



montana
HUMAN RIGHTS NETWORK

April 15, 2015

For Immediate Release Press Briefing on:

Confederated Salish and Kootenai Tribes and State of Montana Water Compact

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Right-Wing Conspiracies and Racism Mar Opposition to Confederated Salish and Kootenai Tribes and State of Montana Water Compact

Background on the Water Rights Compact Commission

The Montana Legislature established the Montana Reserved Water Rights Compact Commission in 1979 to negotiate on behalf of the governor with tribes and the federal government when it came to water in the State of Montana. To date, the Commission has completed seventeen compacts with six tribes and five federal agencies. The legislature decided the composition of the Commission would be: four members selected by the governor; two members selected by the Speaker of the House; two members appointed by the President of the Senate; and one by the Attorney General.

The negotiations for a water compact with the Confederated Salish and Kootenai Tribes (CSKT) began in 2001. The process has been challenging to say the least. It has involved years of negotiations, public meetings, and two different versions of a compact submitted to two different Montana Legislatures. On February 26, 2013, the parties involved voted 8-1 to take a proposed compact to the 2013 Montana Legislature for ratification during the legislative session already underway. The compact had one significant different element than the previous ones negotiated by the Commission, which helped stoke the opposition.

Due to the Hellgate Treaty of 1855 which created the Flathead Reservation, the compact dealt with recognition of CSKT's off-reservation water rights. The CSKT are the only tribes in Montana whose treaty with the United States includes claims to such rights. The Hellgate Treaty reserved for Tribes the "exclusive right of taking fish in all the streams running through or bordering said reservation...[and] also the right of taking fish at all usual and accustomed places...."¹ When it comes to treaty rights, Indian tribes reserve all rights not explicitly granted and carry implied amounts of water to fulfill the purposes of the reservation. When translated to water rights, this language carries with it a priority date of "time immemorial," because the rights were not created by the treaty. As the Ninth Circuit Court of Appeals ruled in a 1983 case, treaties "confirmed the continued existence of these rights."²

As part of the compact, CSKT made concessions regarding the water rights guaranteed under the Hellgate Treaty. The Tribes agreed not to "call" any state-law based, non-irrigation water rights. That means that all

domestic, commercial, municipal, industrial, stock, and other non-irrigation water rights that exist when and if the compact is ratified will be entirely protected, both on and off the reservation. Also, the Flathead Indian Irrigation Project Water Use Agreement, which was part of the compact, would give all Project lands an 1855 priority date. As the Compact Commission stated, the compact minimized the negative impacts to non-tribal water users. “Ultimately, the Compact will provide to all of Montana certainty, finality, and the ability to plan for the future,” wrote the commission in a report to the Interim Water Policy Committee.³

However, as discussed below, the 2013 Montana Legislature didn’t ratify the compact. The bill to do so didn’t even make it out of committee. Instead, the legislature passed a bill that extended the adjudication period and required a study of the compact. Governor Steve Bullock vetoed the legislation. This did not signal an end to the debate over the compact.

Following the 2013 legislative session, CSKT filed a lawsuit asking a federal judge to declare they have the rights to all the water on the reservation and to block three lawsuits in state courts involving water claims.⁴ Additionally, part of the compact was re-opened for negotiations. In May 2014, Gov. Steve Bullock announced that the state and Tribes had agreed to reopen a small portion of the compact for more negotiations with the irrigation districts on the reservation. The Tribes agreed to reopen negotiations for this specific purpose. Any revisions would be incorporated into a ratification bill for the 2015 Montana Legislature.⁵

The issues surrounding water rights on the Flathead Reservation will be solved in one of two ways—through approval of a negotiated settlement or litigation. Since the 2013 Montana Legislature failed to ratify the compact, CSKT must file their claims by mid-2015. Supporters of the compact have pointed out that, if litigation is the route taken, it would last 30 years and the Tribes have strong arguments to access more water than they agreed to under the compact.⁶

With decades of litigation potentially on the horizon and treaty rights that would allow CSKT to access even more water, the question becomes, “Why is their opposition to the compact?” The answer lies in a coalition of right-wing and anti-government activists and entities that have come together to stoke fear, anger, and paranoia, along with providing much misinformation. The effort to defeat the compact, both during the 2013 legislature and now, brought together numerous elements of the political right that includes: anti-government “patriots;” anti-Indian activists, anti-environmental “wise users,” Tea Partiers, and ultra-conservative Republican lawmakers. The rest of this briefing paper examines how these forces derailed a compact during the 2013 legislature that was negotiated to benefit all water users, both tribal and non-tribal, along with upholding CSKT treaty rights. It also examines these entities efforts following the compact’s defeat during the 2013 session and looks at the prospects for the revised compact’s ratification during the 2015 Montana Legislature.



Discussing Water Rights, A Western Pastime

The Concerned Citizens of Western Montana

The Concerned Citizens of Western Montana (which has since spawned a sister organization called the Montana Land and Water Alliance) is one of the main entities opposing the compact. It also has contributed anti-government “patriot” and Tea Party perspectives to the opposition.

The fact that Concerned Citizens represented these far-right ideologies is not surprising, given that Terry Backs was central to its founding. Backs got her start in political organizing after attending a Tea Party event in Hamilton, which inspired her to replicate it in Lake County.⁷ The inspiration came from the Hamilton-based [Celebrating Conservatism](#), which illustrated the crossover between Tea Party and “patriot” groups in Montana. During its existence, Celebrating Conservatism featured radical right-wing speakers, including “patriot” [Richard Mack](#) and anti-Semite [Red Beckman](#). No other event illustrated this dynamic more than its [“Liberty Convention”](#) in 2010, which featured a lineup of right-wing extremists that included the likes of Mack, Beckman, and Schaeffer Cox. Cox, an Alaska militia leader, was convicted in June 2012, along with other members of his militia group, on charges of conspiracy to murder law officers.⁸

Backs did replicate Celebrating Conservatism in Lake County. She started Calling all Conservatives, which was designed to stop the “erosion of traditional American values and principles.”⁹ The group later transformed into Citizens Acting for Liberty, with Backs saying she and five others had left Calling, because it didn’t have enough political bite.¹⁰ She worked with the Montana coordinator for the [John Birch Society](#) to develop program for meetings.¹¹

The speakers invited into the community by Backs mirrored the ideology of those promoted by Celebrating Conservatism in the Bitterroot. Tim Baldwin, son of nationally-known “patriot” [Chuck Baldwin](#), spoke to Backs’ group in November 2010.¹² At the meeting, he advocated that Montana secede from the union.¹³ Far outside mainstream conservatism, Backs’ efforts provided the foundation for her engagement against the compact, which began in 2012. In June 2012, Backs organized a meeting about the compact, which she claimed was being held by concerned citizens as an alternative to the monthly meetings held by the Water Compact Commission.¹⁴ June 2012 was also when the Concerned Citizens went online.¹⁵

Concerned Citizens of Western Montana traveled throughout western Montana during 2012, giving presentations in opposition to the water compact, largely targeting conservative county commissions.¹⁶ In November 2012, Backs appeared before the Ravalli County Commission.¹⁷ She claimed the compact could lead to the Tribes reopening their claims to water throughout the state, despite the fact that, through the compact, the CSKT gave up a large volume of water it has a strong case to under treaty rights.¹⁸ To Ravalli County Commissioners, she repeated her frequent claim that the compact violated the Montana Constitution and constituted a “redistribution of wealth that takes water away from irrigators.”¹⁹

At the Ravalli County meeting, Concerned Citizens found allies in fellow right-wing ideologues, Commissioners Suzy Foss and Jeff Burrows.²⁰ Foss owed her election to the Ravalli County Commission to the work of local Tea Party groups and Celebrating Conservatism.²¹ She was also a major force in the commission’s decision to embrace [“coordination,”](#) the new term for the hardcore anti-government doctrine of county supremacy. “Coordination” supporters have played an important role in fighting the compact. At the meeting, Foss repeated the claim that the compact would take irrigators’ rights away.²² Commissioner Burrows also opposed the compact.²³ He was active in Celebrating Conservatism, and he helped his father-in-law run a survivalist website after Celebrating collapsed. The site posted articles about using deadly force against local law officers.²⁴

Backs’ Concerned Citizens brought to Montana one of the most interesting figures in the fight over the water compact, Dr. Catherine Vandemoer. Vandemoer is a hydrologist and water manager who has worked for both Indian tribes and the federal government.²⁵ Concerned Citizens brought her to work for them in opposing the compact.²⁶ While her work history seems to give her legitimacy, it ignores how she has spent her time in recent years.

