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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)

CONFEDERATED SALISH & KOOTENAI TRIBES' REPORT TO THE COURT

On August 16, 2023, this Court issued an Order Setting Status Conference for September 7, 2023, at 10:00 am via Zoom, and provided that “[a]ny party may file reports or motions as they deem appropriate prior to the conference.” *Order Setting Status Conference*, filed August 16, 2023, (“August Order”) at 2. The August Order further requested the United States, the Tribes and Montana be prepared to discuss factors, if any, for whether the stay should be extended in full or in part. *Id.*

The Confederated Salish & Kootenai Tribes (“the Tribes”) join with the United States and the State of Montana in the simultaneously filed Joint Petition, however, the Tribes felt it necessary to separately report to the Court the unique circumstances that the Tribes face should the current stay not be extended, all of which subject the Tribes to unique burdens and prejudices.

First, it appears the Court has not previously required Indian tribes that have entered into Compacts with the State to simultaneously adjudicate basins within their Reservations and participate in decree proceedings on their Compact.

Second, in order to reduce the burden to the DNRC to have to examine the Reserved Water Rights of the Tribes and the United States as trustee for the Tribes, for inclusion in the preliminary decree, this Court proposes to move forward with the adjudication of only State-Based water rights in Basins 76L and 76LJ. *See Order on Motion to Extend Stay*, February 1, 2023 (“February Order”), at 6. The February Order, however, does not suggest that the Tribes would have an opportunity to file objections to State-based water rights at a later time should the Compact fail.

Thus, while proceeding with adjudication without the Reserved Water Rights of the Tribes and the United States may be more efficient for the Court and DNRC, the Tribes will be required to prepare objections to State-based water rights as they relate to the Tribal Water Right under the Compact **AND** the filed Reserved Rights claims of the Tribes and the United States. The Tribes will also be required to fully engage in adjudication proceedings, filing and responding to objections to claims that would otherwise be resolved by the Compact. Proceeding with adjudication would also make it especially complicated to enter into settlements to resolve objections as some may not be necessary should the Compact be decreed.

Third, the Tribes have approximately 556 State-based water rights in Basins 76L and 76LJ that are either held by the Tribes alone, a Tribal entity, or co-owned by the Tribes. See Declaration of Pamela McDonald, attached hereto as Exhibit 1, at paragraphs 3, 4, and 5. Presumably, all of the Tribes’ 556 State-based water rights will be included in the imminent adjudication of Basins 76L and 76LJ even if the Reserved Water Rights are not included. Tribal staff are currently fully engaged in Case No. WC-2021-01, and it is likely that the Tribes will need to engage outside technical assistance at significant cost to assist in the evaluation of all State-based water rights in order to file timely objections, and respond to objections.

Finally, given the Tribes’ 556 State-based water rights, it is possible that the Tribes may need to object to other State-based water rights held by the State within Basins 76L and 76LJ. This potentially makes the State and the Tribes adverse parties in the adjudication and could create unnecessary ethical issues given that the State and the Tribes have agreed under the terms of the Compact to jointly support the decree of the Compact in Case No. WC-2021-01.

The Tribes have spent decades working through the Compact process. All along the way the Court has stayed adjudication in favor of resolving the Tribes' water rights through the compacting process in order to promote judicial efficiency. The Court should continue to do so now. For the above reasons, the Tribes feel that proceeding with the adjudication of 76L and 76LJ prior to the Compact being decreed, even if Reserved Water Rights are not included, will significantly burden and prejudice the Tribes. Moreover, it appears that the Tribes will be treated differently than other Indian tribes that have entered into Reserved Rights Compacts with the State. Therefore, the Tribes urge the Court to take the above into account when looking at the factors and weighing whether the current Stay should be lifted.

Respectfully submitted,

By: /s/ Daniel J. Decker
Daniel J. Decker
*Counsel for the Confederated Salish and
Kootenai Tribes*

By: /s/ Ryan C. Rusche
Ryan C. Rusche
*Counsel for the Confederated Salish and
Kootenai Tribes*

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2023, I served a true and correct copy of the foregoing document on the Montana Water Court via the electronic filing system and also via email at watercourt@mt.gov, and a copy was served on the following by United States Mail, postage prepaid and/or email as indicated:

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Dated: September 5, 2023

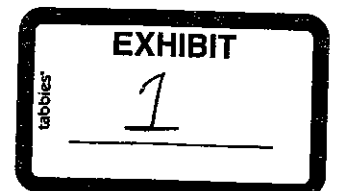
By: /s/ Melissa Schlichting

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

**DECLARATION OF PAMELA MCDONALD, REGARDING THE NUMBER OF
STATE-BASED WATER RIGHT CLAIMS FILED BY THE CONFEDERATED SALISH
AND KOOTENAI TRIBES IN BASIN 76L AND BASIN 76LJ**

I, Pamela McDonald, being duly sworn, depose and state as follows:

1. I am employed by the Confederated Salish and Kootenai Tribes (CSKT). I am employed as the Water Rights Registration Specialist for the Tribal Legal Department.
2. I was requested by CSKT to perform a search using the Department of Natural Resources and Conservation Water Right Query System to determine the number of state-based water right claims filed by CSKT in Basin 76L, Flathead River, Below Flathead Lake (Basin 76L) and Basin 76LJ, Flathead River, to and including Flathead Lake (Basin 76LJ).
3. Based on my search and review, I determined that CSKT has a total of 530 state-based water right claims filed in Basin 76L and 26 state-based water right claims filed in Basin 76LJ.
4. In addition to determining the number of state-based water right claims filed by CSKT in Basin 76L and Basin 76LJ, I was requested to determine how many of those state-based water right claims are co-owned by CSKT.
5. Based on my review, I determined that CSKT has a total of 61 co-owned state-based water right claims filed in Basin 76L and 0 co-owned state-based water right claims filed in Basin 76LJ.



6. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 31, 2023.

/s/ Pamela McDonald
Pamela McDonald, Water Rights
Registration Specialist
Confederated Salish and Kootenai Tribes

CERTIFICATE OF SERVICE

I, Melissa A. Schlichting, hereby certify that I have served true and accurate copies of the foregoing Other - Other to the following on 09-05-2023:

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Electronically Signed By: Melissa A. Schlichting
Dated: 09-05-2023