

Montana Rancher and Lawyer Supports Compact for Multiple Reasons

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There are few rural Montanans who haven't heard about the CSKT Water Compact. I'm a Montana rancher and lawyer who is working for a group of Montana irrigators. My clients support the Compact and believe its approval is essential to their future on the land. I understand that feeling.

As a Montana ranch girl whose family lost our place during the 1980s, I know the pain of losing the family ranch. Since I no longer had a family ranch to go home to, I have spent the last 25 years defending ranchers' and farmers' water and other property rights. At first, I covered the United States Supreme Court as a reporter and sat in on several important private property rights cases. After watching the court proceedings, it became clear that I did not want to report the events and I needed to be more involved. I felt a strong desire to defend landowners and their rights.

Which brings me to today: I strongly believe that approving the Compact makes sense for Montana. To explain why, I'm going to share with you a little about my legal experience.

Twenty-three years ago I left journalism and returned to Montana to attend law school. During two of the three years of law school, I lobbied at the Montana Legislature on behalf of the Montana Farm Bureau Federation. I helped draft the Private Property Rights Assessment Act, which passed in 1995. After law school, I clerked for the Chief Judge of the United States Court of Federal Claims, where all takings cases against the federal government are decided. The Judge I clerked for decided several water rights takings cases.

Since that clerkship, I have continued to work for farmers and ranchers on water and other property rights issues. At one point, due to my deep interest in water rights and takings, I was recruited to work for the Washington Farm Bureau Federation on litigation involving the Endangered Species Act ("ESA"), regarding salmon and bull trout populations. Additionally, I have litigated water rights and takings cases involving instream flows for fish and irrigation rights before the United States Court of Federal Claims and the Federal Circuit Court of Appeals. With this in-depth background of 20 plus years of experience working in the courts on behalf of farmers and ranchers and their property rights, I support the CSKT Compact.

We hear many people delivering their legal opinions about the Compact; however, we have not heard from any attorney licensed in Montana on the Compact opponents' legal claims. Those who freely give their legal advice related to the CSKT Compact, takings and other constitutional claims have never tried a case on these issues. Further, their opinions ignore decades of laws that run completely contrary to their expressed legal opinions.

For example, many of those opposing the Compact have stated that the Compact gives ownership of the State's water rights to the CSKT Tribes. This is simply not true. Montana owns the water, and those who use the water own the water right, because a water right is a "use right." The Compact, like all of Montana's Indian reserved water rights compacts, or an irrigator's abstract, quantifies the use right that the United States holds in trust for the Indian Tribes pursuant to the *Winters* case in 1908. Therefore, the opponents are simply wrong both in fact and in legal analysis.

Other opponents have claimed the Compact gives the CSKT Tribe 110,000 acres of irrigated land owned by individuals. Again, this is simply not the case. There is nothing in the Compact that transfers one iota of land ownership. In fact, the Compact specifically states that it does not, "transfer, convert, or otherwise change the ownership or trust/fee status of land on the Reservation."

The Compact does not take private property from any individual. Instead, the Compact quantifies a senior water right that the United States Supreme Court found belongs to Indians on their reservations.

Another misconception is that someone is just using bullying tactics or threatening that the CSKT Tribes will file their water rights in order to scare legislators into passing the Compact. If the Compact fails, then, by law, the CSKT Tribes have to either file their water rights claims or lose them. See §85-2-702 of the Montana Code. All other water rights holders went through a similar process in the 1980s. The Tribes were given an extension on their filing deadline because the Legislature hoped that the Water Rights Compact Commission would be successful in its legislative mandate to negotiate and settle all Indian reserved water rights claims.

If SB 262 fails, we expect the CSKT Tribes to file at least 10,000 claims. The Tribes will have to file their claims by July 1, 2015. Based on my experience of litigating in the Water Court, I estimate that it will cost farmers, ranchers, and other water rights holders more than \$1.8 billion of their own money to defend their water rights. Further, I have seen estimates that it will cost Montana taxpayers at least an additional \$73 million and several more decades to complete the adjudication process. While all that legal uncertainty is getting straightened out, land values will be depressed, appraisers will be unsure of real values, and bankers will be even more conservative than usual when assessing operating and property loans.

Some of those who oppose the Compact seem to do so on the basis that they want the federal government to be less involved in how Montana manages our water resources, but the truth of the matter is, passing the Compact will ensure that decisions about Montana's waters are left to Montanans. The Compact is based on the Tribes' many years of biological science and modeling to meet the needs of fish. Without the Compact, the federal government can come into the state and arbitrarily make decisions about our water use based on the ESA and the needs of certain species—like the bull trout. Therefore, if you really dislike the federal government, and its ability to influence water rights issues in Montana, there is no other choice but to support the Compact.

The CSKT Compact is the product of many years of negotiation and compromise by all parties. There are no legal boogey men in the document. Based on the facts and legal precedent, passage of the Compact is a no-brainer in order to protect property rights, individual citizens' budgets, and taxpayers' dollars.

