

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

WC-0001-C-2021

August 22, 2025

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Montana Water Court

CASE NO. WC-0001-C-2021

Objector Valerie Root (Hearing #6, 4/24/25 Msla, MT), respectfully submits this post-hearing brief demonstrating that the evidence presented at hearing establishes that she suffered material harm and will discuss her Secretarial Water rights complete loss of water in 2021, resulting in economic damages, loss of farming abilities for both animals and plants, loss of income, loss of property value, and loss of the water rights appurtenant to her land—all directly caused by the Compact Parties' systematic water diversions from Agency Creek.

Additionally, Objector has been continually denied her secretarial and Walton water rights despite documented land lineage proving she purchased former tribal land with Federally granted Secretarial Water Rights, and that her allotted land entitles her to Walton water rights. My water has the same priority dates as the tribal rights 1855. Eneas Finley owned the land that I now own. His # is 1290.(Ex 1)

The Compact continues to deny her ownership of these rights, and the Tribe has refused to recognize them based on her race, constituting ongoing discrimination that violates both federal and state constitutional protections. To this day an Indian can still file for their water rights and are encouraged to do so. Not so the whites. (Tr pg 5, Ex 1,3)

A) MATERIAL HARM

The evidence shows that after thirty years of reliable water flow (1991-2021), Objector experienced sudden and complete water loss in summer 2021, a phone call from James at the water place in Ronan stating that they were making changes in the irrigation. I lost my water three days later. Coinciding with preparing for the Compact implementation. (Ex 8)

This brief, in part, addresses the Compact Parties' failed attempt to deflect responsibility through their expert's speculative claims about natural causes.” Makepeace's flawed testimony is evidence that the entire Compact process is fundamentally flawed and should be denied entirely.

The Court should disregard Makepeace's admitted speculation and consider only his factual testimony regarding systematic water depletion through multiple diversions.

Makepeace's testimony reveals a troubling pattern of selective expertise. While claiming inability to provide factual analysis of supposed natural stream migration, he demonstrates

comprehensive knowledge of the human-controlled diversion system that systematically depletes Agency Creek.

This disparity between speculation about natural causes and detailed knowledge of water diversions raises serious questions about the reliability and bias of his testimony. Makepeace's resort to admitted speculation while possessing detailed knowledge of systematic water depletion suggests evasive testimony designed to deflect responsibility rather than provide honest expert analysis.

This troubling pattern undermines the credibility of Compact Parties' entire Ī. (Emphasis added)

I. EXPERT WITNESS ADMITS HIS TESTIMONY IS PURE SPECULATION.

Compact Parties' primary defense crumbles under their own expert's admission that he has no factual basis for his conclusions. When asked to explain the sudden loss of water that had flowed reliably for thirty years, Makepeace could only offer unsupported guesswork.

The Fatal Admission:

"Agency Creek is recognized to be a braided stream. Which means it can form multiple branches... "-I cannot speak to the fact that the channel may have braided and migrated away from your point of diversion. I am only speculating on that frankly- on the characteristics of that channel." (Tr. 57-58) This extraordinary admission destroys the foundation of Compact Parties' entire defense strategy. Their expert witness—presented as having 35 years of experience managing these exact water systems—admits he "cannot speak to the fact" of what actually happened and is "only speculating" about the cause of Objector's water loss.

The irony of Compact Parties' position is stark. When Objector attempted to explore certain lines of questioning, Counsel Harder objected on grounds that it would require the witness to speculate. (Tr. 58). Yet Compact Parties' entire defense rests on their expert's admitted speculation about natural stream braiding, with Makepeace testifying on the very same page: *'I cannot speak to the fact that the channel may have braided and migrated away from your point of diversion. I am only speculating on that frankly. (Tr. 57-58)'*

Compact Parties cannot have it both ways - objecting to speculation when it might hurt their case while building their entire defense on their expert's admitted speculation. This inconsistency further undermines the credibility of their position. *(emphasis added)*

II. SPECULATION CANNOT SATISFY BURDEN OF PROOF

Mr Makespeace's speculation is not sufficient evidence as to invalidate my proof. As a matter of law he has not given sufficient evidence to undo my proof. Mere speculation cannot meet this legal standard, particularly when the speculating witness admits he has no factual basis for his theory.

