committee and our elected legislators we trust that you will make your recommendations with care and caution. We are the hard working, middle class Americans whose voices are not being heard by our County Commissioners, our elected Legislator, some of our Irrigation Commissioners, our Governor or our Attorney General.

The Compact as it is has great potential to destroy the lives and livelihoods of many Lake County residents, especially those involved in agriculture. A newly negotiated Compact has the potential to stop the distrust and to allow all citizens living on the Flathead Reservation to prosper and live the lives we so cherish. Proceed wisely and do the right thing for all citizens, tribal and non-tribal.

Judy Samuelson

Saint Ignace, MT

RE Broker

Mission Valley Properties

406-745-4940 / 406-360-5860

Reservation). Victor had died during a summer buffalo hunt, and his son, Charlo – Small Grizzly Bear Claws – was chief. Charlo refused to sign the removal document, but when it was subsequently published, it showed his mark. Charlo asserted that this was a forgery and refused to move. He remained in his beloved homeland until 1891, when he and his remnant band of Salish were forcibly removed by military escort to the Jocko Reservation.

From the inception of the reservation system, Indian people lost control over their own destiny. The administrators and policies of the Bureau of Indian Affairs controlled governance decisions for the tribes. The Indian Reorganization Act began the slow transition back to tribal control over tribal affairs. Incorporation under this act allowed the tribes to again determine their own path. This journey was to be challenging, as evidenced in the government's movement to terminate tribes during the 1950s.

Termination policy was initiated with various tribes, beginning with the Menomonee of Wisconsin. Their final termination took place in 1961. Though the Salish, Pend d'Oreille, and Kootenai were targeted, they were not terminated. Termination policy ended during the administration of President Richard M. Nixon. Since then a number of tribes have successfully sought reinstatement.

The Indian Self-Determination Act of 1976 bolstered the tribes' capacity to manage their own affairs. Tribes were given authority to manage federal programs that had historically been under the direction and control of the Bureau of Indian Affairs. Initially the tribes contracted programs, but a more recent amendment to the Self-Determination Act allows the tribes to negotiate compacts with Federal agencies on a government-to-government basis. Since 1994, the tribes have shifted from contracting federal programs to compacting them.

Today the Confederated Salish and Kootenai Tribes are still faced with many challenges. However, the historic and contemporary commitment to tribal sovereignty provides hope and confidence in a sound future. The vision and mission of the Confederated Salish and Kootenai Tribes, the Sovereign People of the Flathead Reservation, are articulated in a formal statement adopted by the Tribal Council in May of 1996:

Vision - The traditional principles and values that served our people in the past are imbedded in the many ways that we serve and invest in our people and communities, in the ways we have regained and restored our homelands and natural resources, in the ways we have built a self-sufficient society and economy, in the ways that we govern our Reservation and represent ourselves to the rest of the world and in the ways we continue to preserve our right to determine our own destiny.

Mission-Our mission is to adopt traditional principles and values into all facets of tribal operations and service. We will invest in our people in a manner that ensures our ability to become a completely self-sufficient society and economy. We will strive to regain ownership and control of all lands within our reservation boundaries. And we will provide sound environmental stewardship to preserve, perpetuate, protect, and enhance natural resources and ecosystems.

