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Sen. Chas Vincent  
Chair WPIC  
By email

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Re: WPIC, March 18, 2014—Proposed CSKT Compact—claims to FIP  
Water

Dear Senator Vincent:

Enclosed with this letter are copies of a few seminal documents that illustrate some of the historical legal foundation of fee-land irrigators' claims to own property rights in the water delivered by the Flathead Irrigation Project. These documents are by no means all that provide the foundation for our claims, but I think they will indicate to any reasonable reader that irrigators clearly have solid legal claims to water rights that, under the proposed CSKT Compact, are not protected or respected. Hence, I offer these as a basis for the WPIC's consideration of the points I made in January and those I will make on March 18, as part of my representation of the Flathead Irrigation District (FID), to the effect that certain changes should be made to the proposed Compact so as to both protect these property rights and other rights of individuals who would be directly affected by the Compact and garner broad public support for a Compact.

By providing the committee these documents, FID is obviously not asking that you stand in judgment of its or any stakeholder's legal rights, as if WPIC were a court. Rather, our goal is more limited: simply to illustrate that, in fact, there are two sides to this story, and the irrigators from whom you have heard do, in fact, have sound historical and legal reasons to assert that they or their irrigation representative—the districts—own the water right to irrigation water delivered by the Project, not the Tribes, as is

provided in the proposed Compact. In addition, I have to emphasize the complexity of the legal background, without detracting from the fact, for I believe it is a fact, that the irrigators themselves own the primary property right in the irrigation water. Thus, these documents do not represent the entire universe of applicable statutes, nor do they indicate all the non-frivolous legal theories that exist in support of irrigators' property rights in this water. But they do, I think, indicate irrefutably that irrigators' claims should not be dismissed out of hand, as if they have no footing in the law. Indeed, if anything, the applicable law, viewed objectively, supports the opposite conclusion.

By way of background, and emphasis, I want also to reiterate that the FID is in support of a negotiated settlement that respects the property rights of all involved. The three concerns the FID relayed to the State, United States, and Tribes in September 2013, if addressed in amendments to the proposed Compact, could accomplish this. If the Compact cannot be amended to do this, the FID is opposed to its passage. The FID simply cannot support an agreement between the CSKT and the State that solves their issues and accomplishes their goals by taking rights, including property rights, away from others.

I must also reiterate that the FID, an elected local government under Montana law, is the representative for irrigation matters of the fee owners of 88,000 of the 107,000 fee acres served by the Flathead Project. As such, and in complete contrast to what may have been said or implied to you, the FID represents tribal members and nonmembers alike, equally. As Congress mandated in the Act of May 10, 1926, 44 Stat. 464, the Districts represent all fee landowners, tribal members and nonmembers, without distinction among them.

The documents I submit, with pertinent highlights, are:

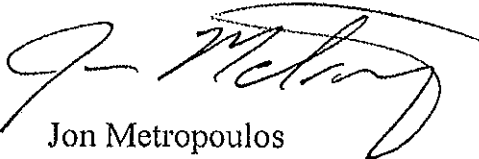
1. A copy of the Flathead Allotment Act (FAA), the Act of April 23, 1905, 33 Stat. 302, which among other things, clearly applied the general Homestead Act to the surplus or unallotted land remaining after allotments were made to tribal members.
2. A copy of the amendment to the FAA Congress enacted in 1908 authorizing the construction of the Flathead Irrigation Project, Act of May 29, 1908, 35 Stat. 448.

3. A copy of a trust patent, indicating an allotment made to a tribal member in 1908 and a fee patent for that same land issued in 1917, demonstrating a documentary basis for an allotment on which successors in interest, today, claim a property interest in water rights for irrigation water delivered by FIP.
4. A copy of a fee patent for surplus, unallotted land also delivered irrigation water by FIP demonstrating a documentary basis for surplus, unallotted land on which successors in interest, today, claim a property interest in water rights for irrigation water delivered by FIP.
5. A copy of three pages from a National Park Service Website that provides basic statistics about homesteading under the Homestead Act generally, and, specifically, showing that approximately 1/3 of Montana, more than 32 million acres, was homesteaded under the same law Congress applied to the Flathead Reservation in the FAA and pursuant to which tens of thousands of acres are now owned in fee and irrigated by FIP water on the Reservation.

Finally, I want to assure you, Mr. Chairman, and the members WPIC, that I have not forgotten the commitment I made to you, and the opportunity you provided me, to submit a written response to the Compact Commission's Report. While I have devoted many hours to that task, its completion has been delayed through the litigation burdens I mentioned in January and other developments in regard to Project operations. I will submit it as soon as possible, and it will be comprehensive. Again, thank you for that opportunity.

Thank you also for your hard work and leadership on this complex issue. I look forward to presenting more information, and to answering questions, on March 18, when the WPIC meets next.

Respectfully,



Jon Metropoulos