

MONTANA

Water Compacts

State of Montana

Department of Natural Resources
and Conservation

Reserved Water Rights
Compact Commission

2008

MONTANA WATER COMPACTS

STATE OF MONTANA

**RESERVED WATER RIGHTS COMPACT
COMMISSION**

2008

Table of Contents

Introduction	iv
Montana Map.....	v
Tables	vi
Statutes Governing RWRCC.....	xi
Title 2 Government Structure and Administration.....	xi
Chapter 15 Executive Branch Officers and Agencies.....	xi
Part 2 Governor	xi
2-15-212 Reserved water rights compact commission.....	xi
Title 85 Water Use	xi
Chapter 2 Surface Water and Ground Water.....	xi
Part 2 Adjudication of Water Rights.....	xi
85-2-217 Suspension of adjudication	xi
Part 7 Indian and Federal Water Rights – Water Rights Within Indian Reservations	xii
85-2-701 Legislative intent	xii
85-2-702 Negotiation with Indian tribes.....	xii
85-2-703 Negotiation with federal government.....	xiii
85-2-704 Termination of negotiations	xiii
85-2-705 Status reports to chief water judge	xiii
85-2-708 Water administration interim agreements within Indian reservations.....	xiv
Montana Water Compacts	
Title 85 Water Use	
Chapter 20.....	1
Part 2 – Fort Peck – Montana Compact	3
85-20-201 Fort Peck-Montana compact ratified	4
Part 3 – Northern Cheyenne – Montana Compact	25
85-20-301 Northern Cheyenne-Montana compact ratified.....	26
85-20-302 Consent to federal act and modification of compact.....	45
Part 4 – United States National Park Service – Montana Compact	47
85-20-401 United States National Park Service-Montana compact ratified.....	48
85-20-402 Accounting for federal funds	102
Part 5 – United States Bureau of Land Management – Montana Compact	103
85-20-501 United States Bureau of Land Management-Montana compact ratified.....	104
Part 6 – Chippewa Cree Tribe – Montana Compact.....	119
85-20-601 Chippewa Cree Tribe-Montana compact ratified	120
Part 7 – United States Fish and Wildlife Service Black Coulee and Benton Lake – Montana Compact	165
85-20-701 United States Fish and Wildlife Service – Montana compact ratified	166
Part 8 – United States Fish and Wildlife Service, Red Rock Lakes – Montana Compact	179
85-20-801 United States Fish and Wildlife Service – Montana compact ratified	180

Part 9 – Crow Tribe – Montana Compact	193
85-20-901 Crow Tribe-Montana compact ratified	194
85-20-902 Findings and purpose	232
85-20-903 Definitions	233
85-20-904 Payment of settlement funds into escrow -- requirements for escrow agreement -- notice from attorney general.....	233
85-20-905 Settlement of litigation — disposition of production taxes collected on coal owned in trust for Crow Tribe.....	234
Part 10 – Fort Belknap – Montana Compact.....	235
85-20-1001 Fort Belknap-Montana compact ratified	236
85-20-1002 Findings and purpose	289
85-20-1003 Definitions	290
85-20-1004 Mitigation account	290
85-20-1005 Watershed improvement trusts.....	290
85-20-1006 Terms and conditions of loan	290
85-20-1007 Peoples Creek minimum flow account.....	291
85-20-1008 Economic development plan	291
Part 11 – United States of America, Department of Agriculture, Agriculture Research Service, Fort Keogh Livestock and Range Research Laboratory – Montana Compact	293
85-20-1101 United States of America, Department of Agriculture, Agricultural Research Service, Fort Keogh Livestock and Range Research Laboratory-Montana compact ratified	294
Part 12 – United States of America, Department of Agriculture, Agriculture Research Service, Sheep Experiment Station – Montana Compact.....	305
85-20-1201 United States of America, Department of Agriculture, Agricultural Research Service, Sheep Experiment Station-Montana Compact ratified	306
Part 13 – United States of America, Fish and Wildlife Service, Bowdoin National Wildlife Refuge – Montana Compact.....	313
85-20-1301 United States of America, Fish and Wildlife Service, Bowdoin National Wildlife Refuge — Montana compact ratified	314
Part 14 – United States of America, Department of Agriculture, Forest Service – Montana Compact	327
85-20-1401 United States of America, Department of Agriculture, Forest Service – Montana compact ratified.....	328
Part 15 – Blackfeet Tribe – Montana 2007 Legislation.....	351
85-20-1501 Reserved.....	352
85-20-1503 Definitions.....	352
85-20-1504 Blackfeet Tribe water rights compact mitigation account — use	352
85-20-1505 Blackfeet Tribe water rights compact infrastructure account — use	353
85-20-1506 Administrative rules	353

INTRODUCTION

This book is a compilation of all federal reserved water right compacts negotiated by the Reserved Water Rights Compact Commission for the State of Montana as of 2007.

The Montana Legislature created the Reserved Water Rights Compact Commission (RWRCC) in 1979, the same year it created the Montana Water Court. The purpose of the RWRCC is to negotiate, on behalf of the State, with Indian Tribes and federal agencies claiming federal reserved water rights in Montana. The negotiations are conducted in public meetings and are submitted for public comment in the specific area impacted. A compact must be ratified by the Montana Legislature, signed by the appropriate federal authorities, and in the case of Indian reserved rights, approved by the Tribal Council. Compacts with Indian Tribes must be ratified by Congress. While settlements are being negotiated, the claims of the Tribes and federal agencies are suspended from adjudication in the Water Court.

Montana was one of the first states to conduct such negotiations, and it is still the only state to do so using a commission.

The RWRCC is made up of nine members who serve four-year terms. One member is appointed by the Attorney General's Office, four by the Governor's Office, two by the Speaker of the House, and two by the President of the Senate. The RWRCC is supported by an eight member staff of two attorneys, an agricultural engineer, two hydrologists, a GIS specialist, an historian and the staff director.

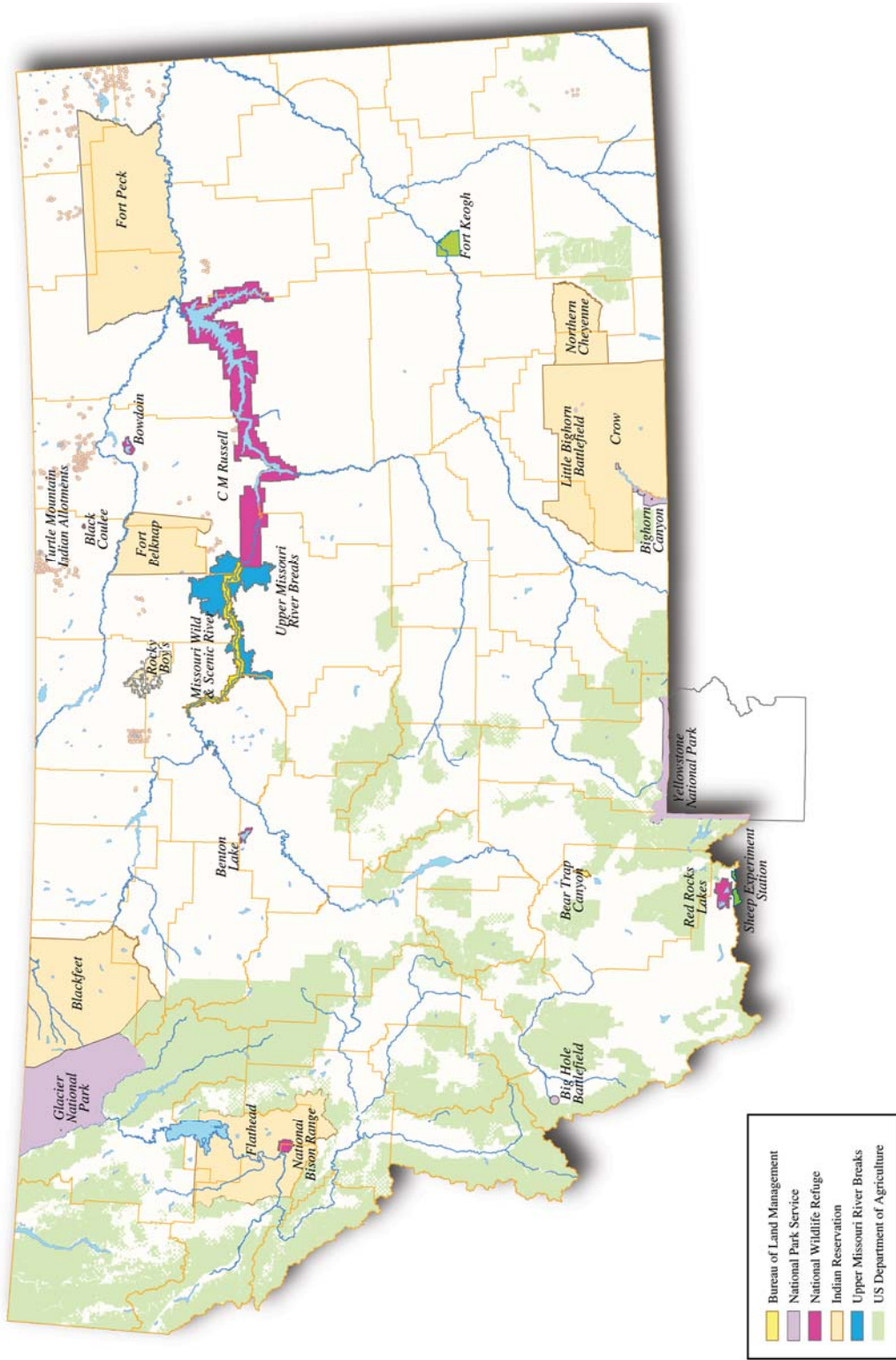
A federal reserved water right is a right to water that was created when Congress or the President of the United States reserved land out of the public domain. Federal reserves in Montana are shown on the accompanying map. When these lands were set aside it was intended that enough water be reserved to meet the purposes for which the lands were designated.

