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**JAN 24 2014**

**Montana Water Court**

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE RIVER DIVISION - BASIN 42B  
TONGUE RIVER ABOVE AND INCLUDING HANGING WOMAN CREEK 42B  
and  
TONGUE RIVER BELOW HANGING WOMAN BASIN – BASIN 42C

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United States of America (USDI-Bureau of  
Indian Affairs) – General Objection to Basin  
42B and 42C Preliminary Decrees.

CASE 42B-1

**STATE OF MONTANA  
ATTORNEY GENERAL'S  
AMICUS CURIAE BRIEF**

Pursuant to the Court's Order of December 27, 2013, the State of Montana through the Montana Attorney General (AG) hereby submits this *Amicus Curiae* Brief addressing the Motion of the United States of January 23, 2012 ("US Motion"). The AG appreciates the opportunity to provide the Court with its views on the US Motion. As the Court considers that motion, the AG urges the Court to bear in mind what this case is not. Although the United States' pleadings wave in this direction, this case is not a so-called McCarran Amendment challenge to the adequacy of the Montana Water Use Act for purposes of determining whether Montana courts have the jurisdiction to adjudicate and administer federal and tribal reserved water rights.<sup>1</sup> Nor is it a challenge to the existing

<sup>1</sup> The Montana Supreme Court determined in 1985 that the statutory underpinnings of the Adjudication are facially compliant with the McCarran Amendment (43 U.S.C. § 666) and that state Courts thus could adjudicate federal and tribal reserved water rights in Montana. *State ex rel. Greely v. Confederated Salish and Kootenai Tribes*, 219 Mont.

processes for identifying and resolving issues with claims from facts and circumstances arising prior to June 30, 1973 (and really prior to the period of 1975-1980, *see* US Motion at 8).<sup>2</sup> It is also not a due process challenge or any other legal assault on the Court's jurisdiction or the conduct of the Montana General Stream Adjudication (Adjudication). Rather, at its core, the US Motion is an effort to relieve the United States and other potential objectors of the responsibility placed on them by the Montana Legislature in its creation and ordering of the Adjudication to challenge specific claims where they believe post-1973<sup>3</sup> non-use may be at issue. Instead, the US Motion seeks to have the brunt of this burden – namely the development of information regarding post-1973 non-use – borne instead by the Montana Department of Natural Resources and Conservation (DNRC), and applied to all claims in the adjudication. The optimal location and nature of this burden, however, is a policy dispute not a legal one, and should be addressed to the Legislature not this Court. Thus, as there is no *legal* basis to support the US Motion, the Court should deny it.

**I. The Water Court Already Possesses and Exercises the Authority to Consider Post-1973 Evidence in Determining Whether a Water Right Claim Has Been Abandoned.**

The US Motion begins by asking the Court to do something the Court already does. That is, it “moves this Court to adjudicate post-June 30, 1973 abandonment in the Montana Adjudication....” US Motion at 1. As the United States recognizes, there is no dispute that the Water Court has the authority to adjudicate questions of abandonment arising from the non-use of claimed water rights, irrespective of whether the period of non-use continued or commenced before or after June 30, 1973. Mont. Code Ann. §§ 3-

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76, 712 P.2d 754 (Mont. 1985) (“*Greely I*”). While *Greely II* left the door open for a future as-applied challenge to the Water Use Act, that is not the case the United States is litigating in this proceeding.

<sup>2</sup> There is no dispute, for example, that the Water Court has the obligation to ensure the resolution of issue remarks placed on claims as a result of the claims examination process. *See* Mont. Code Ann. §§ 85-2-233(11) and 85-2-248.

<sup>3</sup> For convenience, this brief will refer to the post-June 30, 1973, period as “post-1973”.

7-501(4) and 85-2-227(2) and (3); see also *Jefferson River Basin*, 1999 ML 115, 1999 Mont. Water LEXIS 1 at \*12-13 (Mont. Water Ct. 1999).

