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**MONTANA TWENTIETH JUDICIAL DISTRICT COURT,  
 LAKE AND SANDERS COUNTIES**

**WESTERN MONTANA WATER )  
 USERS ASSOCIATION, LLC, on )  
 behalf of its members, who own irrigated )  
 lands with appurtenant water and other )  
 water rights within the Mission, Jocko )  
 Valley, and Flathead Irrigation Districts, )**

**Plaintiff,**

v.

**MISSION IRRIGATION DISTRICT, )  
 JOCKO VALLEY IRRIGATION )  
 DISTRICT, FLATHEAD IRRIGATION )  
 DISTRICT, AND FLATHEAD JOINT )  
 BOARD OF CONTROL, )**

**Defendants.**

**Cause No.** \_\_\_\_\_

**Judge:**

**PLAINTIFF’S PETITION FOR  
 WRIT OF MANDATE AND  
 COMPLAINT FOR INJUNCTIVE  
 AND DECLARATORY RELIEF**

COMES NOW, the Western Montana Water Users Association, LLC, by and through its attorneys, Brian C. Shuck, of the Law Office of Brian C. Shuck, P.C., and Bob Fain, local counsel, and in support of its *Petition for Writ of Mandate and Complaint for Injunctive and*

*Declaratory Relief*, pursuant to Montana Code sections 27-19-101 et seq. (injunctions), 27-8-101 et seq. (declaratory relief), and 27-26-101 et seq (mandamus), hereby states and alleges as follows:

1. The Plaintiff, Western Montana Water User’s Association, LLC, (hereinafter “WMWUA”) is a limited liability company organized and existing under the laws of the State of Montana and has its principal place of business in Lake County, Montana.

2. The members of WMWUA (hereinafter “irrigators”) all own fee lands with appurtenant water to irrigate within the above-referenced irrigation districts and/or own other water rights, including groundwater wells, and their lands are located in and served by water delivered by each of the three (3) irrigation districts through the Flathead Irrigation Project (hereinafter “FIP”).

3. The Defendant, the Mission Irrigation District, is an irrigation district formed pursuant to Montana law and established by this Court by Order of this Court dated August 26, 1926 in Docket No. 9196, and has its principal place of business in Lake County, Montana.

4. The Jocko Valley Irrigation District is an irrigation district formed under the laws of the State of Montana and established by this Court by Order dated August 26, 1926 in Docket No. Book 2 Misc., Page 122, and has its principal place of business in Lake County, Montana.

5. The Defendant, the Flathead Irrigation District, is an irrigation district formed pursuant to Montana law and established by this Court by Order dated August 26, 1926 in Docket No. 9251, and has its principal place of business in Lake and Sanders Counties, Montana.

6. The Defendant, the Flathead Joint Board of Control (hereinafter “Joint Board”), is a joint board purporting to and acting on behalf of the three (3) irrigation districts pursuant to a contract

between the three (3) irrigation districts and its principal place of business is in Lake County, Montana.

7. Venue is proper in this Court as all three Montana three (3) irrigation districts and their Joint Board have their principal places of business in Lake County, Montana and the lands served by the three (3) irrigation districts are located in Lake County and Sanders County, Montana.

8. The three (3) irrigation districts and their Joint Board derive any and all powers that they have from the Orders of this Court establishing the three (3) districts and Montana statutes governing irrigation districts, codified at Montana Code Annotated 85-7-101 et seq.

9. This Court has original jurisdiction over the above-captioned matter pursuant to Montana Code Annotated sections 3-5-302 (1) (b) and (5) and 3-5-311 and venue is appropriate in this Court pursuant to Montana Code Annotated section 25-2-126 (2).

**FIRST REQUESTS FOR RELIEF:**  
**INJUNCTIVE RELIEF AND DECLARATORY RELIEF**

10. Plaintiff realleges and reasserts each paragraph stated above and incorporates the same by reference as if fully set forth herein.

