

IN THE WATER COURT OF THE STATE OF MONTANA

WC-0001-C-2021

CONFEDERATED SALISH AND KOOTENAI TRIBES
MONTANA – UNITED STATES COMPACT PRELIMINARY DECREE

August 22, 2025

Montana Water Court

CASE NO. WC-0001-C-2021

POST HEARING BRIEF PERTAINING TO MATERIAL INJURY
JORE GROUP HEARING 11

I. Introduction and Procedural Background

This post-hearing brief is submitted pursuant to the Court’s Case Management Order No. 9 and the evidentiary hearing held in Polson, Montana, on April 30, 2025. In accordance with the Court’s April 1, 2025, Order on Pending Motions Regarding Compact Approval (Doc. 2336.00), the scope of this brief is limited to whether Objectors met their burden of proving material injury. The Transcript of the April 30th hearing was provided by Cindy Prindiville, Official Court Reporter and hereafter referred to as Tr. The transcript unfortunately had numerous errors within it. Numerous objectors have said so as well as the Compacting Parties (CP). The Court acknowledged this in its order of August 13, 2025 (Doc. 2626).

Objectors respectfully acknowledge the Court’s prior determination that constitutional and broader legal questions—including interpretation of the Hellgate Treaty and challenges under state and federal law—are not within the scope of the evidentiary hearing. Nonetheless, Objectors expressly preserve those issues for appeal pursuant to Rule 25 of the Water Right Adjudication Rules and Mont. Code Ann. § 85-2-233(1)(a).

The purpose of this brief is to address whether the Objectors—Rick Jore, Rick Schoening, Gunner Junge, and Kate French—met their burden of proving material injury, consistent with the standard identified in the Court’s April 1, 2025 Order on Pending Motions (Doc. 2336.00) and § 85-2-233(1)(c), MCA and its Notice of Preliminary Decree, filed on June 9th, 2022.

At Hearing 11 held in Polson, Montana, Objectors presented testimony and evidence showing that the substantive terms of the Confederated Salish and Kootenai Tribes (CSKT) Water Rights Compact have caused or will cause material injury to their existing water rights and to the public interest of Lake County and Thompson Falls. This brief summarizes the relevant testimony,

identifies supporting legal authority, and clarifies how the Compact's implementation results in specific and identifiable harms to Objectors' state-based rights.

Six core issues—relating to judicial review and procedure—have remained consistent throughout these proceedings:

1. **Judicial Bias:** The Court's rulings on the history of the Flathead Nation, the passage of the Compact by the 2015 Montana Legislature, prior court decisions, and interpretation of the Compact have consistently favored the Tribes.
2. **Undefined Terms:** The Court declined to define key legal terms (e.g., *fraud*, *material injury*, *public interest*), instead relying on definitions provided within the Compact (e.g., *tribal water right*, *time immemorial*).
3. **Reservation Status:** The Court accepted that the Flathead Reservation has remained unchanged. In its April 1st Order (p. 2), it stated: ***"These actions led to some of the land within the Reservation being owned by non-tribal persons, but the actions did not terminate the legal status of the Reservation."*** The objectors have never challenged the legal status of the Treaty but have argued that the Court has ignored its plain language.
4. **Treaty Interpretation:** The Court's interpretations conflict with the clear terms of the Hellgate Treaty.
5. **Procedural Errors:** Multiple procedural errors occurred, as outlined in our Combined Objections filed May 5, 2025.
6. **Material Injury by Implementation of the Compact Ignored:** The Court disregarded evidence of material injury resulting from the implementation of the Compact, particularly the public interest, stating—explicitly or implicitly—that it was not its responsibility. As predicted, exhibits supporting material injury were severely limited.

II. Standard of Review

In the context of reviewing water compacts, the Montana Water Court has held that its role is analogous to reviewing a **consent decree**. As noted in *In re Chippewa Cree Tribe Water Compact*, Case No. WC-2000-01 (June 12, 2002), the Court's function is to determine whether the Compact is:

Not the product of fraud or overreaching by, or collusion between, the negotiating parties,” and whether 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.

See also *Crow Compact II*, 2015 MT 353, ¶¶ 18, 20.

In addition, § 85-2-233(1)(c), MCA, provides that:

The water judge shall consider all relevant evidence presented at the hearing and shall issue a final decree affirming or modifying the preliminary decree. If the objector demonstrates that the objector's existing rights, priorities, or interests will be affected, the water judge shall modify the preliminary decree accordingly.