The date that the land was withdrawn and the reservation created is the priority date of the federal reserved water right for that land. Reserved water rights for Indian reservations, for instance, may go back to the 1800s. Federal reserved water rights do not have the same restrictions placed on them as are placed on appropriative rights. For example, a notice of appropriation or a beneficial use is not required to maintain a federal reserved water right, and a right may not be lost due to non-use.

Since its creation in 1979 the RWRCC has completed negotiations with five Indian Tribes and four federal agencies in Montana. For an overview of the completed compacts see the Completed Compacts Table. Compacts with the Blackfoot Tribe and the Confederated Salish and Kootenai Tribe are currently in negotiation and two compacts with the U.S. Fish & Wildlife Service remain as well as the settlement of water rights relating to land allotments belonging to the Turtle Mountain Band of Chippewa. The RWRCC has a sunset date of July 1, 2009.

MONTANA MAP SHOWING LOCATION OF FEDERAL RESERVES IN MONTANA

Federal and Indian Lands in Montana Claiming Reserved Water Rights



TABLES

Compacts Concluded by the Reserved Water Rights Compact Commission	vii
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United States National Park Service-Montana Compact

1. United States National Park Service Big Hole National Battlefield Consumptive Use.....	67
2. State Law Based Total Current and Future Consumptive Use Rights Tributary to the Reserved Portion of the North Fork of the Big Hole River	68
3. United States National Park Service Bighorn Canyon National Recreation Area Consumptive Use	69
4. State Law Based Total Future Consumptive Use Rights Tributary to the Reserved Portion of Category 3 Streams	70
5. United States National Park Service Glacier National Park Consumptive Use.....	71
6. State Law Based Future Consumptive Use Rights Tributary to the Reserved Portion of the Flathead River	73
7. United States National Park Service Little Bighorn National Battlefield Consumptive Use	75
8. United States National Park Service Yellowstone National Park Consumptive Use	76
9. State Law Based Total Current and Future Consumptive Use Rights Tributary to the Reserved Portion of Category 3 Streams	78
10. Low Stream Flow Levels at which Subordination is Limited.....	78
11. State Law Based Total Current and Future Consumptive Use Rights Tributary to the Reserved Portion of Soda Butte Creek.....	79
12. Low Stream Flow Levels at which Subordination is Limited Soda Butte Creek	80
13. State Law Based Total Current and Future Consumptive Use Rights Tributary to the Reserved Portion of these Rivers	80

United States Bureau of Land Management-Montana Compact

1. Available Water Supply Monthly Amounts.....	107
2. Monthly Depletion Factors for Evaporation	114
3. Monthly Depletion Factors for Domestic, Multiple Domestic, and Municipal Uses	115
4. Monthly Depletion Factors for Irrigation Uses Monthly Depletion Factor	115
5. Monthly Storage Depletion Schedule	117

United States Fish and Wildlife Service, Red Rock Lakes-Montana Compact

1. Red Rock Lakes National Wildlife Refuge — Consumptive Use	183
--	-----

U.S. Forest Service

1. Discrete and Dispersed Administrative Uses	331
2. Lower and Upper Stream Point Water Flow	337

COMPACTS CONCLUDED BY THE RESERVED WATER RIGHTS COMPACT COMMISSION

Compact	Dates of Legislative Passage	Information
<p>Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation</p> <p>85-20-201 MCA</p>	<p>May 1985</p>	<p>The compact contains a provision for water marketing by the Tribes, making federal legislation necessary. Federal legislation has not been passed. The compact has been approved by the Montana Water Court.</p>
<p>Northern Cheyenne Tribe</p> <p>85-20-301, MCA</p> <p>Public Law 102-374</p>	<p>April 1991</p> <p>September 1992</p>	<p>Included in the compact was a requirement that the federal government and the State of Montana contribute funds to repair and enlarge the unsafe Tongue River Dam, which has been completed. The compact has been approved by the Montana Water Court.</p>
<p>U.S. Department of the Interior National Park Service <i>Yellowstone National Park</i> <i>Glacier National Park</i> <i>Big Hole National Battlefield</i></p> <p>85-20-401, MCA</p>	<p>January 1994</p>	<p>The compact includes an article providing a controlled groundwater area to protect the hydrothermal system in Yellowstone National Park. The compact has been approved by the Montana Water Court.</p>
<p>U.S. Department of the Interior National Park Service <i>Little Bighorn Battlefield National Monument</i> <i>Bighorn Canyon National Recreation Area</i></p> <p>85-20-401, MCA</p>	<p>May 1995</p>	<p>Codified with the first compact with the National Park Service (above), this compact has been approved by the Montana Water Court.</p>
<p>U.S. Department of the Interior Bureau of Land Management (BLM) <i>Upper Missouri National Wild & Scenic River</i> <i>Bear Trap Canyon Public Recreation Site</i></p> <p>85-20-501, MCA</p>	<p>March 1997</p>	<p>The compact settles the instream flow rights for two river segments; one on the Upper Missouri one on the Madison River. It has received final approval from the BLM and the U.S. Department of Justice. It will be submitted to the Montana Water Court.</p>

