

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

CASE NO. WC-0001-C-2021

NOTICE OF ENTRY OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION-STATE OF MONTANA-UNITED STATES COMPACT PRELIMINARY DECREE AND NOTICE OF AVAILABILITY

AS A WATER USER YOU MUST READ ALL OF THIS NOTICE

The Montana Water Court has been asked to approve a Compact settling the water rights claims of the Confederated Salish and Kootenai Tribes of the Flathead Reservation (“Tribes”). The Tribes, the State of Montana, and the United States (hereinafter collectively referred to as the “Compacting Parties”) entered into a Compact (“Flathead Compact”) settling the reserved water right claims of the Tribes, members of the Tribes, and allottees, and the United States on behalf of the Tribes, members of the Tribes, and allottees, in accordance with § 85-2-702, MCA. The Flathead Compact was ratified by the Montana Legislature on April 24, 2015 (codified at § 85-20-1901, MCA), by the Congress of the United States on December 27, 2020 (Pub. L. No. 116-260, Title V, Division DD) (“Federal Act”), by the Tribes by Resolution 21-023 of the Tribal Council on December 29, 2020 and signed by the Secretary of the United States Department of the Interior on September 17, 2021. The Flathead Compact is available for your review before the Court determines whether to approve the Flathead Compact in accordance with applicable law.

The Flathead Compact defines the reserved water rights of the Tribes within the State of Montana and will entitle the Tribes to divert and use water in accordance with the Flathead Compact within all or part of the following basins: Basin 76D, Kootenai River; Basin 76E, Rock Creek; Basin 76F, Blackfoot River; Basin 76J, Flathead River (South Fork); Basin 76K, Swan River; Basin 76L, Flathead River (below Flathead Lake); Basin 76LJ, Flathead River (to and including Flathead Lake); Basin 76M, Clark Fork River (between Blackfoot and Flathead Rivers); and Basin 76N, lower Clark Fork River (below Flathead River). A summary of the Tribal water rights within these basins is enclosed with this Notice. Also, Tribal water rights can have an impact on water rights in Basin 76G, Clark Fork River (above Blackfoot River); 76GJ, Flint Creek; and Basin 76I, Middle Fork of the Flathead River.

You are receiving this Notice because the State’s water rights records indicate you have filed a statement of claim, applied for or received a permit to appropriate water, or own a water reservation in the vicinity of the area in which a reserved water right quantified in the Flathead Compact is located or in a basin that could be impacted by such rights. Since you may have an interest affected by the Flathead Compact, you should review the Compact. Accordingly,

YOU ARE HEREBY NOTIFIED that the Montana Water Court has entered a Preliminary Decree and Findings of Fact, Conclusions of Law, and Order for the Commencement of Special Proceedings for Consideration of the Confederated Salish and Kootenai Tribes of the Flathead Reservation-State of Montana-United States Compact (“Commencement Order”) in the affected basins, the Flathead Compact, in order to determine whether it should be

approved in accordance with applicable law. If the Court approves the Flathead Compact, it will enter a Final Decree adjudicating the water rights of the Tribes as they are recognized in the Flathead Compact and as limited by the Federal Act. That Final Decree will be binding on all water users in the Montana water rights adjudication.

*What Is a Preliminary Decree and What Are Your Rights
and Obligations to Object to the Flathead Compact?*

This Preliminary Decree is a decree entered by the Water Court in accordance with § 85-2-231(2), MCA. As explained in Article VII.B.2 of the Flathead Compact, the Water Court’s review of the Compact is “limited to the contents of Appendix 38 [of the Compact] and may extend to other sections of the Compact only to the extent that they relate to the determination of water rights and their administration.” The Preliminary Decree sets forth the entire Flathead Compact and the specific provisions of the Flathead Compact that the Court will review in the proceeding. The Court’s review will be conducted pursuant to the standard previously identified for the review of Tribal-State water compacts, which treats a compact as “closely analogous to a consent decree.” *Chippewa Cree Tribe Water Compact*, 2002 WL 34947007, *3, Case No. WC-2000-01 (June 12, 2002). The Court’s review of a compact is to allow the Court “to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between the negotiating parties” *Id.* (internal quotations omitted). “The purpose of this kind of judicial review is not to ensure that the settlement is fair or reasonable between the negotiating parties, but that it is fair and reasonable to those parties and the public interest who were not represented in the negotiation, but have interests that could be materially injured by operation of the compact.” *Id.* at *4 (emphasis omitted).

