

## Living in Indian Country in the 21<sup>st</sup> Century

THOUGHTS: A little humor to begin – supposed to do GF in August but fire evacuation screwed that up, it would have been a trial run for September Pachyderms but now you are the guinea pigs.

GF had asked me to come to speak about the Water Compact because they recognize that, although they too could be affected by it, they are not as well-informed about it as we are over here in Lake County. While the Water Compact is critically important, there seems to be a well-orchestrated, broader-based assault upon non-tribal members living in Indian Country. So I decided to expand the scope of this presentation to shed some light upon additional issues that have been cropping up in Lake County on a regular basis lately.

1. Water Compact
2. PL 280
3. Renewal of the Tribal Gas Tax agreement
4. Kerr Dam ownership transfer
5. Request for annexation of tribal trust land into the City of Polson which needs to be considered separately from ...
6. Intent of CSKT to build a new casino complex in Lake County
7. Bitcoin mining facility plans
8. Mission Valley Power temporarily delaying new service installations for six months

Before beginning I need to make it abundantly clear that I believe that if we could get our respective governments out of the way, Native Americans and non-tribal citizens of Montana could get along just fine. I have lived here for 30 years and, while I have had only excellent interactions with individual tribal members, I have been appalled at the CSKT tribal government's continuing efforts to squeeze as much money as it can out of our Federal government, our State government and our County government with little benefit for the individual CSKT tribal member. The machinations of our two governments actually perpetuate a sense of discord between tribal and non-tribal people. The government gives an incredible amount of money to the tribe and that does not occur without corresponding detriment of some kind to non-tribal citizens. The more that is given, the more the likelihood of resentment and discord. This slide gives a picture of the Federal

monies that have gone to the CSKT between 2012 and 2021. Please note that some of these expenditures were for purchased goods and services and these would not be examples of distribution that necessarily resulted in detriment to non-tribal citizens. We will come back to this slide again later.

Since the 18<sup>th</sup> century the relationships between the United States Government, Native Americans and non-tribal U.S. citizens have undergone many iterations; at different times being friendly and congenial, hostile and authoritarian, violent and angry, resentful and withdrawn, benevolent and trustworthy, misleading and corrupt. All of these terms, the good and the bad, can be attributed to all the players in this drama. We are now living in the 21<sup>st</sup> century and despite all of the advancements of a highly technological society and the conveniences and improvements to our lives that they bring, we cannot seem to create a shared culture that promotes and protects “life, liberty and the pursuit of happiness” for all. It seems that in the 21<sup>st</sup> century the U.S. finds itself repeatedly attempting to appease recognized Native American tribes, of which there are 574, and the level of appeasement is rising to such a degree that it is infringing upon the rights of non-tribal American citizens. The demands placed by the tribes upon US government at all levels, municipal, state and federal, are increasing both in frequency and in magnitude. It is time to say, “Enough!”

Let’s start with some data about the reservations in Montana. There are seven reservations and one tribal headquarters in Montana.

Blackfeet - The reservation is home to 56% of enrolled tribal members and is the largest Indian population in Montana. The economy is primarily agriculture and the principal crops are wheat, barley and hay. There is also one significant manufacturing enterprise that produces pens, pencils and markers.

Crow – There are vast coal deposits under the eastern portion of the reservation and one mine is now in operation, providing royalty income and employment to tribal members. The Crow operate only a small portion of their irrigated or dry farm acreage and about 30% of their grazing land. They maintain a buffalo herd of 300 head.

Flathead – The principal sources of income for the tribe are from its timber industry and revenue paid from the Kerr Dam. The CSKT has a number of high tech companies which generate considerable income, as well as casinos.

Fort Belknap – The BIA and the tribe are the major employers on the reservation. The Little Rockies Meat Packing company is the first tribally-owned, USDA-inspected meat packing facility in the U.S. The major industry is agriculture, cattle ranches and alfalfa hay producers.

