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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. 6 (Valerie Root)

HEARING 6 – 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 Valerie Root (“Root”). Root 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 that the Compact conforms to applicable law. The Order on Motions shifted the burden to parties who filed objections to the Compact (“Objectors”), including Root, 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 Root. This Order addresses evidence of alleged material injury specific to Root.

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. Root filed an objection to the Compact on February 7, 2023. (Doc. 811.00). Root later amended the objection with leave of the Court.² (Doc. 1486.00).

3. After the Court issued its Order on Motions, Root filed a Request for Evidentiary Hearing on February 21, 2025. (Doc. 2132.00). The Court consolidated Root's hearing request as Evidentiary Hearing No. 6.

4. The hearing took place on April 24, 2025, at the Missoula County Courthouse. Valerie Root testified and was cross-examined by the Compact Parties. Root was self-represented at the hearing. The Compact Parties called Seth Makepeace as a witness. The Court also admitted several exhibits, as summarized in the Court Minutes for the hearing. (Doc. 2530.00).

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. Root filed an opening brief on August 22, 2025. (Doc. 2654.00). The Compact Parties filed their

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."

² Order No. 42 on Motions to Amend Objections. (Feb. 29, 2024, Doc. 1728.00).

opening brief the same day. (Doc. 2641.00). The Compact Parties (Doc. 2672.00) and Root (Doc. 2684.00) each filed a response on September 19, 2025.

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. 6:

FINDINGS OF FACT

1. Root is not a party to the Compact.
2. Root owns property near St. Ignatius. Her property is located in the southeast portion of the Flathead Reservation, adjacent to Agency Creek in the Jocko River drainage. (H-6 Tr. 45:18-23). Root acquired her property in 1991. (H-6 Tr. 32:22-24).
3. Agency Creek is one of several streams that originate in the Mission Mountains and flows generally westerly.
4. Several irrigation canals operated by the Flathead Indian Irrigation Project (“FIIP”) bisect Agency Creek upstream from Root’s property. From upstream to downstream, these canals include the Jocko Upper S Canal, the Jocko Upper J Canal, and the Jocko E Canal. The location of these canals in relation to Root’s property are depicted on Compact Parties’ Exhibit 4. (H-6 Ex. CP-4).³
5. Root testified that she does not receive water from the FIIP. (H-6 Tr. 29:18-30:1; 41:4-5).
6. Root owns water right no. 76L 64218-00. Although neither Root nor the Compact Parties introduced an abstract corresponding to this water right number, the State’s water rights record system indicates this water right number is for a groundwater certificate associated with a domestic well. The parties agreed the water right is for non-irrigation purposes. (Agreed Facts, ¶ 1, Doc. 2519.00).
7. Root gave conflicting testimony whether she has other water rights, but did not identify ownership of any other water right by water right number. Specifically, Root

³ Exhibit references are to the hearing number (H-6) and either the Compact Parties (“CP”) or Root, followed by the exhibit number.

did not identify a claimed private water right to use water from Agency Creek for irrigation use or any other purpose. (H-6 Tr. 11:5-14:2).

8. Root testified generally about Secretarial water rights, but did not identify a Secretarial water right she claims. Much of Root's testimony pertained more to whether she owns a valid Secretarial water right, which is not a matter before the Court in this proceeding. Although Root offered several exhibits that describe some historical information about Root and her predecessors, Root did not identify a specific water right that identifies the elements of any claim to water beyond her domestic groundwater certificate. Root confirmed on cross-examination that she is not aware of anything in the State's water right database that establishes she owns a water right for irrigation use. (H-6 Tr. 39:25-41:3).

9. Root testified that the hydrology of Agency Creek changed in 2021 and affected her property. (H-6 Tr. 28:6-17). Root believes this hydrologic change caused her pond to dry up. Root testified that she discussed the concern with someone at the FIIP's water engineer office in Ronan. However, Root did not identify any modifications to the FIIP system in 2021, nor did she describe how any impacts to her pond are connected to the Compact.

10. Root did not identify a water right associated with the pond she described in her testimony.

11. The Compact Parties called Seth Makepeace as a witness. Makepeace is a hydrologist employed by the Tribes.

12. Makepeace testified about his familiarity with the Agency Creek area. He described several locations where stream gages have been installed. Root's property is downstream from a stream gage on Agency Creek below the Upper S Canal and another gage above the Upper S Canal. (H-6 CP Ex. CP-4).

13. Makepeace testified that Agency Creek is subject to interim instream flows. These interim flows have been in place since prior to the Compact.

14. Makepeace also testified that the Compact provides for instream flows for Agency Creek, which he described as "other instream flows." (H-6 Tr. 51:12-17).

Makepeace explained that the place of use for these flows on Agency Creek extend from near its mouth upstream through the portion of Agency Creek adjacent to Root's property.

15. Appendix 12 (part of Decree Appx. 2) to the Compact include abstracts for "other instream flows." The abstract for 76L 30052858 describes the right as a reserved right for Agency Creek fish and wildlife use with a time immemorial priority date. The Compact includes a limitation for the Appendix 12 Other Instream Rights that states:

The Parties agree that a right identified in Appendix 12 shall only become enforceable on the date that an enforceable flow schedule for that right has been established pursuant to the process set forth in the Law of Administration, Section 2-1-115 of this Ordinance, for the development of such enforceable schedules.

Compact, Art. III.C.1.d.iii.

16. Root did not object to any element of the Agency Creek abstract.⁴

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 Injuries

2. The main injury alleged by Root was her allegation that something caused her pond to dry up in 2021. These allegations fail to demonstrate injury resulting from operation of the Compact for several reasons. First, Root failed to identify any provision

⁴ The Compact appendices also include an abstract for Agency Creek in Appendix 11, which includes the abstracts for instream flows for FIIP sites. This Agency Creek abstract (76L 30052785) provides for an instream flow measurement point below the Upper Jocko J Canal, one of the FIIP canals depicted on Compact Party Ex. 4.

of the Compact operational in 2021 that might have modified water flow to her property. Second, Root failed to identify a water right that entitles her to call for water to keep her pond at any certain water level. Root's water right to her domestic well is not subject to call under the terms of the Compact. Compact Art. III.G.1. Third, to the extent Root relies on a certain water level in Agency Creek to keep her pond full due to any hydrologic connection to Agency Creek, Root failed to explain why she either is not protected by the Compact process to set enforceable instream flow levels or by the projected flow levels themselves.

3. The other injury Root alleges relates to her contention that the Compact results in a denial of Secretarial or other private water rights she claims. Root did not identify any provision of the Compact that impacts her ability to assert private water rights in a separate proceeding. This case does not involve the adjudication of Root's private water rights, whether Secretarial, Walton, or otherwise. Instead, the Compact preserves the ability of Root and other Objectors to pursue and protect their private water rights in basin specific proceedings before the Water Court. Compact Art. V.B.6 & 7; Order on Motions, at 50-51.

4. The remainder of Root's contentions are legal arguments that could have been raised during the legal issues phase of this case and are beyond the scope of issues for the evidentiary hearing phase.

Conclusion

5. The evidence and testimony offered by Root 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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