

IN THE WATER COURT OF THE STATE OF MONTANA
CONFEDERATED SALISH AND KOOTENAI TRIBES – MONTANA – UNITED STATES
COMPACT
CASE NO. WC-0001-C-2021

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MONTANA WATER COURT, CLARK FORK DIVISION
FLATHEAD RIVER, BELOW FLATHEAD LAKE (BASIN 76L) AND
FLATHEAD RIVER TO AND INCLUDING FLATHEAD LAKE (BASIN 76LJ)
BASIN-0001-76L-1985
BASIN-0002-76LJ-1985

ORDER DENYING MOTION TO STAY

On November 10, 2025, sixteen self-represented parties (the “Moving Parties”) filed a motion (“Motion”) asking the Court to stay three separate proceedings now pending before the Water Court. They include (1) proceedings related to the Court’s issuance of a Preliminary Decree for the Confederated Salish and Kootenai Tribes of the Flathead Reservation – State of Montana – United States Compact (“Compact”), consolidated in case WC-0001-C-2021; (2) proceedings related to the objection process following the Court’s issuance of a Preliminary Decree for Basin 76LJ, which covers the Flathead River and certain tributaries above and including Flathead Lake;¹ and (3) similar proceedings related to the Court’s May 2, 2025, issuance of a Preliminary Decree for Basin 76L,² which covers the Flathead River and its tributaries below Flathead Lake.

For the reasons stated in this Order, the Court denies the motion.

¹ These proceedings are contained in the basin file for BASIN-0002-76LJ-1985, available in the Court’s Full Court Enterprise electronic case management system.

² These proceedings are in the basin file for BASIN-0001-76L-1985

BACKGROUND

A. Status of Proceedings.

1. *Compact Proceedings.*

The Court issued the Preliminary Decree for the Compact on June 9, 2022. The Court opened case WC-0001-C-2021 (the “Compact Case”) to address objections to the Preliminary Decree and other issues. While the Compact Case is somewhat complex and remains ongoing, the proceedings have crossed several milestones relevant to evaluating the pending Motion. They include:

- a. February 9, 2023 – Deadline (amended) to file objections;
- b. December 8, 2023 – Deadline to move to amend objections;
- c. July 10, 2024 – Substantive motions deadline;
- d. February 21, 2025 – Deadline to request evidentiary hearing;
- e. April 1, 2025 – Court’s Order on Pending Motions;
- f. May 7, 2025 – Completion of last evidentiary hearing;
- g. September 19, 2025 – Completion of all post-hearing briefing.

At this point all that remains before the Court in the Compact Case are rulings on issues still open following the completed hearings and briefing.

2. *Basin 76LJ Proceedings.*

The Court issued the Preliminary Decree for Basin 76LJ on February 21, 2025. Issuance of the decree was preceded by several stays issued by the Water Court. The Basin 76LJ decree includes 5,914 water right claims. The Court originally set August 20, 2025, as the objection deadline. The Court extended the deadline twice, most recently to February 17, 2026. (76LJ Basin File, Doc. 51.00). The Water Use Act does not authorize the Court to grant additional extensions to the objection deadline. Section 85-2-233(2), MCA.

3. *Basin 76L Proceedings.*

The Court issued the Preliminary Decree for Basin 76L on May 2, 2025. The Basin 76L decree includes 3,578 water right claims. The Court originally set October 29, 2025, as the objection deadline. The Court extended the deadline twice, most recently to

April 27, 2026. (76L Basin File, Doc. 51.00). The Court also lacks authority to extend the objection deadline further in this basin.

B. Summary of Motion.

The Motion asks the Court to grant the four categories of relief, including (1) staying all proceedings in (a) the Compact Case; (b) case BASIN-0001-76L-1985 (the “Basin 76L Preliminary Decree Proceeding”); and (c) BASIN-0002-76LJ-1985 (the “Basin 76LJ Preliminary Decree Proceeding”), until the issues identified in the Motion “can be meaningfully addressed;” (2) maintaining the stay through at least September 17, 2026, “when the filing period for Tribal and Allottee claims closes and Walton Rights can be identified;” (3) directing public disclosure of certain consensual agreements; and (4) resuming the state adjudication after the September 17, 2026 filing period.