While the Montana Water Court has developed a body of case law interpreting “material injury,” the standard is not expressly defined in statute or the Montana Water Right Adjudication Rules (W.R.Adj.R.). As raised in prior objector filings (e.g., Doc. 2149), material injury is a term of the Court’s own creation with support of the government. This term has been applied inconsistently and remains largely undefined, contributing to confusion over what must be proven.

Nevertheless, Objectors assert that under § 85-2-233, MCA, and applicable precedent, they have demonstrated that:

- Their **existing water rights or legally protected interests**, both private and public will be adversely affected by the Compact’s terms or administration;
- The Compact is **unreasonable** and does not adequately protect non-party interests;
- The Compact causes **material injury** by authorizing water administration or priority claims that conflict with state-based rights;
- And the Compact’s **implementation** impairs both **private** and **public** interests not represented in its negotiation.

Body of Brief which includes Findings of Fact and Conclusions of Law

III. Legal Framework

However, consistent with the Court’s April 1, 2025, Order, constitutional and treaty-based claims are not subject to evidentiary consideration in this hearing focused solely on material injury. We believe this is serious error by the Court. These issues remain reserved for potential future

proceedings or appeals. Legally, the hearing that was held on April 30th was bound by the Montana Rules of Evidence and any error of the Rules was a violation of the due process rights of objectors.

IV. Summary of Testimony and Material Issues Raised by Objectors of Jore Group

The following is a factual summary of the objectors' testimony at Evidentiary Hearing No. 11, with references to the corresponding locations in the transcript. This summary includes cross-examinations, objections by the CP, remarks by the Court, and testimony from an additional witness for the Jore Group.

The Jore Group—comprising Rick Jore, Rich Schoening, Kathleen French, and Gunner Junge—participated in Evidentiary Hearing No. 11, which was conducted in Polson, Montana, on April 30, 2025. The transcripts of the hearing became available to the Jore Group on July 15.

Gunner Junge Testimony

In his testimony, **Gunner Junge** raised a key question on page 12 of the Tr:

A matter before the Court that remains to be settled is how much evidence of material injury and fraud is necessary to *involve* the Compact. Is it one, twenty, a thousand? (Tr. 12)
The correct word used was “**invalidate**” and not “involve” as was stated in the Jore group’s Objection filed with the Court on 8/12/25.

He noted that the Compacting Parties objected to any claims of injury to the public interest and restricted objectors to testifying only about personal harm. He emphasized that individual harm from water restrictions also impacts neighboring communities.

On page 15, Gunner added:

Limiting anyone’s access to water by theories of time immemorial is evidence of fraud and material injury. Our God-given constitutional rights should not be infringed or denied. (Tr. 15)

David Harder objected to the mention of fraud (Tr. 24), claiming none existed in the Compact. The Court sustained the objection and stated: “*The Court has issued a ruling as to whether the Compact is fraud.*”

{The objectors never claimed the Compact itself is fraudulent, but rather that it **contains** fraudulent elements. In its April 1st Order, the Court focused only on alleged legislative fraud and briefly addressed land ownership concerns but ignored key treaty language, misleading definitions, and broader fraud claims. Contrary to the Court’s statement on page 33—that fraud was not pled with particularity—the objectors did provide detailed allegations.}

Gunner also raised specific examples of material injury, such as the “time immemorial” priority date. The Court claimed it had already ruled on the issue, though many related concerns (e.g., false definitions, revisionist history, property values, and off-reservation water claims) were never addressed.

He cited a 2010 Tribal briefing paper proposing settlement terms that included aboriginal water rights beyond the Reservation. The Compact Parties objected, and the Court ruled it outside the Compact’s scope.

On page 35, Gunner stated he had never heard Tribal members complain about fish or fish habitat. The Court responded it would not consider “prior precedent”—a vague ruling that appeared to dismiss Gunner’s personal experience.

In cross-examination, the focus shifted to municipal water rights in Thompson Falls. While the Compact allegedly does not affect them, Gunner expressed concern that Tribal off-reservation claims could have an impact.

Cross-Examination of Rick Jore Testimony (Pre-Filed)

On *page 43* of the Transcript, attorney Rebecca Ross objected to the relevance of Exhibits A and A2, arguing they relate to the **diminishment** of the Reservation, a matter she stated was already addressed in the Court’s April 1st ruling. Rick clarified that he submitted the exhibits to **show how his property is defined**, not to revisit the Court’s prior ruling.

