

The 2018 CSKT Compact Candidates

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One of the most disappointing elements of this year's primary election in Montana is the extent to which candidates who claim they support the CSKT Compact know nothing about it. Recall that in 2015 a question was asked on the House floor whether anyone in that body had read the compact. Only 3 representatives raised their hands. Thus, the Montana legislature's vote, in addition to being unconstitutional for lack of a supermajority, was also uninformed. Recall also that the only way the CSKT Compact passed the legislature was to change the House rules so that a bill that failed in committee could make it to the floor, and then allowing a simple majority to vote against Montanans in favor of the CSKT Compact.

The truth of the CSKT Compact was that it was "negotiated" in private, without public input or revision, between the CSKT, the Bureau of Indian Affairs (BIA), and the Montana Reserved Water Rights Compact Commission (Commission), an unelected, unaccountable board dominated by the Governor's appointees. Nothing was "negotiable" in terms of the Tribes' demands, so the state's role was basically capitulation. The BIA's inability to fairly represent irrigators within the federal Flathead Irrigation Project is well known, and the state of Montana refused to represent state citizens in the Compact negotiations. Instead of representing state citizens, states' rights, and state sovereignty, the state of Montana put its thumb on the scale of "tribalism", defined as being organized as an advocate for a Tribe. This is a crucial point: the state advocated for the Tribes and not its own citizens, and in the process gave half of the state's water to the federal government, pretending they were giving it to the Tribes. This is one of the worst "deals" negotiated by any state in the country, and contrasts significantly to the way other western states such as Idaho, Washington, Wyoming, and Colorado have handled their settlement negotiations with or litigation regarding the water rights of the Tribes.

The facts of the Compact that lead directly to its unconstitutionality, violation of federal law, and the destruction of states' rights were never acknowledged by the state, nor did they care to inform their citizens. Face it, the entire CSKT Compact was a public propaganda campaign, fueled by millions of dollars supplied by the CSKT, and had nothing to do with fairly settling the water rights of the CSKT, protecting culture, or improving lives. In my view every single legislator that voted for the CSKT Compact violated their oath of office to protect the Montana and U.S. Constitutions.

The Pro-Compact Candidates

So, what are our federal and state candidates saying about the CSKT Compact? The first type of candidate is a state representative who voted for the compact but who now says, "I no longer support the compact as written". This is typical of republican representatives like Greg Hertz (R-Polson) who even at this late date does not understand the actual harm this compact will cause his constituents. Saying you no longer support the compact as written is an "easy" way to take the heat off himself after casting an uninformed and self-serving vote. Hertz wants to be Speaker of the House, but as his constituent, I can't trust that he will make the right decisions that protect Montanans especially on property rights. What other votes will he make that positively ruin the lives of Montanans?

Even though candidates like this "no longer support the compact as written", do these candidates know the compact is being implemented by the state inside a federal irrigation project and that this implementation will deprive irrigators of their historic use of water? And, what are they going to do about the fact that the state has no authority to change operations in a federal irrigation project? What about the harm to Montanans that is occurring NOW, before congressional approval?

The second type of candidate, at the federal level, is "100% for the compact" and pledges to do everything they can to get it passed in Congress. This type of candidate is typified by Russ Fagg who claims he knows about the compact by reading the state of Montana's summary. The state's summary continues to misinform Montanans of the very real constitutional and legal problems with the compact, and of course fails to acknowledge the state's mistake of giving Montana's water away to the federal government.

Based on his early comments on the subject, Mr. Fagg doesn't realize that the compact is flawed, and must be revised to bring it into compliance with federal and state law as well as other settlements in Montana and across the west. By stating that "this compact is the best deal we're going to get", Mr. Fagg is advocating only for the CSKT because he believes that all the Tribes' outrageous, state-wide claims would be affirmed in a court of law. We know differently: The Tribes' expansive claims are not supported by law, period.

