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Montana Water Court

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. 14
(Craig H. Blevins & Beth M Blevins, Smyth Family Trust, Longhorn Arena, LLC, Ernie Otoupalik, Sheila Vallejo, Tad & Tamara Revocable Trust)

HEARING 14 – 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 Craig H. Blevins & Beth M Blevins (“Blevins”); Longhorn Arena, LLC (“Longhorn”); Ernie Otoupalik (“Otoupalik”); Smyth Family Trust (“Smyth”); Tad & Tamara Thomas Revocable Trust (“Thomas”), and Sheila Vallejo (“Vallejo”) (collectively, “Hearing 14 Objectors”). The Hearing 14 Objectors all 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”) 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 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 Hearing 14 Objectors. This Order addresses evidence of alleged material injury specific to the Hearing 14 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. (Doc. 19.00). Issuance of the Preliminary Decree commenced a statutory period for potentially interested parties to file objections to the Compact.

2. Blevins (Doc. 684.00 and Doc. 1519.00, as amended), Longhorn (Doc. 762.00), Otoupalik (Doc. 764.00), Smyth (Doc. 950.00 and Doc. 1510.00, as amended), Thomas (Doc. 394.00 and Doc. 1520.00, as amended), and Vallejo (Doc. 297.00, Doc. 823.00, and Doc. 1512.00, as amended), each filed objections during the objection period.¹

3. On July 10, 2024, Local Government Objectors and others filed a joint Motion and Brief to Deny Compact Based on Adequacy and Fairness and Other Issues of Law. (Doc. 1814.00). The Court denied this motion as part of the Order on Motions.²

¹ The Court authorized the Blevins, Smyth, Thomas, and Vallejo amended objections in its Second Order on Motions to Amend Objections (Doc. 1606.00, Jan. 25, 2024).

² This is the same motion as that referenced for the Local Government Objectors as part of the Findings of Fact and Conclusions of Law for Evidentiary Hearing Nos. 12 and 13.

4. After the Court issued its Order on Motions, the Hearing 14 Objectors and several other Objectors filed a collective Request for Hearing. (Doc. 2118.00). The Court consolidated this hearing request and set proceedings for it as Evidentiary Hearing No. 14. The parties to the Request for Hearing not identified as Hearing 14 Objectors all withdrew their evidentiary hearing requests. (Doc. 2579.00 – Prehearing Order, at 1).

5. Following various prehearing proceedings, the Court conducted an evidentiary hearing on May 1, 2025, at the Lake County Courthouse in Polson, Montana. Pursuant to Case Management Order No. 6 (Doc. 2142.00), each of the Hearing 14 Objectors pre-filed their testimony, including: (a) Russ Smyth for Smyth Family Trust (Doc. 2457.00); (b) Tad Thomas for Tad & Tamara Thomas Revocable Trust (Doc. 2458.00); (c) Roy and Sheila Vallejo (Doc. 2459.00); (d) Ernie Otoupalik as an individual and as member/manager of Longhorn Arena, LLC (Doc. 2460.00); and (d) Craig H. Blevins and Beth M. Blevins (Doc. 2471.00). Each of these Objectors was present at the hearing but were not cross-examined by the Compact Parties.

6. After the hearing and preparation of a hearing transcript, each party filed post hearing briefs pursuant to the briefing schedule set by the Court. The Hearing 14 Objectors filed their opening brief on August 22, 2025. (Doc. 2653.00). The Compact Parties also filed their opening brief on August 22, 2025. (Doc. 2649.00). The Hearing 14 Objectors (Doc. 2679.00) and the Compact Parties (Doc. 2675.00) 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 Evidentiary Hearing No. 14:

FINDINGS OF FACT

Facts Applicable to All Hearing 14 Objectors

1. None of the Hearing 14 Objectors are parties to the Compact.
2. Each of the Hearing 14 Objectors owns property, or controls an entity which owns property, within the external boundaries of the Flathead Reservation. Their respective properties all are within the area served by the Flathead Indian Irrigation Project (“FIIP”).

3. The FIIP system consists of a network of reservoirs and canals that deliver water to various users. The United States Bureau of Indian Affairs (“BIA”) operates the FIIP. (H-14 Tr. 42:7-9).³

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 by the FIIP through water service contracts.” Compact Art. II.32.⁴

5. All of the H-14 Objectors also are customers of the FIIP, meaning the FIIP supplies water to them. (H-14 Tr. 23:5-21).

