

SENATE BILL NO. 278

INTRODUCED BY J. PETERSON

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE CHARLES M. RUSSELL NATIONAL WILDLIFE REFUGE COMPACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. United States of America, fish and wildlife service, Charles M. Russell national wildlife refuge-Montana compact ratified.** This compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to federal reserved water rights for the Charles M. Russell National Wildlife Refuge administered by the U.S. Fish and Wildlife Service within the State of Montana.

ARTICLE I

RECITALS

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-228, MCA, provides that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973;

WHEREAS, 85-2-703 and 85-2-228(3), MCA, provide that the Montana Reserved Water Rights Compact Commission may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the Charles M. Russell National Wildlife Refuge as articulated in Executive Order 7509 of December 11, 1936;



1 WHEREAS, the Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this compact
2 on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-517 (1968);

3 WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this
4 compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. 1457 (1986, Supp. 1992);

5 NOW THEREFORE, the State of Montana and the United States agree as follows:

6 ARTICLE II
7 DEFINITIONS

8 For purposes of this compact only, the following definitions shall apply:

9 (1) "Abstract" means copies of the documents collectively entitled "Abstracts of U.S. Fish and Wildlife Service Water Rights for the Charles M.
10 Russell National Wildlife Refuge" referenced in this compact as Appendices 1-3.

11 (2) "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560
12 cubic feet of water.

13 (3) "Charles M. Russell National Wildlife Refuge" means the federal reservation of land that was designated under the Act of June 25, 1910, ch.
14 421, 36 Stat. 847, as amended by the Act of August 24, 1912, ch. 369, 37 Stat. 497.

15 (4) "Coextensive" means equal or coincident in space, time or scope. As applied to this compact, "Coextensive" rights to instream flow are
16 non-additive water rights that constitute a usufructuary interest held by two or more parties with each party being subject to the same limits on quantity
17 of water regardless of whether one or both parties are exercising the right.

18 (5) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

19 (6) "Effective Date" means the date on which the compact is given ratification by the Montana Legislature, written approval by the United States
20 Department of the Interior, and written approval by the United States Department of Justice, whichever occurs later.

21 (7) "Groundwater" means any water that is beneath the ground surface.



1 (8) "Instream Flow" means the water that the Parties agree must remain in the stream for non-consumptive uses to protect and maintain water
2 flow and Wildlife Habitat throughout the Refuge for the purposes of the federal reservation.

3 (9) "Non-Consumptive Use" means a beneficial use of water that does not cause a reduction in the source of supply or result in a reduction in the
4 quantity or quality of water and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream
5 conditions.

6 (10) "Order" means Executive Order 7509, withdrawing from the public domain the Fort Peck Game Range, signed December 11, 1936.

7 (11) "Parties" means the State of Montana and the United States.

8 (12) "Recognized Under State Law" when referring to a water right or use means a water right or use protected by state law, but does not include
9 state recognition of a federal or tribal reserved water right arising under federal law.

10 (13) "Refuge" means the Charles M. Russell National Wildlife Refuge.

11 (14) "Reserved Right" means collectively the United States' water rights for stock, wildlife, and Wildlife Habitat within Refuge as described herein.

12 (15) "Restricted Reach" means the portion of stream reach subject to the on-stream impoundment limitation described in Articles III.E. and IV.C.
13 and depicted in Appendix 5 of this compact.

14 (16) "Stacked" means a series of impoundments on the same stream placed in proximity to one another such that water impounded by a
15 down-stream dam reaches an elevation less than or equal to five feet below the elevation of the base of the embankment of the next upstream dam.

16 (17) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, "state"
17 means the Director of the Montana Department of Natural Resources and Conservation or the Director's designee.

18 (18) "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise
19 indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior or
20 the Secretary's designee.

21 (19) "Wildlife Habitat" means a combination of food, water, shelter, and space that sustains wildlife and includes, but is not limited to, riparian areas

1 and the stream flows that sustain them. This definition may not be construed to increase the quantity of the water rights set forth in Article III of this
2 compact.

3 ARTICLE III
4 WATER RIGHT

5 The Parties agree that the following water rights are in settlement of the reserved water rights claims of the United States for the Refuge. All water
6 rights described in this Article are subject to Article IV of this compact as well as any specific additional conditions set forth below.

7 A. Priority date. The Reserved Right for stock, wildlife, and Wildlife Habitat uses within the Refuge described herein has a priority date of December
8 11, 1936. The United States agrees to subordinate its 1936 Reserved Right to water rights Recognized Under State Law existing on the Effective Date
9 of this compact. Accordingly, any water right Recognized Under State Law with a priority date prior to the Effective Date of this compact is functionally
10 senior in priority to any component of the Reserved Right and is not subject to a call for enforcement or administration by the United States in the exercise
11 of the Reserved Right. The final decree for the United States' Reserved Right must include the above prohibition on call.