Legal Standard: "The evidence presented at trial demonstrates that Compact Parties' expert testimony fails to meet the reliability standards required by law. *Sharbono v. Cole*, 2015 MT. Makepeace's admitted speculation fails this fundamental requirement.

The Speculation Problem:

- Makepeace provides no scientific study of Agency Creek's migration patterns
- No measurements or documentation of alleged channel changes
- No timeline correlating supposed "natural braiding" to 2021 water loss
- No explanation for why "natural" processes would cause sudden, complete water loss

III. THE TIMING DESTROYS THE SPECULATION DEFENSE

If Makepeace's braided stream theory were true, the evidence would show gradual water reduction over time. Instead, the record establishes:

Objector's Established Pattern:

- 1991-2021: Thirty years of continuous, reliable water flow
- Summer 2021: Sudden, complete water loss within days
- Post-2021: Zero water flow continues

Makepeace Cannot Explain This Timing:

When directly asked whether anything in the irrigation structures caused the change in Agency Creek flow "in June of 2021," Makepeace answered: "No." (Tr. 54-55)

When asked whether "any operation of the Compact" caused changes "in the summer of 2021," Makepeace again answered: "No." (Tr. 55)

The Legal Problem:- Makepeace's speculation theory cannot explain why a supposedly "natural" process would cause immediate, total water loss exactly coinciding with Compact implementation. Natural stream braiding occurs gradually over years or decades, not overnight.

IV. EXPERT'S CREDENTIALS MAKE HIS SPECULATION INCREDIBLE

Makepeace's extensive qualifications paradoxically undermine rather than support his speculation defense:

‘His Claimed Expertise:’

- 35 years with CSKT water management
- Technical supervisor of stream upgrades since 1992
- Worked specifically in "vicinity of the objector" since 2020
- Chair of Implementation Technical Team (2015-2020)

The Credibility Problem: If Makepeace possesses such extensive expertise in these exact water systems, his inability to provide factual explanations becomes implausible. A true expert with 35 years of experience would base conclusions on data, measurements, and observation—not speculation.

The Professional Standard:-Water management professionals don't guess about stream behavior. They study flow patterns, measure diversions, and document changes. Makepeace's resort to speculation suggests either incompetence or deliberate evasion.

V. SYSTEMATIC WATER DEPLETION IS NOT SPECULATION

While Makepeace speculates about "natural" stream migration, he provides concrete, factual testimony about human-caused water depletion:

"Agency Creek is initially diverted at the upper S-Canal. Then at the upper J-Canal. Then...additional diversions from the Agency Creek... By the time Agency Creek reaches the Jocko E-Canal it is significantly depleted from the natural flow." (Tr. 52-53) (emphasis added)

This testimony is not speculation—it describes the engineered system Makepeace manages. He knows exactly where water is diverted, how much is taken, and admits Agency Creek is "significantly depleted" by these human-controlled diversions.

The Legal Significance:- Makepeace can provide detailed, factual testimony about systematic water extraction but can only "speculate" about natural causes. This disparity reveals where the evidence actually points.

VI. MAKEPEACE'S SELECTIVE EXPERTISE REVEALS EVASIVE TESTIMONY

Makepeace's testimony reveals a troubling pattern of selective expertise. While claiming inability to provide factual analysis of supposed natural stream migration, he demonstrates comprehensive knowledge of the human-controlled diversion system that systematically depletes Agency Creek.

This disparity between speculation about natural causes and detailed knowledge of water diversions raises serious questions about the reliability and bias of his testimony. Makepeace's resort to admitted speculation while possessing detailed knowledge of systematic water depletion suggests evasive testimony designed to deflect responsibility rather than provide honest expert analysis.

