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Montana Water Court

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**IN THE WATER COURTS OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
MISSOURI RIVER - FROM HOLTER DAM TO SUN RIVER - BASIN 41QJ**

Case 41QJ-19

CLAIMANTS: Linda M. Johns; W. Steve Johns; Betty L. Bicknell; Gene E. Bicknell; Diana L. Nelson; Sue A. Weingartner; Russell W. Weingartner; Elizabeth C. Dagnall; Robert G. Dagnall	41QJ 5581-00	41QJ 97570-00
	41QJ 34410-00	41QJ 97571-00
	41QJ 41568-00	41QJ 97572-00
	41QJ 41569-00	41QJ 143007-00
OBJECTORS: United States of America (Department of Interior -- Bureau of Indian Affairs)		

UNITED STATES' MOTION TO REVISE INTERLOCUTORY ORDER

I

ORAL ARGUMENT REQUESTED

The United States respectfully requests oral argument on its Motion to Revise Interlocutory Order.

II

INTRODUCTION

By Order dated February 15, 2012, this Court sought input from the United States on the removal of Montana Department of Natural Resources and Conservation ("DNRC") Issue Remark P490 ("IR P490") from certain claims located with Basin 41QJ. IR P490 alerts claimants and objectors when a claim asserts a place of use and priority date on lands that were

part of an Indian Reservation at the time of the claimed priority date.¹ The issue before the Court is whether the 1855 Treaty with the Blackfeet, Oct. 17, 1855, 11 Stat. 657 (“1855 Treaty”), created a reservation that included what is now referred to as Basin 41QJ. *Order Lifting Stay and Setting Optional Briefing Dates* (“Order Lifting Stay”). The Court’s Order Lifting Stay raised two issues of law to be addressed by the United States:

1. Whether, as a matter of law, the 1855 Treaty created a reservation that encompassed the lands now within the area designated as Basin 41QJ; and
2. The significance, as a matter of law, of Article 7 of the 1855 Treaty.

The United States filed a brief addressing the issues outlined by the Court on May 21, 2012. A reply brief was filed on July 31, 2012.

On September 24, 2012, this Court issued its Order Addressing P490 Issue Remark (“Order”), in which the Court held that the 1855 Treaty “created a reservation for the Blackfeet Tribe.” Order at 8. The Court also ruled that non-Indians could appropriate water on the Blackfeet Reservation prior to July 1, 1873, and directed the DNRC to remove IR P490 from the claims in this case and from all claims in Basin 41QJ. *Id.* at 20.

The United States seeks revision of the Court’s Order, addressing the application of the P490 issue remark in Basin 41QJ on the grounds that the Court erred in applying federal

¹ Remark P490 to claims in Basin 41QJ is found in DNRC’s *Water Right Claim Examination Manual*. Chapter 6, Section VI(J)(3)(k) of the Manual provides:

Example: P490 AT THE TIME OF THE CLAIMED PRIORITY DATE,
IT APPEARS THAT THE PLACE OF USE WAS PART OF AN INDIAN
RESERVATION.

DNRC, *Water Right Claim Examination Manual*, p. 357 (May 2011).

substantive law to determine that non-Indians were permitted to trespass upon the 1855 Blackfoot Treaty Reservation and appropriate water. The United States respectfully requests that the Court reinstate issue remark P490 to water right claim in Basin 41QJ with pre-1873 priority dates.

III

STANDARD

Orders of the Water Court are interlocutory. *Matter of Sage Creek Drainage Area* (1988), 234 Mont. 243, 763 P.2d 644. Although the Montana Rules of Civil Procedure do not allow for a motion for reconsideration,² it is well recognized that a court has plenary power over its interlocutory orders and can revise them when it is consonant with justice so to do.³ *See also* Order in Basin 76M-62 (May 5, 2011). As we explain below, justice requires that the Court's Interlocutory Order be revised.

IV

SUMMARY OF ARGUMENT

Federal law controls the scope of the 1855 Treaty Reservation. *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545 (1983). Under federal law, reserved lands in general and the 1855 Treaty Reservation in particular, were not open to settlement by non-Indians. The 1834 Trade and Intercourse Act, June 30, 1864, 4 Stat. 729, 730, Sec. 11, expressly bars "settlement on any

² *See Horton v. Horton* (2007), 338 Mont. 236, 240, 165 P.3d 1076, 1077.

