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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. 5 (Doty, Palmer, etc.)

HEARING 5 – 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 objectors Randolph Doty (“Doty”) and Delbert Palmer (“Palmer”). Doty and Palmer 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 the Compact is fundamentally fair, adequate, and reasonable, and the Compact conforms to applicable law. The Order on Motions shifted the burden to parties who filed objections to the Compact (“Objectors”), including Doty and Palmer, 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 Doty and Palmer. This Order addresses evidence of alleged material injury specific to Doty and Palmer.

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.¹ (Doc. 19.00). Issuance of the Preliminary Decree commenced a statutory period for potentially interested parties to file objections to the Compact.

2. Doty filed an objection to the Compact on December 6, 2022. (Doc. 410.00). Doty filed an amended objection on February 9, 2023. (Doc. 952.00). On February 29, 2024, the Court denied Doty's request to amend his objection further. Order No. 40 on Motion to Amend Objections. (Doc. 1726.00).

3. Palmer filed an objection to the Compact on February 9, 2023. (Doc. 1025.00). Palmer refiled the objection on February 10, 2023. (Doc. 1033.60).

4. After the Court issued its Order on Motions, Doty, Palmer and several other parties collectively filed a "Request to be Heard." (Doc. 2140.00). The Court consolidated this hearing request and set proceedings for it as Evidentiary Hearing No.

5. Following various prehearing proceedings, the Court conducted an evidentiary hearing on April 24, 2025, at the Missoula County Courthouse.

5. Following the hearing and preparation of a hearing transcript, each party filed post hearing briefs pursuant to the briefing schedule set by the Court. Doty and

¹ 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."

Palmer filed their opening brief on August 20, 2025. (Doc. 2630.00). The Compact Parties filed their opening brief on August 22, 2025. (Doc. 2643.00). Doty and Palmer filed a response on September 9, 2025. (Doc. 2663.00). The Compact Parties filed a response on September 19, 2025. (Doc. 2671.00).

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. 5:

FINDINGS OF FACT

Facts Applicable to Both Doty and Palmer

1. Neither Doty nor Palmer is a party to the Compact.
2. Doty and Palmer each own property within the external boundaries of the Flathead Reservation. Their respective properties are within the area served by the Flathead Indian Irrigation Project (“FIIP”). The FIIP system consists of a network of reservoirs and canals that deliver water to various users. (H-5 CP Ex. 7).²
3. The United States Bureau of Indian Affairs (“BIA”) operates the FIIP. BIA follows a set of Operation and Maintenance Guidelines to guide its FIIP operations. (H-5 CP Ex. 7). The Operation and Maintenance Guidelines specify that water deliveries are made using a quota³ system based on available storage water, estimated runoff, and other factors, including “instream flow requirements.” (H-5 CP Ex. 7, at 74; H-5 Tr. at 69:4-70:4).⁴
4. As part of the FIIP water supply, the Compact quantifies and includes other provisions for a “FIIP Water Use Right.” The Compact defines the FIIP Water Use Right 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

² Exhibit references are to the hearing number (H-5) and either the Compact Parties (“CP”) or Doty and Palmer (“DP”) followed by the corresponding number.

³ The Operation and Maintenance Guidelines define “quota” as the “quantity of irrigation water available for delivery by the project expressed as the number of acre-feet per acre. This number is calculated by dividing the forecasted water supply by the number of acres under the project.” (H-5 CP Ex. 7, at 16).

⁴ All transcript (“H-5 Tr.”) citations are to the page and line numbers in the Evidentiary Hearing No. 5 Transcript.

by the FIIP through water service contracts.” Compact Art. II.32.⁵ This provision authorizes a portion of the Tribal Water Right, as defined in the Compact, to be used for the FIIP. The three water right abstracts (water right nos. 76L 30052930, 76L 30052931, and 76L 30052932) for the FIIP Water Use Right are set forth in Compact Appendix 5 (part of Decree Appx. 2).

5. The abstracts included in Compact Appendix 5 quantify the FIIP Water Use Right and specify its various elements. The abstracts identify an annual irrigation period of use as April 15 to October 15. The abstracts also specify a July 16, 1855 priority date.

6. In addition to the FIIP Water Use Right, the Compact also quantifies instream flows for various streams within the FIIP. The specific quantities and locations of the FIIP Instream Flows⁶ are set out in a series of abstracts in Compact Appendix 11 (part of Decree Appx. 2). These instream flow rights have “time immemorial” priority dates.

7. 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-5 CP Ex. 8). The FIIP Biological Opinion specifies measures to protect bull trout listed as a threatened species under the Endangered Species Act. The Biological Opinion resulted from consultation with FWS.

Facts Specific to Doty

8. Doty owns real property in Lake County. Doty’s property is located within the boundaries of the Flathead Reservation.

9. As described by the Compact Parties’ witness Casey Ryan and confirmed by Doty, Doty’s property is near the F-Canal, which is part of the FIIP water conveyance

⁵ The complete definition includes an additional sentence that states: “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.

⁶ Although the Compact does not define FIIP Instream Flows, it does include a definition of “Instream Flow.” Compact Art. IV.44. According to this definition, Instream Flows are “quantified for a stream reach and measured for enforcement purposes at a specific point.” *Id.*

infrastructure in the Charlo area. (H-5 Tr. 91:16-19 (Ryan direct); 101:3-4 (Doty cross examination)).