DISCUSSION

A. The Motion is Procedurally Flawed.

Several procedural barriers provide a basis to deny the Motion. As noted, the Court set July 10, 2024, as the deadline to file substantive motions in the Compact Case. The Motion does not address why this deadline is not binding. Without any explanation or a request for leave to file the Motion, the Motion is untimely and procedurally improper as to any relief in the Compact Case.

A similar problem exists with the two basin proceedings. Prior to issuing the two preliminary decrees, the Court issued several stays of the basin decree proceedings. The stays expired without any comment from the Moving Parties. Once the Court issued the two preliminary decrees, they became subject to the statutory provisions in the Water Use Act that govern decree proceedings. Section 85-2-233(2), MCA. Those provisions allow the objection periods to be extended not more than twice, contingent on a timely motion being filed that shows good cause. None of the Moving Parties availed themselves of this statutory remedy. Nonetheless, in response to timely motions filed by others that demonstrated good cause, the Court extended the objection periods in both basins to the maximum allowed by law. The Court lacks authority to extend the objection periods further and the Motion fails to explain why the objection filing extensions are inadequate.

The Motion therefore conflicts with the procedural provisions of the Water Use Act, which provides a further basis for denial.

B. The Motion is Based on Inaccurate Assumptions.

The Motion is based on several assumptions that are either legally or factually incorrect. First, the Motion suggests the Compact Case might extinguish or otherwise impair private Walton Rights. A Walton Right is a water right “held by a non-Indian successor to allotment lands that are derived from the allottee’s share of the federally reserved water right for the reservation.” *In re Scott Ranch, LLC*, 2017 MT 230, ¶4, 388 Mont. 509, 402 P.3d 1207. Walton Rights are not part of the “Tribal Water Right” as that term is defined in the Compact. Compact, Art. II.70.³ As the Court confirmed in its Order on Pending Motions (“Order on Motions”) dated April 1, 2025 (Case WC-0001-C-2021, Doc. 2336.00, at 50-51), any party claiming a Walton Right had the opportunity to file a statement of claim as part of Montana’s comprehensive statewide general stream adjudication. Walton Rights arising on the Flathead Reservation will be addressed in the preliminary decree proceedings for Basins 76L and 76LJ.

Second, the Motion seems to assume that the Compact requires or allows Walton Rights to be registered by September 2026. This assumption misstates the Compact and the nature of a Walton Right. The Water Court does not oversee the registration process. Rather, the registration process and period only apply to existing uses of the Tribal Water Right. Compact, Art. III.C.1.b. As the Court already ruled in the Order on Motions, Walton Rights are not part of the Tribal Water Right, so the registration process does not provide a basis to issue a stay. (Order on Motions, at 50-51).

Third, the Motion suggests the State of Montana has a legal obligation to conduct a title search to identify and quantify Walton Rights. This misstates the State’s role in the adjudication process. For purposes of state-based rights outside the Tribal Water Right, the responsibility to research and file claims rests with the individual water right claimant. Once claims are timely filed, the State Department of Natural Resources and

³ The Compact is codified at § 85-20-1901, et seq., and also is set forth in Appendix 1 to the Compact Preliminary Decree issued by the Court on June 9, 2022. (Case WC-0001-C-2021, Doc. 19.00).

Conservation examines claims pursuant to its normal examination procedures. *See* Water Right Claim Examination Rules, adopted effective Jan. 15, 1991; *amd.* Dec. 5, 2006. The Montana Supreme Court clarified and confirmed this role in *In re DNRC*, 226 Mont. 221, 740 P.2d 1096 (1987). To the extent the Moving Parties contend the State has an independent title examination obligation that differs from what the applicable rules and case law specify, the Motion fails to identify the source or parameters of such an obligation.

Fourth, the Motion’s request that the Court order disclosure of certain “consensual agreements” implies such agreements have been executed within Basins 76L and 76LJ. The Motion does not provide evidence of any agreement that affects either the Court’s ability to issue a ruling in the Compact Case, or that interferes with the objection process in either the Basin 76L or 76LJ preliminary decree proceedings.