By 2009, Vandemoer was totally immersed in the “[Birther](#)” conspiracy theory regarding President Obama.²⁷ While it takes numerous forms, central to every “Birther” claim is that Obama is not the legitimate president of the United States, because “Birthers” believe he is not an American citizen. One of the more common conspiracies claims Obama is a Kenyan-born Muslim, and that his birth documentation from Hawaii has been faked.

Numerous [news agencies](#) and [organizations](#) have discredited the “Birther” conspiracy. In April 2011, President Obama even released [his long form birth certificate](#) to try to end the controversy. However, many “Birthers” believe that document is also a fake. The “Birther” conspiracy originates from a core belief that an African-American could only be elected president as part of a sinister plan, which has taken decades to implement and includes forging birth records and birth notices in local newspapers.

Vandemoer became a central figure in the plight of Lt. Col. Terry Lakin, an Army physician who refused to deploy to Afghanistan because he didn’t believe Obama was an American citizen.²⁸ Lakin stated he wouldn’t follow “illegal orders” from a president who hadn’t presented proof he is a natural-born American citizen.²⁹ He claimed Obama lacked the “constitutional eligibility” to be president.³⁰ Following his 2010 court-martial hearing, Lakin received six months in prison and was dismissed from the Army.³¹

Vandemoer didn’t just follow Lakin’s case from afar. She physically stood with Lakin as he offered his plea at the court-martial hearing, and Vandemoer blogged about the entire process.³² According to some online accounts, Vandemoer’s involvement with the Lakin trial resulted in her losing the job she had with an Indian tribe.³³ One Vandemoer supporter posted online that Vandemoer could get “a job tomorrow” if she would stop “protecting and defending the constitution and embrace Agenda 21”³⁴ [Agenda 21](#) is a catch phrase of far-right activists that has grown to include numerous conspiracy theories regarding threats to property rights. Compact opponents have frequently referenced Agenda 21 as a reason to oppose the compact. On her dismissal from the Northern Arapaho Tribe, Vandemoer said she was “crushed by the regime” and “was personally devastated” by her firing.³⁵ She also questioned if a “settlement between the United States and an Indian Tribe” was “legal if signed by an ineligible president.”³⁶ The statement makes it appear that Vandemoer thinks a possible way to defeat the compact is by “proving” Obama is not an American citizen and, therefore, not a legitimate president.



Her dedication to the “Birthers” wasn’t just her participation in the Lakin case. On her blog, Vandemoer put forth a campaign she called a “Usurpathon.” She said the main focus of it was “Obama’s lack of eligibility for the Presidency, and to boldly put forth that he is a userper.”³⁷ Vandemoer called for the “immediate arrest” of Obama by FBI or military authorities.³⁸ As her project evolved, she added to the Usurpathon judges she thought should be jailed for ruling against fellow Birthers.³⁹ This was all necessary, Vandemoer contended, because Obama was “a tool of others-whose agenda is decisively anti-American....”⁴⁰ Her blog is filled with “Birther” diatribes against Obama. She has said the “silver bullet” to stopping America’s “march to socialism” is “Obama’s lack of eligibility.”⁴¹ She has called the president “an illegal” who is “not an American. Period, end of story.”⁴² She has also discussed how great it would be to have the Tea Party shut down a city and clog the halls of Congress until Obama’s citizenship status was investigated.⁴³

She constantly places her Birther beliefs into a larger conspiracy about politicians trying to destroy America. Vandemoer has suggested a course of action to get Obama to resign that includes shutting down traffic

around congressional offices and the Federal Reserve; having four million people surround the U.S. Capitol and White House and demand an investigation into Obama; and having one million of the protestors remain until it happens.”⁴⁴

It’s not just Birthers that she’s fully embraced. Vandemoer hosts an online radio show dedicated to letting anti-government “patriots” talk about how to create a “Second Constitutional Republic.” On multiple occasions, she has featured anti-Semite [Red Beckman](#), who has called the Holocaust a judgment against Jews for believing Satan is God.⁴⁵ In one blog post, she said she was “inspired” by an “excellent discussion” she had with Beckman.⁴⁶

Vandemoer was a good choice for Back’s Concerned Citizens. She had a background in hydrology and water management, while also working both for Indian tribes and the federal government. This granted Vandemoer a veneer of legitimacy. However, Vandemoer also shared Backs’ extreme anti-government views. It’s also interesting to note that both Vandemoer and Backs had spent time in Wyoming.

With Vandemoer by her side, Backs and Concerned Citizens started rallying opposition to the water compact in 2012. At a meeting with the Flathead County Commission in January 2013, Vandemoer claimed the water compact exceeded its authority by granting treaty rights, and she claimed the Water Compact Commission had abandoned its constitutional duty to protect non-tribal water users on the reservation.⁴⁷

Also in January 2013, the Backs and Vandemoer spoke to the Sanders County Commission about opposing the compact.⁴⁸ In attendance was John Trochmann, founder of the Militia of Montana and former Aryan Nations participant.⁴⁹ Trochmann was joined by other members of the Sanders Natural Resource Council, the main proponents of [“coordination”](#) in Montana.⁵⁰ During the 2013 Montana Legislature, Sen. Jennifer Fielder (R-Thompson Falls) consistently opposed the compact, even testifying against it on behalf of the Sanders Natural Resource Council.⁵¹ In addition to county commissions, Backs and Vandemoer also spoke against the compact at meetings of anti-government “patriots,” including an appearance at a gathering organized by a member of [Chuck Baldwin’s “Black Regiment.”](#)⁵²

“Wise Use” and the Western Montana Water Users Association

When the “wise use” movement began in the late 1980s, its founders wanted to funnel corporate money to community groups promoting anti-environmental ideology. The goal was to make extractive industry appear to have grassroots support. It quickly began promoting loggers, miners, and off-road enthusiasts as the “true environmentalists.” “Wise use” activists view traditional conservationists and any adoption of their ideology in public policy as radical.

A very well-known “wise use” activist, Clarice Ryan who warns of Agenda 21 and has “Patriot” movement connections, has been front and center in opposing the compact. In a piece posted on a right-wing blog, Ryan warned that the compact was a “plan for control and management of water rights” that would extend from the Canadian border to Butte, along with from the Continental Divide to the Montana-Idaho border.⁵³ During a 2013 legislative hearing, Ryan claimed the compact was part of the federal government’s “grab for private property” and warned that, since “the land and the water are so closely linked,” she knew what was “going on behind the scenes.”⁵⁴

The main organization using “wise use” rhetoric was the Western Montana Water Users Association. [Incorporated in August 2012](#), the organization’s membership is mostly non-tribal irrigators on the Flathead Reservation. Those affiliated with and supportive of the Association have frequently employed standard “wise use” rhetoric in opposing the compact, claiming it violates non-tribal irrigators’ property rights and that it

constitutes an illegal taking. Also, similar to “wise use” rhetoric that blames conservation laws for shutting down extractive industry and negatively impacting the economy, the Association and its supporters frequently claimed the compact would harm western Montana’s economy.

