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MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

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IN THE MATTER OF THE  
ADJUDICATION OF EXISTING AND  
RESERVED RIGHTS TO THE USE OF  
WATER, BOTH SURFACE AND  
UNDERGROUND, OF THE FEDERAL  
FLATHEAD INDIAN RESERVATION,  
BASIN 76L

IN RE: Water Right Owner

FLATHEAD JOINT BOARD OF  
CONTROL OF THE FLATHEAD,  
MISSION AND JOCKO VALLEY  
IRRIGATION DISTRICTS,

Plaintiffs,

VS.

U.S. Bureau of Indian Affairs,

Defendant.

Cause No. DV-13-313

**STATE OF MONTANA  
ATTORNEY GENERAL'S  
MOTION FOR LEAVE TO FILE  
AMICUS CURIAE BRIEF**

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

Complaint filed on December 11, 2013, by the former Flathead Joint Board of Control of the Flathead, Mission and Jocko Valley Irrigation Districts (“FJBC”) 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 (1990) (internal quotations and citations omitted).

### **Interests of the Amicus**

The Attorney General seeks leave to file an amicus 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 interests as owner of all the water in Montana. This interest 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, 712 P.2d 754, (1985). In seeking to appear in this case, the Attorney General does not represent the interests of any particular water rights claimant or objector, or any other stakeholder in the Adjudication.<sup>2</sup>

The FJBC’s Complaint raises issues that implicate other proceedings in this Court, as well as in the Montana Water Court and the United States District Court for the District of Montana. The Complaint also presents legal and procedural issues that impact the current negotiations between the State of Montana, through the Montana Reserved

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<sup>1</sup> *See, e.g.*, Mont. Code Ann. §§ 85-2-212 and 85-2-248.

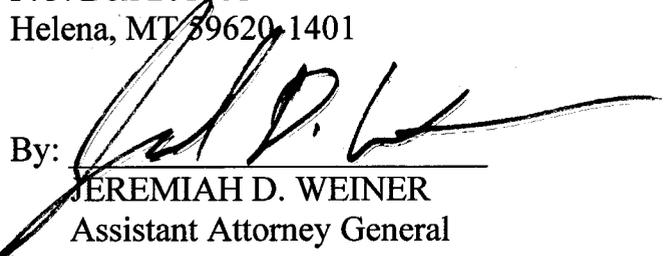
<sup>2</sup> This is true of the Attorney General’s participation in other cases in the Adjudication as well. *See, e.g., Appellant’s Opening Brief in Heavirland v. State*, DA 12-0759 (filed with the Montana Supreme Court March 15, 2013) at 4 (available on the Montana Supreme Court’s website at: <http://supremecourtdocket.mt.gov/view/DA%2012-0759%20Appellant%20--%20Brief?id={F44177C4-72A9-4529-BD79-399414A11581}>}).

Water Rights Compact Commission, the Confederated Salish & Kootenai Tribes (CSKT), and the United States regarding the settlement of the CSKT's reserved water rights claims in Montana. The Attorney General seeks this opportunity to provide assistance to this Court in order to give all parties and stakeholders, including the former FJBC, one more opportunity to settle these water rights claims before they must be adjudicated properly and comprehensively in the Montana Water Court.

The Attorney General's proposed *amicus* brief is attached and filed contemporaneously with this Motion. Counsel for the Attorney General has contacted counsel for the FJBC regarding this motion, who reserves taking any position on the motion until he has reviewed the Attorney General's brief.

Respectfully submitted this 20<sup>th</sup> day of May, 2014.

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By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing STATE OF MONTANA ATTORNEY GENERAL'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF was served by U.S. mail on the following:

Jon Metropoulos  
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Dated: May 20, 2014

  
Jaime Burkhalter, Paralegal