The evidence supporting this pattern is found throughout Makepeace's own testimony:

First, when asked to explain Objector's water loss, Makepeace admitted: "I cannot speak to the fact that the channel may have braided and migrated away from your point of diversion. I am only speculating on that frankly." (Tr. 57-58)

The irony of Compact Parties' position is stark. When Objector attempted to explore certain lines of questioning, Counsel Harder objected on grounds that it would require the witness to speculate. (Tr. 58). Yet Compact Parties' entire defense rests on their expert's admitted speculation about natural stream braiding, with Makepeace testifying on the very same page: 'I cannot speak to the fact that the channel may have braided and migrated away from your point of diversion. I am only speculating on that frankly.' (Tr. 57-58)

Compact Parties cannot have it both ways - objecting to speculation when it might hurt their case while building their entire defense on their expert's admitted speculation. This inconsistency further undermines the credibility of their position.

Second, despite claiming ignorance about natural causes, Makepeace provided detailed factual testimony about systematic water extraction: "Agency Creek is initially diverted at the upper S-Canal. Then at the upper J-Canal. Then...additional diversions from the Agency Creek... By the time Agency Creek reaches the Jocko E-Canal it is significantly depleted from the natural flow." (Tr. 52-53)

Third, Makepeace admitted the infrastructure serving Objector is deliberately neglected: "The E-Canal headworks is one of the most dilapidated structures on the Irrigation Project. Having changed in over three decades." (Tr. 56)

Fourth, Makepeace provided no scientific documentation supporting his braided stream theory—no hydrological studies of Agency Creek, no measurements of alleged channel migration, no photographic documentation of stream changes, no flow data comparing pre-2021 to post-2021 conditions, and no geological surveys. This complete absence of scientific support exposes his "natural causes" theory as convenient speculation designed to deflect responsibility.

This troubling pattern undermines the credibility of Compact Parties' entire defense.

Q "Mr. Makepeace, as part of that investigation in the DNRC database, did you locate any irrigation water rights as to the objector?

A No. I was only able to find a domestic water right." (Tr pg 49, 50)

"Mr. Makepeace's testimony, that I have no irrigation water rights is fundamentally flawed. He only searched state databases for state water rights. The Marsh Memorandum - which the Compact Parties themselves have used - proves that Secretarial Water Rights are Federal Rights created by the Secretary of Interior. These federal rights wouldn't appear in the Montana DNRC database that Mr. Makepeace searched. His testimony is incomplete and misleading because he didn't look for the type of rights I actually have - "Federal Secretarial Water Rights appurtenant to my allotted land." These rights have come from the Federal Gov.

Ms Danna Jackson also asked if I had Dnrc water rights. (tr pg 40,50)

(Emphasis added)

VII. MAKESPEACE CONCLUSION

Compact Parties cannot prevail on a defense of their own expert, who admits its speculation. Makepeace's extraordinary admission that he "cannot speak to the fact" of what happened to Objector's water and is "only speculating" about natural causes fails every legal standard for expert testimony.

The Court should disregard Makepeace's speculative testimony and focus on his factual admissions: Agency Creek is "significantly depleted" by multiple diversions under his management, the irrigation infrastructure is "dilapidated," and no maintenance has occurred "in over three decades." These facts, not speculation, explain Objector's water loss.

When expert witnesses resort to admitted speculation rather than factual analysis, they reveal the weakness of their position. The Court should not allow Compact Parties to hide behind guesswork when the evidence points to systematic water diversion as the true cause of harm.

This is grounds for the Compact to be denied.

VIII THE COMPACT PARTIES' CONTRADICTIONARY WATER RIGHTS STANDARD

Compact Parties apply a blatantly contradictory standard for water rights recognition. They claim vast water rights across the entire Reservation based solely on their land ownership—no individual names required, no specific documentation demanded for each parcel. They simply assert: "We own the land, therefore we own the water."

More remarkably, Compact Parties claim approximately 10,000 off-reservation water rights that have no land attached to them. These claims require no property ownership, no appurtenant land rights, and no individual documentation—yet Compact Parties demand the Court recognize them as valid.

But when Objector asserts the fundamental legal principle that water rights run with her documented land ownership, suddenly Compact Parties demand a different standard: her name must appear on documents, **despite the legal reality that appurtenant water rights transfer automatically with land.**

The Double Standard Revealed:

- For Compact Parties: Land ownership = automatic water rights (no names required)
- For off-reservation claims: No land required at all (10,000+ claims to water alone)
- For Objector: Land ownership + documented historical water rights = "insufficient" because her name isn't individually listed

This discriminatory application of water rights law violates equal protection. Compact Parties cannot claim water rights based solely on land ownership while denying Objector that same fundamental principle. They cannot claim thousands of water rights with no land while demanding Objector prove individual documentation for rights that are legally appurtenant to her documented land ownership.