Compact	Dates of Legislative Passage	Information
<p>U.S. Department of the Interior Fish and Wildlife Service (FWS) <i>Benton Lake National Wildlife Refuge</i> <i>Black Coulee National Wildlife Refuge</i></p> <p>85-20-701, MCA</p>	<p>March 1997</p>	<p>The compact settles the reserved water rights for two of the six national wildlife refuges claiming such rights in Montana. It has been approved by the FWS and the U.S. Department of Justice. The compact has been approved by the Montana Water Court.</p>
<p>Chippewa Cree Tribe of the Rocky Boy's Indian Reservation</p> <p>85-20-601, MCA</p> <p>Public Law 106-163</p>	<p>April 1997</p> <p>December 1999</p>	<p>The compact allocates 10,000 acre-feet per year to the Tribe from water arising on the reservation and includes an agreement to seek 10,000 afy from water stored in Tiber Reservoir. The compact was approved by Congress and signed by the president in 1999. It has been approved by the Montana Water Court.</p>
<p>U.S. Department of the Interior <i>Red Rock Lakes National Wildlife Refuge</i></p> <p>85-20-801, MCA</p>	<p>April 1999</p>	<p>Another of the six wildlife refuges claiming reserved water rights in Montana, the Red Rock Lakes settlement has been approved by the appropriate federal agencies and by the Montana Water Court.</p>
<p>Crow Tribe</p> <p>85-20-901, MCA</p>	<p>June 1999 Special Session</p>	<p>The compact allocates 500,000 acre-feet per year (AFY) of the natural flow of the Bighorn River to the Crow Tribe. The U.S. Bureau of Reclamation will allocate 300,000 AFY of storage in Bighorn Lake to the Tribe. The state paid \$15 million into an account in exchange for the Tribe's dismissal of a coal severance tax lawsuit and for the State's portion of cost-share for the water settlement. A management plan for Bighorn River and Lake was finalized in 2000. Congressional legislation is being drafted as of this printing in 2007, and the compact must pass a Tribal referendum.</p>

Compact	Dates of Legislative Passage	Information
<p>Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation</p> <p>85-20-1001</p>	<p>April 2001</p>	<p>The compact allocates 645 cubic feet per second (CFS) from the Milk River to the Tribes, limited by the U.S. share of the natural flow of the Milk River and the Tribal capacity to develop the water. It also quantifies the Tribal water rights in Peoples Creek, Beaver Creek and Missouri River Basin 40EJ. When uses upstream of the reservation interfere with the Tribal water right the Tribes will obtain water from the federal Milk River Project. The compact must be passed by Congress. Congressional legislation is being drafted as of this printing in 2007.</p>
<p>United States Department of Agriculture, Agriculture Research Service <i>Fort Keogh Livestock and Range Research Laboratory</i></p> <p>85-20-1101, MCA</p>	<p>March 2007</p>	<p>The compact settles the administrative, irrigation, stock and emergency fire suppression water rights for Fort Keogh near Miles City. It includes reserved rights to Fort Keogh's current irrigation use from the Yellowstone River and some future irrigation use, and it includes a small amount of current use from a tributary of the Tongue River.</p>
<p>United States Department of Agriculture, Agriculture Research Service <i>Sheep Experiment Station</i></p> <p>85-20-1201, MCA</p>	<p>March 2007</p>	<p>The compact settles the stockwater, domestic, irrigation, storage, dust abatement, reclamation, research, emergency fire suppression and other water rights for the small portion of the Sheep Experiment Station located in Montana.</p>
<p>United States Department of the Interior Fish and Wildlife Service <i>Bowdoin National Wildlife Refuge</i></p> <p>85-20-1301, MCA</p>	<p>March 2007</p>	<p>The compact settles the reserved rights for uses including administrative, wildlife habitat maintenance and enhancement, stockwatering and other. The FWS water rights are contingent on an MOU which must be attached to the compact as Appendix 3. The MOU will have provisions relating to the solution of the severe salinity problems on the Refuge. Commission staff is working with FWS on this MOU.</p>

Compact	Dates of Legislative Passage	Information
United States Department of Agriculture <i>Forest Service</i> 85-20-1401, MCA	April 2007	The water compact between the State of Montana and the U.S. Forest Service which took more than 15 years to negotiate has been signed by the governor and the appropriate federal officials. In general, the compact recognizes reserved water rights for the Forest Service for administrative and emergency fire fighting, and for instream flows for the South Fork Flathead Wild and Scenic River. The compact uses state law to create state-based water rights for instream flow on National Forest System lands.

2007 State legislation for proposed Blackfeet – Montana Compact

Blackfeet Compact – Reserved 85-20-1501, MCA 85-20-1503 85-20-1504 85-20-1505 85-20-1506	April 2007	This legislation creates a mitigation account within the state special revenue fund; the funds to mitigate economic and hydrologic impacts on water right holders among other things. It creates an infrastructure account to be used only for water-related infrastructure projects on the Blackfeet Indian reservation. Both accounts are administered by DNRC and funds may not be used unless a Blackfeet-Montana compact is ratified by the legislature, Tribe and United States. The compact has been approved by the Blackfeet Tribal Business Council and the Commission and the parties are working on Congressional Legislation.
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STATUTES GOVERNING RWRCC

Title 2 Government Structure and Administration

Chapter 15 Executive Branch Officers and Agencies

Part 2 Governor

2-15-212. Reserved water rights compact commission. (1) There is created a reserved water rights compact commission. In negotiations, the commission is acting on behalf of the governor.

(2) Subject to 5-5-234, commissioners are appointed as follows:

- (a) two members of the house of representatives appointed by the speaker, one from the majority party and one from the minority party;
- (b) two members of the senate appointed by the president, one from the majority party and one from the minority party;
- (c) four members designated by the governor; and
- (d) one member designated by the attorney general.

(3) Legislative members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(4) The commission is attached to the department of natural resources and conservation for administrative purposes only, as prescribed in 2-15-121, unless inconsistent with the provisions of Title 85, chapter 2, part 7. A sufficient and appropriate staff must be assigned to serve the commission within the budget established by the legislature. The commission staff is a principal unit within the department, and the commission shall direct and assign the staff.

(5) Members are appointed for 4-year terms and may be reappointed. A legislative member position is vacant if the person no longer serves in the legislature. The position of a member appointed by the governor or attorney general is vacant if that person is elected to the legislature. A vacancy must be filled in the manner of the original appointment.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 1, Ch. 784, L. 1991; amd. Sec. 4, Ch. 418, L. 1995; amd. Sec. 4, Ch. 4, Sp. L. May 2007.

Title 85 Water Use

Chapter 2 Surface Water and Ground Water

Part 2 Adjudication of Water Rights

85-2-217. Suspension of adjudication. While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies that are negotiating are suspended. The obligation to file water rights claims for those federal non-Indian and Indian reserved rights is also suspended. This suspension is effective until July 1, 2009, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes

or federal agencies has not been accomplished by July 1, 2009, the suspension must terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies are subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their federal non-Indian and Indian reserved water rights are subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 4, Ch. 268, L. 1981; amd. Sec. 1, Ch. 667, L. 1985; amd. Sec. 1, Ch. 358, L. 1987; amd. Sec. 2, Ch. 784, L. 1991; amd. Sec. 1, Ch. 44, L. 1997; amd. Sec. 3, Ch. 497, L. 1997; amd. Sec. 1, Ch. 103, L. 2003.

Title 85 Water Use

Chapter 2 Surface Water and Ground Water

Part 7 Indian and Federal Water Rights – Water Rights Within Indian Reservations

85-2-701. Legislative intent. (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. It is the intent of the legislature that the unified proceedings include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) To the maximum extent possible, the reserved water rights compact commission established under 2-15-212 should make the negotiation of water rights claimed by the federal government or Indian tribes in or affecting the basins identified by 85-2-218 its highest priority. In negotiations, the commission is acting on behalf of the governor.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 9, Ch. 651, L. 1987; amd. Sec. 466, Ch. 418, L. 1995; amd. Sec. 298, Ch. 42, L. 1997.

85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings must be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Compact negotiations commence upon receipt of the written designation from the governing body of a tribe.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The

compact is effective and binding upon all parties upon ratification by the legislature of Montana and any affected tribal governing body, and approval by the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree without alteration. However, if approval of the state legislature and the tribe has not been accomplished by July 1, 2009, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings must be used in the formulation of the preliminary decree and must be given treatment similar to that given to all other filings.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 8, Ch. 268, L. 1981; amd. Sec. 6, Ch. 667, L. 1985; amd. Sec. 2, Ch. 358, L. 1987; amd. Sec. 3, Ch. 784, L. 1991; amd. Sec. 2, Ch. 44, L. 1997; amd. Sec. 2, Ch. 103, L. 2003.

