

IN THE WATER COURT OF THE STATE OF MONTANA
CSKT – MONTANA – UNITED STATES WATER COMPACT

CASE NO. WC-0001-C-2021
EVIDENTIARY HEARING No. 11

GUNNER AND BETH JUNGE FINAL POST-EVIDENTIARY HEARING RESPONSE BRIEF REGARDING MATERIAL INJURY

The Compact Parties’ objections seem to be a series of cut and paste repetitive allegations that objectors have not proven material injury because the compact doesn't materially injure anyone; and by implication that just repeating the same statement would somehow make it true or would convince the hearer of it.

It is either delusional or a denial of reality for the Compact parties to falsely claim that we as objectors have failed to prove any evidence (much less “personal concrete material injury” now being somehow a legitimate requirement). Our “burden of proof to show material injury by operation of the Compact” has been met. Therefore, the Court should invalidate the Compact and disallow it to be implemented.

It is utter absurdity to claim that any “time immemorial” water right claim (that doesn’t exist) against a city’s water right, would somehow affect one resident (us) and not the entire city’s residents. That is factual proof and “concrete evidence” of our and public interests being materially harmed. The Water Compact’s impact past, present and future is something the Compact parties have never disproved or delegitimized. The damages caused to property values with little or no water being allowed or available is not speculative. Any rational adult, realtor or property owner acknowledges that fact. This is something the Compact parties have declined to address or vainly attempted to dismiss as “speculation.”

The Compact parties cite and make a false interpretation in: *United States Fish and Wildlife Service, Bowdoin National Wildlife Refuge - Montana Compact*, No. WC2013-04, 2015 WL 9699486, at *10 (Mont. Water Ct., Oct. 07, 2015) (determining material injury ‘requires injury to water rights or real property interests,’ rather than difference of opinion over correct government policy).” It is a denial of reality and disingenuous to assert that personal or public injury or real property interests are not adversely affected by Court opinions or government policies considered “correct” by some.

The Compact parties deny the evidence presented that Objectors Gunner and Beth Junge have proven beyond their “burden of proof” that the Court should approve their objections, grant their requests and motions to deny the Compact being implemented.

The Compact parties falsely assert:

1. “Junge largely raised issues already resolved by the Court. The Junges’ assertion of material injury was not based on their own water rights and real property interests and thus failed to establish material injury from the Compact.”
Aside from the Compact parties’ conflicted acknowledgment of the Junge’s “own water rights,” the Compact parties’

refusal to acknowledge ANY of the evidence presented by the Objectors by denying that the Junge's "failed to establish (ANY) material injury" is factually incorrect. We raised Constitutional issues never addressed by them with the Court. We also raised issues with due process that had not been "resolved by the Court." The only question that remains is whether a preponderance of evidence is sufficient to convince the Court to deny the Compact implementation.

2. "The Junges, who live off-Reservation, Tr. 41:9-11, do not own a water right. *Hearing II Prehearing Order*, Dkt. No. 2551.00 at 2 (Agreed Fact No. 1) (April 28, 2025)" As the documentation clearly shows, there never was any "agreed fact" to their falsely claiming we ever "agreed" or acknowledged something as absurd as this. In fact, the Court's transcript shows otherwise that we "vehemently deny" that. Such an allegation would constitute fraud and material injury. Ironically, as was previously shown, the Compact Parties and CSKT do not have any water rights listed with the DNRC in Thompson Falls either. The Objectors showed their Constitutional, personal and public rights to the water they pay for every month as residents of Thompson Falls. This fact is irrefutable.
3. They (the Compact parties) only now attempt to cite MCA 85-20-1901, MCA, Art. III.G.1. and disavow that they would ever make a call against Thompson Falls (the citizens' and residents') water rights.
 - a. *G. Call Protection. 1. Non-Irrigators. The Tribes, on behalf of themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States agree to relinquish their 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.*
 - b. This is an admission of guilt. The Tribes and the United States (no mention of Montana who owns the water) are acknowledging they agree to "relinquish their right to exercise the Tribal Water Right to make a Call..." First, the "Tribes" do not own any water outside the reservation in order to be able to "relinquish their right to exercise the Tribal Water Right" (misnomer).
 - c. The broader implications of the Compact's operation are valid evidence on damages to our personal water rights and property interests. The Compact Parties improperly dismissed our concerns about the City of Thompson Falls' municipal water rights as irrelevant, despite the interconnected nature of water systems and the potential indirect impacts on our own rights. We assert that the Compact's provisions, including instream flow requirements, create a framework that would affect water availability and delivery to us, even if the city itself did not object.
 - d. We challenge the Compact Parties' claim that municipal water rights are not subject to call under the Compact, as being a failed attempt to misdirect. It is common knowledge to us as well as the Compact parties that the tribe's indirect involvement in any calls on perceived water rights would result in a domino effect. The Truth is that the tribe as well as Compact Parties can make empty promises all they want that they won't "exercise their rights" against the City of Thompson Falls, however, when they exercise their right against an irrigator it doesn't stop the irrigator from exercising their water right against the city if the irrigator's water right is senior to the city's. This is another example of the frauds of the compact. "Call protection" on overreaching and imaginary "time immemorial water rights" that can be proven will indeed exceed the flow of the Clark Fork numerous times per year is fraudulent and meaningless.

- e. Historical evidence of that is public knowledge that when the reservoir waters have been lowered, the water table is depleted causing multiple wells to run dry. This demonstrates solid proof of how the Compact's operation would indirectly affect our access to water or create risks to our property interests. The Compact Parties' reliance and focus on procedural technicalities, such as our inability to represent the city, unfairly limits the scope of our arguments and fails to account for the broader impacts of the Compact on individuals who share in the same public water system availability.
 - f. Ample evidence beyond the burden of proof has been presented to the Court by the Objectors to disprove this claim asserted by the Compact parties.
4. The Compact Parties' assertion that our claims are speculative is dismissive of specific examples provided as evidence of how the Compact's operation has already affected or is likely to affect our water rights, thereby meeting the legal standard for demonstrating material injury.
 5. The Compact Parties are again misguided in their footnote assertions- "The Junges' offer no legal support for their misguided assertion that they have a separate individual right to the City of Thompson Falls' municipal water rights. Tr. 19:1-2." As was repeatedly stated by Gunner Junge in his testimony, there is a fundamental moral and Constitutional legal right (law) supporting the individual and public right to water for basic needs and life. Evidence was presented during the Evidentiary hearing for in camera review of how legitimate fears of the implementation of the Compact affected the life of our friend. To our knowledge, due to the technical difficulties after our testimony, no response was given on that evidence after it was reviewed by the Court.

Respectfully submitted this 19th day of September, 2025.

/s/ Gunner and Beth Junge
Objectors

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Final Post-Hearing Response Brief* for Hearing No. 11 was served by email to each of the Compact Parties as set forth below this 19th day of September, 2025.

/s/ Gunner Junge

Water Court:

Watercourt@mt.gov

Compacting Parties:

Melissa.Schlichting@cskt.org

Christina.Courville@cskt.org

Daniel.Decker@cskt.org

zachary.zipfel@cskt.org

Danna.Jackson@cskt.org

rusche@sonosky.com

State of Montana:

Molly.kelly2@mt.gov

Jean.saye@mt.gov

United States:

david.harder@usdoj.gov

james.cooney@usdoj.gov
rebecca.ross@usdoj.gov