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Senator Jonathan Windy Boy,  
Chair, State-Tribal Interim Committee  
P.O. Box 269  
Box Elder, MT 59521-0269

All Committee Members

Dear Chair Windy Boy, Vice-Chair Doane, and Committee Members:

Thank you for your kind invitation to speak to the joint State-Tribal Relations Interim Committee and Confederated Salish and Kootenai Tribes (CSKT) Tribal Council meeting on April 28 concerning the proposed CSKT Water Compact. As some of you know, I have worked more than two decades on the issues surrounding water rights on the Flathead Reservation, in particular the water rights of the irrigators who own fee land that is served by the Flathead Irrigation Project (Project). These irrigators, who are tribal members and nonmembers, own their land in fee, having obtained it, with federal patents, pursuant to the Flathead Allotment Act (FAA), which made the general homestead, townsite, and mining laws of the United States applicable there. They own approximately 109,000 acres of the 127,000 acres irrigated by the Project, which is the largest in Montana.

I have been looking forward to this opportunity to present information to you regarding my clients' position on the proposed Compact, which can be summed up as, "Yes, we prefer a settlement, but it must respect the rights of all involved, including property rights in land and water. The proposed Compact does not do that. But it could be modified in three areas, which we identified in a letter to the Tribes and the Governor in September 2013, to make it protective of the rights and responsive to the concerns of all involved."

In preparing to explain these three concerns to you in a concise presentation, I provided your able staffer, Mr. Casey Barrs, with a good deal of information, by hand-delivery on April 17. With a cover letter I transmitted the following:

- (1) A copy of a letter from the Flathead Joint Board of Control to Joe Durglo, Tribal Chairman, dated 18 September 2013, transmitting three concerns with the proposed Compact and Water Use Agreement distilled from about a dozen public meetings during the summer of 2013. The same letter was sent to the Governor. The Flathead Irrigation District and Mission Irrigation District, representing 102,000 irrigated acres, ratified this letter as expressing their concerns as well. The FJBC requested discussions regarding these concerns. No response has been received.
- (2) A copy of a letter and five attachments from me, on behalf of the FID, to the Chair of the WPIC, dated 26 February 2014, concerning, essentially, the same subject.
- (3) A copy of the Complaint filed by the Confederated Salish and Kootenai Tribes in federal court on 27 February 2014, seeking relief against the Montana Water Court, the Twentieth Judicial District Court, all three Irrigation Districts, the Secretary of Interior, six named individuals with water rights claims and an unspecified number of unnamed individuals. In essence, the relief the plaintiffs seek is a judicial declaration that they own all the water and water rights to the water delivered by the Flathead Irrigation Project and, therefore, preventing these judicial institutions, government institutions, and individuals from adjudicating the issue or asserting otherwise.

I suggest you contact Mr. Barrs or me for copies of these documents if you wish to read them over.

As my preparations took shape, yesterday I emailed the Tribes' attorneys requesting their agreement for my presentation directly to their clients—the CSKT Tribal Council—with whom you will be meeting jointly. I am required to seek that agreement by the rules of ethics applicable to lawyers because the CSKT filed a suit February 27, 2014 (third attachment) in federal district court against the Montana Water Court, the Twentieth Judicial District Court, and my clients, the Flathead and Mission Irrigation Districts, as well as others. In the suit, they ask the federal court to prevent the Water Court and the District Court from adjudicating who owns the water right to the water delivered by the Project to my clients' lands and instead declare that the Tribes own that water right. The basis of their Complaint is their claim that the Montana Water Court and District Court are either incompetent or biased, and so should not be allowed to decide the question.

The issue of who owns the irrigation water right, of course, is the first of the three issues we had identified earlier as needing additional discussion and modifications to the Compact. Thus, when I asked the CSKT's attorneys for their agreement that I could make this presentation to you and the Tribal Council, I believed they would readily answer in the affirmative. After all, their client, the Tribal Council, had requested and agreed to this joint meeting with a Legislative Interim Committee, which is open to the public and is designed, I understood, to allow all viewpoints to be aired.