10. Doty testified that he received water from FIIP for 62 days in 2023 and 70 days in 2024. (H-5 Tr. 60:4-13). Doty also testified that historically delivery of FIIP water began on April 15 each year.⁷ (H-5 Tr. 41:16-24). Doty's testimony implies that he believes provisions of the Compact led to reduced FIIP water deliveries during these years. (H-5 Tr. 41:1-2).

11. Doty did not appeal any FIIP water delivery decisions, including those during the years he claimed the historical water delivery schedule was altered.

12. Doty is the record co-owner of state-based water right claim 76L 150510-00. The abstract of the claim describes a water right for multiple domestic use from a groundwater well with a December 31, 1946 priority date. The abstract quantifies the flow rate as 250.00 gpm and the volume as 10.00 acre feet per year. (H-5 DP Ex. 1).⁸ The abstract also specifies that water may be used for multiple domestic use during the entire year.

13. Doty also is a record co-owner with several other parties of water right claim 76L 142028-00. The abstract of the claim describes it as a right to use water from an unnamed tributary of Mission Creek for irrigation use with a July 16, 1855 priority date. The abstract quantifies the claim with a flow rate of 2.67 cfs and a volume of 3.00 acre feet. (H-5 DP Ex. 2). The abstract also specifies that water may be used annually for irrigation use from May 1 to October 10. Doty testified that his abstract provides 163 days of irrigation water. (H-5 Tr. 60:24-61:2).

14. The abstract for water right claim 76L 142028-00 describes a place of use for irrigation of up to 164 acres. Doty only owns and irrigates between 77 and 80 acres of the place of use. (Agreed Facts, ¶ 2).⁹

⁷ Doty testified that he sometimes initiates his calls for water prior to April 15 in certain years.

⁸ 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.

⁹ The agreed facts are set forth in the Hearing 5 Prehearing Order. (Doc. 2506.00).

15. Doty is assessed by the FIIP for 63.27 acres. The assessed lands also are within the places of use included in claim 76L 142028-00. (Agreed Facts, ¶ 3).

Facts Specific to Palmer

16. Palmer is the record owner of water provisional permit no. 76L 48337-00 issued by the State of Montana. The permit authorizes the use of water from an unnamed tributary of Big Gulch for fish and wildlife and for fishery use with a March 30, 1982 priority date. The abstract quantifies the permit with a 105.65 acre feet volume and no quantified flow rate. (H-5 DP Ex. 3). The abstract also specifies that water may be used for the listed purposes during the entire year.

17. Palmer's property is located downgradient from Ninepipes Reservoir, one of the water storage projects operated by the FIIP. (H-5 Tr. 91:12-15).

18. Palmer is assessed by the FIIP for approximately 11 acres. (Agreed Facts, ¶ 5). Palmer testified that he believes he is entitled to water for a full 20-acre tract of land, but his amount has been reduced. (H-5 Tr. 72:3-73:2). He was not able to identify who authorized this change, nor did he connect this claimed reduction to any provision of the Compact.

19. The Compact Parties called Casey Ryan to testify. Ryan is the manager of the Tribes' Division of Engineering Water Resources and a hydrologist within the Tribes' Natural Resource Department. Ryan also has served on the Compact Implementation Technical Team ("CITT").

20. Ryan testified that neither the CITT nor the Tribes have taken any action to limit the FIIP irrigation season. Ryan also testified that a number of infrastructure projects, including an enhanced water gaging network, have been implemented by the Tribes. This has allowed water availability information to be published on a public-facing website. (H-5 Tr. 88:1-89:9).

21. Ryan also described some of the benefits of FIIP infrastructure improvement projects through what he described as the Irrigation Restructure Program that will provide benefits to parties such as Palmer and Doty. (H-5 Tr. 89:24-92:25).

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 Related to the FIIP Operations

2. Doty and Palmer contend they are materially injured by the number of irrigation days adjudicated and the number of irrigation days when water actually is delivered. They argue the Compact results in a shorter time period within which FIIP delivers water.

3. Neither Doty nor Palmer identified any provision of the Compact that led to reduction in the number of dates the FIIP delivered or will deliver water. Instead, the Compact recognizes the FIIP Water Use Right for an authorized annual period of use that spans from May 15 to October 15. Whether water actually is delivered during this period in any given year depends on natural variability in water supply and other factors specified in the FIIP Operation and Maintenance Guidelines.

4. The FIIP Operation and Maintenance Guidelines predate the Compact and do not result in injury arising from the Compact.

5. Palmer's contention that his assessed irrigated acreage has been reduced from 20 acres to 11 acres is not related to the Compact. To the extent any reduction occurred, it was four years ago and Palmer testified he addressed the issue with the BIA at that time. (H-5 Tr. 74:2-76:13).

6. Neither Doty nor Palmer identified any modifications to the quota system used by the FIIP to deliver water to FIIP water users. They also did not identify any

modifications to the Operations and Maintenance Manual related to provisions of the Compact.

Conclusion

7. The evidence and testimony offered by the Doty and Palmer 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.

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Chief Water Judge

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