

ELECTRONICALLY FILED

Objectors: Rick and Nancy Jore
Address: 30488 Mount Harding Lane
Ronan, MT 59864
Phone # (406) 544-2389

WC-0001-C-2021

January 5, 2024

Montana Water Court

**IN THE WATER COURT OF THE STATE OF MONTANA
CONFEDERATED SALISH AND KOOTENAI TRIBES-
MONTANA-UNITED STATES COMPACT
WC-0001-C-2021**

Formal Objection to Mediation/Settlement Process/Request for Hearing

Motion and Legal Brief

Part One – Statutory and Procedural Rules Applicable to the Mediation Process

For and on behalf of objectors Rick and Nancy Jore, Stephen and Vicki Dennison, Rick and Carolyn Schoening, Keith and Jolene Regier, David and Ludmilla Koger, Norman and Stephanie Nather, Guy and Ruth DePonzi, Linda Sauer, Brad Tschida, Mark T. French, Paradise Water District, Trudy Samuelson, Charles F. and Teresa A. Havens, William and Marcia Amrine, Brent and Stephanie Webb, Martin E. Moore and Catherine L. Moore, Paul and Denise LaMarche, Dorlene Herndon, Noel and Romona Jacobson and Valerie Root, this motion and brief is filed as a formal objection to how the mediation process was conducted by Mediator Maddy Weisz.

It appears there is no clear-cut process by which the objectors can get relief from this Court concerning the fraudulent mediation process. The only guidance one has is from the Montana Statutes. In 85-2-233 (5) (b) we read the authority Montana gives to the Water Court concerning mediation and it states:

A Water Judge may require the parties to participate in settlement conferences or may assign the matter to a mediator.

We notice the distinguishing between *settlement conferences* and *assignment to a mediator*. We also notice the significance of the word “**may**”. This word in legal circles means discretion. It is obvious the Water Court translated this to mean “shall” or “must” in its order for mediation. At no time does the statute authorize a dismissal of the objection if one does not attend the mediation.

We read in 26-1-813 (1) MCA the following:

Mediation means a private, confidential, informal dispute resolution process in which an impartial and neutral third person, the mediator, assists disputing parties to resolve their differences. In the mediation process, decision making authority remains with the parties and the mediator does not have authority to compel a resolution or to render a judgment on any issue. A mediator may encourage and assist the parties to reach their own mutually acceptable settlement by facilitating an exchange of information between the parties, helping to clarify issues and interests, ensuring that relevant information is brought forth, and assisting the parties to voluntarily resolve their dispute.

Similar language is found elsewhere in the statutes of Montana. In Case Management Order #1, the Water Court ordered Senior Water Master Madeleine (Maddy) Weisz as the mediator for the Settlement Track. The Court also stated in this Order, without stating any lawful authority, the following: **“The Court will dismiss the objection of any Objector that does not participate in the settlement process.”** In Case Management Order # 2, the Court further stated the work of the Mediator:

The Mediator is a neutral person with the responsibility of encouraging and facilitating resolution of objections in an informal and non-adversarial process. The goal is to assist the parties in reaching mutually acceptable and voluntary agreements; however, the Mediator cannot compel a settlement agreement.

So we understand from the above the character and work of the Mediator is as follows:

- (1) Impartial
- (2) Neutral
- (3) Informal
- (4) Non-adversarial
- (4) Assistance in resolving differences
- (5) No compulsion
- (6) Encourage a settlement
- (7) Clarify issues and interests; and providing relevant information

We also understand what the mediator is NOT to be or do:

- (1) Biased and/or prejudicial
- (2) Closing off any relevant information
- (3) Not clarifying issues, closing off any discussion.
- (4) Using intimating language/information to indicate objections are futile.
- (5) Not allowing spouse to speak for the whole family

- (6) Limiting questions/answers/statements to 2 minutes
- (7) Not answering any questions directed at Compacting Parties.
- (8) Falsely stating objectors are not to communicate with each other regarding their objections.

Montana does allow for disclosure of what takes place at mediation in **26-1-813 (5) (c)** which states, “*Necessary to establish a claim or defense on behalf of the mediator in a controversy between a party to the mediation and the mediator*”. Objectors, through this document, are filing a claim against the whole mediation process.

