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# Western Montana Water Users Assoc., LLC v. Mission Irrigation District

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***Western Montana Water Users Assoc., LLC v. Mission Irrigation District*, 2013 MT 92, 369 Mont. 457, 299 P.3d 346.**

**David A. Bell**

**I. ABSTRACT**

The Western Montana Water Users challenged the authority of the Flathead Joint Control Board to enter into a Water Use Agreement with Tribal, State, and Federal governments. This procedural challenge alleged that the Joint Control Board, made up of the irrigation districts, did not have the ability under Montana statutes to act for the irrigators without a specific vote of the members and approval from the district court. Two days after receiving the case the Montana Supreme Court reversed, determining that the statutes were inapplicable and the Joint Control Board had authority to enter the agreement.

**II. INTRODUCTION**

*Western Montana Water Users Assoc., LLC v. Mission Irrigation District* involved a disagreement over an Irrigation District Joint Control Board’s authority to vote for approval of the Flathead Water Compact on the Flathead Indian Reservation in western Montana.<sup>1</sup> Plaintiffs Western Montana Water Users (“Water Users”), who are individually members of the three Defendant Irrigation Districts (“Irrigation Districts”), filed a complaint claiming that Montana law did not allow the Irrigation Districts to negotiate and sign a “Water Use Agreement” with the Confederated Salish and Kootenai Tribes (“Tribes”) and the United States Government.<sup>2</sup> While the Water Use Agreement intends to “settle the rights of irrigators” at issue in the conflict, the agreement itself spurred controversy within the ranks of the irrigators of the lower flathead valley.<sup>3</sup> Plaintiff’s procedural challenge alleged that the Joint Control Board could not enter agreements for the irrigators without a member vote and approval from the district court.<sup>4</sup>

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<sup>1</sup> *Western Montana Water Users Ass’n LLC v. Mission Irr. Dist.*, 2013 MT 92, ¶ 1, 369 Mont. 457, 299 P.3d 346 (2013).

<sup>2</sup> Montana Code Annotated §§ 85–7–1956 and 1957.

<sup>3</sup> *W. Mont. Water Users*, 299 P.3d 346, at ¶ 8-11.

<sup>4</sup> *Id.*

### **III. FACTUAL AND PROCEDURAL BACKGROUND**

The Flathead Indian Reservation was created when the Confederated Salish and Kootenai Tribes and the United States signed the Hellgate Treaty in 1855.<sup>5</sup> In 1904, Congress allotted the lands in the Flathead Reservation for homestead purposes.<sup>6</sup> In 1908, Congress authorized the Flathead Indian Irrigation Project (“FIIP”), which provides irrigation water to both tribal members and non-tribal members on the Flathead Reservation.<sup>7</sup> The Tribes of the Flathead Reservation claim that the Hellgate Treaty of 1855 reserved their water rights, including the water diverted by the FIIP.<sup>8</sup>

The Tribes, the State of Montana, and the United States entered into a proposed Flathead Water Compact (“Compact”) that claims to resolve the Tribes’ water rights claims, including their claims to the FIIP water.<sup>9</sup> The parties in this lawsuit are not parties to the Compact<sup>10</sup> and it was not being litigated in this matter.<sup>11</sup>

The Tribes, the United States, and the Defendant Irrigation Districts drafted a document as an appendix (“Water Use Agreement”) to the Compact to “settle the rights of irrigators served by the FIIP ... to receive irrigation water.”<sup>12</sup> The Water Use Agreement is the document at issue in this proceeding.

Water Users sought a writ of mandate to block the Water Use Agreement from implementation prior to a vote of Irrigation District members.<sup>13</sup> Accordingly, the Water Users argued that Montana Code Annotated §§ 85–7–1956 and 1957 apply to the Water Use Agreement, requiring the Irrigation Districts to submit the final Agreement for state district court approval and

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<sup>5</sup> *Id.* at ¶ 6.

<sup>6</sup> *Id.*

<sup>7</sup> *W. Mont. Water Users*, 299 P.2d 346, at ¶ 7.

<sup>8</sup> *Id.* at ¶ 8.

<sup>9</sup> *Id.* at ¶ 9.

<sup>10</sup> The parties irrigation rights are determined as part of the negotiated Compact.

<sup>11</sup> *W. Mont. Water Users*, 299 P.2d 346, at ¶ 9.

<sup>12</sup> *Id.* at ¶ 10.

<sup>13</sup> *Id.* at ¶ 11.

to a vote of the members.<sup>14</sup>

The district court issued an alternative writ of mandate in December 2012, ordering the Irrigation Districts to comply with these statutes before entering the Water Use Agreement.<sup>15</sup> In February, 2013, the district court issued a writ of mandate superseding the alternative writ of mandate, determining the Irrigation District had exceeded its authority by entering the Water Use Agreement.<sup>16</sup> The order enjoined the Irrigation Districts from entering the Water Use Agreement or any other similar agreement.<sup>17</sup> The Irrigation District appealed the writ of mandate and the injunction.<sup>18</sup>

#### **IV. ANALYSIS**

##### **A. Writ of Mandate and Injunction**

The standard of review for injunctions is for manifest abuse of discretion.<sup>19</sup> Here the Montana Supreme Court determined that a writ of mandate is a conclusion of law properly reviewed for correctness.<sup>20</sup>

On review, the Court found defects in the district court's injunction and writ of mandate.<sup>21</sup> First, the Court indicated that the district court did not address the statutory issues raised by Plaintiffs and had instead evaluated the Water Use Agreement.<sup>22</sup> Rather than addressing the requirements imposed by §§ 85–7–1956 and 1957, the district court enjoined the Irrigation Districts from executing the Water Use Agreement because it was outside their authority based on the Agreement.<sup>23</sup> Further, the Water Users did not request relief from the Water Use Agreement itself.<sup>24</sup> The Court thus found the injunction was based entirely on the district court's determination that the

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at ¶ 12.

