

WC-0001-C-2021

February 21, 2025

Montana Water Court

Kathryn M. Brautigam
Holland & Hart LLP
401 North 31st Street, Suite 1200
P.O. Box 639
Billings, Montana 59103-0639
(406) 896-4605
KMBrautigam@hollandhart.com

Thomas L. Sansonetti *Admitted Pro Hac Vice*
Holland & Hart LLP
2020 Carey Avenue, Suite 800
Cheyenne, Wyoming 82001
(303) 290-1061
TLSansonetti@hollandhart.com

Murray D. Feldman, *Admitted Pro Hac Vice*
Holland & Hart LLP
800 W. Main Street, Suite 1750
Boise, Idaho 83702
(208) 383-3921
MFeldman@hollandhart.com

William H. Caile *Admitted Pro Hac Vice*
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, Colorado 80202
(303) 295-8403
WHCaile@hollandhart.com

Christopher M. Jackson
Admitted Pro Hac Vice
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, Colorado 80202
(303) 295-8305
CMJackson@hollandhart.com

ATTORNEYS FOR OBJECTORS
WILLIAM SEGO AND BILL & IRENE, LLC,
AND GRACE SLACK

**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

Objectors William Sego and Bill & Irene, LLC (“Sego”) and Grace Slack (“Slack” and together with Sego, the “Sego/Slack Objectors” or “Objectors”), through their counsel of record and pursuant to the Court’s Case Management Order No. 5 dated January 31, 2025, respectfully submit this Request for Hearing. The following information is provided in response to, and corresponds with, the requirements set forth in Section 2.a – 2.g of the Court’s January 31, 2025 Order.

A. Name of Objectors and reference to date of Objection or Amended Objection.

The Sego/Slack Objectors filed a Notice of Amended Objection and Request for Hearing, Doc. No. 1501 (“Amended Objection”), on December 7, 2023.

B. Statement whether the Objector requests to participate at any evidentiary hearing to present evidence of material injury, and if so, whether the Objector intends to offer witnesses or exhibits.

In the absence of further orders from this Court, the Sego/Slack Objectors assert that an evidentiary hearing is not necessary because Objectors have sufficiently established, as a matter of law, the inadequacies of the Compact. As briefed in Objectors’ Motion for Entry of Summary Judgment on Legal Issues and Brief in Support (Docket Nos. 1820 and 1821) filed on July 10, 2024, the Compact (1) violates the Montana Constitution (i.e., infringement of the fundamental right to State court judicial access, impermissible delegation of state judicial authority to a non-state entity, and impermissible special/local legislation); (2) violates Objectors’ due process rights; and (3) fails to comply with federal law of reserved water rights and fails to adequately quantify the Tribal Water Right. No further evidence is needed to find in Objectors’ favor on these claims as a matter of law. Objectors’ interests will be materially injured if the Compact is approved in spite of these legal and constitutional infirmities.

Should the Court determine, however, that the Compact is fundamentally fair, adequate, and reasonable and conforms to applicable laws, and was the product of good faith, arms-length negotiations, then the burden will shift to Objectors to demonstrate that (1) the Compact is unreasonable and (2) Objectors' interests are materially injured by operation of the Compact. Sego/Slack Objectors assert in the first instance that they have met this burden as a matter of law, based on the undisputed facts as demonstrated in the briefing, and that further hearings should not be needed.

If the Court does not rule in Objectors' favor, however, then Sego/Slack Objectors request to participate in any evidentiary hearings held herein in order to present evidence, including both lay and expert witness testimony and exhibits, in support of their contention that the Compact is not reasonable, does not conform to applicable laws, and that Objectors' interests are materially injured as a result.

C. Brief statement of the nature of the testimony and evidence the Objector intends to offer at a hearing on this issue.

At this time, the Objectors anticipate calling as witnesses Mr. Bill Sego, Ms. Grace Slack, and one or more expert witnesses including Dr. Catherine Vandemoer PhD. Objectors may present documentary evidence including Department of the Interior and Bureau of Reclamation records, accounting of water uses, and evidence of financial and other impacts. Objectors reserve the right to designate additional witnesses and testimony based on future orders of the court or other factors. The following is a present statement regarding the nature of the testimony and evidence.

