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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. 11 (Jore and certain other Objectors)

HEARING 11 – 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 Rick Jore (“Jore”), Rick Schoening (“Schoening”), Gunner Junge (“Junge”), and Kathleen French (“French”) (the “Jore Group Objectors”). Each of the Jore Group Objectors 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 the Jore Group Objectors,

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 the Jore Group Objectors. This Order addresses evidence of alleged material injury specific to the Jore Group Objectors.

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. Jore (Doc. 1513.00, as amended),² Schoening (Doc. 719.00), Junge (Doc. 1534.00, as amended),³ and French (Doc. 1448.00, as amended)⁴ each filed objections during the objection period.

3. On July 10, 2024, Jore filed a Motion Dealing with the Fairness and Adequacy of the Flathead Water Compact. Several other Objectors joined this motion. (Doc. 1832.00). The Court denied the motion as part of the Order on Motions.

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 Jore originally filed objections on February 3, 2023. (Doc. 590.00). Jore refiled the objection on February 7, 2023. (Doc. 824.00). Jore sought leave to amend their objection on December 8, 2023. (Doc. 1513.00). The Court granted the motion on February 14, 2024. (Order No. 28 on Motions to Amend Objections; Doc. 1710.00).

³ The background to the Junge objections is set forth in Order No. 31 on Motions to Amend Objections. (Doc. 1717.00).

⁴ The background to the French objections is set forth in Order No. 38 on Motions to Amend Objections. (Doc. 1724.00).

4. On July 9, 2024, Junge and others filed an Objection to Certain Omissions of Standard of Review/Including Violations of Procedural Due Process of these Proceedings. (Doc. 1799.00). The Court treated this as a substantive motion and denied it as part of the Order on Motions.

5. After the Court issued its Order on Motions, Jore, Schoening, Junge, and French along with several others, filed a collective Request for Hearing/Discovery.⁵ (Doc. 2121.00). The Court consolidated this hearing request and set proceedings for it as Evidentiary Hearing No. 11. Following various prehearing proceedings, the Court conducted an evidentiary hearing on April 30, 2025, at the Lake County Courthouse in Polson, Montana. The Jore Group Objectors participated in the hearing as self-represented parties.

6. Pursuant to Case Management Order No. 6 (Doc. 2142.00), Jore and French pre-filed their direct testimony. (Doc. 2443.50 (Jore); Doc. 2466.00 (French)). Jore and French also were present at the hearing for cross-examination. With the consent of the Court, Gunnar Junge gave direct testimony and was cross-examined via Zoom. Schoening gave live testimony. The Jore Group Objectors also called Tiffani Murphy as a witness.

7. The Court admitted exhibits from Jore. The other Jore Group Objectors did not offer any exhibits. The Court also admitted exhibits offered by the Compact Parties. The Compact Parties did not call any witnesses. The testimony and exhibits admitted for this hearing are summarized in the Hearing 11 – Court Minutes. (Doc. 2582.00).

8. Following the hearing and preparation of a hearing transcript, each party filed post hearing briefs pursuant to the briefing schedule set by the Court. The Jore Group Objectors filed their opening brief on August 22, 2025. (Doc. 2652.00). The Compact Parties filed their opening brief on August 22, 2025. (Doc. 2639.00). The Jore Group Objectors filed a response on September 19, 2025. (Doc. 2685.00). The Compact Parties filed a response on September 19, 2025. (Doc. 2673.00).

⁵ The other parties later withdrew their requests to participate in an evidentiary hearing. The various withdrawals are summarized in the Prehearing Order for this hearing. (Doc. 2551.00, at 3-4).

9. Based upon the record, the Court makes the following findings of fact and conclusions of law for Evidentiary Hearing No. 11:

FINDINGS OF FACT

1. None of the Jore Group Objectors are parties to the Compact.

Facts Specific to Jore

2. Jore owns 160 acres of property near Ronan, within the boundaries of the Flathead Reservation.

3. Jore is the record owner of state-based water rights 76L 128897-00 and 76L 40286-00.

4. Jore's Water right no. 76L 128897-00 is a claim to use water from an unnamed tributary of Mollman Creek, also known as Marsh Creek, for fish ponds and fish raceways in connection with a business that raises and sells trout to private fish pond owners. The water right abstract contains a notation in the volume element which states "the use of this water appears to be largely nonconsumptive." (H-11 Jore Ex. B2).⁶

5. Water right no. 76L 40286-00 is a groundwater certificate for domestic and lawn and garden use with a December 10, 1981 priority date. (H-11 Jore Ex. B1).

6. Jore's pre-filed direct testimony recites several categories of alleged material injury, including classification of Jore's land as being part of the Flathead Reservation, and the Flathead Reservation Water Management Board's authority to administer water rights on the Reservation.

7. During cross-examination, Jore clarified that his concern about the jurisdiction of the Water Management Board was constitutional in nature. Jore contends he only should be subject to state oversight of his water rights. (H-11 Tr. 50:20-25).⁷

8. In pre-filed testimony, Jore raised concerns about his water rights being subject to call by downstream senior water rights owners. Specifically, Jore contends that

⁶ Exhibit references are to the hearing number (H-11) and either the Compact Parties ("CP") or Jore, followed by the exhibit number.

