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ELECTRONICALLY FILED

WC-0001-C-2021

February 21, 2025

Montana Water Court

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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 by Mission and Jocko Irrigation Districts**

Comes now the Mission and Jocko Irrigation Districts (“Districts”), by and through their attorneys, and pursuant to this Court’s January 31<sup>st</sup>, 2025 Order, move this Court for an order granting the Districts leave to present evidence on the question of material injury attendant to the adoption of the compact. As grounds therefore, the Districts show this Court as follows:

1. The Districts filed their objection to the confirmation of the water rights set forth in the compact on February 9th, 2023, and amended that objection by motion on December 8, 2023. The Districts thereafter filed their motion for summary judgment, and answered the compacting parties claims for summary judgment, and attended and made oral argument on these motions. The Districts intend to appear at the evidentiary hearings in this matter, and present witnesses and exhibits.

2. The Districts cannot be precise as to exactly what their proof will show, as this Court's scheduling orders have prevented the Districts from conducting necessary discovery on the Flathead Irrigation Project. The Districts are users of water under this Project, and the documents demonstrating the entitlements under the Project are in the possession, custody, and control of the United States.

Nonetheless, the Districts believe that the United States Bureau of Reclamation designed the diversion works comprising the Project, and demarcated the intended place of use of the irrigation supplies, including those lands within the Districts, given the yields of the sources of supply. The Districts also believe the Bureau of Reclamation allocated the anticipated costs of construction to the users and the public generally. For example, if a reservoir created some measure of flood control benefits, those costs answer to the benefits enjoyed the public generally. However, the irrigation component was a "reimbursable" expense, and accordingly was earmarked for the users.

After portions of the Reservation were made available for entry, applicants for a farming and ranching life secured not only land, but also the promises of the United States to provide them water supplies for irrigation, in exchange for the payment of capital costs financed by the government, and payment of operation and maintenance expenses. These promises to individual entrymen were supplanted in the wake of amendments to the Reclamation Act by contracts with irrigation districts formed at the request of the United States. (Irrigation districts have *ad valorem* taxing authority, and accordingly contracts with districts providing for the payment of capital costs freed the United States from pursuing arrearages from individual entrymen.) However, the substance of the promises of the United States remained the same. Particular quantities

of water were promised the districts in exchange for the payment of allocated costs of construction and payment of operation and maintenance expenses.

The compact, however, threatens to unwind what the Districts and their users bought and paid for. There is no reason to for the United States to assert a priority senior to that of the Project unless that was the intent of the US at the time of the Project.

The compact has already resulted in a disruption of the Districts' water supplies. During spring snowmelt runoff, the Districts are now wholly curtailed for weeks while flows are preserved in the sources of supply for what the Tribes characterize as "flushing flows." The flushing preempts the Districts' exercise of their rights again in September. The interment of the promises of the United States is material injury.

In addition, as shown by the Districts' briefs, adoption of the compact will result in an unadministratible river system, frustrating the central purpose of a general adjudication of water rights, and adding to the uncertainty in the Districts' water supplies.

3. The Districts believe that at least five hours is necessary for its testimony and exhibits. While estimating trial time is always uncertain, especially in this context where the Districts have not reviewed necessary discovery, an optimistic forecast is that this Court can be presented with the necessary factual context in just five hours, depending upon cross-examination and rebuttal.
4. The Districts will make themselves available at any forum on any date, provided that they have had time to review discovery responses.
5. The Districts require discovery for a meaningful opportunity to be heard. The reach of discovery is set out in the attached Request for Production of documents.

Done this 21<sup>st</sup> day of February, 2025.

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Matthew W. Williams

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Brian Gallik  
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### **Certificate of Service**

I certify that a copy of the foregoing was duly served on the following at the noted address electronically this 21<sup>st</sup> day of February, 2025.

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