

February 7, 2023

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

**NOTICE OF VERIFIED SUPPLEMENTAL OBJECTION
AND REQUEST FOR HEARING**

1. Objector's Name, Address, and Phone Number:

Hungry Horse Water and Sewer District
LAST NAME FIRST NAME MID. INITIAL
P.O. Box 190309
STREET ADDRESS OR PO BOX
Hungry Horse MT 59919
CITY STATE ZIP CODE
()
PHONE NUMBER E-MAIL

2. Objector's Attorney name, address, and phone number:

Omvig, Kristin L.; Hammer, Benjamin J.
LAST NAME FIRST NAME MID. INITIAL
P O Box 1202
STREET ADDRESS OR PO BOX
Kalispell MT 59903
CITY STATE ZIP CODE
(406) 885-2850 kristin@ohlawmt.com
PHONE NUMBER E-MAIL
ben@ohlawmt.com

3. State the specific part(s) of the Preliminary Decree objected to. Identify the specific ground(s) and evidence on which the objection(s) are based. (Use additional paper if necessary)

See Verified Objection and Request for Hearing-Additional Pages attached hereto and incorporated herein by reference.

4. If you are objecting to a specific water right number, identify the water right number, decree page number, and the water source. If you are objecting to more than one water right number, use a separate form for each water right number.

Water Right #: See attached Verified Objection and Request for Hearing-Additional Pages.
(One Number Per Form)

Page number in Decree: See attached Verified Objection and Request for Hearing-Additional Pages.
Source: See attached Verified Objection and Request for Hearing-Additional Pages.

DATED this 7th day of February, 2023.

/s/ Benjamin J. Hammer
SIGNATURE OF OBJECTOR OR OBJECTOR'S ATTORNEY

(TURN FORM OVER AND COMPLETE OTHER SIDE)

YOU MUST MAIL OR EMAIL A COPY OF THIS OBJECTION TO THE FOLLOWING ATTORNEYS REPRESENTING THE U.S. DEPARTMENT OF JUSTICE, THE STATE OF MONTANA, AND THE CONFEDERATED SALISH AND KOOTENAI TRIBES. COMPLETION OF THE CERTIFICATE OF MAILING, FOUND BELOW, REPRESENTS TO THE COURT THAT YOU HAVE MAILED A COPY OF THIS OBJECTION TO THESE ATTORNEYS.

CERTIFICATE OF MAILING

I, Ann Thamert, declare under penalty of perjury, that on the 7th day of February, 2023, I emailed a copy of this Objection addressed to the following attorneys for the Federal, State, and Tribal Agencies:

Daniel J. Decker
Confederated Salish & Kootenai Tribes
Tribal Legal Department
PO Box 278
Pablo, MT 59855
objections@cskt.org

David W. Harder
U.S. Department of Justice
Indian Resources Section
Environment & Natural Resources Div.
999 18th St.
South Terrace, Suite 370
Denver, Colorado 80202
efile_denver.enrd@usdoj.gov

Molly M. Kelly
Montana Department of Natural Resources and Conservation
1539 Eleventh Avenue
PO Box 201601
Helena, MT 59601
Jean.Saye@mt.gov

/s/Ann Thamert
SIGNATURE FOR CERTIFICATE OF MAILING

**Please send this completed original to: Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389**

or E-mail: watercourt@mt.gov

Questions? Call the Montana Water Court at 1-800-624-3270 or (406) 586-4364.

OBJECTIONS MUST BE RECEIVED AT THE WATER COURT BY FEBRUARY 9, 2023.

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

CASE NO. WC-0001-C-2021

OBJECTOR: HUNGRY HORSE WATER AND SEWER DISTRICT	VERIFIED SUPPLEMENTAL OBJECTION AND REQUEST FOR HEARING – ADDITIONAL PAGES
-----------------------------------------------------------	-------------------------------------------------------------------------------------------

COMES NOW, Hungry Horse Water and Sewer District, through its President, Douglas T. Wagner, (“Objector”), and states on December 2, 2022, Objector, Hungry Horse Water and Sewer District, filed a notice of objection and request for hearing. Objector wishes to supplement said objection and aver, assert and allege as follows:

1. Objector is a water and sewer district doing business in Flathead County, Montana.
2. The Montana Water Court has subject matter jurisdiction over the action stated in this Objection and has personal jurisdiction over the parties.
3. Venue is proper in the Montana Water Court.
4. Objector owns the following real property and water rights:
 - (a) Water Right: 76LJ 53-00
Basin: 76LJ
Reservation: OFF
Source: Surface Water
Use: Municipal
Preliminary Decree page: Doc. 19 pp. 9-11, 26-27, 30-33; Appx. 1 pp. 4, 10, 24-25;
Appx. 2 pp. 1-66, 355-357, 431-434, 444-458, 466-470, 487-489, 494-497, 505-506, and 515-516.
 - (b) Water Right: 76LJ 64145-00
Basin: 76LJ
Reservation: OFF
Source: Groundwater

Use: Municipal
Preliminary Decree page: Doc. 19 pp. 9-11, 26-27, 30-33; Appx. 1 pp. 4, 10, 24-25;
Appx. 2 pp. 1-66, 355-357, 431-434, 444-458, 466-470, 487-489, 494-497, 505-506, and
515-516.