Further, the United States errs when it asserts that this Court “rarely determines the total or partial abandonment of existing water rights after June 30, 1973....” US Motion at 3. In fact, the Court regularly does so. See, e.g., *Heavirland v. State*, 372 Mont. 300, 311 P.3d 813 (Mont. 2013); *Bjork-Callender Decision*, Water Court Case No. 41O-489 (2013); *John Mues Decision*, Water Court Case No. 41O-238 (2013); *Campbell-Luczak Decision*, Water Court Case No. 41O-34 (2011); *Haas Ranch Decision*, Water Court Case No. WC-2009-05 (2010); *Jefferson River Basin*, 1999 ML 115, 1999 Mont. Water LEXIS 1; *North End Subbasin of the Bitterroot River Basin*, 1999 ML 297, 1999 Mont. Water LEXIS 2 (Mont. Water Ct. 1999); *Gary J. Garrett decision*, Water Court Case No. 41C-184 (1999); *Donald Murray Decision*, Water Court Case No. 41G-137 (1999); *Martha R. Haskell Decision*, Water Court Case No. 41G-150 (1999); *Champion International Corp./Plum Creek Timber Co. decision*, Water Court Case No. 76HB-62 (1999); *Norman R. & Eva Plamm/Shackleton & Shackleton decision*, Water Court Case No. 41C-193 (1996); *Eva Portia Page Decision*, Water Court Case No. WC-41G-171 (1995); Water Right No. G (W) 209661-40A/Jeffers, 1994 ML 18, 1994 Mont. Water LEXIS 11 (Mont. Water Ct. 1994).<sup>4</sup> While the United States asserts that the Court’s “[f]ailure to address [questions of abandonment] before entry of the applicable Final Decrees means that this Court has not met its statutory duty[.]” US Motion at 12, it fails to (and cannot) identify a single instance in which this Court has not in fact addressed questions of post-1973 abandonment when evidence of post-1973 non-use has been placed before it.

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<sup>4</sup> In some of the cases in this string cite, the Water Court found claimed water rights to be wholly or partially abandoned and in others it held to the contrary. But in all of the cases, post-1973 evidence going to the question of abandonment was considered.

## II. In the Adjudication, Claims are Presumed Valid Through to Final Decree Until Proven Otherwise.

The US Motion also fails to recognize the relevance of the *prima facie* presumption of validity that attaches to all filed water right claims pursuant to Mont. Code Ann. § 85-2-227(1). The United States asserts that “the Court is required to determine whether existing water rights have been abandoned post-1973 before it enters a Final Decree for the basin in which such rights are located.” US Motion at 10 (emphasis in original). It is not clear how the United States justifies this assertion, as there is a significant difference between the Water Court’s uncontroverted jurisdiction and authority to determine abandonment arising in whole or in part from post-1973 non-use – as well as its obligation to resolve issue remarks – and the United States’ implication (unsupported in Montana statutory or decisional law) that the Court must make a specific finding regarding the non-abandonment of each water right before including it in a final decree. An unarticulated premise of the US Motion appears to be that water rights claims in the Adjudication become more and more suspect the farther the calendar moves from 1973. But this attitude reflects a fundamental misapprehension of the way in which the Montana Legislature has structured the Adjudication.

The United States asserts that “[i]f the DNRC does not investigate post-1973 nonuse, there will be no relevant evidence before the Court from the DNRC to allow the Court to determine whether the water right is existing at the time of the Final Decree.” US Motion at 15 (emphasis in original). While this statement may be tautologically true (if the DNRC does not supply the Court with evidence of post-1973 non-use, then there will be no evidence of post-1973 non-use *from the DNRC* before the Court), it also ignores the fact that the Legislature has provided that filed claims constitute *prima facie* proof of their own validity. Mont. Code Ann. § 85-2-227(1). This presumption remains in place through to the issuance of a final decree. *Id.* The burden thus falls to objectors to adduce admissible evidence to countermand any element of a filed claim, backstopped

by the Court's own authority and mandate to resolve Issue Remarks. *See, e.g., Sage Creek Basin*, 1997 ML 20, 1997 Mont. Water LEXIS 1 at \*17 (Mont. Water Ct. 1997); Mont. Code Ann. §§ 85-2-223(11) and 85-2-248.

The foregoing is *not* to say that DNRC claims examination is anything but an important tool in assembling data to test the accuracy of water rights claims.<sup>5</sup> But the scope, extent, financial resources devoted to and legal import of DNRC-developed data has been the subject of significant scrutiny and periodic adjustment by this Court, the Montana Supreme Court and the Legislature, and has always reflected the striking of a balance among various important considerations. *See, e.g., Matter of Water Court Procedures*, 1995 ML 108, 1995 Mont. Water LEXIS 7 (Mont. Water Ct. 1995); *Order Addressing Reexamination* (December 14, 2012) at 7<sup>6</sup>; Water Right Claim Examination Rules (as adopted in 1987 and amended in 1991 and 2006); HB 22, 2005 Session; Mont. Code Ann. § 85-2-248. *See also Evaluation of Montana Water Rights Adjudication Process Prepared for the Water Policy Committee, September 30, 1988* ("Ross Report") at 18-19.<sup>7</sup>