Moreover, Compact Parties have shown no interest in compensating Objector for the paying of O&M charges which the Federal Gov. said Secretarial Water Rights are not supposed to pay nor the economic losses their water diversions have caused. After thirty years of successful farming operations, Objector can no longer farm, irrigate, grow crops, or raise animals due to complete water loss coinciding with Compact implementation. Despite these documented economic

damages, Compact Parties offer no remedy, no compensation, and no acknowledgment of responsibility—while simultaneously claiming billions in federal funding for the very water projects that eliminated Objector's livelihood.

The law does not require different standards based on the race or political status of the rights holder, nor does it permit taking private property for public benefit without just compensation. The compact parties have not tried to rectify these injustices to date.. *(Emphasis added) (tr pg pg 14line 23&24, 16 line17) (Ex 5 pg 7 last half of ¶ 4 and all of ¶5)*

B) SECRETARIAL and WALTON WATER RIGHTS / CONSTITUTIONAL VIOLATIONS

This case is proven by Defendants' own words. Their 1987 internal memorandum provides smoking gun evidence that Plaintiff holds federally-created water rights that are systematically excluded from compact negotiations—despite being created through the identical governmental process as reserved rights that receive full federal protection. (1987 RWRCC Memo, Ex. A). This government document establishes every element of Plaintiff's constitutional claims.

The memo reveals that Leo Berry, counsel for the Joint Board of Control, told the Reserved Water Rights Compact Commission that "the authority of the RWRC should be expanded to include the ability to negotiate with the Joint Board for these 'non-reserved Federal rights.'" (Id. at 1). This direct admission proves systematic exclusion of Plaintiff's water rights from the very process designed to protect reservation water rights.

Most intriguing, is the memo confirms that Plaintiff's Secretarial Water Rights were created through a federal-tribal governmental process including "an Indian to be selected by the Indians" and approved by the Secretary of Interior. (Id. at 3). Yet while reserved rights created through identical federal-tribal authority receive full compact protection, Plaintiff's rights have been systematically excluded for over 34 years.

Defendants documented their own constitutional violations in 1987, then continued those violations through completion of the 2021 water compact. This Court should hold them accountable for the systematic exclusion they admitted in their own smoking gun memorandum.

I. STATEMENT OF FACTS

A.) Federal Creation of Secretarial Water Rights (1912-1921)

Plaintiff holds Secretarial Water Rights created through formal Federal administrative process on the Flathead Indian Reservation. (1987 Memo, p. 2). In 1912, the Secretary of Interior authorized formation of a committee to investigate existing water uses on the reservation. (Id.).

The committee included "the Superintendent of the Reservation, the Engineer engaged in the work, and an Indian to be selected by the Indians." (Id., p. 3) "Defendants' position is **constitutionally untenable** - they cannot provide full federal protection to some holders of federal-tribal water rights while systematically abandoning others created through identical governmental processes."

Defendants acknowledge Plaintiff holds 'her particular water right' yet systematically exclude her from negotiations affecting those rights.

After comprehensive investigation, the Assistant Secretary of Interior approved the committee's findings on November 25, 1921, creating what became known as "Secretarial Water Rights." (Id., p. 3). These rights confirmed pre-1908 water uses and granted exemptions from construction and maintenance charges. (Id.). (*emphasis added*). (trig 17 line 14)

B.) Government's Own Admission of Systematic Exclusion

Defendants' own 1987 internal memorandum documents systematic exclusion of Secretarial Water Rights from compact negotiations. (1987 Memo, pp. 1-2). Leo Berry, counsel for the Joint Board of Control, told the Reserved Water Rights Compact Commission that "the authority of the RWRC should be expanded to include the ability to negotiate with the Joint Board for these 'non-reserved Federal rights.'" (Id., p. 1). This constitutes direct admission that current compact authority excludes Plaintiff's federally-created water rights. "This systematic exclusion **violates fundamental due process** by denying Plaintiff any meaningful opportunity to protect his federally-created property interests in negotiations designed specifically for reservation water rights." (*Emphasis added*)

