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

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**CASE NO. WC-0001-C-2021**  
**Evidentiary Hearing No. 2 (Ammen)**

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**HEARING 2 – 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 James F. Ammen and Alice Ammen (“Ammens”). The Ammens 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 the Ammens, 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 Ammens. This Order addresses evidence of alleged material injury specific to the Ammens.

### **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.<sup>1</sup> (Doc. 19.00). Issuance of the Preliminary Decree commenced a statutory period for potentially interested parties to file objections to the Compact.

2. James Ammen filed an objection to the Compact on February 8, 2023. (Doc. 929.00). Alice Ammen is the spouse of James Ammen and joined his objection with authorization from the Court on July 20, 2023. (Doc. 1277.00).

3. The Ammens did not file a substantive legal issues motion during the motion phase of this case.

4. After the Court issued its Order on Motions, the Ammens filed a Request for Evidentiary Hearing on February 21, 2025. (Doc. 2132.00). The Court consolidated the Ammens' hearing request as Evidentiary Hearing No. 2. The hearing took place on April 23, 2025, at the Missoula County Courthouse. Alice Ammen testified for the Ammens and was cross-examined by the Compact Parties. The Compact Parties did not call witnesses. The Court admitted several exhibits, as summarized in the Court Minutes for this hearing. (Doc. 2521.00).

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<sup>1</sup> 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."

5. Following the hearing and preparation of a hearing transcript, as corrected by stipulation,<sup>2</sup> each party filed post hearing briefs pursuant to the briefing schedule set by the Court. The Ammens filed their opening brief on August 22, 2025. (Doc. 2646.00). The Compact Parties filed their opening brief the same day. (Doc. 2648.00). The Compact Parties filed a response on September 19, 2025. (Doc. 2670.00). The Ammens did not file a response.

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. 2:

### **FINDINGS OF FACT**

1. The Ammens are not parties to the Compact.
2. The Ammens own real property in Lake County, Montana. Their property is located within the boundaries of the Flathead Reservation. They purchased the property in 1992.
3. The Ammens own state-based water right claim 76L 141798-00. The abstract for the claim describes it as a filed right to divert and use water from Magpie Creek for irrigation use with an October 26, 1914 priority date. The abstract quantifies the flow rate for the claim as 3.98 cfs, and sets the maximum acres irrigated as 135.00 acres. (H-2 CP Ex. 4).<sup>3</sup>
4. Magpie Creek is a tributary of the Flathead River, with its confluence on the south side of the Flathead River west of Dixon and east of Perma.
5. The Ammens do not rely on the Flathead Indian Irrigation Project (“FIIP”) for their water. Alice Ammen testified that their property is not located within the area served by the FIIP. (H-2 Tr. 5:19-20).

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<sup>2</sup> On August 25, 2025, the Compact Parties and the Ammens filed a “Joint Stipulation on Corrected Transcript Among Objectors James and Alice Ammen and the Compact Parties.” (“H-2 Stipulated Transcript”) (Doc. 2656.00). All transcript (“H-2 Tr.”) citations are to the page and line numbers in the H-2 Stipulated Transcript.

<sup>3</sup> Exhibit references are to the hearing number (H-2) and either the Compact Parties (“CP”) or Ammen, followed by the exhibit number.

6. Magpie Creek is not identified as a source for any of the FIIP water diversion abstracts (76L 30052930, 76L 30052931, or 76L 30052932) included in Compact Appendix 5 (part of Decree Appx 2).

7. The Compact includes an instream flow water right abstract for Magpie Creek. This instream right is part of the Tribal Water Right defined in the Compact, Art. II.67. The elements of the right are described in the abstract for water right no. 76L 30052855, which is included in Compact Appendix 12 (part of Decree Appx. 2). The abstract for 76L 30052855 describes the right as a reserved right for fish and wildlife use with a time immemorial priority date. The abstract quantifies the right by reference to flow rates that vary by month, ranging from 3.60 cfs in December to a maximum of 30.80 cfs in May.

8. Compact Appendix 12, which includes water right no. 76L 30052855, describes and quantifies “Other Instream Flows.” This portion of the Tribal Water Right applies to on-Reservation instream flow rights for several streams outside the FIIP boundaries. 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.

9. The citation in the quote from Appendix 12 refers to a provision in the Unitary Administration and Management Ordinance (“UAMO”)<sup>4</sup> that establishes a process to ensure Other Instream Flows do not interfere with irrigation rights recognized in the Montana statewide adjudication proceedings. The process is set out in UAMO § 2-1-115(3). The Compact provides that “Other Instream Flows” rights are not enforceable until the process outlined in § 2-1-115 of the UAMO is complete.

