

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

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

CASE NO. WC-0001-C-2021
Evidentiary Hearing No. 1 (Sego/Slack)

HEARING 1 – FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

The Court enters these Findings of Fact and Conclusions of Law to address evidence offered and admitted in the evidentiary hearing involving objector Grace Slack (“Slack”).¹ Slack objected to the Water Rights Compact (“Compact”) entered into by and among the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana (“Tribes”), the State of Montana (the “State”), and the United States of America on behalf of the Tribes (“United States”) (collectively, the “Compact Parties”).

On April 1, 2025, the Water Court issued an Order on Pending Motions Regarding Compact Approval (“Order on Motions”). (Doc. 2336.00). The Order on Motions concluded that the Compact is fundamentally fair, adequate, and reasonable, and that the Compact conforms to applicable law. The Order on Motions shifted the burden to parties

¹ As discussed below, Slack filed her Request for Hearing jointly with Objectors William Sego and Bill & Irene, LLC (collectively, “Sego”). Sego participated in the evidentiary hearing, but later withdrew their objections to the Compact.

who filed objections to the Compact (“Objectors”), including Slack, to prove their interests are materially injured by operation of the Compact. Order on Motions, at 73.

Although the Order on Motions concluded the Compact Parties met their threshold burden as a matter of law, the Order on Motions provided the opportunity for any Objector to request an evidentiary hearing as to their burden to prove material injury. Most Objectors did not request a hearing, but several did, including Slack. This Order addresses evidence of alleged material injury specific to Slack.

PROCEDURAL BACKGROUND

1. On June 9, 2022, the Water Court issued a Preliminary Decree based on a motion by the Compact Parties to incorporate the water rights described in the Compact into decrees for nine hydrologic basins in western Montana.² (Doc. 19.00). Issuance of the Preliminary Decree commenced a statutory period for potentially interested parties to file objections to the Compact.

2. Slack, together with Objectors William Segó and Bill & Irene, LLC (collectively “Segó”) filed an objection to the Compact on January 19, 2023. (Doc. 509.00). Segó and Slack are referred to collectively as “Segó/Slack”). Segó/Slack later amended their objection with leave of the Court.³ (Doc. 1501.00).

3. On July 10, 2024, Segó/Slack filed a Motion for Entry of Summary Judgment on Legal Issues (Doc. 1820.00) together with a supporting brief (Doc. 1821.00). The Court denied the Segó/Slack motion as part of the Order on Motions.

4. After the Court issued its Order on Motions, Segó/Slack filed a joint Request for Evidentiary Hearing. (Doc. 2128.00). The Court consolidated the Segó/Slack hearing request as Evidentiary Hearing No. 1. The hearing took place on April 22, 2025, at the Missoula County Courthouse.

² The Preliminary Decree contains three appendices. Appendix 1 is the full text of the Compact as ratified by the Montana Legislature, codified in § 85-20-1901, MCA, and approved by the Secretary of Interior. Appendix 2 contains the abstracts that document the elements of the Tribal Water Right. Appendix 3 contains lists and abstracts of the Tribe’s water rights co-owned with FWP. These three appendices are referenced as “Decree Appendix” or “Decree Appx.” Decree Appendix 2 also includes several numbered appendices from the Compact. These are referred to as “Compact Appendix” or “Compact Appx.”

³ Order No. 19 on Motions to Amend Objections. (Feb. 6, 2024, Doc. 1639.00).

5. Pursuant to Case Management Order No. 6 (Doc. 2142.00), Slack pre-filed direct testimony. (Doc. 2385.00). Slack also was present at the hearing and was available for cross-examination. Slack did not call any other witnesses.⁴

6. The Compact Parties called Seth Makepeace and Casey Ryan to testify. The testimony and exhibits admitted for this hearing are summarized in the Hearing 1 – Court Minutes. (Doc. 2507.00).

7. The court reporter prepared a written transcript following the hearing. The parties noted errors in the transcript and stipulated to certain modifications. The Court accepted the stipulated modifications on August 18, 2025. (Doc. 2629.00). These modifications are included in Volume 2 (Doc. 2624.00) and Volume 3 (Doc. 2628.00) of the transcript.

