FLATHEAD
SALISH KOOTENAI
NATION

A Confederation of the Salish,
Pend d' Oreille
and Kootenai Tribes

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P.O. BOX 278
Pablo, Montana 59855
(406) 275-2700
Fax: council.fax@cskt.org
Website: www.cskt.org



A People of Vision

TRIBAL COUNCIL MEMBERS:

Michael Dolson - Chairman
Jami Pluff - Vice Chair
Danielle Matt - Secretary
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Greg Dumontier

October 7, 2026

Senator Steve Daines
320 Hart Senate Office Building
Washington, DC 20510

Senator Tim Sheehy
Russell Senate Office Building
Suite 124
Washington, DC 20510

Congressman Zinke
512 Cannon House Office Building
Washington, DC 20515

Congressman Downing
1529 Longworth House Office Building
Washington, DC 20515

Re: Bipartisan American Affordability and Jobs Act

Dear Senators and Congressmen:

On behalf of the Confederated Salish & Kootenai Tribes (CSKT), I write with significant concerns about the Bipartisan American Affordability and Jobs Act, S. 5653 (BAAJA). The Flathead Nation, established by the Hellgate Treaty of 1855, is home to three Tribes: the Bitterroot Salish, Upper Pend d'Oreille, and the Kootenai. Our reservation contains 1.2 million acres in Western Montana including the lower half of Flathead Lake. Our aboriginal territories cover all of western Montana and extend into parts of Idaho, British Columbia and Wyoming. Through Energy Keepers Incorporated, we are an Independent Power Producer and are the only Tribe to own and operate a major hydro-electric facility, Séliš Ksanka Qlispé Dam. Further, we operate and maintain Mission Valley Power, the federally owned electric utility. Additionally, we strive to be good stewards of our lands, waters, and wildlife. We have dedicated a significant part of our land to be our Tribal Wilderness Area and passed an ordinance to protect our waterways as cultural waterways. We are engaged in significant efforts to preserve and restore threatened and endangered species. This includes federally authorized or permitted projects that will protect our resources and the exercise of our aboriginal rights – all which are recognized and guaranteed by treaty. As such, we have acute reasons to be concerned about the content of this bill.

To start, CSKT is concerned that this massive bill, that has over four hundred pages, has impeded regular process. Because of that, we have not had a fair opportunity to weigh in on

critical issues addressed in this bill. This bill was drafted without input from the committees that would regularly have jurisdiction over these matters. This includes the Senate Committee on Indian Affairs, which is charged with overseeing all legislation that will impact Indian country. Instead, the bill was introduced just last week and Senate leadership announced it will be considered by the Senate in early November. There were no hearings on this bill, and certainly no Senate Committee has approved this bill. This process lacks transparency and is not the way to legislate policy of such magnitude, particularly with respect to the special relationship between Indian Tribes and the United States. A change to any one of these statutes requires careful and thoughtful consideration regarding how the change will impact the environment and cultural resources, as well as the complex framework of federal, state and tribal jurisdiction.

Below I discuss some of CSKT's gravest concerns with the bill.

National Environmental Policy Act

First, the bill amends the National Environmental Policy Act (NEPA) to exempt certain actions related to energy production such as natural gas lines and transmission infrastructure from NEPA review. Much of the nation's energy infrastructure must be upgraded, but not at any cost. NEPA was enacted to consider exactly these kinds of actions. Moreover, none of the exemptions in the bill would benefit Tribes, who again face some of the most significant economic challenges in the country due to the loss of our homelands. If Congress is going to create blanket exemptions to NEPA, then Congress must amend the law to exempt all land into trust actions pursuant to 25 U.S.C. 5108, 25 C.F.R. §§151-et seq. Tribes should not have to invest significant resources simply to restore land that was, in some cases, unjustly taken from them, while foreign companies get a free pass to use and destroy our public lands for mining or energy production activities.