Confidentiality is one thing when a private mediation takes place when all the parties are private individuals but when mediation is conducted by a public employee (paid by tax dollars) such as Maddy Weisz, then open meeting laws apply. We read in 2-3-203 MCA the following:

Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

Any violation of these kinds of open meetings can be litigated and are subject to complaint. The objectors believe the mediation process was fraudulent and a violation of open meeting laws. The mediation process, not settlements, should have been recorded!

Mediator files Reports

Currently the Mediator has filed 11 Reports with a Final One issued on September 28, 2023 (a final Supplemental Report was filed on Oct. 2, 2023). In her first Report, the mediator, Water Master Madeleine (Maddy) Weisz, repeats the Order from the Water Court issued in Case Management Order No. 2 that the Court would dismiss any objector who did not participate in the settlement process. Again no authority was given for such an order. In her Final Report, she states 270 objectors were dismissed due to their non-attendance to the mediation process.

Exactly what was the mediation process? It is referred to by several terms. Here are the terms used:

- (1) Settlement track
- (2) Settlement proceedings
- (3) Mediation session

At no time are these sessions ever referred to as conferences or hearings. In fact, the Court has indicated the Hearing Track was to commence on October 3rd.

We look in vain in the *Statutes of Montana*, in the *Montana Rules of Civil Procedure* and the *Water Court's Adjudication Rules* for the authority to dismiss an objection if the objector does not attend the mediation. Conversely, courts are famous for dismissing assertions by plaintiffs, defendants, etc. when they do so without stating an authority for their assertions.

We do have rules for defendants in criminal proceedings if they fail to attend a hearing. An arrest warrant can be issued for the defendant. He or she could lose their right to a jury trial as per **Declaration of Rights**, Art. II Section 26 of the Montana Constitution. However, the trial is never dismissed nor is the charge dismissed. What about civil matters? In a Worker's Compensation case, a mediator can state a party failed to cooperate but even here the dispute is not dismissed and the court can order the parties to a second mediation. In family law, there is no dismissal of your court case for not attending a mediation hearing. However you may be fined, ordered to pay the costs of the mediator or the court may find you in contempt. Again, however, the case is not dismissed!!

So why does this discriminatory practice occur in the Water Court, and is there even a hint of authority for dismissal of objections for failure to attend a mediation proceeding? We do have Rule 22 of the Water Court's **Adjudication Rules** which deals with **Sanctions** and where sanctions can be imposed if an objector fails to attend a conference or hearing or fails to comply with an order of the Court. However any order of the Court must be based on statutory authority and/or procedures. There is no statutory or procedural authority for the Court to dismiss an objection due to not attending a mediation meeting. Nor was the mediation process ever referred to as a conference or a hearing. This is particularly important if the objector believed the mediation process was a farce, which it did prove to be. Such a dismissal does violence to the due process rights of the objector. Even if Rule 22 did apply, where is the official **Sanction Order** by this Court???

Therefore, all 270 dismissed objectors must be restored to official objection status by this Court.

The following quote introduces our primary objection – A Fraudulent Mediation Process:

Mediation is not appropriate when the parties have unequal bargaining power. When two parties do not have equal footing, mediation may not be fair.

Part Two: Narratives of Objectors Who Found the Mediation Process Biased and Absurd.

Several objectors have provided the following statements of their analysis of the mediation process. These objectors represent individuals who attended mediation meetings in Kalispell, Ronan, and Plains.

Objectors who attended in Ronan:

“Mr. Harder, who spoke for the government, came across with a superior attitude. He reminded us of the 10,000 claims of the Tribes if the Compact was not approved.”

“Maddie stated low water levels of Flathead Lake have nothing to do with the Compact. Maybe, maybe not. But why and how is that relevant to the mediation process?”

“There were police officers there from the county and the Tribes.” *(See further comments about this later in this document).*

“The mediator seemed to focus her efforts to discourage the objectors from continuing through the process. She reminded objectors that their objections were a waste of time and that prior water court decisions were found in favor of compacts.”

“When objectors did ask questions, the mediator turned to the compact parties and none of them ever responded.”

“There was a complete lack of good faith and interest in the attitude and lack of response by the compacting parties.”

