

# [New post] FJBC Issues Press Release 08/17/16

Saturday, September 17, 2016  
8:32 PM

Subject	<b>[New post] FJBC Issues Press Release 08/17/16</b>
From	<a href="#">Western Montana Water Rights</a>
To	jacksranch@freedomforallseasons.org
Sent	Wednesday, August 17, 2016 12:59 PM

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New post on **Western Montana Water Rights**



## **[FJBC Issues Press Release 08/17/16](#)**

by [icthe4est](#)

On July 18, 2016, Lake County District Court Judge James Manley issued his Order on Motions for Summary Judgment in Flathead Joint Board of Control et al v. State of Montana et al., Lake County Cause No. DV-15-73 declaring SB 262 unconstitutional and in violation of Art. II, Section 18 of the Montana Constitution. Based on the clear language of one of the Compact's immunity provisions precluding any legal action against the State or its agents for damages resulting from wrongful actions by the State, the Court granted the FJBC's partial motion for summary judgment stating "[t]his is not a close call. The provision creates a new sovereign immunity for the state, and for its agents or employees."

The opinion found that "...[t]he legislative history provides clear evidence that immunity was, in fact, the purpose of the immunity language." "SB 262 grants a new immunity to the State and its agents. The immunity provisions of SB 262 would therefore constitute an amendment of this constitutional provision, and require a 2/3 vote of each house of the legislature. It did not receive a 2/3 vote of either legislative body. Therefore, the immunity provision is void for failure of passage as required by Article II, Section 18." Although the Court determined that the unconstitutional provision could be severed from the remainder of SB 262, the FJBC maintains that the resulting mutilation of the statute in contravention of the Legislature's clear intent should void SB 262 in its entirety.

The FJBC's concerns regarding immunity are heightened by the amorphous nature of the Water Management Board created by SB 262.

While the Court provided no ruling regarding the validity of the Water Management Board created by SB 262, it did scrutinize the State and Tribes' refusal to accept responsibility for the Board's actions thereby affirming the FJBC's concerns. "The Board is comprised of state and tribal appointees, and their appointee. The governments contend both that it is not a subdivision of the sovereign state or tribal government, but is clothed with all or more of the immunity which either entity has. Each government denies legal responsibility for the Board, while the two governments create and effectively control the Board by holding the power to appoint and remove its members. This Board is a legal creature never apparently seen before. The Compact and SB 262 vest the Board with extraordinary power to grant, permit, deny or change water use for an individual, and create groundwater protection areas. It will have power over a broad geographic area and over tribal and non-tribal individuals, property owners, irrigators, businesses and governments."

As expressed in the Order, the FJBC's concerns are further exacerbated by the Tribes and State's diametrically opposed positions regarding whether or not the Water Management Board can actually be sued in state court for money damages. The State contends it can while the Tribes contend it cannot. The State and Tribes' refusal to accept responsibility for the Board's actions and their differing opinions regarding whether an avenue for legal redress exists for irrigators supports the FJBC's continued efforts to assure the protection of its constituents' constitutional rights. The FJBC is reviewing the opinion and is considering its options going forward.

Note: For more information, visit the FJBC's website at [this link](#).

[icthe4est](#) | August 17, 2016 at 12:59 pm | Categories: [Accountability](#), [Agriculture and Ranching](#), [Compact](#), [Court action](#), [FJBC v Montana](#), [Flathead Irrigation and Power Project](#), [Flathead Joint Board of Control](#), [Immunity](#), [Leadership](#), [Legislature](#), [Litigation](#), [Montana Constitutional violations](#), [Property rights](#), [Proposed CSKT Compact](#), [representation](#), [State law](#), [Unitary Management Ordinance](#) | URL:

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