

A Confederation of the Salish,
Pend d' Oreille
and Kootenai Tribes

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THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

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A People of Vision

TRIBAL COUNCIL MEMBERS:

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Terry Pitts

November 22, 2023

Attorney General Knudsen and Deputy Solicitor General Mead,

Thank you for seeking comments from the Confederated Salish and Kootenai Tribes (CSKT or Tribes) regarding proposed Montana Ballot Issue 10 (BI-10). The Tribes also appreciate the outreach from Deputy Solicitor General Mead. The Tribes have serious concerns about the impacts BI-10 could have on the Flathead Reservation, Montana Indian country, and wildlife management in Montana.

The Tribes have seen the proposed language for BI-10 contained in the Legislative Services letter to Mr. Shoening dated September 14, 2023. The Tribes have also reviewed the Fiscal Note attached to BI-10 and fully concur with the issues and concerns enumerated in the Note. In addition the Tribes provide the following comments:

Issues Under Montana Law

1. Pursuant to MCA 13-27-239(1) a petition for statutory initiative "may not provide for the appropriation of revenue." *See also*, Mont. Const. Article II, Section 4. While the Fiscal Note did not precisely determine the impacts BI-10 will have on future state budgets, it does not state there will be *no* fiscal impacts. It is clear to the Tribes that significant financial resources will be

required to administer wildlife management and big game hunting under this proposal that extend well beyond even those potential costs considered in the Fiscal Note. Put another way, BI-10 is simply an implied appropriation of Montana State revenue in a yet to be determined amount. As your office conducts its review of BI-10 under MCA 13-27-226, the Tribes ask that you consider non-compliance with MCA 13-27-239(1) as a factor in your review.

2. Pursuant to MCA 13-27-212(1) proposed petitions shall contain a "statement of purpose and implication." The Tribes submit that the full implications of BI-10 are not clearly defined nor set out in a manner that will be easily understood by the public. Technical Note 1 of the BI-10 Fiscal Note states that the language BI-10 adds to MCA 87-1-301 is vague. It is not clear how many additional sections of Title 87 that BI-10 may conflict with or impliedly repeal or otherwise impact. The Technical Notes also raise other unknowns about how BI-10 would be administered by the Fish and Wildlife Commission. Further, it is unclear how the overall mission, purpose and authority of the Fish and Wildlife Commission will be abrogated or diminished should BI-10 become law. The Tribes do not believe that BI-10 comports with the requirements of MCA 13-27-212(1) because the proposal does not make potential signatories or voters aware of the full implications of making BI-10 the law in Montana.

3. The CSKT budget, and the budget of every other tribal nation in Montana will be directly impacted should BI-10 become law. Nowhere in the proposed language of BI-10, the Fiscal Note, or the Legislative Services letter to Mr. Shoening is there any mention of the impacts to tribal budgets and laws. Pursuant to MCA 18-11-101, et seq., the CSKT and the State of Montana entered into the Flathead Reservation Bird Hunting and Fishing Cooperative Agreement. Per Section VII of the Agreement and MCA 87-1-228(1)(d and e) the Tribes are to receive revenue generated from license sales, court fines and restitution which in turn funds CSKT fish and wildlife program work. The Tribes are the primary wildlife managers on the Flathead Reservation and have utilized funding under the Agreement for the benefit of all Flathead Reservation residents and visitors including those hunting and fishing on the Reservation per the Agreement. State licensed big game hunting on the Flathead Reservation would void the Agreement and impact the Tribes' financial resources.

4. The CSKT believes BI-10 improperly impacts local or special laws. The Bird Hunting and Fishing Agreement (see section 3 above) provides that management of bird hunting and fishing on the Flathead Reservation shall be done by a jointly appointed State-Tribal Flathead Reservation Fish and Wildlife Board. Section IV and V of the Agreement set out the Board membership and procedures. It is through this Board that the bird hunting is managed with the Board's regulations jointly adopted each season by the CSKT and Fish and Wildlife Commission. The Board has not permitted any big game hunting by non-members. Accordingly the Board has not established non-member big game hunting regulations, seasons, bag limits or hunting districts within the Flathead Reservation. MCA 87-1-228(c) states that the joint licensing provisions of the Agreement "supersede the general licensing and permit requirements set forth in [Title 87]." The Tribes assert that the special hunting laws in place locally on the Flathead Reservation cannot be overruled by BI-10. The Tribes ask that your office evaluate the validity of BI-10 given the proposal's potential interference with local and special laws.

