

SYNOPSIS OF THE CASE

2017 MT 277, DA 16-0516: FLATHEAD JOINT BOARD OF CONTROL and JERRY LASKODY, BOONE COLE, TIM ORR, TED HEIN, BRUCE WHITE, SHANE ORIEN, WAYNE BLEVINS and GENE POSIVIO, all members of the Flathead Joint Board of Control, Plaintiffs and Appellants, v. STATE OF MONTANA, Defendant, Appellee and Cross-Appellant, and CONFEDERATED SALISH AND KOOTENAI TRIBES, Intervenor, Defendant and Appellee.¹

The Montana Supreme Court has rejected a challenge to the constitutionality of the Confederated Salish and Kootenai Water Compact, holding that the Compact does not violate provisions of the Montana Constitution. The Compact was negotiated between the Tribes, the United States, and the State of Montana over a period of years. Its purpose was to avoid water rights litigation and to provide a unified system for the administration of water rights and the resolution of disputes on the reservation. The Montana Legislature approved the Compact in 2015.

The Flathead Board of Joint Control, which concurrently oversees the operations of several Irrigation Districts on the Reservation, brought suit against the State seeking to invalidate the Compact. The Board contended that provisions of the Compact granted the State new immunities from suit and therefore required approval of two-thirds of the members of each house of the Legislature. The Lake County District Court ruled that one of the provisions of the Compact provided immunity from suit to a proposed governing board established by the Compact, and therefore violated the provision of the Montana Constitution that requires approval by a two-thirds vote of each house of the Legislature.

In a six-to-one Opinion, the Court reversed portions of the District Court decision and held that none of the Compact's provisions grant any state governmental agency new immunities from a potential lawsuit. The Court ruled that the Legislature's majority vote to approve and adopt the Compact was consistent with the provisions of the Montana Constitution.

Justice Jim Rice dissented, arguing that an administrative provision of the compact provided immunity from suit to some agents or employees of the State and therefore required two-thirds approval of each legislative body. He noted, however, that this portion of the Compact could be severed from the remainder of the agreement so that only that provision need be stricken from the document.

¹ This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.