

Last session, it passed SB 57, which reaffirms deadlines for issuance of first decrees in all statewide adjudication of water rights moves forward in a timely and efficient manner.

The Legislature has also recognized the benefits of assuring that Montana's

CSKT Compact is a product of that process.

and Indian reserved rights and has created a process to facilitate such settlements. The

The Montana Legislature has recognized the benefits of settling claims to federal

argue that approval of the Compact is a better alternative to litigation over Tribal claims.

or jeopardized if adjudication in Basins 76L and 76LJ commenced. The Settling Parties

arguments was that approval of the Compact by the Tribe and Congress might be delayed

variety of arguments for the stay were presented. The common thread among these

Basins 76L and 76LJ. The Flathead Indian Reservation is located in these Basins. A

The parties to the Compact (Settling Parties) asked for a stay of the adjudication in

appeared telephonically for the DNRC.

Flathead Joint Board of Control. John Peterson, Adjudication Bureau Chief, also

Jay Weiner for the State of Montana. Bruce Fredrickson appeared telephonically for the

Tribes (CSKT); Nathanael Watson for the United States, Bureau of Indian Affairs; and

in person: John Carter and Daniel Decker for the Confederated Salish and Kootenai

held at the Montana Water Court in Bozeman, Montana. The following parties appeared

stay on claims examination in Basins 76L and 76LJ should be extended. The hearing was

On July 16, 2015, the Chief Water Judge heard arguments concerning whether the

COURT MINUTES AND ORDER ON STAY

FLATHEAD RIVER TO AND INCLUDING FLATHEAD LAKE (BASIN 76LJ)

JOCKO RIVER HYDROLOGIC SUB-BASIN (BASIN 76L) AND

MONTANA WATER COURT, CLARK FORK DIVISION

Montana Water Court

JUL 27 2015

FILED

Montana Water Court
PO Box 1389
Bozeman MT 59711-1389
(406) 586-4364
1-800-624-3270 (IN-STATE)
FAX: (406) 522-4131

Basins in Montana. The deadline for issuance of such decrees is 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 first decrees in those Basins.

Consideration of this request for a stay therefore requires a balancing of two potentially competing interests. The Settling Parties represent they are moving forward diligently with congressional and Tribal approval of the Compact. 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. The Settling Parties requested a stay of four years to achieve their goal of Compact approval. At the same time, they represented that odds of congressional approval of the Compact are high during the current lame duck session, which ends in 2016.

A stay of four years is well past that point and represents a substantial delay in the adjudication of water rights in Basins 76L and 76LJ. A shorter stay gives the parties the opportunity to achieve their goals and provides an earlier chance for the Court to reassess the merits of the stay and meet the benchmarks in SB 57.

Accordingly, the Court makes the following order:

1. Adjudication of all water rights in Basins 76L and 76LJ is stayed until January 31, 2017. No Preliminary Decree will be issued for either Basin before this date.
2. Adjudication of any issues pertaining to the Compact is stayed until January 31, 2017. 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.

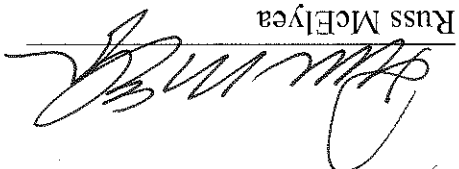
4. The parties may request an additional hearing on these matters prior to

January 31, 2017 to determine whether extension or modification of the

stay is warranted.

It is so ORDERED.

DATED this 27th day of July, 2015

Russ McElyea

Chief Water Judge

John B. Carter
Daniel Decker

Confederated Salish & Kootenai Tribes
Tribal Legal Department

PO Box 278
Pablo, MT 59855
(406) 675-2700
jcskt@cskt.org
danield@cskt.org

Bruce A. Fredrickson
Kristin L. Omvig

Rocky Mountain Law Partners, PLLP
1830 3rd Avenue East, Suite 301
PO Box 1758
Kalispell, MT 59903
(406) 314-6011
bruce@rmlawp.com
kristin@rmlawp.com

John Peterson
Adjudication Bureau Chief
Montana DNRC
PO Box 201602
Helena, MT 59620-1602
(406) 444-6618
johnpeterson@mt.gov
(Via Email Only)

David Harder, Assistant Section Chief
J. Nathanael Watson, Trial Attorney
U.S. Department of Justice
ENRD/IRS
999 18th Street, South Terrace, Suite 370
Denver, CO 80202
(303) 844-1372 (Harder)
(303) 844-1348 (Watson)
david.harder@usdoj.gov
joseph.watson@usdoj.gov

Jeremiah D. Weiner, Esq.
Assistant Attorney General
State of Montana
215 North Sanders
PO Box 201401
Helena, MT 59620-1401
(406) 444-2026
jweiner2@mt.gov

Note: Service List Updated 7/22/2015