

## **Trump administration signals support for CSKT water compact**

BY JOHN S. ADAMS, Montana Free Press | November 27, 2019

HELENA — Through two top cabinet officials, the Trump administration has signaled its support for a proposed settlement of the reserved water right claims of the Confederated Salish and Kootenai Tribes.

First in a Nov. 18 letter from U.S. Secretary of the Interior David Bernhardt to Montana Sen. Steve Daines, and then in a public statement Friday by Attorney General William Barr, the Trump administration has made clear that it wants to resolve Montana's last remaining Indian water rights settlement through the existing negotiating process, and not in the courts.

The proposed CSKT-Montana Compact is an effort to resolve conflicting claims between the CSKT and other water users regarding on- and off-reservation water rights, reconciling Montana's modern water doctrine with fishing rights guaranteed to the tribes as part of the 1855 Hellgate Treaty.

Under Montana's senior-user- takes-priority water rights system, legal precedent involving the treaty language guarantees the CSKT "time immemorial"- based access to streamflows that can support fisheries in portions of the state the tribes historically occupied. Previous compacts have settled water rights for the Blackfeet, Crow, and other tribes.

According to the Montana Department of Natural Resources and Conservation, the CSKT have filed thousands of off-reservation water right claims that will require litigation if the CSKT-Montana

Compact isn't approved, potentially limiting irrigation in 51 of the state's 85 adjudication basins. The negotiated compact, in comparison, grants the tribes a total of 97 rights west of the Continental Divide.

Bernhardt's Nov. 18 letter responds to an Oct. 30 letter from Daines in which Montana's junior senator asked the secretary to review concerns leveled by opponents of the negotiated compact.

In his letter to Bernhardt, Daines asked the Trump administration to give fair consideration to the concerns of supporters of the so-called People's Compact, an alternative proposal drawn up by opponents of the CSKT-Montana Compact.

Critics of the People's Compact point out that it was drafted without consultation with the tribes, the state, or the federal government. The CSKT Montana Compact was negotiated for more than a decade and approved by the Montana Legislature in 2015.

On Friday, Daines and Barr toured parts of the Flathead Valley to meet with tribal leaders and federal, state, local, and tribal law enforcement officials to discuss strategies for addressing the issue of missing and murdered indigenous people.

During a press conference following a roundtable discussion in Kalispell, Barr said the compact settlement addresses a complicated issue that needs “clarity.”

“I think that this is a kind of complicated problem that needs to be resolved, because a lot of economic decisions are pending,” Barr said, according to a recording provided to Montana Free Press by Daines’ office.

Barr said that complicated agreements like the water compact are best arrived at through negotiation, rather than litigation, adding that litigation could be time-consuming, costly, and risky for everyone involved.

“People should not assume that they’re going to end up with a better deal” through litigation, Barr said.

Daines said that he is “grateful” to the Department of Justice, “as well as Department of Interior Secretary Bernhardt directly,” for weighing in on the situation. In his seven-page letter to Daines, Bernhardt said it has been the federal government’s policy to resolve Indian reserved water right claims through negotiations, “rather than protracted and divisive litigation.”

Bernhardt said he is aware of the concerns and objections expressed by compact opponents, and said those concerns “were considered and evaluated during the negotiations, in the context of potential risks and liabilities resulting from non-settlement.” “The Department of the Interior has evaluated the core concerns and criticisms that have been raised with respect to the Compact and found that these concerns were addressed in the negotiations,” Bernhardt wrote to Daines. “I look forward to working with you as you work to resolve this important issue in Congress.”

In a statement to Montana Free Press, Daines spokeswoman Julia Doyle said Daines hopes to find “a resolution that avoids litigation.”

“Today’s letter from Interior reaffirms the need to reach a settlement,” she said. “The Senator will continue engaging with stakeholders to reach an agreement.”

Montana Sen. Al Olszewski, R-Kalispell, is among the outspoken opponents of the compact. Olszewski, who is running for governor, said he was disappointed to learn of Barr and Bernhardt’s comments regarding the compact. “I disagree that this is the right thing to do,” Olszewski said. “It’s absolutely wrong to force western Montana to forfeit their water rights to a third party without remuneration or going to court.”

In a statement to Montana Free Press, CSKT Vice Chairman Leonard Gray said, “We think the letter speaks for itself.”

DNRC Director John Tubbs said his office received a copy of Bernhardt’s letter on Friday. Tubbs has worked on reserved water rights compacts for more than 30 years, first in Montana as a financial officer for DNRC in the 1990s, and later nationally as assistant secretary for water and science in the Obama administration, a position he held from 2009 to 2013.

Tubbs called Barnhart's letter to Daines "historic."

"This is the strongest letter of support from a secretary of the interior in the history of water rights settlements, that I'm aware of," Tubbs said.

Tubbs seconded Barnhart's assessment that the compact negotiating process was proper, and that the settlement should proceed. "We agree with the secretary's conclusions that it's an appropriate settlement, that it's time to move this issue forward, and that it is all within the context of federal statute and court decisions," Tubbs said.

Additional reporting on this story by Eric Dietrich.