

Ravalli County Commissioners Office

From: Verdell Jackson <vjack@centurytel.net>
Sent: Friday, December 26, 2014 4:08 PM
To: Ravalli County Commissioners Office
Subject: Hell Gate Treaty Analysis

Please give a copy to each County Commissioner.

Hell Gate Treaty Forbids Off Reservation Water Rights Contained in CSKT Water Compact

The claim of the Confederated Salish Kootenai Tribes (CSKT) for off reservation water rights on rivers in the CSKT Compact is based on the 1855 Hell Gate Treaty, Article III: "The exclusive right of taking fish in all the streams running through or bordering said reservation is further secured to said Indians; as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."

Note that the statement "right to take fish in common with the citizens of the Territory" is **not a water right**; otherwise Montana citizens could get a water right to protect their favorite place to fish. The Indian right is in common with the citizens of the Territory. These subsistence rights which show up in some treaties are given only to tribes known to be peaceful. A subsistence life style was common among both Indians and the citizens of the territory 159 years ago, but now government programs and fast food restaurants take the place of self sufficiency. Article III also gives Indians the right in common with citizens of the United States to travel upon all public highways and provides the right of public convenience roads being built on the reservation. Article III is a doctrine of public use of land on and off the reservation and **cannot** be legitimately stretched to include a stream flow water rights for the CSKT. The Hell Gate Treaty is very specific and easy to understand and does not mention water or water right.

Article I of the treaty also makes it very clear that the CSKT **cannot** be granted off Reservation water rights based on the right to hunt and fish on their aboriginal land: the CSKT "hereby cede, relinquish, and convey to the United States all their right, title, and interest in and to the country occupied or claimed by them..." Note that the words cede, relinquish and convey and the words right, title, and interest were all used to make sure everyone understood that aboriginal rights were given up.

Article II established the Reservation: "reserved from the lands above ceded, for the use and occupation of the said confederated tribes..."

Article IV through VII pays CSKT for the cession: "In consideration of the above cession, the United States agrees to pay to the Confederated tribes of Indians, in addition to the goods and provisions distributed to them at the time of signing this treaty..." Cash payments were required and basic infrastructure such as a school, black-smith shop, saw mill, and a flouring mill were to be built and maintained for a period of 20 years. The Federal Government paid CSKT for ceding their aboriginal land!

Article VIII states: "The confederated tribes of Indians acknowledge their dependence upon the Government of the United States, and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens." Off Reservation CSKT stream water rights are a blatant violation of article VIII. Irrigated land that is subject to a water call by the CSKT (ordered to stop using water) is greatly depreciated in value because of the uncertainty. Irrigators are few in number, but they are the people who grow our food and make up the major part of our economy in western Montana.

Off-reservation stream water rights by CSKT are forbidden by the Hell Gate treaty and **do not** meet the definition of a federal reserved water right which by law is restricted to reservation land. No off reservation water rights on stream flows have been previously awarded in a compact or in case law in Montana or any other state. In addition, the minimum flows **are not based** on a "survival of fish standard" and the water rights have

a time immemorial priority date which is senior to everyone including the State of Montana. How could anyone who has taken an oath to uphold the US and Montana Constitutions support giving a political tribal council of a sovereign nation authority over rivers that affect 330,000 people in 11 counties in Western Montana?

Senator Verdell Jackson, Kalispell