

MONTANA: When the State Stood Tall for Its People and Its Lands.

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There was a time when the Montana legislature was at the forefront of environmental policy, state sovereign authority and diligent protection of the rights of Montana citizens. Look at this interesting time line of events from 1970 through 1981 when Montana legislators were taking excellent care of their State and citizens:

- 1970 National Environmental Policy Act (NEPA).** This federal mandate requires assessment and analysis for all significant projects affecting the environment, across the country.
- 1971 Montana Environmental Policy Act (MEPA).** Farsighted legislators passed, 99-0, a state mandate, MEPA, requiring assessment and analysis for all significant projects affecting the environment. MEPA stepped up the “spirit” and strength of the federal act, NEPA, and significantly expanded the public right to participate in government decisions. Perhaps now we better understand why both of these environmental mandates have been avoided at all costs. The proposed CSKT Compact is in direct violation of NEPA, MEPA, and the Administrative Procedures Act of 1946, requiring due process and a remedy for grievances against government decisions. MEPA was preparatory to the development of a new Constitution for the State of Montana, adopted in 1973.
- 1973 Montana State Constitution.** Legislators adopted a Constitution that incorporated the intent of MEPA into Article IX of the new Constitution, and additionally provided Montanans with 35 enumerated rights in Article II, including popular sovereignty, the right of participation, and the right of self-government.
- 1975 Indian Education and Self-Determination Act** (Public Law 93-638) provided tribes with the right to *self*-government and management of their own federal funds through contracted services. Unfortunately, many tribes ignored the critical word prefix *self* in **self**-determination and took actions toward asserting tribal government authorities to tax and govern non-tribal persons and properties.
- 1981 Montana v. U.S. 450 U.S. 544.** In 1973 the Crow Tribe attempted to assert its jurisdictional authority over non-tribal lands and persons. The State of Montana argued valiantly for many years to protect Montana citizens, and obtained the ruling in *Montana v. U.S.* that continues to be a landmark Supreme Court case protecting citizens in Montana and across the country from tribal governance over non tribal persons and lands.

Throughout the 1970s and into the 1980s the Montana governors and state legislators were diligently protecting state sovereign authority, state natural resources and the individual rights of Montanans. So what happened between 1981 and 2015?

Then came the emerging coalition of the following: 1) increased federal Executive Branch overreaching; 2) significantly increased tribal government political influence; and national and international environmental NGOs. This cumulative political and financial power has had oppressive and intimidating success among elected officials at every level of state governments and academia in Montana and across the country.

What will be the end result of the CSKT Compact? Unfortunately, Congressional ratification of the CSKT Compact would clearly violate the U.S. Constitution, the Montana Constitution, the National Environmental Policy Act (NEPA), and the Montana Environmental Policy Act (MEPA). Most notably, the Compact is not mere administrative legislation eligible for exemption or categorical exclusion from mandates of NEPA and MEPA. The Compact transfers title, authority, jurisdictional management and movement, redirection and reallocation of waters flowing through 30,000 square miles within 11 counties. The human and natural environment impacts are not negligible; the impacts are profound and perpetual. Land use and livelihoods throughout Western Montana are at severe risk, absent an environmental impact statement (EIS) inclusive of a full economic study.

Another irony: Passage of the Compact will also overturn hard-fought protections from tribal governance over non-members in 1981 Supreme Court case of *Montana v. U.S.* for Montana citizens; however, the rest of the country will remain protected by this Landmark ruling of the High Court because the ruling protects citizens from tribal governance absent their individual *consent*. The Compact legislatively removes individual citizen *consent* for some 350,000 Montana citizens in 11 counties that will be subject to tribal government control of their water, their water rates, and water-dependent land use.

The Compact is not just about water. It is also about whether to respect the Rule of Law as noted above. Our federal and state Constitutions matter, or they don't. Our federal and state environmental mandates matter, or they don't. Supreme Court rulings matter or they don't.

A victorious CSKT Compact opens the door for the federal government and tribal governments to ***fundamentally transform*** Montana something far unlike the proud State that had been at the forefront of environmental protection and property right protection since the 1970s.