(c) Water Right: 76LJ 54-00

Basin: 76LJ

Reservation: OFF

Source: Groundwater

Use: Municipal

Preliminary Decree page: Doc. 19 pp. 9-11, 26-27, 30-33; Appx. 1 pp. 4, 10, 24-25;
Appx. 2 pp. 1-66, 355-357, 431-434, 444-458, 466-470, 487-489, 494-497, 505-506, and
515-516.

(d) Water Right: 76LJ 1902-00

Basin: 76LJ

Reservation: OFF

Source: Groundwater

Use: Municipal

Preliminary Decree page: Doc. 19 pp. 9-11, 26-27, 30-33; Appx. 1 pp. 4, 10, 24-25;
Appx. 2 pp. 1-66, 355-357, 431-434, 444-458, 466-470, 487-489, 494-497, 505-506, and
515-516.

(e) Water Right: 76LJ 27122-00

Basin: 76LJ

Reservation: OFF

Source: Groundwater

Use: Municipal

Preliminary Decree page: Doc. 19 pp. 9-11, 26-27, 30-33; Appx. 1 pp. 4, 10, 24-25;
Appx. 2 pp. 1-66, 355-357, 431-434, 444-458, 466-470, 487-489, 494-497, 505-506, and
515-516.

(f) Water Right: 76LJ 30018535

Basin: 76LJ

Reservation: OFF

Source: Groundwater

Use: Municipal

Preliminary Decree page: Doc. 19 pp. 9-11, 26-27, 30-33; Appx. 1 pp. 4, 10, 24-25;
Appx. 2 pp. 1-66, 355-357, 431-434, 444-458, 466-470, 487-489, 494-497, 505-506, and
515-516.

(“Property”).

5. The Preliminary Decree does not “quantify” the CSKT’s water rights. *The*

Confederated Salish and Kootenai Tribes of the Flathead Reservation v. Stults, 2002 MT 280, 59

P.3d 1093 (2002). The stated purpose of the McCarran Amendment is to prevent piecemeal water rights adjudications by requiring determination of all water rights in a given river system in a single proceeding and to quantify Indian water rights as part of the adjudication process. 43 U.S.C. § 666. See also: *United States v. District Court In and For Eagle County* (1971), 401 U.S. 520, 525, 91 S.Ct. 998, 1002, 28 L.Ed.2d 278.

6. Objector was not a party to the negotiations of the Confederated Salish and Kootenai Tribes of the Flathead Reservation-State of Montana -United States Compact or the Preliminary Decree (collectively, “Preliminary Decree”). Objector’s Property is affected by the Preliminary Decree. The Preliminary Decree is not fair and/or reasonable to Objector and/or the public interest and approval of the Preliminary Decree could materially injure Objector, Objector’s Property and Objector’s property rights.

7. Upon information and belief, the CSKT Compact is a product of fraud and/or overreaching by, or collusion between the negotiating parties for reasons, including but not limited to:

- a. Overreaching affecting off-reservation property/rights. Doc. 19 Appx. 1.
- b. Claims time immemorial rights to both on and off-reservation property/rights.
- c. Dismisses Tribal claims “without prejudice” and does not accomplish the goal of creating the Compact and resolving the Confederated Salish and Kootenai Tribes of the Flathead Reservation unadjudicated water right claims.
- d. Creation of the Water Management Board and adoption of the Law of Administration obliterates Art. IX of the Montana Constitution and violates both Montana and Federal law by vesting exclusive administrative authority in the Tribes over all water rights whether derived from tribal, state or federal law. Doc. 19 Appx. 1 pp. 6, 40-45.
- e. Conveys ownership and control of Flathead Lake to the Tribe without an undefined Maximum Flow Rate. Doc. 19 Appx. 2 pp. 514-516 (76LJ 30052867). Said right is “time immemorial” and affects the Swan River, Flathead River (Flathead Lake) (year around) for uses “both on and off the Flathead Indian

Reservation.” This right in conjunction with the Reserved right defined as the “Flathead System Compact Water” grants the Tribe control over 19 Million Acre Feet of Flathead Lake. *Id.*, Doc. Appx. 1 p. 13, Part III C.1.h., Appx. 2 pp. 65-69, 70-74 (76LJ 30052674) and 514-516. MCA §85-20-1901(35).

