

MONTANA WATER COURT, CLARK FORK DIVISION
JOCKO RIVER HYDROLOGIC SUB-BASIN (BASIN 76L) AND
FLATHEAD RIVER TO AND INCLUDING FLATHEAD LAKE (BASIN 76LJ)

ORDER EXTENDING STAY

The United States petitions the Water Court for an extension of stay of adjudication of all claims in Basins 76L and 76LJ. Basins 76L and 76LJ contain thousands of on- and off-reservation water rights claims filed by the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Reservation and the United States, which are settled by the Confederated Salish and Kootenai—Montana Compact (Compact). *See* §§ 85-20-1901, -1902, MCA. Federal legislation was recently introduced to adopt the Compact. The Compact awaits federal approval and incorporation into a preliminary decree issued by the Montana Water Court. Section 85-20-1901, MCA (Article—Finality). CSKT and the United States petition for an extension of stay until January 10, 2023, the amount of time anticipated for federal ratification of the Compact and authorization of federal appropriations consistent with state and federal legislation.

BACKGROUND

After over a decade of negotiation between CSKT, the United States, and the State of Montana, the 2015 Montana Legislature approved the Compact. *See* §§ 85-20-1901, -1902, MCA. The Compact recites CSKT, the State of Montana, and the United States’ agreement that the tribal water right and other water rights described in the Compact are “in satisfaction of the water rights claims of the Tribes, their members and Allottees, and of the United States on behalf of the Tribes and their members and Alottees[,]” and that “it is in the best interest of all Parties that the water rights claims of [CSKT] be settled

through agreement between and among the Tribes, the State of Montana, and the United States[.]” Section 85-20-1901, MCA (Article I—Recitals).

On July 12, 2015, the Water Court issued an order extending the long-standing stay of adjudication on all water rights claims in Basins 76L and 76LJ until January 31, 2017. On September 26, 2016, the Montana Water Court again extended the stay until June 1, 2018. Anticipating the June 1, 2018 expiration of the stay, CSKT petitioned for another extension requesting the Water Court to stay adjudication until the Water Court could review the Compact. The United States, State of Montana, Avista Corporation, Montana Stockgrowers Association, Montana Farm Bureau Federation, Montana Water Resources Association, Galt Ranch LP, and Cremer Ranch and Rodeo filed briefs in support of CSKT’s petition. No party opposed the petition.

On June 5, 2018, the Water Court extended the stay on adjudication until January 10, 2020. At the time the stay was extended, Montana law stated it was “realistic and feasible for the water court to issue a preliminary or temporary preliminary decree by June 30, 2020, for all basins in Montana.” Section 85-2-270(2), MCA (2017). During the 2019 legislative session, the Montana Legislature statutorily extended the Water Court’s deadline for issuing preliminary or temporary preliminary decrees to June 30, 2024. Section 85-2-270(2), MCA. Accordingly, the June 30, 2020 deadline no longer applies.

Anticipating the January 10, 2020 expiration of the stay, the United States filed a November 25, 2019 petition for an extension of stay until January 10, 2023. In addition to its request for an extension of the stay, the United States petitions the Water Court to require the United States, CSKT, and State of Montana to provide a written status report every six months regarding the parties’ efforts to ratify the Compact. The United States requests a hearing and ruling on its petition prior to the expiration of the current stay on January 10, 2020. Alternatively, the United States requests that the Water Court issue a temporary extension of the stay until the Water Court rules on the petition.

The State of Montana and CSKT filed briefs in support of the United States’ petition for an extension of stay. The Water Court has not received objections to the United States’ petition from any party.

DISCUSSION

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254, 57 S. Ct. 163, 166 (1936). “A court determines whether to grant a stay by balancing competing interests and considering whether the public welfare or convenience will be benefitted by a stay.” *State v. Montana First Judicial Dist. Court*, 361 Mont. 536, ¶ 10, 264 P.3d 518 (2011) (citing *Henry v. District Court*, 198 Mont. 8, 13, 645 P.2d 1350, 1353 (1982)). Consistent with United States Supreme Court precedent, the Montana Supreme Court outlined three criteria by which Montana courts assess stay requests.

1. A court has inherent power to stay proceedings in control of its docket—after balancing the competing interests.

2. The party seeking a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay will work damage to someone else. Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.

3. Especially in cases of extraordinary public moment, the individual may be required to submit to moderate delay if the public welfare or convenience will thereby be promoted.

Henry, 198 Mont. at 13-14, 645 P.2d at 1353 (internal citations omitted).

ANALYSIS

The Montana Water Court has discretion to stay proceedings and manage its docket within statutory limitations after balancing competing interests. The 2019 Montana Legislature statutorily extended the Water Court’s deadline for issuing preliminary or temporary preliminary decrees to June 30, 2024. No party has objected to the United States’ petition for stay of adjudication on all claims in Basins 76L and 76LJ. The Water Court has the inherent power to extend the stay on adjudication until January 10, 2023.

The petition from the United States makes clear that an extension of the stay of adjudication of water rights claims in Basins 76L and 76LJ postpones and potentially eliminates the need for litigation quantifying on- and off-reservation treaty water rights claimed by CSKT. It is undisputed that litigation of CSKT's claims would be lengthy, expensive, and potentially divisive. Litigation of these claims will affect hundreds of water users in the two basins. The Compact settles these claims. While the 2015 Montana Legislature ratified the Compact, the Montana Water Court cannot review or incorporate the Compact into a preliminary decree until the Compact receives federal approval. The United States contends that the parties to the Compact and water users in the basins largely favor the status quo over continued adjudication and pending litigation without the Compact's federal approval. The United States cites the lack of opposition received by the Water Court to support its conclusion.

Finally, the United States contends that the dismissal of thousands of tribal water rights claims with the potential to impact hundreds of water users across two basins in favor of a Compact memorializing over a decade of negotiation between CSKT, the United States, and the State of Montana is an "extraordinary public moment." *See Henry*, 198 Mont. at 13-14, 645 P.2d at 1353 (internal citations omitted). In Montana, it is well-established that courts favor compromise. *State Highway Comm'n v. Arms*, 163 Mont. 487, 490, 518 P.2d 35, 37 (1974). Furthermore, the 2015 Montana Legislature's approval of the Compact signals its preference for resolution through settlement over litigation. Pursuant to *Henry*, such an extraordinary public moment justifies moderate delay.

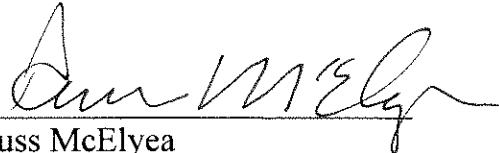
The extension of stay petitioned for by the United States meets the criteria stated in *Henry*. The Water Court has balanced competing interests and found that the stay benefits the public welfare and convenience and promotes judicial economy.

CONCLUSION

Based on the foregoing, it is ORDERED that the stay of adjudication in Basins 76L and 76LJ issued by the Montana Water Court on June 5, 2018 is extended until **January 10, 2023**.

It is further ORDERED that the parties to the Compact shall provide written status reports every six months to the Water Court regarding the parties' efforts to ratify the Compact.

DATED this 13th day of December, 2019.


Russ McElyea
Chief Water Judge

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Note: Service List Updated 12/13/2019