6. The abstracts included in Compact Appendix 5 quantify the FIIP Water Use Right and specify its various elements. The abstracts for the aspects of the FIIP Water Use Right that supply water to the Jocko (76L 30052931) and Mission (76L 30052932) areas identify an annual irrigation period of diversion as April 15 to September 15 and a period of use from April 15 to October 15.⁵ The abstracts also specify a July 16, 1855 priority date.

7. The FIIP uses various canals and laterals to distribute water to water users. These canals include measurement devices at various points where the flow rate of water in the canal is measured and recorded.

Facts Specific to Blevins

8. The Blevins own property near Ronan. They have resided on their property since 1997. The Blevins did not offer deeds or other exhibits to show the specific location of their property. However, the general location of the Blevins’ property and associated watercourses and water delivery infrastructure is depicted on Compact Parties’ Exhibit 9,

³ All transcript (“H-14 Tr.”) citations are to the page and line numbers in the Evidentiary Hearing No. 14 transcript.

⁴ 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.

⁵ The period of use extends later than the period of diversion because the water rights authorize water to be stored and released each year.

which was admitted without objection. (H-14 Tr. 25:19-25). Exhibit 9 depicts the Blevins' property in relation to various FIIP canals and other features. The exhibit indicates the Ronan B Canal crosses their property. (H-14 CP Ex. 9).⁶

9. The Ronan B Canal includes a measurement point below its headworks. This measurement point is depicted by a red target symbol on Exhibit 9. According to the flow direction arrows on the exhibit, the measurement point is upgradient on the canal from the Blevins' property.

10. The Blevins testified that they use several sources of water for their property, including two wells and water delivered by the FIIP. They also claim "Walton" rights, which they understand will be adjudicated outside this case. (Doc. 2471.00, at 2, ¶ 2). The Blevins did not identify their claimed Walton rights by a water right claim number.

11. The Blevins offered and the Court admitted a "Certificate of Domestic Allowance." (H-14 Obj. Ex. 11). According to the title of the document, the Office of the Engineer of the Flathead Reservation Water Management Board issued the certificate. The certificate describes a groundwater water right for domestic, lawn and garden, and stock use with a June 5, 2023 priority date. The Blevins offered the certificate to support their apparent contention that the Compact extinguished their Walton rights.

12. Other than the Certificate of Domestic Allowance, the Blevins did not specifically identify any other water rights appurtenant to their property.

13. The Blevins testified that over the last five years, water delivery from the FIIP has been reduced through "late turn-on dates, early shut-off and less water delivered." (Doc. 2471.00, at 2, ¶ 6).

14. In response to the Blevins' testimony about modifications to water delivery dates, the Compact Parties' witness Seth Makepeace prepared an exhibit that graphically depicts the beginning and end dates for diversions to the Ronan B Canal. (H-14 CP Ex. 10). The information on the exhibit covers two segments of time – the first from 1992 to

⁶ Exhibit references are to the hearing number (H-14) and either the Compact Parties ("CP") or the Hearing 14 Objectors ("Obj.") followed by the corresponding number.

2005 and the second from 2018 to 2024. The bar graph on the top of the exhibit displays the annual volume in acre feet measured in the Ronan B Canal below its headworks. The second is a line graph displaying and comparing the various dates when Ronan B Canal operations started and ended over the same time period. Makepeace testified that he created these graphs from water measurement data maintained on a publicly accessible web site. (H-14 Tr. 29:10-14).

15. The Blevins testified that implementation and operation of the Compact reduced the value of their land. They also contend ditches that deliver water to their property have not been maintained, causing them financial loss. They did not specify the amount of the asserted land value reduction nor did they quantify the amount of financial losses.

Facts Specific to Smyth

16. Russ Smyth testified that he lives near St. Ignatius and has lived there his entire life. His family has lived in this area since 1936.

17. The general location of the Smyth property and associated watercourses and water delivery infrastructure is depicted on Compact Parties' Exhibit 11, which the Court admitted without objection. (H-14 Tr. 26:17-22). According to Exhibit 11, the Smyth property is located on lateral ditches that distribute water from the FIIP Mission-C Canal. (H-14 CP Ex. 11).

18. Smyth testified that their family holds several water rights, including "an 1856 Walton Water Right and Secretarial water rights." (Doc. 2457.00, at 2, ¶ 2). Smyth acknowledged that these water rights will be adjudicated outside this case. Nonetheless, Smyth testified that their water rights are being taken by the Compact. Smyth did not offer any exhibits to document the elements of the claimed water rights.