³ *Smith v. Foss* (1978), 177 Mont. 443, 447, 582 P.2d 329, 332, *citing* 7 Moore's Federal Practice at 242, ¶ 60.20. *See also Estate of Earl Pruyn v. Axmen Propane, Inc.* (2009), 354 Mont. 208, 215, 223 P.3d 845, 852.

lands belonging, secured, or granted by treaty with the United States to any Indian tribe⁴

Moreover, absent a clear and unambiguous intent by Congress to allow non-Indians to settle upon Indian reserved lands, state water laws are not controlling on an Indian reservation.

Colville Confederated Tribes v. Walton, 647 F.2d 42, 53 (9th Cir. 1981), *cert. denied* 454 U.S. 1092 (1981), citing *United States v. McIntire*, 101 F.2d 650, 654 (9th Cir. 1934). When Congress sets land aside for an Indian reservation, the land is held in trust by the United States and reserved for federal, as opposed to state needs. *Id.*

The Court erred as a matter of law by concluding that federal law permits non-Indian appropriation of unreserved water on an Indian reservation. Order at 14. There is no distinction or exception to the firm rule that a non-Indian, absent Congressional intent, is barred from federal reserved lands and from appropriating water under state law, regardless of whether the implied reservation of water is quantified. *Walton*, 647 F.2d at 53 n. 17.

The Court also erred in finding that federal policy protects state law appropriations on federal reservations, Order at 17, and that “settlers in Basin 41QJ had a right to appropriate water rights [prior to July 5, 1873].” *Id.* The contention that federal legislation and federal courts have carved out an exception to the inviolate rule that Indian reservations in which the land are entirely held in trust are not public domain and open to settlement is incorrect, and the decisions cited by the Court to the contrary are inapplicable. *See e.g., Federal Power Commission v. State of Oregon*, 349 U.S. 435, 447-448 (1955) (Mineral Land Acts of July 26, 1866, July 9, 1870, and the Desert Land Act of 1877, 43 U.S.C. 321, are not applicable to the reserved lands.). *See also*

⁴ The Trade and Intercourse Act is codified, as amended, at 25 U.S.C. 177.

Capaert v. United States, 426 U.S. 128, 143 (1976); *McIntire* 101 F.2d 650, 653 (9th Cir. 1939).⁵

The Court further erred when it failed to apply judicial canons of construction for Indian treaties that “treaties should be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.” *Oneida County, N.Y. v. Oneida Indian Nation of New York State*, 470 U.S. 226, 247 (1985) (citations omitted); *Greely v. Confederated Salish and Kootenai Tribes of the Flathead Reservation, et al.* (1985), 219 Mont. 76, 86, 712 P.2d 754, 762 (“Any ambiguity in a treaty must be resolved in favor of the Indians.”) Instead, the Court applied a narrow reading of Article 7 and Article 8 of the Treaty to find that they constitute a “significant exception to the exclusive control provisions in Article 4,” Order at 12 (“Together, Article 7 which authorized non-Indians to live on the reservation, and Article 8 which allowed for permanent occupation of land for farms amount other uses, constituted a significant exception to the exclusive control provisions of Article 4.”).

The Court also erred in giving legal status to the 1865 and 1868 failed treaties with the Blackfeet Tribe, holding the terms of the two failed treaties estop the United States from arguing that non-Indians claiming water rights that pre-date July 5, 1873 were trespassers. Order at 19. See *Utah Power & Light Co. v. United States*, 243 U.S. 389, 409 (1917), *United States v. West*, 232 F.2d 694, 698 (9th Cir. 1956), and *Cook v. Hudson* (1940), 110 Mont. 263, 103 P.2d 137, 148.

