

February 9, 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 OBJECTION AND REQUEST FOR HEARING

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

Mission/Jocko Irrigation Districts			
LAST NAME	FIRST NAME	MID. INITIAL	
524 N. Main St.			
STREET ADDRESS OR PO BOX			
Saint Ignatius		Montana	59865
CITY	STATE	ZIP CODE	
(406) 745-2090	mission@blackfeet.net		
PHONE NUMBER	E-MAIL		

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

Williams		Matthew	
LAST NAME	FIRST NAME	MID. INITIAL	
777 E. Main St., Ste. 205			
STREET ADDRESS OR PO BOX			
Bozeman		Montana	59715
CITY	STATE	ZIP CODE	
(406) 551-6169	mattheww53@aol.com		
PHONE NUMBER	E-MAIL		

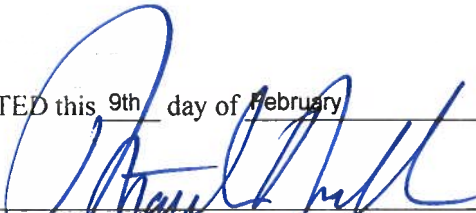
3. State the specific part(s) of the Preliminary Decree objected to. Identify the specific ground(s) and evidence on which the objection(s) are based. (Use additional paper if necessary)

See Exhibit A.

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 Exhibit B.
(One Number Per Form)

Page number in Decree: _____
Source: _____

DATED this 9th day of February, 2023.

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, Matt Williams, declare under penalty of perjury, that on the 9th day of February, 2023, I mailed a copy of this Objection postage prepaid, 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.Save@mt.gov


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.

Mission/Jocko Irrigation Districts

Exhibit A

The Preliminary Decree relies upon what it characterizes as a Compact amongst the State of Montana, the United States, and the Confederated Salish and Kootenai Tribes to frame and describe the water rights it appends to that Decree. Accordingly, it is this Compact that purports to answer to every claimant's duty to provide this Court a prima facie basis for the adjudication of the water right entitlements it seeks.

There is no valid compact that can sustain a decree of this Court confirming any water rights reflected by its terms.

The Compact is not valid or effective because it fails to reflect a necessary unanimity of approval of all its terms amongst the State of Montana, the United States, and the Confederated Tribes. Without such a consensus, the agreement it purports to express does not exist.

Moreover, the Compact does not otherwise answer to the principles adopted by this Court for the application of its authority under MCA § 85-2-233. Pursuant to MCA § 85-2-702(3) and MCA § 85-2-233, this Court is required to hear and determine any objections to the water entitlements framed by any compact. In this context, this Court will not sustain such a compact as a proper enunciation of a water right unless, *inter alia*, that compact is fundamentally fair and reasonable, and other conforms to applicable law. *In re Blackfeet Tribe Compact*, 2020 Montana Water Court, LEXIS 770.

The tendered Compact does not answer this necessary inquiry. It reflects principles of a Tribe's entitlements to water not heretofore adopted by Montana or federal authorities, and otherwise hamstring the proper application of this Court's principles by purporting to reserve to administrative bodies created by the Compact the authority to reallocate supplies of water after this Court's decree. Thus, for

example, water supplies for the continuing irrigation of lands within the Mission and Jocko Irrigation Districts can be subsequently reassigned to instream flow use under the Compact, in the event that unspecified efficiencies are increased within the irrigated areas. Moreover, the Compact truncates and indeed renounces the ability of water right users within the Reservation to seek relief in Montana courts for the unauthorized administration of these rights. Indeed, the significance of this abdication of Montana judicial authority is compounded by the Compact's purported grant of immunity to persons acting for administrative bodies created by the tendered settlement.

