

Montana Water Court
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Montana Water Court

MONTANA WATER COURT, CLARK FORK DIVISION
JOCKO RIVER HYDROLOGIC SUB-BASIN (BASIN 76L) AND
FLATHEAD RIVER TO AND INCLUDING FLATHEAD LAKE (BASIN 76LJ)

COURT MINUTES AND ORDER ON STAY

On July 16, 2015, the Chief Water Judge heard arguments concerning whether the stay on claims examination in Basins 76L and 76LJ should be extended. The hearing was held at the Montana Water Court in Bozeman, Montana. The following parties appeared in person: John Carter and Daniel Decker for the Confederated Salish and Kootenai Tribes (CSKT); Nathanael Watson for the United States, Bureau of Indian Affairs; and Jay Weiner for the State of Montana. Bruce Fredrickson appeared telephonically for the Flathead Joint Board of Control. John Peterson, Adjudication Bureau Chief, also appeared telephonically for the DNRC.

The parties to the Compact (Settling Parties) asked for a stay of the adjudication in Basins 76L and 76LJ. The Flathead Indian Reservation is located in these Basins. A variety of arguments for the stay were presented. The common thread among these arguments was that approval of the Compact by the Tribe and Congress might be delayed or jeopardized if adjudication in Basins 76L and 76LJ commenced. The Settling Parties argue that approval of the Compact is a better alternative to litigation over Tribal claims.

The Montana Legislature has recognized the benefits of settling claims to federal and Indian reserved rights and has created a process to facilitate such settlements. The CSKT Compact is a product of that process.

The Legislature has also recognized the benefits of assuring that Montana's statewide adjudication of water rights moves forward in a timely and efficient manner. Last session, it passed SB 57, which reaffirms deadlines for issuance of first decrees in all

Basins in Montana. The deadline for issuance of such decrees is 2020. No decrees have yet been issued in Basins 76L and 76LJ, and the stay requested by the Settling Parties will delay the issuance of first decrees in those Basins.

Consideration of this request for a stay therefore requires a balancing of two potentially competing interests. The Settling Parties represent they are moving forward diligently with congressional and Tribal approval of the Compact. Approval of the Compact, provided it occurs in a timely manner, may avoid protracted litigation over Tribal claims, thereby serving the Legislature's goal of expediting the adjudication.

The Settling Parties requested a stay of four years to achieve their goal of Compact approval. At the same time, they represented that odds of congressional approval of the Compact are high during the current lame duck session, which ends in 2016.

A stay of four years is well past that point and represents a substantial delay in the adjudication of water rights in Basins 76L and 76LJ. A shorter stay gives the parties the opportunity to achieve their goals and provides an earlier chance for the Court to reassess the merits of the stay and meet the benchmarks in SB 57.

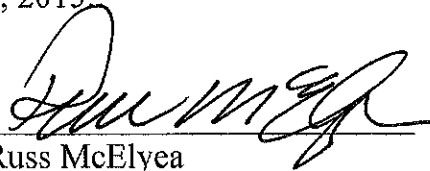
Accordingly, the Court makes the following order:

1. Adjudication of all water rights in Basins 76L and 76LJ is stayed until January 31, 2017. No Preliminary Decree will be issued for either Basin before this date.
2. Adjudication of any issues pertaining to the Compact is stayed until January 31, 2017. This part of the stay applies only to cases before the Montana Water Court, and does not apply to cases in other courts.
3. The DNRC is ordered to complete claims examination of state-based claims, and to prepare and deliver to the Water Court Summary Reports in both Basins. The Court reserves the authority to control the scope of the claims examination during the pendency of that process. Claims examination in the Basins will not include examination of any Reserved or Aboriginal rights filed by the Tribe or the United States during the pendency of this stay.

4. The parties may request an additional hearing on these matters prior to January 31, 2017 to determine whether extension or modification of the stay is warranted.

It is so ORDERED.

DATED this 27th day of July, 2015


Russ McElyea
Chief Water Judge

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Note: Service List Updated 7/22/2015