

**IN THE WATER COURT OF THE STATE OF MONTANA** WC-0001-C-2021  
**CONFEDERATED SALISH AND KOOTENAI TRIBES –** February 21, 2025  
**MONTANA – UNITED STATES COMPACT**

**CASE NO. WC-0001-C-2021**

**Montana Water Court**

**REQUEST FOR EVIDENTIARY HEARING**

Objectors James F. and Alice A. Ammen wish to participate in an evidentiary hearing as per Case Management Order #5. The date of initial objection was February 8, 2023. Objectors will provide exhibits. Evidence can be offered in less than one hour. Objectors are not available to appear in Lake or Flathead Counties, and are not available to appear on the afternoon of April 24, 2025. Discovery is unnecessary for Objectors to prove material injury.

**Summary Statement of the Nature of Testimony:**

We bought property on the Flathead Indian Reservation in 1992. Although the DNRC Water Rights Query website lists us as having an active water right, we have never been able to use the water out of Magpie Creek because CSKT bladed over a portion of the ditch that crosses Tribal land. We are not in the Flathead Irrigation Project (FIP) or a FIP influence area.

The CSKT Water Compact gives the Tribes all of the water in tributaries from time immemorial. In the future, not only will our access be blocked, but we will have no right to water when the Tribes decide they have a use for it.

The Compact conflicts with the 1909 United States appropriation of 100 CFS of water from Magpie Creek for irrigating 2000 acres of land for domestic uses in Township 18N, Ranges 22 and 23 W. The United States also claimed a ditch and right-of-way for the ditch, along with the right of location upon any land for dams, flumes, reservoirs, constructed or to be constructed, by the United States in appropriation and using said water. (Sanders County, MT, Records: Book 1 Miscellaneous, page 366.)

After appropriating water from Magpie Creek, the United States entered into an agreement with non-Indian Axel Schulstad in 1915. (Sanders County, MT, Records: Federal Water Usage Agreement – Book 1, pages 537-540.) This document states that the United States filed upon and appropriated all of the flow of Magpie Creek. It gave Axel Schulstad a temporary license to construct a ditch and divert water from Magpie Creek for irrigation, subject to the prior rights of existing Indian canals. It was temporary because the US Government intended to extend the Flathead Irrigation Project to our property. FIP was never extended and there are no plans to extend it in the future.

The Tribal land that our ditch crosses was initially classified as timberland by the US government. We know that the United States claimed a right-of-way for a ditch and later granted Axel Schulstad a temporary license to construct a ditch and divert water from Magpie Creek that would cross this Federally-designated timberland. At some point, probably during the Indian

Reorganization Act of 1934, the Tribes became owners of the timberland. Apparently, easements/right-of-ways do not run with the land on the Flathead Reservation.

In addition, 40 acres of our contiguous land was homesteaded by Ray Schulstad. His March 15, 1916 patent states: *“TO HAVE AND TO HOLD forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and right to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of Courts. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.”* Because Ray Schulstad, along with his father Axel Schulstad, filed a Notice of Appropriation for water out of Magpie Creek with the State of Montana on November 2, 1914, his patent was subject to this vested and accrued water right for agricultural purposes that were acknowledged by local customs, laws, and decisions of the Courts. Ray Schulstad’s water right and right to ditches should be Federally assured.

As an aside, the Compact says nothing about the Tribal Water Right of non-Indians who purchased former Indian allotments. What percentage of the total Tribal Water Right is allocated per acre? Will non-Indians be allowed to use their Tribal Water Right in the same manner as Tribal persons?

The crux of the problem with the Flathead Water Compact is that the Tribes claim they reserved the reservation, which is not true. The 1855 Treaty of Hell Gate, Article 1, paragraph 1, reads: *“The said confederated tribe of Indians hereby cede, relinquish, and convey to the United States **all** their right, title, and interest in and to the country occupied or claimed by them...”* This paragraph does not say, *“With the exception of...”*. Once the Treaty was signed, the United States owned all specified. Yet we now read in Montana Code Annotated 85-20-1901: Article I – Recitals. *“WHEREAS, pursuant to the Hellgate Treaty of 1855, 12 Stat. 975, **the Confederated Salish and Kootenai Tribes reserved the Flathead Indian Reservation...**”*

There has also been an effort to promote the idea of a ‘permanent homeland’. One only need Google, “BIA, Federal Indian Reservation”, to pull up the following definition from the BIA: *“A federal Indian reservation is an area of land reserved for a tribe or tribes under treaty or other agreement with the United States, executive order, or federal statute or administrative action as **permanent tribal homelands**, and where the federal government holds title to the land in trust on behalf of the tribe.”* Likewise, on CSKT’s History of the Bison Range website: *“In the Hellgate Treaty of 1855, the United States promised that the Flathead Reservation would forever be the Tribes’ **permanent homeland**.”*