Nowhere was this rhetoric easier to see than during the Association’s lawsuit against the Flathead Joint Board of Control (FJBC), one of the entities involved the compact, which was filed in January 2013.⁵⁵ The Association brought in another person from Wyoming, retaining Brian Shuck as its attorney. According to Shuck’s website, he worked in the Wyoming Attorney General’s Office between January 1998 and February 2000.⁵⁶ While there, he served as co-counsel representing Wyoming in the Big Horn River General Stream Adjudication between the State of Wyoming and the Wind River Reservation.⁵⁷

Shuck and the Association claimed that the Flathead Indian Irrigation Project agreement, which was part of proposed compact, was an “unconstitutional taking,” because non-Indian landowners on the reservation were “absolutely” losing senior water rights.⁵⁸ He told a 2013 legislative committee that the compact didn’t take into account the property rights of the non-tribal landowners, saying it would “result in a taking of a water right...real property rights that need to be protected.”⁵⁹ Those couldn’t, Shuck claimed, be taken without “just compensation.”⁶⁰

In November 2012, Steve Tobol, who has served as the Association’s chairperson, told the FJBC that, if the compact was approved, “I won’t be able to farm another year.”⁶¹ This claim of economic annihilation is a frequent talking point. Catherine Vandemoer told a 2013 legislative committee that the compact would “stifle development for everyone.”⁶²

The Association and its supporters peddled “wise use” rhetoric throughout their opposition to the compact. Frequent claims about the compact violating property rights, being unconstitutional takings, and potentially destroying the economy have been common. However, they also needed somebody to talk about the supposed scientific problems with the compact, which often found them relying on questionable characters like Vandemoer. In addition to those spouting “wise use” and anti-government talking points, the Association also had a convicted criminal in its midst.



Steve Killorn, Western Montana Water User Association board member. (picture credit: Charkoosta)

Steve Killorn testified against the compact at the 2013 Montana Legislature and identified himself as with the Association.⁶³ According to the Montana Department of Corrections, Killorn received a seven-year suspended sentence in 1996 for tampering with public record information.⁶⁴ The charges resulted from Killorn running a game farm in Meagher County, where he faced charges of possession and sale of unlawfully killed elk and record tampering.⁶⁵ Online consumer websites contain scathing reviews of Killorn related to his Montrail Bison Company, where people complain about him being nothing but a “used car salesman” and a “FRAUD.”⁶⁶ Another website features a charge that Killorn stole another person’s business/product line, claiming Killorn started his Montrail Bison Company from another operation called

Montcal Bison Company.⁶⁷

The Water Users Association did win an initial victory regarding its claim that the Flathead Indian Irrigation Project agreement was a taking. Lake County District Judge CB McNeil ruled in mid-February 2013 that the FJBC didn’t have the authority to enter into an agreement which gave the irrigators’ water rights to the Tribes without compensation.⁶⁸ The victory was short lived, as the decision was appealed to the Montana Supreme

Court, which overturned the verdict. The Supreme Court found there were no grounds for the conclusion that that the agreement would take away water rights.⁶⁹

Anti-Indian Activists Join Compact Opposition

Over the last three decades, the Flathead Reservation has been a hotspot for anti-Indian activity.⁷⁰ The battles between anti-Indian activists and Native Americans always involve the issue of race, and compact is no different. In its definitive [report](#) on Montana's anti-Indian movement, the Montana Human Rights concluded:

“Even if we set aside the racial epithets and affiliations with white supremacist groups which plague anti-Indian groups across the country, the movement is racist at its core. Taken at face value, the anti-Indian movement is a systematic effort to deny legally established rights to a group of people who are identified on the basis of their shared culture, history, religion and tradition. That makes it racist by definition.”

Many Water Users Association members combined “wise use” rhetoric about takings and property rights with anti-Indian comments that disparaged Native Americans, treaty rights, and tribal sovereignty. This crossover between the “wise use” and anti-Indian activists has been common over the years on multiple issues, and the compact opposition continued this dynamic.⁷¹ The opposition was also joined by numerous well-known anti-Indian activists.



Michael Gale (picture credit: Charkoosta)

Association member Michael Gale has claimed the Tribes no longer should claim treaty rights, because they are defeated nations. In Gale's view, the Tribes had “relinquished or ceded all of their aboriginal territories to the U.S.”⁷² He said they no longer had any claim to these lands, because it's “ancient history.”⁷³ He claimed the idea that treaty rights gave the CSKT all water within the reservation was “presumptuous” and “based on a fantasy.”⁷⁴ At one point, Gale warned that ratification of the compact would lead to “civil unrest that will make the ‘taming of the West’ look like a child's game.”⁷⁵

Gale's call was echoed by Mark Agather, a Tea Party leader that has engaged in tactical discussions with the John Birch Society with his only criticism of the Society being that it wasn't extreme enough on some issues.⁷⁶ In a column against the compact, Agather said the negotiation process should “give us pause to reconsider the entire notion of Indian sovereignty and the reservation system.”⁷⁷ He said sovereignty “no longer works inside of the modern age” and is “driven entirely by race.”⁷⁸ He lamented that the treaties which established sovereignty “pretend” that Tribes are sovereign, and that is “ridiculous.”⁷⁹ He also blasted Indians for being “dependent” on the “welfare state.”⁸⁰ Agather repeated many of these claims to the Interim Water Policy Committee in 2014.⁸¹

David Passieri, Mission Mountain Properties realtor and Association activist, attacked compact negotiators with charges of corruption and illegal behavior. He said the compact was a “non-viable irrigation project” that “dovetails into a greater darker conspiracy” perpetrated by the Tribes.⁸² During the 2013 legislature, he went even further. He told one committee that the Water Rights Commission had broken racketeering laws and claimed the Tribes had engaged in discrimination, coercion and racketeering.⁸³ Passieri's boss at Mission Mountain Properties, Trudy Samuelson, has also publicly opposed the compact, saying it results in a “taking without compensation.”⁸⁴

Association members and supporters also frequently stated their water rights were superior to those granted to the Tribes by the Hellgate Treaty. One Association member said the group had retained attorney Shuck to

“help us maintain our historical use of water on this reservation,” with the assumption that historical use took precedence to the Tribes priority date of “time immemorial.”⁸⁵ Jerry Laskody, a key Montana Users Association member, has claimed his water rights date back to 1910, and that the tribes wanted “unconditional surrender” with the compact.⁸⁶ He and other opponents never mentioned that CSKT had agreed under the compact that all Flathead irrigation projects would be given an 1855 priority date.

One reason Laskody is such an important Association member is that he was elected to the FJBC in May 2013.⁸⁷ Following the election when new members were sworn in, a flyer was circulated titled “Flathead Reservation Myths and Facts.” It contained 10 points that mocked the Tribes’ treaty rights and its status as a sovereign nation. Nobody attending the meeting would take responsibility for it.⁸⁸ The flier wasn’t the end of demeaning the Tribes. In June 2013, two of the three irrigation districts comprising the FJBC pulled out of the entity, complaining that the “CSKT and Indian people were discussed in very ugly tones” and saying that one of the FJBC’s new leaders declared “Indians weren’t Americans.”⁸⁹ Laskody responded to the irrigation districts leaving by saying he doubted the statements were real and, if they were, “it was taken out of context.”⁹⁰ He said the problem was “not a racial issue” and blamed others for “trying to inflame it.”⁹¹

While Laskody claimed opposing the compact wasn’t a “racial issue,” many compact opponents did describe it in those terms. William Myers, of Bayside Park and Marine Center, was a frequent opponent during the 2013 Montana Legislature. He employed a common tactic of anti-Indian activists, claiming that the compact “violates my civil rights as a Montanan and American citizen,” and that CSKT was violating his rights based on his race.⁹²