8. Segó/Slack filed their opening brief on August 22, 2025. (Doc. 2638.00). The Compact Parties filed their opening brief the same day. (Doc. 2645.00). The Compact Parties (Doc. 2682.00) and Segó/Slack (Doc. 2680.00) filed responses on September 19, 2025.

9. After all briefing was complete, Segó reached a settlement with the Compact Parties and withdrew their objections. (Docs. 2692.00 and 2693.00). The Court then dismissed Segó's objections. (Doc. 2696.00).⁵ Accordingly, the Court makes no findings of fact or conclusions of law as to Segó. The remainder of these Findings of Fact and Conclusions of Law refer only to Slack, except when the context requires otherwise.

Based upon the record, the Court makes the following findings of fact and conclusions of law as to the issues raised in Evidentiary Hearing No. 1:

FINDINGS OF FACT

1. Slack is not a party to the Compact.
2. Slack owns property within the exterior boundaries of the Flathead Reservation called the Doubleshoe Ranch.

⁴ William Slack also filed pre-filed testimony and testified for himself and his entities during Evidentiary Hearing No. 1, but not as a witness for Slack.

⁵ Order No. 16 Dismissing Objections. (Oct. 30, 2025).

3. The Flathead River flows through the Reservation. The River drains much of northwestern Montana and receives water from several sources, including Flathead Lake and several large natural tributaries. Many of these tributaries have their headwaters in the Mission Mountains and flow westerly across the Reservation toward the Flathead River.

4. Slack's property is served by the Flathead Indian Irrigation Project ("FIIP"). Slack is assessed for her lands served by FIIP.

5. The FIIP supplies water to Slack via several canals, including the Post F Canal, the C Canal, the Meinsinger-Magee (aka Magee-Minesinger) Canal, and the D Canal. (Doc. 2385.00, at 5:19-24). The water sources for these canals include several Flathead River tributaries and several reservoirs.

6. The United States Bureau of Indian Affairs ("BIA") operates the FIIP water delivery system. (H-1 CP Ex. 2).⁶ The FIIP system is a complex network that includes canals, diversions, reservoirs, and other infrastructure. BIA follows a set of Operation and Maintenance Guidelines to guide its FIIP operations.

7. The water right abstracts for the FIIP incorporated into the Compact identify an irrigation period use as April 15 to September 15. (Compact, Appx. 5 – water right nos. 76L 30052930, 76L 30052931, and 76L 30052932). Under the terms of the Compact, each of these water rights have July 16, 1855 priority dates. The Compact refers to these three water rights collectively as the "FIIP Water Use Right."⁷

8. Slack identified several water rights associated with the FIIP system that describe the FIIP source of supply she uses, including water right no. 76L 30052932. This water right is included within the FIIP Water Use Right under the Compact. Slack does not hold an ownership interest in any portion of the FIIP Water Use Right.

⁶ Exhibit references are to the hearing number (H-1) and either the Compact Parties ("CP") or Slack, followed by the exhibit number.

⁷ The Compact defines this term as "the water right set forth in Article III.C.1.a that is dedicated to use by the FIIP and FIIP irrigators and includes uses of water for irrigation and Incidental Purposes allowed by the FIIP through water service contracts. This water right is the source for the entitlement to delivery of available irrigation water for assessed parcels as provided by Article IV.D.2." Compact, Art. II.32.

9. Although the Compact defines the elements of the FIIP Water Use Right, the Compact does not dictate when the FIIP delivers water to customers, or other aspects of how the FIIP Water Use Right is exercised.

10. In addition to the FIIP Water Use Right, the Compact also describes and quantifies several rights to instream flows on various streams. The instream flow rights are described in other abstracts incorporated into the Compact. Compact Appx. 11. The on-reservation instream flow water rights have “time immemorial” priority dates that are senior to the FIIP Water Use Right’s July 16, 1855 priority date. Interim instream flows have been in place for streams on the Flathead Reservation since the late 1980s.