11. The Joint Board has been negotiating a contract with the United States and the Confederated Salish and Kootenai Tribes (hereinafter “CSKT”) entitled “*Agreement between the Confederated Salish and Kootenai Tribes of the Flathead Nation, the United States, Acting through the Bureau of Indian Affairs of the United States Department of the Interior, and the Flathead Joint Board of Control of the Flathead, Mission and Jocko Valley Irrigation Districts*” (hereinafter “FIP Agreement”). A copy of the FIP Agreement is attached hereto as **Exhibit “A.”**

12. A vote to either approve or disapprove the FIP Agreement proposed by the CSKT will occur soon and there would likely be little public notice of the vote because the Joint Board's only needs to provide 24-48 hours notice posted on the door of the Joint Board office prior to a vote on the FIP Agreement. The FIP Agreement is one of three (3) draft documents that has been circulated for Comments that were drafted and proposed by the CSKT as part of a proposed water rights settlement, including the "*Water Rights Compact Entered into by the Confederated Salish and Kootenai Tribes, the State of Montana, and United States of America*" (hereinafter "Compact") and the CSKT's "*Unitary Administration and Management Ordinance*" (hereinafter "Tribal Ordinance").

13. The FIP Agreement states that "this Agreement will be incorporated as an integral part of the Water Rights Compact (Compact) . . ." See FIP Agreement, page 5.

14. The FIP Agreement the Joint Board intends to vote to approve is one of the CSKT's three (3) proposed settlement documents.

15. Plaintiff asserts approval of said FIP Agreement by the Joint Board would be illegal for **several reasons** and that this Court should enter an Order enjoining a vote for approval of the FIP Agreement for several reasons.

16. **First**, Montana Code Annotated section 85-7-1957 requires the 3 irrigation districts to submit the proposed FIP Agreement to this Court for review, stating:

The board of commissioners of any **irrigation district, before** the making of **any contract** with the United States hereunder, shall commence a special proceeding in the **district court of the state**, by which the proceedings of the board and of the district leading up to the making of any such contract and the validity of the terms thereof shall be judicially examined and approved and affirmed or disapproved and disaffirmed. (Emphasis added).

17. In the case at bar, any vote by the Joint Board at this point would be illegal because any such contract must be approved by the “irrigation districts,” not the Joint Board. Such a distinction is relevant because the boards for all three irrigation districts do not support the proposed FIP Agreement and the related Compact and water rights settlement proposed by the CSKT.

18. Further, the vote by the Joint Board would be illegal because the irrigation districts must petition this Court for approval of the same **before** it enters into the FIP Agreement. Given the fact that the Joint Board vote will occur soon and no action has been brought in this Court pursuant to section 85-7-1957, it is clear the Joint Board does not intend to comply with this statute.

19. Further, any such Joint Board vote on the FIP Agreement is tainted by illegal meetings leading up to approval of the FIP Agreement. For example, one such illegal meeting took place on October 12, 2012, at which time the Board members illegally agreed to expedite the vote on the FIP Agreement and vote on it the way it is rather than requiring amendments and concessions from the CSKT that the Joint Board demanded by letter approximately four (4) weeks earlier.

20. Further, the proceedings leading up to a Joint Board vote on the FIP Agreement are tainted because certain members of the Joint Board have been awarded tribal grazing leases from the Tribes under which they lease lands from the CSKT, and other matters involving self dealing and ethical conflicts, and they should have disclosed the conflicts.

21. Some of said Joint Board members are incentivized to approve the FIP Agreement the CSKT has proposed or they may lose their tribal grazing leases and/or not receive other tribal grazing leases in the future.

22. **Second**, Montana Code Annotated section 85-7-1956 requires the proposed FIP Agreement to be submitted to a vote of the individual irrigators whose lands are served, stating:

No contract shall be made with the United States hereunder except upon approval of a majority of those voting on the question at an election conducted pursuant to 85-7-1710, provided that the voting majority must own at least 50% of the acreage included within the district, or upon a petition signed by at least 60% in number and acreage of the holders of title or evidence of title to the lands included within the district.

23. A Joint Board vote on the FIP Agreement at this point would be illegal because the Joint Board has not submitted the contract for the approval of a majority of the people owning land within the districts or produced a petition signed by individual irrigators as required by section 85-7-1956.