8. Objector hereby objects to approval of the Confederated Salish and Kootenai Tribes of the Flathead Reservation-State of Montana -United States Compact Preliminary Decree (“Preliminary Decree”). Upon information and belief, the CSKT Compact is not fair or reasonable to Objector or the public interest and Objector’s interests could be materially injured by operation of the CSKT Compact for reasons including but not limited to:

- a. Implements “Adaptive Management” which is an ongoing process of decision making. However, the concept of “Adaptive Management” adopted by the Compact does not include “Historic Farm Deliveries” as part of the Adaptive Management implementation. Doc. 19 Appx. 1 pp. 3, 37; Appx. 2 pp. 547-549.
- b. Defines “Instream Flow” as including “Natural Flow or streamflow affected by regulation, diversion, or other modification” which directly impacts irrigators by providing for storage water release from FIP reservoirs for instream flows river and above natural flows. Doc. 19 Appx. 1 p. 6(44).
- c. Creates the Unitary Management Board and Unitary Management Ordinance (“Law of Administration”) delegating Montana’s constitutional authority for the management of state law based water rights, disputes and decision making to a politically appointed board in violation of both the Montana Constitution (Art. II § 17; Art. V; Art. VII, §4 (1 and 2); and Art. IX, §§ 3 and 4) and the U.S. Constitution (Art I §10; Art IV § 4; Fourteenth Amendment’ Art. V). Clothes the Water Management Board with immunity for which the State and Tribe denies legal responsibility. See: *Flathead Joint Board of Control et al. v. State of Montana et al.*, Lake County Cause No. DV-15-73.
- d. Eliminates the Montana Water Court’s oversight and eliminates monetary lawsuits against the UMB, eliminates a water user’s right to contest a change or denial of the user’s historic right or water right in the Montana Water Court. *Id.*
- e. Violates Art. II, § 16, Art. III, § 17. Art II, § 26 and Art. IX, § 3(3) eliminating the constitutional provision that all unappropriated water belongs to the State. Mont. Const. Art. II, § 16, Art. III, § 17. Art II, § 26 and Art. IX, § 3(3).
- f. Fails to acknowledge that water rights are appurtenant to the land upon which they are beneficially used and awards the water rights to the Tribe as opposed to

the land.

- g. Wrongfully transfers ownership and/or co-ownership of water owned by the State to the Tribe in violation of Mont. Const. Art. IX, § 3 and attempts to empower the Tribe with ability to issue new water rights for new issues. Doc. 19 p. 2; Appx. 2.
 - h. Grants the tribes “instream flow” rights with a time immemorial priority date. No basis exists in the law for tribes to “co-own” an instream flow which creates uncertainty and unpredictability as to water delivery, which arguably decrease property values.
 - i. Violates the *Winter’s Doctrine* by, including but not limited to, attempting to wrongfully expand the “purpose” of the Reservation and creating a “time immemorial” priority. *Winters v. United States* 207 U.S. 564, 28 S.Ct. 207, 52 L.Ed. 340 (1908),
 - j. Implements a discriminatory call system which affects both on and off reservation rights. For example, see: Doc. 19 Appx. 1 pp. 16, 18, 21 and 22.
9. The Compact’s implementing legislation is not considered in the Water Court proceedings because S.3019 (a/k/a the Daines Bill) made significant changes to the CSKT Compact which has not been considered or voted upon by the State of Montana.
10. Upon information and belief, the Preliminary Decree results in the wrongful taking of Objector’s Property without just compensation. 42 U.S.C. § 1983.
11. The Preliminary Decree violates the Montana Constitution. Mont. Const. Art. IX, Section 3(3) states: All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.
12. The Preliminary Decree violates the Hellgate Treaty of 1855 and wrongfully attempts to expand the purpose of the reservation.
13. Historically in Montana, water ownership has been controlled by the appropriative system. Rights to water belong to the first user who puts the water to beneficial use. The first people to become appropriators of the water source have the right to continue using

the water in the same quantity as always as long as they continue putting the water to good use. MCA 85-2-401. Appropriative rights are based on actual use. Appropriation for beneficial use is governed by state law. Reserved water rights are established by reference to the purposes of the reservation rather than to actual, present use of the water. *State ex. rel. Greely v.*

Confederated Salish and Kootenai Tribes of the Flathead Reservation (1985), 219 Mont. 76, 712 P.2d 754. The Preliminary Decree violates existing Montana law.

14. The Preliminary Decree wrongfully limits review herein to Appendix 38, harms individual water claims and prevents the Court from completing its mission of “reaching a fair and reasoned ruling on whether the compact was fair to individuals and the public interest”.

15. Objector further objects to the February 9, 2023 objection deadline as being unreasonable and materially prejudicial due, among other things, to the complexities, volume of information and lack of historical data.

16. Objector hereby request a hearing and further pray the Court deny approval of the Preliminary Decree.

DATED this 7th day of February, 2023.

OMVIG HAMMER LAW, P.C.

By: /s/ Benjamin J. Hammer
Kristin L. Omvig
Benjamin J. Hammer
Attorneys for Objector