It would certainly simplify matters for potential objectors if the DNRC pulled the laboring oar on every possible sort of factual investigation of all claims. (It would also, of course, simplify matters for potential objectors if the initial burden of proof was placed on claimants rather than objectors.) But that is not the Adjudication the Legislature has

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<sup>5</sup> To the extent the United States believes that the former DNRC verification process genuinely hampered the adduction of evidence of abandonment, *see* US Motion at 20, the United States – or, in basins where the United States holds fewer than 15% of the water rights, the United States in conjunction with other water rights holders - is entitled to petition this Court to order the examination of those basins. *See* Mont. Code Ann. § 85-2-282. The Court has already ordered the DNRC to examine of roughly 90,000 claims in basins that were previously verified. *See Order Addressing Reexamination* (December 14, 2012); *DNRC Amicus Curiae Brief*, Water Court Case No. 42B-1 (filed January 24, 2014).

<sup>6</sup> "As recommended in the audit report, the DNRC and the Water Court worked together to create a plan that balances the need for accuracy and consistency with fairness to water users and consideration of time and cost...." *Id.*

<sup>7</sup> The Ross Report is available on the Montana Legislature's website at <http://www.leg.mt.gov/content/publications/environmental/1988adjudication.pdf>.

created. In part, this reflects fiscal reality, as the Legislature needed to balance the taxpayer resources that would be invested in DNRC claims examination against the burden that would be placed on potential objectors to conduct their own research into possible grounds for objection. *Matter of Water Court Procedures*, 1995 ML 108, 1995 Mont. Water LEXIS 7 at \*13. *See also* Mont Code. Ann. § 85-2-243(2) (the DNRC's obligation to provide technical assistance to the Water Court extends only so far as there is funding available for it to do so).

There was another significant practical consideration in play, however. As the Water Court has recognized, a balance needed to be struck in the conduct of the Adjudication between accuracy and efficiency. *Id.* at \*7; *Sage Creek Basin*, 1997 ML 20, 1997 Mont. Water LEXIS 1 at \*6-7. *See also Matter of Water Court Procedures*, 1995 ML 108, 1995 Mont. Water LEXIS at \*26-27;<sup>8</sup> *Ross Report* at 75-76. That choice does not weaken the underpinnings of the Adjudication, *see Greely II*, 219 Mont. at 95-96 and 99, 712 P.2d at 766 and 768,<sup>9</sup> and the United States can demonstrate no legal support to the contrary.<sup>10</sup>

### **III. Issue Remarks Arising from DNRC Claims Examination Are Not the Only Way to Place Information Regarding Possible Abandonment Before the Court.**

A further weakness in the US Motion is that the United States takes an inaccurately restrictive view of how evidence of post-1973 non-use or abandonment

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<sup>8</sup> "The legislature had a choice when it began this adjudication. It could require water users to prove up every element of their water right or it could provide that the statement of claim was *prima facie* proof of its contents. It chose the latter course and required other water users to file objections to contradict and overcome that *prima facie* proof." *Id.*

<sup>9</sup> Again, it is important to remember that the US Motion is not the as-applied McCarran challenge left open by *Greely II*.

<sup>10</sup> The foregoing is also *not* to say that the *prima facie* presumption of Mont. Code Ann. § 85-2-227(1), or the presence or absence of issue remarks on a water right claim, in any way relieves a water right claimant from complying with the fundamental requirement of beneficial use. *See McDonald v. State*, 220 Mont. 519, 532, 722 P.2d 598, 606 (1986). Without continued beneficial use, a water right certainly becomes susceptible to termination for abandonment. *E.g., Axtell v. M.S. Consulting*, 288 Mont. 150, 955 P.2d 1362 (1998).

could be placed before the Court. The United States asserts that “[w]ithout [DNRC] reviewing one or more data sources after the period of 1970-1980, there are no later snapshots in time and the Water Court *cannot* know if there is a post-1973 nonuse/abandonment issue” with any given claim. US Motion at 18 (emphasis added). This statement is simply incorrect, as there are multiple ways evidence of post-1973 non-use may be placed before the Court, none of which is dependent on DNRC claims examination.<sup>11</sup>