⁷ All transcript references ("H-11 Tr.") in this document are to the page and line numbers of the Evidentiary Hearing No. 11 written transcript.

even though his domestic water right cannot be called under the terms of the Compact, the call protection provision does not protect him from calls from his neighbor.

9. Jore's property is situated upstream from property owned by third parties who hold water right claims with more senior priority dates. (H-11 Jore Ex. B3). Jore did not offer testimony reconciling the point of diversion for the downstream rights, or how a call might operate. Jore also did not offer testimony as to the likelihood of the downstream rights asserting a call as a result of any Compact provision.

Facts Specific to Junge

10. The Junges reside off the Flathead Reservation in Thompson Falls. They receive water from the City of Thompson Falls through its municipal system. (Agreed Facts, ¶ 1; H-11 Tr. 17:6-12). The Junges do not represent the City of Thompson Falls, nor is Thompson Falls an objector to the Compact.

11. The Junges do not own any water rights, nor did their testimony establish any other specific injuries to property or any specific injury otherwise tied to the operation of the Compact. Instead, The Junge's testimony was more in the nature of legal concerns with the Compact as well as philosophical disagreements with the Compact.

12. Even though the Junges do not hold water rights, Gunner Junge testified that they are harmed by virtue of a time immemorial priority date. Junge did not identify a specific interest that would be affected by a time immemorial priority date, nor did he explain how any particular provision of the Compact would operate in relation to a time immemorial priority date.

13. Junge testified that they were materially injured relating to loss of property value. (H-11 Tr. 25:9-10). However, Mr. Junge did not provide any appraisal evidence or other evidence as to diminution in value, or how any such diminution was tied to any operative provision of the Compact.

Facts Specific to Schoening

14. Schoening owns property on the Flathead Reservation south of Polson.

15. Schoening testified that he owns two water rights in Lake County. During cross-examination, Schoening clarified that one of his claimed water rights is

denominated as claim 76L 51614-00. (H-11 Tr. 71:20-22). Schoening did not offer exhibits or testimony explaining the elements of the rights.⁸ Schoening provided very little testimony about how he uses his water rights, though he conceded he is not claiming any personal stock water loss, nor did he identify a stock water right.

16. Schoening testified he believes he receives water from the Flathead Indian Irrigation Project (“FIIP”). (H-11 Tr. 80:23-25). Schoening testified that in August 2023 he did not receive FIIP water. He identified the A-Canal as the delivery means for FIIP water, and that the canal was shut off at that time. (H-11 Tr. 72:18-19). Schoening conceded that he did not file any appeal with the FIIP. Instead, he testified as to his general belief that “fisheries took a precedent over the water delivery to the agriculture areas which is part of the compacts.” (H-11 Tr. 73:10-12).

17. Schoening testified that he did not receive FIIP water from his neighbor in August 2023. Schoening did not explain the arrangement with his neighbor or the source of the neighbor’s rights that Schoening testified he shares.

18. Schoening also testified about material injury related to the public at large.

19. As part of Schoening’s cross-examination, the Court took judicial notice of the United States Department of Interior, Bureau of Indian Affairs, Operation and Maintenance Guidelines for the Flathead Indian Irrigation Project, and the regulations codified at 25 CFR, part 171.

Facts Specific to French

20. Kathleen French testified on behalf of both herself and Mark French.

21. Kathleen and Mark French own several parcels of property west of and downstream from the Flathead Reservation near Paradise, Montana. The lower Flathead River flows by one of these parcels.

⁸ The Prehearing Order states as an agreed fact that Schoening owns water right claim nos. 76L 134809-00, 76L 142381-00, and 76L 46803-00. (Doc. 2551, Agreed Facts, ¶ 2). At the hearing, Schoening testified that the Prehearing Order is incorrect and he actually owns two water rights. Schoening did not identify the second water right number during the hearing. The State’s centralized water rights database indicates Schoening does not own water right nos. 76L 134809-00, 76L 142381-00, and 76L 46803-00.

22. The Frenches (through an LLC) own several water rights, including rights associated with four groundwater wells with a domestic/lawn and garden purpose (76M 30012152, 76L 11258-00, 76L 30148988, 76M 30152109), and rights to use water from unnamed tributaries of the Flathead River and the Flathead River for irrigation use. (76L 35612-00, 76L 35610-00, 76L 103307-00). The Frenches do not use water from the mainstem of the Clark Fork. (H-11 Tr. 113:11-13). Ms. French described Wilson Creek as the source of some of these water rights.

23. French testified that any call of water could result in effects to their agricultural operation, including potential “loss of pasture, loss of food source for our livestock, loss of fattening yearlings that will be [a]ffected and health of fertility of the stock.” (H-11 Tr. 87:5-9 (typo corrected)). French did not elaborate what Compact provisions would result in a call for water, nor did she identify the particular water right that would form the basis for such a call.

