

Beware of the "work-around" gang's goals and motives

Thursday, July 24, 2014, 1:21:21 PM | www.westernagreporter.com (Western Ag Reporter)

By Catherine Vandemoer, Ph.D.

The Flathead Irrigation & Power Project (FIPP) was conceived of in 1908 to benefit all the residents of the Congressionally-opened Flathead Indian Reservation, Indian and non-Indian alike. In support of this plan, the United States appropriated or reserved water under state law from nearly all of the Flathead River and contemplated storage behind a dam (now Kerr Dam) for the purpose of making sure the irrigation project was a success. By 1926, 80% of the irrigable land under the FIPP was owned by the non-Indian settlers who had been invited by the United States to settle on the Flathead Indian Reservation and who purchased land from individual Indians or homesteaded other parcels under the public land laws of the United States.

The power part of the FIPP contemplated using the valuable irrigation water rights appropriated by the United States under state law to generate electrical power for reservation and regional development. In exchange for the use of those water rights, the irrigation districts were given a low cost block of power. All the way around, the FIPP has been a success, irrigating approximately 130,000 acres of land which generates more than \$80 million for the local economy, not to mention contributing to the tax base of Lake, Sanders, and Missoula Counties through taxes on 90% of the privately held land base within the irrigation project.

Congress directed that, once the construction costs of the FIPP were paid, the project would be transferred to the owners of the irrigated land. The FIPP was fully paid off in the year 2003, and by law, the project is to be transferred to the owners of the irrigated land, now 90% non-Indian. Once the project is transferred, it no longer has a "federal" imprint.

Previous Tribal efforts to lawfully take over the FIPP have been rejected by the United States. In 2007, the Tribes sought to have the control of the FIPP turned over to them under a federal self-determination law which provides that federal projects "built for the benefit of Indians because of their status as Indians" could be managed by Indians. However, the United States rejected the Tribes' argument based on analysis of the Treaty of Hellgate, the 1904 Flathead Allotment Act, and the 1908 Amendment to the FAA.

Enter the proposed water compact with the Confederated Salish and Kootenai Tribes (CSKT). Both the Treaty of Hellgate (Article VI) and the Flathead Allotment Act of 1904 authorized the sale of surplus land on the reservation for the Tribes' benefit once all the individual Indian allotments were given (without cost) to the Indians who availed themselves of this opportunity. The proposed CSKT Compact, however, requires irrigators to give up their water rights to the ownership of the Tribes in exchange for a reduced amount of water far lower than historic use. This plan was ruled an unconstitutional taking of property rights without compensation by a District Court Judge in February 2013.

Moreover, both the proposed Compact and the recently-filed CSKT lawsuit challenging federal land laws have as their goal the complete takeover, ownership, and eventual decommissioning of the FIIP. There are more than 2,000 families, including Indians, which are the target of these aggressive efforts. The Tribes' lawsuit claims that ALL the privately-held fee land on the reservation, and within the irrigation project, belongs to the Tribes.

In effect, the proposed Compact is a "work around" to the "inconvenient" laws of the United States that have rejected the Tribes' transparent effort to destroy the FIPP. What is more stunning is that the Compact Commission bought the Tribes' argument hook, line, and sinker and, on behalf of the Tribes, directed the irrigation districts to turn over their water rights to the Tribes as part of the Compact. So despite the Compact Commission's claim to "protect irrigators," it is, in fact, doing the Tribes' bidding and, in the process, failing to represent or protect Montana citizens.

Indeed, a recent report in the Tribes' newspaper, the Charkoosta, indicated that the state has asked the Tribes for permission to take over the Flathead Joint Board of Control (FJBC) for the purposes of moving the Compact forward to the Montana legislature. The FJBC is a local government not subject to the whims of a politically-driven state executive.

The Governor's recent letter proposing a "limited renegotiation" of the irrigation water use agreement is nothing more than a transparent attempt to eliminate the irrigation districts from any discussion as to the disposition and ownership of their lands and water rights. Tribal attorneys have made it clear: nothing will change in the Water Use Agreement with this limited re-opening. The plan is to insert the water use agreement into the Compact the way it is by "negotiating" with the Compact Commission, the Bureau of Indian Affairs, and the federal government (also represented by BIA attorneys).

So the FIIP, and the thousands of families reliant upon irrigation for their livelihood, are outnumbered 3 to 1: they are fighting the state (Compact Commission), the Tribes, and the federal government. The Compact Commission could easily be labeled the "work around gang" as every action they have taken in the proposed CSKT Compact has been intended to ignore, violate, or work around the existing legal framework which requires the Tribes to determine their federal reserved water rights, not the determination and elimination of the irrigation community's water rights.

No wonder the Tribes and the Compact Commission want this compact so badly. If they had to submit their claims in a court of law, they could very well be denied everything in the proposed Compact because a court has to follow the law, not "work around" it.

Note: Catherine Vandemoer, Ph.D., is a consultant working with Concerned Citizens of Western Montana. She can be reached through the blog site www.westernmtwaterrights.wordpress.com