

Riffel, Natalie

WC-0001-C-2021

From: Shelley Lustman <shelleypip@aol.com>
Sent: Monday, July 8, 2024 9:46 AM
To: Negose, Yosef; efile_denver.enrd@usdoj.gov; Melissa Schlichting; daniel.decker@cskt.org;
rusche@sonosky.com; Kelly, Molly; Vanisko, Chad; christina.courville@cskt.org; Saye, Jean; Standish,
Rochell; Restuccio, Thomas; Watercourt (Bozeman); Harder, David
Subject: [EXTERNAL] Motion for Adequacy and Fairness
Attachments: Jul 8, 2024 at 9_05_21 AM cert of service.pdf
Categories: Natalie

July 8, 2024

Montana Water Court

Water Court of the State of Montana INC
Confederated Salish and Kootenai Tribes -
Montana -United States Compact
Hon Judge Stephen
Brown

Shelley lustman
R006 lower valley rd 1492
Kalispell Montana
against

U.S Department of Justice Indian Resource Section
Environmental & Natural Resource
Div 999 18th St south Terrace,
Suite 370 Denver CO 80202

Confederated Salish & Kootenai Tribes Tribal Legal Dept
P.O.B 278 Pablo, Montana 59855

Montana Department of Natural Resources
1539 Eleventh ave
P.O.B 201601
Helena, Montana 59601

Complaint # WC-0001-CO21

Motion for Fairness and adequacy

The Honorable Stephen Brown,

COMES NOW Shelley Lustman (objector) asserts and alleges as follows:
Objector is a natural woman in Terra Ferma Jurisdiction of Montana, flathead county with a mail stop
address of R006 lower valley rd 1492, Kalispell Montana, owns water rights 76LJ4415-000 with the
use of ground water and irrigation.

WHEREFORE, I Shelley Lustman pro se Motion for Fairness and adequacy in support of my request are outlined in my brief

Procedural Background

On November 27th a motion to Amend objection, On March 5, 2024 my motion was granted in part, precluding Damages and water levels portion of my objection. On March 19th 2024, I made a motion for reconsideration, as I requested full legal redress, regarding Damages portion of my objection. That motion was denied.

Case management order #3 provides a July 10th deadline for parties to file motions pertaining to compact fairness and adequacy and "any issues of law that do not require the court to make findings of fact". Aren't findings of fact what courts are supposed to do? Directly translated Res judicata, a matter judged based on merits and legal authority, is a principle most used in litigation. Judgements on this compact requires "no finding of fact" as at least two other courts have already adjudicated these issues and have made findings of fact and conclusions of law pertaining to CSKT ceded lands and a final judgement in the court of claims. Additionally Federal constitutional laws, Montana constitution laws, and bill of rights are actual laws and require no finds of facts. Supreme court rulings have already adjudicated and made findings of facts in their conclusions and do not require this court to make findings of facts, only to consider the precedent.

Unfortunately, I was not able to join the case management conference zoom call due to technical difficulties with my Century link services. This order is very confusing and difficult to understand to pro se objectors, as I found no laws for a court not to consider findings of fact, further confusing me.

Brief

There is a unbroken chain of title with respect to the source of the surreptitious replacement of our lawful governments with Corporations, Departments and Agencies in the business of providing government services,(see: STATE OF MONTANA Dunn and Bradstreet number 080278629). The shareholders and board members, who do not care about the results of their uncaring policies in pursuit of profit, or their effect on the public. This is routinely shifted to administrative hearing, a unlawful cross contamination of power, without oversight. The 7th amendment is violated as facts are not found by a jury and a administrated tribunal finds the facts, or orders no finding of facts in this case, and controls the administrated records on appeal. This is a gain of an unconscionable and overreaching advantage. For these reasons the administrative adjudication is a abomination and conducts due process and full legal redress violations with structurally bias empires is pernicious, and should not be operating under these principles, and the Federal Supreme Court has made sure to that in its corrective wisdom.

SEC v Jarkesy docket number 22-859 argued 11/29/23, Justice Gorsuch, "Congress cannot eliminate a party's seventh Amendment right to a jury trial merely by relabeling the cause of action and placing jurisdiction in a administrative agency".... "And we don't usually say the government can avoid a constitutional mandate merely by relabeling or moving things around" .

April 14th 2024 Axon v FTC , Justice Kagan pointed out having to go through a unconstitutional proceeding is a here and now injury, Justice Thomas expressed grave doubts about vesting administrative agencies with primary authority to adjudicate core private rights with only deferential judicial review. Axon v FTC once again reverse the ninth circuit holding administrative proceedings accountable under constitutional law.