There are other numerous places that give rise to a concern about possible bias in favor of the Tribes over Montanans in Mr. Fagg's portfolio, including the fact that he is funded by the same outfit hired by the Tribes to push the compact propaganda—Mercury Consulting. His wife is a founding member of the engineering group Dowd-HKM, based in Billings, that is the "go to" firm for all Tribes in the United States and the government in their water rights litigations or negotiations. In addition, Karen Fagg was on the board of the group "Farmers and Ranchers for Montana", plainly a front organization developed by Mercury Consulting to create the illusion of public support for the Compact.

Candidates like Mr. Fagg also represent the state's entrenched forces advocating for Tribes over and above state needs. Like the March 2 editorial in the Havre Daily News by Corey Swanson, a former member of the state attorney general's office and now Broadwater County attorney, Mr. Fagg also absurdly claims that the CSKT Compact represents "conservative", "republican" values and that "federalism" requires that Congress just pass the CSKT Compact as is, without review. While we don't know of Mr. Fagg's position before the compact was passed by the legislature, Mr. Swanson was "against the compact before he was for it", claiming initially it was a water grab. Now he's for the compact even though it is still a water grab-- because taking all the water in western Montana, and giving it to the tribes, will avoid environmental lawsuits. Did the state use its citizens water rights as collateral to avoid environmental lawsuits?

Neutral?

The third type of candidate—at both state and federal levels—says nothing. These candidates may either not know about the compact or are remaining "neutral" in order to get elected. Some may believe that any stance against or for the compact will "trigger Tribal funding" of their opponents. The reality is that the Tribes already have their money in the senatorial race and are hedging their bets. Their preferred candidates are Jon Tester or Russ Fagg, as both have promised to quickly introduce the compact to congress and get it passed. Whether it takes courage to remain silent on the most critical issue to affect Montana in its history, or whether it is fear of addressing hard issues, remains a question for these candidates. In the meantime, the silent candidates don't, can't, or won't be able to address the serious concerns of Montanans and may be less aware of them at the D.C. level if they get there.

Principle above Politics

Finally, the fourth type of candidate, represented by Dr. Al Olszewski, U.S. Senate candidate, takes a public stand against the CSKT Compact based on the factual violations of federal and state law in the compact, and the detrimental impact of the Compact to private property rights and property values across western and eastern Montana. These candidates are concerned about the huge outlier the CSKT Compact is in comparison to the other compacts in Montana, the most recent being the Blackfeet compact. These candidates note factually that in the CSKT Compact, Montana's water is given to the federal government, and that Tribal members are not well-served by this compact. These candidates also realize how Montana's legislative process and duty to its citizens was compromised by the state's "tribalism", and how strict adherence to the Constitutions would have obligated legislators to vote against the compact. A candidate like Dr. Olszewski is more likely to enter the U.S. Senate with an idea of how this CSKT Compact must be reformed and brought into compliance with federal law and other Indian water settlements, rather than rushing to submit it as a bill right away. Dr. Olszewski is not likely to shy away from difficult issues like the Compact and with this knowledge, can serve all of Montana's citizens including Tribal members disaffected by it.

We reiterate that the CSKT Compact really had nothing to do with the resolution of the federal reserved water rights of the CSKT---it was a document intended to set precedent, not solve problems. In my view, supporting the CSKT Compact now means the following: (1) supporting the legislature skirting the Montana and US Constitutions, thus violating their oath of office; (2) giving Montana's water, and authority over it, to the federal government; (3) supporting tribalism; and

(4) supporting the devaluing of Montana's property rights. The blind support offered to the compact by so many politicians, including Senator Steve Daines, spells trouble for Montana. By law, the state will not get another chance to review this compact after Congressional review and approval.

We ask Montanan's to make an informed decision in the primaries and the general election. Doing your own research will confirm the many issues presented in this letter. And we ask the politicians to stop thinking about their election and re-election and start working for the people of Montana.

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