Finally, the Court erred when it determined the purpose of the 1855 Treaty and the

⁵ *United States v. New Mexico*, 438 U.S. 698 (1978), is also inapplicable. *New Mexico*, involved national forest lands rather than an Indian reservation, the Supreme Court determined Congress intended to defer to state water law in creating the national forest system. *Id.* at 718. In contrast, the Indian Trade and Intercourse Act and the case law discussed above demonstrate that Congress intended to *prevent* the application of state law to lands set aside for Indians.

quantity of water reserved thereunder. Neither the purpose of the 1855 Treaty, nor any quantity of water reserved by that Treaty, are properly before the Court. Moreover, the Court's Order impacts numerous Tribes and Allottees for which reserved water rights proceedings are stayed pursuant to Court Order and state law. Moreover, this erroneous ruling will upset the adjudication and prejudice future proceedings. Even if this issue is necessary to the matter decided, the Court determined these issues without reference to, and in contradiction of, federal law.

V

ARGUMENT

A. Federal substantive law controls how Indian water rights are judged in state court.

The scope of the 1855 Treaty is controlled by federal law. *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 571 (1983) (“We also emphasize . . . that our decision in no way changes the substantive law by which Indian rights in state water adjudications must be judged. State courts, as much as federal courts, have a solemn obligation to follow federal law.”) The United States seeks revision of the Court's Order because it misapplies federal law and inappropriately relies upon state law to conclude that non-Indians were entitled to invade lands set aside in 1855 for the Blackfeet Indians and to appropriate water under Montana state laws before Montana became a Territory or a State and before the 1855 Treaty Reservation was reduced in size or its lands were opened to non-Indians.

B. Lands reserved by the 1855 Treaty are not open to trespass, settlement or occupation by non-Indians.

The Court's conclusion that non-Indians may trespass upon lands reserved by the 1855

Treaty to appropriate water under state law is irreconcilable with federal law. *See Duro v. Reina*, 495 U.S. 676, 696-97 (1990) (“The tribes also possess their traditional and undisputed power to exclude persons whom they deem to be undesirable from tribal lands”); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333 (1983) (recognizing a “tribe’s power to exclude nonmembers entirely [from a reservation] . . .”); *Merrion v. Jicarilla Tribe*, 455 U.S. 130, 144-145 (1982) (Nonmembers on tribal land are “subject to the tribe’s power to exclude . . .”); *Worcester v. State of Georgia*, 31 U.S. 515, 561 (1832) (Nonmembers may enter Indian land only “with the assent of the [tribes] themselves . . .”). *See also* 1834 Trade and Intercourse Act, June 30, 1864, 4 Stat. 729, 730, Sec. 11 (Applying criminal penalties to any non-Indian who “shall make a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe . . .”)

Simply put, “state water laws are not controlling on an Indian reservation.” *Walton*, 647 F.2d at 53. The bar does not stem from whether the reserved water right is quantified (“reserved”) or unquantified (“unreserved”)⁶ but from the *reserved status* of the land. In *Walton*, the State of Washington argued that *McIntire* was distinguishable because the Court in that case had already held the waters were reserved. Rejecting this argument, the Ninth Circuit held that it “is clear, however, that the court did not rely on this in holding state water law inapplicable on the reservation.” *Id.* at 53, n. 17.

The Court erred when it sought to create an exception to the rule that lands that “are reserved are severed from the public domain.” *McIntire*, 101 F.2d at 654. *See Order* at 16, citing

⁶ *See Order* at 14 (“At most, *McIntire*, stands for the self evident and uncontroversial proposition that once water was reserved it could not later be appropriated by someone else. *McIntire*, does not prohibit appropriation of unreserved waters.”)

the Mineral Lands Act of July 26, 1866, 14 Stat. 251, 253, 43 U.S.C. 661 and the Desert Land Act of 1877, 43 U.S.C. 321 and concluding that it is the longstanding policy of the United States Congress and federal courts to protect appropriation of water rights on federal lands, including lands within federal Indian and other reservations and that “[a]pplying these principles to the present case, it is clear that [pre-1873] settlers in Basin 41QJ had a right to appropriate water rights . . .” *Id.* At 17. This conclusion is inconsistent with the “familiar principle of public land law that statutes providing generally for disposal of the public domain are inapplicable to lands which are not unqualifiedly subject to sale and disposition because they have been appropriated to some purpose.” *Federal Power Commission v. State of Oregon*, 349 U.S. 435, 448 (1955), citing *United States v. O’Donnell*, 303 U.S. 501, 510 (1938). In *Federal Power Commission*, the Court expressly rejected the notion that reserved lands are subject to the same rules that govern the public domain. *Id.* at 448 (“It is not necessary for us, in the instant case, to pass upon the question whether this legislation constitutes the express delegation or conveyance of power that is claimed by the State, because these Acts are not applicable to the reserved lands and waters here involved.”). See also *United States v. Cappaert*, 426 U.S. 128, 143 (1976) (Desert Land Act applies to public lands); *United States v. Minnesota*, 270 U.S. 181, 206 (1926) (“The rule is that lands which have been appropriated or reserved for a lawful purpose are not public, and are to be regarded as impliedly excepted from subsequent law, grants, and disposals which do not specially disclose a purpose to include them.”); *McIntire*, 101 F.2d at 54 (Mineral Lands Act applies only to public lands.).