Further, the Compact otherwise is invalid because the ratification of its provision by the United States and the State of Montana required these governments to act beyond their constitutional authorities. Montana may not consistently with its duties under Article IV limit or truncate the authority of Montana's judiciary that extends to all parts of the State of Montana. Art. IV, Section 4(1). Moreover, Montana's Constitution assigned to the legislature the duty to provide for the "administration, control, and regulation of water rights." Mont Const. Art IX, Sec. 3(4). The Compact cannot renounce this duty by assigning the authority over such administration and control to a Board created by its terms.

Finally, any adoption of the Compact by the United States or the State of Montana would frustrate water users' rights to equal protection of the laws and substantive due process.

Mission and Jocko Irrigation Districts are governmental entities created under Montana law to manage water supplies for its members. These members, in turn, settled lands made available by the United States, and took up lives of farming and ranching. These decisions were in significant part induced by water supplies promised by the United States for the irrigation of those lands. Indeed, the federal government originally financed the Flathead Irrigation Project in order to provide to the diversion of those quantities of water required for such irrigation.

The promise of water supplies was originally made to the families who developed their lands for irrigation. Since the creation of the irrigation districts, these promises run directly to the districts, which in turn have statutory obligations to supply water to their members. As a result, for a century and more, people have been relying upon the promises of the federal government to maintain viable farms

and ranches, including of course instances in which enrolled members of the Tribes own such irrigated lands.

In *State ex. Rel Greeley v. Confederated Salish and Kootenai Tribes*, 219 Mont. 76, 712 P.2d 754 (1985), the Court noted that the Water Court was lawfully empowered to adjudicate claims to water rights by the federal government, as the Water Court in those instances is constrained to follow the federal law that governs the scope and extent of any such claims. This federal law, in instances in which the United States supplies water to individual users for irrigation, confirms that as between the United States and irrigator, it is the irrigator that actually owns the rights to divert and use the water.

This confirmation of Mission and Jocko's ownership of entitlements simply answers to the federal government's promises. The federal government induced the creation of farms and ranches by its assurance of water supplies. In part, these assurances were predicated upon the irrigator's promise to repay to the United States the costs of the diversion works required to divert those supplies. The members of Mission and Jocko made such an agreement to repay the costs of their diversion works, and these promises were affirmed by Mission and Jocko as entities upon their formation. The United States, in turn, promised in addition that it would formally acknowledge Mission and Jocko as owners of the diversion works upon fulfillment of the repayment provisions.

In this context, the Compact cannot be seen as anything other than a decision to take property from its lawful owners and give it to another. While this result is obviously a taking under both the United States Constitution and the Montana Constitution, it is not the sort of taking that prompts the restricted remedy of inverse condemnation claims. Rather, taking property from one to simply give it to another transgresses substantive due process.

The Court should not recognize the Compact as a duly enacted agreement amongst the United States, the Confederated Tribes, and the State of Montana. The compact approved by the State of Montana does not have identical terms with that approved by Congress. It cannot be presumed that both entities meant the same thing when they said different things. Consequently, the Court should not treat either Compact as a *prima facie* statement of the water right claims of the Confederated Tribes.

Even if the Court should determine that the Compact it references creates a *prima facie* case, this Court should refuse to confirm it under the principles it has

adopted to exercise its authorities under MCA § 85-2-233, and it should in addition determine that it is unable to so confirm the Compact because it violates other provisions of federal and Montana law, including the United States and Montana constitutions.

Exhibit B

The nature of the position of Mission/Jocko Irrigation District necessarily implicates all of the water rights set forth in the Preliminary Decree, and the terms of the Decree itself. Nonetheless, like water rights in any significant drainage basin, there are some claim' that are unlikely to significantly implicate the water supplies relied upon by Mission and Jocko for as long as 130 years. For example, instream flow claim confined within a mountain tributary would not in some instances implicate the water supplies integral to the farms and ranches within Mission/Jocko.

The following rights are those that Mission/Jocko assert would compromise their water rights depending upon how they are ultimately expressed. Mission/Jocko does not waive, however, any of its claims or assertions that all claims appended to the Preliminary Decree cannot be given effect.