12 B. Quantified instream rights. The United States holds water rights in the following named streams from the point furthest upstream where the
13 Refuge boundary crosses the mainstem stream channel to its confluence with Fort Peck Lake or the Missouri River. The water right is in the amount of
14 one (1) or one-half (1/2) cubic feet per second (cfs) for instream use for the purposes of stock, wildlife, and Wildlife Habitat as set forth in Table 1 and the
15 Abstracts attached to this compact as Appendix 1, and as depicted in Appendix 4. The period of use is from March 1 to June 30. The United States may
16 exercise its quantified instream rights during the period of use provided by this Compact if water is available.

17 Table 1

18 Stream Name	Amount(cfs)	Upstream Limit	Downstream Limit
19 Alkali Creek	0.5	NWSW Sec.27 19N29E	SESW Sec.36 19N29E
20 Antelope Creek	0.5	NWNE Sec.3 22N23E	SESE Sec.21 22N23E
21 Armells Creek	1.0	NWSW Sec.18 21N23E	NWSW Sec.32 22N24E



1	Ash Creek	0.5	NWNW Sec.28 22N42E	SESW Sec.27 22N42E
2	Bear Creek	0.5	NENE Sec.15 25N42E	SWSE Sec.10 25N42E
3	Beauchamp Creek	0.5	NWNE Sec.16 22N28E	SESE Sec.35 22N28E
4	Big Coulee Creek	0.5	NWSW Sec.16 21N33E	SWSW Sec.12 21N33E
5	Big Dry Creek	1.0	SWSW Sec.26 20N42E	NESW Sec.12 20N42E
6	Billy Creek	0.5	SESE Sec.33 22N34E	NWNE Sec.22 22N34E
7	Box Creek, North Fork	0.5	SWSW Sec.18 23N42E	NENE Sec.19 23N42E
8	Box Creek, South Fork	0.5	SWNW Sec.19 23N42E	SENE Sec.19 23N42E
9	Bridge Coulee	0.5	SWNW Sec.1 20N42E	NENE Sec.12 20N42E
10	Cabin Coulee	0.5	SESW Sec.21 23N35E	SWSE Sec.5 22N36E
11	Carroll Coulee	0.5	SWNW Sec.31 21N26E	SENE Sec.22 21N26E
12	Cart Trail Coulee	0.5	NWNW Sec.35 23N33E	NENW Sec.1 22N33E
13	Cat Creek	0.5	NWSW Sec.29 23N42E	SWSW Sec.28 23N42E
14	Cattle Creek	0.5	SWSE Sec.15 22N39E	SWSE Sec.10 22N39E
15	CK Creek	0.5	NWNE Sec.1 22N26E	SESE Sec.12 21N27E
16	Crooked Creek (Garfield County)	0.5	SESE Sec.19 22N39E	NENE Sec.19 22N39E
17	Sacagawea River/ Crooked Creek	0.5	SWSW Sec.27 20N29E	SWNW Sec.36 20N29E
18	Dawson Creek	0.5	NWSW Sec.6 23N42E	SWSE Sec.6 23N42E
19	Devils Creek	0.5	NENE Sec.16 21N32E	SENE Sec.5 21N32E
20	Doney Coulee	0.5	NWNE Sec.30 23N34E	SESW Sec.29 23N34E
21	Duck Creek	0.5	NWNW Sec.1 23N37E	NWSE Sec.1 23N37E