11. On November 5, 2018, the United States Fish and Wildlife Service (“FWS”) issued a Biological Opinion on the Effects of the Flathead Indian Irrigation Project on Bull Trout and Bull Trout Critical Habitat (“FIIP Biological Opinion”). (H-1 CP Ex. 3). The FIIP Biological Opinion resulted from consultation with FWS.

12. The FIIP Biological Opinion specifies measures to protect bull trout listed as a threatened species under the Endangered Species Act. The document sets out protective measures in connection with the operation of the FIIP system. These measures include implementation of bankfull discharge flows or channel maintenance flows for streams within the FIIP system. (H-1 CP Ex. 3).

13. Slack claims ownership of several different water rights, including state-based water right claim nos. 76L 100386-00 and 76L 100387-00.⁸ The source of Slack’s water rights is Post Creek and its tributaries, including Poison Oak Creek. Slack described her water rights as including “Secretarial” rights and “Walton” rights.⁹

⁸ The full list identified in Slack’s pre-filed testimony includes water right claim nos. 76L 134609-00; 76L 134611-00; 76L 134614-00; 76L 134615-00; 76L 100386-00; 76L 100387-00; 76L 100481-00; 76L 100482-00; 76L 100483-00; and 76L 100484-00. (Doc. 2385.00).

⁹ Slack and the Compact Parties stipulated that the elements and validity of Slack’s state-based water rights are not at issue in this case. (Doc. 2536.00). As with all hearings in this case, the findings of fact regarding objector water right claims are made for the purpose of evaluating claims of material injury, not for the purpose of adjudicating the elements of any state-based water right claims that may be included in another decree issued by the Water Court.

14. Slack (through her late husband) filed statements of claim for various state-based water rights.¹⁰ The Water Court included Slack's claims in the Basin 76L Preliminary Decree. The Preliminary Decree adjudication proceedings are underway in a separate proceeding. Slack's state-based rights include claimed Walton rights. Slack also testified that Secretarial water rights are pending in the Basin 76L Preliminary Decree proceedings, although she did not specifically identify them by water right claim number.

15. Slack contends her Secretarial water rights have priority dates senior to the FIIP water rights. Slack also contends her Walton rights have a priority date as of the date of the Treaty of Hellgate in 1855. Slack does not contend that any of her water rights are senior to the instream flow rights with time immemorial priority dates.

16. Slack alleges several categories of injuries in her testimony. First, Slack testified that the Flathead Reservation Water Management Board ("Board") established under Article IV of the Compact administers her water rights and precludes state court review of her water rights. Slack's pre-filed testimony did not identify specific Compact provisions, or specific actions taken by the Board under the terms of the Compact that have caused injury to her. Slack also did not identify any specific actions she intends to take that would require Board approval. Instead, she only describes her understanding of the Board's authority with respect to water rights administration and issuance of new water rights authorizations and changes. Slack also described her interpretation of the judicial review provisions of Board administrative decisions, but did not identify any pending or projected instance of being affected, either actually or potentially, by the judicial review provisions.

17. Second, Slack testified that FIIP irrigation deliveries to her property have been reduced, requiring her to rely on sources other than FIIP. Specifically, Slack contends that during the 2022 irrigation season, FIIP water deliveries started later and

¹⁰ The Compact defines "Water Rights Arising Under State Law" by incorporating a separate definition of "Arising Under State Law." Compact Art. II.6 & 70. The definitions include both water rights "created under Montana law" and water rights "held by a nonmember of the Tribes on land not held in trust by the United States for the Tribes or a Tribal member and for which a claim was required to be filed in the Montana general stream adjudication." *Id.*

ended earlier than in prior seasons. During these periods, Slack relied on her private state-based rights and took other actions such as purchasing additional hay, leasing more pasture, and selling cows earlier than she otherwise planned.

18. Third, Slack testified that the Compact allows FIIP irrigation water to be used for purposes other than irrigation, which results in a reduction in irrigation deliveries and resulting damage to her agricultural operations.