19. Smyth's pre-filed testimony also described increases to operation and maintenance costs and lack of maintenance to the FIIP canals. Additionally, Smyth testified that they have been affected by reduced water deliveries from the FIIP due to "late turn-on dates, early shut-off and less water delivered." (Doc. 2457.00, at 2, ¶ 5).

20. The Mission-C Canal includes a measurement point at its headworks near St. Ignatius. This measurement point is depicted by a green target symbol on Exhibit 11. Based on the flow direction arrows on the exhibit, the measurement point is upgradient from the lateral ditches that lead to the Smyth property.

21. Similar to the Ronan B Canal, the Compact Parties' witness Seth Makepeace prepared an exhibit with graphs summarizing measurement data for the Mission-C Canal. (H-14 CP Ex. 12).⁷

Facts Specific to Vallejo

22. The Vallejos own property near St. Ignatius. They have lived there for 31 years and the property has been in the family since about 1962.

23. The Vallejos claim several water rights used on the property, including rights from a domestic well and stock water. The Vallejos also receive water delivered by the FIIP.

24. The Vallejos testified that Walton rights are appurtenant to their property. The Vallejos acknowledge these water rights will be adjudicated outside this case. Nonetheless, the Vallejos testified that their water rights are being taken by the Compact. The Vallejos did not offer any exhibits to document the elements of the claimed water rights nor does their pre-filed testimony identify any water rights by a water right number.

25. The general location of the Vallejo property and associated watercourses and water delivery infrastructure is depicted on Compact Parties' Exhibit 16, which the Court admitted without objection. (H-14 Tr. 28:21-24). Similar to the Smyth property, the Vallejo property is located north of St. Ignatius on lateral ditches that distribute water from the FIIP Mission-C Canal.

26. The Vallejos testified that over the last five years, the amount of water delivered by the FIIP has been reduced due to "late turn-on dates, early shut-off and less

⁷ The same information is depicted on Compact Parties Exhibit 17.

water delivered.” (Doc. 2459.00, at 2, ¶ 5). The Vallejos testified that the reduction in water delivery has resulted in reduced hay production.

27. Vallejo testified generally as to several other categories of material injury, including violations of unspecified agreements and contracts, increased costs of irrigation water delivery, and lack of ditch maintenance.

28. The Compact Parties’ witness Seth Makepeace prepared an exhibit with graphs summarizing measurement data for the Mission-C Canal in response to the Vallejo testimony. (H-14 CP Ex. 17). The information on this exhibit is the same as that for the exhibit (Exhibit 12) prepared in response to the Smyth testimony.

Facts Specific to Thomas

29. The Thomases own property in the St. Ignatius area where they have lived for three years. Their pre-filed testimony describes their property as consisting of 77 acres, with a house and a domestic well. A 38-acre portion of the property is served by the FIIP. (Doc. 2458.00, at 2, ¶ 1).

30. The general location of the Thomas property and associated watercourses and water delivery infrastructure is depicted on Compact Parties’ Exhibit 13, which the Court admitted without objection. (H-14 Tr. 27:10-15). The Thomas property is located southwest of Ninepipes Reservoir and adjacent to the Post D Canal.

31. The Thomases claim Walton rights, which they acknowledge will be adjudicated outside this case. (Doc. 2458.00, at 2, ¶ 1). They did not identify their claimed Walton rights by a water right claim number.

32. Similar to Blevins, the Thomases attached a Certificate of Domestic Allowance issued by the Water Management Board Office of the Engineer to their pre-filed testimony. The Thomases describe this document as being “created” by the Compact and replacing their Walton rights. (Doc. 2458.00, at 2, ¶ 2). However, they did not provide testimony or offer any exhibit to prove that any Walton rights they claim actually have been extinguished.

33. Other than the Certificate of Domestic Allowance, the Thomases did not specifically identify any other water rights appurtenant to their property.

34. The Thomases testified that water delivery from the FIIP has been reduced through “late turn on and early shut off of irrigation water for the past 2 years.” (Doc. 2458.00, at 2, ¶ 3).

35. The Thomases testified generally as to several other categories of claimed material injury, including elimination of FIIP delivery points, reduction to authorized lawn and garden irrigation area, and increased charges for water. (Doc. 2458.00, at 2-3, ¶¶ 5-8).