3
CSKT
Vision
stmt.



**Montana Department of Natural Resources and
Conservation Trust Land Management Division**

Water Rights Valuation

pg 5

33,34,35,36,37

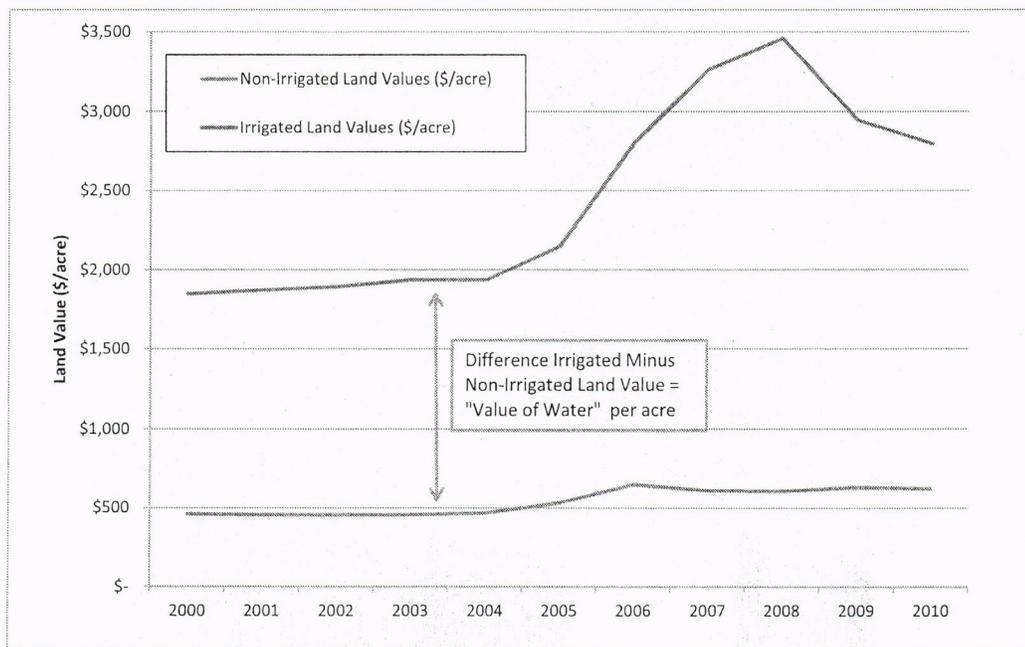
01.08.12

analysis is the irrigated versus non-irrigated crop land values from 2000 to 2010. The historical prices have been adjusted using the CPI to June 2011 dollars.⁵⁶

Land Price Differential Analysis

This section highlights the water values derived from the NASS irrigated and non-irrigated crop land values. As shown in Figure 7, the differential between irrigated and non-irrigated land values has been rising in recent years. **In 2000, the differential was \$1,390 per acre and has increased to \$2,174 per acre in 2010.** This increased differential may be attributable to an increase in yield per acre, capital investment in irrigation efficiency equipment, removal of low yielding land from irrigation, errors in data collection, and an increased awareness in water values.

Figure 7: Irrigated vs Non-Irrigated Land Values in Montana⁵⁷



To estimate the quantity of water on a per acre basis, an average of all counties of the consumptive use AF/AC was determined using the DNRC standards described previously. This resulted in 0.952 CU AF/AC. This figure was then applied to the per acre irrigated vs non-irrigated land differentials to arrive at an estimated per acre-foot value of water. Table

⁵⁶ Consumer Price Index - All Urban Consumers; 1982-84=100; Series ID # CUUR0000SA0

⁵⁷ http://www.nass.usda.gov/Statistics_by_State/Montana/Publications/economic/realest.htm

4 below displays the estimated per AF value of water derived from this rudimentary land price differential analysis.

Table 4: Estimated \$/AF Derived From Rudimentary Land Price Differential Analysis

Year	\$/AF Value
2000	\$ 1,322.77
2001	\$ 1,352.90
2002	\$ 1,373.65
2003	\$ 1,413.12
2004	\$ 1,399.21
2005	\$ 1,540.41
2006	\$ 2,046.55
2007	\$ 2,528.79
2008	\$ 2,714.75
2009	\$ 2,203.59
2010	\$ 2,069.48

Agricultural Region Value Summary:

The results of the five analysis methods for the agricultural region of the state are shown in Table 5.

Table 5: Summary of Agricultural Region Valuation Methodologies

	Low (\$ / AF)	High (\$ / AF)
Permanent Agricultural Transactions	\$ 65	\$ 1,385
Lease Transactions	\$ 42	\$ 3,614
Review of Existing Studies on Effects of Irrigation on Farm Net Income	\$972	\$1,184
BOR and DNRC Agricultural Rates	\$ 189	\$ 615
Land Price Differential Analysis	\$ 1,323	\$ 2,715

The land price differential analysis does not consider all the factors that drive land values to isolate the value contribution of water. As such, the total differential between irrigated and non-irrigated land values likely overstates the value of the water. Due to these factors, the per AF values derived from the land price differential analysis is not included in the results of this analysis. The values exhibited in the remaining four analyses range from \$42 to \$3,614 per AF.