5. There is no analysis of the implications BI-10 would have to the preservation of Montana citizens' harvest heritage under Mont. Const. Art. IX, Section 7. While some private landowners may have an increased opportunity to harvest wild game animals under BI-10, there is no consideration of the likelihood that other Montana citizens will have that opportunity reduced. Citizens who own land where hunting cannot safely occur and those who own no private property at all may be unconstitutionally denied an opportunity to harvest as a result, i.e. those that rely on public lands for hunting in closed hunting districts cannot hunt, while private property owners in that closed district can hunt. Non-resident landowners will have opportunities to harvest that would not be available to residents who are not landowners. There are a number of considerations under the Montana constitution that must be examined.

Issues With Tribal-State Relations

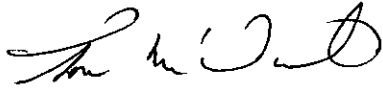
The CSKT and Montana have been working cooperatively on wildlife management for decades. A special partnership and trust has developed between the leaders and staff of the Montana Department of Fish, Wildlife and Parks and the CSKT. There are a host of reasons why the CSKT has opposed measures similar to BI-10 that Mr. Shoening has brought before the Fish and Wildlife Commission and the Montana Legislature over the years. Those entities have all rebuffed Mr. Shoening's requests as the collateral damage to State-Tribal relations with the CSKT and every other tribe in Montana would be catastrophic. The CSKT outlined similar legal and policy implications in the Tribes written testimony in opposition to HB 241, a bill brought in the 2021 legislative session to open Montana's Indian reservations to state-licensed hunting. (See attached Letter of February 9, 2021 to the House Fish and Wildlife Committee). HB 241 drew tremendous opposition from a wide array of citizens and was tabled in committee.

With the short notice the CSKT received, these comments are far from extensive. Moreover, it seems unlikely that the other tribal governments in Montana will have an adequate (if any) opportunity to provide your office with their comments. However, the Tribes note the requirements of MCA 13-27-238(d) wherein ballot initiatives shall be reviewed by the Legislative Council or and interim committee such as the Environmental Quality Council. Interim committees are vested with such review authority under MCA 5-5-217(g). It did not appear to the Tribes that Legislative Services made Mr. Shoening aware of this provision in their September 14, 2023 review letter, however your review should remind the Secretary of State that this committee review process is required prior to any approval for signature gathering and encourage a full hearing in the committee of jurisdiction in order to allow other Montana tribes the opportunity to comment on the impacts BI-10 will have on them.

Finally, sporting businesses and businesses that work with tribal governments and fish and wildlife programs will likely be negatively impacted should BI-10 pass. Tribes that require non-members to hire tribal member guides in order to hunt big game on their reservation will see impacts to those tribal member small businesses. The Tribes believe that the Attorney General should investigate the potential for BI-10 to have far reaching impacts to Montana's hunting industry and related businesses. Such a review could assist the Attorney General in determining if MCA 13-27-238(2)(a) requires BI-10 to carry the public notice that the proposed ballot issue will likely cause significant material harm to one or more business interests in Montana.

Thank you again for consulting with the CSKT and we urge the Office of the Montana Attorney General to seriously consider the concerns raised in the Fiscal Note and this comment letter before approving BI-10 for the signature gathering process. The Tribes remain available for further consultation, and respectfully suggest that other Montana tribal governments should be allowed to provide input on this ballot initiative.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom McDonald". The signature is fluid and cursive, with the first name "Tom" being more prominent than the last name "McDonald".

Chairman Tom McDonald

Confederated Salish & Kootenai Tribes