Finally, Congress explicitly recognized that territorial law does not apply to Blackfeet Reservation lands when it authorized organization of the Montana Territory in 1864:

[N]othing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribes, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but *all such territory shall be excepted out of the boundaries and constitute no part of the Territory of Montana*, until said tribe shall signify their assent to the President of the United States to be included within said territory, or to affect the authority of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed.

Montana Organic Act of May 26, 1864, 13 Stat. 85, 86 §1 (emphasis added).⁷

In sum, any state law claim for state law water rights within Basin 41QJ with a priority that predates July 5, 1873, is void as a matter of law.

C. Article 7 of the 1855 Treaty does not authorize non-Indians to live within the 1855 Reservation.

The Court acknowledges that its interpretation of Article 7 of the 1855 Treaty creates a conflict with Article 4 of the same Treaty (which provides for the Blackfeet's exclusive control over their territory).⁸ The Court views Article 7 as a "significant exception" to Congress' agreement in Article 4 that the Blackfeet Indians would maintain "exclusive control" over their

⁷ The Montana authorities relied upon by the Court for the proposition that "water rights may be appropriated by squatters occupying lands they do not own and to which they do not have a legitimate claim of title," Order at 17 n.9, in addition to the overwhelming federal authority discussed above that non-Indians have no claim to water located upon an Indian reservation, Montana courts in fact do not recognize any right to water where the *appropriator is a trespasser*. See *Smith v. Denniff* (1900), 24 Mont. 20, 60 P. 398; and *Connolly v. Harrel* (1936), 102 Mont. 295, 57 P.2d 78. See also *Cook v. Hudson* (1940), 110 Mont. 263, 103 P.2d 137 (Recognizing the applicability of the 1834 Trade and Intercourse Act, to bar water rights claims when trespass is at issue.).

⁸ There is no conflict between the two Articles because, as we explained in our initial response, Article 7 does not allow settlement on the 1855 Treaty Reservation or by implication, the appropriation of water.

Article 4 lands, by allowing non-Indians to live within the reservation. Order at 12 (“Together, Article 7 which authorized non-Indians to live on the reservation, and Article 8 which allowed for permanent occupation of land for farms amount other uses, constituted a significant exception to the exclusive control provisions of Article 4.”).

The conclusion that by Article 7 Congress intended to *deprive* the Blackfeet and the United States of exclusive control in favor of non-Indian settlement “and by implication to appropriate water,” Order at 12, undermines Article 4 and expands Article 7 from an agreement not to molest, to a surrender of the federal real property rights that were guaranteed in Article 4. Federal law, however, requires the Court to address this ambiguity by construing it “in favor of the Indians, with ambiguous provisions interpreted to their benefit.” *Oneida* 470 U.S. at 247.⁹ *See also Greely*, 219 Mont. at 86, 712 P.2d at 762-763 (“Any ambiguity in a treaty must be resolved in favor of the Indians. Treaties must be interpreted as the Indians themselves would have understood them. Indian treaties must be liberally construed in favor of the Indians.”)

