



Water Policy Interim Committee
63rd Montana Legislature

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Sept. 9, 2014

Groundwater Directive Comments
USDA Forest Service
Attn.: Rob Harper -- WFWARP
201 14th St. SW
Washington, DC 20250

Dear Mr. Harper,

The Water Policy Interim Committee (WPIC) of the Montana Legislature appreciates the extension of the comment period for the proposed groundwater resource management directive first published in the Federal Register May 6. However, the committee objects to the proposed directive.

The WPIC believes the U.S. Forest Service may be violating its water rights compact with the state of Montana and does not have the authority to impose a directive "managing" groundwater on the state's National Forest System lands.

Two facts are worth repeating:

- The Montana Department of Natural Resources and Conservation is responsible for administration and jurisdiction over new water uses and changes in existing uses under Title 85, Chapter 2, MCA.
- In 2007, Montana and the Forest Service signed a compact, settling all federal reserved water rights and state-based water rights claimed by the Forest Service in Montana (Section 85-20-1401, MCA). This compact establishes all Forest Service claims for federal reserved water rights to surface water and groundwater, including a process to apply for additional instream flows. After approval by the U.S. Department of Agriculture, the Montana Water Court issued a final decree for this compact in 2012.

So while the Forest Service might place reasonable conditions on the use of the surface of National Forest System lands, the agency does not appear to have authority to administer water rights in Montana.

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COMMITTEE. 2013-14

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In light of these facts, the WPIC believes the directive should be withdrawn or clarified to expressly acknowledge the that the Forest Service is bound by any compact negotiated prior to the date of this directive.

Sincerely,

Sen. Chas Vincent, chairman
Water Policy Interim Committee