Most obviously, the US – and intervenor Avista Corporation, their amici, and every other person or entity with “a particularized interest in the adjudication of ... [a] watershed[,]” *Trout Unlimited v. Beaverhead Water Co*, 361 Mont. 77, 87, 255 P.3d 179, 185 (Mont. 2011) – are entitled to file objections to any claim in that watershed that they believe is set forth inaccurately in any way in a preliminary decree. *See* Mont. Code Ann. § 85-2-233.<sup>12</sup> These objections can of course include assertions of post-1973 abandonment.<sup>13</sup> Even after the objection period has closed, however, further opportunities exist to place new or additional information before the Court pertaining to the accuracy of water rights set forth in a preliminary decree. As the Montana Supreme Court has recognized:

By the use of a preliminary decree, the Water Court, over a period of one or more seasons may test the provisions of its decree to determine that it works fairly and properly as between appropriators and between appropriators and those with other interests. Such other modifications as may be necessary can be made before the entry of the final decree.

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<sup>11</sup> Issue remarks attached to claims through the DNRC examination process are, of course, another way evidence of non-use can come before the Court.

<sup>12</sup> The United States, intervenor Avista and most of their amici have in fact demonstrated their ability to file objections to claims in the Adjudication by doing so.

<sup>13</sup> It is ironic in this context that the US Motion identifies a host of post-1973 aerial imagery that is publicly available, yet the United States wants to shunt the burden of reviewing that photography exclusively onto the DNRC. *See* US Motion at 19-20 and n.16.

*McDonald v. State*, supra at n.10, 220 Mont. at 531-32, 722 P.2d at 606. The Water Court has explained in greater detail how this process works:

If during the enforcement of a Water Court decree, it is determined that one or more water rights were incorrectly decreed, the affected water users can petition the appropriate district court judge or water judge for relief. The district court may grant injunctive or other relief necessary and appropriate to preserve property rights or the status quo pending the issuance of the final decree. If the circumstances are appropriate, the district court could also request the Water Court for its assistance. Generally, a court has plenary power over its interlocutory orders<sup>[14]</sup> and may revise such orders when it is consonant with justice to do so. Therefore, the Water Court could hear the controversy and revise its previous orders if necessary or address previously unaddressed issues on its own motion.

*Matter of Water Court Procedures*, 1995 ML 108, 1995 Mont. Water LEXIS at \*16-17 (internal citations omitted). Thus, in the event that evidence of possible abandonment is discovered by a would-be objector outside of the objection period, there are opportunities to place that evidence before the Court to ensure that it is acted upon. These are all “legally-sufficient procedures to ensure post-1973 abandonment is addressed before Final Decrees are issued in each basin....” US Motion at 31. Their existence obviates the need to grant the US Motion, as the Adjudication process already provides the crux of what the United States seeks, even if the United States’ preferred approach – “directing the DNRC examine water rights claims for post-1973 nonuse” (*id.*) – is not among them.

On top of all these avenues allowing for evidence of abandonment to be presented to the Court prior to the entry of a final decree, moreover, evidence of abandonment may also be brought to bear even after the Water Court enters a final decree. It may be introduced in a post-decree dispute between appropriators, for example, and rights adjudicated in a final decree may be modified based on the evidence brought to bear in

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<sup>14</sup> All Water Court orders short of final decrees are inherently interlocutory in nature. See *In re Adjudication of Sage Creek Water Rights*, 234 Mont. 243, 763 P.2d 644 (1988).

such a case. *See* Mont. Code Ann. § 85-2-406(3). In addition, after entry of a final decree, an appropriator may bring forth evidence of abandonment to the DNRC, which is authorized to institute an enforcement action under Mont. Code Ann. § 85-2-405 to have the right declared abandoned. Under appropriate circumstances, Mont. R. Civ. P. 60 may also be invoked.<sup>15</sup>

Consequently, the parade of horrors the US Motion envisions regarding the possible impairment of federal or tribal water rights,<sup>16</sup> the potential implications of the same for the adequacy of the Montana General Stream Adjudication for purposes of compliance with the waiver of federal and tribal sovereign immunity set forth in the McCarran Amendment, and the risks to other water rights in the Adjudication is entirely speculative and without factual basis. As such, it cannot provide a legal basis to warrant the extraordinary relief the US, intervenor Avista Corporation and their amici seek from the Court – namely to be relieved of the burden that the Legislature has placed on objectors in its structuring of the Adjudication regarding the introduction of evidence to countermand the elements of particular filed claims.

