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D.N.R.C.

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK RIVER DIVISION (BASIN 76L)
JOCKO RIVER HYDROLOGIC SUB-BASIN

IN RE EXAMINATION OF CLAIMS)
PERFORMED BY MONTANA)
DEPARTMENT OF NATURAL)
RESOURCES AND CONSERVATION)
IN THE JOCKO RIVER HYDROLOGIC)
SUB-BASIN IN BASIN 76L WHOLLY)
OR PARTLY WITHIN THE FLATHEAD)
INDIAN RESERVATION)
_____)

FILED

JUL 03 2003

Montana Water Court

**ORDER DIRECTING THE MONTANA DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION TO EXAMINE CLAIMS IN THE JOCKO RIVER
HYDROLOGIC SUB-BASIN IN BASIN 76L WHOLLY OR PARTLY WITHIN THE
EXTERIOR BOUNDARIES OF THE FLATHEAD INDIAN RESERVATION**

By letter dated June 27, 2003, the Confederated Salish and Kootenai Tribes (Tribes), the United States, and the Montana Reserved Water Rights Compact Commission (Commission) requested the Court to establish procedures for examination of certain water rights claims in Basin 76L, within the Jocko River Hydrologic Sub-Basin, wholly or partly within the Flathead Indian Reservation, and to order the Montana Department of Natural Resources and Conservation (DNRC) to proceed with claims examination in this area as soon as possible. The Court recognizes that the Tribes claim that a limited waiver of sovereign immunity is necessary for this Order to issue and that the Tribes consent to a limited waiver of sovereign immunity only for the purposes expressly set out in this Order and do not waive immunity for any other purposes. The Court also recognizes that the

State does not agree that a waiver of sovereign immunity by the Tribes is necessary to proceed with this Order.

Claims examination is limited to claims on fee lands and will not include Tribal or allotted trust land or fee land owned by the Tribes, Tribal corporations, agencies of the Tribes, or other similar Tribal organizations or entities or claims for federal reserved or aboriginal water rights claimed by the Tribes or by the United States. The procedures will allow claims examination to commence and will provide useful, factual information concerning these claims to the Tribes, the United States, and Commission in negotiating a settlement of claims for reserved and aboriginal water rights. To aid the Tribes, the United States, and the Commission in gathering information on water use within the Flathead Indian Reservation in the Jocko River Hydrologic Sub-Basin in Basin 76L, it is,

ORDERED that the following procedures shall apply to the examination of claims by DNRC in Basin 76L within the exterior boundaries of the Flathead Indian Reservation in the Jocko River Hydrologic Sub-Basin:

1. DNRC shall examine all claims on fee lands lying in whole or in part within the Jocko River Hydrologic Sub-Basin within the Flathead Indian Reservation in Basins 76L, except for fee lands owned by the Tribes, Tribal corporations, agencies of the Tribes or other similar Tribal organizations or entities. Subject to the availability of funds, DNRC shall provide one full time employee to examine all claims under the Supreme Court Claims Examination Rules. For each claim examined claiming reserved water rights or a priority date earlier than April 1, 1910, the following issue remark shall be added:

NO REVIEW OR DETERMINATION OF THE ORIGIN OF THE CLAIMED TYPE OF HISTORICAL RIGHT OR OF ITS PRIORITY DATE HAS BEEN MADE. ADDITIONAL EVIDENCE WILL BE REQUIRED BEFORE THE CLAIM CAN BE DECREED.

2. No examination will take place at this time on Tribal or allotted trust lands or fee lands owned by the Tribes, Tribal corporations, agencies of the Tribes, or other similar Tribal organizations or entities. No examination will take place for claims for federal reserved or aboriginal water rights claimed by the Tribes or by the United States.

3. DNRC shall furnish the Tribes and the United States with an abstract of each claim which lies in the Jocko River Hydrologic Sub-Basin in Basin 76L, in whole or in part within the exterior boundaries of the Flathead Indian Reservation. These abstracts shall be furnished to John Carter, Legal Counsel for the Tribes, and to David Harder, Attorney for the United States, at their respective addresses listed on the Certificate of Service. The Tribes and the United States shall have 60 days following receipt of the abstracts to notify the DNRC Kalispell Water Resources Regional Office, in writing, which claims involve Tribal or allotted trust lands, fee land owned by the Tribes, Tribal corporations, agencies of the Tribes, or other similar Tribal organizations or entities or claims for federal reserved or aboriginal water rights claimed by the Tribes or by the United States. If the Tribes or the United States do not notify the DNRC Kalispell Water Resources Regional Office within the designated 60 days, DNRC shall proceed to examine all claims.

4. The Tribes or the United States, at any time, including final review of the claims examination, may notify the DNRC Kalispell Water Resources Regional Office, in writing, that a claim is of a type described in Paragraph 2, above, and DNRC shall cease examination of such claims and shall remove information relating to the examination of those claims from all reports to the Court. For claims not examined, the following general information remark shall be added:

PURSUANT TO WATER COURT ORDER, THIS CLAIM HAS NOT BEEN EXAMINED IN ACCORDANCE WITH MONTANA SUPREME COURT RULES AS THE CONFEDERATED SALISH AND KOOTENAI TRIBES OR THE UNITED STATES HAVE DETERMINED THAT THIS CLAIM INVOLVES TRIBAL OR ALLOTTED TRUST LAND OR FEE LAND OWNED BY THE TRIBES, TRIBAL CORPORATIONS, AGENCIES OF THE TRIBES,

OR OTHER SIMILAR TRIBAL ORGANIZATIONS OR ENTITIES OR
CLAIMS FOR FEDERAL RESERVED OR ABORIGINAL WATER RIGHTS
CLAIMED BY THE TRIBES OR BY THE UNITED STATES.

5. Any field examination of a claim on fee land within the Flathead Indian Reservation shall be arranged by DNRC. DNRC shall provide the Tribes and the United States with advance notice of such field examination and the Tribes and the United States shall be entitled to attend such field examination.

6. Every claim located in whole or part within the exterior boundaries of the Flathead Indian Reservation shall have the following general explanation remark added which will be a permanent part of the right:

THIS CLAIM IS LOCATED IN WHOLE OR IN PART WITHIN THE
EXTERIOR BOUNDARY OF THE FLATHEAD INDIAN RESERVATION.

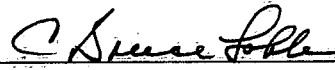
7. Throughout the claim examination process, the United States and the Tribes shall be afforded access to claim examination information which is developed and produced by DNRC pursuant to this Order, in accordance with state law. Following completion of claims examination pursuant to this Order, DNRC shall furnish the Tribes and the United States Department of Justice, Denver Field Office, with the examination information for each claim examined in whole or in part. This material shall be furnished to the Tribes and the United States through their respective representatives in this proceeding: John Carter and David Harder.

8. In responding to this Order to undertake claims examination in the Jocko River Hydrologic Sub-Basin, DNRC shall perform its duties in accordance with the Supreme Court Claims Examination Rules and the orders of the Court, except that DNRC shall not forward to the Court the Summary Report of results of the claims examination process or other reports or information which may be used to issue a decree of any nature, unless compact negotiations among the Commission, the Tribes, and the United States terminate pursuant to the provisions of Mont. Code. Ann. § 85-2-

704 (2001); upon consent of the Tribes, the State, and the United States; or upon further order of this Court.

9. A copy of any notice given to the DNRC Kalispell Water Resources Regional Office under this Order shall also be served, using the same method of service, on the DNRC Adjudication Program Manager in Helena.

DATED this 3 day of July, 2003.



C. Bruce Loble
Chief Water Judge