Fort Peck - A prosperous industrial park in Poplar is one of the largest employers in Montana. A variety of enterprises, including metal fabrication and production sewing, are housed here. Other industries, including an electronics manufacturer, flourish on the reservation. Farming, ranching and oil extraction also play a part in the reservation economy.

Northern Cheyenne – Major employers include an Indian School, the federal government, tribal government, power companies and construction companies. The education system, farming, ranching and small businesses contribute to the economy.

Rocky Boy's - Rocky Boy's residents who work on the reservation are employed by the schools, Bureau of Indian Affairs, Indian Health Service and tribal government. There is also some wheat farming and post and pole production. The tribe is actively working toward development of its natural resources to be able to provide more jobs and income for its people.

Little Shell Tribe of Chippewa Indians Tribal Headquarters – In December 2019 President Trump signed the National Defense Authorization Act for 2020, which is basically the budgetary mechanism for the DOD and is signed into law each year. Tucked into this Act was federal recognition of the Little Shell Chippewa Tribe, making it the 574<sup>th</sup> federally recognized tribe in the U.S. Why was it tucked into the defense budget? Because Daines and Tester had failed to get the Senate to approve federal recognition of this tribe and so, much like the Daines Water Confiscation Act, it was tucked into an entirely unrelated bill that was so big and ordinary, that it was guaranteed to pass with little notice. I have no issue with the recognition of the tribe, but the deliberate camouflaging of the action within a totally unrelated Act is disturbing.

This brief overview of Montana's reservations clearly points out a significant disparity in the economic health of the CSKT reservation and all other Montana reservations. CSKT has been extremely successful with their investments in the technology industry. They have also capitalized on the natural resources on the

reservation and they have invested in the gaming/hospitality industry. I applaud their ambition and success. But at what point does the magnitude of their financial success make them no longer eligible for financial aid from the American taxpayer? When will the CSKT contribute consistently and substantively to the well-being of Lake County and all of its citizens?

The relentless grasping of the CSKT tribal government for every dollar it can possibly squeeze out of our County, State and Federal governments to the detriment of Lake County citizens is typified by the Water Compact. Non-tribal residents of Montana were essentially thrown under the bus by our State legislature and finally by Daines and Tester. These two Senators took the Compact that the State legislature had ratified and expanded it to include things that have nothing to do with water (Bison Range and landswap) and everything to do with appeasement and pandering to the CSKT. Then, after being unable to garner the votes necessary in the Senate for a stand-alone bill, they tacked it into the COVID Relief Bill. Are either of these two senators able to get bills that they sponsor ratified in a legitimate manner or do they always tack them onto something else that will receive little scrutiny?

We need to talk about the 10,000 off-reservation claims. This seems to be an incredible overreach. Those off-reservation claims were used as a weapon when the first Water Compact went through our State legislature: Using the typical “to avoid litigation” argument, the Tribal Government and its attorneys said that, if the Water Compact was approved, they would drop the off-reservation claims. This was a helpful argument in getting the legislators on the east side to vote in favor of the Compact. And when promoting and praising the Daines’ bill, it was verbally stated that the off-reservation claims had been relinquished. However, we need to look closely at the language used when the relinquishment of claims is addressed in the Daines bill: ----- how do these affect the other reservations?

This slide compares the amount of water governed in all of the Compacts in Montana. The first piece of data to note is the populations within reservation boundaries that are affected by the compacts. Just looking through this data and comparing the CSKT water compact with the other reservations is a real wake-up call!

Speaking as a Lake County property owner who does not irrigate and who lives outside the boundaries of the reservation, I have concerns about how this bill will affect my property. As have many of you, I received the letter from the water court. I intend to file an objection and to use legal assistance to assure that it is done correctly so it isn't "disregarded". I will do this because, quite frankly, I don't believe there is anyone who has been involved in this process who is looking out for my rights as a property owner.

I encourage everyone here today to attend one of the Save Your Water Rights meetings that will be held in Ronan on Sept 21st, Oct 5<sup>th</sup> and Oct 19<sup>th</sup> for the opportunity to learn how you can protect your water rights from this potential theft.

