



Ted Schwinden  
Governor

State of Montana

## *Reserved Water Rights Compact Commission*

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D. Scott Brown, Program Manager  
David E. Ladd, Legal Counsel

### MEMORANDUM

TO: Compact Commission Members

FROM: David Ladd

DATE: December 30, 1981

RE: Settlement of Flathead Suit  
Extension of Filing Deadline

Attached is a copy of the stipulation entered in the Flathead lawsuit against Montana and a copy of the Supreme Court order extending the deadline for filing claims to water rights.

#### Flathead Suit

The Flathead Tribes filed suit in Federal District Court in Missoula on October 20, 1981, seeking a declaratory judgment that the Water Use Act of 1973 and the adjudication system set up in 1979 by SB 76 are invalid and unconstitutional in their application to the Flathead Reservation. The complaint also sought an injunction to prevent the state from enforcing any of the provisions of the challenged statutes on the Flathead Reservation. On the day set for hearing the parties agreed to a stipulation which would withdraw the tribes' application for an injunction but not completely dismiss the lawsuit. The tribes agreed that they would file two statements of claims under the Montana Water Use Act, one on behalf of the tribes and one on behalf of all the allottees and tribal members who have an interest in lands on the Flathead Reservation. The state agreed that it would accept the filing of the tribes and not challenge a generalized claim by the tribes as being inadequate and insufficient to prevent a forfeiture of their water rights under the abandonment provision of the Water Use Act. No further action will be taken on the case until plaintiffs so request and plaintiffs agree not to object to the request of a stay of proceedings by the defendants if such request is based on the grounds that related issues are pending in the federal suits before the Ninth Circuit Court or the Walton case. Within the last two weeks the Supreme Court denied certiorari for the Walton case so it will not be heard by the Supreme Court.

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Extension of Filing Deadline

The deadline for filing water rights claims under the adjudication system was extended by the Montana Supreme Court to April 30, 1982. Previously the deadline was set on January 1, 1982. The Montana Attorney General petitioned the court for an extension and after a hearing on December 7, 1981, the court extended the deadline to April 30. The order extending the deadline sets out the procedure to be followed to notify the public of the change and also notes that there will be no further extensions.

jlr

✓cc: Scott Brown