Over the years, anti-Indian activists and organizations have tried to couch their opposition to treaty rights and tribal sovereignty under the banner of “civil rights” for non-Indians on the reservation.⁹³ This is a common tactic of anti-Indian activists and groups, which like to portray their efforts to deny legally-established treaty rights to Native Americans as an effort to secure non-tribal rights. Over the years in Montana, the leading anti-Indian groups have sported names like All Citizens Equal, Montanans Opposing Discrimination, and Flathead Residents Earning Equality.⁹⁴



Clarice Ryan as pictured in the Fairfield Sun Times in 2010

This rhetorical game about equal rights has been repeated by many compact opponents. Mark Agather, the Tea Party activist, told the Interim Water Policy Committee (IWPC) that everyone in Montana should belong to the same state with the same rights.⁹⁵ Patty Arnone, a member of Agather’s Tea Party group, told lawmakers during the 2013 session that current non-Indian landowners weren’t responsible for the mistakes of their ancestors. “The war’s been gone a long time,” she told members of the House Appropriations Committee. “Let’s become American citizens for this country and state.”⁹⁶

“Wise use” activist Clarice Ryan told the IWPC that the world was changing, and society is “trying to eliminate racism.”⁹⁷ She followed that statement by saying non-tribal members on the reservation might need to tell their kids to marry tribal members so they would have rights.⁹⁸ All of these comments are a smokescreen to try and distract from the reality that compact opponents are trying to deny legally-established rights guaranteed to CSKT by treaty.

An interesting character in the compact controversy and the characterization of CSKT’s treaty rights is attorney Jon Metropoulos, who represented the FJBC. During the negotiations and the 2013 legislature, he seemed, at times, to be both a supporter and opponent of the compact. At one 2012 compact meeting, he said he had “fought for years” with CSKT and hadn’t “won many battles.” Without a

settlement, he warned of a 30-year legal battle that would cost \$30 million and might turn out bad for non-Indian water users on the reservation.⁹⁹

However, by the time the IWPC met in January 2014 and the FJBC had disbanded, he had a much more strident tone. He claimed the judicial rights of the Tribes to the water weren't as concrete as compact supporters claimed.¹⁰⁰ He said there were "good arguments" that CSKT's rights didn't exist.¹⁰¹ He then launched into a long and winding dissertation about how the General Allotment Act of 1887 was the federal government's attempt to destroy reservations, and the federal government has passed laws to get control of irrigation rights.¹⁰² Those irrigation rights, he said, were given to non-tribal resident as part of the effort to destroy the reservations.¹⁰³ In other words, he promoted the notion of the Tribes as defeated nations. However, court precedent doesn't backup these claims. The Ninth Circuit Court of Appeals ruled in 1982 that the General Allotment Act and the Flathead Allotment Act of 1904 showed no evidence that they were passed by Congress to terminate or otherwise diminish the Flathead Reservation.¹⁰⁴

Longtime and well-known anti-Indian activist also opposed the compact. Lloyd Ingraham led anti-Indian groups during the 1970s, including Flathead Residents Earning Equality (FREE).¹⁰⁵ He claimed that the federal government always intended to terminate the reservation system and that the concept of Indian self-determination was flawed.¹⁰⁶ In April 2013, he played a central role in the Water Users Association's lawsuit



against the FJBC, saying he got a "judge out of bed" to sign an order against the FJBC.¹⁰⁷ Ingraham claimed the Tribes were trying to "control the use of all waters flowing through...Western Montana."¹⁰⁸ Ingraham passed away in August 2014.¹⁰⁹ In alerting people to his death, the Concerned Citizens memorialized him by saying he "had great passion for defending and drawing attention to the violations of civil rights of everyone living within the boundaries, or near, the Flathead Indian Reservation."¹¹⁰ His death apparently didn't stop his involvement. By December 2014, television commercials against the compact were airing, paid for by the Lloyd Ingraham Defense Fund.¹¹¹

Former state Representative Rick Jore, another longtime anti-Indian activist, also opposed the compact, both at Water Compact Commission meetings and during the 2013 legislature.¹¹² He has a long history of working with anti-Indian groups on the Flathead Reservation. In 2000, Jore left the Montana Republican Party for the Constitution Party of Montana, saying it better reflected his values. The Constitution Party combines many tenets of the anti-government "patriot" movement with hardline, fundamentalist Christianity. For an in-depth look at the party and Jore, see this [report](#).

Jore has fought the Tribes both inside and outside of the legislature. In 1998, he summed up his position on Indian issues when he said tribal sovereignty "flies in the face of everything that this country is all about."¹¹³ He has opposed treaty-based sovereignty.¹¹⁴ During his time serving in the Montana Legislature, Jore routinely sponsored bills to terminate the State-Tribal Hunting and Fishing Agreement, which requires non-tribal members to purchase hunting permits from tribal governments to hunt and fish on reservation lands. During the 1997 legislative session, he sponsored a resolution opposing the transfer of management for the National Bison Range to the Tribes.¹¹⁵ When Jore returned to the legislature as a member of the Constitution Party of Montana in 2007, he sponsored a bill that would have prohibited the State of Montana from entering into state-tribal compacts that recognized tribal government's jurisdiction over non-tribal members on reservations.¹¹⁶

Jore wasn't the only former far-right legislator to oppose the compact. Former state Rep. Derek Skees showed up during the 2013 Montana Legislature to oppose the compact.¹¹⁷ Skees served as a Republican during the 2011 session. One of his major bills was to create a commission to examine and nullify federal laws.¹¹⁸ Skees also ran for State Auditor and Public Service Commission, and has been criticized for his hard Right activism. Mother Jones magazine reported that Skees, showed up at a Memorial Day parade this summer wearing a jacket emblazoned with a Confederate flag. . . is a tea party purist. He has advocated nullifying federal health care laws, refusing federal stimulus money, and shutting down many of the state's school districts and giving kids vouchers to help cut the budget by letting the private sector fill the gap."¹¹⁹

The fight against the compact included both new and well-known anti-Indian activists. The rhetoric employed was similar. It minimized and degraded tribal sovereignty and treaty rights. It promoted the destruction of the Flathead Reservation, and it did all of this while claiming tribal members were oppressing non-tribal residents of the reservation.

2013 Montana Legislature: Republican Legislators Side with Compact Opponents

The 2013 Montana Legislature had the opportunity to ratify the compact through House Bill 629. Traditionally, the water compacts negotiated by the Water Rights Commission and other tribes went through Natural Resource Committees. GOP House leadership assigned HB 629 to the House Judiciary Committee, which Republicans had stacked with a 12-8 majority and was widely regarded as a "kill committee." That is where the GOP sent bills they disliked and wanted to die.

Compact opponents showed up in force to oppose HB 629. Brian Shuck, attorney for the Water Users Association, repeated the group's claims that the compact resulted in an unconstitutional taking of water rights.¹²⁰ Catherine Vandemoer lectured committee members that they hadn't stood up for Montana citizens during the compact process and needed to kill the compact.¹²¹ Another opponent claimed the compact was part of Agenda 21.¹²²

During executive action on the bill, Republican committee members echoed many of the opponents' talking points. Rep. Keith Regier (R-Kalispell) downplayed the Hellgate Treaty, saying it was "a stretch" to make it apply to water rights and that the Tribes had given up their independence. He claimed parts of the compact violated the Montana Constitution, and that "Citizens of Montana haven't been properly represented in the process."¹²³ The committee tabled the bill on a party-line vote.

