

WC-0001-C-2021

February 21, 2025

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

Montana Water Court

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CASE NO. WC-0001-C-2021

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**REQUEST FOR HEARING**

We Objectors, including Dean Brockway, Randy Doty, Gene Erb and Delbert Palmer, individually and together, hereby file in our own names this Request for Hearing containing the following information as required by paragraph 2 of the Water Court's Case Management Order No. 5:

- a.
  - i. Objector Dean Brockway – Filing Date of Objection 2/9/2023, Filing # 1020; Filing Date of Motion to Amend Objection 12/6/2023, Filing # 1020;
  - ii. Objector Gene Erb – Filing Date of Objection 2/9/2023, Filing # 1019; Filing Date of Motion to Amend Objection 11/17/2023; Filing # 1019;
  - iii. Objector Randy Doty – Filing Date of Objection 2/9/2023, Filing # 1024; Filing Date of Motion to Amend Objection 12/4/2023, Filing # 1024;
  - iv. Objector Delbert Palmer – Date of Objection 2/9/2023, Filing # 1025;
- b. We, Objectors Dean Brockway, Randy Doty, Gene Erb and Delbert Palmer, individually and together, hereby state that each and all of us seek to participate at the evidentiary hearing(s) scheduled to take place from April 22 to 25, 2025, at the Missoula County Courthouse, Missoula Montana. We intend to participate through our retained expert witness, Attorney Lana E. Marcussen, a water law attorney licensed to practice law in the State of New Mexico, who will present evidence of how we Objectors have been materially injured by operation of the Compact,

including its Water Right Abstracts and Exhibits, and by the federal Montana Water Protection Act (“Settlement Act”) that ratifies and modifies the Compact, all as decreed by the Water Court.

c. i. Ms. Marcussen may require the use of a white board to explain specific aspects of constitutional law and how they relate to Objectors’ material injuries. Most importantly, Attorney Marcussen will explain how the Equal Protection trust relationship as written in the Fourteenth Amendment to the Constitution of the United States has now been placed in its rightful primary position by the Supreme Court of the United States (SCOTUS) to protect the constitutional structure and thereby protect the due process rights that flow from the enforcement of separation of powers, checks and balances and federalism.

ii. Ms. Marcussen also will explain how the joint motion for summary judgement filed by the United States, State of Montana and Confederated Salish and Kootenai Tribes aptly demonstrates, there is a complete breakdown of all of the constitutional structural safeguards if the Indian trust relationship is allowed to become the primary constitutional trust relationship.

iii. And Ms. Marcussen will explain how this Court, in continuing to adjudicate the Compact, is now directly violating the law as held in *Arizona v. Navajo Nation*, (2023) 143 S.Ct. 1804 (2023), which specifically held that there is no Indian trust relationship between the United States and any Indian tribe that applies to requiring the United States to provide water or water rights to an Indian tribe.

iv. In addition, Attorney Marcussen will explain to the Water Court how the Compact Parties, through their implementation of the Compact, are taking vested private property

water rights away from Objectors, and claiming that they can replace those water rights with a federal paper water right that Objectors have no means to enforce.

v. Ms. Marcussen, furthermore, will explain how the Flathead Irrigation Project has been treated as both a federal reclamation project and as an Indian Irrigation project, and that changing the status of the project did and does not allow the United States or Montana to reclassify the water rights of the non-Indians.

vi. Moreover, Attorney Marcussen will explain how the Compact water settlement agreements also remove the private property water rights to tribal members and the tribe, and that while that may still be constitutional because of current federal Indian law, neither the State of Montana or United States has the authority to treat non-Indians as Indians to steal their private property water rights without reclassifying all persons living on reservations as “Indians.”

vii. Significantly, Attorney Marcussen will explain how requiring the federal government and Montana to adhere to equal protection of the law will protect both Indians and non-Indians from the United States claimed unlimited territorial powers. The CSKT does not seem to realize that the only “winner” under these agreements is the United States because the federal government will be able to take whatever the tribe has at any time, by any means with no recourse. Why Montana and CSKT are willing to agree to allow the United States to treat their people as non-citizens without constitutional structural rights is inexplicable.

viii. Finally, Attorney Marcussen will also explain how and why the federal reserved rights doctrine is now explicitly unconstitutional against the Tenth Amendment that specifically reserves all powers not enumerated in the Constitution to the States and People respectively. Political accountability federalism pulls together what were treated as



distinguishable constitutional arguments to show how in reality they all fit together to protect the civil rights and liberties of all. With the Trump administration's challenge to birthright citizenship as contained in the Fourteenth Amendment, these issues could not be of greater importance.

d. Attorney Marcussen will require approximately two hours to present her expert testimony during the April 22-25, 2025 hearing(s), which, in summary, will explain what has happened to the Indian trust relationship in the last five years at law and why promoting tribal sovereignty violates equal protection of the law. However, if Attorney Marcussen is also required to explain the history of how property rights under British law gave rise to civil rights and free persons under common law as applied to what became constitutional law, her testimony will require about three hours.

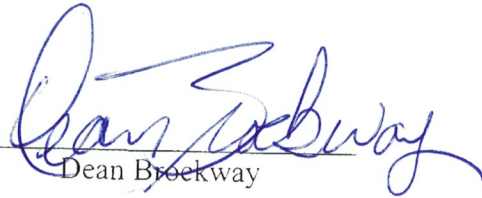
e. There are no hearing dates when we Objectors are not available for a hearing.

f. We Objectors do not anticipate the need for any discovery to prove material injury.

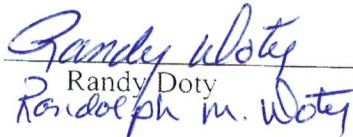
g. We Objectors recognize that we may, but are not required to, include proposed discovery requests as exhibits.

Dated: February 21, 2025

Objector: \_\_\_\_\_

  
Dean Broekway

Objector: \_\_\_\_\_

  
Randy Doty  
Randolph M. Doty

Objector: \_\_\_\_\_

Gene Erb

Objector: \_\_\_\_\_

  
Delbert Palmer