December 18, 2013

Record High in U.S. Say Big Government Greatest Threat

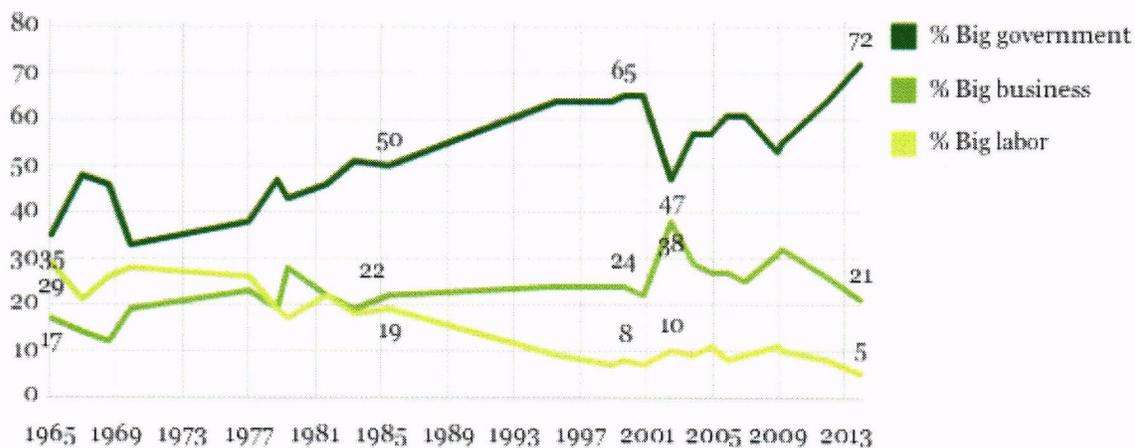
Now 72% say it is greater threat than big business or big labor

by Jeffrey M. Jones

PRINCETON, NJ -- Seventy-two percent of Americans say big government is a greater threat to the U.S. in the future than is big business or big labor, a record high in the nearly 50-year history of this question. The prior high for big government was 65% in 1999 and 2000. Big government has always topped big business and big labor, including in the initial asking in 1965, but just 35% named it at that time.

Views of Biggest Threat to U.S. in Future

In your opinion, which of the following will be the biggest threat to the country in the future -- big business, big labor, or big government?



GALLUP

The latest update comes from a Dec. 5-8 poll. Gallup has documented a steady increase in concern about big government since 2009, rising from 55% in March 2009 to 64% in November 2011 and 72% today. This suggests that government policies specific to the period, such as the Affordable Care Act -- perhaps coupled with recent revelations of government spying tactics by former NSA contractor Edward Snowden -- may be factors.

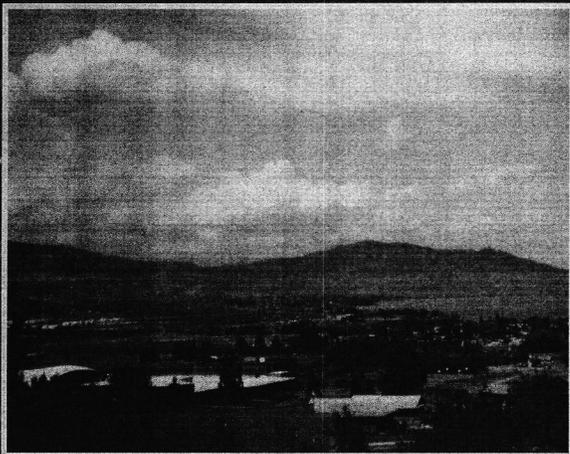
Currently, 21% name big business as the greatest threat, while 5%, a record low, say big labor. The high point for big labor was 29% in 1965. No more than 11% of Americans have chosen big labor since 1995, clearly reflecting the decline of the labor movement in the United States in recent decades.

The historical high choosing big business, 38%, came in 2002, after a series of corporate scandals rocked major corporations including Enron and Tyco. Also at that time, Americans may have been less willing to

MISSION VALLEY

Polson, Ronan, Pablo & St. Ignatius

Community Profile • Healthcare • Education
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RELOCATION GUIDE 2012-2013

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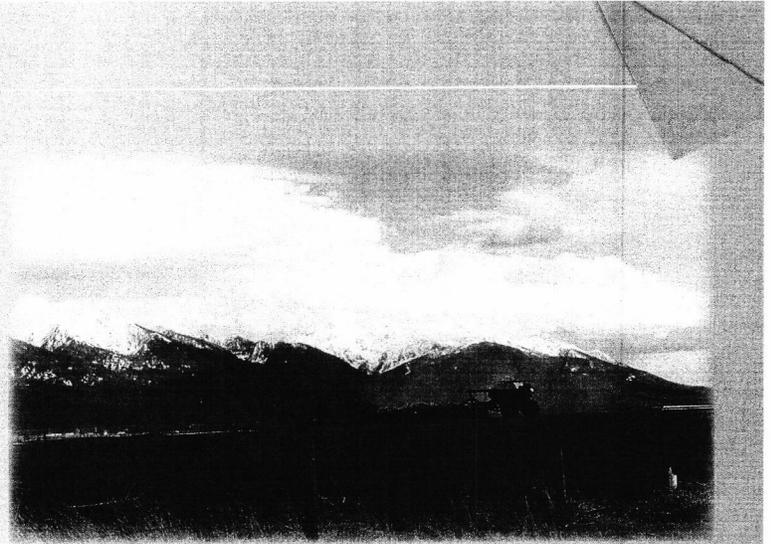
Economy

They are also involved in developing S&K Marina on Flathead Lake (employing 2). Light manufacturing plants provide a steadily increasing number of jobs. Pablo and Polson are both homes for defense contractors manufacturing electronic products. S & K Electronics and S & K Technologies in Pablo are Tribal enterprise; Tamsco is a privately held company. There is a continuing need to grow and/or attract complimentary businesses in the area that provide "living wage" jobs to our area's skilled laborers.