19. Fourth, Slack contends the volume of water expected to be released to satisfy instream flow requirements “could result” in erosion and road damage. (Doc. 2385.00, at 10:5-8). Slack did not provide any testimony about where such erosion and damage might occur, nor any hydrologic or engineering analysis of the likelihood of such damage. Even though Slack testified that she believes Compact implementation has commenced, she did not identify any erosion or road damage that has occurred as a result of implementation.

20. Additionally, in her post-hearing briefing, Slack generally alleges that the Compact structure alters her Walton rights thereby causing material injury.

21. The Compact Parties called two witnesses to testify at the hearing. They first called Seth Makepeace. Makepeace is a hydrologist who has worked for the Tribes for 35 years. Makepeace’s experience includes numerous aspects of water distribution and management on the Reservation, including ensuring compliance with interim instream flows, work with the extensive stream and canal measurement network, evaluating irrigation return flows, assisting in preparation of a Biological Assessment for FIIP operations, implementation of operational improvements under the Compact. (Tr. Vol II., 8:21-13:4).

22. Makepeace provided an overview of the FIIP water distribution system, which includes several lengthy canals that convey water from various streams to several reservoirs. The system also includes distribution canals used to convey water from streams and reservoirs to lateral and sublateral ditches, and ultimately to FIIP water users. (Tr. Vol. II, 25:25-27:15; H-1 CP Ex. 4).

23. Makepeace described so-called “interim instream flows” that were established in 1987 and 1988 following a court proceeding. The interim instream flows have been measured and monitored at 27 points on the Reservation where various streams intersect instream headworks, canals and other irrigation infrastructure. As described by Makepeace, the interim instream flows specified the “minimal flows intended to maintain wetted channels in the streams that they pertain to.” (Tr. Vol. II, 34:9-13).

24. As Makepeace noted, the Compact provides that the interim instream flows ultimately will be replaced by permanent Instream Flow rights through a process specified in the Compact. Compact Art. III.C.1.d.iv.

25. Makepeace testified about his involvement with the development of the channel maintenance flow schedule that was incorporated into the FIIP Biological Opinion.

26. Makepeace provided testimony in response to Slack’s contention that FIIP irrigation water deliveries began late and ended early in 2022. To explain the testimony, Makepeace prepared a map that depicted the general location of Slack’s property in relation to FIIP distribution canals and measurement locations. (H-1 CP Ex. 5). Makepeace also reviewed the start and end dates for the various canals that serve the properties in the vicinity of Slacks property, including the Mission A Canal, the Mission B Canal, and the Mission C Canal. Based on this review, Makepeace observed that the start of irrigation season in 2022 was “well within the range of variability observed over the 1992 to 2024 period.” (Tr. Vol II., 60:9-11).

27. Although the start of the 2022 canal operations was later than the historical median date, Makepeace attributed this to natural water availability as recorded in the stream gages and weather observations. (Tr. Vol II., 60:9-23). On cross-examination, Makepeace clarified that recorded natural flow runoff volumes were 55 percent of average in April 2022, and between 40 and 50 percent of average in May 2022.

28. The Compact Parties also called Casey Ryan. Ryan is employed as a hydrologist and division manager for the Tribes’ Natural Resources Department.

29. Since 2021, Ryan has been in charge of the Tribes' Water Measurement Program and the Water Management and Planning Program. Part of the role of these programs is to monitor hydrologic conditions on the Reservation through a network of surface water and reservoir gages. This information is used to monitor compliance with interim instream flows that have been in place since the 1980s. The programs also monitor snowpack conditions used to develop water supply forecasts.

