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U.S. Senate Committee on Indian Affairs
838 Hart Office Building
Washington, D.C. 20510
testimony@indian.senate.gov

RE: S.3013 AUTHORIZATION AND IMPLEMENTATION OF THE WATER RIGHTS COMPACT WITH THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, MONTANA

Dear Committee Members:

The Lake County Commissioners, elected officials in Lake County, Montana with offices in Polson, MT., offer the attached comments for the record on **S.3013, which authorizes and implements the water rights compact between the United States, the Confederated Salish and Kootenai Tribes of Montana and the state of Montana.**

We appreciate this opportunity to provide testimony on this important measure. As most of the Flathead Indian Reservation lies within Lake County, potential ratification of the compact will have an enduring effect on all Lake County citizens, tribal and non-tribal. After initial review of the proposed compact legislation, the Lake County Commissioners have significant reservations regarding some of the language contained in the act, and issues, or problems, arising from the same.

Attached is a draft summary of comments that we desire to have included in the record of testimony before the United States Senate Committee on Indian Affairs.

Please contact us if you have questions regarding our comments. We look forward to being involved in future discussions of this important legislation.

BOARD OF LAKE COUNTY COMMISSIONERS



Ann Brower, Chairman



William D. Barron, Member



Gale Decker, Member

Attachment

LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF MONTANA, SUBMITS THESE INITIAL COMMENTS ON S. 3013, THE “SALISH AND KOOTENAI WATER RIGHTS SETTLEMENT ACT OF 2016” These issues are significant and more detail can be provided subsequent hereto.

Initially, Section 2, paragraph (1), on page 2, please add Section (C) the benefit of the residents of the State of Montana and the Flathead Reservation and vicinity that are Tribal and non-Tribal members.

Second, Section 3, paragraph 5, part B Inclusions, should be corrected to clarify if or what amendment or amendments to the compact or attachments would be included and what “executed in accordance with this Act” means or involves.

Third, Section 3 paragraph 10, paragraph (B), 1 includes “any other facility of the Flathead Irrigation Project,” without a definition of what is included in a “facility”, and without an indication of ownership or control of any such “facility”. Clarification would help this paragraph, as this county owns some facilities like bridges and culverts.

Further, Section 3, 10, B ii includes “any other physical tangible object used in the management and operation of the Flathead Irrigation Project”. No discussion of who owns, maintains, or operates those “objects” is made, and “object” may or not be part of the Project. Examples may include bridges or culverts owned and/or installed by private persons, the railroad, and operated by the Project but not owned by or repaired or maintained historically by the Project.

Fourth, Section 3, paragraph 2 defines “Allottee” to limit the definition to be only owners with trust lands. This definition when utilized in the act, section 5 paragraph (a) limits the benefit to only trust land acreage and excludes persons who own historic allotment parcels that are Tribal or non-Tribal members with lands not in trust. This limits the benefit of Section 5, (a) to only trust lands parties and therefore the definition and intent paragraph deny all other persons equal protection or benefits from the act. A revised or functional definition providing benefits for all allotment or historic allotment holders would perhaps mitigate this problem.

Fifth, Section 4, (a) Ratification, (1) provides that the compact is authorized, ratified and confirmed “Except as modified by this Act.” We are unclear how or if the Act can modify the compact, but not ratify the same modifications, and also not ratify portions of the compact in conflict with the Act. Clarification of what modifications occur with the Act and what conflicts exist would help the county and citizens better evaluate the Act itself.

Sixth, Section 5 page 9 could be amended to reflect that the Act seeks similar benefits for all persons affected by the Compact, not only allottee’s.

Seventh, Section 5 part (b), (3) provides that the Act and not the compact prevails. This does not reflect the nature of the Compact as it was a negotiated contract between the Tribes and State of Montana, not a Federal statute. In the spirit of compromise and working cooperatively it would seem that reversing this language would be appropriate.

Eighth, Section 5, part d 1, 2, and 3, should be amended to reflect the terms of the compact and should provide access to the Tribal Water Right for all allotment parcels, regardless of ownership or trust status of this time. Further, the 3 section could reflect that “all reservation irrigators, not only allottees, should be entitled to a just and equitable allocation of irrigation water”.

Ninth, Section 5 part (d) provides authority to protect only allottees. Broader authority to protect other users, with valid claims, or other amenities would seem more appropriate, as it provides the benefit and a remedy to all citizens affected.