24. Even if the Joint Board submitted the matter to a vote of the irrigated landowners or produced the signed petition required by section 85-7-1956, it would still not comply with the section above because it is each of the three (3) irrigations district who must do so, not the Joint Board, who must submit it to a vote or submit a signed petition. Once again, it is the three (3) irrigation districts that have the authority to submit it to a vote of the irrigated landowners, not the Joint Board.

25. Therefore, the Joint Board and the three (3) irrigation districts have failed to comply with Montana statutes put in place by the Montana Legislature to ensure that contracts with the United States are legal and fair to irrigators, are subject to a vote of irrigators, and have been approved by this Court.

26. Plaintiff has provided a draft of this Complaint to Defendants in an effort to secure Defendants' compliance with sections 85-7-1956 and -1957 and avoid filing this action.

27. Plaintiff has been advised by Defendants that they have no intent to comply with these two statutes.

28. **Third**, the FIP Agreement the Joint Board seeks to approve is premised on the false assumption that a “Cooperative Management Entity” created by an earlier Agreement with the United States and the CSKT is valid and enforceable. It is not.

29. Specifically, the “*Agreement between the United States of America Department of the Interior and the Confederated Salish and Kootenai Tribes of the Flathead Nation and the Flathead Joint Board of Control of the Flathead, Mission, and Jocko Valley Irrigation Districts Acting through a Cooperative Management Entity to Manage and Operate the Flathead Indian Irrigation Project*” (hereinafter “CME Agreement”) was illegally approved by the Joint Board without submitting it to this Court’s approval and submit it to as vote of the irrigated landowners pursuant to sections 1956 and 1957.

30. In 2010, the Joint Board entered into the CME Agreement with the CSKT and the United States to establish a joint irrigation district-tribal governmental entity known as the Cooperative Management Entity (CME) to which the BIA would turn over operation and maintenance of the project.

31. Under the CME Agreement, the three (3) irrigation districts, through their Joint Board, agreed to continue to use their statutory authority under the Montana statutes governing irrigation districts to levy assessments and collect taxes from irrigated landowners and make those tax dollars available to the CME to fund operation and maintenance of the irrigation project.

32. **Before** the CME Agreement was enacted, neither the Joint Board nor the three (3) irrigation districts complied with Montana Code Annotated sections 18-11-101 et seq. relating to

the creating of joint tribal cooperative agreements, which requires that the public be notified of the proposed agreement, and be given an opportunity to provide comments and be heard as to CME Agreement.

33. Montana Code Annotated section 18-11-103 (4) provides that, **prior** to entering onto the CME Agreement, the Joint Board had to provide notice and a public meeting to receive comments and provide written and other information and publish the notice in the newspaper in every county in which the reservation sits. Plaintiff asserts this did not occur.

34. Further, the CME Agreement was a contract with the United States. As a contract with the United States, Montana Code Annotated sections 85-7-1956 and -1957 required the Joint Board to submit the proposed CME Agreement to a vote of the irrigators and petition this Court and submit the CME Agreement to this Court for approval **prior** to entering into it. This did not occur either.

35. For this reason, the FIP Agreement the Joint Board will vote to approve, which is based on the false assumption that the CME Agreement is valid and enforceable, is likewise invalid and unenforceable and would be an illegal act that this Court should enjoin from being approved by the Joint Board.

36. In light of the above, the Plaintiff respectfully requests that this Court:

- a. Enter declaratory relief declaring that the Joint Board and the three (3) irrigation districts have failed to comply with Montana Code sections 85-7-1956 and -1957 with respect to the proposed FIP Agreement with the United States and CSKT and that a Joint Board or any irrigation district vote on the proposed FIP Agreement at this time, as currently drafted, would be in violation of these State statutes; and

- b. Enter declaratory relief declaring that the Joint Board and the three (3) irrigation districts failed to comply with Montana Code sections 85-7-1956, 85-7-1957, and 18-11-103 (4) with respect to the CME Agreement with the United States and CSKT and that the Joint Board's approval of the CME Agreement failed to comply with these State statutes and is therefore void; and
- c. Enjoin the Joint Board and the three (3) irrigation districts from voting on the FIP Agreement until it has fully complied with sections 85-7-1956 and -1957 by submitting it to a vote of the irrigated landowners and submit it to this Court for review and approval.