85-2-703. Negotiation with federal government. The compact commission may also enter into separate negotiations with the federal government for the conclusion of compacts concerning the equitable division and apportionment of water between the state and its people and the federal government claiming non-Indian reserved waters within the state. The terms and conditions of such negotiations shall be the same as provided in this section for negotiations with Indian tribes.

History: En. Sec. 27, Ch. 697, L. 1979.

85-2-704. Termination of negotiations. (1) The commission or any negotiating tribe or federal agency may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of part 2 provided for in 85-2-217 shall also terminate. The tribe or federal agency shall file all of its claims for reserved rights within 6 months of the termination of negotiations.

(2) Once negotiations have been terminated pursuant to subsection (1), they may be reopened only by mutual agreement of the parties.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 9, Ch. 268, L. 1981; amd. Sec. 7, Ch. 667, L. 1985.

85-2-705. Status reports to chief water judge. (1) The Montana reserved water rights compact commission must submit to the chief water judge, appointed pursuant to 3-7-221, a report on the status of its negotiations on July 1, 1985, and every 6 months thereafter.

(2) Each report must state which Indian tribes and federal agencies are engaged in negotiations, whether any negotiations with Indian tribes or federal agencies have been terminated, and the progress of negotiations on a tribe-by-tribe and agency-by-agency basis. The report must be made available to the public.

History: En. Sec. 8, Ch. 667, L. 1985.

85-2-706. Renumbered . Code Commissioner, 1994.

85-2-707. Renumbered . Code Commissioner, 1994.

85-2-708. Water administration interim agreements within Indian reservations.

(1) Because it appears to be to the common advantage of the state and Indian tribes to cooperate in matters involving the permitting and use of water within the exterior boundaries of an Indian reservation prior to the final adjudication of Indian reserved water rights and because the state does not intend by enactment of this section to limit, expand, alter, or waive state jurisdiction to administer water rights within the exterior boundaries of an Indian reservation, pursuant to the requirements of Title 18, chapter 11, the department may negotiate and conclude an interim agreement with the tribal government of any Indian tribe in Montana prior to final adjudication of Indian reserved water rights for the purpose of implementing a water administration plan and a permitting process for the issuance of water rights and changes in water right uses within the exterior boundaries of an Indian reservation.

(2) Subject to subsection (4), an agreement entered into pursuant to subsection (1) must:

- (a) provide for the retention of exclusive authority by the state to issue permits to applicants who are not members of the tribe and to issue change of use authorizations;
- (b) provide that any permits must be issued in accordance with the criteria established by state law; and
- (c) provide that permits may be only for new uses with a date of priority in compliance with state law.

(3) Prior to concluding any agreement under this section, the department shall hold public meetings, after proper public notice of the meetings has been given and the proposed agreement has been made available for public review, to afford the public an opportunity to comment on the contents of the agreement.

(4) The provisions of subsection (2) do not apply if a court of competent jurisdiction has held that the department lacks exclusive authority to issue new water use permits within the exterior boundaries of an Indian reservation pending final adjudication of Indian reserved water rights. In that case, the department, with the approval of the governor, may enter into an interim agreement that provides for joint tribal and state administration of new water uses on the reservation pending final adjudication of Indian reserved water rights. Any interim agreement entered into pursuant to this subsection (4):

- (a) must address how and whether new ground water uses for domestic and municipal purposes will be granted. Except for the criterion in 85-2-311(1)(a)(ii), an interim agreement that grants new ground water uses must establish criteria for new water uses that incorporate the criteria listed in 85-2-311.
- (b) must address how and whether changes in existing appropriation rights within the exterior boundaries of the reservation will be granted. An interim agreement that grants changes must establish criteria for changes in existing appropriation rights that incorporate the criteria listed in 85-2-402.

- (c) must address how and whether water use will be authorized under the interim agreement and how the use will be secure and valid in the event of the termination of the interim agreement, quantification of reserved water rights, or termination of negotiations of reserved water rights under 85-2-704;
- (d) must maintain the jurisdictional claims of each party to the interim agreement;
- (e) must protect each party against a waiver of the right to challenge the claims of each party at any time;
- (f) may not prejudice the regulatory or adjudicatory jurisdiction of either party;
- (g) must provide that none of the activities of each party in the negotiation or implementation of an interim agreement may be used to affect the equitable or legal position of either party in any future litigation; and
- (h) must provide that nothing in the negotiation or implementation of an interim agreement may be considered as enlarging or diminishing the jurisdiction or authority of either party within the reservation.

History: En. Sec. 19, Ch. 497, L. 1997; amd. Sec. 1, Ch. 483, L. 2003.

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Table of Contents

Introduction	iv
Montana Map.....	v
Tables	vi
Statutes Governing RWRCC.....	xi
Title 2 Government Structure and Administration.....	xi
Chapter 15 Executive Branch Officers and Agencies.....	xi
Part 2 Governor	xi
2-15-212 Reserved water rights compact commission.....	xi
Title 85 Water Use	xi
Chapter 2 Surface Water and Ground Water.....	xi
Part 2 Adjudication of Water Rights.....	xi
85-2-217 Suspension of adjudication	xi
Part 7 Indian and Federal Water Rights – Water Rights Within Indian Reservations	xii
85-2-701 Legislative intent	xii
85-2-702 Negotiation with Indian tribes.....	xii
85-2-703 Negotiation with federal government.....	xiii
85-2-704 Termination of negotiations	xiii
85-2-705 Status reports to chief water judge	xiii
85-2-708 Water administration interim agreements within Indian reservations.....	xiv
Montana Water Compacts	
Title 85 Water Use	
Chapter 20.....	1
Part 2 – Fort Peck – Montana Compact	3
85-20-201 Fort Peck-Montana compact ratified	4
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85-20-302 Consent to federal act and modification of compact.....	45
Part 4 – United States National Park Service – Montana Compact	47
85-20-401 United States National Park Service-Montana compact ratified.....	48
85-20-402 Accounting for federal funds	102
Part 5 – United States Bureau of Land Management – Montana Compact	103
85-20-501 United States Bureau of Land Management-Montana compact ratified.....	104
Part 6 – Chippewa Cree Tribe – Montana Compact.....	119
85-20-601 Chippewa Cree Tribe-Montana compact ratified	120
Part 7 – United States Fish and Wildlife Service Black Coulee and Benton Lake – Montana Compact	165
85-20-701 United States Fish and Wildlife Service – Montana compact ratified	166
Part 8 – United States Fish and Wildlife Service, Red Rock Lakes – Montana Compact	179
85-20-801 United States Fish and Wildlife Service – Montana compact ratified	180

Part 9 – Crow Tribe – Montana Compact	193
85-20-901 Crow Tribe-Montana compact ratified	194
85-20-902 Findings and purpose	232
85-20-903 Definitions	233
85-20-904 Payment of settlement funds into escrow -- requirements for escrow agreement -- notice from attorney general.....	233
85-20-905 Settlement of litigation — disposition of production taxes collected on coal owned in trust for Crow Tribe.....	234
Part 10 – Fort Belknap – Montana Compact.....	235
85-20-1001 Fort Belknap-Montana compact ratified	236
85-20-1002 Findings and purpose	289
85-20-1003 Definitions	290
85-20-1004 Mitigation account	290
85-20-1005 Watershed improvement trusts.....	290
85-20-1006 Terms and conditions of loan	290
85-20-1007 Peoples Creek minimum flow account.....	291
85-20-1008 Economic development plan	291
Part 11 – United States of America, Department of Agriculture, Agriculture Research Service, Fort Keogh Livestock and Range Research Laboratory – Montana Compact	293
85-20-1101 United States of America, Department of Agriculture, Agricultural Research Service, Fort Keogh Livestock and Range Research Laboratory-Montana compact ratified	294
Part 12 – United States of America, Department of Agriculture, Agriculture Research Service, Sheep Experiment Station – Montana Compact.....	305
85-20-1201 United States of America, Department of Agriculture, Agricultural Research Service, Sheep Experiment Station-Montana Compact ratified	306
Part 13 – United States of America, Fish and Wildlife Service, Bowdoin National Wildlife Refuge – Montana Compact.....	313
85-20-1301 United States of America, Fish and Wildlife Service, Bowdoin National Wildlife Refuge — Montana compact ratified	314
Part 14 – United States of America, Department of Agriculture, Forest Service – Montana Compact	327
85-20-1401 United States of America, Department of Agriculture, Forest Service – Montana compact ratified.....	328
Part 15 – Blackfeet Tribe – Montana 2007 Legislation.....	351
85-20-1501 Reserved.....	352
85-20-1503 Definitions.....	352
85-20-1504 Blackfeet Tribe water rights compact mitigation account — use	352
85-20-1505 Blackfeet Tribe water rights compact infrastructure account — use	353
85-20-1506 Administrative rules	353

INTRODUCTION

This book is a compilation of all federal reserved water right compacts negotiated by the Reserved Water Rights Compact Commission for the State of Montana as of 2007.