Tenth, Section 6, paragraph (a) provides the water as measured at the Hungry Horse Dam. Our question is simply is that going into or coming out of the structure? Clarification would help with this long term question.

Eleventh, Section 6, paragraph (c) (2)D is unclear as to if the storage rights are pro-rata or absolute or adjusted otherwise. As this may impact the levels of Flathead Lake and irrigation water availability, clarity would be helpful as to the amounts.

Twelfth, Section 7 paragraph (a) provides the commission with authority to regulate hydroelectric power within the reservation. Paragraph (b) is unclear as it notes the Tribes’ right is exclusive to develop and market any hydro project on bodies of water within the reservation. If off body of water hydro-generation is acceptable for other entities or persons, that should be made clear. This would be consistent with national energy policy to encourage alternate energy production without limit as to Tribal only.

Thirteenth, Section 7, paragraph “d” limits the ability of other users to profit from a project. For example, if per paragraph “d” 1B a generator is in a Bureau Rec Irrigation facility that is funded and maintained by irrigators, it seems fair that the irrigators should be entitled to a portion of the revenue generated. This is based upon the fact that they pay repair, operation and maintenance on the facility. Amending parts d, e, and f of that part of paragraph (d) of Section (7) would seem much more equitable to all involved.

Fourteenth, Section 8, “a” 1 identifies in general rehabilitation work to be carried out by the Secretary through the Commission. The Bureau of Reclamation is identified as the “Lead

Agency” in Section 8 (a) 5, but no language regarding cooperating agencies or local governments like Lake County is made. This is significant as parts of the system are owned by individuals and by this county or local entities like cities or towns, who should be consulted and who should be provided meaningful rights to participate. This participation is important in Section 8(b) 3 and 4 as local participation matters and “local” including this county owns parts of these facilities.

Fifteenth, Section 8(d) should provide that local government entities that already provide repair, and maintenance, and construction of parts of the project should be party to the agreement, and also funded to provide these services to the project. We as a county own the road right-of-ways used by the projects and the crossing structures and should be funded to provide those services.

Sixteenth, Section 8(e) 2 provides for acquisition of easements from landowners without compensation for land value taken or reduced by the work. This seems a taking without compensation and no assurance of restoration of the land is included in the paragraph. We believe both should be. Further, Section (f) requires that the land, i.e. right-of-way is held in trust for the Tribes benefit. This seems lopsided and is a forced sale to an entity that is only for benefit of the “Tribes”. It is not a preferred alternative to many.

Seventeenth, Section 8(e) and (f) harms all local government units here and our schools and fire districts, etc. as trust lands do not pay taxes, placing an unfair and oppressive burden on our other taxpayers.

Eighteenth, Section 9 (1) uses mandates that the Ag Development account is used for “Indian Land” in parts A, B, C, D, and F, with no acknowledgment of system improvements that benefit non-Indian land or lands that are impacted. No discussion of cost allocation is included and we believe it should be as collateral costs to non-Indian land may be non-economic for the long term, and unfair to other owners.

Nineteenth, Section 10 includes funding for Flathead Irrigation Project maintenance with no mechanism to allocate costs related to non-allottee beneficiaries.

Twentieth, paragraph Section 12 a (3) does not obtain a release from allottees and 12 (c) allows the Tribes to make claim against any water rights recognized under any Final Decree. That seems contrary to the compact and statements that the Tribe gave up certain claims, which this paragraph does not give up.

Twenty First, Section 13 a and b could release this state and this county from liability as we understood that was the benefit of a compact.

Twenty Second, Section 3 (15) defines “Indian Land,” the compact does not. The definition seems to overturn the “Clairmont” case and raises significant questions about jurisdiction, use, and authority of Federal, State, Tribal, and local government. A clarified definition would be helpful limiting these questions.

Twenty Third, we also have a concern regarding the other accounts that are being established, including economic development account, community development account, and agriculture development account. Those funds are limited to Tribal Government only, no funding for local government, and no funding for non-Tribal member projects. At a minimum clarification of the programs and provision of funds for all residents would be helpful. This issue is important because more than 70% of the population of this reservation and county is non-Tribal.

Twenty Fourth, as a county our concern about allottees having lands in trust to qualify and all acquired lands being put in trust are largely based on worsening our unfunded mandate. Trust lands pay no taxes to the county, fire districts or schools, but receive the benefits. Our Public Law 280 law enforcement problem will be made even worse by this act as it increases the unfunded mandate burden on our other taxpayers.

These comments are not complete due to time deadlines but are a start for the record of significant issues that need to be addressed.