37. Plaintiff's members' fee lands would have less or little value with the lesser amount of water proposed by the FIP Agreement.

38. Any uncertainty as to the amount of water appurtenant to Plaintiff's members' fee lands or the predictability with which they will receive water diminishes their land's value and said FIP Agreement decreases the amount and undermines the certainty and predictability of their water rights delivery.

39. The Plaintiff asserts no bond is required; however, if the Court deems it necessary for Plaintiff to post bond in this matter, it stands ready to do so.

40. A Permanent Injunction is necessary in order to maintain the status quo so as to not irreparably injure the rights of the Plaintiff's members and their lands.

41. **Monetary damages would not be adequate to compensate Plaintiff's members** in the event the Joint Board approves the FIP Agreement.

42. Montana Code Annotated section 27-19-102 (1) provides:

. . . a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant where:

- (1) pecuniary compensation would not afford adequate relief;
  - (2) it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;
- \* \* \*

43. In this case, the Plaintiff and its members would not be afforded adequate relief by awarding monetary damages to them and it would be extremely difficult to ascertain the amount of compensation necessary to compensate them for the loss of part or all of their appurtenant water and subjecting them to the jurisdiction of the CSKT and a joint tribal entity.

44. **The balancing of the equities** weighs in favor of the Plaintiff's members, who would forever lose all or a portion of their appurtenant water and be forced to have themselves and their fee lands submit to the jurisdiction of a tribal entity and joint local government-tribal entity that has no jurisdiction over them or their lands and be forced to litigate any disputes related to their water rights in tribal court and then ultimately federal court, thus depriving them of their right to have disputes resolved in this Court and/or the Montana Water Court.

45. If the injunction is not granted, the harm to the Plaintiff and its members and its members' fee lands with appurtenant water far outweighs any inconvenience imposed upon the Joint Board and the three (3) irrigation districts by requiring them to comply with Montana State Statutes by submitting the matter to a vote of the irrigators, submitting the FIP Agreement to this Court for review and approval, and demanding amendments to the FIP Agreement so that it complies with Montana law.

46. Further, Plaintiff asserts the Court should reject any argument by the Joint Board or the three (3) irrigation districts that complying with the laws cited above is a burden of any kind.

47. Plaintiff is a citizens' group and/or public interest association, which asserts that its members' property rights, namely the water appurtenant to their fee land in the three (3)

irrigation districts, would be injured by the proposed FIP Agreement, which is distinguishable from the injury to the public generally.

48. Further, Plaintiff's members, who hold water rights for groundwater wells and other water rights other than project irrigation water, would be injured by having their water rights purportedly given up by the Joint Board and required to submit themselves to the jurisdiction of a tribal entity or joint tribal entity and comply with their new process to obtain a water right from them and continue to use their water rights.

49. Pursuant to Montana Code Annotated section 27-19-104, the names and addresses of the injured members with water rights for irrigation and with water rights for groundwater wells and other water rights are attached hereto as **Exhibit "B"** and incorporated herein by reference.

50. Plaintiff, its members, and their fee lands, would be **irreparably harmed** if the Joint Board is not enjoined from approving the FIP Agreement. If the proposed FIP Agreement were approved, the Joint Board would unlawfully injure Plaintiff's members and their lands by, *inter alia*:

- a. Reducing the amount of water they will receive to irrigate their lands and cap it at a maximum of 1.4 acre feet per acre per year, even when more water is available in the system (See FIP Agreement, page 6, paragraph 5, last sentence);
- b. Unlawfully agreeing to convert the State water right that should be awarded to Plaintiff's members' lands into a right to use a portion of an Indian reserved water right to be awarded to the CSKT as a "big bucket" of unattached, unappurtenant water rather than awarding it to the lands as an appurtenance to the lands upon which it is used as done in the *Winters* case, other general stream adjudications, and in compliance with Montana Code Annotated section 85-7-1911 (1) (which

applies to all water rights in Montana irrigation districts), thus depriving them of a State statutory property right and unlawfully subjecting them to tribal jurisdiction (See FIP Agreement, page 6, paragraph 11, first sentence);