The Montana Legislature created the Reserved Water Rights Compact Commission (RWRCC) in 1979, the same year it created the Montana Water Court. The purpose of the RWRCC is to negotiate, on behalf of the State, with Indian Tribes and federal agencies claiming federal reserved water rights in Montana. The negotiations are conducted in public meetings and are submitted for public comment in the specific area impacted. A compact must be ratified by the Montana Legislature, signed by the appropriate federal authorities, and in the case of Indian reserved rights, approved by the Tribal Council. Compacts with Indian Tribes must be ratified by Congress. While settlements are being negotiated, the claims of the Tribes and federal agencies are suspended from adjudication in the Water Court.

Montana was one of the first states to conduct such negotiations, and it is still the only state to do so using a commission.

The RWRCC is made up of nine members who serve four-year terms. One member is appointed by the Attorney General's Office, four by the Governor's Office, two by the Speaker of the House, and two by the President of the Senate. The RWRCC is supported by an eight member staff of two attorneys, an agricultural engineer, two hydrologists, a GIS specialist, an historian and the staff director.

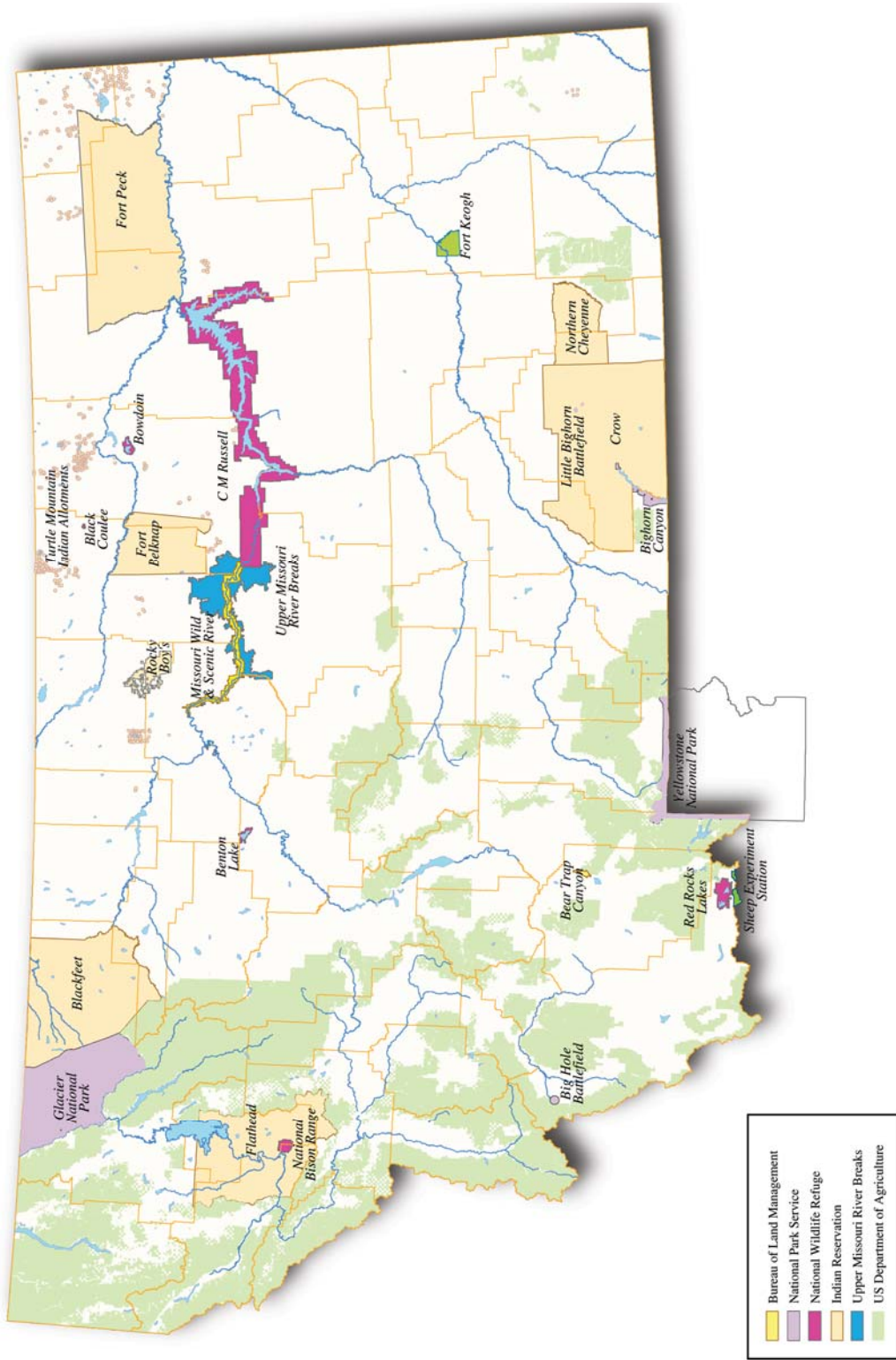
A federal reserved water right is a right to water that was created when Congress or the President of the United States reserved land out of the public domain. Federal reserves in Montana are shown on the accompanying map. When these lands were set aside it was intended that enough water be reserved to meet the purposes for which the lands were designated.

The date that the land was withdrawn and the reservation created is the priority date of the federal reserved water right for that land. Reserved water rights for Indian reservations, for instance, may go back to the 1800s. Federal reserved water rights do not have the same restrictions placed on them as are placed on appropriative rights. For example, a notice of appropriation or a beneficial use is not required to maintain a federal reserved water right, and a right may not be lost due to non-use.

Since its creation in 1979 the RWRCC has completed negotiations with five Indian Tribes and four federal agencies in Montana. For an overview of the completed compacts see the Completed Compacts Table. Compacts with the Blackfoot Tribe and the Confederated Salish and Kootenai Tribe are currently in negotiation and two compacts with the U.S. Fish & Wildlife Service remain as well as the settlement of water rights relating to land allotments belonging to the Turtle Mountain Band of Chippewa. The RWRCC has a sunset date of July 1, 2009.