“The meeting felt like an assault on the concept of free speech – most objectors were intimidated.”

“David Harder spoke about how he had been working with Water Courts since George Bush’s time in office. He then stated an objector has never won.”

“I stated that no one short of a judge of the Water Court, or the U.S. Supreme Court had the authority to offer a settlement outside of the Compact’s language. Maddie agreed no one of the Signers had the authority to offer a settlement outside of the Compact’s language”.

Objector who attended in Kalispell:

“I had mentioned the possibility of the Tribes requiring off-reservation fishing licenses. At the meeting, I was taken aside privately and was told a letter would be sent out to me stating this would not take place. I received no such letter.”

Objectors who attended in Plains:

“The Tribes showed up at Mediation with 12 representatives. We asked numerous questions and the questions were not answered even though we were assured that they would be.”

“The Tribes offered to provide a No Call letter/contract for us to review. This document never materialized.”

“We asked to see information on the copious water claims, the 10,000 water claims the Tribes were going to file if the Compact was not approved. The Tribes refused. They say it was a lawyer/client work product.”

“The Tribes tried to bully us into withdrawing our objections.”

“Due to the 2 minute sessions, questions were asked and then the Compacting Parties left the room. When they came back, they said they had a presentation but would not give it now, for the objectors could not handle it.”

“More than once, the mediator stated if the Compact was rejected, adjudication of the 10,000 claims would almost be certain.”

What do these comments by objectors tell us? A Withdrawal Session!

1. This was not a mediation session but an intimidation session to get objectors to withdraw their objection or to settle their objection; but not outside the language of the Compact.
2. The mediator was not a neutral, impartial person but an advocate for the Compacting Parties due to past decisions of the Water Court dealing with Compacts.
3. The mediator is, in actuality, a Water Master, an employee of the Water Court, so how could she not be partial to the previous decisions of the Water Court when dealing with Compacts? Comments the mediator made at these sessions indicate a biased, rather hostile person to the concerns of the objectors. To truly show neutrality, the Water Court should have hired a person not in the employment of the Water Court.
4. The Compacting Parties were not there to settle any differences or to answer any questions UNLESS the objector was willing to settle or withdraw. They did not come in good faith to mediate. In fact the word mediation is **specious** in this context.
5. No one knows why police officers were at the Ronan meeting. However, the effect was rather intimidating, particularly for a mediation setting.

{A local police officer, upon inquiry, told an objector that he was told to attend the session due to a phone call from the mediator to the sheriff's office. The officer also indicated he overheard tribal representatives state they need "equal representation," so a call was made for tribal police to also be there.}

Much of this will probably be waved away with some resentment for even suggesting the mediator was biased and hostile. However, the comments above represent the true analysis of objectors who attended these sessions. The appearance of bias was there immediately and, later, actual bias was shown by the mediator.

Part Three: Conflicting Laws and Hands were Tied!

While the Compacting Parties and the mediator will deny this, the laws concerning mediation are conflicting and confusing. According to the law, the Compacting Parties were bound to defend the Compact. We read in 85-20-1902 MCA (The Unitary Administration and Management Ordinance), at 1-1-113. 4., the following:

Should the legality of the Ordinance, or parallel Tribal legislation, or any provision thereof be challenged in any court, the parties shall use their best effort jointly to defend the enforceability of the Ordinance, the parallel Tribal legislation and each of the respective provisions.

First, this is an unusual piece of statutory language. We doubt you will find such language in any other statutes of Montana. Why is language like this needed? Such language is understandable when defending both the State and Federal Constitutions, and we have written this in **Article III Section 3** of the Montana Constitution concerning the oath of office. But to state this concerning a Compact suggests ascribing a sort of sacredness to statutes by placing them on the same level of the Constitution. This is astonishing and reveals how far afield the Legislature was concerning this Compact. One hopes they did not realize what they were doing!

Secondly, we see how far the parties were willing to go in colluding so that the Compact would be decreed. The statutory language gives them such authority! Is it any wonder we get biased comments at these mediation sessions?

Thirdly, the language violates the spirit of our constitutional republic. No one who has taken his or her oath of office as per Article III, Section 3 of the Montana Constitution is bound to defend any statute, ordinance or Compact which violates the Constitution. The language of 1-1-113. 4., shows how far from constitutional moorings many of our legislators have traveled.