Moreover, BAAJA disrupts the ability of stakeholders to challenge a federal agency's decision-making under NEPA. The bill imposes strict deadlines not only on consultation, but on stakeholders' ability to challenge an agency's decision in court. Significantly, the bill ties the hands of federal courts by prohibiting the judicial branch from vacating an agency's decision. Instead, the bill directs that a court must remand an action to the federal agency that failed to do the job right in the first place. We question the constitutionality of this action and the ability of the CSKT and its trustee, the United States, to protect treaty land, water, and fish and wildlife habitat which are essential for the exercise of rights under the Hellgate Treaty.

Clean Water Act

With regard to the Clean Water Act, BAAJA would limit the authority of Tribes and States to protect their water resources in accordance with our laws. Specifically, the bill would narrow Tribal governments' ability to consider a project's impact on treaty protected resources and species that rely on clean water to survive. Again, the provision limiting the federal court's review of an agency's action under the Clean Water Act is likely unconstitutional.

Endangered Species Act

The bill amends the Endangered Species Act to delegate federal consultation responsibility to states. Tribes have a government-to-government relationship with the United States. Congress cannot delegate this responsibility to states – especially when the function involves protecting and restoring treaty protected species and resources that Tribes depend on for our economic and cultural wellbeing. CSKT has been involved in extensive efforts to restore extirpated species back to our Reservation and preserve listed and endangered species using best available science. The bill would undermine these important efforts to protect trust and treaty resources by narrowing the definition of "best available science," a concept that is a hallmark of this statute and the Tribes view as an extremely important notion to preserve.

Federal Power Act

The bill would amend the Federal Power Act (FPA) to narrow the ability of the Department of the Interior to impose conditions on the operation of hydropower projects to protect Indian reservations to only those impacts that are "reasonably related" to the hydropower project's operations. This is contrary to well-settled law that allows Interior to impose conditions on a dam's operations that are necessary to protect federal Indian reservations (in fact all federal reservations). The FPA has for almost a century balanced the need for power with the need to protect Tribal homelands, with Interior entrusted with the duty to determine what is necessary to protect our homelands. Under the BAAJA, Interior's authority will be significantly limited. If this provision remains in the bill, which it should not, Interior's authority to protect federal Indian reservations should remain unchanged.

National Historic Preservation Act

Finally, the bill makes unprecedented and unnecessary changes to the National Historic Preservation Act. Under BAAJA, Section 106 consultation with Tribal governments would be *optional* and even if a federal agency engages in consultation, Tribal input would only be considered if submitted within 30 days.

Perhaps most disturbing is that the bill would redefine Tribal sacred places under NHPA, limiting protection to "identifiable" locations where a significant "event" occurred, and would narrow the types of harms that agencies must consider. Finally, the bill creates an unfunded mandate for State Historic Preservation Offices (SHPO) and Tribal Historic Preservation Offices (THPOS) by imposing strict timelines without providing any additional resources to do this expedited work. Even worse, under the bill, if a THPO fails to meet the mandated expedited timeline, it could lose federal funding, and the Interior Department could take over their functions entirely. SHPOs do not face these same penalties. This is disparate treatment of tribal governments that Congress should not permit.

Other Acts specific to Indian Country

We are aware that proponents of this bill will argue that the bill is good for Tribes because it creates yet another authority for Tribes to grant rights-of-way over our Trust land, subject to Interior's approval of tribal regulations. While we appreciate this, under the HEARTH Act and the Indian Tribal Energy Development and Self-Determination Act, Tribes

already have this authority. Thus, the provisions of BAAJA are nothing more than window dressing. The authors of this BAAJA may have learned this if they had consulted with the Senate Committee on Indian Affairs.

Conclusion

In short, BAAJA fails to properly consider the potential impact on Indian Tribes and Tribal governments, our lands and our Treaty protected rights and resources. We urge you to engage in full consultation with Tribes before you undertake such massive changes to the Nation's foundational environmental statutes. These changes in the law could result in irreversible damage to our lands, our resources and our very future. Tribal leaders have significant responsibilities to the tribal members it serves and our community. We must be afforded an opportunity for government-to-government collaboration.

Sincerely,



Michael Dolson
Chairman