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/Discovery

Introduction

The signatories of this document are objectors with standing in this Court whose docket numbers are: Rick and Nancy Jore, #1513; Stephen and Vicki Dennison, #1453; Paul LaMarche, #1422; Deborah Wickum, #1544-49; Ken Matthiesen, #1495; Brent and Stephanie Webb, #1450; Darlene Wagner #1503; Mark and Katy French, #1448; Linda Sauer, #1494; Brad Tschida, #1515; Gunner and Beth Junge, #1534; Charles and Teresa Havens, #1468; Keith and Jolene Regier, #458-460; Frank and Mary Mutch, #456; Rick Schoening, #719; Trudy Samuelson, #1462.

We request a hearing to present evidence concerning the issue of material injury. Our evidence will be in harmony with two standards of review stated in the Court's Notice of Entry filed on June 9, 2022. They are (highlighted words for emphasis):

1. The 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."*

2. "*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*." In fact, this is the only place in the preliminary matters of this proceeding that material injury is mentioned.

We are somewhat concerned the Court is focusing just on material injury. Perhaps the Court is using the term broadly. If not, then this suggests the Court is not concerned about the *"fraud, overreach, collusion,"* etc., that resulted in the *"product"* (the Compact). Finally, according to No. 2 above, *"material injury"* includes both private and public interests, although the Court has left the term ambiguous.

Material Injury has been the primary focus of Responses by the Compacting Parties. While the term is used in past Water Compact Decrees, there is ambiguity in the language of 85-2-233 MCA (1) (a) which states *"for good cause shown"..."a hearing **must** be held…" "Good cause shown"* is defined in 85-2-233 (1) (b) but does not specifically mention "material injury." Rather, the language is "*the person's interest has been affected by the decree…*" In their Introduction to the Motion for Summary Judgment filed on July 10th 2024, the Compacting Parties state the Compact is fair, reasonable, adequate, conforms to applicable law (is not illegal) and negotiations were proper. They then pounce upon objectors: "*They consequently cannot establish that their water rights will be **materially injured** by some failure of the Compact to conform to applicable law*." This emphasis on the charge of the lack of material injury shown by attorneys and pro se objectors also dominates the Compacting Parties Introduction to many of their Answer Briefs. **Objectors take notice that the Compacting Parties never take the time to define what they mean by material injury.** The Parties have tried to stretch material injury to include "*illegality,*" which opens the door to constitutional arguments. They say in their Answer Brief to pro se objectors (Docket #1929): "*Therefore, Objectors must now show some illegality in the Compact that leads to a material injury*." Lastly, the Compacting Parties try to restrict "*material injury*" to **private injury** due to the possible fact that some objectors are not subject to call and, therefore, will have no injury to their water right. They purposely ignore what we stated earlier in our Introduction, paragraph 2: the Court's standard of review is to consider both "*parties"* (private individuals) and the "*public interest*."

We have written much in our briefs about the damage of the Compact to the "*public interest,*" which has consisted of constitutional violations. We have other examples. One is the changes made by MWRPA to the Compact. The *public interest* states those changes needed Legislative approval as per Article VII, A. 1. The Compact Parties admit to these changes by MWRPA in their Answer Brief (Docket #1898) where they state on top of page 4: "*Second, the other change, to reduce the extent of the Tribes' water rights, was proper under Congress' plenary capacity to control tribal affairs. Congress **eliminated** some of the Tribes' off-reservation instream flow **water rights** north of the Reservation*." (emphasis by the objectors). Another example of damage to the public interest is the fallacy of the Compacting Parties to deny the plain language of the Hellgate Treaty concerning the use of water. The Treaty states *"the right of taking fish at all usual and accustomed places in common with the citizens of the Territory."* The Compact Parties

state in Docket #1898 on page 7 the following: "*Though each group has a right to a share of the fish and cannot deprive the other of its enjoyment, id., the rights are not co-owned*." That this is false is clear from the Hellgate Treaty. Both groups - Indians and Settlers - had common ownership of the right to fish. This right emanates from the Hellgate Treaty, not from court cases or statutes. The violation and distortion of this language by the Compacting Parties has materially damaged the public interest.

Our final example of the public interest is the Compacting Parties claim that they own the "*vast domain west of the Continental Divide and within what is. . . much of present-day Montana*" (See top of Page 2 of their Motion for Summary Judgment, Docket #1823). We have explicitly said in our briefs this is false. The Parties will rebut by saying you cannot integrate other treaties with the Hellgate as part of the Compact. However, we can refer to any historical documents that falsify the claims of the Compact Parties. The public interest demands it. We have other examples of the public interest in our briefs and will present them at an evidentiary hearing – knowing these issues are a mixture of both law and fact.