24. French testified about how Compact implementation might affect the hydrology on Wilson Creek, which runs through one of the French properties. French testified about her concern that implementation of the instream flow provisions of the Compact would cause peak flows in the Flathead River to rise, resulting in water backing up on to the French property. (H-11 Tr. 88:20-90:11).

25. French also testified about concerns regarding how calls for water to satisfy instream flows might affect the French’s pasture and livestock. Ms. French was unable to describe the impact of calls with any specificity, or to define how any water rights owned by the Frenches might be curtailed in connection with operation of the Compact. (H-11 Tr. 116:5-11).

26. French also raised concerns about how calls for water might affect the Paradise community water system, which she characterized as a non-municipal system. She raised concerns about how the Compact might affect the availability of water for fire suppression.

27. As with other witnesses, French testified about concerns that even if the Compact precludes the Tribes from calling water rights owned by the Frenches, they

could be called by third parties. French did not identify specific water users with such rights, or how such calls might occur.

Tiffani Murphy Testimony

28. The Jore Group Objectors also called Tiffani Murphy as a witness. Murphy is employed by Lake County as a land use planning director.

29. Murphy did not provide any specific testimony linking the Compact to approval, or timing of approval, of subdivisions in Lake County. Instead, Murphy testified on cross-examination that she was not aware of any subdivision applications being withdrawn or delayed for reasons related to the Compact.

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 ("*Crow Compact II*"). 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 Public Interest

2. Several of the Jore Group Objectors contend operation of the Compact results in material injury to the public interest. To some extent, these contentions are based upon effects to third parties who either did not file objections at all (*e.g.* the City of Thompson Falls; the unincorporated town of Paradise), or who did not participate in an evidentiary hearing. The Jore Group Objectors lack standing to assert injury on behalf of third parties.

3. With respect to public interest generally, the Court already concluded that, based on *Crow Compact II*, a compact's allocation of an amount of water for fishery maintenance is consistent with the public interest, especially when the Compact has been

ratified by the Legislature. Order on Motions, at 35. The Jore Group Objectors did not offer evidence of any public interest affected by operation of the Compact that lies outside what the Legislature authorized. The Court concludes that the lengthy public process, together with Legislative approval, demonstrate Compact approval is in the public interest and the Jore Group Objectors fail to prove otherwise.

Jore

4. Jore’s testimony failed to prove material injury because he offered no evidence to prove the Compact would affect his identified water rights in any way. Jore’s water right no.76L 128897-00 is a nonconsumptive right which Jore failed to prove is affected by any specific provision of the Compact. Instead, both this right and Jore’s domestic groundwater certificate (76L 40286-00) receive call protection that would not exist absent the Compact.

Junge

5. Junge’s claims of injury largely amount to criticisms of the legal conclusions reached by the Court in its Order on Motions. Junge failed to identify any real property interest or any water right that would be affected in any way by operation of the Compact. Instead, Junge’s only claimed injury arises out of concern as a municipal resident who relies on the City of Thompson Falls municipal drinking water system. The Compact contains provisions that preclude the Tribes from making a call for water that would curtail municipal use. Compact Art. III.G.1 (Compact provision relinquishing “right to exercise the Tribal Water Right to make a call against any Water Right Arising Under State Law whose purpose(s) do(es) not include irrigation”).

Schoening

6. Other than generalized and non-specific claims of injury to the public interest, Schoening’s claimed injury largely arises out of concern that lack of water availability in August 2023 is attributable to operation of the Compact. The only personal water right Schoening identifies is water right no. 76L 51614-00. Schoening did not offer evidence of this water right to the Court sufficient to demonstrate the right is subject to a

Call under the terms of the Compact. Absent any such evidence, the Court has no basis to evaluate any claimed injury to this water right.

7. Schoening also failed to prove injury arising out of any entitlement to water provided by the FIIP system, either directly or to Schoening based on his status as owning property within the area served by the FIIP. Schoening did not dispute that water deliveries under the FIIP system are governed by the FIIP Operation Guidelines, not the Compact directly. Schoening offered no proof that the Compact somehow resulted in a reduction in the amount of water available to the FIIP system, or that the Compact expands on the priority system already recognized by the Ninth Circuit in *Joint Bd. of Control of Flathead, Mission & Jocko Irrigation Districts v. United States*, 832 F.2d 1127 (9th Cir. 1987).

French

8. The interests French identified, including flood risk from the Flathead River, potential calls for water to Wilson Creek, fire suppression risk, and future subdivision development, were not specifically linked to any Compact provision necessary to establish any injury.

9. French failed to explain how off-reservation instream flows enhance any flood risk. Although French did not offer any testimony or evidence about specific off-reservation instream flow provisions, those provisions are stated in terms of minimum flow levels. *E.g.*, Compact Appx. 27 (abstract for water right 76N 30063808, lower Clark Fork River instream flows, as measured at the U.S.G.S. gage below Cabinet Gorge dam). Likewise, French did not provide evidence as to how any upstream instream flow provisions would cause an increase flood risk. Absent any such evidence, French fails to prove any risk of material injury caused by operation of the Compact.

Conclusion

10. The evidence and testimony offered by the Jore Group Objectors 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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