Rebecca Ross then referred to Rick’s pretrial testimony about Exhibit A (*Tr. 45*), and when asked about Exhibit A2, she stated it appeared to be a **1923 Tribal Resolution** and questioned its relevance. Rick explained that the resolution used the term “**Former Flathead Reservation**”, indicating the Tribes themselves acknowledged land had been withdrawn. Despite this, the Court **sustained the objection**.

On *page 46*, Ross objected to Exhibits C1 through C5. Rick argued they were relevant as they showed **material injury** related to his land’s classification as Reservation property and its impact on Lake County. Rick stated if it impacts Lake County, it impacts me (*Tr. 47, line 7*)! The Court sustained the objection, stating the exhibits were confusing. A final objection related to Rick’s original written objection was overruled, as it was already part of the record.

On page 52, line 23, Ross asked: *“Why do you think the lands were withdrawn from Reservation status?”*

Rick provided a detailed response, citing **Section 3 of the 1934 Indian Reorganization Act (25 U.S.C. § 5103)**: *Provided, however, that valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act.* Rick stated on page 55, line 6, *“any land sold or **withdrawn** shall not be affected”*.

On page 53, Rebecca Ross again referenced the April 1st ruling on diminishment. Rick responded that he **did not agree** with the ruling.

{The Court’s April 1st ruling cited prior case law but did **not** directly address the issue of diminishment or the Tribes’ own historical acknowledgments of diminished land status.}

Rick also cited the **1889 Enabling Act**, asserting his land is not subject to Congressional control because it is not Indian land. Notably, Rebecca Ross appeared to agree, stating on page 54, line 23:

“That’s right. So you are subject to state and local county jurisdiction for some matters, correct?”

{This admission is legally significant.}

On pg. 56, line 22, Rebecca Ross asked: *“So you disagree with the premise that the Court can interpret what the law is?”*

Rick responded, “It depends on what you mean by the law,”. He states on line 14, *“court cases are not law”* and elaborates on page 57 that the **9th Circuit ruling** (presumably *Namen*) **was a court decision**, not “the law” in itself.

The final issue involved a **senior water right claim against Jore on Marsh Creek**, discussed on pages 59–65, centering on a possible misinterpretation of Exhibit B3.

Rick Schoening’s Testimony

Rick Schoening’s testimony begins on page 67 of the Transcript (*Tr.*).

Rick opens by quoting a Recital from the Compact that refers to ensuring all residents of the Reservation the “quiet enjoyment of the use of waters on the reservation for beneficial use.” (*Tr.* 67)

{This suggests the Compact acknowledges a public interest that includes **all** Reservation residents}

Rick testified that he suffered **material injury in 2023** due to the unavailability of irrigation water from the Flathead Indian Irrigation Project (FIIP), resulting in a significant loss of fruit yield. He attributes this loss to the **implementation of the Compact**, specifically prioritization of instream flows for fish by CSKT over agricultural use. (*Tr. 67, Line 25*)

He further stated the Compact caused the Project to reduce **stock water deliveries**, aligning with similar testimony given by Randy Doty and Del Palmer. (*Tr. 68, Line 25*)

On page 69, Rick referenced a \$4 million allocation for mitigating such losses, pointing to Article VI of the Compact (*Contributions to Settlement, Section I.c.*), which states:

“\$4 million for mitigating the loss of Stock Water Deliveries from the FIIP.”

{This clearly implies that **the Compact anticipated impacts to stock water access.**}

Rick also expressed a public interest concern for fellow ranchers receiving adequate water. (The transcript mistakenly records "weight" instead of "water.") (*Tr. 69*)

When asked whether he believed the Compact caused the FIIP to stop water delivery in August 2023, Rick responded that **fishery priorities took precedence over agriculture**, which he viewed as part of the Compact’s implementation.

