



THE CONFEDERATED SALISH AND KOOTENAI TRIBES
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A Confederation of the Salish,
Pend d' Oreille
and Kootenai Tribes

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Montana State House of Representatives
House Fish, Wildlife, and Parks Committee
Hon. Ross Fitzgerald, Chairman
67th Montana State Legislature
Capital Building
Helena, Montana

February 9, 2021

RE: House Bill No. 241 "An Act Requiring the Fish and Wildlife Commission to Allow Hunting by Nontribal Members on Fee Lands Within the Exterior Boundaries of a Reservation, etc."

Chairman Fitzgerald and Committee Members,

The Confederated Salish and Kootenai Tribes of the Flathead Reservation (CSKT or Tribes) respectfully submit this letter in strong opposition to HB 241, a bill that would require the Montana Fish and Wildlife Commission to allow hunting by non-tribal members on fee lands within the exterior boundaries of an Indian reservation. HB 241 grants a benefit to a limited number of landowners, at the expense of the rest of Montana's citizens.

Should HB 241 become law, it will inevitably lead Montana into protracted and expensive litigation with the state's Indian tribes. The budget needs of Montana Fish, Wildlife, and Parks (FWP) would likely increase under a new mandate to regulate and enforce state-licensed hunting within Montana Indian reservations. Beyond the financial costs, passage of this bill would cripple State-Tribal relations, reversing decades of cooperative wildlife management. On the Flathead Reservation in particular, continued non-member access to CSKT lands for hunting birds and fishing, including the south half of Flathead Lake, could be jeopardized.

Passage of HB 241 will surely lead Montana and the CSKT back to the same federal courthouse where they previously litigated hunting and fishing regulatory jurisdiction on the Flathead Reservation. *See, Confederated Salish and Kootenai Tribes v. Montana and K.L. Cool*, 750 F.Supp. 446 (D. Mont 1990) (*Cool*). Thirty years ago both Montana and the CSKT agreed

the best resolution to was to negotiate the Montana-CSKT Fish and Game Agreement (Agreement) that opened Tribal lands to non-Indians for upland bird and water fowl hunting, and allows non-Indian fishing on the Flathead Reservation rivers and the south half of Flathead Lake. That agreement is contingent upon Montana maintaining the closure of the Flathead Reservation to non-Indian big game hunting. HB 241 breaks that agreement, restarting the *Cool* litigation. Moreover, opening the Flathead Reservation for a few fee land big game hunters could be at the expense of all the bird hunters and anglers who rely on the Agreement to access CSKT lands and waters, and the thousands of non-Indians who use CSKT campsites and recreation lands.

HB 241 also threatens continued cooperation between Montana fish and wildlife managers and their tribal counterparts. An exceptional partnership has developed between FWP and CSKT fish and wildlife managers, both on and off the Flathead Reservation. Cooperative management of wildlife, migratory birds, and Flathead Lake and riparian fisheries have benefited all citizens in western Montana. Inter-governmental partnerships for recovery of federally listed species has been on ongoing success. CSKT Conservation Officers and FWP Wardens have developed a mutual respect and partnership through joint enforcement of fish and game violations both on the Flathead Reservation under the Agreement, and on off-Reservation lands where CSKT members exercise treaty-reserved hunting and fishing rights. HB 241 threatens to end cooperative fish and wildlife management within and around Montana's Indian reservations, impacting all Montana citizens.

HB 241 could have numerous unforeseen consequences. More tribal members could be pushed to exercise their off-reservation treaty-reserved hunting rights as fee land hunting diminishes reservation big game populations. Should the Agreement end on the Flathead Reservation, the resulting loss of access to CSKT lands for hunting and recreation could impact the local economy, as non-Indians are turned away from CSKT lands and access points, including on the south half of Flathead Lake. Moreover, non-members who entered Indian land to hunt or fish could find themselves subject to federal prosecution under 18 U.S.C. § 1165, and the Lacey Act, 16 U.S.C. §§ 3371 *et seq.*

Along with HB 241's unintended costs are the unanswered questions. How would FWP manage a hunt over a big game population to which it has only limited jurisdiction? What happens when a tribe and FWP have conflicting big game management and harvest priorities? Would the non-Indian fee lands be open to other hunters, including non-resident hunters? Are guided hunts allowed? Where does the hunt license revenue go, when the tribes are the governing bodies that have invested the resources to propagate and manage the current reservation-based big game populations?

Given the costs, uncertainty, and limited benefits, the Montana Fish and Wildlife Commission has calculated that attempting to open non-Indian fee land hunting within Montana's Indian reservations is not worth the price. Further, the decision to close Montana Indian reservations to state-licensed hunting has been found constitutionally valid by federal and

state courts in Montana.¹ For both Montana and the CSKT, negotiating the Agreement in *Cool* was a better outcome than continuing with lengthy, expensive, tax-payer funded litigation that had no clear end point and an uncertain outcome.

HB 241 is not a simple bill to open hunting in some closed areas. It is a massive change to wildlife management in Montana, with a myriad of complexities that have not been thought through. For decades Republican and Democratic Legislatures, Governors, Attorneys General, and Fish and Wildlife Commissions have recognized it is not worth the costs imposed upon the vast majority of Montana citizens. This bill ensures ceaseless state-tribal conflict in order to benefit a limited number of people. The CSKT respectfully ask this Committee for a Do Not Pass vote on HB 241.

Sincerely,

Confederated Salish and Kootenai


Shelly Fyant, Chairwoman
Tribal Council

¹ *Roberts v. Hager*, 2006 WL 8435573 (D. Mont. 2006, *aff'd*, 287 Fed. Appx. 586 (9th Cir. 2008) *cert. denied*, 555 U.S. 1126 (2009); *State v. Shook*, 313 Mont. 347, 67 P.2d 863 (2002) *cert denied*, 540 U.S. 815 (2003).