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<sup>4</sup> The UAMO is codified in § 85-20-1902, MCA. Citations to the UAMO are to its specific provisions within this statutory section.

10. These limitations are reflected in an information remark on the abstract that states:

THE TRIBES SHALL DEFER THE ENFORCEMENT OF THIS RIGHT UNTIL AN ENFORCEABLE FLOW SCHEDULE FOR THAT RIGHT HAS BEEN ESTABLISHED PURSUANT TO THE PROCESS SET FORTH IN THE LAW OF ADMINISTRATION FOR THE DEVELOPMENT OF SUCH ENFORCEABLE SCHEDULE, WHICH CANNOT OCCUR UNTIL AFTER THE WATER COURT HAS ISSUED ITS FINAL DECREE FOR THE BASIN IN WHICH THIS WATER RIGHT IS LOCATED.

11. The Ammens argue that the amount of water quantified for the Magpie Creek instream flow right (76L 30052855) “is excessive.” (Doc. 2646.00, at 2). The Ammens also contend they have been materially injured by operation of the Compact because their water right will be junior to an instream flow right for 121.1 cfs.

12. The Ammens misread the abstract for water right 76L 30052855. The Ammens’ assertion that the Tribes’ Magpie Creek right flow rate is 121.1 cfs appears based on a sum of all monthly flow rates combined, not the actual maximum flow rate of 30.80 cfs for the calendar month of May, as specified in the abstract.

13. Alice Ammen testified that operation of the prior appropriation system will cause the Ammens’ water right to become junior to the Tribes’ water right, which will result in “property devaluation and loss of potential income.” (H-2 Tr. 9:3-4). The Ammens did not introduce evidence to substantiate this contention.

### **CONCLUSIONS OF LAW**

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.*

2. The Ammens contend the Compact will cause material injury by establishing an instream flow right for Magpie Creek, a water source where the Ammens claim an interest. However, rather than injure the Ammens water right claim, the Compact actually provides a measure of protection that would not exist absent the Compact because the Compact provides a process that integrates the establishment of instream flows with a recognition of junior irrigation rights that might be affected by those flows. UAMO § 2-1-115.

3. The Ammens contend that if the Magpie Creek instream flow rights are not met, their water rights “will be subject to call as a junior user.” (Tr., at 9:16-17). The priority-based injury the Ammens assert is a function of the prior appropriation system. In its decision approving the Water Court’s authority to adjudicate federal and tribal reserved rights, the Montana Supreme Court recognized that tribal reserved water rights may have priority dates senior to private state-based rights. *State ex rel. Greely v. Confederated Salish & Kootenai Tribes*, 219 Mont. 76, 92 712 P.2d 754, 764 (1985). Because Montana is a prior appropriation state, recognizing a senior priority date – be it either in a reserved right or in a state-based right – does not create a legal injury. All water rights in Montana are subject to and relative to the rights of senior appropriators, regardless of when the senior right is decreed and adjudicated. Section 85-2-401, MCA; *Mettler v. Ames Realty Co.*, 61 Mont. 152, 169, 201 P. 702, 707 (1921); *Kelly v. Teton Prairie LLC*, 2016 MT 179, ¶ 9, 384 Mont. 174, 376 P.3d 143; Order on Motions, at 75-76.

4. The Compact Parties respond that reliance on a water right the Ammens never have used and cannot use is too speculative to establish material injury. While the Court is not adjudicating the elements of the Ammens water right claim in this case, the Ammens’ lack of any demonstrated use of their water right – regardless of the reason – negates their proof of any material injury.

5. The Ammens also contend implementation of the Compact will cause material injury by reducing their property value and causing a potential loss of income due to the lack of call protection for water right claim 76L 141798-00. The Ammens did

not offer any evidence of modifications to property values or potential lost income sufficient to prove this contention.

6. In their post-hearing brief, the Ammens make a legal argument that the United States did not ever disclose prior reserved rights when it issued land patents to the Ammens' predecessors. They also suggest the United States has a legal obligation to defend interests granted in land patents. The time for the Ammens to raise this legal argument has long since passed. Even if the argument were not time-barred the Ammens cite no legal authority to support their assertions as to the United States' obligations to land patentees and their successors.

7. The evidence and testimony offered by the Ammens 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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Stephen R. Brown  
Chief Water Judge

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