Yet, we are told all sides were to attend a mediation session. To mediate what??? The Compacting Parties were at these mediation sessions to defend the Compact, not to mediate!! The Compacting Parties did not have the authority to change any part of the Compact in order to settle. The Compacting Parties might argue that they were there to alleviate any fears or false information dealing with the objector's water right. But again, this is not mediation! Mediation to most normal people is where both sides are willing to give a little, to compromise. This did not take place. This was confusing to objectors!

If the session had been labeled as “**Withdrawal Sessions**” objectors would have understood exactly what happened at these sessions. But they were not labeled as such; instead they were labeled as Mediation Sessions.

In fact, all of the Reports filed by the Mediator are entitled “Mediation” Reports. To label these sessions as Mediation Sessions was one of the most fraudulent aspects of this current litigation. Truly the Compact was the product of fraud, collusion and overreaching and these sessions continued in that vein! We are not surprised that no objector has ever triumphed in a Compact Adjudication Proceeding.

REQUEST FOR HEARING

The objectors named in this document have made some strong accusations of the Mediation Process. We request a formal hearing to factually prove under oath what took place at these sessions. No session is immune to the accusations of fraud and bias, particularly those sanctioned by a Court of the State of Montana. The following objectives would be disclosed and proven at a hearing:

1. Mediation in this context was not voluntary!
2. Neutrality was not shown by the mediator.
3. The mediator is an employee of the Water Court, not a neutral person.
4. The presence of police officers at the request of the mediator is an extraordinary example of this not being a mediation session. No authority was ever stated for the presence of police officers.
5. The Compacting Parties were not there to mediate. The true purpose of these sessions was to eliminate as many objectors as possible.
6. It was a blatant injustice with no basis in law to dismiss 270 objectors.
7. Due Process is violated if mediation proceedings are not subject to complaints and discovery as to the biased comments made at these proceedings. Objectors have the right to petition any court for redress of any faulty mediation proceedings.

DATED this 5th day of January, 2024.

DocuSigned by: Rick Jore DocuSigned by: Nancy Jore
Rick and Nancy Jore
30488 Mount Harding Lane
Ronan, MT 59864
(406) 544-2389
Representing all above named *Pro Se* objectors.

CERTIFICATE OF SERVICE

This is to certify that the foregoing Motion to Amend along with the Amended Objection with Exhibits and Attachments was served on the following persons as noted below:

Montana Water Court

1123 Research Drive P.O. Box 1389 Bozeman, MT 59771-1389

watercourt@mt.gov

U.S. Mail Overnight Mail Hand Delivery Facsimile E-Mail

David W. Harder Senior Atty for Legal Issues

U.S. Dept. of Justice Indian Resources Section Environment & Natural Resources Division
999 18th Street South Terrace, Suite 370 Denver, Colorado 80202

David.harder@usdoj.gov

efile_denver.enrd@usdoj.gov

U.S. Mail Overnight Mail Hand Delivery Facsimile E-Mail

Molly M. Kelly, Montana DNRC

1539 Eleventh Avenue

P.O. Box 201601 Helena, MT 59601

Molly.kelly2@mt.gov

Jean.Saye@mt.gov

U.S. Mail Overnight Mail Hand Delivery E-Mail

Chad Vanisko, Montana Attorney General Agency Legal Counsel

Agency Legal Services Bureau

1712 Ninth Avenue P.O. Box 201440 Helena, MT 59620-1440

chad.vanisko@mt.gov

rochell.standish@mt.gov

U.S. Mail Overnight Mail Hand Delivery E-Mail

Daniel J. Decker, Melissa Schlichting, Christina M. Courville

Confederated Salish & Kootenai Tribes

Tribal Legal Department P.O. Box 278 Pablo, MT 59855

Melissa.Schlichting@cskt.org

Christina.Courville@cskt.org

daniel.decker@cskt.org

U.S. Mail Overnight Mail Hand Delivery E-Mail

Dated this 5th day of January, 2024

DocuSigned by:

Rich Jore

Objector: 01F3DD89538A4E1...

DocuSigned by:

Nancy Jore

Objector: 01277E121B544B3...