Unfortunately, I was mistaken. Instead, their lead attorney, Mr. John Carter, responded by email that he would object if I spoke about the Tribes lawsuit seeking ownership of the entire irrigation water right, in which they assert that “no non-Indian” can own a water right on the Project. He further asserted the authority to claim I should not speak about another federal lawsuit regarding operation of the Project and that I could not, or at least should not, speak of these matters outside the federal court. He even asserted that I could not speak of the matter to the “Committee,” not just his clients the Tribal Council members with whom the Committee will be sitting.

Mr. Chairman and committee members, this is plainly outrageous. Matters in litigation are matters of public record and I or anyone can inform the Legislature of such important matters related to its business. There simply is no way to disentangle the Tribes' federal suit against my clients seeking a declaration that no one but the Tribes and their members own water rights from the Project from the proposed Compact, **which imposes the same result.** These issues are, to coin a phrase, inextricably intertwined.

Having said this, the fact is that since the Tribes filed that suit against my clients and others, to speak to their client, the Tribal Council, under the rules of ethics I need their lawyers' agreement. Another, equally important ethical requirement, however, demands that I use my best judgment and efforts to zealously represent my client. I cannot do that, in my opinion, if I allow opposing lawyers to dictate the subjects and limits of my right to speak on my clients' behalf, essentially censoring it. Finally, since the joint meeting is hosted by the Tribal Council, I would not feel I was being a respectful guest if I simply defied their lawyers' request. I truly thought in the interests of helping the Legislature understand the issues and do its work they would graciously agree to my presentation.

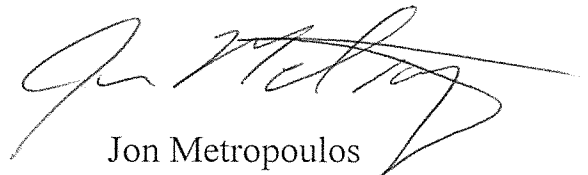
The leverage they enjoy and are exploiting, simply because their client is a co-host of this joint meeting with the Interim committee, is fleeting and limited. It is true they can deny my request and thereby limit the presentations to you on April 28 to those who support the proposed Compact, but they cannot deny my right to inform the committee and the Legislature as a whole of my clients' perspectives.

The Tribes, by their lawyers, have placed impossible restrictions on my ability to communicate with you at the April 28 joint meeting. I cannot do my duty to my clients and comply with their demand that I refrain from discussing certain suits that are directly related to the subject of the proposed Flathead Compact. Thus, by this letter I have to inform you that I am withdrawing from participating in that meeting.

The State-Tribal Interim Committee, however, as a committee of the Legislature of Montana is a public body that I can provide information to about any relevant subject. Through the materials provided Mr. Barr and with this letter I have done so, in part. But it is not equivalent to the opportunity to speak to and with you face-to-face. So, I respectfully request that at the next meeting of the committee in Helena, I be placed on the agenda and be given the opportunity to present the information that I would have presented to you on April 28. In addition, I ask for the opportunity to discuss with you in question and answer format your perspectives on the proposed Flathead Compact and your questions about my clients' concerns.

In a nutshell, let me say that the proposed Compact is a momentous step for the Legislature to take, one directly and negatively impacting the property rights and other rights of many thousands of Montanans. The heaviest burden would fall on the irrigators I represent, as the proposed Compact would, among other things, give ownership of the irrigation water right to the CSKT, depriving these irrigators, who are tribal members as well as nonmembers, of their property right in that water. It is my hope you will, as a dedicated interim committee of the Legislature representing all of Montana, allow me the opportunity to provide my clients' perspective on this issue fully, without improper limitation on my speech.

Respectfully,



Jon Metropoulos

cc: President Essman  
Minority Leader John Sesso  
Speaker Mark Blasdel  
Minority Leader Chuck Hunter  
Wayne Blevins, Chair FID  
Jerry Laskody, Chair MID