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ATTORNEY FOR OBJECTORS  
WILLIAM SEGO AND BILL & IRENE, LLC,  
AND GRACE SLACK

**IN THE WATER COURT OF THE STATE OF MONTANA  
CONFEDERATED SALISH AND KOOTENAI TRIBES –  
MONTANA – UNITED STATES COMPACT**

**CASE NO. WC-0001-C-2021**

**OBJECTORS' REQUEST TO DISCUSS ADDITIONAL TOPICS AT CASE  
MANAGEMENT CONFERENCE OF OCTOBER 3, 2023**

Pursuant to the Court's September 22, 2023 Notice of Case Management Conference Agenda, Objectors William Segó and Bill & Irene, LLC ("Segó") and Grace Slack (together with Segó, collectively the "Segó/Slack Objectors"), by and through their counsel, Holland & Hart LLP, hereby submit this request to discuss additional topics at the Conference.

1. Under items 6.a. and b. of the Agenda, address the proposed phasing of the discovery and motions practice for the hearing track, including:
  - a. The potential inequity in Phase 1 of allowing the Compacting Parties to proceed with discovery from all Objectors and dispositive motions practice without a corresponding and contemporaneous ability of Objectors to obtain discovery from the Compacting Parties and for Objectors to file dispositive motions either affirmatively or in response to (or as cross-motions) to any motion filed by the Compacting Parties during Phase 1.
  - b. These Phase 1 concerns reflect that the proposed Phase 1 sequenced discovery and motions procedure is contrary to the standard procedure in civil actions,

where either plaintiffs or defendants (analogous in this case to the Compacting Parties, who requested the initiation of this adjudication, and Objectors) can both proceed with discovery and motions simultaneously, notwithstanding the Court's inherent authority in any particular action to alter the normal provisions and scheduling of discovery and motions practice in appropriate circumstances.

- c. The proposed sequenced discovery and motions approach—deferring Objectors' ability to take discovery and make motions—would allow the Compacting Parties to obtain discovery from Objectors and seek to dismiss various claims or Objectors from this adjudication or to resolve legal issues on summary judgment without Objectors having a corresponding opportunity to do so. Objectors would not be able to obtain discovery from the Compacting Parties to support Objectors' defense of such motions or to support cross-motions that the Objectors may wish to or even be compelled to submit to protect the Objectors' positions and claims in the face of the Compacting Parties' motions. Such an approach would be contrary to, for instance, the policies of MRCP 1 to obtain the just, speedy, and inexpensive determination of every action and proceeding, and MRCP 56 to resolve legal issues without trial where there are no material facts in dispute. It is also contrary to the point, as expressed for instance by Justice Kennedy, that “we should be very cautious about receiving [a position] that destroys the usual neutrality that we think underlies the rule of law in this country.”<sup>1</sup> That “usual neutrality” means that an opportunity provided to one set or parties in a case, *i.e.*

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<sup>1</sup> This observation was made by Justice Kennedy at oral argument in the case of *Bennett v. Spear*, 520 U.S. 154 (1997). It is available at the oral argument recording and transcript at <https://www.oyez.org/cases/1996/95-813>, at approximately 44:50 of the audio recording.

the Compacting Parties here, for discovery and motions should also be provided to the other parties, *i.e.* the Objectors here, and at the same time so that the “usual neutrality” is maintained.

- d. The proposed Phase 2 procedure also raises the potential inequality of requiring Objectors to pass an additional threshold of demonstrating the necessity of their discovery at a pre-Phase 2 conference and addressing the scope of their discovery when the Compacting Parties are not subject to the same thresholds. Such additional constraints and burdens on the Objectors but not the Compacting Parties are inequitable for the reasons and policies noted above.

2. Under item 8 of the Court’s Agenda, the Segó/Slack Objectors wish to add the topic of addressing appropriate restraints from the Court on the Compacting Parties and any entities created under the Compact (including, without limitation, the Water Management Board created by the Compact) from implementing provisions of the Compact prior to the conclusion of the proceedings before this Court in this action. Reference to the possible need for such restraint is raised in the letter from Montana Attorney General Austin Knudsen to Bureau of Indian Affairs Regional Director Brian Mercier (May 30, 2023), attached hereto as **Exhibit A**.

Dated this 29th day of September, 2023.

/s/ Kathryn M. Brautigam  
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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing was served on the following persons as noted below.

<p>Montana Water Court          1123 Research Drive          P.O. Box 1389          Bozeman, MT 59771-1389          watercourt@mt.gov</p>	<p><input type="checkbox"/> U.S. Mail  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Facsimile  <input checked="" type="checkbox"/> E-Mail</p>
<p>David W. Harder          Senior Attorney for Legal Issues          U.S. Department of Justice          Indian Resources Section          Environment &amp; Natural Resources Division          999 18th Street          South Terrace, Suite 370          Denver, Colorado 80202          David.harder@usdoj.gov          efile_denver.enrd@usdoj.gov</p>	<p><input type="checkbox"/> U.S. Mail  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Facsimile  <input checked="" type="checkbox"/> E-Mail</p>
<p>Molly M. Kelly          Montana DNRC          1539 Eleventh Avenue          P.O. Box 201601          Helena, MT 59601          Molly.kelly2@mt.gov          Jean.Saye@mt.gov</p>	<p><input type="checkbox"/> U.S. Mail  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Facsimile  <input checked="" type="checkbox"/> E-Mail</p>
<p>Chad Vanisko          Montana Attorney General          Agency Legal Counsel          Agency Legal Services Bureau          1712 Ninth Avenue          P.O. Box 201440          Helena, MT 59620-1440          chad.vanisko@mt.gov          rochell.standish@mt.gov</p>	<p><input type="checkbox"/> U.S. Mail  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> Facsimile  <input checked="" type="checkbox"/> E-Mail</p>

Daniel J. Decker Melissa Schlichting Christina M. Courville Confederated Salish & Kootenai Tribes Tribal Legal Department P.O. Box 278 Pablo, MT 59855 Melissa.Schlichting@cskt.org Christina.Courville@cskt.org daniel.decker@cskt.org	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail
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Dated this 29th day of September, 2023.

/s/ Arlene S. Forney  
 Arlene S. Forney, Legal Assistant  
 Holland & Hart

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STATE OF MONTANA

AUSTIN KNUDSEN  
ATTORNEY GENERAL

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May 30, 2023

Brian Mercier  
Regional Director  
Northwest Regional Office BIA  
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Portland, OR 97232

Larry Nelson  
Manager  
220 Project Drive  
St. Ignatius, MT 59865

RE: Confederated Salish and Kootenai Tribal Water Compact

Director Mercier and Manager Nelson,

I have recently been informed by members of the Mission and Jocko Irrigation District that the Bureau of Indian Affairs intends to begin immediate implementation of the Confederated Salish and Kootenai Tribal (CSKT) water compact.

While I understand that the CSKT water compact has been adopted by the Montana Legislature and ratified by the United States Senate, significant legal issues still surround it. These issues are, at least in part, being litigated in the Montana State Water Court. I request that the BIA delay implementation of the CSKT water compact until the Montana Water Court has completed its work and these issues have been resolved.

Sincerely,

Austin Knudsen