

Montana Water Court
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MONTANA WATER COURT, CLARK FORK DIVISION
FLATHEAD RIVER, BELOW FLATHEAD LAKE (BASIN 76L) AND
FLATHEAD RIVER TO AND INCLUDING FLATHEAD LAKE (BASIN 76LJ)

BASIN-0001-76L-1985
BASIN-0002-76LJ-1985

NOTICE OF MOTIONS TO STAY
AND ORDER PROVIDING OPPORTUNITY FOR RESPONSE BRIEFING

BACKGROUND

Over the course of several years, the Water Court issued a number of stays applicable to the issuance of the preliminary decrees for Basins 76L and 76LJ. These two basins cover much of the Flathead River drainage, including various tributaries. Basin 76L is the Flathead River Basin below Flathead Lake. Basin 76LJ is the Flathead River to and including Flathead Lake and most tributaries.

The stays issued by the Water Court are essentially commitments by the Court that it will not issue the decrees and start the objection processes for these two basins while the stays are in effect. The Court has, however, requested that the Department of Natural Resources and Conservation (“DNRC”) continue its work to prepare summary reports for the two basins. Summary reports are the draft reports DNRC provides to the Court that form the basis for decrees.

Currently the stays for the two basins are scheduled to expire on April 30, 2024, for Basin 76LJ, and on May 31, 2024, for Basin 76L.

On March 14, 2024, the Court held a status conference regarding the stay for Basin 76LJ. As of the date of the conference, the Basin 76LJ stay was scheduled to expire on March 29, 2024. Representatives of the Confederated Salish and Kootenai Tribes (“CSKT”), the United States of America (“United States”), and the State of Montana (“Montana”) attended the conference, as did several members of the public. At the conference, CSKT made an oral motion to extend the Basin 76LJ stay until January 2025. The United States and Montana joined the motion. The Court asked the parties to put the motion in writing and to provide any supporting briefs.¹

On March 29, 2024, the United States, joined by Montana, filed motions to extend the stays for both basins through January 2025, and to stagger the dates for expiration of the stays. CSKT filed separate briefs joining and supporting the motions. The motions and briefs have been filed in the basin files for each basin as follows:

1. Basin 76L Motion.

Full Court Enterprise Case File: BASIN-0001-76L-1985

Document Nos.: 24.00 – United States Motion for Extension; 25.00 – CSKT Additional Brief in Support.

2. Basin 76LJ Motion.

Full Court Enterprise Case File: BASIN-0002-76LJ-1985

Document Nos.: 28.00 – United States Motion for Extension; 29.00 – CSKT Additional Brief in Support.

The motions and briefing also are available directly from the Court’s website at the following link: <https://courts.mt.gov/courts/water/Notices-Info/PublicNotices> (scroll to bottom).

At the March 14, 2024 conference, the Court indicated it would provide notice of the motions and give potentially affected or interested parties the opportunity to respond

¹ The April 30, 2024 stay currently in place for Basin 76L was set in the Court’s minute order that followed the March 14, 2024 conference. *See* Basin-0002-76LJ-1985, Doc. 27.00.

to the motions. The Court will issue a ruling on the motions after the response period closes. Responses are limited to the specific relief requested in the motions. The Court will not consider any information or argument in responses that address any issue other than whether the stays should be extended.

NOTICE AND ORDER

Therefore, the Court provides the following Notice and ORDERS:

1. Notice is provided that the Court has received motions to extend the stays currently in place for the issuance of preliminary decrees for Basins 76L and 76LJ.

2. The Court provides this opportunity for any interested party to file a response to one or both motions. Any response shall be filed not later than **May 3, 2024**. Responses shall include the file numbers for these cases. For basin 76L, the basin file number is “Basin-0001-76L-1985.” For Basin 76LJ, the basin file number is “Basin-0002-76LJ-1985.” Filings may be made as an interested party.

3. Any filing made in response to the motions and this Notice and Order shall be limited to the question of whether the Court should grant either or both of the motions to extend the preliminary decree stays, including any prejudice that may result from either the granting or denial of the motions. The Court will disregard any argument regarding any other issue.

4. The stays for both basins will remain in place until the Court issues an order on the pending motions.

5. This Notice and Order shall be provided as follows: (1) by posting a copy of this Notice and Order, together with the motions and briefs, on the “Public Notices and Information” page on the Court’s website (<https://courts.mt.gov/courts/water/Notices-Info/PublicNotices>); (2) by sending a copy of this Notice and Order to the Water Court’s listserv; and (3) by publishing notice of its availability in the *Kalispell Daily Interlake*, the *Flathead Beacon*, and the *Missoulian*, once per week, for two weeks.

ELECTRONICALLY SIGNED AND DATED BELOW.

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****Basin 76L Caption Updated 4/1/2024****