1	Duval Creek	0.5	NENW Sec.5 22N24E	NWSE Sec.34 22N24E
2	Fifth Coulee	0.5	SWNW Sec.33 25N39E	SESE Sec.2 24N39E
3	Fourchette Creek	1.0	NWNW Sec.15 22N30E	NWSE Sec.8 22N31E
4	Germaine Coulee	0.5	SESE Sec.22 19N30E	SWSW Sec.16 19N30E
5	Gilbert Creek	0.5	SWSE Sec.17 22N40E	NESE Sec.4 22N40E
6	Hawley Creek	0.5	NENW Sec.35 22N29E	NENE Sec.2 21N28E
7	Hell Creek	0.5	SESE Sec.16 21N37E	NWNW Sec.13 21N37E
8	Hilliard Coulee	0.5	NENE Sec.20 26N42E	NWSW Sec.17 26N42E
9	Kill Woman Creek	0.5	NENE Sec.3 22N32E	SESE Sec.10 22N32E
10	King Coulee	0.5	NWNW Sec.6 23N37E	SESW Sec.9 23N37E
11	Lone Tree Creek	0.5	NWSW Sec.34 22N42E	NESW Sec.34 22N42E
12	Lost Creek	0.5	SWSE Sec.36 21N31E	NWNW Sec.33 21N31E
13	Middle Eighth Coulee	0.5	NENE Sec.28 24N38E	SWNE Sec.35 24N38E
14	Nelson Creek	0.5	SESW Sec.26 21N43E	NENW Sec.27 21N43E
15	Nichols Coulee	0.5	SWSW Sec.7 22N27E	SESE Sec.10 21N27E
16	North Fork Rock Creek	0.5	NENE Sec.21 23N43E	SWSE Sec.17 23N43E
17	Norville Creek	0.5	NWNW Sec.36 24N41E	NWNW Sec.31 24N42E
18	Renick Coulee	0.5	SESE Sec.24 23N40E	NENE Sec.23 23N40E
19	Ried Coulee	0.5	SWSW Sec.18 21N38E	NWNE Sec.13 21N37E
20	Rock Creek	1.0	NENE Sec.6 22N25E	NWNE Sec.11 21N25E
21	Sand Arroyo	0.5	NWNE Sec.20 24N43E	NESW Sec.20 24N43E

1	Sand Creek	0.5	SWSW Sec.16 21N24E	NENE Sec.9 21N25E
2	Sandburn Coulee	0.5	SESE Sec.1 19N30E	SESE Sec.25 20N30E
3	Seven Blackfoot Creek	0.5	SWSE Sec.13 21N33E	NENW Sec.13 21N33E
4	Sevenmile Creek	0.5	NENW Sec.6 22N26E	SESE Sec.7 21N27E
5	Seventh Coulee	0.5	NWSW Sec.18 24N39E	SWNW Sec.20 24N39E
6	Sherman Coulee	0.5	NESE Sec.33 19N30E	NENE Sec.30 19N30E
7	Siparyann Creek	1.0	NWNW Sec.2 22N24E	SESE Sec.32 22N25E
8	Sixth Coulee	0.5	NWNW Sec.5 24N39E	SWNW Sec.14 24N39E
9	Snap Creek	0.5	SWSW Sec.23 21N42E	SENE Sec.26 21N42E
10	Snow Creek	0.5	SWSW Sec.3 21N36E	NESW Sec.2 21N36E
11	Soda Creek	0.5	SWNW Sec.33 21N29E	SWNW Sec.8 20N30E
12	South Fork Duck Creek	0.5	NWNW Sec.21 25N39E	SWNW Sec.14 25N39E
13	South Fork Rock Creek	0.5	SENE Sec.33 23N43E	NWNE Sec.32 23N43E
14	Spring Creek	0.5	NESE Sec.11 24N42E	SESE Sec.10 24N42E
15	Nancy Russell Creek/ Squaw Creek	0.5	SESE Sec.29 20N31E	SWNE Sec.30 20N31E
16	Sutherland Creek	0.5	SWNW Sec.13 23N36E	SWSW Sec.18 23N37E
17	Telegraph Creek*	0.5	NENW Sec.30 23N31E	SWSE Sec.31 23N31E
18	Timber Creek (McCone)	0.5	NENE Sec.17 20N43E	SWSE Sec.6 20N43E
19	Two Calf Creek	0.5	NWNW Sec.30 22N23E	NENW Sec.28 22N23E
20	Upper Eighth Coulee	0.5	NWSW Sec.33 24N38E	SENE Sec.4 23N38E
21	Valentine Creek*	0.5	NWNE Sec.10 21N30E	SENE Sec.14 22N30E

1	Wilder Creek	0.5	NENW Sec.12 22N25E	SWSE Sec.6 21N26E
2	Wyatt Coulee	0.5	NWNW Sec.22 23N34E	NESW Sec.22 23N34E

3 *The downstream end of the quantified reaches of Telegraph Creek and Valentine Creek end at their confluence with Fourchette Creek.

4 C. Instream Flow right on Musselshell River. The United States holds a water right in the Musselshell River from the point furthest upstream where
 5 the mainstem river channel enters U.S. Fish and Wildlife Service owned land within the Refuge (near the SESE of section 11, T.18N, R.29E) to its
 6 confluence with Fort Peck Lake as described in the Abstract attached to this compact as Appendix 2. The water right is in the amount of a minimum
 7 instream flow of seventy (70) cfs. The water right is for the purposes of stock, wildlife, and Wildlife Habitat and must be Coextensive with any other
 8 non-consumptive instream uses during the specified period of use. The period of use for this right is from March 1 to June 30.

