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ELECTRONICALLY FILED

WC-0001-C-2021

October 18, 2023

Montana Water Court

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**

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**CASE MANAGEMENT ORDER NO. 3**

This Order is issued in connection with proceedings for resolution of objections filed to the Preliminary Decree for the Confederated Salish and Kootenai Tribes – Montana – United States Compact (“Compact”). For purposes of this Order, the parties to the Compact are referred to as the “Compacting Parties.” Those persons or entities that filed objections to the Preliminary Decree for the Compact are referred to individually as an “Objector” or collectively as “Objectors.”

**BACKGROUND**

After the objection period closed, the Court conducted several conferences and issued two prior case management orders. As specified in Case Management Order No. 2, the Court put this case on a settlement track (the “Settlement Track”) to allow informal resolution of objections. Mediations were conducted by Madeleine Wiesz, the Court-appointed mediator. As settlements were reached and reported to the Court, the Court issued a series of orders dismissing objections. This case now transitions to a hearing track (the “Hearing Track”) to address the remaining objections.

On October 3, 2023, the Court conducted a case management conference to discuss the Hearing Track proceedings. The Court asked attorneys for the Compacting Parties and various represented objectors to meet and confer, and to propose a briefing schedule. Counsel for the Confederated Salish and Kootenai Tribes reported the results of the conference in an email to the Court dated October 6, 2023, which is filed in the Court’s Full Court Enterprise (“FCE”) docket as Doc. 1,380.00. The Court conducted a follow-up conference on October 10, 2023. This Order contains the schedule discussed at the October 10 conference, and sets procedures that apply to the Hearing Track.

**ORDER**

The Court may issue Case Management Orders at such times as it deems appropriate. The Case Management Orders apply to and bind all parties, control the course of proceedings, and may be modified only by an order of the Court.

Therefore, it is ORDERED that Case Management Order Nos. 1 and 2 are amended and supplemented as follows:

1. **Hearing Track.** Pursuant to Rule 16(c) of the Water Court’s Water Right Adjudication Rules (“W.R.Adj.R.”), this Order commences formal hearing proceedings. This Order triggers the requirement that all parties, other than natural persons representing themselves, must be represented by an attorney in all Water Court proceedings. Not later than thirty (30) days from the date of this Order, a notice of appearance shall be filed by the attorney for each party subject to the legal representation requirement unless a notice previously has been filed.

2. **Schedule.** The following schedule governs the initial briefing in this case:

*a. Motions to amend existing objections.*

Motion deadline: December 8, 2023

Answer briefs (response): January 10, 2024

Replies: January 26, 2024

***This deadline applies only to motions to amend existing objections; it does not open a new objection period.***

b. *Motions to dismiss objections.*

Motion deadline: April 3, 2024  
Answer briefs: May 17, 2024  
Reply briefs: May 31, 2024

c. *Motions regarding Compact adequacy and fairness, and any other issues of law.*

Motion deadline: July 10, 2024  
Answer briefs: August 23, 2024  
Reply briefs: September 6, 2024  
Oral argument: September 19, 2024<sup>1</sup>

d. *Hearing date (anticipated):* January 6, 2025

The parties should assume a hearing of not to exceed two weeks.

**3. Briefing Schedule Clarifications.**

a. *Deadlines.* The deadlines for filing motions specify the last date a motion may be filed for a particular category. Any motion may be filed prior to the specified deadline. The categorical deadline for answer briefs and reply briefs shall apply as specified regardless of the date of filing of a motion unless the Court modifies the deadline. The “issues of law” deadline in subpart 2.c is intended to apply to any motions filed by the Compacting Parties or Objectors that raise issues of law as to Compact adequacy or any other legal issue that does not require the Court to make findings of fact.

b. *Notice of motions.* Notwithstanding the provisions of Uniform District Court Rule 2(a), parties are not required to contact other parties prior to filing a motion. Additionally, the newspaper notice provision for amendments to objections set forth in § 85-2-233(6)(a)(ii), MCA does not apply to the filing of motions to amend objections in this case.

c. *Page limits.* The following page limits apply to each individual motion unless otherwise ordered by the Court:

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<sup>1</sup> Note this is one day later than the date provided by the Court during the conference.

