

TIMOTHY C. FOX
Attorney General
CORY J. SWANSON
Deputy Attorney General
CoSwanson@mt.gov
JEREMIAH D. WEINER
Assistant Attorney General
JWeiner2@mt.gov
215 North Sanders
P.O. Box 201401
Helena, Montana 59620-1401
(406) 444-2026

IN THE WATER COURT OF THE STATE OF MONTANA

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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

CASE WC-2013-05

**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 motions filed on December 6, 2013, by the 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,¹ 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 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.²

The FJBC’s complaint raises issues that implicate future proceedings in this Court, as well as in the Montana State District Court and United States District Court for the District of Montana. The Complaint also presents legal and procedural issues that impact

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

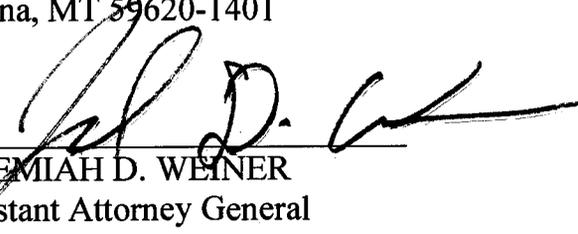
² This is true of the Attorney General’s participation in other cases in the Adjudication as well. *See, e.g., Appellant’s Opening Brief in Heavirland v. State*, DA 12-0759 (filed with the Montana Supreme Court March 15, 2013) at 4 (available on the Montana Supreme Court’s website at: <http://supremecourtdocket.mt.gov/view/DA%2012-0759%20Appellant%20-%20Brief?id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

the current negotiations between the State of Montana, through the Montana Reserved 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 this 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, the United States and the Jocko Valley Irrigation District regarding this motion. Counsel for the FJBC reserves taking any position on the motion until he has reviewed the Attorney General's brief. The United States has no objection to the motion. The Jocko Valley Irrigation District has taken no position.

Respectfully submitted this 20th day of May, 2014.

TIMOTHY C. FOX
Montana Attorney General
CORY J. SWANSON
Deputy Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: 
JEREMIAH D. WEINER
Assistant Attorney General

CERTIFICATE OF SERVICE

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

Western Montana Water Users Association, LLC
Steve Tobol
Skip Biggs
PO Box 1042
St. Ignatius, MT 59865

F.I. Ingraham
Ingraham Law Offices, LLC
10 Adams St. SE
Ronan, MT 59864

David Harder
US Dept. of Justice
Indian Resources Section
Environment & Natural Resources Div.
999 18th St
South Terrace, Ste. 370
Denver, CO 80202

John Tietz
Steve Wade
Browning, Kaleczyc, Berry & Hoven, PC
PO Box 1697
Helena, MT 59601

Duane Mecham
Dept. of Interior
Office of the Regional Solicitor
Pacific Northwest Region
805 SW Broadway, Ste. 600
Portland, OR 97205

John Carter
Ranald MacDonald
Tribal Attorney
Confederated Salish & Kootenai Tribes
PO Box 278
Pablo, MT 59855

Dated: May 20, 2014



Jaime Burkhalter, Paralegal