

OPINION

WATER RIGHTS PROTECTION ACT

Future of Montana's largest industry at risk

May 3, 2020

[The following letter was sent from the Montana Cattlemen's Association to U.S. Sen. Steve Daines.]

BY GILLES STOCKTON

The Board of Directors of the Montana Cattlemen's Association has studied your proposed Bill (S 3019) which aims to finalize water rights issues between landowners in Montana and the Confederated Salish Kootenai Tribes (CSKT). We certainly applaud this effort and sincerely desire a resolution agreeable to all parties. However, we find several provisions in your bill that requires clarification and/or modification.

We are, in addition, concerned that a number of affected parties feel that their interests have not been adequately considered. The preservation of an open public process in governance is an important principle that should be adhered to in every manner possible. In this regard, MCA requests that you hold hearings to allow these citizens to express these concerns.

The points upon which we would like clarification or modification include: In your Bill, the CSKT relinquishes all water rights claims outside of their direct reservation interests (page 32). Yet under sub-section c (page 37) it states that the tribe "...shall retain ...activities affecting the quality of the water..." under the Clean Water Act, CERCLA, etc... This sub-section needs clarification. Does the tribe relinquish all water rights claims and if not — why not?

The National Bison Range is a 18,500-acre national treasure, open for the enjoyment of all citizens and tourists visiting Montana. We do not understand the reasoning for transferring the National Bison Range to the CSKT, and in this regard request a clarification as to why this is included in a Bill whose purpose is to settle conflicting water rights claims. If, indeed, the transfer goes ahead, we see two points that should be modified.

The provision that authorizes the transfer does not require that the CSKT continue to manage the National Bison Range in such a manner that it is freely open to all visitors. We feel that this should be clearly required as part of the agreement.

Because the bison are currently owned by the people of the United States, they are classified as "wildlife." Under no circumstances should these bison, once transferred to a private entity - like the CSKT — continue to have a wildlife legal status. Instead they should be reclassified as livestock. Our objection is based on the increasing probability that elk will infect these bison with brucellosis. If/ when this happens, it is imperative that the bison come under the legal authority of the State Veterinarian who can require measures to mitigate the infection. The future of

Montana's largest industry is at risk, unless the bison's legal classification is changed to livestock. We most strenuously insist that you rectify this matter in the Bill.

The transfer of ownership of 36,800 acres of state lands within the Flathead Reservation poses a number of problems that also requires clarification: These state lands include state parks that are enjoyed by all Montana citizens and school trust land that are currently leased by farmers, ranchers, and loggers.

Many of these lessees have made important investments on these lands for which there is no mention of compensation. Perhaps the better approach would be to include a provision in the Bill that requires the CSKT continue to administer these lands in the same manner and under the same regulations that is used by the State of Montana?

To recompense the State for the transfer of state lands to the CSKT, the Bill proposes that federal lands from somewhere else in Montana will be transferred to the State. However, the Federal Government pays the counties a payment in lieu of taxes (PILT), refuge revenue sharing, and other forms of federal income transfers on these lands, which the counties depend upon to fund their services. How will counties make up this lost revenue?

In addition, easements for roads and utilities on these State Lands are not adequately addressed.

The public and lessees should be allowed to retain those rights of way and easements and this guarantee should be included within the language of the Bill.

Similarly, control over repair and maintenance of local, county, state, and federal infrastructure should be retained by those jurisdictions. We urge you to rectify these deficiencies.

Communication from your office indicates that this Bill settles a "new compact" that supersedes the compact negotiated by the State of Montana.

Please supply us with the text for this "new compact" so that we can compare its provisions to that of the CSKT Water Compact.

It is not clear what jurisdiction will apply to off reservations lands or rights of way of the tribes resulting from a) expanding tribal land ownership b) expanding rights of way and c) expanding water claims? The Act does not waive U.S.A. immunity and provides no remedy for public appeals and dispute resolution, which we feel should be preserved. We request the clarification of these issues.

There are other issues that also need clarification, but since they pertain to the counties and citizens directly affected by this water rights settlement Bill, it would be better if they represent their own concerns. MCA, however, looks forward to having the issues outlined above clarified and modified where appropriate. In addition, we would very much like the opportunity to participate in hearings in order to represent the interests of Montana's cattle producers.

Gilles Stockton is president of the Montana Cattlemen's Association.