Rebecca Ross then asked whether Rick received water in 2024—he said no. (*Tr. 74*)

She attempted to shift responsibility by noting that the **BIA operates the FIIP** and is subject to federal regulations. She asked the Court to take **judicial notice of 25 CFR Part 171**, though the transcript mistakenly cites Part 271. Rick did not object. (*Tr. 75*)

Later, Rebecca Ross referred to a **“bond notebook,”** specifically Tab 7, Page 4. When asked by the Court whether this was an exhibit, she admitted it was not entered as evidence but prepared for cross-examination and had been attached to pleadings. (*Tr. 76–78*)

She acknowledged the document was from **2008**, which predates Compact implementation and therefore may be of limited relevance. (*Tr. 80, Line 17*)

She also referenced a **letter dated August 10, 2023**, from FIIP (on BIA letterhead) regarding “end of water season dates.” She did not establish a foundation for the letter, and Rick did not mention it. It was **not entered into evidence** and is not part of the official record. (*Tr.* 83)

Commentary: Rebecca Ross appeared to argue that the **BIA, not the Compact, caused the 2023 water shutdown**. However, she failed to explain why such an action occurred **suddenly in 2023**, after the Compact’s implementation. Rick was not given an opportunity on redirect to clarify this point.

Kate French Testimony

Kate expressed concern that any call on their 200-acre ranch could cause significant losses, including pasture, livestock food sources, yearling fattening, and the health and fertility of their stock (*Tr.* 87, line 5). Daniel Decker, representing the Compact Parties, objected, calling this speculation, but the Court overruled the objection.

Kate also fears the Compact’s implementation might impact Wilson Creek, which runs through her property, as well as the local floodplain (*Tr.* 88, 91). She raised concerns about the Paradise Water District, which serves 112 users. Although the Compact claims it won’t make calls on non-irrigators, the District must legally supply water to irrigators, potentially subjecting the entire District—and indirectly, its users—to a call. While not a municipality, Kate questioned whether the Paradise Water District could still be subject to such calls (*Tr.* 91).

Kate mentioned Fire Chief James Russell of the Plains-Paradise Fire District, whom she had hoped would testify but was unavailable. She noted on page 99 that the Water District might not reliably supply water due to potential calls; Decker objected to this as hearsay, and the Court sustained the objection.

Kate discussed four properties totaling over 25 acres, including the McMillian Post Development, approved for an RV park, store, museum, restaurant, and hotel (*Tr.* 100). These approvals were contingent on having adequate water for fire suppression.

On page 103, Kate criticized the Compact’s 100-gallon-per-minute threshold as arbitrary and unsupported. She questioned the Compact’s reach beyond Reservation boundaries concerning fish habitat (*Tr.* 104), challenging the interpretation of off-stream water rights under Article 1 of the

Hellgate Treaty. Decker objected as irrelevant, and the Court sustained the objection. Kate also objected to the Court's April 1st ruling on this issue (Tr. 105), but the Court upheld Decker's objection regarding Kate's statement that water rights are limited to actual use.

Kate agreed with Rick Schoening's earlier testimony that hydraulic impacts within the Reservation from the Compact also affect hydrologic activity beyond the Reservation (Tr. 106).

During cross-examination (Tr. 107–121), Decker sought to establish that Kate is not an irrigator and thus not subject to a call. He asked if her concern was less about her specific water rights and more about the Compact's administration affecting those rights, to which Kate agreed (Tr. 116). A key discussion arose over whether Kate had received a discovery request from the Compacting Parties, which she denied. The Court noted that failure to respond to such a request result in the matter being considered "admitted" (Tr. 120).

Finally, on page 130, Rick Jore (a serious error here, it was Rick Schoening) raised the issue of his requested jury trial. The Court said he would rule on it separately, but that decision would not impact the current hearing.

Witness Tiffani Murphy

On page 124 of the Transcript, Rick Jore references exhibits C1 through C5, which the Court had already denied earlier that day. He questions Tiffani, the Lake County Planning Director, about her role regarding permit and development applications in Lake County, focusing on how the Water Management Board's (WMB) administration is affecting future developments. The Court instructs Tiffani to provide a general response, not specific to the denied exhibits.

Tiffani explains she has observed some application withdrawals and amendments made to comply with new restrictions. When Rick asks if these changes are due to the WMB's influence, she confirms that they are (Tr. 126, line 3).

David Harder objects, arguing that questions about how the WMB's administration differs from prior DNRC requirements are unrelated to the objectors' specific rights. Although the Court typically sustains such objections, it allows Tiffani's general testimony here—a somewhat unusual distinction.

Rick suggests this has caused confusion for Lake County developers now required to apply to the WMB. This question is objected to as leading, and the Court sustains the objection (Tr. 127).