Property rights are mentioned approximately 72 times in the Constitution and are untouchable, and any court decision repugnant to the constitution is void, *Marbury v Madison 5 U.S.137,*

In June of 2023 *U.S. Supreme, Arizona v Navaho* reversed ninth circuit decision and applied common law principles with respect to water.

On 2/12/2024 The Supreme Court reversed *California in Sheetz v El Dorado County* for agencies imposing unconstitutional conditions on land.

On September 29th 2005 *Horne V. Dept of Agriculture* Supreme court reversed ninth circuit court in favor of the fifth amendment.

Just days ago on June 28 2024, The Supreme court in *Loper Bright V Ramondo*, overturns the "***Chevron Deference precedence***" dealing a huge blow to the so called administrative state and its unelected regulators stripping federal agencies of enforcing overreaching regulations, basically deeming all of these extended arms of agency's, departments, administration boards, or any corporation in which the United States has a proprietary interest, from enforcing unconstitutional decisions, or interpreting the law to what ever they want and imposing unlawful penalties. This ruling is a major step to preserve separation of powers, an enormous sigh of relief for Americans as it caused immeasurable harm, long overdue Justice, and in the dust bin of history where it belongs. This is the most important Supreme court decision in my lifetime. This ruling puts an end to the overreaching scope of statutory authority untethered from constitutional law, and can no longer can create rules out of thin air by proxy or escape liability by reassigned unelected bureaucrats, courts no longer have to defer to, and compelled not to, when the constitution mandates. It is clear that the over turning of the Chevon deference means the over turning of power assumed by incorporated entities and the neutering of agencies from confiscation of Americans assets. The nullifying of the entire three letter agencies and Departments in our government from ruling by fiat statutory, that was not passed by Congress will have resounding ripple effects .

The break in the Dam came last year with another Supreme court case *West Virginia V EPS* which the Justices reiterated *Norton V Shelby county* finding that Congress can not shuffle off powers to other entities.

Please take notice that, on, June 28, 2024 The Supreme court in another blow to the "administrative state", *Corner Post INC v Board of Governors* "That the six year window to sue federal agencies ***begins*** when the plaintiff experiences damages due to their actions" This means very old agency authority can now be challenged on the grounds that some recent action has injured the plaintiff, opening up the flood gates of liability.

Please take notice that, "*He who does a thing by another is considered as doing it himself*" (i.e. the act of an agent are the acts of the principle). *Broom,max.817,818 et seg: A collection Maxims of Law by Charles A Weisman.*

Please take notice that, ***Cooper vs Aaron [358.US \[358.us\]](https://www.uscourts.gov/ohr/cases/358-us-1785) 1,785 CT 1401(1958), No state legislator or executive or judicial officer can war against the constitution.*** .

Please take notice that, *Tucker Blackstone Vol1 Appendix Note B Section 31803*, "If in a limited government, the public functionaries exceed the limits which the constitution prescribes to their power, every act is act of usurpation in the government, and, as such treason against the sovereignty of the people"

Just to name a few precedence of property, human rights and Positive Law, that are well settled in the Supreme court. which requires "no finding of facts" For these reasons I do not consider this so called water compact fair or adequate or lawful, and will be materially injured by this compact.

Please take notice, I do not consent to a administrative proceedings offer to divest me from my valuable water property rights and is not excepted, I have signed no contract, and do not consent to being surety for this case. As per the freedom of information Act, I demand any bond including but not limited to, "Anonymous bonds", tax free bonds be brought forward so I can see, will indemnify me if I am damaged.

Under the Winters Doctrine the language stipulation agreement reads: The judgement shall Finally Dispose of all claims and demands which petitioner has asserted or could have asserted in this case against defendant and petitioner shall be barred from asserting all such claim and demands in any such future action. The compact completely ignores this fact, it is not okay for a tribe, the United States or a State to create a new legal theory decades later for the purpose of reopening grievances that were legally resolved years ago. As structured, the compact imposes upon the people ex post facto law that undermines private property rights, the constitution and existing federal reserved water rights law. Is this negligence, oversight or constructive fraud perpetrated on the people of Montana? For this reason, I do not consider this compact and the process of it, fair or adequate or lawful.