36. The Compact Parties introduced an exhibit that summarizes graphically the dates on which Ninepipes Reservoir reached its full pool elevation during each year from 2021 to 2024. (H-14 CP Ex. 14). Water stored in Ninepipes Reservoir is released to the Post D Canal which delivers water to the Thomas property. (H-14 Tr. 32:1-2).

Facts Specific to Longhorn and Otoupalik

37. Ernie Otoupalik is the member/manager of Longhorn Arena, LLC. Otoupalik has lived near Arlee for twenty-five years. Otoupalik or Longhorn own several properties in Lake County and Missoula County. The general location of the various properties and associated watercourses and water delivery infrastructure is depicted on Compact Parties’ Exhibit 15, which was admitted without objection. (H-14 Tr. 28:3-7).

38. Otoupalik and Longhorn use several sources of water for their properties, including water delivered by the FIIP. Otoupalik and Longhorn also claim Walton and Secretarial water rights, which they understand will be adjudicated outside this case. (Doc. 2460.00, at 2, ¶¶ 1-2). Otoupalik and Longhorn did not identify their claimed water rights by water right claim numbers.

39. Otoupalik and Longhorn testified that the Compact causes material injury or damage by violating various “agreements and contracts, including the repayment contracts, patents, and Treaties.” (Doc. 2460.00, at 2, ¶ 3). Otoupalik and Longhorn did not identify any specific contracts or agreements, nor did they testify whether they are parties to any of the contracts or agreements mentioned in their testimony.

40. Otoupalik and Longhorn contend that over the last five years, water delivery from the FIIP has been reduced as a result of “late turn-on dates, early shut-off and less water delivered.” (Doc. 2460.00, at 3, ¶ 7).

41. Otoupalik and Longhorn testified that in 2023, employees of the FIIP trespassed on their property and drained a pond that he maintains for wildlife habitat. (Doc. 2460.00, at 2, ¶ 5).

42. Otoupalik and Longhorn testified generally as to several other categories of material injury, including increased cost of hay, lack of stock water, inability to fully utilize a recently installed pivot, and other costs. (Doc. 2460.00, at 2-3, ¶¶ 4, 6-8). Otoupalik and Longhorn contend that these effects result in a taking.

Compact Parties’ Testimony

43. The Compact Parties called two witnesses. Seth Makepeace, the first witness, is a hydrologist who has worked for the Tribes for 35 years. (H-14 Tr. 20:2-15). Makepeace is familiar with the FIIP operations generally, including work to ensure the FIIP is operated to maintain flows for fisheries. Makepeace also testified that the legal support for fish flows is based on case law decided in 1985. These interim instream flows have been in place since about 1986 or 1987. (H-14 Tr. 36:23-37:2).

44. Makepeace prepared the maps and graphs the Compact Parties introduced as their Exhibits 9 through 15. Makepeace relied on his years of experience with various aspects of the water delivery system and information from publicly available sources to prepare the maps of the Hearing 14 Objectors’ respective properties.

45. To create the graphs, Makepeace obtained and summarized water flow timing and amounts for the various FIIP canals and laterals that deliver water to the Hearing 14 Objectors’ properties.

46. Makepeace testified that, based on data on the FIIP canal and reservoir activity, the FIIP delivery periods and annual diversion volumes for the canals and reservoir serving the Hearing 14 Objectors’ property were within normal ranges when compared to other years. (H-14 Tr. 29:2 – 34:16). The Hearing 14 Objectors did not call an expert or other witness to analyze or critique this data.

47. Based on the information summarized on the exhibits depicting annual flows and dates (Exhibits 10, 12, 14, and 17), Makepeace testified that the water measurement data reflected low water availability during the 2021 season, which was “an extreme drought year.” (H-14 Tr. 33:16-17). Other than 2021, Makepeace testified that the diversion volumes were within the range of variability for the prior year. Makepeace did not identify anything in the data that reflected a change in water management procedure. (H-14 Tr. 33:18-34:5).

48. Casey Ryan, the Tribes’ second witness, also is a hydrologist and is the manager for the Tribes’ Natural Resource Department. (H-14 Tr. 43:10-12).

49. Ryan testified that the Compact does not dictate the FIIP or the BIA’s weed management program related to FIIP water delivery canals. (H-14 Tr. 47:15-19).

50. Ryan also testified that the Compact does not dictate the amount of fees FIIP charges to water users. (H-14 Tr. 47:20-48:2).

51. The Compact Parties introduced evidence through Ryan to document that the FIIP operation and maintenance fee increases follow a process and are documented in the Federal Register. (H-14 CP Ex. 4-8).