Agriculture: Lake County's number four industry is agriculture, paying more than \$7,250,000 in wages and achieving annual sales of over \$37,975,000 per year. Cash receipts from the marketing of livestock provide 56% of that figure, which ranks Lake County 17 out of 56 in Montana for livestock production. Cattle and calves yield the largest share of livestock earnings, stressing the importance of beef cattle production. With 53,000 beef cattle and calves people are out-numbered more than two to one by bovines. Superior breeding cattle and highly sought after feeder cattle make Lake County a focal point for livestock buyers all over North America. Lake County ranks 26th in the State for swine production and 33rd in sheep production. The dairy industry supports more than 15 families and Lake ranks as the 5th county in overall milk production. Crop production is also a major agricultural concern in Lake County. Total hay acreage is 70,000 acres, 53,000 irrigated and 17,000 non-irrigated. Due to its growing conditions and management, Lake County is Montana's leader in the production of certified cereal grains for seed.

All wheat production ranks Lake County 32nd in the state with an average of 44.6 bushels per acre. Because of the suitable soils, desirable climate, isolation from disease and the intensive management employed, Lake County produces the best certified seed potatoes in the world. Lake County's most notable crop is sweet cherries, known throughout the industry for being redder, firmer, sweeter, and larger, due to the climatic influence of Flathead Lake. Cherries are a novelty crop for Montana and attract outside attention that has stimulated Lake County's economy through added tourism at cherry harvest time. Approximately 480 acres of cherry orchards are situated near Flathead Lake with a producing potential of 1000 pounds of cherries per acre.

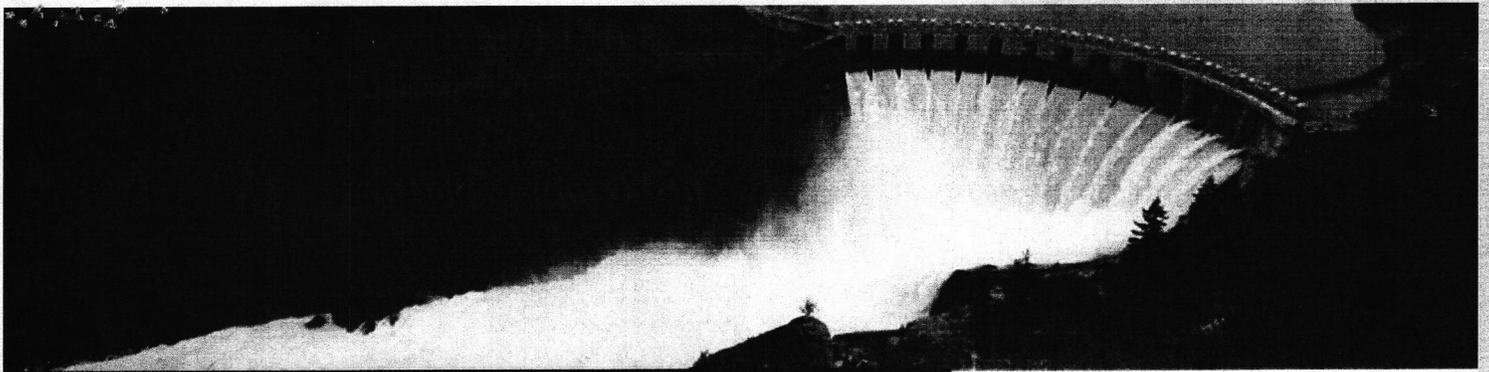
The current trend of farm units in Lake County is to become larger and much less diversified than 25 years ago. Large commercial farms are increasing in size; small and part-time farms, partially supported from outside sources, are increasing in number; and moderate size family farms are decreasing in number because of production limitations and pressures to stay competitive. With the increase in small farms and changes in consumer demands, the emphasis is on alternative and value-added products. Alternative production in recent years has been canola, shell corn, sunflowers, kabocha squash, Austrian peas, lentils, Jerusalem artichoke, cantaloupe, strawberries, raspberries, organically grown fruits and vegetables. Alternative production for livestock is red deer, elk, llamas, miniature donkeys, Tibetan yak, angora goats, ostrich and emus. Agricul-



ture in Lake County has met many challenges throughout the years. These challenges have been mastered with the dedication of producers who continue to provide an abundance of high quality products. Today's agriculture industry is a complex and technologically advanced business. One that requires intense management and complex marketing and financial decisions. To survive and prosper today is more complicated than ever and Lake County is fortunate when it comes to the top quality producers that care for and manage the land in the county to its fullest potential.