At this stage in the adjudication, all affected persons are required to state any objections that they may have to the Preliminary Decree. Your water usage may be affected by the Flathead Compact. If you do not agree with the Tribal Water Rights recognized in the Flathead Compact, you may file an objection and request a hearing and the Water Court will hear your objection under the existing legal standards. **This will be your only opportunity to object to the Preliminary Decree. If you do not file an objection at this time, you will not be able to object to the Preliminary Decree in any other proceedings before the Water Court and you will be bound by any final decree entered by the Water Court approving the Tribal Water Rights quantified in the Flathead Compact.**

Right to Appeal

If you do not participate in Water Court proceedings, your right to appeal an adverse decision is limited. Section 85-2-235, MCA, provides that:

(1) A person whose existing rights and priorities are determined in a final decree may appeal the determination only if: (a) the person requested a hearing and appeared and entered objections to the temporary preliminary decree or the preliminary decree; (b) the person’s rights or priorities as determined in the temporary preliminary decree or the preliminary decree were affected as the result of an objection filed by another person; (c) the person requested a hearing and appeared before the water court to finally resolve an issue remark, as defined in 85-2-250; or (d) the person is a claimant appealing an adverse decision when the water court issued the decision as the result of an evidentiary hearing or as the result of calling the claim in on the court’s own motion.

(2) The attorney general may appeal a determination made in a final decree if the attorney general participated as an intervenor as provided in 85-2-248.

(3) An interlocutory ruling by the water judge upon a question of law may be appealed by any party who is affected by the decision and who participated in the matter in which the ruling was issued.

Should You File an Objection?

Only you can answer this question. To help you determine whether you should file an objection to the Preliminary Decree, you should examine the enclosed summary and the Flathead Compact. Your examination should not stop there, however. You should also compare the Tribal Water Rights with the claims that you have filed with the Water Court, the water right permits or certificates that you have received from the Montana Department of Natural Resources and Conservation (“DNRC”), and possibly the other claims, permits, certificates, and reservations of water within the basins affected by the Flathead Compact. All of the water rights claims filed and all of the water right

permits, certificates, or reservations of water that have been granted in the basins where the Tribal water rights can be exercised are on record with the DNRC. You can also review the entire Preliminary Decree and Commencement Order. Some or all of the documents referenced in this paragraph can be reviewed during business hours at the following offices:

1. The Montana Water Court, 1123 Research Drive, Bozeman, MT 59718 (Preliminary Decree and Commencement Order only).
2. The Montana DNRC, Water Resources Regional Office, 2705 Spurgin Road, Bldg. C, Missoula, MT 59806-5004; (406) 721-4284 (all documents).
3. The Montana DNRC, Water Resources Regional Office, 655 Timberwolf Parkway, Ste 4, Kalispell, MT 59901-1215; (406) 752-2288 (all documents).
4. Lincoln County Clerk's Office, Libby, MT; Flathead County Clerk's Office, Kalispell, MT; Sanders County Clerk's Office, Thompson Falls, MT; Lake County Clerk's Office, Polson, MT; Mineral County Clerk's Office, Superior, MT; Missoula County Clerk's Office, Missoula, MT; Ravalli County Clerk's Office, Hamilton, MT; Granite County Clerk's Office, Philipsburg, MT; Powell County Clerk's Office, Deer Lodge, MT; Lewis and Clark County Clerk's Office, Helena, MT; Deer Lodge County Clerk's Office, Anaconda, MT; Silver Bow County Clerk's Office, Butte, MT (Preliminary Decree and Commencement Order only).
5. Bureau of Indian Affairs, Flathead Indian Irrigation Project Office, 220 Project Drive, St. Ignatius, MT 59865; 406-745-2661 (Preliminary Decree and Commencement Order only).
6. CSKT Natural Resources Department, 301 Main Street, Polson, Montana, 59860; (406) 675-2700 (Preliminary Decree and Commencement Order only).