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 Takings of Walton and Secretarial Rights

2. The Hearing 14 Objectors all contend that they own Walton or Secretarial water rights.⁸ However, none of these Objectors identified the water right numbers or the specific locations and characteristics of these claimed water rights.

3. The Hearing 14 Objectors also argue the Compact will or has resulted in a taking of these rights. At the same time, they each concede their rights remain subject to an ongoing adjudication in a separate proceeding. To allege a taking of a water right, the Hearing 14 Objectors must at a minimum identify the water right they contend has been taken. The Hearing 14 Objectors failed to do so because of the generality of their arguments.

4. As part of the Order on Motions, the Court concluded that the Compact does not result in a taking of privately-claimed Walton rights, Secretarial rights, or any other type of private state-based water rights. Order on Motions, 50-51, 57-58, 61. The Hearing 14 Objectors did not offer any evidence to provide a basis for the Court to revisit its prior ruling. This conclusion is underscored by the concession by each of the Objectors that the state-adjudication of their water right claims is being conducted in a separate proceeding.

5. The Hearing 14 Objectors, specifically Thomas, argue that issuance of Certificate of Domestic Allowance extinguishes or otherwise constrains Walton rights. The Court has not made such a ruling, nor is the validity of the Thomas' Walton rights at issue in this proceeding. Neither the Compact, nor any ruling by the Court in this case, supports the assertion that issuance of a Certificate of Domestic Allowance causes an extinguishment or taking of any Walton rights. Any challenge to the validity of such rights is outside the scope of this case.

Alleged Injuries Relating to the FIIP Operations

6. The Hearing 14 Objectors raised a number of concerns arising out of the FIIP operations, including testimony that those operations have changed over the last five

⁸ Walton rights are described in the Order on Motions at 50.

years. The Objectors attribute these changes to what they contend is premature implementation of the Compact.

7. The Hearing 14 Objectors' contentions regarding changes to the FIIP operations are devoid of supporting evidence. They argue that the irrigation delivery season has been curtailed but provide no testimony or documents to inform the Court as to when the FIIP historically began water deliveries and when they historically stopped each year. Similarly, the Objectors did not provide evidence of the duration of any early or late season water delivery curtailment.

8. Even if the Court were to accept the Hearing 14 Objectors' testimony about modifications to the FIIP water delivery schedule, the Hearing 14 Objectors failed to prove any changes to water deliveries are caused by provisions of the Compact. The Objectors did not cite any provision of the Compact that modified actual or legal dates of FIIP water delivery. The abstracts that are incorporated into the Compact specify that water can be delivered as early as April 15 each year. The abstracts also specify that the FIIP Water Use Right authorizes diversions as late as September 15 and irrigation water use as late as October 15 each year. The Hearing 14 Objectors did not provide any evidence that the Compact modified historical legal periods of diversion and use.

9. As to the actual periods of water delivery from the FIIP, water diversions and water delivery always is subject to natural water availability and the operation of the prior appropriation system. The FIIP operations are controlled by the BIA, not the Compact. As the Court ruled in the Order on Motions, those operations are subject to a separate appeal process. The Hearing 14 Objectors did not present evidence that the process has been negated or otherwise controlled by the Compact.

10. Finally, despite their generalized testimony to the contrary, the Hearing 14 Objectors failed to prove that the dates of historical water deliveries have been modified during any time period since the Compact was ratified by the Montana legislature in 2015. None of the Hearing 14 Objectors testified about a specific date on which water deliveries either commenced or ended at any time historically. The Hearing 14 Objectors also failed to offer testimony of any dates since the Compact was approved to provide a

basis for comparison. Without such testimony or supporting exhibits, the Hearing 14 Objectors did not provide the Court with any evidentiary basis to conclude that any modifications from historical practice actually occurred.

11. In contrast to the Hearing 14 Objectors, the Compact Parties offered evidence to demonstrate the alleged seasonal curtailment is a matter of water availability, not a change to the legal regime related to the Compact. This evidence took the form of graphs depicting historical water deliveries – both in terms of timing and amount – to various canals leading to the Hearing 14 Objectors’ properties. The Hearing 14 Objectors did not object to these exhibits, nor did they offer any expert testimony or other analysis to cause the Court to question the veracity of the information on the exhibits.