Let's take a look at some of the other issues that make living in the Indian Country known as Lake County interesting and challenging.

Public Law 280 has its pros and cons and people who feel very strongly one way or another about its effects upon Lake County from the overcrowded jail to the high costs of administration of the Law. The issue has become so economically impactful to the county that the County Commissioners filed a lawsuit against the State in July to recoup millions of dollars of expenditures that the county has expended to administer PL 280. The tribe wants PL 280 to remain in force and does not want the County to choose to withdraw, which the county has the right to do. Will the State step up and meet its obligation for funding or will the State choose, once again, to throw Lake County taxpayers under the bus? This State issue is somewhat akin to a National issue: the southern border crisis. A lot of talk and no action for years by the respective legislatures, governments (State, Federal) that are ignoring duties to citizens, and messes left for local citizens to deal with.

Renewal of Tribal Gas Tax Agreement: Tracy Sharp did a fantastic job researching and reporting on the CSKT Tribal Gas Agreement which is being reviewed for another 10-year renewal this year. The agreement (agreements actually because there are agreements on each of the seven reservations but they are all specific to each reservation) was established because tribal members are exempt from State excise tax on fuel and superficially the agreements define a method to return those State taxes collected from tribal members. I say superficially

because the language in the CSKT agreement does not actually refer to refunding taxes to the people who shouldn't have been charged in the first place; it specifically defines that the remittance from the state will be made to the "Tribe". Furthermore, language in the agreement defines the general purpose of the agreement to be: (quote) To avoid legal controversy and possible litigation of the taxation of gasoline within the exterior boundaries of the Flathead Indian Reservation, to avoid dual taxation of gasoline by both the Tribe and the State, to ensure that the same level of taxation is imposed on distribution of gasoline both within and outside the boundaries of the Reservation, and to provide an effective means by which revenues generated by the state and tribal taxes on gasoline may be shared and distributed. The Tribe agrees it will not participate in any litigation challenging state taxation of gasoline motor fuels on the Reservation for so long as payment are made hereunder. (end quote) Today's technology is such that a simple solution to the problem could be developed so that when a tribal member purchases gasoline within the boundaries of the Reservation the tax would be waived. That would likely be objected to by the Tribal government because as it stands now, the tax money that shouldn't have been collected in the first place goes into the coffers of Tribal government, not back to the tribal members. The tribe has the right to impose a tribal tax on fuel upon its members and effectively this agreement provides a mechanism for it to do just that, using the State as its administrator for the tax. The agreement is cumbersome and ripe for corruption. It will most likely be renewed for another 10-year period because of the State's fear of the threat of litigation.

Purchase of Kerr Dam: The Kerr Dam revenue to CSKT was \$9mil annually through a co-license with Montana PPL until the tribe purchased the dam for \$18.3 mill in 2015. The CSKT became the first tribe in the U.S. to own a major hydroelectric facility. Prior to the purchase the tribe paid PILT (payment in lieu of taxes) of \$1mil annually to Lake County, however upon purchasing the dam the tribe now declines to pay any PILT – a huge loss for Lake County.

Request for annexation of trust land into the City of Polson: A recent development is the request by CSKT to have 79 acres along Hwy 93 annexed into the City of Polson. The purpose of the annexation is for the development of a casino, an entertainment center and housing. The impact of such a facility on the already over-burdened Hwy 93 is of great concern to residents and the City wisely

tabled the request while further information is gathered. This request was made to the City with a carrot and a stick: CSKT would contribute funds to help mitigate the cost of developing infrastructure to the acreage (carrot) and if the annexation is not approved they would continue with the development anyway (stick). I posit that the motivation for requesting annexation was purely driven by economics and convenience: if the CSKT proceeds without annexation the level of scrutiny by many federal alphabet agencies could be very costly and delay the project considerably. Annexation provides great cover for a project of questionable value to anyone other than CSKT.