{Currently, we have three (3) pages of material injuries we could present before the court. The ones suggested here are just a few.}

We must mention a procedural issue the Compacting Parties have asserted. They have stated objector(s) must demonstrate material injury "*beyond a reasonable doubt."* (Docket # unknown – Response by Compact Parties to Brad Tschida's Joinder to Elena Ingraham's Motion; see also Docket #1894, Answer Brief by Compacting Parties, page 4). Elsewhere they state, "*show beyond doubt*" (Docket #1929, page 5). The Parties misapply *Barrett vs State* (2024 MT 86). Objectors are not objecting to a statute, but to the false assertions and revisionist history that led to the *"product"* – the Compact. The due process criteria "*beyond a reasonable doubt"* is for criminal matters. Why they bring this up in a civil matter is bewildering.

Finally, the Compacting Parties appear to have shifting standards of review. Currently, it is "material injury" but in their Answer Brief (Docket #1929, page 3) we are told there are only two factors Compacting Parties have to show. Actually, there are three and two of them are listed in this Introduction.

Definitions

Regrettably, objectors have not found a definition of material injury in the statutes of Montana nor in recent Court decisions. The words "adverse effect" are used in the statutes. Remarkably, we get some guidance from the Hellgate Treaty in Article 8. It states the tribes "promise to be friendly with all citizens thereof and pledge themselves to commit no *depredations upon the property of such* citizens." That the Federal Government, the State of Montana, and the Tribes have colluded to do just that is a sad commentary on the history of this Compact. We provide the following definition which is reasonable and applies directly to this case:

Material Injury:

Whether physical, economic or of rights secured by the Constitution, particularly Article II, Section 3:

> The loss, the damage or the takings of the use of water, including the violation of an inalienable right to pursue water for the proper use, function, and decision-making concerning one's person, home, land or stock. Material injury is also indicated by the decision making of any governmental entity over the use of water on a person's property which violates his or her right to pursue water for beneficial use. Injury can occur to the public interest if the improper or erroneous decision making of any governmental entity, whether local or state, violates the constitutional rights of a large number of citizens, whether regionally or statewide, who pursue their inalienable right to water.

The Purpose of an Evidentiary Hearing

(Objectors have already shown material injury by this Compact to the U.S. and State Constitutions in our briefs.)

1. One of the most significant material injuries is the damage to the truth. As in war, so it is in courts; often, the first casualty is TRUTH, as suggested in the following (#'s 2 and 4 particularly).

2. We will provide evidence that the Compact is the product of fraud, collusion and overreach, thereby injuring the public interest, which includes the appropriation of some 1.9 billion taxpayers' dollars.

3. We will provide evidence of material injury to the private interests of the objectors' property.

4. We will provide evidence that this Compact is the product of fraud, collusion and overreach which includes the false fear tactics used by the negotiators of this Compact. The words fraud, collusion and overreach were defined in the objectors' briefs.

5. Affidavits will be produced and witnesses will testify concerning the two standards of review written in the Introduction.

6. We will request the production of documents that show how "the riparian rights of non-Indians owning land within the Reservation is actually "*interfering with the treaty fishing rights*" held in common by both non-Indians and Indians (See *Namen* at 665 F.2d at 965) and to

show that any **damage** to the preservation of fishing rights or *tribal fisheries*, and *in-stream flow* has been done in the past or currently. (See *Adair* 723 F.2d 1394 (9th Cir. 1983). Finally, any proof of the CSKT's heavy dependence on "**fisheries**" for their livelihood must be revealed. We will also request Admissions as to whether the re-piping or lining of irrigation ditches and laterals will affect seepage for irrigation, groundwater usage, domestic wells, marshes and ponds. An interrogatory (among others) will be submitted as to whether those domestic wells having 35 gallons p/m and 10 acre/ft per year will be grandfathered or will be changed to 2.4 acre/ft. All of this will be produced at an evidentiary hearing.

Discovery/Witnesses

The Compacting Parties deny discovery is needed because we must show illegality in the Compact as a prerequisite for discovery. One of the standards of review is that *interests **could be** materially injured* (Compacting Parties have ignored this language). While we have evidence of current material injury, discovery is necessary in procuring necessary proofs of material injury, both public and private in the future, by the filing of interrogatories and admissions. We ask leave of the Court to pursue Discovery. One significant fact is the Compact itself *admits material injuries*. Our purpose is to solicit answers to our questions and admissions concerning the implementation of the Compact by the WMB, as to the tribes shutting off stock water, if Farm Deliveries will be adequate for pasture and stock, if minimum instream flows as proposed by the Compact will affect private ponds and irrigators, if excessive fees will be charged for any new developments (such $250.00 per application) of old and new wells (possible measuring devices), if proposed developments will be restricted in Lake County by the Tribes, and if rules governing new wells are unequally enforced in Lake County. Finally, admissions will be sent to procure answers to the fraudulent contents, which are full of revisionist history, of the Compact.

