

August 10, 2022

Recipients:

Montana Attorney General's Office	Confederated Salish and Kootenai Tribes – Chairman McDonald
Montana Association of Counties	Secretary of Interior
Senator Steve Daines	Northwest Regional Office Bureau of Indian Affairs
Senator Jon Tester	Office of the Assistant Secretary – Indian Affairs – Bryan Newland
Congressman Matt Rosendale	Lieutenant Governor Kristen Juras
Governor Greg Gianforte	

RE: Lake County Montana Resolution of Intent 20-21

All:

We are reaching out to you regarding a gross violation of Montana law and breach of duty by the County Commissioners in Lake County Montana. Effective July 20, 2022, the Lake County Commissioners put in place their Resolution 20-21 – which states that Lake County will no longer collect Operation and Maintenance Assessments (“O&M”) for the Flathead Indian Irrigation Project. This decision places Flathead Irrigation District (“FID”), Mission Irrigation District (“MID”), and Jocko Irrigation District (“JID”) in direct violation of their Flathead Irrigation Project Contracts dated May 28, 1928, as amended/supplemented on February 27, 1929, July 13, 1936, and April 4, 1950 (collectively the “Contracts”).

The Contracts require the FID, JID, and MID to collect the O&M for the Flathead Indian Irrigation Project based on the irrigated acres fed by the project in each district. The Contracts have not been terminated, voided, or superseded to date. Therefore, all three irrigation districts are obligated to assess and collect the O&M fees.

Montana irrigation districts are required to collect O&M fees and administrative fees through the process outlined in Title 85, Chapter 7, Part 21. On or before the 1st Monday in August, irrigation district commissioners must determine the total amount needed pay for the district's administration, operations, debt service, and another district purpose. Mont. Code Ann. §85-7-2104. County Officers are then required to assess and collect the assessment. Mont. Code Ann. §85-7-2133. Once collected, the County Treasurer issues funds to meet the districts obligation. *Id.* If a levy of taxes or assessments is not made by the irrigation district, the county commissioners are required to determine what is necessary and levy the assessments themselves. Mont. Code Ann. §85-7-2134.

Montana Code Ann. §85-7-2136 states “The county treasurer of each county in which any irrigation district is located, in whole or in part, **shall collect and receipt for all taxes and assessments levied by the district**, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer must receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.”

There is no exception or alternative provision for assessments and collections provided to Montana irrigation districts. Moreover, there is no option for a county to “opt” out of collecting the assessments for the operations of the irrigation districts, which necessarily include to O&M.

We have enclosed copies of the following documents to assist you in the history of Resolution 20-21:

1. Resolution of Intent 20-21;
2. FID Public Comment dated August 25, 2021;
3. Letter from Wally Congdon (Lake County Civil Attorney) to the FID dated October 7, 2021;
4. Letter from Lake County Commissioners to FID dated June 27, 2022; and
5. FID Public Comment dated July 8, 2022.

Despite the clear obligations under Montana law, the Lake County Commissioners have taken it upon themselves to cease assessing or collecting O&M fees for the FID, JID, and MID. Further, their actions put all the lands impacted by the Flathead Irrigation Project at risk for damage due to loss of water in 2023. The water that flows through the irrigation project not only assists the irrigators in Lake County (and to a smaller extent, Sanders, Flathead and Missoula Counties), it also helps restore the underground aquifers. The long-term damage of their actions is impossible to calculate.

Lake County Commissioners have ignored black letter law in a clear attempt to incite a lawsuit and in doing so place their electors at risk of losing water in the 2023 irrigation season. We are not interested in a lengthy litigation battle to hold the Lake County Commissioners and Lake County liable or force them to comply with their duties. However, if forced to, any legal action will necessarily include all three irrigation districts, the Bureau of Indian Affairs (“BIA”), and possibly the Confederated Salish and Kootenai Tribes (“CS&KT”).

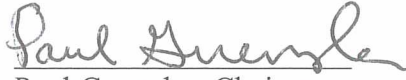
We believe it is in the best interest of all to avoid a legal battle to enforce the Contracts and compliance with Title 85 Chapter 7 of the Montana Code Annotated. However, without your assistance, we fear litigation may be the only option left to the FID, JID, and MID to mitigate any damages for breaches of the Contracts with the BIA.


Please reach out to FID’s counsel, Cassie R. Dellwo at Five Valleys Law, P.L.L.C. to discuss this matter further. You may reach her by phone at (406) 203-1410 or email at cassie@fivevalleyslaw.com.


We look forward to working with you to cure this dereliction of duty by the Lake County Commissioners.

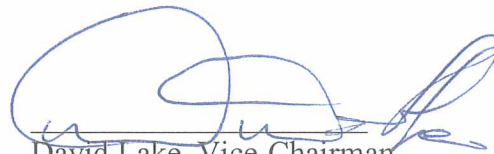
Sincerely,

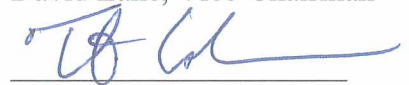
Flathead Irrigation District


Paul Guenzler, Chairman


Bruce White, Commissioner


Janette Rosman, Secretary


David Lake, Vice-Chairman


Trent Coleman, Commissioner

Mission/Jocko Irrigation Districts (Joint Operations)

Ray Swenson, Chairman

Boone Cole, Vice-Chairman

Gene Posivio, Secretary

Tim Callahan, Commissioner

Patty Hahn, Commissioner

Tracy Gardner, Commissioner

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Sincerely,

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Tracy Gardner, Commissioner

Cc: Lake County Commissioners - lakecommissioners@lakemt.gov & kstinger@lakemt.gov

August 8, 2022
3 | Page

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Sincerely,

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