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WC-0001-C-2021

April 18, 2025

Montana Water Court

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

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

**Evidentiary Hearing No. 1  
(Sego/Slack)**

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**HEARING 1 PREHEARING ORDER**

On April 18, 2025, the Court conducted a Prehearing Conference with the Confederated Salish and Kootenai Tribes (“Tribes”), the United States of America on behalf of the Tribes (“United States”), and the State of Montana (“State”), (collectively, the “Compact Parties”) and Objectors William Sego and Bill & Irene, LLC (“Sego”) and Grace Slack (“Slack”) (collectively the “Sego/Slack Objectors” or “Objectors”). Ryan Rusche and David Harder participated for the Compact Parties. William Caile and Christopher Jackson participated for the Sego/Slack Objectors. The conference was conducted pursuant to Rule 16 of the Montana Rules of Civil Procedure. Chief Water Judge Stephen Brown presided.

Prior to the conference, the Compact Parties and the Objectors each filed a proposed prehearing order. Following discussion, the Court adopts the following as the Prehearing Order for Evidentiary Hearing No. 1 in this case:

**AGREED FACTS**

The following facts are agreed upon and require no proof:

1. Objectors have state-based water rights claims in Basins 76L and 76LJ on the Flathead Indian Reservation in Montana.

2. Objectors are served by the Flathead Indian Irrigation Project.

3. The water rights described in Art. III.D. of the Compact do not injure Seago's water rights claims.

4. Objectors Seago and Slack did not appeal any decision of the Flathead Indian Irrigation Project Manager about the amount of water delivered during the 2022, 2023 or 2024 irrigation seasons as provided for in 25 C.F.R., Part 171.

5. The portion of the Tribal Water Right described in Art. III.C.1.d.iii of the Compact will not be enforceable against any water rights of Objectors.

## **CONTENTIONS**

### **A. Objectors' Contentions.**

1. The Compact is (a) unreasonable and (b) materially injurious, because the "substantive terms" within the Compact injure Objectors' water rights and/or interests protected under state or federal law and related to those water rights. See Crow Compact II, 2015 MT 353, ¶¶ 18, 20.

2. The CSKT Compact is also unreasonable and materially injurious to Objectors' water rights because it creates an allocation and administration of water rights structure for the FIIP water right and other components of the Tribal Water Right that interfere with Seago/Slack Objectors' state-based water rights, Walton water rights, and Secretarial water rights, including Objectors' water rights with priority dates the same as or earlier than the FIIP water right and other portions of the Tribal Water Right at issue.

3. Objectors have expressly preserved their right to appeal a final decree by this Court pursuant to Rule 25, W.R.Adj.R. and Mont. Code Ann. § 85-2-233(1)(a) by (1) demonstrating that their existing rights, priorities, or interests will be affected by the Court's final decree, (2) requesting a hearing, (3) timely appearing and entering objections to the Court's June 9, 2022 preliminary decree, (4) timely amending their Objection pursuant to the Court's Case Management Order No. 3 issued on October 18, 2023, (5) participating in the mediation track ordered by this Court, and (6) participating

in the hearing track ordered by this Court, including filing a motion for summary judgment, participating in oral argument, and participating in the upcoming evidentiary hearing.

4. Objectors expressly incorporate by reference into this filing all, and have not waived or forfeited or otherwise lost, any factual or legal arguments they raised, including those in their (1) December 7, 2023 Amended Objections, (2) July 10, 2024 Motion for Summary Judgment, (3) September 13, 2024 Response to Compact Parties' Motion for Summary Judgment, and (4) November 1, 2024 Reply in Support of Summary Judgment.

5. The Segó/Slack Objectors dispute the Compact Parties' contentions.

**B. Compact Parties' Contentions.**

1. Neither the Compact water rights, the exercise of those rights, nor the administration of water under the Compact or the Unitary Administration and Management Ordinance, Section 85-20-1902, MCA ("UAMO") result in material injury to Objectors.

2. The Segó/Slack Objectors have failed to meet their burden to establish that they are materially injured by operation of the Compact.