Tourism: Tourism, as an industry, is particularly important to any community richly endowed with natural resources and attractions but lacking in industrial and technical employment opportunities. Today, that might describe the Lake County area. The tourism industry, one of Lake County's four major industries, has shown continual growth and promises to become more important to the area's economic well-being in the future. The economic impact of the tourism industry is difficult to measure accurately because of its diversity that stretches from the obvious campgrounds, motels, service stations and supermarkets-and filtering to retail businesses, art galleries and real estate sales. The Lake County/Flathead Reservation area has participated in the tourism industry as a "pass through" site; the area has not been vigorously promoted as a destination stop. Thousands of visitors journey along the shores of Flathead Lake and past the Mission Mountains and the Bob Marshall Wilderness areas each summer as they drive the highway corridor between Yellowstone and Glacier National Parks. Few stop to enjoy the vast recreational opportunities that give the valley its uniqueness such as boating, sailing, fishing, hunting, hiking photography, snowsports, golfing, along with valuable resources such as the National Bison Range and Ninepipes Wildlife Refuge. In addition there are several museums and historic areas to visit. Individual communities along with the Flathead Nation are working together for the betterment of the tourism industry to enhance and preserve these unique resources.

Source: Lake County Community Development Corporation

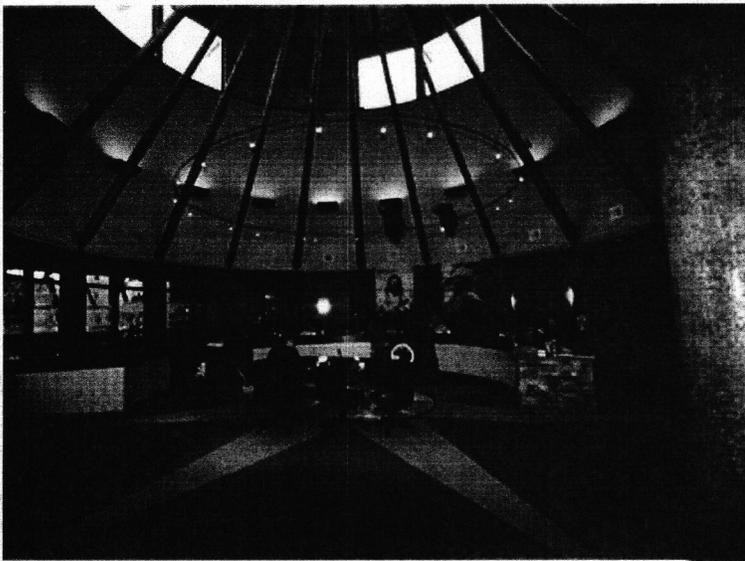


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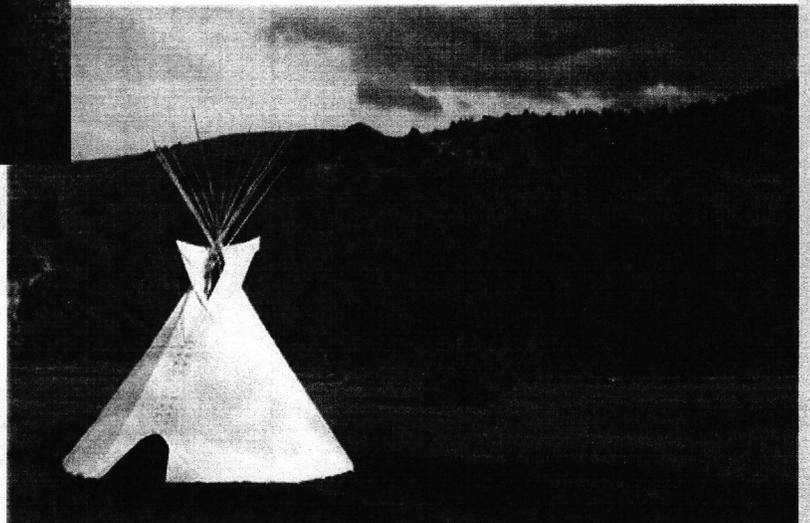
A People of Vision

**Welcome to the homeland of
the Salish, Kootenai and
Pend d'Oreille Tribes on the
Flathead Indian Reservation**

The Confederated Salish and Kootenai Tribes are the largest employer in Lake County with 1,200 employees serving a dozen departments that tend to natural resources, forests, lands, water and air quality along with law enforcement, tribal health and housing services. Of the 7,846 enrolled Tribal members, approximately 5,000 live on the reservation. The Tribal government is directed by a 10-member Council of elected officials. The Tribal headquarters are based in Pablo, with tribal offices spread across the reservation.