9 D. Wells, ponds, and springs. Water rights for wells, developed springs, and ponds will be recognized and quantified as set forth in the Abstracts
 10 attached to this compact as Appendix 3.

11 E. Conditions to be applied to permits issued after the Effective Date of the Compact. On the Restricted Reaches set forth in Table 2 and depicted
 12 in Appendix 5, no new on-stream impoundments may be constructed after the Effective Date of this Compact, except as provided by Article IV.C.

13 Table 2

14	Name of Group	Name at Endpoint	Upper or Lower	Quarter	Section	Township
15				Quarter		Range
16	Armells Creek	Armells Creek	Upper	NENE	12	20N21E
17		Armells Creek	Lower	SWSW	32	22N24E
18		Fargo Coulee	Upper	NESE	13	20N22E
19		UT of Fargo Coulee	Upper	SENW	33	21N23E
20		UT of Fargo Coulee	Upper	NENW	1	20N22E
21	Ash Creek	Ash Creek	Upper	SWSW	11	22N41E



1		Ash Creek	Lower	SESW	27	22N42E
2	Bear Creek	Bear Creek	Upper	NENE	15	25N42E
3		Bear Creek	Lower	SWSE	10	25N42E
4	Beauchamp Creek	Beauchamp Creek	Upper	NESW	14	24N26E
5		Beauchamp Creek	Lower	SESE	35	22N28E
6	Billy Creek	Billy Creek	Upper	SENE	17	21N34E
7		Billy Creek	Lower	NWNE	22	22N34E
8	Bobcat Creek	Bobcat Creek	Upper	NENE	29	25N42E
9		UT of Bobcat Creek	Upper	NESW	29	25N42E
10		Bobcat Creek	Lower	NWNW	30	25N41E
11	Box Creek, North Fork	Box Creek, North Fork	Upper	SENE	4	23N41E
12		UT of North Fork Box Creek	Upper	NESW	9	23N41E
13		Box Creek, North Fork	Lower	NENE	19	23N42E
14	Box Creek, South Fork	Box Creek, South Fork	Upper	NENW	22	23N41E
15		Box Creek, South Fork	Lower	SENE	19	23N42E
16	Box Elder Creek	Box Elder Creek	Upper	NESW	29	23N32E
17		Box Elder Creek	Lower	SENE	30	23N31E
18	Bridge Coulee	Bridge Coulee	Upper	SESW	33	21N42E
19		Bridge Coulee	Lower	NENE	12	20N42E
20		Carpenter Creek	Upper	NWNW	15	23N35E
21	Carroll Coulee	Carroll Coulee	Upper	SWNW	11	20N25E

1		UT of Carroll Coulee	Upper	SESE	27	21N25E
2		UT of Carroll Coulee	Upper	SWSW	1	20N25E
3		UT of Carroll Coulee	Upper	NWNW	3	20N25E
4		Carroll Coulee	Lower	SENE	22	21N26E
5	Cat Creek	Cat Creek	Upper	NWNW	34	23N41E
6		Cat Creek	Lower	SWSW	28	23N42E
7	CK Creek	CK Creek	Upper	NESE	22	24N25E
8		CK Creek	Lower	SESE	12	21N27E
9		Cottonwood Creek	Upper	NWNW	36	24N24E
10	Crooked Creek (Garfield County)	Crooked Creek (Garfield County)	Upper	NWNE	4	21N39E
11		Crooked Creek (Garfield County)	Lower	NENE	19	22N39E
12	Crooked Creek/Sacagawea River	Crooked Creek/Sacagawea River	Upper	SWNW	30	20N28E
13		Crooked Creek/Sacagawea River	Lower	SENE	35	20N29E
14	Dawson Creek	Dawson Creek	Upper	NENE	3	23N41E
15		Dawson Creek	Lower	SWSE	6	23N42E
16	Deadman Coulee	Deadman Coulee	Upper	SESE	20	21N32E
17		Deadman Coulee	Lower	SWNE	22	21N31E
18	Devils Creek	Devils Creek	Upper	SESW	30	21N33E
19		Devils Creek	Lower	SENW	5	21N32E
20	Doney Coulee	Doney Coulee	Upper	SESW	13	23N33E
21		Doney Coulee	Lower	SESW	29	23N34E