The bill's sponsor, Rep. Kathleen Williams (D-Bozeman), who was a Water Compact Commission member, attempted to get the bill out of committee and onto the House Floor with a blast motion. She told her colleagues that the Montana Supreme Court had vacated the District Court ruling, and the compact didn't constitute a taking.¹²⁴ She told them that the Judiciary Committee had made a significant decision for all legislators by tabling the bill, since it most likely meant the CSKT would go to court if the compact wasn't ratified.¹²⁵ She said all lawmakers deserved a chance to vote on ratifying the compact.¹²⁶

Rep. Krayton Kerns (R-Laurel) responded by claiming the compact was "unconstitutional in lots of respects," regardless of the Montana Supreme Court ruling.¹²⁷ Krayton Kerns was a long time Right-wing state legislator from Laurel who led the gun movement, including carrying Montana's "Castle Doctrine" bill that became law. He repeated the claim that the compact forced non-tribal landowners to give up "Montana water rights," and that it set up a system where they would be regulated and taxed "without representation."¹²⁸ Rep. Regier repeated his comments from executive action about the Hellgate Treaty not dealing with water rights.¹²⁹ He

parroted a line from anti-Indian activists, saying tribal members “should have the same rights as everyone else.”¹³⁰

Rep. Dan Salomon (R-Ronan), a Water Compact Commission member, pointed out how “amazing” it was that 18 other water compacts had been ratified, but this one was supposedly “unconstitutional.”¹³¹ He reminded his colleagues that the Montana Supreme Court had just ruled the compact wasn’t an unconstitutional taking.¹³² He also told his colleagues that the Tribes gave up their rights to a lot of water in the compact.¹³³ He said, if the compact wasn’t ratified, “The Tribe will adjudicate, and they will win.”¹³⁴

While a majority of legislators (51) voted to bring HB 629 to the floor for second reading, the blast motion required 60 votes to pass. The bill to ratify the compact failed. Other legislation related to the compact was still in process.

On the same day the HB 629 blast motion failed, the House Appropriations Committee tabled House Bill 636. Sponsored by Rep. Salomon, the bill would have put off ratification until the 2015 session, while a report was drafted to answer the questions raised by opponents. Compact opponents vigorously opposed HB 636 as well. Terry Backs, representing Concerned Citizens, summed up the opponents’ rationale by proclaiming the bill “a Trojan Horse,” because HB 636 still ended with the ratification of the compact. Backs said the compact was based on “failed negotiations” and needed “to be killed.”¹³⁵ Similarly, Catherine Vandemoer said the bill was a “transparent attempt to circumvent” the legislative process and “disingenuous.”¹³⁶ A representative from the Water Users Association deemed it “ratification lite.”¹³⁷ The bill was tabled by the Appropriations Committee by an 18-1 vote.¹³⁸ The opponents and their allied Republican legislators took control at the session from this point forward.

Instead, compact opponents rallied behind Senate Bill 265, which was sponsored by Sen. Verdell Jackson (R-Kalispell). Jackson was another far Right legislator who was active in the gun movement, advocated for jury nullification, and avid American Legislative Exchange Council (ALEC) supporter. Jackson characterized his bill as a “spare tire” that put off compact ratification for two years while the IWPC studied it.¹³⁹ During the course of the bill’s journey through the legislative process, Jackson downplayed the importance of the Hellgate Treaty; claimed the compact would turn senior water rights into junior rights; and claimed that the public meetings held by the Compact Commission focused on selling the compact and intimidating opponents.¹⁴⁰

Shuck and the Water Users Association supported Jackson’s bill. He told legislators that the compact gave the Tribes everything they wanted, and it “gave away the water rights of irrigators.”¹⁴¹ He urged legislators to pass SB 265 and give the process two more years. “It’s been crammed through,” he told one committee.¹⁴² “There is no need to rush.”¹⁴³

During a hearing in House Natural Resources, numerous SB 265 supporters claimed the compact was like a “Nancy Pelosi-ObamaCare” situation, where it was passed before people had actually read the document.¹⁴⁴ Montanans in Action also opposed the compact during the hearing.¹⁴⁵ Montanans in Action was a dark money group active in Montana politics around 2006-2009 and was headed by former Representative Ed Butcher. In 2006 alone they injected \$1.2 million in a few Right-wing ballot measures that were later tossed out by the court for fraud signature gathering practices.¹⁴⁶ These two opponents help show the ideological position of the opponents. They had managed to integrate opposition to the compact into the conservative movement’s larger agenda.

Along with what became the standard list of opponents during the legislative session, it was interesting that the Montana Attorney General’s Office supported SB 265. When Jackson’s bill went to the House Appropriations Committee, Jon Bennion testified for the bill on behalf of Attorney General Tim Fox. During

questions from the committee, Bennion said the attorney general recognized there “was a big effort to sell this [the compact] to the legislature.”¹⁴⁷ He said his office hoped all the parties would stay at the negotiating table for two more years.¹⁴⁸ He also said it was possible that, if the parties would negotiate, Fox would attempt to replace members of the Water Compact Commission, saying it was conceivable that new people would need to be appointed.”¹⁴⁹

This political opportunity to pack a new Commission came up again when the House Floor took up SB 265 on Second Reading. During debate before the vote, Rep. Jerry O’Neil (R-Columbia Falls) told his colleagues that, with a new attorney general in Fox, hopefully the Commission would get new members.¹⁵⁰ “Current members have lost our confidence,” he claimed.¹⁵¹ Since statute dictates the makeup of the Commission, Republicans clearly saw the opportunity to try and stack it with compact opponents. After all, statute says the House Speaker, Senate President, and Attorney General get to pick five Commission members. All of those offices were controlled by the GOP, which meant, at least theoretically, their picks could outnumber the four positions appointed by Democrat Governor Bullock.

The Tribes opposed SB 265 as it made its way through the legislative process.¹⁵² During a House Appropriations hearing, Jackson made it clear he didn’t have tribal support, saying he didn’t invite anyone from CSKT to the hearing.¹⁵³ “The only time I speak to the Tribes is during the compact meetings,” he said. “I have not tried to be political them.”¹⁵⁴

Rep. Dan Salomon (R-Ronan), whose bill similar to Jackson’s was tabled, said SB 265 accomplished its goal. “It let people rail against the compact,” he told his colleagues on the House Floor.¹⁵⁵ Likewise, Sen. Dick Barrett (D-Missoula) told his fellow lawmakers on the Senate Floor that “supporters of this bill are opponents of the compact.”¹⁵⁶ When it came to Jackson’s bill, the compact opponents won, as SB 265 passed the legislature. However, like the District Court ruling for the Water Users Association, the victory was short lived. Governor Steve Bullock vetoed the measure.

In his veto note, Bullock said the Water Compact Commission and CSKT had completed negotiations, both sides made concessions, and the compact was a “reasonable settlement” of water rights claims.¹⁵⁷ He noted this was the first time in the 34-year history of the Commission that the legislature failed to ratify an approved compact.¹⁵⁸ He also pointed out that neither legislative chamber was allowed to vote on ratifying the compact itself.¹⁵⁹ He also noted that extending the negotiations for two years:

“...leaves state water users with tremendous uncertainty, makes it difficult to protect Montana’s water from demands from neighboring states and Canada, postpones future land and water development in western Montanan, and will undermine the legislative directive to the DNRC and Water Court to ensure the issuance of all preliminary decrees by 2020.”¹⁶⁰

He directed the Compact Commission, CSKT, FJBC, and the federal government to prepare a report addressing questions that surfaced during the 2013 session.¹⁶¹ The [report](#) was submitted to the IWPC in early 2014.

Post 2013 Session: Litigation, Right-Wing Propaganda, and National Organizations

The end of the 2013 Montana Legislature began the next chapter for the fight over the water compact. From a legislative angle, the IWPC took up the issue, held public hearings, and even formed a “CSKT Compact Technical Working Group” to work on the issue throughout 2014. Parties on both sides of the compact issue filed litigation. Litigation picked up, as parties on both sides of the compact filed lawsuits. Finally, after a battle that had waged mostly at the local level, national “wise use” and anti-Indian entities began to make their presences known.