3. The Segó/Slack Objectors have identified only two witnesses, William Segó and Grace Slack, who both submitted pre-filed testimony on April 8, 2025.

4. In its Order on Pending Motions Regarding Compact Approval (Apr. 1, 2025) ("Order"), Dkt. No. 2336.00, the Court denied all Objectors' motions as to issues of law, including the Segó/Slack Objectors' Motion for Entry of Summary Judgment on Legal Issues and Brief in Support (July 10, 2024), Dkt. Nos. 1820.00 & 1821.00.

5. Evidence pertaining to the elements or ultimate validity of any water right claims, including but not limited to any evidence supporting arguments that the Compact prevents Objectors from asserting Walton or Secretarial water rights see Order at 50, 58, is irrelevant to the issue of Objectors' claims of material injury from operation of the Compact and should be excluded. Regardless, the exercise of the Tribes' rights under the Compact does not result in any material injury to Objectors' water rights or property.

6. Evidence pertaining to the history of FIIP, including the federal entities involved in its creation and operation, and whether FIIP is a Bureau of Reclamation (“BOR”) or Bureau of Indian Affairs (“BIA”) irrigation project is irrelevant to the issue of the Segó/Slack Objectors’ claims of material injury from operation of the Compact and should be excluded. See Order at 49 (“Whether FIIP is administered by the United State[s] through the [Bureau of Reclamation] or through the Bureau of Indian Affairs (“BIA”) is not a necessary question for purposes of the Court’s narrow role in evaluating the Compact for purposes of incorporating it into final decrees.”). Regardless, the exercise of the Tribes’ rights under the Compact does not result in any material injury to Objectors’ water rights or property.

7. Any evidence, including but not limited to documents and witness testimony, concerning how FIIP was created and operated, and whether that creation and operation establishes separate legal title to the water FIIP delivers to the Segó/Slack Objectors is irrelevant to the issue of the Segó/Slack Objectors’ claims of material injury from operation of the Compact and should be excluded. Regardless, the exercise of the Tribes’ rights under the Compact does not result in any material injury to Objectors’ water rights or property.

8. Any evidence, including but not limited to documents and witness testimony, concerning any new water developments or changes in use of any existing water rights claims of objectors is both speculative and lacks requisite foundation. Further, any evidence that relies on speculation about future implementation of the Compact must be excluded, including the “effect” of the Compact, the UAMO, and the discretion of the Board. Regardless, the exercise of the Tribes’ rights under the Compact does not result in any material injury to Objectors’ water rights or property.

9. No implementation of the Compact Appendix 3.4 occurred prior to 2024. Regardless, the exercise of the Tribes’ senior instream water rights under the Compact does not result in any material injury to Objectors’ water rights or property.

10. In 2023 and earlier, FIIP deliveries were governed by its Operation and Maintenance Guidelines and a 2018 United States Fish and Wildlife Service Biological

Opinion, not the Compact. FIIP started and ended delivery of water to project users based on climatic conditions, available snowpack, and the condition of facilities.

11. In 2024, FIIP deliveries were maintained as governed by its Operation and Maintenance Guidelines, the 2018 United States Fish and Wildlife Service Biological Opinion, and initial implementation of the Compact.

12. All issues concerning the Compact's validity, including its procedural and substantive fairness, were resolved by the Order.

13. The Compact Parties dispute the Sego/Slack Objectors' contentions.

## **EXHIBITS**

### **A. Exhibit Procedures.**

Each party shall bring one binder(s) set of original paper exhibits to the hearing. An electronic exhibit set shall be provided to the Court by email or other file transfer service to [watercourt@mt.gov](mailto:watercourt@mt.gov) before the close of business on April 21, 2025. The subject line of the email shall reference this case and the hearing number. All exhibits shall be pre-marked with the exhibit number set forth in the exhibit list filed with the Court. The parties shall make their own arrangements for any projection of exhibits. At the close of the hearing, any exhibits not offered and admitted will be removed from the record set.