MONTANA MAP SHOWING LOCATION OF FEDERAL RESERVES IN MONTANA

Federal and Indian Lands in Montana Claiming Reserved Water Rights



TABLES

Compacts Concluded by the Reserved Water Rights Compact Commission	vii
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United States National Park Service-Montana Compact

1. United States National Park Service Big Hole National Battlefield Consumptive Use.....	67
2. State Law Based Total Current and Future Consumptive Use Rights Tributary to the Reserved Portion of the North Fork of the Big Hole River	68
3. United States National Park Service Bighorn Canyon National Recreation Area Consumptive Use	69
4. State Law Based Total Future Consumptive Use Rights Tributary to the Reserved Portion of Category 3 Streams	70
5. United States National Park Service Glacier National Park Consumptive Use.....	71
6. State Law Based Future Consumptive Use Rights Tributary to the Reserved Portion of the Flathead River	73
7. United States National Park Service Little Bighorn National Battlefield Consumptive Use	75
8. United States National Park Service Yellowstone National Park Consumptive Use	76
9. State Law Based Total Current and Future Consumptive Use Rights Tributary to the Reserved Portion of Category 3 Streams	78
10. Low Stream Flow Levels at which Subordination is Limited.....	78
11. State Law Based Total Current and Future Consumptive Use Rights Tributary to the Reserved Portion of Soda Butte Creek.....	79
12. Low Stream Flow Levels at which Subordination is Limited Soda Butte Creek	80
13. State Law Based Total Current and Future Consumptive Use Rights Tributary to the Reserved Portion of these Rivers	80

United States Bureau of Land Management-Montana Compact

1. Available Water Supply Monthly Amounts.....	107
2. Monthly Depletion Factors for Evaporation	114
3. Monthly Depletion Factors for Domestic, Multiple Domestic, and Municipal Uses	115
4. Monthly Depletion Factors for Irrigation Uses Monthly Depletion Factor	115
5. Monthly Storage Depletion Schedule	117

United States Fish and Wildlife Service, Red Rock Lakes-Montana Compact

1. Red Rock Lakes National Wildlife Refuge — Consumptive Use	183
--	-----

U.S. Forest Service

1. Discrete and Dispersed Administrative Uses	331
2. Lower and Upper Stream Point Water Flow	337

COMPACTS CONCLUDED BY THE RESERVED WATER RIGHTS COMPACT COMMISSION

Compact	Dates of Legislative Passage	Information
<p>Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation</p> <p>85-20-201 MCA</p>	<p>May 1985</p>	<p>The compact contains a provision for water marketing by the Tribes, making federal legislation necessary. Federal legislation has not been passed. The compact has been approved by the Montana Water Court.</p>
<p>Northern Cheyenne Tribe</p> <p>85-20-301, MCA</p> <p>Public Law 102-374</p>	<p>April 1991</p> <p>September 1992</p>	<p>Included in the compact was a requirement that the federal government and the State of Montana contribute funds to repair and enlarge the unsafe Tongue River Dam, which has been completed. The compact has been approved by the Montana Water Court.</p>
<p>U.S. Department of the Interior National Park Service <i>Yellowstone National Park</i> <i>Glacier National Park</i> <i>Big Hole National Battlefield</i></p> <p>85-20-401, MCA</p>	<p>January 1994</p>	<p>The compact includes an article providing a controlled groundwater area to protect the hydrothermal system in Yellowstone National Park. The compact has been approved by the Montana Water Court.</p>
<p>U.S. Department of the Interior National Park Service <i>Little Bighorn Battlefield National Monument</i> <i>Bighorn Canyon National Recreation Area</i></p> <p>85-20-401, MCA</p>	<p>May 1995</p>	<p>Codified with the first compact with the National Park Service (above), this compact has been approved by the Montana Water Court.</p>
<p>U.S. Department of the Interior Bureau of Land Management (BLM) <i>Upper Missouri National Wild & Scenic River</i> <i>Bear Trap Canyon Public Recreation Site</i></p> <p>85-20-501, MCA</p>	<p>March 1997</p>	<p>The compact settles the instream flow rights for two river segments; one on the Upper Missouri one on the Madison River. It has received final approval from the BLM and the U.S. Department of Justice. It will be submitted to the Montana Water Court.</p>

Compact	Dates of Legislative Passage	Information
<p>U.S. Department of the Interior Fish and Wildlife Service (FWS) <i>Benton Lake National Wildlife Refuge</i> <i>Black Coulee National Wildlife Refuge</i></p> <p>85-20-701, MCA</p>	<p>March 1997</p>	<p>The compact settles the reserved water rights for two of the six national wildlife refuges claiming such rights in Montana. It has been approved by the FWS and the U.S. Department of Justice. The compact has been approved by the Montana Water Court.</p>
<p>Chippewa Cree Tribe of the Rocky Boy's Indian Reservation</p> <p>85-20-601, MCA</p> <p>Public Law 106-163</p>	<p>April 1997</p> <p>December 1999</p>	<p>The compact allocates 10,000 acre-feet per year to the Tribe from water arising on the reservation and includes an agreement to seek 10,000 afy from water stored in Tiber Reservoir. The compact was approved by Congress and signed by the president in 1999. It has been approved by the Montana Water Court.</p>
<p>U.S. Department of the Interior <i>Red Rock Lakes National Wildlife Refuge</i></p> <p>85-20-801, MCA</p>	<p>April 1999</p>	<p>Another of the six wildlife refuges claiming reserved water rights in Montana, the Red Rock Lakes settlement has been approved by the appropriate federal agencies and by the Montana Water Court.</p>
<p>Crow Tribe</p> <p>85-20-901, MCA</p>	<p>June 1999 Special Session</p>	<p>The compact allocates 500,000 acre-feet per year (AFY) of the natural flow of the Bighorn River to the Crow Tribe. The U.S. Bureau of Reclamation will allocate 300,000 AFY of storage in Bighorn Lake to the Tribe. The state paid \$15 million into an account in exchange for the Tribe's dismissal of a coal severance tax lawsuit and for the State's portion of cost-share for the water settlement. A management plan for Bighorn River and Lake was finalized in 2000. Congressional legislation is being drafted as of this printing in 2007, and the compact must pass a Tribal referendum.</p>

Compact	Dates of Legislative Passage	Information
<p>Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation</p> <p>85-20-1001</p>	<p>April 2001</p>	<p>The compact allocates 645 cubic feet per second (CFS) from the Milk River to the Tribes, limited by the U.S. share of the natural flow of the Milk River and the Tribal capacity to develop the water. It also quantifies the Tribal water rights in Peoples Creek, Beaver Creek and Missouri River Basin 40EJ. When uses upstream of the reservation interfere with the Tribal water right the Tribes will obtain water from the federal Milk River Project. The compact must be passed by Congress. Congressional legislation is being drafted as of this printing in 2007.</p>
<p>United States Department of Agriculture, Agriculture Research Service <i>Fort Keogh Livestock and Range Research Laboratory</i></p> <p>85-20-1101, MCA</p>	<p>March 2007</p>	<p>The compact settles the administrative, irrigation, stock and emergency fire suppression water rights for Fort Keogh near Miles City. It includes reserved rights to Fort Keogh's current irrigation use from the Yellowstone River and some future irrigation use, and it includes a small amount of current use from a tributary of the Tongue River.</p>
<p>United States Department of Agriculture, Agriculture Research Service <i>Sheep Experiment Station</i></p> <p>85-20-1201, MCA</p>	<p>March 2007</p>	<p>The compact settles the stockwater, domestic, irrigation, storage, dust abatement, reclamation, research, emergency fire suppression and other water rights for the small portion of the Sheep Experiment Station located in Montana.</p>
<p>United States Department of the Interior Fish and Wildlife Service <i>Bowdoin National Wildlife Refuge</i></p> <p>85-20-1301, MCA</p>	<p>March 2007</p>	<p>The compact settles the reserved rights for uses including administrative, wildlife habitat maintenance and enhancement, stockwatering and other. The FWS water rights are contingent on an MOU which must be attached to the compact as Appendix 3. The MOU will have provisions relating to the solution of the severe salinity problems on the Refuge. Commission staff is working with FWS on this MOU.</p>

Compact	Dates of Legislative Passage	Information
United States Department of Agriculture <i>Forest Service</i> 85-20-1401, MCA	April 2007	The water compact between the State of Montana and the U.S. Forest Service which took more than 15 years to negotiate has been signed by the governor and the appropriate federal officials. In general, the compact recognizes reserved water rights for the Forest Service for administrative and emergency fire fighting, and for instream flows for the South Fork Flathead Wild and Scenic River. The compact uses state law to create state-based water rights for instream flow on National Forest System lands.

