

WC-0001-C-2021

February 13, 2025

Montana Water Court

Mickale Carter
Bar Number 2594
Pro Se Objector
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IN THE WATER COURT OF THE STATE OF MONTANA
CONFEDERATED SALISH AND KOOTENAI TRIBES-MONTANA-UNITED STATES
COMPACT

CASE NO. WC-0001-C-2021

REQUEST FOR HEARING

Comes now, Mickale Carter, Pro Se, and submits this notice of intent to participate in an evidentiary hearing and notice of necessary discovery, including attached discovery requests. As required by the January 31, 2025 Case Management Order No. 5, this notice of intent includes the following:

- a. Objector's name: Mickale Carter
Date of Amended Objection: 11/28/2023
Docket number: 1440 (filed with Motion to Amend Objection)
Motion to Amend Objection Granted
Docket number: 1631

b. Mickale Carter gives notice of her intent to participate in an evidentiary hearing to present evidence that her existing water rights are negatively affected by the Flathead Compact, i.e., material injury. MCA 85-2-233 (1). She will also present evidence that the Compact Parties cannot prove that CSKT has a right to off reservation water based upon its off reservation fishing rights, as "currently exercised." See United States v. Adair, 723 F.2d 1394, 1413 (9th Cir. 1983). Objector Carter will offer multiple exhibits and may offer the testimony of witnesses in addition to herself.

c. Objector Carter's water rights: 76LJ 30010558
76LJ 30124300
76LJ 30124301
76LJ 30124302

The evidence will show that the Flathead Compact negatively affects these water rights. The evidence will show that simply not being "Subject to Call" does not protect these water rights. The evidence will show that there is a hydrological link between the ground water and the surface water in the Kalispell Subarea of the Flathead Lake Watershed where Objector Carter's water rights are located. Objector Carter's water rights are in the shallow aquifers of the East Side Aquifer. The underground water therein flows from the western front of the Swan Range toward the Flathead River. The unrestricted withdrawal of the interconnected surface water, as allowed by the Flathead Compact, will necessarily diminish groundwater levels, in that the groundwater will flow into the Flathead River to replenish its lowered level caused by the taking of the water pursuant to the Flathead Compact. The lowering of the ground water level by the CSKT will be especially devastating during times of drought. This will materially affect access to groundwater as set forth in Objector Carter's water rights. In that the Flathead Compact does not require termination of the taking of water from the Flathead River system, including Flathead Lake, as allowed by the Flathead Compact, if and when such taking lowers the groundwater level to such an extent that Objector Carter cannot access her water rights, Objector Carter's water rights are unreliable.

The evidence presented will prove the Grounds listed in Objection 7 of Objector Carter's Amended Objections. For example: 1. The evidence will show that the Flathead Compact's cavalier disregard for the preservation of the groundwater levels necessary for Objector Carter to have access to her water rights, is a violation of MCA

85-2-701(1), in that the Flathead Compact does not take into consideration the interests of the people of the State of Montana. 2. The evidence will also show that this cavalier disregard for Objector Carter's water rights amounts to depredation (i.e., damage done to) and consequently, is a violation of the Treaty of Hell Gate, 1855, Article 8. At a minimum, the Flathead Compact should include, pursuant to Article 8 of the Treaty of Hellgate, 1855, a provision that requires compensation to be made to those people of the State of Montana who suffer damages, including reduction in property values, caused by depredation to their water rights resulting from the Flathead Compact. 3. The evidence will also show that this failure to ensure that the water taken from Flathead Lake and/or its watershed, allowed pursuant to the Flathead Compact, does not negatively impact Objector Carter's water rights, is a violation of Montana Constitution Article IX Section 3 and MCA 85-2-311(1)b which states that the waters of the State are for the use of its people. 4. The evidence will show that approval by the Water Court of the Flathead Compact without valid assurances that the taking of water from Flathead Lake and its watershed by CSKT will not affect the water rights of Objector Carter would amount to racial discrimination in that all others in the state must make such showing before water rights are granted.