Development of new casino in Polson: This needs to be considered separately from the annexation request because the spokespeople for the CSKT have made it very clear that their intention is to proceed with or without annexation. Do the citizens of Polson and Lake County want a mega-casino facility burdening their already stretched law enforcement and fire services? What would be the benefits of such a facility to the citizens of Polson and Lake County? The citizens will have very little influence once the tribe decides to proceed.

Bitcoin mining facility: In June with a big splash Gov Gianforte announced preliminary plans for the construction of a bitcoin mining facility in Polson. Collaboration between the CSKT and Bitzero could result in the establishment of a 50 megawatt data center using hydroelectric power from Kerr Dam. There has been no further information about where the facility would be located or how many jobs it would provide. The details are very sketchy and we need to keep a close eye on this for many reasons.

MVP recently announced on its Facebook page a plan to temporarily delay new service installations for six months. Mission Valley Power is a federally-owned (BIA) electric utility, operated and maintained by the CSKT.

Between Kerr Dam, the water compact and the fact that the tribe controls our electricity in Lake County, all Lake County citizens are vulnerable. It seems monopolistic to me that CSKT has absolute control over our utilities. Can anyone explain to me why that isn't a dangerous or vulnerable situation?

Living in Indian Country in the 21<sup>st</sup> Century has its challenges for all parties – tribal and non-tribal. The conundrum for all of us in Lake County is that the CSKT tribal government insists upon behaving somewhat schizophrenically: it appears that

they want to abide by treaties that have either expired or have been replaced by other treaties and agreements, or otherwise made invalid. At the same time they wish to be sovereign, independent of the responsibilities that fall to non-tribal US citizens. Their demands upon the State, County and Federal governments for financial support and services continues unabated. The victimhood flag raised by tribal governments on behalf of all tribal members has become quite tattered and worn out. Whatever the primary driver of the entrepreneurial success of the CSKT, it is time to acknowledge their success and let them be independent and self-sufficient and wean them from the government teat. Federal Indian Policy is a millstone around the necks of all citizens, tribal and non-tribal alike. It encourages dependence by tribal members upon the governments and it compromises the constitutional rights and protections of non-tribal members. It is well past time that every American citizen should be treated lawfully and equally.

What do we need to do? First, we must open our eyes and admit that we have a problem. Much of what we face today is the result of willful ignorance about the relationship between Native Americans and non-tribal citizens. It should not be romanticized, it should not be demonized, rather it should be viewed pragmatically and dispassionately. In a perfect world, all people could get along but we sure don't live in a perfect world right now. We need to hold our elected representatives accountable to ALL citizens. They cannot be allowed to favor one group over another: not Native Americans, not black Americans, not foreign-born Americans, not women, not men, ALL Americans must be treated equally and their inalienable rights must be sacrosanct. If our elected reps cannot seem to manage this because they are influenced by money or power or coercion or whatever gets their attention at any given moment, then they need to be voted OUT! We need to be knowledgeable about legislation BEFORE it is passed -- more knowledgeable even than our reps who often do not read bills before voting on them. On a micro level here in Lake County, we need to be well-informed about issues being considered by our governments, municipal and county and state, so we can offer input before decisions are final. Much of what we are dealing with today is a result of the average citizen just sitting back and waiting for decisions to be made, bills to be introduced and laws to be passed and then dealing with the results later – sometimes within a year, sometimes five or ten years out. We are



dangerously close to having an untenable financial situation in Lake County – will Lake County still exist five years from now? Will we be living side-by-side with our native brothers and sisters, sharing water and other resources, sharing equally the financial responsibilities that a county bears, living the good life here in God's country? Or will we still be dealing with attempts to squeeze non-tribal folks out of Lake County? Or could Lake County possibly be dissolved and absorbed into Flathead and Missoula counties? I don't have a crystal ball so I cannot predict. I will tell you this I will be working to protect my land, my water, my home, my life from whatever threatens my rights as an American citizen from all enemies, foreign and domestic! And I hope that you will join me!