This Compact effectuate the unlawful conversion of the Non-tribal irrigator water rights, turning them into part of the tribal right. Pursuant to the *General Allotment Act, 25 U.S.C par 331 et seq, Article VI of the Helgate Treaty* provides for the survey and allotment in severalty of tracts of the flathead Reservation lands ranging in size from 80 acres to more than 640 acres, depending on family size. Ultimately, the allotment would be conveyed by patent. Article VI also places certain restrictions on the sale or lease of individual allotments "until a state constitution, embracing such lands with in its boundaries shall be formed" Pursuant to the terms of the *General Allotment Act and the Flathead Allotment Act of 1904*, both the Flathead Reservation and the tribal government therein were to be dissolved eventually. *The reorganization Act* did not repeal the *General Allotment Act of May 29 1908*, Congress explicitly stated in *25 U.S.C 463(a)* the section of the Indian Reorganization Act that authorizes the restoration of surplus lands previously opened to settlement, " this section shall not apply to lands with in any reclamation project heretofore authorized in any Indian reservation" *Justice Stuwart summed it up "there is simply no suggestion in the legislative history that congress intended that non Indians who settled upon alienated allotted lands would be subject to tribal regulatory authority" Montana v United States, 450 U.S 544(1981) In 1971 the Tribes cited the fifth amendment rights to the Court of claims, the settlement was 22.4 million dollars, yet, now does not want to recognize non- tribal, off reservation fifth amendment property rights and damages and wants to enforce an improper demand in a uneven application of the law. To reiterate, the stipulation in Docket 61, The judgement shall finally dispose of all claims or demands which petitioner has asserted or could have asserted in this case against defendant and petitioner shall be barred from asserting all such claims or demands in future action. in 1972 Congress approved this payment of settlement as Congress intended that the grievance would be settled with finality and shall be a full discharge of the United States of the claims and demands touching any of the matters involved in the controversy, USA v Mary Dann and Carrie Dann, Scotus Docket 83-1476.* Once again both the CSKT tribal government and tribal members accepted the terms of settlement claims. Yet here we are again still litigating the same issues the court of claims resolved with finality decades ago, and now claim continuing title. It not possible that the tribe is able to retain time immemorial water

rights on land it ceded all right, title and interest in, and its aboriginal title was extinguished decades ago according to this settlement. The compact completely ignores the fact the tribes was paid for their ceded lands and are precluded from going after the water associated with those lands. Yet again creating a new legal theory that was resolved years ago. For these reasons I do not consider this compact and the process of it, fair, adequate or lawful.

Instead of protecting the real property water rights of both the Tribal and non tribal irrigators, (approximately ninety percent of irrigators are non tribal), the compact and the tribes rewritten compact place of ownership of the water rights in the Tribes, unconditionally. If this compact is allowed would take property rights of irrigators without compensation. In violation of the Fifth Amendment, and destabilizing western Montana, and using tax payers funds to circumvent state and federal laws, while tribes are tax exempt, and advance their agenda of control of jurisdiction over non tribal members. Who ever controls the water, controls the people, and the value of their land, and can make the people of Montana lands baron. For these reasons, I do not consider this compact fair or adequate and I do not consent, and will be materially injured by the operation of this compact.

This compact usurp the application of *Article IX of the Montana Constitution* to lands within the Flathead Reservation and negates many provisions of Montana law governing the adjudication and administration of water rights. Article IX statues outline the procedural due process that is requisite to the United States waiver of sovereign immunity under the *McCarran Amendment*. The Compact expressly negates *Montana law in 1-1101(4)* . For this reason I do not consider this compact fair or adequate.

Unitary Management Ordinance, which reads: Upon the effective date of the Compact, This Ordinance shall govern all water rights, weather derived from tribal, state or federal law. This is not a rational exercise of legislative authority, nor do federal courts appear to even have a subject matter jurisdiction to entertain such cases under current law, For this reason I do not consider this compact and the process of it fair or adequate or lawful .

The History, the law and facts are ignored in this so called water compact on meaningless theory that the tribes claims are "colorable" while giving no benefit to non tribal water users with respect to Winters, aboriginal, the *General Allotment Act, Flathead Allotment act 1904 and its Amendment in May 28, 1908* the body of applicable federal law weighs heavily in favor of the non-Indian. for this reason I do not consider this compact fair or adequate.

The "adaptive management" is open ended and vague, water right decrees are required to include priority, amount, purpose, place of use any any other conditions necessary to define the right and its priority and must be conclusive in its understanding. This is necessary to comport with procedural due process requirements. *Sessions v Dimaya , 584 U.S 2018* requires it to act with enough clarity that a reasonable people know what is required of them. A few examples are "Flathead river below Kerr" is stated that the right has two "administration points" also called "points of diversion" with no minimum diversion and flow values to be a simple percentage. Another inconclusive is the "Flathead System Compact water" which defines acres feet per year but does not define the point of diversion, and can be anywhere. "Instream right" is this the water the tribes plan to sell or have already sold? If the tribes have extra water to sell they obviously don't need water to establish their "permanent home land" assuming that is a legitimate purpose. For these reasons I do not consider this compact and the process of it, fair or adequate or lawful and will be materially damaged.