2007 State legislation for proposed Blackfeet – Montana Compact

Blackfeet Compact – Reserved 85-20-1501, MCA 85-20-1503 85-20-1504 85-20-1505 85-20-1506	April 2007	This legislation creates a mitigation account within the state special revenue fund; the funds to mitigate economic and hydrologic impacts on water right holders among other things. It creates an infrastructure account to be used only for water-related infrastructure projects on the Blackfeet Indian reservation. Both accounts are administered by DNRC and funds may not be used unless a Blackfeet-Montana compact is ratified by the legislature, Tribe and United States. The compact has been approved by the Blackfeet Tribal Business Council and the Commission and the parties are working on Congressional Legislation.
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STATUTES GOVERNING RWRCC

Title 2 Government Structure and Administration

Chapter 15 Executive Branch Officers and Agencies

Part 2 Governor

2-15-212. Reserved water rights compact commission. (1) There is created a reserved water rights compact commission. In negotiations, the commission is acting on behalf of the governor.

(2) Subject to 5-5-234, commissioners are appointed as follows:

- (a) two members of the house of representatives appointed by the speaker, one from the majority party and one from the minority party;
- (b) two members of the senate appointed by the president, one from the majority party and one from the minority party;
- (c) four members designated by the governor; and
- (d) one member designated by the attorney general.

(3) Legislative members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(4) The commission is attached to the department of natural resources and conservation for administrative purposes only, as prescribed in 2-15-121, unless inconsistent with the provisions of Title 85, chapter 2, part 7. A sufficient and appropriate staff must be assigned to serve the commission within the budget established by the legislature. The commission staff is a principal unit within the department, and the commission shall direct and assign the staff.

(5) Members are appointed for 4-year terms and may be reappointed. A legislative member position is vacant if the person no longer serves in the legislature. The position of a member appointed by the governor or attorney general is vacant if that person is elected to the legislature. A vacancy must be filled in the manner of the original appointment.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 1, Ch. 784, L. 1991; amd. Sec. 4, Ch. 418, L. 1995; amd. Sec. 4, Ch. 4, Sp. L. May 2007.

Title 85 Water Use

Chapter 2 Surface Water and Ground Water

Part 2 Adjudication of Water Rights

85-2-217. Suspension of adjudication. While negotiations for the conclusion of a compact under part 7 are being pursued, all proceedings to generally adjudicate reserved Indian water rights and federal reserved water rights of those tribes and federal agencies that are negotiating are suspended. The obligation to file water rights claims for those federal non-Indian and Indian reserved rights is also suspended. This suspension is effective until July 1, 2009, as long as negotiations are continuing or ratification of a completed compact is being sought. If approval by the state legislature and tribes

or federal agencies has not been accomplished by July 1, 2009, the suspension must terminate on that date. Upon termination of the suspension of this part, the tribes and the federal agencies are subject to the special filing requirements of 85-2-702(3) and all other requirements of the state water adjudication system provided for in Title 85, chapter 2. Those tribes and federal agencies that choose not to negotiate their federal non-Indian and Indian reserved water rights are subject to the full operation of the state adjudication system and may not benefit from the suspension provisions of this section.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 4, Ch. 268, L. 1981; amd. Sec. 1, Ch. 667, L. 1985; amd. Sec. 1, Ch. 358, L. 1987; amd. Sec. 2, Ch. 784, L. 1991; amd. Sec. 1, Ch. 44, L. 1997; amd. Sec. 3, Ch. 497, L. 1997; amd. Sec. 1, Ch. 103, L. 2003.

Title 85 Water Use

Chapter 2 Surface Water and Ground Water

Part 7 Indian and Federal Water Rights – Water Rights Within Indian Reservations

85-2-701. Legislative intent. (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. It is the intent of the legislature that the unified proceedings include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) To the maximum extent possible, the reserved water rights compact commission established under 2-15-212 should make the negotiation of water rights claimed by the federal government or Indian tribes in or affecting the basins identified by 85-2-218 its highest priority. In negotiations, the commission is acting on behalf of the governor.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 9, Ch. 651, L. 1987; amd. Sec. 466, Ch. 418, L. 1995; amd. Sec. 298, Ch. 42, L. 1997.

85-2-702. Negotiation with Indian tribes. (1) The reserved water rights compact commission, created by 2-15-212, may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under 85-2-701. Compact proceedings must be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under this part and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Compact negotiations commence upon receipt of the written designation from the governing body of a tribe.

(2) When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The

compact is effective and binding upon all parties upon ratification by the legislature of Montana and any affected tribal governing body, and approval by the appropriate federal authority.

(3) Upon its ratification by the Montana legislature and the tribe, the terms of a compact must be included in the preliminary decree as provided by 85-2-231, and unless an objection to the compact is sustained under 85-2-233, the terms of the compact must be included in the final decree without alteration. However, if approval of the state legislature and the tribe has not been accomplished by July 1, 2009, all Indian claims for reserved water rights that have not been resolved by a compact must be filed with the department within 6 months. These new filings must be used in the formulation of the preliminary decree and must be given treatment similar to that given to all other filings.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 8, Ch. 268, L. 1981; amd. Sec. 6, Ch. 667, L. 1985; amd. Sec. 2, Ch. 358, L. 1987; amd. Sec. 3, Ch. 784, L. 1991; amd. Sec. 2, Ch. 44, L. 1997; amd. Sec. 2, Ch. 103, L. 2003.

85-2-703. Negotiation with federal government. The compact commission may also enter into separate negotiations with the federal government for the conclusion of compacts concerning the equitable division and apportionment of water between the state and its people and the federal government claiming non-Indian reserved waters within the state. The terms and conditions of such negotiations shall be the same as provided in this section for negotiations with Indian tribes.

History: En. Sec. 27, Ch. 697, L. 1979.

85-2-704. Termination of negotiations. (1) The commission or any negotiating tribe or federal agency may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of part 2 provided for in 85-2-217 shall also terminate. The tribe or federal agency shall file all of its claims for reserved rights within 6 months of the termination of negotiations.

(2) Once negotiations have been terminated pursuant to subsection (1), they may be reopened only by mutual agreement of the parties.

History: En. Sec. 27, Ch. 697, L. 1979; amd. Sec. 9, Ch. 268, L. 1981; amd. Sec. 7, Ch. 667, L. 1985.

85-2-705. Status reports to chief water judge. (1) The Montana reserved water rights compact commission must submit to the chief water judge, appointed pursuant to 3-7-221, a report on the status of its negotiations on July 1, 1985, and every 6 months thereafter.

(2) Each report must state which Indian tribes and federal agencies are engaged in negotiations, whether any negotiations with Indian tribes or federal agencies have been terminated, and the progress of negotiations on a tribe-by-tribe and agency-by-agency basis. The report must be made available to the public.

History: En. Sec. 8, Ch. 667, L. 1985.

85-2-706. Renumbered . Code Commissioner, 1994.

85-2-707. Renumbered . Code Commissioner, 1994.

85-2-708. Water administration interim agreements within Indian reservations.

(1) Because it appears to be to the common advantage of the state and Indian tribes to cooperate in matters involving the permitting and use of water within the exterior boundaries of an Indian reservation prior to the final adjudication of Indian reserved water rights and because the state does not intend by enactment of this section to limit, expand, alter, or waive state jurisdiction to administer water rights within the exterior boundaries of an Indian reservation, pursuant to the requirements of Title 18, chapter 11, the department may negotiate and conclude an interim agreement with the tribal government of any Indian tribe in Montana prior to final adjudication of Indian reserved water rights for the purpose of implementing a water administration plan and a permitting process for the issuance of water rights and changes in water right uses within the exterior boundaries of an Indian reservation.

(2) Subject to subsection (4), an agreement entered into pursuant to subsection (1) must:

- (a) provide for the retention of exclusive authority by the state to issue permits to applicants who are not members of the tribe and to issue change of use authorizations;
- (b) provide that any permits must be issued in accordance with the criteria established by state law; and
- (c) provide that permits may be only for new uses with a date of priority in compliance with state law.

(3) Prior to concluding any agreement under this section, the department shall hold public meetings, after proper public notice of the meetings has been given and the proposed agreement has been made available for public review, to afford the public an opportunity to comment on the contents of the agreement.