#### **IV. The Policy Argument Made in the US Motion Should be Addressed to the Montana Legislature Not This Court.**

The US Motion is essentially a policy brief, advancing one conception of how the Adjudication could be conducted. The proper forum for the consideration of such policy arguments, however, is the Legislature not this Court. *See, e.g., In re Adjudication of Existing and Reserved Rights of Chippewa Cree Tribe*, 2002 ML 4232, 2002 Mont.

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<sup>15</sup> The United States' concern that claims that should have been found abandoned but that were ultimately finally decreed could be barred from being reopened by parties who could have but did not object to those claims prior to final decree, US Motion at 4, is both speculative and most easily obviated by the US and other potentially affected parties accepting the burden that the Legislature placed on them and filing objections. It also overlooks the Court's power to re-open final decrees under appropriate circumstances. *See, e.g.,* Mont. Code Ann. § 85-2-237.

<sup>16</sup> It is also worth noting that during negotiations between the Montana Reserved Water Rights Compact Commission, the United States and the various Indian tribes in Montana claiming federal reserved water rights, the Compact Commission routinely made its negotiating counterparts aware that they would bear the burden of objecting to state law-based water rights claims in the Adjudication that they believed were inaccurate or invalid.

Water LEXIS 1 at \*15 (Mont. Water Ct. 2002). The Legislature is simply better situated to consider the implications of the role for the DNRC envisioned by the US Motion.

For example, the US Motion asserts that the “burden [to review claims for evidence of post-1973 abandonment] should primarily reside with DNRC [sic],” and not “on the public.” US Motion at 25. Yet if the DNRC is to play an enhanced role in developing evidence of post-1973 abandonment for the Court’s consideration, it is taxpayer – i.e. public – dollars that will pay for it. In addition, as part of the Legislature’s last major increase to the DNRC’s funding level, *see* HB 22, 2005 Session, the Legislature set certain benchmarks for the DNRC and the Court, culminating in the examination of all of the outstanding claims in the Adjudication by June 30, 2015, and the Court’s issuance of preliminary or temporary preliminary decrees for all basins by June 30, 2020. *See* Mont. Code Ann. §§ 85-2-270 and -271; HB 22, 2005 Session, § 2. The United States concedes that its proposed course of action “will require additional time and resources and may threaten” both the DNRC’s and the Court’s ability to meet the legislatively-mandated benchmarks. US Motion at 4-5. Without further legislative action, the failure by the DNRC to meet those benchmarks for any reason will have immediate consequences for the DNRC’s budget, which would impact its ability to perform any of its Adjudication-related functions.<sup>17</sup> If those benchmarks are to be revisited, including if the DNRC’s duties are to be modified in ways that might impact its ability to meet those benchmarks, it should be for the Legislature to do so.

There are also significant practical questions left unaddressed by the US Motion that the Legislature is best positioned to consider. The United States asks this Court to order the DNRC to examine claims for evidence of post-1973 abandonment. But it does not explain whether it would like to see a one-off examination (the DNRC examines

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<sup>17</sup> Recall that under Mont. Code Ann. § 85-2-243(2), the DNRC’s obligation to provide technical assistance to the Court only extends as far as the DNRC’s budget allows and no further.

claims for evidence of non-use between 1973 and 2014, for example, and then its new job would be done) or if it would like to see an ongoing process (say if an examination is done through 2014 but a final decree has not been issued by 2024, a new round of examination must be conducted). The time involved in re-examining claims and providing that information to the Court, and the Court the re-opening previously-issued preliminary decrees and re-noticing them for possible objections will dramatically lengthen the period before which a final decree may be issued. The United States apparently views this as salutary. Others would surely disagree. Ultimately, the optimal balance to be struck in the quest for accuracy and efficiency is again better determined by the Legislature, not least because of the increased funding commitments the resolution of those questions might require. *See DNRC Amicus Curiae Brief*, Water Court Case No. 42B-1 (filed January 24, 2014).