Furthermore, the evidence will show that the Compact Parties' claim that its right to off reservation water as set forth in the Flathead Compact is based upon CSKT's right "of taking fish at all usual and accustomed places, in common with citizens of the Territory" provided for in Article III of the Treaty of Hell Gate, 1855, is not supported by the facts. The evidence will show that: 1. the Compact Parties did not determine the extent to which the members of the CSKT "currently exercised" their off reservation

fishing rights; 2. the Compact Parties did not do an investigation, or otherwise determine that CSKT's off reservation fishing rights, as "currently exercised" by CSKT, were in jeopardy because of a water related reason; 3. the Compact Parties made no determination as to the amount of water needed to remedy the water issues that they found jeopardized CSKT's off reservation fishing rights as "currently exercised;" 4. the Compact Parties did not make assessments to assure that the amount of water claimed in the Flathead Compact, did not exceed the amount of water needed to remedy the water issues they found jeopardized CSKT's off reservation fishing as "currently exercised." Consequently, there is no legal basis for any claim of off reservation water rights, including those claimed in Flathead County. See United States v. Adair, 723 F.2d 1394, 1413 (9th Cir. 1983).

d. Objector Carter's offer of proof may take more than an hour.

e. Objector Carter is available on all proposed hearing dates. However, she would prefer to have her hearing in Kalispell, in that it is closer to where she lives.

f. Discovery. Requests for admission, interrogatories, and requests for production related to: 1. Whether the Flathead Compact and/or the Compact Parties performed any analysis or study regarding, or otherwise considered, the interrelated nature of the surface and ground water in the Flathead Lake Watershed and the impact the Flathead Compact would have on ground water therein, which necessarily impacts groundwater water rights. 2. Evidence of off reservation fishing rights of the CSKT as "currently exercised." 3. Determination that the CSKT's off reservation fishing rights as "currently exercised" were in jeopardy caused by water related reasons. 4. Assessment of the amount of water needed to maintain the CSKT's "currently

exercised" off reservation fishing rights. 5. Comparison of the off reservation waters claimed in the Flathead Compact with the water needed to maintain CSKT's "currently exercised" off reservation fishing rights.

g. Proposed discovery requests are attached.

Dated this 13th day of February, 2025.

OBJECTOR MICKALE CARTER

/s/ Mickale Carter
MICKALE CARTER
Bar Number 2594
pro se

CERTIFICATE OF SERVICE

I declare under penalty of perjury, that I emailed a true and accurate copy of the foregoing document on February 13, 2025, to the following email addresses:

Montana Water Court: watercourt@mt.gov

Daniel J Decker
Confederated Salish & Kootenai Tribes: objections@cskt.org

David W. Harder
U.S. Department of Justice
Indian Resources Section
Environment & Natural Resources Division: efile_denver.enrd@usdoj.gov

Molly M. Kelly
Montana Department of
Natural Resources and Conservation: Jean.Saye@mt.gov

Chad Vanisko
Montana Attorney General Agency
Legal Counsel Agency Legal Services Bureau: chad.vanisko@mt.gov

/s/ Mickale Carter February 13, 2025.

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

CASE NO. WC-0001-C-2021

DISCOVERY REQUESTS

TO: STATE OF MONTANA, CSKT, UNITED STATES OF AMERICA

Objector Mickale Carter hereby makes the following discovery requests upon the Compact Parties: State of Montana, CSKT, and the United States of America, with each to answer the discovery requests, individually, under oath, within thirty (30) days after service.

REQUESTS FOR ADMISSION

1. Please admit that you individually, or in conjunction with others, including the other Compact Parties, either prior to, or during the creation of the Flathead Compact, did not make an analysis or study regarding, or otherwise consider, the interrelated nature of the surface and ground water in the Flathead Lake watershed when you created the Flathead Compact.

RESPONSE:

2. Please admit that you individually, or in conjunction with others, including the other Compact Parties, either prior to, or during the creation of the Flathead

Compact, did not make an analysis or study concerning the impact the water rights, including the off reservation water rights, contained in the Flathead Compact, would have on the ground water in the Flathead Lake watershed.