1. Testimony and documentary evidence regarding Objectors' Constitutional rights, water rights and related property interests, and the material injury thereto, including but not limited to:

- i. Injury to Objectors' Constitutional rights;
 - ii. Objectors' water rights and water uses;
 - iii. Failure of the Compact to adequately quantify the Tribal Water Right;
 - iv. Injury to Objectors' *Walton* and Secretarial Water Rights;
 - v. Injury to Objectors' state law-based water right claims.
2. Testimony and evidence regarding the effect of the Compact, the UAMO, and the unconstrained discretion of the Water Management Board on Sego and Slack.
 3. Testimony and evidence regarding the impact of constitutional violations, including deprivation of due process and takings, on Sego and Slack.
 4. Testimony and evidence regarding claims that were included in Objectors' Amended Objection, but for which Objectors did not move for summary judgment:
 - i. Violation of Montana Constitution because the immunity of the Water Management Board from suit was not ratified by a two-thirds vote of the legislature;
 - ii. Physical and regulatory takings claims pursuant to the Federal and Montana Constitutions.

D. A statement of whether the Objectors' evidence can be offered in less than one hour (not including time for cross-examination), and if not, an estimation of the time necessary to introduce the evidence with an explanation justifying the amount of time necessary.

Sego/Slack Objectors believe they will need approximately six hours to present live witness testimony and offer evidence as described herein, not including cross-examination. Sego/Slack Objectors are willing to submit witness testimony in writing in order cut down on the length of presentation at the hearing, subject to approval of, and setting of standards for, the same by the Court.

In the event that the Court approves of written witness testimony, Sego/Slack Objectors propose the following procedure: (i) Objectors' written witness testimony and exhibits provided 14 days before the hearing; (ii) Compact Parties have opportunity to cross-examine witnesses in person at the hearing; (iii) Sego/Slack Objectors will still require approximately three hours, not including cross-examination, in which to conduct live re-direct examination, handle objections and present arguments of counsel, etc.

E. Designation of any of the hearing dates or locations, if any, when the Objector is *not* available for a hearing.

The Sego Slack Objectors and their counsel are available during the scheduled hearing dates, as identified in Case Management Order No. 5, of April 22 to 25 in the Missoula County Courthouse (the April 22 and 23 dates are preferred if possible). Counsel for the Sego/Slack Objectors are *not* available during the April 29 to May 1, or May 6 to May 8, hearing dates.

F. Statement of whether discovery is necessary for the Objector to prove material injury, and if so, a description of the proposed discovery.

To prepare and present the testimony and evidence identified herein, Sego/Slack Objectors will require limited discovery. Sego/Slack Objectors propose written discovery comprised of:

- i. Not more than twenty (15) Requests for Production of Documents to the Compact Parties (in aggregate);
- ii. Not more than (15) Requests for Admission to the Compact Parties;
- iii. Not more than (15) Interrogatories to the Compact Parties.
- iv. Objectors do not anticipate the need for depositions at this time, but request the right to attend any depositions noticed by other parties.

The information sought through such limited discovery may include, without limitation, information regarding the claimed protections for non-Compact water rights, guarantees of state court access for adjudication of disputes between non-Indian water rights claimants on the Flathead Reservation, and the current status of Compact and UAMO implementation and the activities of the Flathead Water Management Board. Based on currently available information regarding the hearing schedule, Segó/Slack Objectors propose that written discovery requests be served not later than March 7, 2025, with responses to same due within 28 days or by April 4, 2025.

G. Objectors may, but are not required to, include proposed discovery requests as exhibits to their Request for Hearing.

Objectors are not including any proposed discovery requests at this time.

Respectfully submitted this 21st day of February, 2025.

