

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
CONFEDERATED SALISH AND KOOTENAI TRIBES – MONTANA – UNITED STATES
COMPACT

CASE NO. WC-0001-C-2021

CASE MANAGEMENT ORDER NO. 1

This Case Management Order establishes initial procedures to address objections filed during the Preliminary Decree objection period for the Confederated Salish and Kootenai Tribes – Montana – United States Compact (“Compact”).

For purposes of this Case Management Order, the parties to the Compact are referred to as the “Compacting Parties.” Those persons or entities that filed objections to the Preliminary Decree for the Compact are referred to as “Objectors.”

BACKGROUND

On June 9, 2022, the Water Court issued the Preliminary Decree for the Compact. Issuance of the Preliminary Decree commenced a 180-day objection period. The objection period, as extended, ended on February 9, 2023. The objection period now is closed. The Montana Water Use Act requires the Water Court to resolve all objections to a preliminary decree.

The Water Court docketed all objections in its Full Court Enterprise (“FCE”) case management system. Each objection was assigned a specific numerical docket number. The docket numbers and the names of the Objectors may be viewed on the FCE public portal, which is linked on the Court’s website. (<https://courts.mt.gov/courts/water/>).

The Water Use Act authorizes the Court to require parties to participate in settlement conferences prior to any hearing on objections. Section 85-2-233(5)(b), MCA. As part of this Case Management Order, the Court is setting a “settlement track.” A settlement track is a time period during which objections can be resolved without a hearing. The Court also is appointing a mediator to facilitate settlements during the settlement track. **The Court will dismiss the objection of any Objector that does not participate in the settlement process.**

At the end of the settlement track, the Court will place any remaining unresolved objections on a “hearing track.” The hearing track will set formal court deadlines for various pretrial items, including the filing of any motions. If objections are not resolved by settlement or by motions, those objections will be heard at a trial-type hearing. The Court then will issue a decision.

The Court may issue additional Case Management Orders at such times as it deems appropriate. The Case Management Orders will apply to and bind all parties, will control the course of proceedings, and may be modified only by an order of the Court.

Therefore, it is ORDERED:

1. **Rules governing these proceedings.** All proceedings for this case, and any subcases created to address specific objections or issues, are governed by case management orders, the Water Court’s Water Right Adjudication Rules (abbreviated as “W.R.Adj.R.”), which incorporate by reference the Montana Rules of Civil Procedure (“M.R.Civ.P.”), the Montana Uniform District Court Rules, and the Montana Rules of Evidence. Rule 2(b), W.R.Adj.R. A copy of the Water Right Adjudication Rules is available on “Legal Resources” page of the Water Court’s website. (<https://courts.mt.gov/courts/water/>).

2. **Initial Case Management Conference.** An initial Case Management Conference is set for **March 22, 2023** at 10:00 a.m., Mountain Time. The conference will take place by Zoom. The conference is limited to a discussion of procedural items. The conference is not a hearing on the merits of any objection. Participation at the conference is optional for Objectors. A representative for each of the Compacting Parties must attend the conference.

To maintain efficiency and order, parties other than legal counsel for the Compacting Parties who intend to speak at the conference must notify the Court not later than March 15, 2023. The notification must state the reason for the request. The conference will be recorded and the Court will make the recording available on the Court's website.

Instructions for accessing the call are as follows:

To join from a PC, Mac, iPad, iPhone or Android device:

Click on this URL, or type the URL into your browser to join:

<https://mt-gov.zoom.us/j/82935972785?pwd=RHE2Sk1SYUtQOTZ1ZUYvU2dENk85UT09>

Password: 524161

To join by phone:

Dial (for higher quality, dial a number based on your current location):

US: +1 213 338 8477 or +1 206 337 9723 or +1 646 558 8656

Webinar ID: 829 3597 2785

Passcode: 524161

3. **Case management conference agenda.** The tentative agenda of the initial Case Management Conference is as follows:

- a. Introductions.
- b. Rules governing proceedings.
- c. Method for filing documents with the Court, including electronic filing.
- d. Methods and requirements for service of documents.
- e. Explanation of the settlement track procedures.
- f. Explanation of hearing track and tentative hearing track schedule.

g. Other topics emailed or mailed and received by the Court prior to close of business March 15, 2023. The final agenda will be published on the Court's website by March 17, 2023.