For more information on CSKT, please visit the Web site, www.cskt.org or visit The Peoples Center at www.peoplescenter.org. This reservation was formed in 1855 when Tribal leaders ceded millions of acres for the establishment of this 1.3 million acre reservation.



35 Years of the Montana Environmental Policy Act

With 2006 almost here, I thought it would be appropriate for this Back Page article to take a 35-year retrospective look at one of Montana's most celebrated and controversial environmental laws—the Montana Environmental Policy Act (MEPA).

As a 14-year staff member of the Environmental Quality Council (EQC), a bipartisan body of legislative members, public members, and a Governor's representative that was created by MEPA in 1971, I have had a front row seat in a surreal MEPA Broadway show that could easily be entitled "*Cats Fighting—Not a Musical*". MEPA, the cornerstone of a series of environmental laws enacted in the early 1970s, has been the focal point in a magnetic vortex of swirling environmental and natural resource policy debates over its 35-year history. Whatever perspective you may have regarding MEPA, you cannot say that it has been a boring ride over the years. The ride may have been passionate, electrifying, contentious, and perhaps frustrating, but never boring.

In organizing this MEPA retrospective Interim article, I thought I would take a shot at addressing some of the most common MEPA questions that legislators have ask me throughout my tenure.¹ Those questions include:

- ⇒ What is the purpose of MEPA?
- ⇒ Why did Montanans decide to enact MEPA?
- ⇒ How does MEPA work and what is the environmental review process?
- ⇒ How do state agencies involve the public in MEPA decisions?
- ⇒ How many environmental reviews have been produced over the years and which state agencies conduct the most MEPA reviews?
- ⇒ How have successive Legislatures dealt with MEPA since its enactment over 35 years ago?
- ⇒ How have the Montana courts interpreted MEPA over the years?
- ⇒ What are the costs and benefits of MEPA?
- ⇒ Is the MEPA process timely and efficient?
- ⇒ Does the MEPA process result in better-informed decisions?
- ⇒ What does the future hold for MEPA?

What is the purpose of MEPA?

The purpose of MEPA is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, and to enrich the understanding of the ecological systems and natural resources important to the state (75-1-102(2), MCA).

Legislative amendments in 2003 to MEPA's purpose statement noted that the Montana Legislature, "mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Environmental Policy Act" (75-1-102(1), MCA). MEPA is procedural, and it is the Legislature's intent that the requirements of MEPA provide for adequate review of state actions in order to ensure that environmental attributes are fully considered (75-1-102(1), MCA).

MEPA was originally patterned after the National Environmental Policy Act of 1969 (NEPA) and includes three distinct parts. Part 1 is the "spirit" of MEPA. Part 1 establishes Montana's environmental policy. It requires state government to coordinate state plans, functions, and resources to achieve various environmental, economic, and social goals. Part 1 has no legal requirements, but the policy and purpose provide guidance in interpreting and applying the statute.

Part 2 is the "letter of the law". Part 2 requires state agencies to carry out the policies in Part 1 through the use of a systematic, interdisciplinary analysis of state actions that have an impact on the human environment.

¹ Obviously, a treatise could be written in response to these questions. Remember that this is only an Interim article, and my attempt here is to illuminate and inform in a very limited amount of space, which may result in oversimplification and unintended omissions—all of which I take sole responsibility for.

Part 3 of MEPA establishes the Environmental Quality Council (EQC) and outlines the EQC's authority and responsibilities.

To truly understand MEPA's purpose, a brief review of the environmental, public participation, and right-to-know provisions of Montana's 1972 Constitution is necessary. The Legislature enacted MEPA in the spring of 1971 just prior to the Constitutional Convention, which started in November of 1971. The new Constitution was subsequently ratified by Montanans in June of 1972. The language of MEPA is, to some extent, reflected in the Constitution. The noteworthy constitutional provisions include:

Article II, section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include *the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.* (emphasis added)

Article II, section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Article II, section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Article IX, section 1. Protection and improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

The purpose of these constitutional provisions mirrors, and is intertwined with, the underlying purposes of MEPA. If implemented correctly, MEPA should facilitate the ability of state agencies to make better decisions. Better decisions should be balanced decisions. Balanced decisions maintain Montana's clean and healthful environment without compromising the ability of people to pursue their livelihoods as enumerated in MEPA and the Constitution. Better decisions should be accountable decisions. 