/s/ Kathryn M. Brautigam
Kathryn M. Brautigam
Holland & Hart LLP
401 North 31st Street, Suite 1200
P.O. Box 639
Billings, Montana 59103-0639

ATTORNEY FOR OBJECTORS
WILLIAM SEGO AND BILL & IRENE, LLC,
AND GRACE SLACK

CERTIFICATE OF SERVICE

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

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|---|---|
| Montana Water Court 1123 Research Drive P.O. Box 1389 Bozeman, MT 59771-1389 watercourt@mt.gov | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Todd Kim David W. Harder, Assistant Attorney General Senior Attorney for Legal Issues U.S. Department 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 | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Rebecca M. Ross Senior Attorney United States Department of Justice Indian Resources Section Environment and Natural Resources Division 150 M Street, NE Washington DC 20002 Rebecca.ross@usdoj.gov | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| James Cooney Trial Attorney United States Department of Justice Indian Resources Section Environment and Natural Resources Division 150 M Street, NE Washington DC 20002 James.Cooney@usdoj.gov | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |

| | |
|--|---|
| Molly M. Kelly Jennifer C. Wells Montana DNRC 1539 Eleventh Avenue P.O. Box 201601 Helena, MT 59601 Molly.kelly2@mt.gov J.Wells@mt.gov Jean.Saye@mt.gov CND602@mt.gov | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> 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 | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Terisa Oomens Montana Attorney General Agency Legal Counsel Agency Legal Services Bureau 1712 Ninth Avenue P.O. Box 201440 Helena, MT 59620-1440 Terisa.oomens@mt.gov | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Daniel J. Decker Melissa Schlichting Christina M. Courville Zach Zipfel Confederated Salish & Kootenai Tribes Tribal Legal Department P.O. Box 278 Pablo, MT 59855 Melissa.Schlichting@cskt.org Christina.Courville@cskt.org daniel.decker@cskt.org Pamela.McDonald@cskt.org Zachary.Zipfel@cskt.org danna.jackson@cskt.org | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Ryan Rusche Sonosky, Chambers, Sachse, Enderson & Perry, LLP P.O. Box 2930 Columbia Falls, MT 59912 rusche@sonosky.com | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |

| | |
|--|---|
| Bruce A. Fredrickson Angie M. LeDuc Taylor R. Miller Rocky Mountain Law Partners, P.C. P.O. Box 1758 1830 3rd Avenue East, Suite 301 Kalispell, MT 59903 bruce@rmtlawp.com angie@rmtlawp.com nikki@rmtlawp.com taylor@rmtlawp.com megan@rmtlawp.com | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Walter E. Congdon 106 4th Avenue East Missoula, MT 59860 lorigoffeaapc@gmail.com Waltercongdon@gmail.com | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Cassie R. Dellwo Five Valleys Law, PLLC 1410 S. Reserve Street, Suite C Missoula, MT 59801 cassie@fivevalleyslaw.com | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Debra Jackson Mineral County Deputy County Attorney 300 River Street P.O. Box 339 Superior, MT 59872 djackson@co.mineral.mt.us wcongdon@co.mineral.mt.us | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Graham J. Coppes Ferguson Law Office, PLLC P.O. Box 8359 Missoula, MT 59807 grahamc@fergusonlawmt.com | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Kimberly L. Field Field Law Offices, PLLC 405 Main SW, Ste. 2 P.O. Box 573 Ronan, MT 59864 kim.field@kfieldlawoffices.com | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Benjamin J. Hammer Omvig Hammer Law, P.C. P.O. Box 1202 Kalispell, MT 59903 ben@ohlawmt.com | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |

| | |
|--|---|
| Megan Hansen / Naomi Leisz /Jania Hatfield Sanders County Attorney 1111 Main St. W. P.O. Box 519 Thompson Falls, MT 59873 mhansen@co.sanders.mt.us countyattorney@sanderscounty.gov countyattorney@co.sanders.mt.us | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Kristin L. Omvig Omvig Hammer Law, P.C. P.O. Box 1202 Kalispell, MT 59903 kristin@ohlawmt.com | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Matthew W. Williams MW Law Firm PLLC 777 E Main Street, Ste 205 Bozeman, MT 59715 mattheww53@aol.com | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Brian K. Gallik Gallik & Bremer, P.C. 777 East Main, Suite 202 P.O. Box 70 Bozeman, MT 59771-0070 brian@galliklawfirm.com corrie@galliklawfirm.com | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |
| Angela M. LeDuc Rocky Mountain Law Partners, P.C. 1830 3rd Avenue East, Suite 301 Kalispell, MT 59901 Angie@rmtlawp.com | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail |

Dated this 21st day of February, 2025.

/s/ Arlene S. Forney

Arlene S. Forney, Legal Assistant
Holland & Hart