The Court should not follow its customary procedure of adjudicating water rights by creating separate proceedings to resolve objections to particular claims.

There are no doubt other persons or entities other than Mission/Jocko that will file objections that set forth claims that implicate many water rights, even if they are initially couched in terms of objections to particular water rights. Accordingly, to have any ordered way of addressing objections, the Court should not adjudicate such claims within the confines of any single proceeding.

Water Right No.	Source of Supply	Page Number
76L 30052930	Various	1
76L 30052931	Various	13
76L 30052932	Various	23
76LJ 30052674	Lolo Creek	67
76LJ 30052678	Tepee Creek	75
76LJ 30052679	Talking Waters Creek	77
76LJ 30052681	Dee Creek	79
76LJ 30052683	Station Creek	81
76LJ 30052684	Skidoo Creek	85
76LJ 30052685	Holmes Creek	87

76LJ 30052686	Hellroaring Creek	89
76LJ 30052687	Centipede Creek	91
76L-30052688	Bisson Creek	93
76L 30052689	Dubay Creek	95
76L 30052690	Minesinger Creek	97
76L 30052691	Big Creek	99
76L 30052692	Poierre Creek	101
76L 30052693	Ashely Creek	103
76L 30052694	Mud Creek	105
76L 30052695	Courville Creek	107
76L 30052696	Rock Creek	109
76L 30052697	North Crow	111
76L 30052698	Middle Crow	113
76L 30052699	Lost Creek	115
76L 30052700	South Crow	119
76L 30052701	Mollman Creek	121
76L 30052702	March Creek	123
76L 30052703	Eagle Pass Creek	125
76L 30052704	Post Creek	127
76L 30052705	Valentine Creek	129
76L 30052706	Poison Oak Creek	131
76L 30052707	Ashley Creek	133
76L 30052708	UT to Ashley Creek	135
76L 30052709	Dry Creek	137
76L 30052710	Mission Creek	139
76L 30052711	NF Mikes Creek	141
76L 30052712	SF Mikes Creek	143
76L 30052713	Cold Creek	145
76L 30052714	Power Creek	147

76L 30052715	Dry Lake Creek	149
76L 30052716	UT Dry Creek	151
76L 30052717	Thorne Creek	153
76L 30052718	Sabine Creek	155
76L 30052719	McCollum Creek	157
76L 30052720	Deep Draw	159
76L 30052721	Cromwell Creek	161
76L 30052722	Sullivan Springs	163
76L 30052723	Mill Creek	165
76L 30052724	Mill Pocket Creek	167
76L 30052725	Sullivan Gulch	169
76L 30052726	Dry Fork	171
76L 30052727	Rattlesnake Gulch	173
76L 30052728	Finley Creek	175
76L 30052730	Garden Creek	179
76L 30052731	Hot Springs Creek	181
76L 30052732	Hot Springs Creek NF	183
76L 30052733	WF Cottonwood Creek	185
76L 30052734	Rainbow Lake Creek	187
76L 30052735	Camas Creek	189
76L 30052736	Clear Creek	191
76L 30052737	West Fork Revais Creek	193
76L 30052738	Revais Creek	195
76L 30052739	Gunderson Creek	197
76L 30052740	Magpie Creek	199
76L 30052741	West Magpie Creek	201
76L 30052742	Magpie Spring Creek	203
76L 30052743	Vanderburg Creek	205
76L 30052744	Racehorse Gulch	207