C.) Pattern of Federal Abandonment

-The memo traces a consistent pattern of federal creation followed by abandonment:

-1921: Federal government officially created Secretarial Water Rights

-1942: In U.S. v. Alexander, government "makes no attempt to sustain their validity"

-1987: Government admits these rights are excluded from compact negotiations

-Present: Decades of systematic exclusion continue

"Government's abandonment **eviscerates constitutional protections** for federally-created property rights, rendering them legally worthless despite formal federal creation and approval." (*emphasis added*)

II. ARGUMENT

A. DEFENDANTS VIOLATE EQUAL PROTECTION BY DISCRIMINATING BETWEEN IDENTICALLY CREATED FEDERAL WATER RIGHTS

1. Secretarial Water Rights Were Created Through Same Federal-Tribal Process as Reserved Rights

Plaintiff's water rights were created through identical governmental process as tribally reserved rights:

Process Element	Reserved Rights	Secretarial Water Rights
Federal Authority	Secretary of Interior	Secretary of Interior ✓
Tribal Participation	Tribal government	Indian representative selected by Indians ✓
Reservation	Flathead	Flathead Reservation ✓
Official	Federal	Secretary approval (1921) ✓
Priority Date	Treaty date	Pre-1908 actual use is 1880✓(Ex 3)

The 1987 memo confirms an "Indian to be selected by the Indians" participated in creating Plaintiff's rights. (1987 Memo, p. 3). This tribal participation in the federal approval process creates identical governmental authority as reserved rights.

2. Government Provides Discriminatory Treatment to Identically Created Rights

Despite identical creation process, Defendants provide drastically different treatment:

Reserved Rights Holders Receive:

- Federal representation in compact negotiations
- Legal advocacy and protection
- Full participation in water allocation decisions
- Federal trust protection

Plaintiff Receives:

- Systematic exclusion from compact negotiations
- No federal representation or protection
- Complete abandonment by creating government
- Decades of legal limbo

This disparate treatment of identically created federal-tribal water rights violates equal protection. "Equal protection is violated when government treats similarly situated individuals differently without rational basis.". The compact parties have not tried to rectify these injustices to date.

B. DEFENDANTS VIOLATE DUE PROCESS BY EXCLUDING PLAINTIFF FROM NEGOTIATIONS AFFECTING HER PROPERTY RIGHTS

1. Government's Own Documents Prove Systematic Exclusion

Defendants cannot dispute exclusion—their own 1987 memo admits it. Joint Board counsel told RWRCC that authority "should be expanded to include the ability to negotiate" Secretarial Water Rights. (1987 Memo, p. 1). This direct admission establishes:

- Current compact authority excludes Plaintiff's rights
- Exclusion is systematic and intentional
- Even organized water users cannot get representation for these rights
- Special legislation would be needed just to negotiate about Plaintiff's property

2. Exclusion Violates Procedural Due Process

"[D]ue process is flexible and calls for such procedural protections as the particular situation demands." Here, Plaintiff holds federally-created property rights that are directly affected by compact negotiations, yet is provided no meaningful process to protect those rights. The compact process creates a legal trap from which Secretarial Water Rights cannot escape:

- **Not classified as "reserved rights"** = No federal tribal representation
- **Not treated as state appropriative rights** = No state representation
- **Federally created but federally abandoned** = No federal protection
- **Excluded from compact authority** = No negotiation process available

This systematic exclusion creates a procedural loop where Plaintiff's rights exist but have no pathway to protection. Due process cannot permit government to create property rights through federal authority, then design procedures that systematically exclude those rights from all forms of legal protection.”

