

Montana Water Court
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FILED

SEP 26 2016

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 EXTENDING STAY

On September 22, 2016, proponents of the Confederated Salish and Kootenai (CSKT) Compact presented arguments concerning extension of a stay of the adjudication of Basins 76L and 76LJ. The following parties appeared telephonically: John Carter, Daniel Decker, Rhonda Swaney, and John Harrison for the Confederated Salish and Kootenai Tribes (CSKT); Nathanael Watson, David Harder, and Bradley Bridgewater for the United States, Bureau of Indian Affairs, along with Jennifer Frozena of the Office of the Solicitor; and Jay Weiner for the State of Montana. Kristin Omvig appeared for the Flathead Joint Board of Control. John Peterson, Adjudication Bureau Chief, also appeared for the DNRC.

The parties to the Compact (Settling Parties) asked for an extension of the stay in Basins 76L and 76LJ, which contain the Flathead Indian Reservation, until such time as the Confederated Salish and Kootenai—Montana Compact is approved by this Court. The Compact was approved in the 2015 Montana Legislative session and is codified at Section 85-20-1901, et seq. MCA. The Compact must now be approved by the United States Congress.

The Settling Parties argued that approval of the Compact might be delayed or jeopardized if adjudication in Basins 76L and 76LJ commenced and 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. To this end, it has enacted legislation requiring that preliminary decrees be issued in all Montana Basins by 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 decrees in those Basins.

Consideration of this request for a stay therefore requires a balancing of two potentially competing legislative interests. 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. Issuance of a stay may also frustrate the legislature's objectives for issuance of preliminary decrees.

At the hearing on September 22, 2016, the Settling Parties represented that progress toward Compact approval has occurred. On May 26, 2016, Senator Jon Tester introduced a bill in the United States Senate (S. 3013) to approve the Compact and settle all of the Tribes' water related claims. The Senate Indian Affairs Committee held a hearing on the Compact Bill on June 29, 2016 with testimony from several senators and Letty Belin, Senior counselor to the Deputy Secretary of the Interior. Ms. Belin expressed support for the compact process but also stated concerns about the costs of settlement.

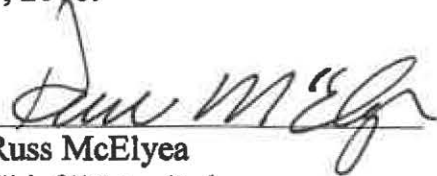
The Settling Parties have requested a stay until Congress has approved the Compact, but are unable to forecast when such approval might occur. A reasonable extension of the stay gives the parties an opportunity to achieve their goals while providing the Court an opportunity to reassess the merits of the stay in a timely manner.

Accordingly, it is ORDERED:

1. Adjudication of all water rights in Basins 76L and 76LJ is stayed until **June 1, 2018**. No Preliminary Decree will be issued for either Basin before this date.

2. Adjudication of any issues pertaining to the Compact is stayed until **June 1, 2018**. 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 June 1, 2018 to determine whether extension or modification of the stay is warranted.

DATED this 26th day of September, 2016.


Russ McElyea
Chief Water Judge

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Note: Service List Updated 9/23/2016