The government have a duty to promote and is mandated, to general welfare and preservation of person rights, private property they swore an oath to protect, **Maxim of Law 51p**, did not even bother to adhere to Montana's strict public meeting laws, **Article 11 sec 9**, and snuck a "Compact" in a covid spending bill, a gimmick to circumvent **Article V** which governs amendments to the constitution as voters rejected this in 2016 and 2020. Changing state law without notice, concealing what should have been disclosed, revision of history, and a very questionable process of ratifying, dramatically abusing our system of laws to "take" our valuable water real property rights, is not a defensible product, a product of the poisonous tree and caused legal injury. The water was an appurtenance to the land I purchased, for this reasons I do not consider this so called water compact and the process of it, fair or adequate and will be materially damaged

Conclusion

Water is life, and God given, taking it is a crime against humanity, and a violation of The Bill Rights Article III section 9, and the fifth amendment as well as the Montana Constitution Article 9. Both tribal and non tribal need water equally, as we are both the human race. Even other tribes, Blackfeet tribes as an example, are also objectors to this so called water compact. Ensuring the ownership and protection of the existing state/federal water rights of both tribal and non tribal irrigators should be the objective. Water is also also critical infrastructure and a guaranteed public highway as per the *Helgate treaty Article 3*, and in my case the only escape route in the event of a fire, additionally, a clear and present danger to national and economic security when under the control of only a few for their self serving purpose and does not serve the public's interest. I reject the overreach and deprivation of my rights, U.S. Code Title 42 chapter 21 subchapter 1983 (civil action) This very important provision is itself, an acknowledgment by the government that all the proceedings of our justice system who are entrusted with the administration of justice, are not entitled to uncritical acceptance. This compact not founded in law, unsupported historically, vaporizes real property rights and the provisions of the Water Use Act.

For all of the above mentioned reasons I believe this compact and the process of it, is neither fair, adequate, lawful or even reasonable, and this water court should void the compact as matter of law. This may have to be addressed in a jurisdiction free from conflicts of interests and due process violations. The people of Montana has recently given formal notice of the reassembling of the Montana General Jural Assembly on 6/1/24 along with approximately 30 other states and 10 more in the process, due to many grievances and overreach, deprivation rights under the color of law, and to ensure our constitutional republic, with the blessing of the military as they honor their oath to protect and defend our constitution. The formal notice can be verified in the Public notice section of the Great falls tribune, Billings Gazette, Montana Standard, Missoulian publications. Once settled, de jure grand and petite jury's are impaneled, this issue may find its way there in the event the Federal and State constitutions are trespassed on.

I reverse my rights, without prejudice,

Respectfully submitted,
Shelley Lustman
Terra Ferma Jurisdiction

Attached certification of service

CERTIFICATE OF SERVICE

This is to certify that the foregoing was served on the following persons as noted below.

Montana Water Court
1123 Research Drive P.O. Box 1389 Bozeman, MT 59771-1389
watercourt@mt.gov
 U.S. Mail Overnight Mail Hand Delivery Facsimile E-Mail

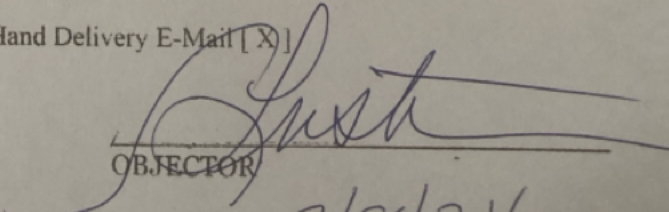
David W. Harder Senior Atty for Legal Issues
U.S. Dept. of Justice Indian Resources Section Environment & Natural Resources Division
999 18th Street South Terrace, Suite 370 Denver, Colorado 80202
David.harder@usdoj.gov
efile_denver.enrd@usdoj.gov
 U.S. Mail Overnight Mail Hand Delivery Facsimile E-Mail

Molly M. Kelly, Montana DNRC
1539 Eleventh Avenue
P.O. Box 201601 Helena, MT 59601
Molly.kelly2@mt.gov
Jean.Save@mt.gov
 U.S. Mail Overnight Mail Hand Delivery E-Mail

Chad Vanisko, Montana Attorney General Agency Legal Counsel
Agency Legal Services Bureau
1712 Ninth Avenue P.O. Box 201440 Helena, MT 59620-1440
chad.vanisko@mt.gov
rochell.standish@mt.gov
 U.S. Mail Overnight Mail Hand Delivery E-Mail

Daniel J. Decker, Melissa Schlichting, Christina M. Courville
Confederated Salish & Kootenai Tribes
Tribal Legal Department P.O. Box 278 Pablo, MT 59855
Melissa.Schlichting@cstkt.org
Christina.Courville@cstkt.org
daniel.decker@cstkt.org
 U.S. Mail Overnight Mail Hand Delivery E-Mail

Dated this 8 day of ^{July} Month, 2024


OBJECTOR

7/8/24