Objectors and some of the attorneys in this case have filed numerous **Affidavits** indicating material injuries. Pro Se objectors have filed at least 3 affidavits (Affidavit of Disputed Facts, Affidavit of Art Wittich, Affidavit of Teresa K. McCarrick). We plan to file numerous other Affidavits stating material Injury, including a Lake County Commissioner, the Lake County Planning Director, and several individuals who have been directly affected by the current implementation of the Compact. These individuals are also willing to testify.

Conclusion

Objectors do not believe their evidentiary hearing will take more than four hours. We are available for any of the proposed hearing dates and locations but prefer the Lake County dates and location.

/s/ Rick and Nancy Jore
30488 Mount Harding Lane
Ronan, MT 59864

/s/ Charles F. and Teresa A. Havens,
30734 Mission Creek Rd, MT. 59865
St. Ignatius, MT 59865

/s/Kieth S. and Jolene A. Regier
1078 Stillwater Road
Kalispell, MT 59901

/s Paul LaMarche
33334 Emory Rd
Ronan, MT 59864

/s/ Linda Sauer
P. 0. Box 264
Dayton, MT 59914

/s/ Rick Schoening
41694 Stasso Road
Polson, MT 59860

/s/ Stephen and Vicki Dennison
32345 Red Horn Road
St. Ignatius, MT 59865

/s/ Brent and Stephanie Webb
39 Silcox Lane
Thompson Falls, MT 59873

/s/ Mark T. and Katy French
8682 Hwy 200
Plains, MT 59859

/s/ Frank and Mary Mutch
33678 N. Finley Point Rd
Polson, MT 59860

/s/ Gunner and Beth Junge
407 East 4th Avenue P.O. Box 591
Thompson Falls, MT 59873

/s/ Deborah Wickum
1451 Whitlash Rd
Chester, MT 59522

/s/ Brad Tschida
10825 Mullan Rd.,
Missoula, MT 59808-9479

/s/ Ken Matthiesen
26 Pine Meadow Lane
Plains, MT 59859

/s/ Trudy Samuelson
31118 Mission Creek Rd.
St. Ignatius, MT 59865

/s/ Darlene Wagner
Box 190158 100 River Drive
Hungry Horse, MT 59919

Certificate of Service

I, Rick Jore, certify that I emailed this Request for Hearing to the following addresses on this 21st day of February, 2025.

/s/ Rick Jore

Rick Jore

Montana Water Court
Research Drive P.O. Box 1389
Bozeman, MT 59771-1389
watercourt@montana.gov

[ ] E-Filing Service[ ] U.S. Mail (first class postage)[ ] Federal Express [ ] Hand-Delivery [ ] Email [x]

THE CONFEDERATED SALISH AND KOOTENAI TRIBES

Daniel J. Decker
Melissa Schlichting
Christina M. Courville
Zach Zipfel
Danna R. Jackson
Confederated Salish & Kootenai Tribes
Tribal Legal Department
PO Box 278
Pablo, MT 59855

Melissa.Schlichting@cskt.org
Christina.Courville@cskt.org
Daniel.Decker@cskt.org
zachary.zipfel@cskt.org
Danna.Jackson@cskt.org

Ryan C. Rusche: rusche@sonosky.com
Sonosky, Chambers, Sachse, Enderson & Perry, LLP
PO Box 2930
Columbia Falls, MT 59912

STATE OF MONTANA

Molly M. Kelly
Jennifer C. Wells
Montana Department of
Natural Resources and Conservation
1539 Eleventh Avenue
PO Box 201601
Helena, MT 59601
(406) 444-5785
Molly.kelly2@mt.gov
Jean.saye@mt.gov
J.wells@mt.gov

UNITED STATES OF AMERICA

Todd Kim, Assistant Attorney General
David W. Harder, Senior Attorney for Legal Issues
U.S. Department of Justice
Indian Resources Section
Environment & Natural Resources Div.
999 18th St., South Terrace, Suite 370 Denver, Colorado 80202 david.harder@usdoj.gov
efile_denver.enrd@usdoj.gov

Rebecca M. Ross, Senior Attorney
James Cooney, Trial Attorney
United States Department of Justice
Indian Resources Section
Environment and Natural Resources Div.
150 M Street, NE Washington
DC 20002
rebecca.ross@usdoj.gov
james.cooney@usdoj.gov