CONCLUSIONS OF LAW

Standard

1. The standard followed by the Court when reviewing a compact requires an objector to prove the objector's interests are "materially injured" by "operation of the Compact." *In re Crow Water Compact*, 2015 MT 353, ¶ 18, 382 Mont. 46, 364 P.3d 584. To meet this standard, an objector must (1) identify a legally protected interest, (2) prove material injury to that interest, and (3) establish a link between the proven injury and an operative provision of the Compact. This standard requires the objector to meet a "heavy burden" to prove the Compact is unreasonable as applied to the objector. *Id.*

Alleged Injury to Walton Rights

2. Slack contends she is materially injured by operation of the Compact because the so-called "Walton right" she claims is based on a pro rata share of the Tribes' reserved water right. Slack does not cite any facts to support this contention, nor does she cite any instance where exercise of her Walton rights have been curtailed as a consequence of the Compact. Instead, Slack's concerns are legal in nature and already were addressed by the Court in the Order on Motions. Specifically, the Order on Motions specified that to the extent Slack claims an interest in a Walton right, she has the ability to protect that right in the adjudication of state-based rights for Basin 76L. *See* Order on Motions, at 50.

Alleged Injury From Water Management Board Oversight

3. Slack failed to provide evidence that the Board ever denied or otherwise affected an application for a permit or a change of an existing water right. Slack also did not provide any evidence that the Board (as opposed to the BIA, the FIIP or others) relied

on the Compact to alter the delivery of irrigation water from FIIP or ordered curtailment of any of Slack's water rights. Slack failed to identify any interest that has been or will be affected by any action of the Board in connection with the Compact. Additionally, this category of concern also is legal in nature and was already addressed by the Court in the Order on Motions. Order on Motions, at 63-73.

Alleged Injury From Reductions in FIIP Water Deliveries

4. Slack alleges injury arising out of reductions to the dates of the FIIP water deliveries during the 2022 irrigation season. Slack does not allege injuries related to the FIIP water delivery schedules in any other year.

5. As to 2022, Slack fails to provide proof of any injury resulting from reductions in available water were caused by factors other than water flow which naturally fluctuates from year to year. Slack conceded in her pre-filed testimony that in 2022 the Doubleshoe Ranch property was able to rely on other private water rights to supplement water supply.

6. Although Slack provided an exhibit with her pre-filed testimony that purports to quantify financial losses, the information lacks the detail necessary to draw any meaningful conclusions. Slack provided no baseline information to compare the 2022 financial costs to any other year. Without such evidence, the Court has no way to quantify the degree to which her 2022 financial impacts differed from any other year.

7. Slack also failed to prove that any reductions in the FIIP water deliveries for which she claims an interest were caused by implementation of any Compact provisions. Slack did not provide any evidence of how the instream flow or other Compact provisions affected the FIIP water delivery schedule in 2022 or in any other year, either in the past or projected into the future. Without such evidence, Slack did not prove the necessary link between alleged injury and some provision of the Compact.

8. Slack's argument also fails to acknowledge that the FIIP abstracts included with the Compact specify a period of use that authorizes FIIP to divert water any time between April 15 to September 15, and deliver water from April 15 to October 15. Compact Appx. 5 (abstracts for water right nos. 76L 30052930, 76L 30052931, and 76L

30052932). Whether water is available within this window during any particular year is a matter of physical water availability and the FIIP's internal operation decisions, as set out in the FIIP Operation and Maintenance Manual. Slack provided no evidence that the Compact imposes any additional constraints on water availability beyond those that already were in place prior to or independent from the Compact.

9. Additionally, as the Compact Parties' witnesses Makepeace and Ryan testified, interim instream flows have been in place since the 1980s and are based on prior Court precedent, not some new restriction in the Compact.¹¹ This testimony establishes that any reduction to water delivery quantity or the timing resulted from factors outside the Compact such as compliance with the provisions of the Biological Opinion, prior court decisions, and the general operation of the prior appropriation system.

Alleged Injury From Use of FIIP Water for Non-irrigation Purposes

10. Although Slack argues the Compact allows FIIP to use water for purposes other than irrigation, she failed to provide any examples of instances where the FIIP irrigation deliveries have been affected by the FIIP Water Use Right being used for purposes other than an irrigation use or what is authorized by the Compact.

