Something Wicked This Way Cometh!

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There's an enormous threat to the farming and cattle ranching community coming to the western states. One need only to review **S.3019**, intentionally and deceitfully titled "*Montana Water Protection Act*," look find answers to these two questions:

Q: What are the benefits for the State of Montana? A: There are none.

Q: What protections and provisions are provided for residents of Montana (i.e. farmers, cattlemen, municipalities, et al)? A: There are none.

A "compact" is customarily an agreement between two or more governmental entities with reciprocal benefits for all parties. S.3019 has absolutely **no** mutual benefits for the State of Montana as a signatory. This "compact" is **not** an agreement, and it does not provide benefits and protections for all signatories. It is an outright *surrender* document, gifting to the Confederated Salish and Kootenai Tribes of the Flathead Reservation Montana State waters, $55 million Montana tax dollars, $1.9 billion federal tax dollars, and a National Bison Range thrown in as a bonus.

Below are the recently identified ten major legal flaws of the *Montana Water Protection Act*, identified as the principle beliefs of Montana Senators Steve Daines and Jon Tester. And surprise, surprise! Both Senators Daines and Tester are seated on the Senate Committee on Indian Affairs. S.3019 reflects their shift away from their Oath of Office to supporting tribal sovereignty over the sovereignty of Montana and the people they were elected to serve.

The policies and beliefs defined in S.3019 are also supported by Montana Governor Steven Bullock, Attorney General Tim Fox, and a majority of the Montana Legislature. All of these elected officials have completely abandoned the state protections of Montana residents living in eleven counties of western Montana. Below are the major flaws of the proposed *Montana Water Protection Act* with a few supportive examples affirming that the proposed Act is entirely illegal:

1. S.3019 violates three Constitutions: The United States Constitution, the Montana State Constitution and the CSKT Tribal Constitution. It is premised upon the "*Aboriginal Rights*" of the CSKT. Such rights pre-date the existence of the United States as a country and a government; *Aboriginal Rights* render the existence of the United States and its rule of law as secondary - or entirely irrelevant and inferior - to unlawful *Aboriginal Rights*.

2. The Montana State Constitution is Flexible. S.3019 tramples upon Article II and Article IX of the Montana State Constitution by removing the popular sovereignty and inalienable rights of Montana citizens, taking water rights attached to property deeds and transferring off-reservation Montana waters to federal "trust" for one Indian tribe. Article IX requires "a clean and healthful environment in Montana for present and future generations." Water is livelihood, or the lack of livelihood on land. Transferring authority over Montana waters to an Indian tribe that has no duty to Montana landowners is abhorrent.

3. The CSKT Tribal Constitution is Insignificant. Article VI of the CSKT Constitution declares that the Tribal Council's powers and duties are subject to any limitations imposed by Statutes of the Constitution of the United States. (See U.S. Constitution above). Further, Article VII of the Tribal Constitution provides a Bill of Rights that is substantially violated on behalf of enrolled tribal member landowners and irrigators within the Flathead Reservation, among other Tribal Constitution violations.

4. The U.S. Supreme Court Rulings on Water Should Be Ignored. The *Winters Doctrine* of 1908 is a fair and just commitment to always providing adequate water for all tribal lands, people and enterprises. The *Winters Doctrine* excludes off-reservation waters from tribal authority. The

1981 *Montana v. U.S.* ruling provides that tribal governments have no authority over non-tribal persons or properties, absent a person's consent. The 2013 ruling in *Tarrant v. Herrmann* unanimously asserted that *"States have the absolute authority over all navigable waters within lands ceded to a state upon statehood."* These are but a few of the very powerful U.S. Supreme Court rulings utterly ignored by the federal government, State of Montana and CSKT Tribe.

5. S.3019 presumes that Tribal Sovereignty Is Superior to and More Precious than State Sovereignty. Two major tribal privileges have caused elected officials of the State of Montana to elevate tribal sovereignty over State sovereignty: 1) tribal governments directly finance incumbents and candidates. No other American governments may do so. 2) Indian reservations place polling precincts on federal "trust" land, where the Secretary of State has no access or enforcement authority and cannot ensure fair election practices. Elected officials benefitting from these two egregious election conditions (money and questionable tribal votes) are loath to require the Montana Legislature to end these practices. Consequently, Montana elected officials say "Yes" to every tribal whim, even to the direct harm of state sovereignty and the protection of Montana citizens.

6. The Federal Government, State and Tribe Must Steal Water Rights Attached to Private Property Deeds. The entire ability to implement the proposed *Montana Water Rights Protection Act* is contingent upon surreptitious and nefarious removal of private water rights, and illegally transferring such rights to the federal government on behalf of a tribe. This is outright theft - absolute unadulterated theft of a water right without compensation, and instrumental to the success of the Act. And somehow Senators Daines and Tester, Governor Bullock and their minions believe that such a travesty is a justified harm to Montana residents.

7. A Montana Senator's Oath of Office Must Prioritize Tribalism. The Federal Government has a "trust" relationship with Indian tribes. States do not, unless they intentionally self-impose a State "trust" relationship with Indian tribes. Montana did exactly that a couple of decades ago.

See Item 5 above (candidate funding and questionable votes) to fully understand why Montana elected officials either cooperate with tribes or get taken out of office.

8. A Territorial War Power Against the State of Montana is the Right Way to Implement a Tribal Water Compact. On Page 2 of Enrolled **Senate Bill 262**, passed by the Montana Legislature in 2015, is the following: "The Secretary of Interior…has authority to execute this Compact…pursuant to 43 U.S.C. 1457…" This statute is a Territorial War Power that may be applied in federal territories, but **never** against a state. Montana elected officials either naively or intentionally agreed to this travesty. And there has been no discussion or action by state officials since to protect state sovereign authority specific to this Compact.

9. Montana State Legislature is Subservient to a Senator's Decisions. Montana Legislature's bill, **S.B 262** was first wrapped into and substantially amplified in Senator Tester's Compact Bill **S.3013**, the *Salish and Kootenai Water Rights Settlement Act of 2016*, and later in S.3019, expanding tribal authority over Montana waters and adding multi-millions to the Compact, beyond what the Montana Legislature approved. Senators Daines and Tester overruled and exceeded the decisions of the Montana legislature, with no complaint from Montana elected officials. Fortunately, Tester's S.3103 died in a Senate Committee in the last (114tht) Congress. But it has now been significantly expanded in S.3019 by Senator Daines and/or Tester.

10. Montana Waters Should Rightfully Be Owned and Managed by the Federal Government. The proposed CSKT Compact transfers the state's authority over its waters in eleven western counties to the federal government, to be held in "trust" for a single Indian tribe. Should S.3019 be ratified by Congress, all other Montana Indian tribes will demand the same water benefits as the CSKT tribe. The end result will transfer all Montana waters to the federal government to be managed on behalf of Indian tribes in Montana.

This is, of course, a horror story for the State of Montana, but it gets worse. Should this unique and highly illegal tribal water compact become law, the precedent will be set for **all** tribes in their respective states to roll out the same demands. The Federal government is using tribes as willing pawns to federalize the waters of the western states, and the proposed *Montana Water Protection Act* is the model – the pilot project to accomplish this goal.

Water is life on the land. Unless state elected officials resume their duty to protect their state authorities and resources, the federal government and the tribes have smooth road ahead for dismantling the balance of power between the states and the federal government. And tribal

financing of elected officials is greasing the skids to get this done, with a willing and continuously overreaching federal government.