1	Duval Creek	Duval Creek	Upper	NENW	5	22N24E
2		Duval Creek	Lower	NWSE	34	22N24E
3	East Fork Crooked Creek	East Fork Crooked Creek	Upper	NWNW	25	22N39E
4		East Fork Crooked Creek	Lower	SWSE	10	22N39E
5	Fifth Coulee	Fifth Coulee	Upper	NWNW	32	25N39E
6		Fifth Coulee	Lower	SESE	2	24N39E
7	Fourchette Creek	Fourchette Creek	Upper	NESE	29	23N29E
8		Fourchette Creek	Lower	NWSW	5	22N31E
9	Germaine Coulee	Germaine Coulee	Upper	SESE	24	19N30E
10		Germaine Coulee	Lower	SWSW	16	19N30E
11	Gilbert Creek	Gilbert Creek	Upper	SENE	29	22N40E
12		Gilbert Creek	Lower	NESE	4	22N40E
13	Hell Creek	Hell Creek	Upper	NWSE	27	21N36E
14		Hell Creek	Lower	NWNW	13	21N37E
15	Hell Hole Coulee	Hell Hole Coulee	Upper	NENE	19	23N34E
16		Hell Hole Coulee	Lower	NENE	28	23N34E
17		Karsten Coulee	Upper	NWNW	12	22N28E
18	Kill Woman Creek	Kill Woman Creek	Upper	NESE	27	23N32E
19		Kill Woman Creek	Lower	SESE	10	22N32E
20	King Coulee	King Coulee	Upper	SWNE	36	24N36E
21		King Coulee	Lower	SESW	9	23N37E

1		Little Cottonwood Creek	Upper	NWNE	9	23N24E
2	Lone Tree Creek	Lone Tree Creek	Upper	NENW	27	22N41E
3		Lone Tree Creek	Lower	NESW	34	22N42E
4	Lost Creek (east Garfield Co.)	Lost Creek (east Garfield Co.)	Upper	SWNE	8	22N42E
5		Lost Creek (east Garfield Co.)	Lower	SWSW	3	22N42E
6	Lost Creek (west Garfield Co.)	Lost Creek (west Garfield Co.)	Upper	SWSW	32	21N32E
7		Lost Creek (west Garfield Co.)	Lower	SENW	33	21N31E
8	Middle Eighth Coulee	Middle Eighth Coulee	Upper	NENW	21	24N38E
9		Middle Eighth Coulee	Lower	SWNE	35	24N38E
10	North Fork Rock Creek	North Fork Rock Creek	Upper	NWNW	36	24N43E
11		North Fork Rock Creek	Lower	NWNE	20	23N43E
12	Norville Creek	Norville Creek	Upper	NESE	28	24N41E
13		UT of Norville Creek	Upper	SESE	21	24N41E
14		Norville Creek	Lower	NWNW	31	24N42E
15		Plum Creek	Upper	SENW	3	23N35E
16	Renick Coulee	Renick Coulee	Upper	NWNW	32	23N41E
17		Renick Coulee	Lower	NWNE	23	23N40E
18	Ried Coulee	Ried Coulee	Upper	NESE	32	21N38E
19		Ried Coulee	Lower	NENE	13	21N37E
20	Rock Creek	Rock Creek	Upper	SWNE	30	24N25E
21		Rock Creek	Lower	NWNE	11	21N25E

1	Sage Creek	Sage Creek	Upper	NENE	8	23N41E
2		Sage Creek	Lower	SWSW	31	24N41E
3	Sand Creek	Sand Creek	Upper	NENE	1	20N23E
4		UT of Sand Creek	Upper	SWSE	35	21N24E
5		UT of Sand Creek	Upper	SWSE	24	21N23E
6		UT of Sand Creek	Upper	SWSE	33	21N24E
7		UT of Sand Creek	Upper	SWSW	26	21N23E
8		UT of Sand Creek	Upper	SWSE	14	21N23E
9		Sand Creek	Lower	NENE	9	21N25E
10	Seven Blackfoot Creek	Seven Blackfoot Creek	Upper	SWNW	23	20N34E
11		Seven Blackfoot Creek	Lower	NENW	13	21N33E
12	Sevenmile Creek	Sevenmile Creek	Upper	SESW	14	23N25E
13		Sevenmile Creek	Lower	SESE	7	21N27E
14	Sherman Coulee	Sherman Coulee	Upper	NWSW	1	18N30E
15		Sherman Coulee	Lower	NENE	30	19N30E
16	Short Creek	Short Creek	Upper	SENE	10	21N42E
17		Short Creek	Lower	SESE	11	21N42E
18	Siparyann Creek	Siparyann Creek	Upper	NENE	5	23N24E
19		Siparyann Creek	Lower	SESE	32	22N25E
20	Sixth Coulee	Sixth Coulee	Upper	SWNW	31	25N39E
21		Sixth Coulee	Lower	SWNW	14	24N39E