Finally, the Court’s interpretation of Article 7 creates another inconsistency. The Court describes what it characterizes as congressional and executive efforts after the 1855 Treaty to

⁹ The Tribal promise in Article 7 not to challenge non-Indians to who live in or travel through the 1855 Treaty Reservation and the powers reserved by the United States in Article 8 are not unusual treaty provisions (although the same language is not always used). *See, e.g.* Treaty of Fort Laramie with Sioux, and other Indian Nations, 2 Kapp. 594, 11 Stat. 749 (1851) (Recognizing the right of the United States to establish roads, military and other posts); Treaty with the Apache, 2 Kapp. 598, 10 Stat. 979 (1852) (Art. 7 - the people of the United States shall have free and safe passage through the territory of the aforesaid Indians, under such rules and regulations as may be adopted; Art.8 - United States will establish military posts and agencies, and authorize ‘trading houses’); and Treaty with the Comanche, Kiowa and Apache, 2 Kapp. 600, 10 Stat. 1013 (1853) (Art.3 - Tribes acknowledge right of the United States to construct roads, establish military and other posts, and to protect the rights of persons and property among the Indian tribes).

open lands in Basin 41QJ for settlement. Order at 8 (footnote omitted.) If, however, the United States had, by way of the express language of the 1855 Treaty, simultaneously established the Blackfeet Reservation and opened it to non-Indian settlement, there would have been no need for subsequent attempts by Congress and the executive branch to create a smaller reservation for the express purpose of changing the status of the remaining lands in Basin 41QJ from Indian reservation to public domain, thereby opening these lands for “settlement of incoming emigrants,” *Blackfeet Tribe v. United States*, 81 Ct. Cl. 101, 123 (1935).¹⁰

D. The Court erred in giving legal status to the 1865 and 1868 Treaties with the Blackfeet.

The Court improperly relies upon the failed treaties of 1865 and 1868 to conclude that the United States having “signed treaties to encourage settlement . . . cannot now argue settlers were trespassers who should have the priority dates of their water rights arbitrarily back-dated to the time of the cession.” Order at 19. The finding is wrong as a matter of law.

In negotiating with the Blackfeet over the 1865 and the 1868 Treaties, the United States sought to reach agreement with the Blackfeet for the voluntary cession of certain lands within the 1855 Treaty Reservation. “The moving cause for this legislation and procedure was a prevalent supposition that the lands abounded in gold and should be made available to settlement by

¹⁰ The Court mentions the McCarran Amendment, 43 U.S.C. 666, in passing, but incorrectly states that the Act “waived sovereign immunity of both the United States and Indian Tribes and provided for their joinder in state lawsuits or proceedings involving comprehensive adjudication of water rights.” Order at 16. The McCarran Amendment did not waive the sovereign immunity of Indians as *parties* to state comprehensive water adjudications -- it only waived federal sovereign immunity with regard to the Indian *rights* at issue in those proceedings. See *San Carlos Apache Tribe*, 463 U.S. at 567 n.17. See also *Greely*, 219 Mont. at 84, 712 P.2d at 759 (“The McCarran Amendment did not expressly waive the sovereign immunity of Indian Tribes.”).

incoming emigrants.” *Blackfeet*, 81 Ct. Cl. at 123.

Treaty making authority is exclusively a federal responsibility. Although the Executive branch is the primary negotiator of treaties, the United States Constitution requires that two-thirds of the Senate approve a treaty. U.S. Const., Art. II, Sec. 2, cl. 2. Prior to 1871, treaties with Indian tribes were subject to Senate ratification. Both treaties referenced this requirement. *See* 4 Kapp. 1133, 1136 (1865 Treaty); 4 Kapp. 1138, 1141 (1868 Treaty.) Neither Treaty was ratified by Congress. On this issue, the Court of Claims noted that:

We can find no precedent which would warrant a departure from the reason for the necessity of formal ratification of Indian treaties. Indian treaties were negotiated by duly accredited commissioners of the United States, and Congress in no legislation pointed out to the court ever indicated an intent to entrust the finality of the agreements and surrender the superior right of supervision, amendment, and approval, by way of ratification of the same until 1871. Until 1871 the Congress refused “to expose the Government to the errors of a single person” and ratification of a treaty to render it obligatory was uniformly recognized.”

Blackfeet, 81 Ct. Cl. at 126. Consequently, as a matter of law, neither treaty had any force or effect.¹¹

Finally, the Court concludes, incorrectly, that having “signed the treaties to encourage settlement, the United States cannot now argue settlers were trespassers who should have the priority dates of their water rights arbitrarily back dated to the time of cession.” Order at 19. A suit by the United States to enforce and maintain its policy respecting lands which it holds in trust for all people stands upon a different plane in this and some other respects from the ordinary private suit to regain title to real property or to remain a cloud from it. *Utah Power & Light Co.*,

¹¹ *See also Cook v. Hudson* (1940), 110 Mont. 263, 103 P.2d 137, 148 (“It appears to us that [the date of ratification] is the date the agreement became binding upon both parties according to its terms . . .”)