Zach Zippel moves to strike Tiffani's testimony from the record, but the Court overrules this motion (Tr. 128). Later, Zippel attempts to limit Tiffani's knowledge of any objector being denied or withdrawing a subdivision application based on personal knowledge. Tiffani confirms she is unaware of any such objector (Tr. 129).

This concludes a summary of the testimony of all the witnesses at the Polson Hearing.

Findings of Fact

The cumulative testimony as summarized in the table below demonstrates that implementation of the Compact has materially injured existing water rights and imposed new burdens not authorized under Montana law. Moreover, the evidence reveals significant public interest harms, including economic disruption, diminished local governance, and risk to essential services such as fire suppression and public water systems.

Finding of Fact	Application of Law (Material Injury)	Public Interest Impact
Gunner Junge		
1. How much evidence of fraud and material injury is necessary. (Tr. 12–15; 23,24)	Limited testimony as to the public interest.	Undermines public confidence in the provisions of the Compact.
2. References to MCA concerning water rights and municipalities. Refers to MWRPA. (Tr.17-21)	State Law and Congressional intent.	Compact affects all water users.
3. Listing of material injuries. (Tr. 25–37)	Injuries to private and public permitted by standard of review.	Impacts the tax payers if fraudulent.
Rick Jore		
4. Court excluded Exhibits C1–C5 showing the impact of Water Management Board on Lake County. (Tr. 43–46)	Eliminated evidence of jurisdictional confusion impacting water use.	Raises broader governance concerns and landowner rights.
5. Water Management Board structure has interfered with administration, lack of proper judicial review (Tr. 50,51)	Materially alters how rights are enforced; causes legal uncertainty.	Undermines local control and predictability in land use planning.
6. Testimony on Enabling Act and Tribal resolutions was limited. Private land was withdrawn from Reservation (Tr. 52–57)	Exclusion of legal context diminishes the ability to assess injury.	Suggests federalism and sovereignty issues on private land is relevant to both private and public.
7. Mischaracterization in Marsh Creek water right abstract. (Tr. 59–65)	Creates potential harm through legal ambiguity in water right title.	May mislead public registries relied upon by users and developers.

Finding of Fact	Application of Law (Material Injury)	Public Interest Impact
Rick Schoening		
8. Observed changes in water right administration in Lake County, excessive instream flow, threatens ranchers and the citizens of Mt.(Tr. 66-71)	Mitigation of stock water losses is admittance of material injury	County residents face reduced access to transparent processes and faces economic uncertainty.
9. Close interrelation relationship between surface and ground waters of Reservation. (Tr. 67)	Courts must consider impact of Compact to ground water.	Developers face costly delays and planning uncertainty.
10. Lack of access to Flathead Irrigation Project (Tr. 67).	Compact interferes with existing use. Limited use is arbitrary.	Hampers crop and fruit production.
11. Lack of irrigation water is due to implementation of Compact (Tr. 68)	This is at the direction of the provisions of the Compact.	Erodes public trust in water governance and civic participation.
Kate French		
12. Call on water would affect pasture and livestock health. . (Tr. 87:5)	Direct impact to beneficial use of water and agricultural viability.	Loss of productive land impacts rural livelihoods and food supply.
13. Wilson Creek and Paradise Water District may be affected. (Tr. 88–91, 99)	Injures both private and public water systems tied to land use.	Endangers water supply for fire suppression, business, and irrigation.
14. McMillan Project approval at risk due to water availability. (Tr. 100–101)	Compact impairs the feasibility of lawful development projects.	Delays critical infrastructure (hotel, museum, RV park) that support local tourism.
15. Threshold of 100 gpm is arbitrary and unsupported. (Tr. 103)	Imposes unjustified limits on historically recognized rights.	Disproportionately affects small-scale users and rural landowners.
16. Impacts extend beyond reservation boundaries. (Tr. 104–106)	Overreaches into non-tribal territory, interfering with lawful rights.	Raises concerns about jurisdiction and fairness to off-reservation residents.
17. Concerns stem from Compact administration, not just direct calls. (Tr. 88–91, 99)	Evidence that implementation creates systemic injury.	Administrative overreach threatens long-term resource planning.
Tiffani Murphy		
19. Developers withdrew/amended projects due to WMB confusion. (Tr. 124–126)	Demonstrates that the Compact disrupts reliance interests and development.	Threatens housing availability and local economic development.
20. Compact has altered water availability review process. . (Tr. 126:3)	Constitutes de facto change to permitting rights and procedures.	Undermines certainty needed by investors and landowners.
21. Broader chilling effect despite no named objector. (Tr. 129)	General deterrent effect confirms systemic harm.	Reduces citizen engagement and trust in government processes.