1	Snap Creek	Snap Creek	Upper	NENE	17	21N42E
2		Snap Creek	Lower	NENE	26	21N42E
3	Snow Creek	Snow Creek	Upper	NWSW	14	21N35E
4		Snow Creek	Lower	NESW	2	21N36E
5	Soda Creek	UT of Soda Creek	Upper	SWNE	30	21N29E
6		UT of Soda Creek	Upper	NESW	31	21N29E
7		UT of Soda Creek	Upper	NWNE	29	21N29E
8		UT of Soda Creek	Upper	SESW	31	21N29E
9		UT of Soda Creek	Upper	NENW	36	21N28E
10		Soda Creek	Lower	SWNW	8	20N30E
11	Spring Creek	Spring Creek	Upper	NWNE	12	24N42E
12		UT of Spring Creek	Upper	NESW	33	25N42E
13		UT of Spring Creek	Upper	NENW	3	24N42E
14		UT of Spring Creek	Upper	NENE	14	24N42E
15		UT of Spring Creek	Upper	NWNW	34	25N42E
16		Spring Creek	Lower	SESE	10	24N42E
17	Stole Creek	Stole Creek	Upper	SWSE	4	24N42E
18		Stole Creek	Lower	SESE	9	24N42E
19	Sutherland Creek	Sutherland Creek	Upper	SWSW	30	24N36E
20		UT of Sutherland Creek	Upper	NWNE	34	24N36E
21		Sutherland Creek	Lower	SWSW	18	23N37E

1	Telegraph Creek	Telegraph Creek	Upper	SESE	25	24N31E
2		Telegraph Creek	Lower	NWNE	6	22N31E
3	Two Calf Creek	Two Calf Creek	Upper	NENE	22	22N21E
4		Two Calf Creek	Lower	NWNE	28	22N23E
5	UT of Musselshell River	UT of Musselshell River	Upper	NWSW	17	19N29E
6		UT of Musselshell River	Lower	SWNW	30	19N30E
7	UT1 of Fort Peck Lake	UT1 of Fort Peck Lake	Upper	NWNE	14	22N40E
8		UT1 of Fort Peck Lake	Lower	NENW	2	22N40E
9	UT2 of Fort Peck Lake	UT2 of Fort Peck Lake	Upper	NENE	17	24N41E
10		UT2 of Fort Peck Lake	Upper	SWNW	21	24N41E
11		UT2 of Fort Peck Lake	Upper	NENE	21	24N41E
12		UT2 of Fort Peck Lake	Lower	SWNW	15	24N41E
13	UT3 of Fort Peck Lake	UT3 of Fort Peck Lake	Upper	NWSW	35	26N42E
14		UT of UT3 of Fort Peck Lake	Upper	SENW	34	26N42E
15		UT3 of Fort Peck Lake	Lower	SENW	4	25N42E
16	UT4 of Fort Peck Lake	UT4 of Fort Peck Lake	Upper	NENE	20	25N42E
17		UT4 of Fort Peck Lake	Lower	SENE	8	23N42E
18	UT5 of Fort Peck Lake	UT5 of Fort Peck Lake	Upper	SENE	21	25N42E
19		UT of UT5 of Fort Peck Lake	Upper	SENW	22	25N42E
20		UT5 of Fort Peck Lake	Lower	SESW	10	25N42E
21	UT6 of Fort Peck Lake	UT6 of Fort Peck Lake	Upper	NWNE	19	25N41E

1		UT6 of Fort Peck Lake	Lower	SESE	24	25N41E
2	UT7 of Fort Peck Lake	UT7 of Fort Peck Lake	Upper	SESE	14	24N42E
3		UT7 of Fort Peck Lake	Lower	NWNE	15	24N42E
4	UT8 of Fort Peck Lake	UT8 of Fort Peck Lake	Upper	NWSE	13	24N42E
5		UT8 of Fort Peck Lake	Lower	SENE	24	24N42E
6	West Fork Sand Arroyo	West Fork Sand Arroyo	Upper	SENE	9	24N43E
7		West Fork Sand Arroyo	Lower	NESW	20	24N43E
8	Wyatt Coulee	Wyatt Coulee	Upper	SWNE	12	23N33E
9		Wyatt Coulee	Lower	NESW	22	23N34E