You may obtain a paper or electronic copy of the Preliminary Decree and Commencement Order from the DNRC, Water Rights Bureau, P.O. Box 201601, Helena, MT, 59620-1601. The cost of a paper copy of the Preliminary Decree, Commencement Order, Summary of Water Rights, and this Notice (approximately 62 pages) is \$20.00. An electronic copy of those documents on CD is \$10.00.

The Preliminary Decree and Commencement Order are also available on the DNRC website at <http://dnrc.mt.gov/divisions/water/adjudication/confederated-salish-and-kootenai-tribes-compact>, The Flathead Compact is published in section 85-20-1901 of the Montana Code Annotated, which can be found on the Internet at https://leg.mt.gov/bills/mca/title_0850/chapter_0200/part_0190/section_0010/0850-0200-0190-0010.html. The Montana Code Annotated can also be found in many public offices and public libraries.

Public Meeting

The Water Court will host an online public meeting on July 11, 2022, at 6 p.m., Mountain Time. The public meeting is limited to providing information about the Water Court procedures and is not a hearing to provide testimony or to raise objections. The Water Court will explain the procedures and provide an opportunity for questions within the limited scope of the meeting. The meeting can be accessed by computer at: <https://mt.gov.zoom.us/j/86359692851?pwd=QXQyZGpiR2RnenlrbnNuTkkg3bmI2Zz09> or by telephone at +1 646 558 8656 or +1 406 444 9999. The meeting ID is 863 5969 2851 and the password is 333701.

How to File an Objection and Request a Hearing

An objection to the Flathead Compact must be filed on the form provided by the Montana Water Court. Objection forms can be found at the Water Court and the DNRC offices in Missoula and Kalispell and at <https://courts.mt.gov/courts/water/LegalResources>. Any objection to the procedure being followed in this matter may be filed in any format which is in compliance with the Montana Rules of Civil Procedure. **All objections must be filed and received by the Montana Water Court, P.O. Box 1389, Bozeman, MT 59771-1389, or by email to watercourt@mt.gov, on or before December 6, 2022.**

LATE OBJECTIONS WILL NOT BE CONSIDERED.

Extensions

The Water Judge may grant a request for an extension of the time for filing objections. A request for an extension must be received by the Water Court on or before **December 6, 2022**. Use the Water Court's Request for Extension form found at <https://courts.mt.gov/courts/water/LegalResources>. If an extension is granted, it will apply to everyone. Any extension will be posted at the offices listed above and will be advertised once in the *Anaconda Leader*, *Billings Gazette*, *Bitterroot Star*, *Blackfoot Valley Dispatch*, *Bozeman Chronicle*, *Char-Koosta News*, *Clark Fork Valley Press & Mineral Independent*, *Daily Inter Lake*, *Flathead Beacon*, *Great Falls Tribune*, *Helena Independent Record*, *Hungry Horse News*, *Kootenai Valley Record*, *Lake County Leader*, *Mineral Independent*, *Missoulian*, *Montana Standard*, *Philipsburg Mail*, *Ravalli Republic*, *Sanders County Ledger*, *Seeley Swan*, *Pathfinder*, *Silver State Post*, *The Montanian*, *The Western News*, *Tobacco Valley News*, *Valley Journal*, and *Whitefish Pilot*.

Any Questions?

Use the Water Court's toll-free number 800-624-3270; or call our regular office number of (406) 586-4364, which is not toll-free. Or call the Kalispell DNRC Regional Office at (406) 752-2288 or the Missoula DNRC Regional Office at (406) 721-4284.

DATED this 9th day of June, 2022.

/s/ Stephen R. Brown
Associate Water Judge
Montana Water Court