The 1987 memo documents this due process violation:

- RWRCC commissioners "requested that the staff research the history of these rights" (1987 Memo, p. 2)—proving they didn't even understand the rights they were excluding
- 34+ years of negotiations (1987-2021) without correcting known exclusion
- No procedures exist for Secretarial Water Rights holders to participate

C. Pattern of Federal Abandonment Creates Untenable Legal Position

The memo traces a consistent pattern of federal creation followed by abandonment:

- **1921:** Federal government officially created Secretarial Water Rights through federal-tribal process
- **1942:** In U.S. v. Alexander, government "makes no attempt to sustain their validity"
- **1987:** Government admits these rights are excluded from compact negotiations
- **Present:** Decades of systematic exclusion continue through 2021 compact approval

This abandonment creates a fatal legal contradiction with any determination that the compact is "fair and adequate." If this compact is truly fair, then **what happens to tribal water rights in this compact must equally happen to Plaintiff's identically-created Secretarial Water Rights.**

The government cannot have it both ways:

- **Either** federal-tribal created water rights deserve consistent federal protection (including Plaintiff's rights)
- **Or** the federal government can abandon any water rights it created through federal-tribal authority (undermining all tribal water rights) I vote that all Federal Rights be eliminated!

The "fairness" standard demands equal treatment:

- **If** the compact fairly protects tribal reserved rights created through federal-tribal authority, **then** it must equally protect Secretarial Water Rights created through identical federal-tribal authority
- **If** systematic exclusion of Plaintiff's rights is "fair," then tribal rights created through the same process deserve no greater protection

This creates a constitutional crisis. The government cannot claim the compact is "fair and adequate" while systematically excluding an entire class of federal water rights holders. Either:

- If the compact is to remain fair it can not exclude Federally-created rights holders, **OR**
- **All federal-tribal water rights** (including tribal reserved rights) can be abandoned without constitutional protection

A "fair" compact cannot provide full federal protection to some holders of federal-tribal water rights while completely abandoning others whose rights were created through identical governmental processes. If Plaintiff's federally-created rights can be abandoned without due process, then **no federal water rights are secure from arbitrary governmental abandonment.** (*Emphasis added*)

D.) DEFENDANTS BREACH FEDERAL TRUST OBLIGATIONS

1. The tribal participation in creating Secretarial Water Rights triggers federal trust duties. The 1987 memo confirms these rights were approved through process including "an Indian to be selected by the Indians." (1987 Memo, p. 3).

Federal trust duty requires government to protect interests created through federal-tribal governmental process. Defendants breach this duty by:

- Creating rights through federal-tribal process
- Abandoning those same rights in subsequent proceedings
- Excluding rights holders from protection provided to other reservation water users

2. Trust Breach Through Systematic Abandonment

Defendants breach federal trust duties by:

Creating Rights Through Federal-Tribal Process: Government used federal authority with tribal participation to create Plaintiff's water rights.

Abandoning Defense: Government later refused to defend the validity of rights it created through federal-tribal process.

Discriminatory Protection: Government provides full trust protection to some reservation water rights while systematically excluding others created through identical federal-tribal authority.

This pattern violates the fundamental trust principle that government must protect, not destroy, interests created through exercise of federal authority over Indian affairs.

The law does not require different standards based on the race or political status of the rights holder, nor does it permit taking private property for public benefit without just compensation. The compact parties have not tried to rectify these injustices to date. (*Emphasis added*).

3. Continuing Trust Violations

The trust breach continues through current systematic exclusion. While providing full compact representation to tribal reserved rights, Defendants abandon holders of water rights created through the same federal-tribal governmental authority. This discrimination violates the government's obligation to provide consistent protection for all interests created through federal trust authority.

IV. DEFENDANTS' ANTICIPATED ARGUMENTS FAIL

A. "These Rights Are Not Reserved Rights"

Defendants may argue that Secretarial Water Rights deserve no federal protection because they are "not reserved rights in any way." (1987 Memo at 1). This argument fails for multiple reasons:

Legal Classification Cannot Override Constitutional Rights: Whether rights are labeled "reserved" or "secretarial," they remain **federally-created property** entitled to constitutional protection. Government cannot escape constitutional obligations through semantic distinctions.

Same Federal-Tribal Authority: The smoking gun memo proves these rights were created through **identical governmental process** as reserved rights—federal authority with tribal participation and Secretary approval. Constitutional protection depends on governmental action, not legal labels.

Government Cannot Abandon Rights It Creates: Even if these rights differ from reserved rights, the federal government cannot create property rights through official process then systematically abandon them. Due process requires consistent treatment of federally-created property interests.