Accountable decisions, as required in MEPA, clearly explain the agency's reasons for selecting a particular course of action. Better decisions are made with public participation. Montana's Constitution mandates open government—people have the right to participate in the decisions made by their government. MEPA requires agencies to open government decisions for public scrutiny. The Montana Constitution also recognizes that people have the responsibility to participate in decisions that may affect them.

During an extremely comprehensive 1999-2000 interim study² on MEPA, the EQC noted that MEPA's very core, the policy and purpose of MEPA, is to foster:

- ✓ informed state government decisions;
- ✓ accountable and open state government decisions;
- ✓ balanced state government decisions; and
- ✓ ultimately, better state government decisions.

Why did Montanans decide to enact MEPA?

Backed by a very broad and unanimous coalition of interests (**Table 1**), MEPA was enacted in 1971 by a Republican House (99-0), a Democratically controlled Senate (51-1), and a Democrat in the Governor's

² Environmental Quality Council, *Improving the Montana Environmental Policy Act (MEPA) Process*, Senate Joint Resolution No. 18, Final Report to the 57 Legislature of the State of Montana, (November 2000).

Office. The legislation was sponsored by George Darrow, a Republican representative and petroleum engineer from Billings. Although the legislative record is sparse in detail, it reflects some of the reasons why MEPA was enacted. Selective statements from the legislative record include:

- ✓ MEPA "states the responsibility of the state".
- ✓ MEPA spells out that "each citizen is entitled to a healthy environment".
- ✓ "The intent of the bill is to establish a working partnership between the Executive and Legislative Branch of state government concerning the protection of the environment."
- ✓ MEPA "would coordinate the environmental facts of the state".
- ✓ "Montana's productive age populace is leaving the state for employment in other states, and if we wanted to keep taxpayers in the state, she suggested passage of HB 66 (MEPA)."
- ✓ "A major conservation challenge today is to achieve needed development and use of our natural resources while concurrently protecting and enhancing the quality of our environment."
- ✓ The sponsor of this bill "legislates foreknowledge".
- ✓ MEPA "seeks that often elusive middle ground between purely preservationist philosophy and purely exploitive philosophy, and indeed we must soon find that middle ground".
- ✓ MEPA will "establish a unified state policy pertaining to development and preservation of our environment".
- ✓ "As we guide Montana's development, we must use all of the scientific, technological, and sociological expertise available to us. This is our responsibility We must avoid creating emotionally explosive situations that have occurred in the past and, indeed, are present right now in some of our communities We must establish a state policy for the environment."
- ✓ "Include people in the decisionmaking."
- ✓ MEPA is "a master plan for the enhancement of our environment and promulgation of our economic productivity".
- ✓ MEPA "commits the state, through its agencies, to consider the environmental consequences of its actions".
- ✓ MEPA "says that Montana should continue to be a wonderful place to live and that development of its resources should be done in such a manner that quality of life will be assured to those who follow".

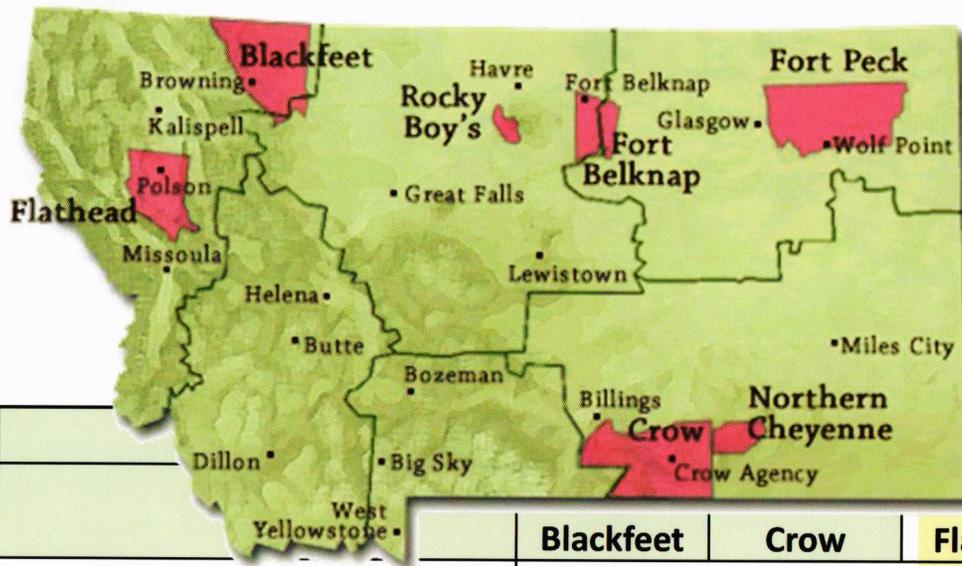
Unfortunately, the legislative record does not include transcripts from the floor debates in the House or the Senate. The votes are the only indicator of MEPA's support in those debates.