RESPONSE:

3. Please admit that you individually, or in conjunction with others, including the other Compact Parties, either prior to, or during the creation of the Flathead Compact, have neither collected, nor otherwise have, evidence with regard to CSKT's off reservation fishing rights, as "currently exercised," as that term is used in United States v. Adair, 723 F.2d 1349, 1413 (9th Cir. 1983).

RESPONSE:

4. Please admit that you individually, or in conjunction with others, including the other Compact Parties, either prior to, or during the creation of the Flathead Compact, have not done a study or otherwise determined that CSKT's off reservation fishing rights as "currently exercised" were in any way in jeopardy due to water related reasons.

RESPONSE:

5. Please admit that you individually, or in conjunction with others, including the other Compact Parties, either prior to, or during the creation of the Flathead Compact, have not made an assessment as to the additional amount of water which would be necessary to maintain the CSKT's off reservation fishing rights as "currently exercised."

RESPONSE:

6. Please admit that you individually, or in conjunction with others, including the other Compact Parties, either prior to, or during the creation of the Flathead Compact, have not compared the amount of water which would be needed to maintain the CSKT's off reservation fishing rights as "currently exercised" with the amount of off reservation water which is claimed in the Flathead Compact.

RESPONSE:

7. Please admit that when you created the Flathead Compact that you did not consider, or otherwise designate therein, the amount of water that would be necessary to maintain the CSKT's off reservation fishing rights as "currently exercised."

RESPONSE:

INTERROGATORIES

1. If your Response to any of the foregoing Requests for Admission is anything other than an unequivocal admission, please state your reasons in detail for failing to unequivocally admit the same, and also identify any people, including experts, identifying them as such, including area of expertise, you rely upon in support of your response, and identify any documents relied upon in support of your non-admission.

ANSWER:

2. Please indicate which aspects of the off reservation water rights claimed in the Flathead Compact are required to preserve CSKT's off reservation fishing rights as "currently exercised," and explain exactly why and how such water rights are so required and identify documents that support your answer.

ANSWER:

3. Please explain in detail how CSKT's off reservation fishing rights as "currently exercised" would be in jeopardy without the off reservation water rights claimed in the Flathead Compact and identify documents that support your answer.

ANSWER:

REQUESTS FOR PRODUCTION

1. Please produce a true and accurate copy of any and all documents you identified in response to the Interrogatories above.

RESPONSE:

2. Please produce a true and accurate copy of any and all documents that support your denial of any Admission Request, including, but not limited to, documents you created, or caused to be created, or relied upon that: 1. show the interrelatedness of the Flathead Lake Watershed surface and groundwater; 2. show the impact the Flathead Compact would have on groundwater in the Flathead Lake Watershed; 3. show the collection of evidence of CSKT's off reservation fishing rights as "currently exercised;" 4. show that CSKT's off reservation fishing rights as "currently exercised" were in jeopardy due to water related reasons; 5. calculate the amount of water which would be needed to maintain CSKT's off reservation fishing rights as "currently exercised;" 6. show the relationship between the amount of water which would be needed to support CSKT's off reservation fishing rights as "currently exercised" and the amount of off reservation water claimed in the Flathead Compact.

RESPONSE:

Dated this 13th day of February, 2025.

OBJECTOR MICKALE CARTER

/s/ Mickale Carter
MICKALE CARTER
Bar Number 2594
pro se

CERTIFICATE OF SERVICE

I declare under penalty of perjury, that I emailed a true and accurate copy of the foregoing document on February 13 , 2025, to the following email addresses:

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Molly M. Kelly
Montana Department of
Natural Resources and Conservation: Jean.Saye@mt.gov

Chad Vanisko
Montana Attorney General Agency
Legal Counsel Agency Legal Services Bureau: chad.vanisko@mt.gov

/s/ Mickale Carter February 13, 2025.