ARTICLE IV

COMPACT IMPLEMENTATION

12 A. Quantified reaches. Flows of designated quantified reaches set forth in Table 1 and Appendix 1 that are not already appropriated as of the
 13 Effective Date of this compact will be available for future development, subject to the Reserved Right and applicable permit conditions described herein.
 14 The Department may approve new uses after the Effective Date of this compact, but the Department shall condition any permit or approval of new uses
 15 to provide that such uses may not cause the quantified reaches to fall below the minimum flows set forth in Table 1 and Appendix 1 during the time period
 16 from March 1 to June 30. Appropriations occurring after the Effective Date of this compact will be subject to call by the United States in the exercise of
 17 the Reserved Right at any time streamflows are available but fall below the levels set forth in Table 1 and Appendix 1 of this compact, as measured where
 18 each quantified stream enters Fort Peck Lake or the Missouri River, or at the closest upstream confluence for those streams that intersect another stream
 19 before reaching Fort Peck Lake or the Missouri River, with a proper device for measurement of the waters flowing in the quantified reach.

20 B. Musselshell River. Musselshell River flows that are not already appropriated as of the Effective Date of this compact will be available for future
 21 development subject to the Reserved Right and applicable permit conditions described herein. The Department may approve new uses after the Effective

1 Date of this compact but shall condition any permit or approval of new uses to provide that such uses may not cause the flow of the Musselshell River to
2 fall below seventy (70) cfs where the mainstem river channel enters U.S. Fish and Wildlife Service owned land within the Refuge during the period from
3 March 1 to June 30. Appropriations occurring after the Effective Date of this compact will be subject to a call by the United States in the exercise of the
4 Reserved Right at any time streamflow falls below 70 cfs for five (5) consecutive days.

5 C. Conditions to be applied to permits issued after the Effective Date of the compact. Impoundments of less than the capacity and appropriation
6 limits excepted from permitting under 85-2-306, MCA, may be constructed on the stream reaches identified in Table 2 and Appendix 5. These
7 impoundments may not be Stacked to achieve a volume greater than the statutory exception. The Department may permit no new on-stream
8 impoundments that do not meet the permit exception requirements of 85-2-306, MCA, on the Restricted Reaches identified in Table 2 and Appendix 5.

9 1. Reclamation, repair, or rehabilitation of an existing impoundment may not be considered a new impoundment, except that reclamation, repair,
10 or rehabilitation cannot cause the impoundment to exceed the storage volume listed on the statement of claim.

11 2. Off-stream impoundments larger than the capacity and appropriation limits excepted from permitting by 85-2-306, MCA, may be constructed
12 and filled in accordance with state permitting requirements from a diversion works located on the stream reaches identified Table 2 and Appendix 5; and

13 3. On-stream impoundments larger than the capacity and appropriation limits excepted from permitting by 85-2-306, MCA, may be constructed
14 and filled in accordance with state permitting requirements on the streams identified in Table 2 and Appendix 5 upstream of the designated Restricted
15 Reach.

16 D. Uses exempted from curtailment by the United States' exercise of the Reserved Right during times of shortage. During times when there is
17 insufficient water to satisfy the Reserved Right, and curtailment of junior water rights is otherwise contemplated under Article III, the following water rights
18 will not be subject to call or curtailment for the benefit of the Reserved Right:

19 1. Non-Consumptive Uses located upstream of the instream reaches identified in Table I and Appendix 1.

20 2. Groundwater uses of thirty-five (35) gallons per minute (gpm) or less not to exceed ten (10) AF per year.

21 3. Stockwater impoundments of less than fifteen (15) AF capacity and total appropriation less than thirty (30) AF per year.

- 1 4. Temporary emergency appropriations under 85-2-113(3), MCA.
- 2 5. An application submitted pursuant to 85-20-1401, MCA, Article VI.
- 3 6. An application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:
- 4 a. Remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601,
- 5 et seq.;
- 6 b. Aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251-1387; or
- 7 c. Remedial actions taken pursuant to Title 75, chapter 10, part 7.
- 8 E. Action for enforcement of provisions of Article III. The United States may file an original action in a court of competent jurisdiction to enforce
- 9 the provisions of Article III at any time. The United States cannot be required to exhaust any administrative remedies in order to enforce Article III of this
- 10 compact.

ARTICLE V

GENERAL PROVISIONS

- 13 A. The Parties recognize that the U.S. Fish and Wildlife Service has an interest in maintaining water flow and wildlife habitat throughout the Refuge.
- 14 B. No effect on tribal rights or other federal reserved water rights.
- 15 1. The relationship between the water rights of the U.S. Fish and Wildlife Service described herein and any rights to water of an Indian Tribe in
- 16 Montana, or of any federally derived water right of an individual, or of the United States on behalf of a Tribe or individual shall be determined by the rule
- 17 of priority.
- 18 2. Nothing in this compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights
- 19 to water of any Indian Tribes and Tribal members in the State of Montana.
- 20 3. Nothing in this compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe regarding boundaries or property
- 21 interests in the State of Montana.