Part of the compact was re-opened for negotiations. In May 2014, Gov. Steve Bullock announced that the state and Tribes had agreed to reopen a small portion of the compact for more negotiations with the irrigation districts on the reservation. The Tribes agreed to reopen negotiations solely for this specific purpose. Any revisions would be incorporated into a ratification bill to be submitted to the 2015 Montana Legislature.¹⁶²

Many of the Republican legislators who championed defeat of the compact during the 2013 session continued that role in the interim. For example, Sen. Verdell Jackson consistently wrote editorials that ran in both mainstream newspapers and on right-wing websites. He continued to claim that the compact violated both the Montana and federal Constitutions, going so far as to claim it raised an “equal protection issue and would violate the 14th Amendment.”¹⁶³ Despite court rulings to the contrary, Sen. Jackson also continued using the argument that the Hellgate Treaty didn’t secure water rights for the Tribes.¹⁶⁴



Rep. Keith Regier (R-HD 5) was active during the interim in his opposition to the compact.

Another legislator who continued to speak out during the interim was Rep. Keith Regier. In a July 2014 op-ed, he said the compact wasn’t ratified by the legislature because it was “a massive over-reach by CSKT and the Montana Reserved Water Right Commission.”¹⁶⁵ He demanded that CSKT and Commission quit spending their time defending the compact and start working to make it “more reasonable.”¹⁶⁶ Both Jackson and Regier spoke at a meeting in September 2014 featuring a keynote address by a representative from the national anti-Indian organization Citizens Equal Rights Alliance (CERA).¹⁶⁷ Also on the list of speakers were realtor Trudy Samuelson; former state legislator and anti-Indian activist Rick Jore; and Rep. Kerry White (R-Bozeman), the longtime head of the wise use [Citizens for Balanced Use](#).¹⁶⁸

Meetings of the IWPC frequently featured flare ups. While the committee met in April 2014, irrigators opposing the compact staged a press conference. Jerry Laskody, chair of the Mission Irrigation District and active in the Western Montana Users Association, declared the compact was a “broad overreach of tribal sovereignty” and “violates the equal protection clause of the Constitution.”¹⁶⁹ Catherine Vandemoer, the “Birther” and right-wing conspiracy theorist, continued submitting materials to the IWPC. At one point, she offered her “technical assistance” to the IWPC’s technical group, saying she was “an expert in the quantification of federal reserved water rights.”¹⁷⁰ She disclosed she was an “unpaid volunteer consultant to Concerned Citizens of Western Montana,” but she claimed she would work for the IWPC without any biases toward Concerned Citizens’ positions or philosophies.¹⁷¹

The compact also came up during the 2014 campaign season for Republicans. During her re-election campaign, Rep. Nancy Ballance (R-Hamilton), an IWPC member, said she supported a negotiated compact. However, she could not support the current version because would “strip Montana citizens of their constitutional rights and equal protection under the 14th Amendment.”¹⁷² Ballance has served as the contact for the Ravalli County Tea Party Patriots.¹⁷³ Balance has been a leader of the far Right Republican caucus during the 2015 session.

Another example came in June 2014 when the CSKT Tribal Council approved giving \$20,000 to a group of Republicans, the Montanans for Responsible Leadership, supporting the compact.¹⁷⁴ Their rationale was that some Republicans supported the compact, while those who are “Tea Party members” do not.¹⁷⁵ The Council believed it needed to back a “strategy to gather as much support as possible” to get the compact passed during the 2015 Montana Legislature.¹⁷⁶ The Montanans for Responsible Leadership were part of [an internal](#)

[fight within the Montana GOP](#) between moderates and the right-wing of the party. The tribal support resulted in the Flathead County Republican Central Committee censuring state Sen. Bruce Tutvedt (R-Kalispell) for soliciting the tribal funds and undermining the credibility of local Republicans.¹⁷⁷

The Flathead County Commission also became a frequent battleground over the compact. Russ Crowder, a notorious wise use activist and leader of American Dream Montana, pushed the Flathead County Commission to have a public comment session on the compact in October 2014.¹⁷⁸ Crowder, who said he is “absolutely” opposed to the compact, wanted the commissioners to take a position on the compact.¹⁷⁹ During the public comment session, many regular compact opponents showed up. Sen. Jackson recommended the commissioners not support the compact.¹⁸⁰

Former right-wing legislator Derek Skees agreed with Jackson, telling the Flathead commissioners the compact is “regulation without representation.”¹⁸¹ Skees also said CSKT was being racist, because he wasn’t allowed to participate in the negotiations because he couldn’t be a member of the Tribes.¹⁸² He said this type of regulation without representation was why Tea Parties were created.¹⁸³ Flathead County commissioners ended up voting 2-1 to send a letter to the governor, which ended with the following sentences:

“Our constituents include all Flathead County residents from varied cultural backgrounds and races. It is our hope that the administration and the 2015 Legislature continues to consider Flathead County’s water policy needs in its ongoing negotiations with the Confederated Salish and Kootenai Tribes, and continues negotiations free of racism, partisan politics, and with a desire to avoid protracted litigation.”¹⁸⁴

In early January 2015 after the election of a new commissioner, the Flathead County Commission again considered adopting a letter to state officials opposing the Compact. Written by new Commissioner Phil Mitchell, it stated the compact will be “harmful to Flathead County as well as to the rest of Montana and neighboring states”¹⁸⁵ and would reverse the commission’s previous support of the Compact process.¹⁸⁶ Mitchell said he’d attended eight or nine Compact meetings and opposition ran 20 to 1.¹⁸⁷ During discussion of the letter, one commissioner asked Mitchell if the county attorney’s office had reviewed the legal claims made in the document.¹⁸⁸ Mitchell said he hadn’t, but had asked “several” other attorneys about, and he admitted the letter was written by a group of people he respected.¹⁸⁹ The Flathead Commissioners voted 2-1 to send Mitchell’s letter.¹⁹⁰

In November, the IWPC made 11 recommendations to the Water Rights Commission. However, Representatives Ballance and Regier refused to support the compact.¹⁹¹ Committee member Sen. Jennifer Fielder stated that the suggestions served as neither a recommendation to pass or torpedo a compact. Instead they were just suggestions about how the Water Rights Commission could serve Montanans.¹⁹² She said it would be “very telling” whether or not the Tribes and the Commission incorporated the IWPC’s suggestions.¹⁹³ Fielder concluded that she expected “litigation to be fierce” unless a new compact addressed many of the opponents’ “primary concerns.”¹⁹⁴

Battling in the Courts

While the compact debate heated up in political circles, it also became the focus of more litigation. In March 2014, CSKT filed a lawsuit in U.S. District Court seeking to stop a state court and the Montana Water Court from proceeding with cases where individuals were claiming personal water rights on the Flathead Reservation. The CSKT’s lawsuit was in response to the Flathead Irrigation Project suing in state district court and the Montana Water Court to try and acquire ownership of the water within the Project’s boundaries. The CSKT suit stated that the Tribes and United States “are necessary and indispensable parties to the

determination and to move forward in their absence is a profound waste of judicial time.” The Tribes did not seek to quantify the volume of any water rights in the lawsuit.¹⁹⁵

In response, the Flathead Irrigation Project, through its attorney Jon Metropoulos, asked Montana Attorney General Tim Fox to intervene in the lawsuit to “defend the state of Montana’s sovereign prerogatives....”¹⁹⁶ In May, Fox intervened in the CSKT lawsuit and asked that the court to dismiss the case.¹⁹⁷ Fox argued that the Montana Water Court was the proper judicial body to hear the water claims and bringing them to federal district court was “counterproductive and could derail efforts to reach a negotiated compact.”¹⁹⁸ He encouraged the parties involved in the compact to spend their time working to create a compact that could pass the Montana Legislature by using “civil dialogue that is informed by facts and not inflamed rhetoric or expensive litigation.”¹⁹⁹

Michael Gale continued his prodigious letter writing bashing the Tribes following the filing of the CSKT lawsuit. He said the lawsuit was “based on fallacy” and “revisionist history.”²⁰⁰ He also suggested in the same letter that “the water and land grab is actually being orchestrated by the United States federal government through its agencies.”