11. Slack also misreads the provisions of the Compact regarding use of the FIIP water right. The Compact provides that the FIIP Right is "dedicated to use by the FIIP and FIIP irrigators and includes uses of water for irrigation and Incidental Purposes allowed by FIIP through water service contracts." Compact Art. II.32 (defining FIIP Water Use Right). The Compact defines "Incidental Purposes" as "purposes incidental to irrigation, including but not limited to Rehabilitation and Betterment, and lawn and garden purposes allowed by the FIIP through water service contracts." Compact Art. II.42. These provisions do not authorize use of the FIIP Water Use right for instream flows, as Slack suggests.

¹¹ As the Court discussed in the Order on Motions, the instream flow provisions already in place were addressed and recognized in *Joint Bd. of Control of Flathead, Mission & Jocko Irr. Districts v. United States*, 832 F.2d 1127 (9th Cir. 1987) (holding that held the Tribes' instream rights are senior to all irrigation rights because they are based on an aboriginal fishing right with a time immemorial priority date).

Alleged Injury From Erosion Impacts

12. Slack alleges injury from the erosion impacts related to channel maintenance flows. However, Slack did not provide factual evidence or expert testimony that implementation of any of the instream flow water rights have caused or will cause erosion or other adverse impacts to any property for which Slack claims an interest. Nor does Slack quantify any actual or imminent degree of any erosion. Moreover, as indicated in the testimony of Casey Ryan, the channel maintenance flows only were implemented for a single season and were based on other legal authority including the Biological Opinion and the FIIP operations generally, as outlined in its manual. (Tr. Vol. II at 87:19-89:19). Slack fails to prove erosion from channel maintenance flows arising out of operation of the Compact.

13. Slack's concerns about channel maintenance flows also ignores the Compact provisions for establishing instream flows. The Compact provides that instream flows on the Reservation do not become enforceable until certain actions specified in Compact Article IV.C. are completed. Until that time, the interim instream flows that were set independent of the Compact are enforced. Compact Art. III.C.1.d.iv. Slack provided no testimony or evidence as to why or how she will be injured by the instream flow enforceability process built into the Compact.

Conclusion

14. The evidence and testimony offered by Slack fails to prove material injury by operation of the Compact.

ORDER

Therefore, it is ORDERED that these Findings of Fact and Conclusions of Law shall be incorporated by reference into the Court's Final Order Approving the Compact.

Stephen R. Brown
Chief Water Judge

Service via Electronic Mail:

Adam R.F. Gustafson, Acting Assistant
Attorney General
David W. Harder, Senior Attorney for Legal
Issues
U.S. Department of Justice
Indian Resources Section
Environment & Natural Resources Div.
david.harder@usdoj.gov
efile_denver.enrd@usdoj.gov

Rebecca M. Ross, Senior Attorney
United States Department of Justice
Indian Resources Section
Environment and Natural Resources Div.
rebecca.ross@usdoj.gov

Daniel J. Decker
Melissa Schlichting
Christina M. Courville
Zach Zipfel
Danna R. Jackson
Confederated Salish & Kootenai Tribes
Tribal Legal Department
Melissa.Schlichting@cskt.org
Christina.Courville@cskt.org
Daniel.Decker@cskt.org
zachary.zipfel@cskt.org
danna.jackson@cskt.org

Ryan C. Rusche
Sonosky, Chambers, Sachse, Enderson &
Perry, LLP
rusche@sonosky.com

Molly M. Kelly
Jennifer C. Wells
Montana Department of
Natural Resources and Conservation
Molly.kelly2@mt.gov
Jean.saye@mt.gov
J.wells@mt.gov

Interested Party:
Thane Johnson
Alwyn Lansing
Assistant Attorneys General
Montana Department of Justice
Thane.Johnson@mt.gov
Alwyn.Lansing@mt.gov
AGOWaterCourtFilings@mt.gov

Kristin L. Omvig
OMVIG HAMMER LAW, P.C.
kristin@ohlawmt.com

Service Via USPS Mail:

Courtesy Copy:
Bill & Irene, LLC
C/O William A Sego
40080 Fox Glove Lane
PO Box 224
Big Arm, MT 59910

Courtesy Copy:
Sego, William
489071 US Hwy 93
Suite A, PBM #105
Polson, MT 59860