Conclusions of Law

This brief is filed in accordance with the Order setting dates for evidentiary hearings (later modified), in Doc. 2099, January 2, 2025, which stated:

This Order sets dates for evidentiary hearings as may be necessary to resolve any issues of fact that remain after the Court issues its orders on various pending motions. The factual issues may include, but may not be limited to, evidence from any remaining objector to the Compact as necessary to prove material injury *under the standard applicable to Water Court review of compacts* (emphasis by objectors).

The *standard of review* was summarized in the **Notice of Preliminary Decree** filed on June 9, 2022, which stated:

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.*" (Emphasis added by objectors).

At the Case Management Conference held on February 26, 2025, the Court addressed the issue of defining "material injury," a question raised by the objectors. The Court acknowledged that many parties sought clarity on the meaning of material injury, stating: "*There are a number of Compact Orders issued already and that is where the standard comes from. That's the best I can do right now.*" In response, the objectors, in their filing titled Response to Compacting Parties' Motion for Clarification (Doc. 2149, filed March 6, 2025), conducted an extensive analysis of the origin of

the standard of review for material injury. They concluded that such standard is neither codified in the Water Rights Adjudication Rules (W.R.Adj.R.) nor in the Montana Code Annotated (MCA), but rather represents a judicial creation historically developed by the Water Court itself. However, this does not explain why prior Water Courts have consistently declined to formally define the term, and continue to refrain from doing so. The Court's suggestion that the standard is found in "a number of Compact Orders" only adds to the confusion, illustrating inconsistencies in the Court's statements.

Moreover, the Water Court's standards of review have not been applied consistently throughout these proceedings. For example, in its April 1, 2025 ruling, the Court briefly addressed issues of fraud and overreach but then quickly moved on without fully resolving factual issues presented in the objectors' briefs and motions. Many disputed facts were dismissed as mere matters of interpretation rather than substantive concerns.

Specifically, the Court's Protective Order dated April 29, 2025, denied the Jore Objectors' discovery requests, stating at page 6: "*The evidentiary hearing is not an opportunity to relitigate these interpretative issues.*"

{Many of the discovery requests by the Jore Group deal with the disputed facts of the Compact, fraud, and the public interest.}

This effectively precluded the objectors from introducing evidence regarding the plain language of the Hellgate Treaty, as the Court had already ruled on those issues in its April 1st Order.

At the March 20, 2025 Zoom Conference, the Court disregarded any evidence related to fraud, noting that the matter had been previously briefed. Thus, the Court made clear that allegations of fraud would not be considered material injury, despite allowing limited testimony regarding fraud by witness Gunner Junge during the April 30 hearing.

The Court also required objectors to demonstrate that the Compact was unreasonable. However, evidence concerning unreasonableness as it relates to the public interest was excluded. Notably, the Court declared the Compact to be fair in its April 1 ruling prior to conducting any evidentiary hearing on material injury, a procedural approach that raises due process concerns.

The standard concerning public interest has been particularly frustrating to objectors. The Court, akin to a "water bug," has largely overlooked this issue, apparently concluding that only

constitutional issues constituted public issues to be addressed in the April 1 ruling. Consequently, testimony regarding public interest was not permitted at the Polson evidentiary hearing, although the term was allowed to be used. This left objectors bewildered and frustrated.

A critical, unresolved question is how material injury can be proven absent full implementation of the Compact. When evidence was introduced relating to the Compact's implementation in Lake County, exhibits C1 through C5 offered during Rick Jore's testimony were excluded by the Court.

Multiple evidentiary hearings have demonstrated that material injury has occurred as a result of Compact implementation. Recently, insight into the Court's refusal to consider implementation evidence emerged during the Water Policy Interim Committee (WPIC) meeting of the 2025 Montana Legislature on July 30, 2025, in Helena. The presiding Water Court Judge was questioned by Representative Tracy Sharp regarding implementation of the Compact prior to final decree issuance.