MEPA was one of several environmental bills considered by the 1971 Legislature. A competing bill—the Montana Environmental *Protection Act*—would have declared that a public trust exists in the natural resources of this state and that those natural resources should be protected from pollution, impairment, or destruction. To enforce this trust, the Protection Act would have allowed anyone, including nonresidents, to sue the state for failure to perform any legal duty concerning the protection of the air, water, soil and biota, and other natural resources from pollution, impairment, or destruction.

The Protection Act generated public controversy. The votes both in committee and on the floor mirrored the political realities that each bill had endured. The Protection Act received an adverse committee report with a 6 to 5 do not pass vote. When brought up on second reading in the House, the Protection Act was killed by a 49 to 48 vote. In contrast to the Protection Act's much-contested demise, MEPA sailed through the Legislature and on to the Governor's desk.

MEPA's almost unanimous bipartisan approval would, on its face, appear to have reflected a true consensus on the direction of the state's environmental policy. However, at the end of the 1971 regular session, MEPA's \$250,000 appropriation was removed from the state budget, leaving Montana with an environmental policy but no means to implement it. Later, during a second special legislative session in the summer of 1971 and after much debate, the MEPA appropriation was restored, but at a lower level—\$95,000. The battle over MEPA's funding indicates some political division surrounding its enactment that was not reflected in the votes on the House and Senate floors.

COMPARISON OF MONTANA INDIAN RESERVATION RESERVED WATER RIGHTS COMPACTS



	RESERVATION						
	Blackfeet	Crow	Flathead	Fort Belknap	Fort Peck	Northern Cheyenne	Rocky Boy
Population within Reservation Boundaries	Source: 2010 US Census of Housing and Population CPH-1-28						
Tribal	8,944	5,322	7,042	2,704	6,714	4,406	3,221
Non-Tribal	1,461	1,541	21,317	147	3,294	383	102
Total Population	10,405	6,863	28,359	2,851	10,008	4,789	3,323
Land w/in Reservation Boundaries (Acres)	Source: Indian Education for All—MT Office of Public Instruction 2009						
Tribal Trust	311,175	404,172	653,214	210,954	413,020	326,547	122,259
Tribal Allotments	701,816	1,166,406	58,729	406,533	516,092	113,277	0
Other (State/Federal/Private)	512,721	894,336	531,057	28,089	1,164,012	4,951	0
Total Land	1,525,712	2,464,914	1,243,000	645,576	2,093,124	444,775	122,259
Reserved Water Right Award (Acre Feet)							
On Reservation	86,880	800,000	16,300,951	500,000	1,052,472	89,530	20,000
Off Reservation	0	0	31,774,647	0	0	0	0
Total (Data Source: See Items 1 or 2 below)	(1) 86,880	(1) 800,000	(2) 48,075,598	(1) 500,000	(1) 1,052,472	(1) 89,530	(1) 20,000
Compact Details							
On Reservation Water Rights Administration	U.S./MT/Tribe	U.S./MT/Tribe	Tribe/UMO	U.S./MT/Tribe	U.S./MT/Tribe	U.S./MT/Tribe	U.S./MT/Tribe
Off Reservation Aboriginal Treaty Rights	No	No	Yes	No	No	No	No
Relinquish Irrigation Water Rights to Tribe	No	No	Yes	No	No	No	No
Ratified Montana Legislature / U.S. Senate	2009 / No	1999 / 2010	No / No	2001 / No	1985 / 1994	1991 / 1992	1997 / 1999
Statistics:							
Acre Feet / Tribally Owned Acre	0.09	0.51	67.53	0.81	1.13	0.20	0.16
Acre Feet / Tribal Member	9.71	150.32	6,826.98	184.91	156.76	20.32	6.21

(1) Negotiating Tribal Water Rights: Fulfilling Promises In The Arid West, By Bonnie G. Colby, John E. Thorson, Sarah Britton

(2) Flathead Reservation based upon Concerned Citizens of Western Montana analysis of the 02/13/13 compact documents on the DNRC website. Note: the commission has not provided quantification numbers for this compact and recently revised the compact documents in Appendix 12, increasing the volume of water in the compact to nearly 52 million acre feet.

Samuelson