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Testimony of
Kathleen A. McAllister
Deputy Regional Forester
U.S. Forest Service Northern Region

Before the Montana State Legislature
Senate Natural Resources Committee
Regarding Montana/US Forest Service
Compact for Reserved Water Rights

Mr. Chairman and Members of the Committee:

My name is Kathy McAllister. I serve as Deputy Regional Forester for the Northern Region of the U.S. Forest Service. The Northern Region encompasses all National Forest System lands in Montana, North Dakota, north Idaho and portions of South Dakota.

Thank you for the opportunity to testify on this important matter. Accompanying me here today are legal and technical experts from the Forest Service negotiating team.

The hearing today is regarding Senate Bill 248 which will ratify the reserved water rights compact between the U.S. Forest Service and State of Montana. As a matter of policy, the Forest Service does not take a position on legislation. I am pleased to speak to the merits of the compact which Senate Bill 248 would ratify.

We commend the State of Montana for having the foresight to create the Reserved Water Rights Compact Commission for the sole purpose of negotiating reserved water rights rather than subjecting all parties to expensive and protracted litigation. Reserved water rights litigation in other western states has taken decades and tens of millions of dollars, with little benefit to the American people.

We believe that negotiating a settlement that is acceptable to both the State and Forest Service, best serves the citizens of Montana, and the country as a whole. It is important to note that negotiating these federal reserved water rights was no easy task. The Forest Service and Compact Commission negotiated for nearly 15 years before agreeing to the compact you are reviewing today. The Forest Service negotiating team includes hydrologists, fisheries biologists and attorneys from both the U.S. Department of Agriculture and U.S. Department of Justice.

After coming to a tentative agreement, the Compact Commission and Forest Service established an information website and mailed compact information to

Montana water right holders. Additionally, the state and federal negotiating teams jointly conducted public meetings and open houses in 17 communities across the state. These sessions informed people about the compact and listened to the public's ideas and concerns. The Forest Service and Commission also met with groups that requested special meetings regarding the draft compact. The Commission and Forest Service subsequently revised the compact to be responsive to public comment.

You may hear today from individuals and groups that feel the compact either did not go far enough to protect National Forest interests or went too far. The Forest Service feels the compact in front of you today represents the best efforts of compromise and cooperation between the parties.

The compact will provide for instream flows in nearly 80 streams on National Forest System lands in Montana. It also includes a procedure for processing future instream flow rights for other important streams. Providing for minimal flows ensures aquatic and riparian resource health and helps protect Montana's native fish populations. The compact includes water rights for essential administrative purposes such as ranger stations and fire suppression as well as a reserved water right for the Wild and Scenic South Fork of the Flathead River above Hungry Horse reservoir.

National Forest System lands in Montana are primarily in headwater areas that deliver water to downstream water users. The compact works to protect the rights of the downstream senior water right holders and also considers possible future water development on National Forest System lands, in situations shown to be in the public interest. This compact also provides for withdrawal of current Forest Service reserved water rights claims, thus avoiding the extensive time and expense of litigating Forest Service reserved rights in the ongoing Montana adjudication process.

The Forest Service mission is to manage resources on National Forest System lands for current and future generations. This compact was negotiated in that spirit. The compact will protect critical resource values on public lands, while allowing appropriate water development which will benefit the people of Montana and the United States. We believe it deserves the support of this committee.

We would be happy to answer questions and provide further information at your request.