- c. Purporting to cede water management, water measurement, instream flow monitoring and reporting over Plaintiff's members and the members' land to a tribal entity (See FIP Agreement, page 9, paragraph 28);
- d. Giving up Plaintiff's members' exempt water rights under existing state law (See FIP Agreement, page 9, paragraph 3);
- e. Giving up Plaintiff's members' right to have State water rights adjudicated by the Montana Water Court and awarded to as an appurtenance to their lands under existing State law governing all Montana irrigation districts (See FIP Agreement, page 9, paragraph 3);
- f. With respect to those members with water rights for groundwater wells rather than irrigation, having their water rights purportedly given up by the Joint Board and requiring them to submit themselves to the jurisdiction of a tribal entity or joint tribal entity and comply with their new process to obtain a water right from them and continue to use their water rights (See FIP Agreement, Art. V, paragraph 3, on page 9 and Art. IX, paragraph 23, page 13).

51. Issuing injunctive relief in this case is **in the public interest**, which is better served by having: (a) the FIP Agreement submitted to a vote of the irrigated landowners; (b) the FIP Agreement being submitted by petition to this Court for review and approval; and/or (c) the Montana Water Court adjudicate all water rights and award the amount of water as an appurtenance to their lands.

52. Plaintiff asserts that there is a substantial likelihood it will be successful on the merits in permanently enjoining the Joint Board from voting on the FIP Agreement at this time, as drafted because the FIP Agreement and Defendants' process violates numerous provisions of the Montana Statutes, as outlined in detail above.

53. Declaratory Relief pursuant to Montana Code Annotated section 27-8-101 et seq. in this case is appropriate to settle Plaintiff's rights and afford them relief from uncertainty and insecurity with respect to the status of the water rights and the amount of water appurtenant to their fee land.

54. Specifically, Declaratory Relief is appropriate when "any person...whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise [and] may have determined any question of construction or validity arising under the instruments, statutes, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder." Montana Code Annotated section 27-8-202.

55. In this case, Plaintiff and its members are entitled to have their rights declared by this Court under Montana's statutes identified above and whether the three (3) irrigation districts and the Joint Board have any authority to enter into a FIP Agreement contrary to their statutory rights and property rights.

56. Declaratory Relief as requested by the Plaintiff will aid in terminating the controversy and removing any uncertainty because the Joint Board must then submit the FIP Agreement to a vote of the irrigators and submit the FIP Agreement and the Joint Board's process leading to the FIP Agreement to this Court for approval, which gives Plaintiff greater comfort that a FIP Agreement will not be approved by this Court until the Joint Board has amended the FIP

Agreement to address the numerous areas where the FIP Agreement is unfair to irrigations and fails to comply with Montana law.

57. Plaintiff and its members have incurred significant costs in attempting to negotiate this matter with the Flathead Joint Board of Control and its three (3) irrigation districts and filing this action and Plaintiff is entitled to an award of costs from the Joint Board and three (3) irrigation districts as the Court deems just and equitable.

58. In seeking injunctive relief, Plaintiff seeks to enforce its member's rights under the project and water rights to ensure they may continue to use the amounts of water appurtenant to their lands.

59. Further, in seeking injunctive relief, Plaintiff seeks to enjoin the Joint Board from entering into a FIP Agreement that allows it to use Plaintiff's members' water rights for its own purposes or in a way that benefits the CSKT pursuant to the proposed FIP Agreement.

60. Plaintiff and its members are entitled to an award by this Court of reasonable attorneys fees and costs pursuant to Montana law.

**SECOND REQUEST FOR RELIEF:**  
**WRIT OF MANDAMUS**

61. Plaintiff restates and realleges each and every averment contained in the paragraphs above as if fully set forth herein and incorporates the same by reference.