1 4. Nothing in this compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights
2 to water of any other federal agency or federal lands in the State of Montana other than those of the U.S. Fish and Wildlife Service for the Charles M.
3 Russell National Wildlife Refuge.

4 C. General Disclaimers. Nothing in this Compact may be construed or interpreted:

5 1. As a precedent for the litigation of reserved water rights or the interpretation or administration of existing or future compacts between the United
6 States and the State; or of the United States and any other state;

7 2. As a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the
8 state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this compact, or, except as provided in this compact, any right
9 to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana
10 Code Annotated, in the basins affected by this compact;

11 3. As a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this compact;

12 4. To establish a precedent for other agreements between the State and the United States or an Indian tribe;

13 5. To determine the relative rights, inter se, of persons using water under the authority of state law or to limit the rights of the parties or a person
14 to litigate an issue not resolved by this compact;

15 6. To authorize the taking of a water right that is vested under state or federal law;

16 7. To create or deny substantive rights through headings or captions used in this compact;

17 8. To expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this compact;

18 9. To affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities
19 of the U.S. Fish and Wildlife Service;

20 10. To affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of fees or costs,
21 pursuant to a ruling by a state or federal court of competent jurisdiction or an act of Congress;

1 11. To affect, in any manner, the entitlement to or quantification of other federal water rights. This compact is binding on the United States solely
2 in regard to the water rights of the United States for the Charles M. Russell National Wildlife Refuge, and this compact does not affect the water rights of
3 any other federal agency that is not a successor in interest to the water rights subject to this compact.

4 D. Use of water right. Non-use of all or a part of the Reserved Right may not constitute abandonment of the right. The Reserved Right need not
5 be applied to a use deemed beneficial under state law, but must be restricted to uses necessary to fulfill the purposes outlined in the Order.

6 E. Coextensive with other non-consumptive instream water uses. The Reserved Right for Instream Flows for the Refuge described in this compact
7 must be Coextensive with any other non-consumptive instream water uses, and may not be cumulative to other instream uses.

8 F. Appropriation pursuant to State law. Nothing in this compact may prevent the United States from seeking a water appropriation pursuant to
9 state law for use on the reserved land within the Refuge or for use outside the boundaries of the federal reservation for which a water right is described
10 in this compact. A water right obtained in this manner shall be Recognized Under State Law and must be administered pursuant to state law.

11 G. Reservation of rights. The Parties expressly reserve all rights not granted, described, or relinquished in this compact.

12 H. Severability. The provisions of this compact are not severable.

13 I. Multiple originals. This compact is executed in quintuplicate. Each of the five (5) compacts bearing original signatures must be deemed an
14 original.

15 J. Notice. Unless otherwise specifically provided for in this compact, service of notice, except service in litigation, must be:

- 16 1. State. Upon the Director of the Department or its successor agency, and such other officials as the Director may designate in writing.
- 17 2. United States. Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

18 ARTICLE VI

19 FINALITY OF COMPACT

20 A. Binding effect.

21 1. The Effective Date of this Compact is the date of the ratification of this compact by the Montana legislature, written approval by the United States



1 Department of the Interior, and written approval by the United States Department of Justice. Once effective, all of the provisions of this compact shall be
2 binding on:

3 a. The State and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the State
4 to the use of water; and

5 b. Except as otherwise provided in Article V, Section B, the United States, a person or entity of any nature whatsoever using, claiming, or in any
6 manner asserting a right under the authority of the United States to the use of water.

7 2. Following the Effective Date, this compact may not be modified without the written consent of the Parties. Any attempt to unilaterally modify this
8 compact by either Party shall render this compact voidable at the election of the other Party.

9 B. Settlement of claims. The Parties intend that the Reserved Right described in this compact is in full and final settlement of the reserved water
10 right claims of the United States for the Charles M. Russell National Wildlife Refuge. Pursuant to this settlement, by which certain federal reserved water
11 rights are expressly recognized by the State in this compact, the United States hereby and in full settlement of any and all claims filed by the United States
12 or which could have been filed by the United States for the Refuge relinquishes forever all said claims on the Effective Date of this compact to water within
13 the State of Montana for federal reserved water rights for the above mentioned unit. The State agrees to recognize the Reserved Right described and
14 quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as any other appropriation.

15 C. The parties agree to defend the provisions and purposes of this compact from all challenges and attacks.

16 IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the ___ day of ___, 2013.

17

18 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the
19 provisions of Title 85, chapter 20, apply to [section 1].

20

21 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

22

- END -