### **B. Objectors' Exhibits.**

Objectors' exhibit list is attached to this Order. At the commencement of the evidentiary hearing, Objectors may move for the admission of any exhibit that does not receive an objection. The Compact Parties object to the following exhibits:

1. Slack Direct Testimony, Ex. 2, pp. 1-2;
2. Sego Direct Testimony, Ex. 1 (SegoSlack\_00051);
3. Sego Direct Testimony, Ex. 2 (SegoSlack\_00052-54, 73);
4. Sego Direct Testimony, Ex. 3 (SegoSlack\_00055-72, 74-76);
5. Sego Direct Testimony, Ex. 4 (SegoSlack\_00079);
6. Sego Direct Testimony, Ex. 5 (SegoSlack\_00081-90);
7. Sego Direct Testimony, Ex. 7 (SegoSlack\_00031-32, 77-79);
8. Sego Direct Testimony, Ex. 8 (SegoSlack\_00048-49);

9. Segó Direct Testimony, Ex. 9, pp. 1-6;
10. Slack Direct Testimony Ex, 1, pp. 1-2.

**C. Compact Parties' Exhibits.**

The Compact Parties' amended exhibit list was filed on April 17, 2025, as doc. no. 2451.00 and is attached to this Order. At the commencement of the evidentiary hearing the Compact Parties may move for the admission of any exhibit that does not receive an objection. Objectors may object to any exhibit on the amended list and will endeavor to provide a list of objections and the basis for the objections by not later than 12:00 noon on Monday, April 21, 2025, without waiving the right to lodge additional objections.

**WITNESSES**

The following witnesses may be called by the parties. Witnesses are not excluded from the courtroom prior to testifying. Any witness for whom direct testimony is prefiled shall be made available at the hearing for cross-examination.

**A. Objectors' Witnesses.**

1. William Segó (prefiled as Doc. 2385.00);
2. Grace Slack (prefiled as Doc. 2386.00).

As part of their proposed prehearing order, the Compact Parties lodged objections to portions of the prefiled testimony of both Mr. Segó and Ms. Slack. The objections will be addressed at the hearing on the hearing record. To the extent Mr. Segó or Ms. Slack are called to provide live testimony, they may be provided and refer to their written prefiled testimony while testifying.

**B. Compact Parties' Witnesses.**

1. William Segó, for cross-examination purposes;
2. Grace Slack, for cross-examination purposes;
3. Seth Makepeace, Confederated Salish and Kootenai Tribes, for rebuttal purposes;
4. Casey Ryan, Confederated Salish and Kootenai Tribes, for rebuttal purposes; and

5. Any other person necessary to rebut Objectors' testimony disclosed at the April 22, 2025 evidentiary hearing.

### **ISSUES OF FACT**

The following issues of fact, and no others, are to be litigated at the hearing:

#### **A. Objectors' Issues of Fact.**

1. Whether Segó/Slack Objectors' interests have been or will be materially injured by operation of the Compact;
2. Whether Segó/Slack Objectors' interests have been or will be materially injured by the administration of water rights under the Compact;
3. Whether Segó/Slack Objectors' interests have been or will be materially injured by the effect of the Compact's structures and provisions in reducing FIIP or other irrigation deliveries to Segó/Slack Objectors' properties;
4. Whether Segó/Slack Objectors' interests have been or will be materially injured by the legal violations alleged by Objectors.

#### **B. Compact Parties' Issues of Fact.**

1. Whether Segó is materially injured by operation of the Compact.
2. Whether Slack is materially injured by operation of the Compact.

Each party reserves all objections to the other party's issues of fact.

### **ISSUES OF LAW**

The following issues of law, and no others, are to be litigated at the hearing:

#### **A. Objectors' Issues of Law.**

1. Whether the Compact is unreasonable. Crow Compact II, 2015 MT 353, ¶¶ 18, 20.
2. Whether Segó/Slack Objectors' interests are materially injured by operation of the Compact. *Id.*

#### **B. Compact Parties' Issues of Law.**

The Compact Parties contend that the Order on Pending Motions Regarding Compact Approval ("Order on Motions") resolving certain legal issues. (Doc. 2336.00). resolved all issues of law and thus there are no issues of law left to address at the

evidentiary hearing. Nevertheless, issues of law relevant to the April 22, 2025 evidentiary hearing may include:

1. Whether Sego met his burden to demonstrate material injury from operation of the Compact;
2. Whether Slack met her burden to demonstrate material injury from operation of the Compact; and
3. Whether evidence offered either in support of a claim of material injury, or to rebut such a claim, is admissible.