76L 30052745	Seepay Creek	209
76L 30052746	Burgess Creek	211
76L 30052747	Little Money Creek	213
76L 30052748	Finley Creek	215
76L 30052749	Frog Creek	217
76L 30052750	Antoine Creek	219
76L 30052751	Christine Creek	221
76L 30052752	UT Finley Creek	223
76L 30052753	Schley Creek	225
76L 30052754	EF Finley Creek	227
76L 30052755	Charity Creek	229
76L 30052756	McClure Creek	231
76L 30052757	Agency Creek	233
76L 30052758	Blodgett Creek	235
76L 30052759	Big Knife Creek	237
76L 30052760	Gold Creek	239
76L 30052761	Cold Creek	241
76L 30052762	Pistol Creek	243
76L 30052763	SF Jocko River	245
76L 30052764	NR Jocko River	247
76L 30052765	Falls Creek	249
76L 30052766	S 14 Creek	251
76L 30052767	Grizzley Creek	253
76L 30052768	Kellys Creek	255
76L 30052769	UT Finley Creek	257
76L 30052770	Pellew Creek	259
76L 30052771	Lamoose Creek	261
76L 30052772	Valley Creek	263
76L 30052773	NF Valley Creek	265

76L 30052774	Selow Creek	267
76L 30052775	Spring Creek	269
76L 30052776	MF Jocko River	271
76L 30052777	NF Jocko River	273
76L 30052778	Falls Creek	275
76L 30052779	S-14 Creek	277
76L 30052780	Jocko River	279
76L 30052781	Cold Creek	281
76L 30052782	Gold Creek	283
76L 30052783	Big Knife Creek	285
76L 30052784	Jocko River	287
76L 30052785	Agency Creek	289
76L 30052786	EF Finley Creek	291
76L 30052787	Schley Creek	293
76L 30052788	Finley Creek	295
76L 30052789	Jocko River	297
76L 30052790	Jocko River	299
76L 30052791	Devars Creek	301
76L 30052792	Mission Creek	303
76L 30052793	Post Creek	305
76L 30052794	Middle Crow Creek	307
76L 30052795	North Crow Creek	309
76L 30052796	Mission Creek	311
76L 30052797	Post Creek	313
76L 30052798	Marsh Creek	315
76L 30052799	South Crow Creek	317
76L 30052800	Crow Creek	319
76L 30052801	Mud Creek	321

76L 30052802	Crow Creek	323
76L 30052803	Hellroaring Creek	325
76L 30052804	Little Bitterroot River	327
76L 30052805	Little Bitterroot	329
76L 30052806	Mill Creek	331
76L 30052807	Hot Springs Creek	333
76L 30052808	Little Bitterroot	335
76L 30052818	Lolo Creek	337
76L 30052822	Skidoo Creek	345
76L 30052825	Dayton Creek	351
76L 30052827	Flathead River	355
76L 30052828	White Earth Creek	357
76L 30052829	Spring Creek	359
76L 30052830	Mud Creek	361
76L 30052832	Mud Creek	365
76L 30052834	Ashley Creek	369
76L 30052835	Ashley Creek	371
76L 30052836	UT to Ashley Creek	373
76L 30052837	Mikes Creek	375
76L 30052838	Matt Creek	377
76L 30052839	Post Creek	380
76L 30052840	Sabin Creek	382
76L 30052842	Sabine Creek	386
76L 30052843	Sabine Creek	388
76L 30052844	Sullivan Creek	390
76L 30052845	Sullivan Creek	392
76L 30052852	Little Bitterroot	406
76L 30052853	Camas Creek	408
76L 30052854	Revias Creek	410

76L 30052855	Mapie Creek	412
76L 30052858	Agency Creek	418
76L 30052859	Jocko Spring Creek	420
76L 30052860	Jocko Spring Creek	422
76L 30052861	NF Velley Creek	424
76L 30052862	Valley Creek	
76L 30052863	Finley Creek	
76L 30052864	Flathead River	431
76L 30052871	Hellroaring Creek	509
76L 30052927	Various	439
76L 30052929	Various	444
76L 30063808	Clark Fork	528
76L 30063809	Swan River	509
76L 30063811	Placid Creek	528
76LJ 30063812	Flathead River	63