Judge Brown stated, *"The implementation piece is not a water court responsibility," and further explained that questions about the timing or commencement of implementation fall outside the Water Court's jurisdiction, or "wheelhouse," and thus he was "not qualified to answer" such questions.*

From these comments, it is clear the Water Court Judge did not consider himself authorized to hear evidence of material injury related to Compact implementation during the evidentiary hearings, explaining the frequent sustainment of objections when parties attempted to introduce evidence of current Compact impacts.

Further, Case Management Order No. 9 (Doc. 2551), regarding Evidentiary Hearing No. 11 held in Polson on April 30, 2025, clarified the scope of briefing for that hearing. On page 2, paragraph 1, the Order states:

The content of the brief is limited to the scope of issues addressed at the evidentiary hearing, specifically whether the Objector(s) met or did not meet their burden of proving material injury as specified in the Court's Order on Pending Motions Regarding Compact Approval dated April 1, 2025. (Doc. 2336)

Objectors who testified at the April 30 hearing included Gunner Junge, Rick Jore, Rick Schoening, and Kate French. An additional witness, Tiffani Murphy, Lake County Planning Director, also testified on behalf of the objectors.

The objectors' objectives in establishing material injury were outlined in their Request for Hearing (Doc. 2121) and further defined by the Court's Pre-Hearing Order (Doc. 2551).

In the Evidentiary Hearing, the Jore Group Objectors raised the following scope of the issues:

1. Injury to Public Interest
2. Theories of time immemorial
3. Fraud
4. Off-reservation water rights (municipalities)
5. Private injury due to the unavailability of irrigation water (for stock, fruit, etc.)
6. Former Flathead Reservation (private property on or within the Reservation).
7. Indian Reorganization Act of 1934
8. 1889 Enabling Act
9. Municipalities and Water Districts subject to a call
10. Arbitrariness of the 100-gpm threshold
11. Compacts Impact on hydrological activity beyond the Reservation
12. No Jury Trial
13. Administration of Water Management Board on Lake County

In the Court's Order of April 1st, it stated on page 18, that it must follow federal law and then he stated, "*that does not mean the Court is free to ignore Montana law*". As will be indicated below the laws of Montana concerning the Constitution, Rules of Evidence, Water Use Act and Code of Judicial Conduct were ignored.

Did Evidentiary Hearing Follow the Montana Rules of Evidence and Constitutional Oath

Rules 103-04, 401, 403, 611 and the Code of Judicial Conduct were involved in this evidentiary hearing. Here is a list within transcript and the Rule that was violated.

1. Exhibits A1 and A2; and C1 – C5 were not allowed or excluded from the hearing (Tr. 43-47). The Court stated A1 (land map of the Reservation) did not refer specifically to Rick Jore's property. A2 was a 1923 Resolution by the then Tribal Council which admitted to the **former** Flathead Indian Reservation. The Court again said it did not refer specifically to Rick's property (Tr. Page 46, line 4). Then the Court stated C1 – C5 (these dealt with current Water Board Decisions. The documents were prepared by Tiffani Murphy), these exhibits were confusing (no explanation has to how it was confusing, but Rick stated these exhibits impacted Lake Court and he was a resident of Lake County). The confusing reason by the Court does not satisfy Rule 403 as those documents had tremendous probative value. According to Rule 401 of the Rules of Evidence, it states:

any evidence that having a tendency to make the existence of any fact that is of consequence to the determination of an action more probable or less probable than it would be without the evidence.

All of these exhibits showed that the actions of the Compact and the WMB made it probable that material injuries were occurring as to fact (former Reservation) and to consequences of the implementation of the WMB policies due to the Compact.

2. There were multiple improper restrictions in denying any testimony to public interest and fraud or withdrawing of Reservation land. We see in Tr., on Pages 24, 29; Page 35 (dealing with observance of the taking of fish by the Tribes); Page 45 (Withdrawal) Page 69 (where Rick Schoening refers to the public interest of fellow ranchers), he could only testify to a general understanding, and Page 116. One of the objections sustained by the Court was stated by the CP as follows on page 46 :

And none of the exhibits or email communications or other communications, they do not involve any **active objector** in this case. We have hearsay concerns.

This was false as Lake County was an active objector. The Court ignored this.

We believe any restrictions were a violation of Rules 401 – 403 and the Water Use Act particularly 85-1-101 particularly (6).