By June 2014, the FJBC had authorized attorney Metropoulos to hire additional help from his Helena law firm to meet deadlines in some lawsuits already filed. Commissioner and Water Users Association member Laskody said the irrigation districts were “lawyering up” to fight for non-tribal irrigators. Terry Backs of Concerned Citizens applauded the decision in media reports.²⁰¹

By late July 2014, the FJBC had amended its lawsuit in U.S. District Court and fired an anti-Indian shot across the bow. It claimed that Congress enacted the Flathead Allotment Act to “eventually fully integrate the reservation land and people into Montana society.”²⁰² It also sought to stop transfer of fee land into trust wanted Mission Valley Power turned over to the FJBC.²⁰³ FJBC was essentially advocating for reinstatement of policies designed to terminate the reservation.

However, Metropoulos “threw a temper fit” at a September FJBC meeting and quit his position on the FJBC after the board questioned his legal advice.²⁰⁴ This came as FJBC was working to create a document that articulated what its members wanted included in the renegotiated compact. Both the governor and attorney general had offered to listen to FJBC’s concerns. FJBC would vote in October to hire Kalispell’s Kalvig Law Firm as its new legal representation, despite at least one commissioner wanting to bring in a New Mexico firm.²⁰⁵

Familiar Foes Surface: Mountain States Legal Foundation and CERA

Throughout most of the fight against the compact, the opponents organized locally. In other words, the opposition came from local community members and was organically grown. Leadership and strategy was plotted largely by people living in Flathead communities. While these opponents brought in outsiders, including Catherine Vandemoer and Brian Shuck, it was still a local fight.

That started to change in June 2014 when the Colorado-based Mountain States Legal Foundation announced it was representing parties named in the CSKT lawsuit. It claimed the Flathead Allotment Act and a subsequent \$6 million payment to the Tribes effectively put the land into public domain.²⁰⁶

This “wise use” law firm has fought affirmative action and Indian voting rights across the west. Mountain States was founded in the 1970s with future Interior Secretary James Watt serving as its first president. The group has been a central player in the “wise use” movement throughout the 1990s. Focusing primarily on the judicial arena, this group says that it is dedicated to individual liberty; the right to own and use property;

limited government; and the free enterprise system. Its board of directors has predominately been individuals with direct interest in large corporations and extractive resource industries.

The compact is hardly the first time Mountain States has engaged tribal issues in Montana. In 1999, the U.S. Justice Department filed suit against Blaine County which partly includes the Fort Belknap Reservation. The suit alleged that the at-large election of county commissioners violates the federal Voting Rights Act and results in discrimination against Native Americans in county commission elections.

These suits were not new in Montana. What is unique about the Blaine County case is that after settlement discussions were underway between county and U.S. Justice Department officials, Mountain States contacted the county. It offered to represent the county without charging legal fees. It was apparent this group wanted to litigate the case for political purposes, carefully choosing cases to effect changes in public policy. In the end, the Ninth Circuit Court of Appeals declared the voting districts discriminatory. That ruling stood, as the U.S. Supreme Court declined to hear the case.

While Mountain States Legal Foundation is not generally associated with race issues, the Blaine County case was not its first venture into race politics. It has also been involved in cases challenging minority contracting rules at the state and federal levels. Nor is this its first case involving Indian issues. Mountain States also joined a case against the National Park Service challenging the Park Service's decision to close the Devil's Tower National Monument in Wyoming, which restricted public access during certain times of the year to allow Native American spiritual observances.

Both the Blaine County and compact cases provides an example of the political mathematics which binds the anti-Indian and "wise use" movements together. On one side of the equation is the "wise use" movement with its adulation of individual property rights and antipathy toward federal authority combined with its access to power through its corporate sponsors. On the other are Indian tribes expanding their influence through the federal government (treaty rights) and laying claim to the natural resources found on reservations across the country, virtually assuring a change in the nature (and certainly beneficiaries) of development. Given those dynamics, it is no surprise that "wise use" groups enter mutually-supportive relationships with organized anti-Indian groups.

In early July 2014, the anti-Indian Citizens Equal Rights Alliance (CERA) finally made its presence known in the compact fight. Elaine Willman, a CERA board member from Wisconsin, was invited to the Flathead area to give public presentations.²⁰⁷ She shared the stage with Senator Jackson, Representatives Regier and White, and Flathead realtor Trudy Samuelson.²⁰⁸ Some of Willman's presentations were sponsored by a local Tea Party, the Freedom Action Rally.²⁰⁹ At one event, Rep. Regier thanked Clarice Ryan for organizing it.²¹⁰

CERA, and its counterpart the Citizens Equal Rights Foundation (CERF), is the largest anti-Indian group in the country, and its connection to Montana is strong. During its existence, numerous anti-Indian activists in Montana have served on its board and in other leadership positions. It has frequently opposed CSKT on multiple issues, most recently about management of the National Bison Range.²¹¹

Frequently introduced as a "Cherokee woman," Willman told attendees of her speeches that the compact violated constitutional rights.²¹² She minimized treaty rights, saying, "Treaties and documents prior to the Constitution are but a memory, a beautiful fairy tale."²¹³ Given this sentiment, it's not surprising that one attendee reported that Willman could "barely contain her disdain for tribal members."²¹⁴ She also stated that the Hellgate Treaty no longer mattered; Montana U.S. Senator Jon Tester was only elected because Indians were allowed to vote multiple times; and blamed the University of Montana law school for training lawyers who gave bad advice to opponents of the compact.²¹⁵ She also discussed a right-wing fantasy that connected

tribal sovereignty to Agenda 21 in one presentation titled “Inroads of Agenda 21: Building on Indian and Federal Policies.”²¹⁶ One of the credentials listed for Willman in promotional materials was that her writings have appeared in the John Birch Society’s national magazine.

An organization monitoring the anti-Indian movement has called Willman “the movement’s top celebrity.”²¹⁷ Willman serves as the Director of Tribal Affairs for the Village of Hobart in Wisconsin, which has been involved in numerous lawsuits seeking to undermine the tribal sovereignty of the Oneida Nation.²¹⁸ At a Washington event, Willman claimed Wisconsin was not being “cannibalized” as quickly by federal and state Indian policy as some areas of the country.²¹⁹ She also complained there weren’t more attorneys across the country willing to fight tribal sovereignty, saying “You can count on two hands the legal counsel across the country that actually focus on Indian law on our side of the issue.”²²⁰

Given that both Mountain States Legal Foundation and CERA/CERF had previously worked against tribal



interests in Montana, it’s a little surprising it took this long for their presence to be known in opposing the compact. Both continue a pattern of being national organizations that look for local fights to exploit. Closer to home, a compact opponent was creating a more traditional “wise use” organization.

By September 2014, the Concerned Citizens of Western Montana had formed the Montana Land and Water Alliance. It stated the Alliance was formed to “specifically deal with this compact, but also with other attacks on property rights issues that Montanans are faced with.”²²¹ Dr. Catherine Vandemoer is the group’s chair and, in a letter to the editor, she stressed the group’s dedication to property rights.²²² She said the group would:

“...legally defend the constitutional and legal rights of property owners whose rights to possession, control, exclusion, enjoyment or disposition of property are negatively impacted by the actions of others, including federal, state, or tribal governments, their agencies and individuals, organizations or corporations.”²²³

The group’s website states that Concerned Citizens understood that, if a compact came up during the 2015 Montana Legislature, “a PLAN B will be necessary to protect Montana citizens from their state and federal governments.”²²⁴ The Montana Land and Water Alliance would fill the need.

