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

7 **MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY**

Cause No. DV-15-73

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

Plaintiffs,

14 vs.

15 STATE OF MONTANA,

16 Defendant.

17 **ORDER**
18 **GRANTING TRIBE'S**
19 **MOTION TO INTERVENE**

20 **ORDER**

21 The Motion to Intervene filed by the Confederated Salish and Kootenai Tribes December
22 10, 2015 is GRANTED.

23 **RATIONALE**

24 Intervention is sought as a matter of right under Rule 24(a), as well as permissive
25 intervention under Rule 24(b).

26 Permissive intervention is granted under Rule 24(b).

The trial court is granted considerable discretion in determining permissive intervention.

1 The Tribes' motion was filed timely. As they point out, there was no reason to file the
2 motion while the Defendant's motion to dismiss was pending. The motion to intervene was filed
3 soon after that motion was denied on December 2, 2015.

4 Permissive intervention may be granted when the intervenor "...has a claim or defense that
5 shares with the main action a common question of law or fact." The Tribes' claim that the Water
6 Compact is not unconstitutional under the Montana Constitution is in common with the main
7 questions of law and fact herein.

8 The Tribes have an interest in litigation which could indirectly have substantial impact on
9 the eventual implementation of the Water Compact which the Tribes are party to. There is no good
10 reason, that this Court can see, for closing the courthouse doors to this interested party, while
11 allowing other interested parties to litigate the constitutionality of the statute which was passed to
12 implement the Water Compact. The Tribes also have an interest in the question of severability,
13 should some part or parts of the Water Compact be determined to be inconsistent with the State's
14 waiver of sovereign immunity in the Montana Constitution.

15 Plaintiffs argue that allowing intervention would significantly increase and expand the
16 litigation, and delay the outcome of the case. As set forth below, this Court agrees with Plaintiffs'
17 arguments regarding the limited scope of this case. Intervention by the Tribes will not broaden the
18 scope or significantly complicate the litigation, given its limited scope.

19 Plaintiffs argue the Water Compact is contingent upon passage by the federal and tribal
20 governments, and therefore the Tribes' interest in speculative and contingent, and the Tribes do not
21 have standing at this point. This argument is similar to the argument the State made in its motion
22 to dismiss, which Plaintiffs successfully argued against. Just as the court previously held that
23 delaying the case on *ripeness* considerations and leaving these issues and Plaintiffs' water rights in
24 doubt for years or decades, while the political machinery progressed, was unfair to the Plaintiffs,
25 the same fairness principles extend to the State and the Tribes.
26

1 The Court does not find the Tribes have a right to intervene as a matter of right pursuant to
2 Rule 24(a). Given the narrow scope of this case, the Tribes have no unique right that would be
3 impacted by the outcome of the case, or position that is not already being advocated for by the
4 State.

5 The Tribes seem to believe the outcome of this case could result in a ruling that the Water
6 Compact or new statute somehow waived the Tribes' sovereign immunity from monetary lawsuits
7 against the Tribes in state courts. That issue is not raised by the Plaintiffs' complaint, and will not
8 be litigated on the existing pleadings. This case is narrowly limited to the *State's* constitutional
9 waiver of sovereign immunity, and whether this compact and statute are inconsistent therewith,
10 and therefore whether the statute required a 2/3 vote in both houses of the state legislature.
11 Whether and the degree to which the Tribes have waived or retain sovereign immunity from suit in
12 various courts is not for this Court to decide in this litigation. Hopefully, this clarification will
13 avoid unnecessary motions and briefing on this issue.

14 For the same reason, the Tribes are not an indispensable party under Rule 19, because
15 complete relief can be granted in this limited litigation in the absence of the Tribes.

16 Finally, there is the unrelated issue of the Tribes' limited waiver of sovereign immunity
17 herein, for "*...addressing the Constitutionality of the Compact only, and do not waive Tribal*
18 *sovereign immunity for any crossclaims, counterclaims or third party actions arising out of or*
19 *resulting from this case.*" (pages 9-10, Tribes Brief in Support). Plaintiffs apparently contest this,
20 stating they "*...reserve and preserve the right to challenge...*" this limited waiver. The limited
21 waiver is not presented as an issue to be decided; it is premature, as there has been no attempt to go
22 beyond the statement of limited waiver.

23 DATED this 4th day of February, 2016.

JAMES A. MANLEY

24 _____
JAMES A. MANLEY
25 District Court Judge

26 cc: Bruce A. Fredrickson and Kristin L. Omvig, Attorney for Plaintiffs
Timothy C. Fox, Alan Joscelyn, Dale Schowengerdt, J. Stuart Segrest, Matthew Cochenour, Attorneys for Defendants
John B. Carter / Daniel J. Decker, Attorneys for Confederated Salish and Kootenai Tribes
02/04/16 cWMc