	Opening briefs	Answer briefs	Reply briefs
Motions to amend objections	20 pages	20 pages	10 pages
Motions to dismiss	20 pages	20 pages	10 pages
Legal issues	25 pages	25 pages	10 pages

The page limitations do not include the caption, table of contents (if any), or any attachments or exhibits. The parties shall endeavor not to file attachments or exhibits except as necessary to support a motion. All attachments and exhibits shall be identified with an exhibit letter, with each page paginated with a page number.

d. *Integration with other rules.* These clarifications shall apply to all motions and supersede any otherwise applicable rule for motions and briefs. Except as modified by this Order, the applicable provisions of the Water Court Claim Adjudication Rules, the Montana Rules of Civil Procedure, and the Montana Uniform District Court Rules shall apply. Parties are expected to familiarize themselves with such rules prior to filing any motion with the Court.

e. *Modifications.* The briefing schedule and clarifications shall apply unless and until modified by the Court following a motion to the Court or upon the Court’s own motion. Any request to modify a deadline shall be filed not later than five (5) days prior to the deadline applicable to the request.

4. **Master Service List.** The Court has established and will maintain on its website a service list (the “Master Service List”) that provides the contact information for the Compacting Parties and all Objectors. The Court clarifies that parties and addresses have been and will continue to be added, deleted, or corrected when any of the following occurs:

- a. When the Court issues an order dismissing one or more Objectors, the Objectors identified in the Order will be removed from the Master Service List.

- b. When the Court receives a notice of appearance from an attorney, the client(s) of the attorney identified in the notice will be deleted from the Master Service List and the attorney will be added.
- c. When it is obvious there are duplicate listings of the same party on the Master Service List, the duplicates will be deleted from the list.
- d. If documents are returned to the Court as non-deliverable.
- e. When a party gives notice of change of address or update to an address. It is the responsibility of parties or their representatives to notify the Court of any change in address.
- f. Upon an order from the Court.

5. **Service of Motions.** The following procedures shall apply to the service of motions and modify the electronic filing requirements of Water Court Local Rule 1 and Local Rule 2 (available at <https://courts.mt.gov/courts/water/LegalResources>). Except as modified by this Order, the provisions of Local Rules 1 and Rule 2 continue to apply.

a. All attorneys must file documents electronically unless a waiver has been granted by the Court for good cause. Documents filed electronically must be emailed to [watercourt@mt.gov](mailto:watercourt@mt.gov), not e-filed in the Court's FCE system. Self-represented Objectors are strongly encouraged to file documents electronically. Emails sent to any other Water Court email address will not be docketed.

b. The Water Court will file in the FCE docketing system each properly filed motion, brief, or other document. (<https://courts.mt.gov/courts/water/CSKT/>). The Court will establish a website page (the "Motion and Brief Page") that includes links to all motions and supporting briefs. The Motion and Brief Page will identify the docket number, the date of filing, the filing party, a description of the document, and the party required to file a response.

c. Any motion to amend an objection, and any supporting brief filed by an Objector must be served on each of the Compacting Parties, but need not be served on any other Objector.

d. Any motion to dismiss, and any supporting brief filed by the Compacting Parties shall be served on each Objector identified in the motion, but need not be served on any other Objector not identified in the motion or brief.

e. The Master Service List identifies those parties who have not consented to electronic service and require service by USPS Mail. The Court encourages parties that have not consented to service by electronic mail to do so by completing the form available on the Court's website.

f. Any motion or brief that is more than four (4) pages in length may be served on a party that has not consented to electronic service by serving a Notice of Filing of the motion or brief on the party required to be served. The Notice of Filing must be sent on the same day that the document described in the Notice is filed with the Court. The Notice must contain (a) the name of the document, (b) the date of filing of the document, (c) a brief summary of the substance of the document, (d) a statement that the full document may be downloaded from the Court's website, and (e) the deadline for a response. The Notice of Filing shall include a certificate of service, which shall be filed with the Court. This Notice provision applies only to parties served by USPS Mail.

6. **Discovery and Discovery Conference.** Parties may not engage in formal discovery without leave of the Court. The Court will conduct a conference immediately following the September 19, 2024 oral argument to discuss (a) any discovery that may be necessary; and (b) the remaining pretrial schedule for the case.

7. **Future Settlements and Objection Withdrawals.** Nothing in this Order shall preclude any Objector from settling or withdrawing their objection.

8. **Integration.** Except as modified by this Order, the provisions of Case Management Orders 1 and 2 remain in effect.

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Stephen R. Brown  
Water Judge

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This Order has been served on all other self-represented Objectors. Pursuant to Rule 5(c), M.R.Civ.P. a copy of the complete Master Service List is available at:  
<https://courts.mt.gov/Courts/Water/cskt/>