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**E-MAIL FILED**  
**MAY 30 2018**  
**Montana Water Court**

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

**THE STATE OF MONTANA ATTORNEY GENERAL'S *AMICUS CURIAE*  
BRIEF IN SUPPORT OF CONTINUED STAY OF ADJUDICATION IN  
BASINS 76L AND 76LJ**

The State of Montana, by and through the Attorney General's Office, supports the "Petition for Stay of Adjudication in Basins 76L and 76LJ and Request for Hearing" ("the Petition") filed by the Confederated Salish & Kootenai Tribes ("the Tribes").

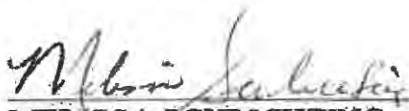
As noted by this Court in its September 26, 2016, Order staying the adjudication of Basins 76L and 76LJ, the Montana Legislature specifically created a process for the settlement of federal and Indian reserved water rights, clearly indicating a preference for settlement over litigation. For the reasons stated in both the Petition and the United States Department of Justice's Response, a continuation of the stay furthers the Montana Legislature's preference for settlement over litigation.

Moreover, it has only been three years since the 2015 Montana Legislature passed the Confederated Salish and Kootenai – Montana Water Compact ("Compact"), codified at Mont. Code Ann. § 85-20-1901. A continuation of the stay of adjudication will enable the State of Montana to focus its resources on Congressional passage of the Compact, rather than costly and time-consuming litigation.

For all the reasons best articulated by the Tribes in their Petition and the United States Department of Justice in its Response, the State of Montana joins the other parties' request to continue the stay, and notes that the Montana Department of Natural Resources and Conservation, and Montana Department of Fish, Wildlife and Parks, also concur.

Respectfully submitted this 29th day of May, 2018.

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By:   
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## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served on the Montana Water Court via email at watercourt@mt.gov with a request for a delivery receipt. Also, a copy of the foregoing was served via U.S. mail, postage pre-paid or email to:

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Dated: 5-29-18

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MAY 29 2018

Montana Water Court

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**THE STATE OF MONTANA ATTORNEY GENERAL'S MOTION FOR LEAVE  
TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF CONTINUED STAY OF  
ADJUDICATION IN BASINS 76L AND 76LJ**

COMES NOW the State of Montana through the Montana Attorney General ("Attorney General") and moves for leave to file an *amicus curiae* brief addressing the Petition filed on April 19, 2018, by the Confederated Salish and Kootenai Tribes ("the Tribes"), the United States Department of Justice's Response filed May 1, 2018, and Avista Corporation's Brief in Support of Petition for Stay filed in the above-captioned case. As the Montana Supreme Court has recognized, "the right to be heard as *amicus curiae* is within the discretion of the court." *Eberl v. Scofield*, 244 Mont. 515, 520, 798 P.2d 536, 539 (Mont. 1990) (internal quotations and citations omitted).

**Interests of the Amici**

The Attorney General seeks leave to file an *amicus curiae* brief in this case because of his interest, as both the chief legal officer of the State of Montana and as a result of his statutorily-assigned special role,<sup>1</sup> in protecting and preserving the integrity and orderly conduct of the Montana General Stream Adjudication so as to vindicate the State's constitutionally assigned role as owner of all the water in Montana. This interest

<sup>1</sup> See, e.g., §§ 85-2-212 and 85-2-248, MCA.

is particularly great as it pertains to assuring the compliance of the adjudication with the waiver of federal and tribal sovereign immunity embodied in the McCarran Amendment, 43 U.S.C. § 666, which allows Montana state courts to exercise jurisdiction over the water rights claims of the United States and Indian tribes within Montana's borders. *See State ex rel. Greely v. Confederated Salish and Kootenai Tribes*, 219 Mont. 76 (1985).

The Tribes' Petition raises issues that implicate future proceedings in this Court. The Petition also presents legal and procedural issues that may impact the current Montana statewide adjudication.