4. **Settlement track.** Pursuant to Section 85-2-233(5)(b), MCA, the Court places all objections on a settlement track until the earlier of (a) September 29, 2023, or (b) such other date set by the Court in a subsequent order. The "settlement track" means all proceedings are stayed until the settlement track period expires other than matters related to settlement of objections. The stay applies to the filing of any motions on substantive legal issues and any discovery. If an objection is resolved by settlement during the settlement track period, the settling parties shall file notice of the settlement with the Court. The Court will address settlements pursuant to its authority under Rule 17(c), W.R.Adj.R.

5. **Hearing track.** Following the completion of the settlement track, the resolution of any remaining objections will proceed on a hearing track. The Court sets **October 3, 2023** at 10:00 a.m., Mountain Time, as the date for the Hearing Track scheduling conference. The Court will provide instructions to access the conference in a subsequent order.

6. **Settlement process.** Pursuant to W.R.Adj.R. 16(b), which authorizes the Water Court to appoint a mediator, the Court appoints Senior Water Master Madeleine Weisz as the mediator to promote and facilitate settlement of objections. The mediator cannot compel a settlement. As noted previously, the Court will dismiss the objections of Objectors that do not participate in the settlement process.

Following the initial Case Management Conference, the mediator will set a schedule and process for resolution of objections. This process will include the opportunity for each Objector to resolve their objections with the Compacting Parties. The settlement process will include opportunities for both in person and online settlement conferences.

7. **Voluntary withdrawal of objections.** While the case is on the settlement track, any party may voluntarily withdraw their objection. A form for withdrawing an

objection is available on the Court’s website. Upon receipt of a withdrawal of objection, whether by form or by settlement agreement, the Court will dismiss the objection and remove the Objector from this case.

8. **Subcases.** For settlement purposes or to facilitate resolution of specific issues, the Court may assign individual or groups of objections to a subcase. When a subcase is created, the Court will issue an order giving the subcase a case number, identifying the Objector(s) involved in the case, and creating a service list for the case. The Compacting Parties will be included as parties to every subcase.

9. **Service of process.** Pursuant to Rule 5(c), M.R.Civ.P. the Court sets the following rules for service of process:

- a. The Court will establish a master service list (“Master Service List”) for this case and provide a link to the service list on the Court’s website. The Master Service List includes the Compacting Parties and all Objectors. The Court will modify the Master Service List from time to time to delete Objectors that reach settlements accepted by the Court.
- b. Any pleading, motion or other paper filed by any Objector that addresses the validity of any provision of the Compact must be served on all persons on the Master Service List, including the Compacting Parties, that is current as of the date of the filing.
- c. Certificates of service may certify service by referencing the Master Service List. If such a reference is made, the service list does not need to be separately attached and included with the filing.
- d. Any pleading, motion or other paper filed by an Objector or the Compacting Parties that addresses the validity of an objection or a matter specific to an Objector need not be served on other Objectors, but must be served on the Compacting Parties.
- e. If any objections are consolidated in a subcase, the Court will establish a service list specific to that subcase and service of process will be limited to parties identified on the subcase service list. If objections are put into

a subcase, service only is required as to parties to the subcase, including the Compacting Parties.

- f. The Court encourages Objectors to consent to electronic service. A “Consent to Electronic Service” form is available on the Court’s website.

10. **Case website.** The Court will establish a page on its website dedicated to providing information about the process for resolution of the Objections. This page will include links to all case management orders, substantive orders of the Court, the current service list, and other pertinent information. The official record for this case is maintained on the Court’s FCE system.