B. "Compact Process Adequately Represents All Water Users"

Any claim that current processes adequately represent Secretarial Water Rights holders is contradicted by Defendants' own smoking gun admissions:

Direct Admission of Exclusion: The 1987 memo contains **direct admission** that compact authority excludes these rights and that "expanded authority" would be needed to negotiate about them.

No Representation Identified: Defendants have never identified who, if anyone, represents Secretarial Water Rights holders in compact negotiations.

34+ Years of Exclusion: The systematic exclusion documented in 1987 continued through final compact approval in 2021, proving no adequate representation exists.

C. "Rights Holders Can Pursue State Court Remedies"

Forcing holders of **federally-created rights** into expensive individual state proceedings while providing full federal representation to other federal water rights holders violates equal protection:

Federal Rights Deserve Federal Protection: Rights created by federal government through federal-tribal process deserve federal representation, not abandonment to state forums.

Discriminatory Treatment: Reserved rights holders get federal advocacy while Secretarial Water Rights holders are forced into individual state litigation—despite identical federal creation.

Due Process Requires Meaningful Process: Individual state court cases cannot provide the comprehensive protection that compact negotiations offer to other federal water rights holders.

V. RELIEF REQUESTED

Based on Defendants' own documented constitutional violations, this Court should grant the following relief:

A. DENY THE COMPACT IN IT'S ENTIRETY

GRANT such other relief as this Court deems just and proper to remedy the constitutional violations documented in Defendants' own smoking gun memorandum.

III. CONCLUSION AND RELIEF REQUESTED

Defendants' own 1987 memorandum provides systematic constitutional violations. The government admits excluding Plaintiff's federally-created water rights from compact negotiations while providing full protection to identically created reserved rights.

This Court should:

- 1.** Find as a matter of law that Plaintiff's Secretarial Water Rights deserve equal protection with other federally-created reservation water rights

2. Find that my rights are the same and equal to the compact water rights and the compact rights do not have any superior rights to mine. I am not a junior water right holder. Eneas Finley Had the same priority date of 1855 as the rest of the tribe.

CONCLUSION

Defendants cannot escape the constitutional violations they documented themselves. Their 1987 internal memorandum provides **smoking gun evidence** that:

- Plaintiff holds federally-created water rights created through identical process as reserved rights
- These rights are systematically excluded from compact negotiations
- Government has abandoned rights it created through federal-tribal authority
- Equal protection, due process, and taking violations have continued for over 34 years

The government's own words prove every element of Plaintiff's claims. As their smoking gun memo admits, current compact authority excludes Plaintiff's federally-created rights, forcing holders of federal property into legal limbo while providing full protection to identically created reserved rights.

A government that creates property rights through federal-tribal authority cannot then systematically abandon those rights while protecting others created through identical processes. The Constitution requires equal treatment of equal government action.

This Court should hold Defendants accountable for the systematic constitutional violations they admitted in their own smoking gun memorandum and provide Plaintiff the equal protection and due process that all holders of federally-created water rights deserve.

For all these reasons, Objector respectfully asks the Court to deny this Compact before irreparable harm is done to her constitutionally protected water rights and property interests. The evidence establishes that Compact Parties' systematic water diversions have already caused devastating harm—complete loss of farming operations, economic damages, and denial of due process. Their own expert's admission that his defense relies on pure speculation rather than facts demonstrates the weakness of their position.

Objector has endured thirty years of discriminatory denial of her lawful water rights, followed by complete water loss the moment the Compact took effect. She cannot wait for another lengthy legal process while her land remains barren and her constitutional rights continue to be violated. The time for justice is now.

The Court should deny the Compact and restore Objector's water before further irreparable harm occurs.

Respectively Submitted

/s/Valerie Root 8/22/25

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Post-Hearing Opening Brief for Hearing No. 6 was served by email to the compact Parties and an email to the Water Court as set forth below this 22nd day of August, 2025.

Water Court watercourt@mt.gov

Danna Jackson danna.jackson@cskt.org

Molly Kelly molly.kelly2@mt.gov

David Harder david.harder@usdoj.gov

/s/ Valerie Root 8/22/25