Further reasons to support the Compact:

1. Look at the cast of characters who oppose the Compact and those who support the Compact.

Opponents of the Compact Include:

- *The Militia of Montana*
(<http://www.militiaofmontana.com/>)
- *Nesara-Republic Now-Galactic News*
(<http://nesaraneews.blogspot.com/>)
- *Concerned Citizens of Western Montana* – A group of people who mostly have moved into Montana during the last few years and who have organized to collect money to fight the Compact.
(<https://westernmtwaterrights.wordpress.com/about/>)
- *Montana Land and Water Alliance* – A second group organized by the *Concerned Citizens of Western Montana* to collect money to fight the Compact
(<http://www.landandwateralliance.com/>)
- *Catherine “Kate” Vandemoer* – Ms. Vandemoer worked in the Clinton Administration for the United States Bureau of Indian Affairs; she also worked for the federal government to implement endangered species regulations against agriculture in Washington state; when she worked as an environmental activist in Oregon she said, “Behind every threatened fish in the Klamath Basin is a Native American family, a commercial fishing family, or a family that depends on river recreation.” Also, she advocated that more water be left in the river instead of being used by agriculture.
(<http://earthjustice.org/news/press/2002/suppressed-government-report-shows-klamath-irrigation-a-bad-investment>)
(<http://agenda21news.com/2014/11/population-control-via-water-control/>)
(<http://mtcowgirl.com/tag/concerned-citizens-of-western-montana/>)

Proponents of the Compact include:

- *Steve Bullock*, Governor of Montana.

- *Tim Fox*, Attorney General of Montana.
- *The Montana Farm Bureau Federation*. (<http://mfbf.org/>) (http://billingsgazette.com/news/opinion/editorial/columnists/guest-view-a-case-for-the-cskt-water-compact/article_85813617-e560-5eb2-a988-ca981c2527a2.html)
- *The Montana Stockgrowers Association*. (<http://mtbeef.org/>)
- *Montana Farmers Union*. (<http://www.montanafarmersunion.com/>)
- *Marc Racicot* (former governor of Montana)– (http://billingsgazette.com/news/opinion/guest/guest-opinion-all-montana-will-benefit-from-cskt-water-compact/article_4be45ada-73a7-5f69-84b7-fa96d56aco8f.html)
- *Lorents Grosfield* – Former State Senator and rancher from Big Timber. (http://m.billingsgazette.com/news/opinion/editorial/gazette-opinion/gazette-opinion-cskt-water-compact-matters-to-billings-region/article_c005f1ba-f7f6-5b3a-8b4d-4f7d6c349894.html?mobile_touch=true)
- *Tom Beck* – Former State Senate President and rancher from Deer Lodge. (<http://us9.campaign-archive2.com/?u=2031ba67422211c3e3375cf96&id=b475a6d75f&e=8136ddaa9c>)
- *Jim Hagenbarth* – Family rancher whose family has managed land and water along the Big Hole River for more than 140 years. (http://missoulian.com/news/opinion/mailbag/cskt-water-compact-process-essential-to-protect-rights/article_32cd03f1-dce1-5f9f-b175-ee3ae3ca2c7.html)
- *Major Irrigators in the Bitterroot* – (http://www.flatheadnewsgroup.com/hungryhorsenews/future-of-montana-agriculture-depends-on-cskt-water-compact/article_d3a1bcf2-ad51-11e4-b27d-3b83750e2598.html)
- *Ed Berry, Phd.* – A scientist who started out being against the Compact and after spending several days reading all of the material for and against the Compact decided that “[t]he claims against the Compact do not stand up against their rebuttals.” (<http://edberr.com/blog/polymontana/authors-polymontana/ed-berry/challenge-water-compact-prove-conclusions-wrong/>)

2. All Montana licensed attorneys who have released their written opinions on the legal issues related to the Compact support the Compact. (<http://edberry.com/>)
3. ***The Compact Will Have Positive Impacts on the Economy*** – “According to best estimates, if the Compact fails, Montana taxpayers will be contributing at least another \$73 million dollars in order to pay for adjudication. Further, additional costs to water rights holders could be as high as \$1.8 billion.” (<http://www.lund-law.com/>)
4. ***Majority of Irrigators on the CSKT Reservation Support the CSKT Compact*** – One irrigator who pays twice as much in fees to the irrigation district than does the three board members who oppose the Compact, Jack Horner said, “It is wrong that Board members, who do not have much skin in the game can take the money that I pay and use this money against my interests.”(<http://www.lund-law.com/>)
5. ***Passage of the CSKT Compact is a No-Brainer for Agriculture Both On and Off the CSKT Reservation*** – It is fair to Indians and non-Indians, to irrigators and non-irrigators, to all water users and to those who live on and off the Flathead Reservation. (<http://www.lund-law.com/>)
6. ***Arguments Against the Compact Are Not Well Founded*** – Proponents have been less than truthful about their use of number for irrigation water volumes with or without a Compact. Also, those who oppose the Compact have lost 30 cases in promulgating their incorrect legal theories. (<http://www.lund-law.com/>)
7. ***CSKT Compact is Not a Taking of Water Rights*** – There is no taking of water rights as a result of passage of the CSKT Compact because an individual water rights holders will have his/her water right regardless of whether the Compact is passed. The Compact is a valid use of the State’s authority to quantify and settle senior Indian reserved water rights. (<http://www.lund-law.com/>)

The Compact is a complex document. So, is the legislation for the State’s budget. But that’s not a good reason to do away with the Compact or the State’s budget. Analyzing documents, such as the Compact, and determining whether they are good or bad for my farmer and rancher clients is the kind of work I do. (*See From Lies to Truth: Why the CSKT Water Rights Compact is Good for Montana*, <http://www.lund-law.com/>). I strongly believe this is the best deal for Montana. If the Compact does not pass, I and other water rights attorneys will be ramping up our law offices to handle the surge of new cases due to the Tribes having to file their water rights claims. Instead of providing an “attorney relief act,” urge your legislator to vote yes on SB 262.