62. In the alternative or in addition to injunctive relief, Plaintiff requests that this Court issue a Writ of Mandamus, also denominated as a Writ of Mandate, ordering the 3 Defendant irrigation districts to comply with Montana Code sections 85-7-1956 and -1957 by submitting the proposed FIP Agreement to a vote of the landowning irrigators or otherwise comply with

section -1956 and submit it to this Court for approval. A Writ of Mandate is attached hereto and incorporated herein by reference for the Court to execute.

63. Defendants are governmental entities, boards, and/or public corporations that exist pursuant to state statutes and the Orders of this Court establishing them.

64. Defendant irrigation districts have a clear legal duty to comply with Montana Code by submitting the proposed FIP Agreement to a vote of the landowning irrigators (or otherwise comply with section 85-7-1956) and submit it to this Court for approval pursuant to section 85-7-1957.

65. The proposed FIP Agreement is “a contract with the United States” that is reference in both statutory sections and governed by Montana Code sections 85-7-1956 and -1957.

66. The Affidavit of Steve Killorn, a Manager of the Western Montana Water Users Association, LLC and Manger of Buffalo Wallow, LLC, a landowning irrigator within the Defendant irrigation district, who is entitled to vote at an election to be held pursuant to section 85-7-1956, is attached hereto and incorporated by reference.

67. Plaintiff and its members are beneficially interested in Defendants complying with sections 85-7-1956 and -1957 because they are landowning irrigators within the 3 Defendant irrigation districts and are entitled to vote or consider a petition under section 1956 and will be injured if the Court does not review the proposed FIP Agreement and the process by which it was negotiated and determine whether it complies with the law.

68. The required compliance with sections 85-7-1956 and -1957 are not legislative acts, but are merely duties Defendant irrigation districts must perform to comply with the statutes governing irrigation districts.

69. There is no plain, speedy, and adequate remedy in the ordinary course of the law available to Plaintiff and its members unless this relief is granted and an injunction is not a plain, speedy, and adequate remedy because the Joint Board will vote soon and is only required to give 24-48 hours notice of a meeting. See *Allen v. Madison County Comm'n*, 211 M. 79, 684 P.2d 1095, 41 St. Rep. 1226 (1984) (holding that an injunction is not a plain, speedy and adequate remedy).

70. Plaintiffs have incurred damages in the form of attorney s fees and costs.

71. With respect to its request for a Writ of Mandate, Plaintiffs are also entitled to recover from Defendants the attorneys fees and costs it has incurred in securing compliance with sections 85-7-1956 and -1957.

**WHEREFORE**, the Plaintiff, Western Montana Water Users Association, LLC, respectfully requests on behalf of its members that this Court grant relief as follows:

A. Enter a Permanent Injunction enjoining the Flathead Joint Board of Control and the three (3) irrigation districts from voting to approve any FIP Agreement until it has complied with Montana Code Annotated sections 85-7-1956 and 85-7-1957 and grant Declaratory Relief declaring the Defendants must comply with the same and any vote taken by Defendants without complying with these statutes is void; and

B. Enter Declaratory Relief in favor of Plaintiff declaring that Defendants have failed to comply with Montana Code Annotated sections 85-7-1956 and 85-7-1957 and that it must do so before it votes on the FIP Agreement and any failure to comply with said statutes renders any such FIP Agreement void; and

C. Enter Declaratory Relief in favor of Plaintiff declaring that the CME Agreement executed in 2010 failed to comply with Montana Code Annotated sections 18-11-101 et seq., 85-7-1956, 85-7-1957, and is therefore void; and

D. In the alternative or in addition to injunctive relief, grant an Alternative Writ of Mandate, ordering Defendants to comply with Montana Code sections 85-7-1956 and -1957 by submitting the proposed FIP Agreement to a vote of the landowning irrigators or otherwise comply with section 1956 and submit it to this Court for approval.

E. Award attorneys fees and costs to Plaintiff and its members; and

F. Grant such other and further relief as the Court deems just and equitable in the premises.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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