Respectfully submitted this 29th day of May, 2018.

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**BRIEF IN SUPPORT OF THE PETITION FOR EXTENSION OF STAY OF  
ADJUDICATION IN BASINS 76L AND 76LJ**

Pursuant to Rule 2 of the Montana Adjudication Rules, Movants Montana Stockgrowers Association (MSGA), Montana Farm Bureau Federation (Farm Bureau), Montana Water Resources Association (MWRA), Galt Ranch LP (Galt), Cremer Ranch and Rodeo (Cremer), respectfully file this motion and brief in support of the Confederated Salish and Kootenai Tribes of the Flathead Reservation (Tribes') Petition for Extension of Stay of Proceedings to Adjudicate the water right claims in Basins 76L and 76LJ. Movants state in support of this Motion:

**I. Movants are Vitally Interested in the Adjudication**

Movants are several organizations and private individuals whose missions and livelihoods depend on the legal and physical availability of water in Montana and the stability and efficient functioning of the Montana adjudication.

- a. MSGA is a nonprofit association composed of ranchers across Montana dedicated to protecting and enhancing Montana ranching families' ability to grow and deliver healthy and environmentally wholesome beef to the world. It has been representing and advocating for Montana ranching families since 1884. It actively engages with legislative and Congressional

bodies on behalf of Montana ranching families, on all matters of governmental policy that affect stockgrowers, including the Montana water adjudication.

- b. MWRA is a broad based and non-partisan public interest organization whose mission is to “participate directly in state water related legislative, regulatory and policy development activities”<sup>i</sup>. The MWRA is affiliated with the National Water Resources Association and provides its members with information and representation, on technical matters and representation on policy and legislative issues to assist members to protect their interests and participate in natural resource policy in Montana.
- c. The Farm Bureau, Montana’s largest agricultural organization, is an independent, non-governmental, voluntary organization with its roots in agriculture. MFBBF represents its members on local, county, state, national and international agricultural issues and is non-partisan, non-sectarian and non-secret in character.
- d. Galt and Cremer are large Montana ranches with several generations of history in Montana, and lands and operations in several Basins, including Basins 40A, 40C, 41I and 43 BV. Both ranches hold numerous irrigation, domestic, and stock water rights for their agricultural operations and homes and without which they could not operate. Both ranches span more than one hydrologic basin. Thus, these ranchers, like many Montana ranchers, must actively participate through counsel in the adjudication in more than one basin at a time. The need to participate regardless of the season – whether calving, branding, haying, or selling and transporting cows to market – is quite a burden, though one these parties willingly bear to protect their water rights.

II. Movants’ Participation Supporting the Tribes’ Petition for Stay Will Apprise the Court of Distinct Relevant Information to Assist the Court’s Determination

The Movants are each vitally interested in the ongoing efficiency and stability of the Montana adjudication. Their interests are different from those of governmental entities like the Tribes. Their participation as amici will therefore assist the Court herein by presenting the experiences and views of private parties whose claims and interests lie primarily in Basins other than the Jocko, Basin 76 L, and Flathead to and including Flathead Lake, Basin 76LJ. The Stockgrowers, MWRA, and Farm Bureau are non-governmental, non-profit Montana organizations whose mission includes providing Montana governmental agencies and Courts with timely, informed input on adjudication policy.

III. Movant’s Motion is Timely and will Create no Hardship or Prejudice to Other Parties or Delay the Court’s Consideration of the Matter





**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of May, I served by mail the above, "Brief in Support of Flathead Tribes Petition for Extension of Stay of Adjudication in Basins 76L, Jocko River Hydrologic Subbasin and Basin 76LJ, Flathead River to and Including Flathead Lake" postage prepaid to the following:

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\_\_\_\_\_/s/ Don Coyle\_\_\_\_\_

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<sup>1</sup> Montana Water Resources Association website: <http://mtwra.org/>.