243 U.S. at 409. *See also United States v. West*, 232 F.2d 694, 698 (9th Cir. 1956).^{12/}

E. The Court erred as a matter of law when it determined the purpose of the 1855 Reservation and the quantity of water reserved thereunder.

The Court improperly expanded its review of IR P490 by reaching unsupported conclusions regarding an issue that was not before it: the purpose of the 1855 Treaty Reservation and the quantity of water reserved through the creation of the 1855 Treaty Reservation. Order at 8. There is no claim before the Court for water reserved in Basin 41QJ under the 1855 Treaty. Moreover, the Court provided no notice that it intended to engage in fact finding to determine the amount of water reserved for the Blackfeet Indians by the 1855 Treaty. A finding that *the* purpose of the 1855 Treaty was “to establish a reservation large enough to enable the Blackfeet Tribe to continue its traditional nomadic existence,” Order at 12, is wrong as a matter of law. The Court acknowledges that Article 10 refers to agriculture, but dismisses its importance because “no reference is made to irrigation.” Order at 12. Federal law, however, requires that treaties “should be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.” *Oneida*, 470 U.S. at 247 and *Greely*, 219 Mont. at 90, 712 P.2d at 768 (“The purposes of Indian reserved rights, on the other hand, are given broader interpretation in order to further the federal goal of Indian self-sufficiency.”) The import of Article 10 was that the United States sought a change in the Blackfeet’s present habits and mode

¹² The Court also finds estoppel in the context of the Blackfeet judgment in 1935. Order at 19 (“Having terminated large areas of the reservation to facilitate non-Indian settlement, and having paid damages for its decision, the United States cannot now argue a reserved water right remains viable in this Basin, and that successors of the settlers it induced to occupy the lands should have their priority dates modified.”). Notwithstanding the Supreme Court’s ruling in *Utah Power and Light*, which applies with equal force here; the import of federal law is that until the 1855 Treaty Reservation was reduced in 1873, no right to water could be awarded to non-Indians trespassing on the 1855 Treaty Reservation before that significant date.

of living and to encourage cultivation of the soil -- purposes for which was reserved.

Finally, the Court's Order unnecessarily jeopardizes the pending adjudication and possible settlement of water rights claim for those Tribes that are parties to the 1855 Treaty and are thus impacted by the Court's Order. The Gros Ventre (now on the Fort Belknap Reservation), the Tribes of the Flathead Reservation, and the Nez Perce Tribe (now in Idaho) were all party to the 1855 Blackfeet Treaty. The present-day Blackfeet, Fort Belknap, and Fort Peck Reservations were all carved out of the original 1855 Blackfeet Treaty Reservation area. Pursuant to M.C.A. § 82-2-217, "all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights" are suspended until July 1, 2013, while negotiations are continuing.¹³

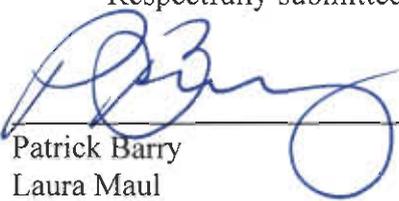
VI

CONCLUSION

For the reasons stated above and consonant with justice, the United States seeks reinstatement of issue remark P490 to Claimants' claims in Basin 41QJ with pre-1873 priority dates.

¹³ The Water Court has stayed the adjudication of the Blackfeet Tribe's water rights on an annual basis for over a decade because the State of Montana and the Blackfeet Tribe were negotiating and approving a Compact for which settlement legislation is now pending before the U.S. Congress. See, e.g., Case No. WC-91-1, *Order Extending Stay* (Dec. 28, 2011) (extending annual stay to January 16, 2013); *Joint Motion to Extend Stay For Additional Year* (Dec. 28, 2011).

Respectfully submitted this *22nd* day of *October*, 2012.



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by first class mail to each of the parties
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