Each party reserves all objections to the other party's issues of law.

### **DISCOVERY**

The following discovery remains to be completed: None.

The parties may use discovery responses for purposes of impeachment. Any discovery response to be offered as evidence is contained on the exhibit list.

### **DETERMINATION OF LEGAL ISSUES**

The Order on Motions resolving certain legal issues, including allocation of the burden of proof. (Doc. 2336.00). The Order on Motions sets the scope for this hearing and other similar hearings involving other Objectors. To the extent issues previously resolved in the Order on Motions are incorporated into contentions, they are done so only to preserve the issues for appeal, and not to relitigate previously resolved issues. Each party reserves all rights of appeal as to prior rulings of the Court.

The following motion has yet to be addressed by the Court:

The Compact Parties' Motion in Limine, Dkt. No. 2380.00 (April 8, 2025).

### **STIPULATIONS**

The Compact Parties stipulated to the cancellation of the notices of deposition and subpoenas duces tecum of Sego/Slack Objectors, but did not file notices of cancellation with the Court.

### **HEARING**

The hearing shall commence at 9:00 a.m. on April 22, 2025, in Courtroom no. 3 in the Missoula County District Court located at 200 West Broadway, Missoula, Montana

59802. The hearing shall be concluded in one day and will be conducted without a jury.

Objectors shall present their case first. Upon completion of Objectors' case, the Compact Parties may present their case.

A deadline for submitting proposed findings of fact and conclusions of law or post-hearing briefing, if any, will be set at the hearing. The parties are not required to submit proposed findings of fact and conclusions of law prior to the hearing.

Except as provided in this Order, the hearing in this case is governed by the Water Court's Water Right Adjudication Rules, including Rule 2(b) which incorporates by reference the Montana Rules of Civil Procedure, the Montana Rules of Evidence, the Montana Uniform District Court Rules, the Water Court Local Rules, and all prior case management orders issued in this case.

### **ORDER**

Therefore, it is ORDERED that this Order is adopted as the Prehearing Order for this case. This Prehearing Order incorporates all prior objections and responses, which are modified to conform to this Order. Subject to any rights of appeal of prior orders, this order shall supersede the pleadings and govern the course of the hearing of this cause, unless modified to prevent manifest injustice.

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Stephen R. Brown  
Chief Water Judge

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<b><u>Objector Sego Exhibits</u></b>		
Exhibit No.	Bates Nos.	Brief Description
EXHIBIT 1	SegoSlack_00051	Department of the Interior U.S. Reclamation Service Flathead Project Montana Water Rights-Beneficial Use Amendatory and Supplemental Plat Sections 28, 29, 30, 31, 32, 33 in T19N, R19W, showing the allotments of Objector Sego's predecessors in title (original Indian allottees) in the records of the U.S. Department of the Interior and U.S. Reclamation Service
EXHIBIT 2	SegoSlack_00052-54, 73	Notice of Water Right and Notice of Appropriation documents dated October 7, 1896 from the records of Lake County, Montana reflecting water rights notices from some of the original Indian allottee predecessors in title Objector Sego's Sego Ranch property
EXHIBIT 3	SegoSlack_00055-72, 74-76	U.S. Reclamation Service records documenting the allotment numbers and irrigated acres, based on surveys of the U.S. Reclamation Service in 1914, and in two instances in 1919, of the lands of some of the original Indian allottee predecessors in title for Objector Sego's Sego Ranch property
EXHIBIT 4	SegoSlack_00079	A table compilation, compiled from records of the U.S. Department of the Interior, listing the names and allotment numbers and notes information for the original Indian allottees that are Objector Sego's predecessors in title for some of the portions of Objector Sego's Sego Ranch property
EXHIBIT 5	SegoSlack_00081, 90	Copies of land patents from the United States of America to some of the original Indian allottees that are Objector Sego's predecessors in title for Objector Sego's Sego Ranch property
EXHIBIT 6	N/A	Copies of Objector Sego's receipts for supplemental hay purchases in 2022 and the copies of the checks, with specific account information redacted, evidencing Objector Sego's payments for supplemental hay
EXHIBIT 7	SegoSlack_00031-32, 77-79	Copy of the Supplemental Information for the Proposed Amendment to the priority date for Objector Sego's Ashley Creek water rights to address the Secretarial and Walton water rights basis for those priority date changes and water rights
EXHIBIT 8	SegoSlack_00048-49	A copy of the Water Court order dated April 11, 2024 denying without prejudice the amendments to Objector Sego's statements of claim but indicating the Water Court's preference in the Basin 76L adjudication to address those proposed amendments in response to objections to the claims as listed in the Basin 76L Preliminary Decree
EXHIBIT 9	N/A	Water right abstracts for Water Rights Claim Nos. 76 L 15152-00, 76L 15151-00, and 76L 15150-00 documenting the claiming of those water rights and updating of those filed claims
<b><u>Objector Slack Exhibits</u></b>		
Exhibit No.	Bates Nos.	Brief Description
EXHIBIT 1	SegoSlack_00092-93	December 18, 2009 letter from William Slack to the Montana DNRC regarding Secretarial Water Rights
EXHIBIT 2	N/A	Summary of costs to Doubleshoe Ranch property in 2022 due to lack of FIIP deliveries