Alleged Increased Costs

12. Each of the Hearing 14 Objectors alleged financial loss as evidence of material injury.

13. The Hearing 14 Objectors did not quantify the magnitude of any financial loss attributable to the Compact. For example, Vallejo contends the cost of irrigation water delivery and irrigation project maintenance has “increased drastically.” (Doc. 2490.00, at 2, ¶ 4). Vallejo provided the Court no evidence of a comparison of costs from season to season. They also argue hay production has been “cut down by 1/2 in 2024.” (Doc. 2490.00, at 2, ¶ 5). Other Objectors make similar claims. While this is not a money damages case, to claim injury arising out of financial loss, the Objectors bear the burden of providing the Court admissible evidence that losses actually occurred.

Alleged Reduced Land Values

14. Each of the Hearing 14 Objectors identified reduced land values as evidence of material injury. At the outset, the Objectors did not identify what caused any reduction in land values. The Objectors made generalized reference to contracts, treaties, or other agreements. However, they did not identify these documents with enough specificity to determine a connection between the documents and the valuation of their land.

15. The only evidence the Hearing 14 Objectors offered was their own personal opinions that there has been a reduction. The Objectors did not provide a legal theory as to why the Court should accept this testimony at face value. In other contexts, Montana law rejects landowner valuation unless the landowner-witness first satisfies the multi-step “landowner-witness rule.” *K&R P'ship v. City of Whitefish*, 2008 MT 228, ¶ 43, 344 Mont. 336, 189 P.3d 593. The Hearing 14 Objectors did not cite or apply this rule or any other rule to meet their burden of proving loss of property value as material injury.

Summary

16. The testimony offered by the Hearing 14 Objectors does not satisfy the “heavy burden” they must meet to establish material injury. First, while there is little dispute that the Hearing 14 Objectors own property within the portion of the Flathead Reservation, the Objectors failed to establish a sufficient legally protected interest from which to measure any material injury. The Objectors did not provide deeds or legal descriptions of their properties, nor did they provide any valuation information about their properties. While they made references to owning Walton rights or Secretarial rights, they did not identify any water right claim numbers to show these rights either have been filed on in Montana’s statewide adjudication, or otherwise protected.⁹ Likewise, the Hearing 14 Objectors did not provide specific evidence of their contractual or other arrangements with the FIIP for water delivery.

17. Second, even as to the interests the Hearing 14 Objectors did describe, their evidence and testimony failed to prove any material injury. The Objectors all made general arguments that the dates of water delivery from the FIIP have shifted in recent years to their detriment. This testimony is refuted by the Compact Parties’ graphical evidence showing that water delivery dates and amounts vary over time, but have not materially changed in recent years from historical variations.

⁹ The Court has previously noted that the purpose of this case is not to adjudicate the elements of any private water rights claimed by any objector. Order on Motions, at 50. However, to the extent any objector relies on their private water rights as the basis for a claim of material injury, those rights should be identified with enough specificity for the Court to evaluate the alleged injury.

18. Additionally, to the extent the Objectors have valid Walton rights or Secretarial rights, they failed to prove that the Compact extinguished those rights. Rather, they all specifically acknowledge those rights will be addressed in a separate proceeding. As to claimed diminution to property value, the Objectors provided no appraisal or other evidence by which to quantify any change in value. Similarly, the Objectors provided no evidence to quantify any financial losses that they have allegedly suffered.

19. Third, the Hearing 14 Objectors failed to prove a link between their alleged injuries and an operative provision of the Compact. The Court already ruled that this proceeding does not involve the validity of any water right claims whether Walton-based, Secretarial, or otherwise. Order on Motions, at 50. To the extent water delivery dates have shifted, any such shifts are operational in nature. The BIA operates the FIIP. The Objectors did not identify any Compact provision that controls or alters the dates of FIIP water deliveries. Instead, the Compact specifically recognizes and quantifies the elements of the FIIP Water Use Rights with legal periods of diversion and use that span annual dates from April 15 to either September 15 (for diversions) or October 15 (for use) each year. As with all water rights in Montana, whether water is physically available during these dates may vary from year to year. The Compact does not control the vagaries of seasonal water availability.

20. The Hearing 14 Objectors also fail to connect their alleged financial injuries to any provision of the Compact that is before the Court. The Compact does not appropriate any property interest owned by any Objector. Order on Motions, at 57-58. The Compact also does not control the water delivery operations or infrastructure on the Reservation. The Objectors do not cite any specific provision of the Compact to support their claims. Without any connection to Compact provisions, the Objectors fail to meet their burden to prove material injury by operation of the Compact.

Conclusion

21. The evidence and testimony offered by the Hearing 14 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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