Furthermore, because of Mont. Code Ann. § 85-2-248(7), the adoption of the US proposal could have the effect (intended or otherwise) of leaving the objection process on issues of abandonment wholly in the hands of the AG. Since the Mont. Code Ann. § 85-2-248(7) was enacted in 2005 through House Bill (HB) 782, this Court has been obligated to resolve all issue remarks that had not been resolved during the normal objection process, and to join the AG as a necessary party to ensure the resolution of any such issue remark giving rise to a question of abandonment. This was an important step in ensuring the accuracy of the Adjudication. But as HB 782's sponsor, Representative Walter McNutt, explained during the House Natural Resources Committee's hearing on the bill, the involvement of the AG in these claims was intended "as a last resort" if the other processes available – including informal claimant contact with the DNRC and the regular objection process – had not led to the resolution of those remarks. House Natural Resources Committee meeting audio recording, March 23, 2005 at 1:13:00 (available at

[http://montanalegislature.granicus.com/MediaPlayer.php?view\\_id=24&clip\\_id=11605](http://montanalegislature.granicus.com/MediaPlayer.php?view_id=24&clip_id=11605).<sup>18</sup>

HB 782 clearly reflected a recognition that issue remarks regarding abandonment (and non-perfection, which is not at issue in the US Motion) were too important to be left entirely unaddressed – doing so could legitimately call into question the accuracy of the Adjudication. At the same time, however, HB 782 did nothing to alter the pre-existing ordering of the Adjudication that tasked objectors with doing much of the heavy lifting of contesting the accuracy of any filed claims. Certainly this was the contemporary understanding of the AG. *See* HB 782 Fiscal Note at 1 (“The [Department of Justice] assumes that the majority of the issue remarks attached to water right claims will be resolved through contact with claimants, through objections by adverse parties and through the water court’s own motion prior to the Attorney General’s intervention”) (available at <http://leg.mt.gov/bills/2005/FNP/DF/HB0782.pdf>).

This situation could be markedly altered if the DNRC were ordered to examine every claim for evidence of ongoing post-1973 non-use, as the US Motion seeks. Were that to occur, the United States, intervenor Avista Corporation, their amici and all other water users could then simply sit back and wait for the AG to be joined to resolve all of the abandonment-related DNRC issue remarks not independently resolved by the Court pursuant to Mont. Code Ann. § 85-2-248(2)-(5). The AG’s participation in the Adjudication pursuant to Mont. Code Ann. § 85-2-248(7) is also funded at state expense. Unlike DNRC’s obligation to the Court pursuant to Mont. Code Ann. § 85-2-243, however, the AG’s obligation under Mont. Code Ann. § 85-2-248(7) is not limited by its budget and is mandatory regardless of funding. Allowing potential objectors to hang back and rely on the AG to litigate every question of abandonment would constitute a

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<sup>18</sup> The Legislature’s intent to have the resolution of issue remarks through the Mont. Code Ann. § 85-2-248 process be a safety net in the event that issue remarks were not resolved through the regular objection process is also evinced by Mont. Code Ann. § 85-2-249, which specifically authorizes the Water Court to prioritize the hearing of objections ahead of the resolution of issue remarks.

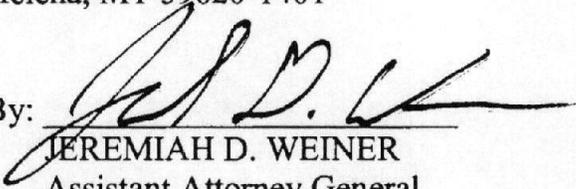
significant alteration to the ordering of the Adjudication and would also bring with it considerable fiscal ramifications for the State and its taxpayers. The Legislature is again better positioned to determine whether this might be the right course for the Adjudication to take.

### Conclusion

The Montana Supreme Court found the Adjudication to be facially McCarran-compliant in *Greely II*. The US, intervenor Avista Corporation, and their amici have not identified legal flaws with conduct of the Adjudication as it is being carried out, but merely have asserted speculative concerns and a preference for a different sort of system. While the Legislature certainly could mandate a mid-course correction and set up a system of institutional objection,<sup>19</sup> thereby removing the burden from individual objectors and keeping it essentially in-house among the DNRC and the AG, that is not the system that the Legislature has devised. This sort of policy dispute is properly addressed to the Legislature, not the Court. The AG therefore asks the Court to deny the US Motion.

Respectfully submitted this 24th day of January, 2014.

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<sup>19</sup> At one time the DNRC attempted to serve this function, but withdrew from that role in the early 1990s. See *Joint Amicus Brief of DNRC and Attorney General on Water Court Procedures*, Water Court Case No. WC-92-3 (March 24, 1993) at 11-20.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **State of Montana Attorney General's Amicus Curiae Brief** was served via U.S. mail or email as indicated on the service list.

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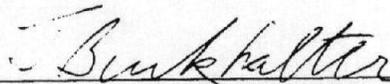
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