**Updated List of Exhibits for April 22, 2025 Sego/Slack Evidentiary Hearing**

April 17, 2025

Montana Water Court

<b>Exhibit Number</b>	<b>Title</b>	<b>Description</b>
1	Excerpt from Objectors William Sego and Bill & Irene, LLC and Grace Slack's Responses to Compact Parties' First Set of Combined Discovery Requests, (Apr. 4, 2025)	Excerpt of Responses to Requests for Admissions Nos. 3, 5, 10-12, 14; Response to Interrogatory No. 10, 11, 18
2	Flathead Indian Irrigation Project Operation & Maintenance Guidelines	Describes procedures governing FIIP operations
3	US FWS, Biological Opinion on the Effects of the Flathead Indian Irrigation Project on Bull Trout and Bull Trout Critical Habitat (2018)	Among other things, addresses necessary mitigation measures related to species protected by the Endangered Species Act
4	Map of the Flathead Reservation	Shows topographic and hydrologic features, as well as FIIP reservoir and canal network
5	Hydrographic Vicinity Map	Mission Reservoir Vicinity
6	Snow Water Equivalent Plot	Composite of Snow Measurement Sites for the Flathead Basin
7	USGS gage 12377150 Mission Creek above Reservoir Data	April – September Runoff and runoff by month for 1992 – 2024 period
8	USBR Agrimet Station SIGM Saint Ignatius Weather Station Data	April – September monthly accumulated precipitation for 1992 – 2024 period
9	CSKT canal gage 4814.10 Mission A Canal below Mission Reservoir Data	April – September Runoff volume and start of canal spring operations for 1992 – 2024 period  <a href="https://cskt.aquaticinformatics.net/">https://cskt.aquaticinformatics.net/</a>
10	Hydrographic Vicinity Map	Moiese Irrigation Service Area

11	CSKT gages 4897.00 and 3585.70 Coleman Coulee and Moiese Wasteway Data	Irrigation Season Irrigation Return Flows for 2021 July- September period  <a href="https://cskt.aquaticinformatics.net/">https://cskt.aquaticinformatics.net/</a>
12	CSKT gages 3850.00 and 4890.00 Moiese A Canal and Hillside Canals Data	Diversion Volumes for 1992 – 2024 or available period  <a href="https://cskt.aquaticinformatics.net/">https://cskt.aquaticinformatics.net/</a>
13	CSKT gage 4831.00 Mission Creek at St. Ignatius	Runoff Volumes and Daily Discharge for Water Year 2022  <a href="https://cskt.aquaticinformatics.net/">https://cskt.aquaticinformatics.net/</a>
14	Any pleading in this case necessary for use with witnesses	