The only time the word ‘permanent’ was used in the Treaty of Hellgate was in Article 6: *“The President may from time to time, at his discretion, cause the whole, or such portion of such reservation as he may think proper, to be surveyed into lots, and assign the same to such individuals or families of the said confederated tribes as are willing to avail themselves of the privilege, and will locate on the same as a **permanent** home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable.”* The sixth article of the 1854 treaty with the Omahas uses the word ‘permanent’ in a similar manner. A single person would get an eighth of a section, a family of

two would get a quarter section, a family of 3-5 members would get a half section, etc. *“The President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land....”*

The Flathead Reservation was for the **use** of the Indians. The 1855 Treaty of Hellgate mentions this repeatedly:

- Article 2, paragraph 1, *“There is, however, reserved from the lands above ceded, for the **use** and occupation of the said confederated tribes, and as a general Indian reservation....”*
- Article 2, paragraph 3: *“All which tract shall be set apart, and so far as necessary, surveyed and marked out for the exclusive **use** and benefit of said confederated tribes as an Indian reservation.”*
- Article 4, paragraph 2: *“All which said sums of money shall be applied to the **use** and benefit of the said Indians, under the direction of the President of the United States, who may from time to time determine, at his discretion, upon what beneficial objects to expend the same for them, and the superintendent of Indian affairs, or other proper officer, shall each year inform the President of the wishes of the Indians in relation thereto.”*
- Article 10: *“The United States further agree to guaranty the exclusive **use** of the reservation provided for in this treaty, as against any claims which may be urged by the Hudson Bay Company under the provisions of the treaty between the United States and Great Britain of the fifteenth of June, eighteen hundred and forty-six, in consequence of the occupation of a trading-post on the Pru-in River by the servants of that company.”*

Objectors intend to offer evidence at the hearing in the form of exhibits to support the above such as:

1. 1855 Treaty of Hellgate
2. United States Notice of Appropriation for water out of Magpie Creek. Sanders County, MT, Records: Book 1 Miscellaneous, page 366.
3. Federal Water Usage Agreement with Axel Schulstad. Sanders County, MT, Records: Book 1, pages 537-540.
4. BLM-GLO timberland classification document
5. Ray Schulstad’s patent.
6. Axel Schulstad’s patent.
7. Axel and Ray Schulstad’s Notice of Appropriation of water. Sanders County, MT, Records: Book 2, page 332.

CERTIFICATE OF SERVICE

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

<p>Montana Water Court 1123 Research Drive P.O. Box 1389 Bozeman, MT 59771-1389 watercourt@mt.gov</p>	<ul style="list-style-type: none"> <li>• <input type="checkbox"/> U.S. Mail</li> <li>• <input type="checkbox"/> Overnight Mail</li> <li>• <input type="checkbox"/> Hand Delivery</li> <li>• <input type="checkbox"/> Facsimile</li> <li>• <input checked="" type="checkbox"/> E-Mail</li> </ul>
<p>Todd Kim Asst. Attorney General David W. Harder Sr. Attorney for Legal Issues U.S. Department of Justice Indian Resources Section Environment &amp; Natural Resources Division 999 18th Street, South Terrace, Suite 370 Denver, Colorado 80202 <a href="mailto:david.harder@usdoj.gov">david.harder@usdoj.gov</a> efile_denver.enrd@usdoj.gov</p>	<ul style="list-style-type: none"> <li>• <input type="checkbox"/> U.S. Mail</li> <li>• <input type="checkbox"/> Overnight Mail</li> <li>• <input type="checkbox"/> Hand Delivery</li> <li>• <input type="checkbox"/> Facsimile</li> <li>• <input checked="" type="checkbox"/> E-Mail</li> </ul>
<p>Rebecca M. Ross, Senior Attorney James Cooney, Trial Attorney United States Department of Justice Indian Resources Section Environment and Natural Resources Division 150 M Street, NE Washington DC 20002 <a href="mailto:rebecca.ross@usdoj.gov">rebecca.ross@usdoj.gov</a> <a href="mailto:james.cooney@usdoj.gov">james.cooney@usdoj.gov</a></p>	<ul style="list-style-type: none"> <li>• <input type="checkbox"/> U.S. Mail</li> <li>• <input type="checkbox"/> Overnight Mail</li> <li>• <input type="checkbox"/> Hand Delivery</li> <li>• <input type="checkbox"/> Facsimile</li> <li>• <input checked="" type="checkbox"/> E-Mail</li> </ul>
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Dated this 21<sup>st</sup> day of February, 2025.

/s/ Alice A. Ammen, Objector