Digitally signed by
Stephen Brown
Date: 2023.03.03

Stephen R. Brown
Water Judge

Service via Electronic Mail:

David W. Harder
Senior Attorney for Legal Issues
U.S. Department of Justice
Indian Resources Section
Environment & Natural Resources Div.
999 18th St.
South Terrace, Suite 370
Denver, Colorado 80202
david.harder@usdoj.gov
efile_denver.enrd@usdoj.gov

Molly M. Kelly
Montana DNRC
1539 Eleventh Avenue
PO Box 201601
Helena, MT 59601
(406) 444-5785
Molly.kelly2@mt.gov
jean.saye@mt.gov

Kathryn Brautigam
Holland & Hart LLP
401 North 31st Street, Suite 1500
Billings 59101
kmbrautigam@hollandhart.com
aforney@hollandhart.com

Chad Vanisko
Montana Attorney General
Agency Legal Counsel
Agency Legal Services Bureau
1712 Ninth Avenue
PO Box 201440
Helena, MT 59620-1440
Phone: (406) 444-7375
chad.vanisko@mt.gov
rochell.standish@mt.gov

Daniel Decker
Melissa Schlichting
Christina M. Courville
Confederated Salish & Kootenai Tribes
Tribal Legal Department
PO Box 278
Pablo, MT 59855
Melissa.Schlichting@cskt.org
Christina.Courville@cskt.org
daniel.decker@cskt.org

Graham J. Coppes
Ferguson Law Office, PLLC
P.O. Box 8359
Missoula, MT 59807
(406) 532-2664
grahamc@fergusonlawmt.com
filings@fergusonlawmt.com

Service via USPS Mail:

Walter E. Congdon
Attorney for Lake County
106 4th Avenue East
Polson, MT 59860
(406) 883-7231
Lorigoffeaapc@gmail.com

Bruce A. Fredrickson
Angela M. LeDuc
Rocky Mountain Law Partners, P.C.
1830 3rd Ave. E., Ste. 301
Kalispell, Montana 59901
(406) 314-6011
bruce@rmtlawp.com
angie@rmtlawp.com

John B. Dudis
Attorney at Law
431 1st Ave. W.
Kalispell, MT 59901
john@dudislawpc.com

Loren T. Fitzpatrick
213 1st St. W. Suite 206,
Polson, MT 59860
loren.t.fitzpatrick@gmail.com

Kristin L. Omvig
Benjamin J. Hammer
Omvig Hammer Law, P.C.
P.O. Box 1202
Kalispell, MT 59903
(406) 885-2850
ben@ohlawmt.com
kristin@ohlawmt.com

Elizabeth W. Erickson
Amy M. Scott Smith
Worden Thane P.C.
321 W. Broadway St., Suite 300
Missoula, MT 59802
ascottsmith@wordenthane.com
eerickson@wordenthane.com

Matthew W. Williams
MW Law Firm PLLC
777 E Main Street, Ste 205
Bozeman, MT 59715
(406) 586-1373

Dousis Angeliki
Attorney at Law
3033 Helena Flats Rd.
Kalispell, MT 59901

Naomi Leisz
Sanders County Attorney
1111 Main St. W.
PO Box 519
Thompson Falls, MT 59873
(406) 827-6903

James Raymond
Civil Deputy County Attorney
106 4th Ave. E
Polson, MT 59860

Sack Law PLLC
Matthew Sack
1700 W. Koch, Ste. 4
Bozeman, MT 59715
(406) 587-3736

Gregory J. Hatley
Davis, Hatley, Haffeman & Tighe, P.C.
101 River Drive North
Milwaukee Station, 3rd Floor
Great Falls, MT 59401
(406) 761.5243
greg.hatley@dhhtlaw.com

Debra Jackson
Mineral County Deputy County Attorney
300 River Street
P.O. Box 339
Superior, Montana 59872
(406) 822-3535

Marcel Quinn
Hammer, Quinn & Shaw PLLC
100 Financial Dr, Ste 100
Kalispell, MT 59901
(406) 755-2225

Eric L. Olsen
Attorney at Law
505 Pershing Ave., Ste. 100
Pocatello, ID 83201

Lance P. Jasper
Reep, Bell & Jasper, P.C.
202 West Spruce Street
Missoula, MT 59802
(406) 541-4100

Julie R. Sirrs
Boone Karlberg P.C.
Central Square Building
201 West Main Street, Suite 300
Missoula, MT 59802
(406) 543-6646

This Case Management Order has been served on all other Objectors. Pursuant to Rule 5(c), M.R.Civ.P. a copy of the complete Master Service List is available at <https://courts.mt.gov/Courts/Water/Notices-Info/cskt>.