<sup>16</sup> *Id.* at ¶ 13.

<sup>17</sup> *W. Mont. Water Users*, 299 P.2d 346, at ¶ 13.

<sup>18</sup> *Id.* at ¶ 13.

<sup>19</sup> *Id.* at ¶ 14.

<sup>20</sup> *Id.*, citing *Bostwick Props. V. Mont. Dep't of Nat. Res. & Cons.*, 2009 MT 181, ¶ 15, 351 Mont. 26, 208 P.3d 868.

<sup>21</sup> *W. Mont. Water Users*, 299 P.2d 346, at ¶ 23.

<sup>22</sup> *Id.* at ¶ 20.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at ¶ 21.

Water Use Agreement terms exceeded the Irrigation District’s authority to contract.<sup>25</sup> Regarding the writ, the district court titled the order “writ of mandate” but did not mandate that the Irrigation District take any action.<sup>26</sup> With the validity of the writ of mandate in question, the Court also found the district court failed to consider the water issues on the merits, and therefore had no grounds to conclude that the Water Use Agreement took away rights or exceeded authority.<sup>27</sup> Due to these defects, the Court concluded that the district court improperly granted the writ of mandate and the injunction because it was based on issues not raised before the district court.<sup>28</sup>

### **B. Alternative Writ of Mandate**

Upon vacating the writ of mandate, the Court looked to the alternative writ of mandate to determine whether the Irrigation Districts needed to comply with §§ 85–7–1956 and 1957 prior to entering the Water Use Agreement.<sup>29</sup> The Water Users argued that the statutes required a vote of all Irrigation District members and district court approval prior to entering into the Water Use Agreement.<sup>30</sup> The Court analyzed the statutes for legislative intent (including historical and textual contexts) regarding an irrigation district’s ability to enter water contracts with the United States.<sup>31</sup> The Court declined the Water Users’ “broad interpretation” of the statutes, finding that the statutes only apply to contracts between the irrigators and the federal government for a loan of money.<sup>32</sup> Because the Water Use Agreement had no provisions for a loan of money, the statutes were not applicable to the Water Use Agreement.<sup>33</sup> Thus, the Court found the district court incorrectly granted the alternative writ of mandate.<sup>34</sup>

## **V. CONCLUSION**

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<sup>25</sup> *Id.* at ¶ 21.

<sup>26</sup> *Id.* at ¶ 20.

<sup>27</sup> *W. Mont. Water Users*, 299 P.2d 346, at ¶ 22.

<sup>28</sup> *Id.* at ¶ 24.

<sup>29</sup> *Id.* at ¶ 25, 27. (The Court noted that upon vacating the writ of mandate the alternative writ of mandate was restored).

<sup>30</sup> *Id.* at ¶¶ 27, 33, 39, 43.

<sup>31</sup> *Id.* at ¶ 30-41.

<sup>32</sup> *Id.* at ¶ 42.

<sup>33</sup> *W. Mont. Water Users*, 299 P.2d 346 at ¶ 41, 43.

<sup>34</sup> *Id.* at ¶ 43.

In a unanimous decision, the Court dissolved the writ of mandate and injunction and reversed the district court's conclusion that §§ 85-7-1956 and 1957 applied to the Water Use Agreement.<sup>35</sup> The Court also dissolved the alternative writ of mandate.<sup>36</sup>

The Montana Supreme Court recognized that the district court was under significant time constraints, as the Compact was under consideration for approval at the 2013 Montana Legislature.<sup>37</sup> The Court also expressed appreciation for the district court's work in accommodating competing interests and issuing a timely opinion.<sup>38</sup> Nonetheless, the Court found that the parties did not seek injunction of the Water Use Agreement, so the only specific relief was a resolution regarding the applicability of §§ 85-7-1956 and 1957.<sup>39</sup> After the district court was reversed, the legislative process surrounding the Compact went forward at the 2013 Montana Legislature where it was not approved.

Ironically, the main goal of negotiated water compacts in Montana has been to prevent costly litigation over water rights. Although the Flathead Water Compact has been negotiated, the battle over ratification of this agreement has just begun, leading predictably to this procedural challenge. While the Compact failed at the 2013 Montana Legislature, some similar form of the Compact will likely go to lawmakers in the next session and may return to the courts in the future. At a minimum, the applicability of these statutes will be settled law in future water compact litigation.

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<sup>35</sup> *Id.* at ¶ 44.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at ¶ 23.

<sup>38</sup> *Id.*

<sup>39</sup> *W. Mont. Water Users*, 299 P.2d 346 at ¶ 23.