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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

CONFEDERATED SALISH AND
KOOTENAI TRIBES,

Case No. 9:14-cv-00044-DLC

Plaintiff,

v.

FEDERAL DEFENDANTS'
UNOPPOSED MOTION
FOR EXTENSION OF TIME

JEWELL et al.,

Defendants.

Unopposed Motion for Extension of Time

The United States respectfully requests that this Court grant its motion for an extension of time to file a responsive pleading, until September 26, 2014. For the reasons set forth below, an extension will promote judicial efficiency because the United States is evaluating whether it should seek intervention as a Plaintiff and/or dismissal as a Defendant.

The United States has conferred, or attempted to confer, with all represented parties. The following parties do not oppose the motion: Plaintiff Confederated Salish and Kootenai Tribes and Defendant Flathead Irrigation District. No counsel has appeared for defendants Blanche and Alex Crepeau, Michael G. McLatchy, Jocko Valley Irrigation District, and Mission Irrigation District. Counsel for the District Court for the Twentieth Judicial District of Montana and the Montana Water Court were contacted, via email on June 30, and have not responded although a “read receipt” email was returned on June 30. Counsel for Betty and Wayne Stickel and Judy and Robert Harms asked that we state their position as follows: “[a]t this time, the Harms and Stickels take no position on federal defendants’ motion; however, they reserve the right to object after reviewing the motion.”

The Complaint, Amended Compl. (ECF No. 40), does not seek relief against the United States. If the United States were to file a motion to dismiss, on that sole

basis, without first determining whether it will intervene as a plaintiff, the parties would likely dispute a number of legal issues over the ensuing months, including whether the United States is a necessary and indispensable party, and if so, whether the United States has waived its sovereign immunity. This may prove unnecessary and an extension will serve judicial efficiency by preventing briefing on these issues, unless and until the United States declines to enter this case as a Plaintiff.

The suit has two components: a count for injunctive relief to stop two different Montana State Courts from determining water rights because one lacks jurisdiction and the other that has jurisdiction must wait another year to begin proceedings on such rights, and a declaratory count to determine the water rights of the federal irrigation project on the Flathead Indian Reservation. The United States needs additional time to evaluate this suit, the multiple state suits involved, and formulate the appropriate positions, including whether the United States as a defendant is in the correct posture as a party to this litigation. This requires extensive coordination with several components of the Justice Department and with the Interior Department; this process is ongoing but incomplete.

Further, a delay may well have salutary effects in regards to the injunctive count of the Complaint and the overall resolution of water rights issues.

Additional time will, in the interest of comity, allow the two different Montana State Courts to dismiss for lack of jurisdiction or take other appropriate action in

the litigation brought by various irrigation entities, as the Montana Attorney General has encouraged them to do. See Mem. in Support of Montana Attorney General's Motion to Intervene at p. 5 (ECF No. 41). As noted by the Montana Attorney General's *amicus curiae* briefs in State Court, the hope of three sovereigns (Tribes, State and United States) is that a revised Compact will be negotiated this summer and fall and that can be ratified by the Montana legislature in early 2015. An extension of the current schedule will allow the sovereigns time to focus on those matters as well.

/s/ Nathanael Watson
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CERTIFICATE OF SERVICE

I HERBY CERTIFY that, on July 2nd, 2014, I filed the foregoing electronically through the CM/ECF System, which caused parties to be served by electronic means.

AND I FURTHER certify that on such date I served the foregoing on the following non-CM/ECF Participants, by first class mail:

Michael G. Mclatchy
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/s/ Nathanael Watson