Heading Into the 2015 Montana Legislature

In mid-December 2014, Governor Steve Bullock and Attorney General Tim Fox announced that a [revised compact](#) agreement had been reached.²²⁵ “I am pleased that an agreement has been reached that respects tribal rights, while ensuring that irrigators and residents in the region continue to have access to a reliable water supply,” said Governor Bullock. “I’m confident that the legislature will recognize the importance and fairness of this agreement.”²²⁶ Attorney General Fox stated the new compact was “significantly better than the previous one” and was “constitutional.”²²⁷

The compact somewhat addressed two of the three concerns mentioned by the FJBC. However, the FJBC still decided to hire a lobbyist for the 2015 session, although it has declined to define exactly what that means

going into the session.²²⁸ At a December FJBC meeting, Jerry Laskody told irrigators, “There is a way to replace this [the compact] and that’s through adjudication.”²²⁹ At the end of December, the FJBC voted 8-2 to approve a resolution that “strongly opposes” the compact.²³⁰ Laskody said the FJBC still believed parts of the compact were unconstitutional.²³¹

Heading into the 2015 Montana Legislature, many of the same right-wing opponents that successfully killed the compact ratification in 2013 worked for a repeat in 2015. The arguments against the compact largely remain the same, driven by a set of talking points that combine strident anti-Indian ideology opposing treaty rights and tribal sovereignty; traditional anti-government and Tea Party conspiracy theories; and the property rights tenets of “wise use.” This cross section of right-wing thought and action leads the charge against the compact and prop up Republican legislators willing to act as its mouthpiece.

However, the [revised compact](#) does have new support in the 2015 session. Attorney General Fox, whom Republican legislators cited in 2013 as a potential ally to stop the compact, has publicly supported the revised document. Also, a deal struck by both parties in the Montana House during the opening days of the 2015 Montana Legislature will allow each party to bring six bills to the floor from committees without a super majority of 60 votes.²³² The ratification of the compact was mentioned as a likely beneficiary of this agreement, since a simple majority of the House had supported the compact in 2013.

Additionally, a new organization predominately comprised of Republicans and farmers stepped forward to support the compact. In December 2014, Farmers and Ranchers for Montana (FARM) started getting the word out that approval of the compact was critical to protecting the state’s farming and ranching businesses.²³³ Among the group’s supporters was former Rep. Scott Reichner (R-Kalispell), who voted against the Compact in 2013. He said leadership by the attorney general during the interim helped bring the Tribes closer to what the “citizens of Flathead” needed.²³⁴ Reichner also admitted that some of the arguments against the compact in 2013 weren’t based in fact and sometimes “presentation got the best part of it” and misinformation “snowballed” during the session.²³⁵

Reichner is listed a co-chair of the group, along with former Republican legislator Lorents Grosfield, who twice served on the Water Rights Commission (1991-1995 and 2003-2007).²³⁶ Grosfield has told the press, “I’m convinced that it’s a fair compact and that it treats the Tribes, as well as people on the reservation and off the reservation fairly.”²³⁷ He said FARM hoped to counter the “misinformation” that defeated the Compact during the 2013 session.²³⁸

The opposition to the compact reflects a wide spectrum of Montana’s right wing. The bases for the arguments originate from a fusion of anti-government, anti-environmental, and anti-Indian sentiments. These extremist views provided enough fodder for the majority of the 2013 Montana Legislature to not ratify the compact. On the other side, compact supporters seem more prepared going into the 2015 session.

One of the most repeated arguments against the compact is that it was done behind closed doors, a foolish claim when one looks at the evidence. Chris Tweeten, chair of the Commission, told legislators during the 2013 session, “This compact has had more public process than any other compact we’ve ever done.”²³⁹

He explained to lawmakers there were five years of public negotiations that followed public meeting rules.²⁴⁰ When the parties involved reached an initial agreement in November 2012, Tweeten said they held about 25 meetings about the compact throughout western Montana in about a month.²⁴¹ He also said every iteration and changed version of the compact was posted online, and the Compact Commission sent postcards to anyone who wanted them to announce negotiating sessions.²⁴² “It exceeds what we did with other compacts by several magnitudes,” he said, “We’ve done as well as we could.”²⁴³

The level of disinformation and paranoia promoted by compact opponents has derailed what should have been a successful compact. During the negotiations, the Tribes made meaningful concessions to protect water rights of both tribal and non-tribal members. This wasn't good enough for the opponents. Instead, they seem determined to drive the compact and settlement of water rights to litigation, which all parties admit could take 30 years to resolve. While the opponents claim they have the best interests of non-tribal water users in mind, that claim is based on underestimating treaty rights. If not settled by June 2015, CSKT must go to court to exert their treaty rights. The tribes could claim up to 10,000 potential new water rights, and it would take decades to sort out.²⁴⁴

Going into the 2015 legislative session, there were bills drafted to ratify the revised Compact. However, there are also a handful of bills meant to undercut it as well. However, the compact does have some new supporters, in addition to those that supported it in 2013. One of those supporters is Rep. Ellie Hill. When a newspaper asked if the 2015 session should pass the compact, she replied:

“Absolutely. State and tribal negotiators agreed to come up with an agreement that doesn't harm interests with existing valid water rights. They succeeded in doing that largely because the Tribes have graciously subordinated most of their claims to existing non-tribal water users. The Tribes didn't have to do that. Still, this hasn't satisfied critics, mainly a mob of conspiracy theorists and a few non-tribal irrigators on the reservation. This very transparent deal has been in the works for years. The alternative is for the Tribes to rightfully litigate this and then nobody will benefit.”²⁴⁵

The opponents staked out their territory by denigrating treaty rights. They championed their private property rights, while seeking to ignore The Tribes' rights. They tried to justify their attempts to deny legally-established rights to the Tribes with empty charges of reverse racism. They even contemplated that the federal government is using the Tribes as pawns in part of a larger conspiracy to take over land and water in Montana. When it comes to science in the public arena, they largely relied on the efforts Dr. Kate Vandemoer, a conspiracy theorist who doesn't believe President Obama is an American. Yet, they stopped the compact during the 2013 legislature.

The 2015 Montana Legislature

The 63rd Montana Legislature has taken up the Water Compact as SB 262, sponsored by Chas Vincent, a Republican from the North West corner of the state and a former opponent of the compact. The bill passed Senate 33-19 and is being heard by the House. Both bodies required a blast to bypass committees whom did not send the bill to the floor. Many of the opposition players reported on above testified at the two hearings and opposition legislators have brought a series of amendments meant to kill the agreement reached by the Compact commission.

¹ [Hellgate Treaty](#)

² Ninth Circuit Court of Appeals, *United States v. Adair*, 1983.

³ [Report on the Proposed Water Rights Compact](#), Prepared by the Montana Reserved Water Rights Compact Commission, January 2014

⁴ *Missoulian*, March 19, 2014.

⁵ *Missoulian*, May 13, 2014.

⁶ Montana Legislative Services, House Judiciary Committee Hearing on HB 629, March 27, 2013; Montana Legislative Services, House Appropriations Committee Hearing on HB 636, Feb. 12, 2013.

⁷ Montana PBS, Patchwork Nation, Feb. 22, 2011.

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- ⁸ For more on Cox, see Montana Human Rights Network News, [October 2012](#), page 4.
- ⁹ Montana PBS, Patchwork Nation, Feb. 22, 2011.
- ¹⁰ Montana PBS, Patchwork Nation, Feb. 22, 2011.
- ¹¹ Montana PBS, Patchwork Nation, Feb. 22, 2011.
- ¹² Montana PBS, Patchwork Nation, Feb. 22, 2011.
- ¹³ Montana PBS, Patchwork Nation, Feb. 22, 2011.
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