

1 HON. JAMES A. MANLEY  
2 20<sup>th</sup> Judicial District Court  
3 Lake County Courthouse  
4 106 Fourth Avenue East  
5 Polson, MT 59860  
6 (406) 883-7250

CLERK OF THE  
DISTRICT COURT  
LYN FRICKER

2015 MAY 27 AM 11 18

FILED BY \_\_\_\_\_  
CLERK/DEPUTY

7 MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

8 Cause No. DV-15-73

9 FLATHEAD JOINT BOARD OF CONTROL  
10 and JERRY LASKODY, BOONE COLE, TIM  
11 ORR, TED HEINS, BRUCE WHITE, SHANE  
12 ORIEN, WAYNE BLEVINS and GENE  
13 POSIVIO, all members of the Flathead Joint  
14 Board of Control,

15 Plaintiffs,

16 vs.

17 MEMBERS OF THE MONTANA 64<sup>th</sup>  
18 LEGISLATURE, a legislative body comprised  
19 of Members of the Senate and House of  
20 Representatives; AUSTIN KNUDSEN, Speaker  
21 of the House; DEBBY BARRETT, President of  
22 the Senate; STATE OF MONTANA;  
23 STEPHEN C. BULLOCK, Governor, State of  
24 Montana; TIMOTHY FOX, Montana Attorney  
25 General; REPRESENTATIVE DANIEL  
26 SALOMON, Representing Montana House  
District 93; REPRESENTATIVE GREG  
HERTZ, representing Montana House District  
12; REPRESENTATIVE GEORGE KIPP, III,  
representing Montana House District 15;  
SENATOR CLIFF LARSEN, representing  
Montana Senate District 47; SENATOR LEA  
WHITFORD, representing Montana Senate  
District 8; and JOHN DOES 1-10,

Defendants.

ORDER  
DENYING MOTION TO CHANGE VENUE

1 Plaintiffs include the Flathead Joint Board of Control, which is the joint board which  
2 operates three irrigation districts: the Flathead Irrigation District, Mission Irrigation District and  
3 Jocko Valley Irrigation District. These irrigation districts are located in Lake County and Sanders  
4 County. Plaintiffs also include individual members of the joint board, who are also landowners and  
5 water users in Lake County or Sanders County.  
6

7 Plaintiffs filed a complaint for injunctive relief and declaratory judgment, relating to water  
8 compact and Senate Bill 262 to adopt the water compact. The injunctive relief sought was to  
9 prevent various members of the legislative and executive branches of state government from  
10 passage of the senate bill, or signing the senate bill into law. The bill was passed and signed into  
11 law.  
12

13 The Montana Attorney General and Solicitor General, on behalf of all defendants, filed a  
14 "Notice of Mootness", contending that the request for temporary restraining order is now moot.  
15 With respect to the request for temporary restraining order, the Court agrees that issue is now  
16 moot. However, as pointed out by plaintiffs, the complaint also seeks declaratory judgment  
17 regarding the constitutionality of the law, and that issue is not moot. Therefore, the Motion to  
18 Change Venue must be decided.  
19

20 Defendant's motion was based on the authority that an action to enjoin public officials  
21 should generally be filed in the Country where the public official is located, and therefore where  
22 the acts complained of will occur. Given the mootness of the injunction issue, determination of  
23 venue turns on other rules.  
24

25 Plaintiffs are located, operating and residing in the 20<sup>th</sup> judicial District, in Lake County or  
26 Sanders County. The irrigation systems and water use which is the subject of this action are  
primarily or exclusively located in Lake County or Sanders County. The people primarily affected

1 by the outcome of this case are located in Lake County or Sanders County. The convenience of  
2 witnesses and ends of justice would be promoted by declining to change venue. MCA 25-2-201  
3 (3).

4 This action, which will proceed as a declaratory judgment action on constitutionality, is  
5 essentially, or predictably will be, an action against the state. Venue in Lake County is proper  
6 pursuant to MCA 25-2-126(1).  
7

8 Although it ultimately may be determined that venue and jurisdiction lies with the Montana  
9 Water Court, if the action remains in a state district court, the legislature intended the action to be  
10 tried where the real property interest is located. MCA 25-2-123.  
11

12 Therefore, Defendants' Motion for Change of Venue is DENIED.

13 DATED this 26<sup>th</sup> day of May, 2015.

14 **JAMES A. MANLEY**

15 \_\_\_\_\_  
16 JAMES A. MANLEY  
17 District Court Judge  
18  
19  
20

21 cc: Bruce A. Fredrickson and Kristin L. Omvig, Attorney for Plaintiffs  
22 Timothy C. Fox, Alan Joscelyn, Dale Schowengerdt, J. Stuart Segrest, Matthew Cochenour, Attorneys for Defendants  
23 05/27/15 cWMc  
24  
25  
26