Next, the Moving Parties seize on a comment made during an evidentiary hearing regarding water rights “subsumed” in the Compact, apparently assuming the Court was referring to Walton Rights. The comment the Motion cites does not refer to Walton Rights. Instead, as the Compact definition indicates, the “Tribal Water Right” before the Court in the Compact proceeding incorporates numerous rights defined in various sections of the Compact and its appendices, which include several dozen abstracts of water rights covered by the Compact. (Case WC-0001-C-2021, Doc. 19.00, Decree Appx. 2 and 3). None of these abstracts describe Walton rights claimed by third parties. The Moving Parties efforts to argue otherwise mischaracterizes a colloquy between the Court and an objector who is not a party to the Motion.⁴

C. The Motion Fails to Meet the Standard for Issuing Stay.

Even if the Court ignores the Motion’s procedural flaws and substantive errors, the Court then applies a standard to determine whether a stay is proper, which the Motion does not cite. When issuing and extending prior stays for the two basins, the Court considered three criteria, including (1) the balancing of competing interests with a

⁴ The particular evidentiary hearing the Motion references involved the objections of James and Alice Ammen. The Ammens are not parties to the Motion.

recognition that that Court has inherent authority to control its docket; (2) that the party seeking the stay make out a clear case of hardship or inequity in proceeding, even if there is a fair possibility the stay will damage someone else; and (3) consideration of the promotion of public welfare or convenience, especially in cases of “extraordinary public moment.” Order On Motion to Extend Stay (76L Basin File, Doc. 17.00, Feb. 1, 2023); *Henry v. Dist. Court*, 198 Mont. 8, 13, 645 P.2d 1350, 1352 (1982).

1. *Balancing of Interests.*

The Motion does not define the Moving Parties’ interest in seeking a stay. It is not clear from the Motion which, if any, of the Moving Parties claim Walton Rights, or if they do, why they cannot protect those rights in the normal state-based adjudication process underway in Basins 76L and LJ. Despite the lack of clearly articulated interests, the Motion asks the Court to stay the Compact Case which has been underway for more than three years, and involves nearly 3,000 docket filings, dozens of motions, numerous evidentiary hearings, and countless hours of time.

Likewise, the Motion asks the Court to ignore its obligation to move the statewide adjudication forward by conducting the Basins 76L and LJ decree proceedings. Those proceedings involve nearly 10,000 filed claims, most of which are held by persons who are not parties to the Motions. Issuing a stay would undercut the significant expenditure of time invested by multiple persons over the past year in evaluating claims, objections, and issue remarks. The balance of interests tips sharply toward denying the stay.

2. *Hardship.*

Similarly, the Moving Parties fail to demonstrate any hardship if the stays are not granted. As noted, the Tribal Water Right registration process has no bearing on the ability of claimants to file (or object to) Walton Rights in the basin proceedings. Whether such rights exist or are valid also has no bearing on the Compact Case, as the Court already has ruled. Moreover, the Court granted the maximum extensions for filing objections in the basin proceedings even though none of the Moving Parties requested them. As the Supreme Court stated in upholding a similar stay request in the Crow Compact proceeding, “[I]t would work a hardship and a potential injustice on the parties

who have worked for many years to develop and implement the Compact to put everything in abeyance for an unlimited time and to risk repeal of the Compact, to see whether the Allottees can prevail on their representation claims in federal court.” *In re Crow Water Compact*, 2015 MT 217, ¶ 33, 380 Mont. 168, 354 P.3d 1217.

3. *Public Welfare or Convenience.*

Finally, although the motion is signed by sixteen parties, they represent a significant minority of the objectors to the Compact, and the owners of the thousands of claims in the two basin proceedings. The Motion identifies no public welfare or convenience that supports the extensive relief the Motion seeks.

In summary, the relief the Motion seeks is extraordinary and would only further delay the progression of Montana’s comprehensive statewide adjudication. In light of the procedural and substantive flaws in the Motions, and application of the test the Court follows when considering a stay of this magnitude, the Court concludes no valid basis exists for the relief the Motion seeks.

ORDER

Therefore, it is ORDERED that the Motion for Stay is DENIED.

Stephen R. Brown
Chief Water Judge

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