3. The Court basically stated he could not rule on constitutional issues. He states in Tr. Page 32. Line 13 and 15 that *“the case is not about a Fifth Amendment taking. But in terms of what I can rule on as the Water Court, there are outside of the scope of what I have authority to rule on.”* His oath of office clearly gives him the authority to determine constitutional issues. Finally, this statement appears to contradict his April 1st ruling where he addressed the Fifth Amendment.
4. The Court’s statement that even though he had not ruled on the “Jury Motion”, it would not affect this hearing shows a prejudgment. Clearly any subsequent ruling would be moot as no jury was allowed for the evidentiary hearing. This statement indicates that the Court had already determined much of the factual and evidentiary issues. The issue of the right to a jury is a substantial right and the effect of his erroneous prejudgment indicates a lack of fairness and triggers Rule 2.2 of the **Montana Code of Judicial Conduct**.
5. Vagueness in Rulings. Phrases like *“the exhibits are confusing”* or *“outside the Compact”* or *“outside the scope of what I have authority to rule on”* were used by the Court without

tying the ruling back to a SPECIFIC evidentiary rule such as Rule 103 (a) (1) which requires a specific ground of objection and tying it to a Rule of Evidence.

6. Rule 611 of the Rules of Evidence gives the Court controlling powers “so as to make (1) the interrogation and presentation effective for the **ascertainment of the truth**”. Objectors believe the Court restricted much evidence as to the truth of the revisionist history, fraudulent elements and the impact of the Compact on the public interest. Sadly, courts ruled by stare decisis will not be interested in the truth.
7. The denial of using the Damages Report for an evidentiary hearing has been shown by filings by the objectors to be a serious due process error. We will not repeat those arguments here.

Conclusion

Objectors have raised many priorities concerning the implementation of this Compact filed numerous documents stating the Water Court has violated numerous due process procedures. Objectors were undermined repeatedly in addressing the impact of the Compact on the public. Many objectors in these proceedings were also denied the right to introduce evidence for both private and public injuries. The objectors represented by Kim Field have referred to ongoing economic harm to ranching operations and decreased land value. Operation and maintenance costs for irrigation have doubled for some. One objector (Long Orn Arena/Ernie Otoupalik) stated he had to haul water to cattle and horses incurring significant labor, time and financial costs. This objector also raised the O/M fees (the Water Court would not allow any discovery O/M fees); yet his costs are rising and a 50% reduction on water delivery.

Wally Congdon’s clients stated in testimony that there is material injury to Lake County Schools (yes, Lake County was an active objector). There is the fear of metered water forcing schools to trim their budgets. Gale Decker testified that the implementation of the Compact will cause significant injury to local government functions particularly increasing costs to taxpayers.

The Mission-Jocko Irrigation Districts spoke of a reduced irrigation season which resulted in lost crop production. They argued that improvements to sprinkler systems -encouraged by the Compact – will impact groundwater seepage for marshes, wells, and stream flows.

Holland and Hart clients repeated the theme of reduced water deliveries from FIIP. The Compact uses coercive “consensual agreements” to avoid calls. The Compacts instream flow requirements will cause property damage.

Testimony from the Double Shoe Ranch repeats the theme of financial loss due to late FIIP deliveries forcing them to sell cows early, buy hay and rent pasture.

Delbert Palmer and Randy Doty also stated the system now allows multiple excuses as to why withholding water is necessary. He presented evidence from the Compact as to the decision to reduce the irrigation season. Doty said that for three years he did not receive irrigation water as per the usual irrigation schedule. This left him without water for animals and stock.

Vivian Allen stated her fear that the implementation of the Compact would deplete ground water and water quality. She states there is a hydrological connection from the Middle Fork and the South Fork with water flowing under her property. The Compact by prioritizing fisheries related instream flow may allow significant releases from Hungry Horse Reservoir, reducing groundwater recharge for her and other users. Mickale Carter had similar testimony.

Much of the material injuries listed deal with the implementation of the Compact. However, we now know from recent testimony by the Water Court before the Interim Water Policy Committee, he was not concerned about the implementation of the Compact. To have that attitude will of course lead one to minimize the public interest, which was one of the standards of judicial review in the Notice of Preliminary Decree.

We believe justice in these proceedings may only come about on appeal. If not, we are satisfied that we have stood for the truth throughout all of these proceedings.

DATED 22nd day of August, 2025.

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CERTIFICATE OF SERVICE

I declare that I emailed a true and accurate copy of the foregoing document on August 22, 2025, to the following email addresses:

/s/ Gunner Junge

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