(4) The provisions of subsection (2) do not apply if a court of competent jurisdiction has held that the department lacks exclusive authority to issue new water use permits within the exterior boundaries of an Indian reservation pending final adjudication of Indian reserved water rights. In that case, the department, with the approval of the governor, may enter into an interim agreement that provides for joint tribal and state administration of new water uses on the reservation pending final adjudication of Indian reserved water rights. Any interim agreement entered into pursuant to this subsection (4):

- (a) must address how and whether new ground water uses for domestic and municipal purposes will be granted. Except for the criterion in 85-2-311(1)(a)(ii), an interim agreement that grants new ground water uses must establish criteria for new water uses that incorporate the criteria listed in 85-2-311.
- (b) must address how and whether changes in existing appropriation rights within the exterior boundaries of the reservation will be granted. An interim agreement that grants changes must establish criteria for changes in existing appropriation rights that incorporate the criteria listed in 85-2-402.

- (c) must address how and whether water use will be authorized under the interim agreement and how the use will be secure and valid in the event of the termination of the interim agreement, quantification of reserved water rights, or termination of negotiations of reserved water rights under 85-2-704;
- (d) must maintain the jurisdictional claims of each party to the interim agreement;
- (e) must protect each party against a waiver of the right to challenge the claims of each party at any time;
- (f) may not prejudice the regulatory or adjudicatory jurisdiction of either party;
- (g) must provide that none of the activities of each party in the negotiation or implementation of an interim agreement may be used to affect the equitable or legal position of either party in any future litigation; and
- (h) must provide that nothing in the negotiation or implementation of an interim agreement may be considered as enlarging or diminishing the jurisdiction or authority of either party within the reservation.

History: En. Sec. 19, Ch. 497, L. 1997; amd. Sec. 1, Ch. 483, L. 2003.

MONTANA WATER COMPACTS

Title 85

Chapter 20

Montana Water Compacts
Title 85
Chapter 20

FORT PECK – MONTANA COMPACT

Fort Peck – Montana
Compact



Title 85 Water Use
Chapter 20 Water Compacts

85-20-201. Fort Peck-Montana compact ratified. The compact entered into by the state of Montana and the Assiniboine and Sioux tribes of the Fort Peck Indian reservation and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on May 15, 1985, is ratified. The compact is as follows:

FORT PECK-MONTANA COMPACT

This Compact is entered into by and between THE STATE OF MONTANA and THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION (herein called the “Parties”) and shall become effective as set forth hereinafter.

The Parties agree as follows:

ARTICLE I GENERAL PURPOSES

The basic purposes of this Compact are to determine finally and forever all rights of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation in the State of Montana to water on, under, adjacent to, or otherwise appurtenant to the Reservation, to settle existing disputes and remove causes of future controversy between the Tribes and the State and between Indians of the Fort Peck Reservation and other persons concerning waters of the Missouri River, its tributaries, and ground water, and to settle all claims by the Tribes and by the United States on behalf of the Tribes in United States v. Ageson, Civ. No. 79-21-GF (D. Mont.), United States v. Aasheim, Civ. No. 79-40-BLG (D. Mont.) and the pending adjudication in the state water court initiated pursuant to the provisions of Chapter 697, Laws of Montana 1979.

ARTICLE II DEFINITIONS

For purposes of this Compact, and for no other purposes, the following definitions apply:

- (1) “Acre-foot” means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet.
- (2) “Annual” or “per year” means the calendar year commencing January 1 and ending December 31.
- (3) “Board” means the Fort Peck-Montana Compact Board established by Article VI.
- (4) “Conservation (carry-over) storage” is storage provided in a reservoir to capture and hold water that would otherwise go downstream. Such storage holds the water for beneficial use later in the season or is carried over to a subsequent season or seasons. Evaporation from the surface of such reservoir is considered to be a consumptive use to the extent that it exceeds the evaporative and transpirational losses which occurred in the reservoir area prior to its construction.
- (5) “Consumptive use” means the amount of irrigation water that is transpired by vegetation, converted in the processes of photosynthesis and plant tissue growth, and evaporated from adjacent soils, water surfaces and foliage. For uses other than

irrigation, consumptive use means the quantity of water diverted less the quantity of reusable return flow within the State.

(6) “Court of competent jurisdiction” means a state or federal district court which otherwise has jurisdiction of the subject matter and the parties, or a tribal court which otherwise has such jurisdiction provided that all parties to the case consent to tribal court jurisdiction.

(7) “Diversion” means the removal of water from its natural course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump, or other structure or device, or the impoundment of water in a reservoir. Where a reservoir is constructed or operated on a stream, the annual diversion shall be the greater of:

(a) the inflow into the reservoir minus the outflow for releases or spills downstream from the reservoir, or

(b) withdrawals of water from the reservoir for actual use.

(8) “Domestic use” means the diversion of water by one or more individuals, family units or households for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(9) “Fort Peck Irrigation Project” means those irrigation systems and works constructed pursuant to the Act of May 30, 1908, 35 Stat. 558, and all lands receiving water from such systems and works.

(10) “Fort Peck Reservoir” means that body of surface water impounded by Fort Peck Dam, at the current spillway elevation.

(11) “Full service irrigation” means any form of irrigation that distributes water on a regularly scheduled basis in order to satisfy the full seasonal crop and soil water requirements.

(12) “Ground water” means any water located under the surface of the land or the bed of any stream, lake, reservoir, or other body of surface water. All other water shall be considered surface water.

(13) “Indian” means any person who:

(a) is an enrolled member of the Tribes; or

(b) is a member of a tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(c) holds or is recognized by the Secretary of the Interior as eligible to hold trust or restricted property on the Reservation.

(14) “Industrial” means the use of water for any uses that benefit an industrial enterprise including, but not limited to, industrial cooling, energy production, and evaporation associated with any industrial operation. Among the purposes excluded from the industrial use category are irrigation, stockwater, and domestic uses.

(15) “Instream flow” means that quantity of water scheduled to remain in a stream to maintain fish and wildlife resources.

(16) “Missouri River” means the river formed by the confluence of the Gallatin, Jefferson and Madison Rivers in southwestern Montana, and flowing easterly beyond the eastern boundary of Montana.

(17) “Partial service irrigation” means the diversion of flood runoff from natural channels or water courses and spreading such water for the purpose of applying as much water as practicable to the land during periods of high stream flow to increase crop production.

(18) “Parties” means the Tribes and the State.

(19) “Person” means an individual or any other entity, public or private, including the State, the Tribes, and the government of the United States and all officers, agents, and departments thereof.

(20) “Regulatory Storage” is storage provided as a part of a water distribution system for operational purposes. Evaporation loss from the distribution system itself is accounted for and is a part of the unit consumptive use rate established in this Compact and is therefore not considered to be a separate item of consumptive use.

(21) “Reservation” means the Fort Peck Indian Reservation as established in the agreement of December 28 and December 31, 1886, and confirmed by the Act of May 1, 1888, 25 Stat. 113.

(22) “Reusable” means capable of further beneficial use.

(23) “State” means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, “State” means the Director of the State Department of Natural Resources and Conservation or its successor agency.

(24) “Transfer” means any authorization for the delivery or use of water by a joint venture, service contract, lease, sale, exchange or other similar agreement.

(25) “Tribal Water Right” means the right to divert and use water as confirmed by Article III of this Compact.

(26) “Tribes” means the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation and all officers, agents and departments thereof. Unless otherwise indicated, for purposes of notification or consent, “Tribes” means the Tribal Chairman or the Chief Executive Official of the Tribes at the time.

(27) “Tributary” or “tributaries of the Missouri River that flow through or adjacent to the Reservation” means those tributaries of the Missouri River that traverse the Reservation, generally in a north to south direction, including:

- (a) streams that form the east and west boundaries of the Reservation (Big Muddy Creek, Porcupine Creek and the Milk River);
- (b) streams that originate outside the Reservation but empty into the Missouri River within the boundaries of the Reservation (the Poplar River and its tributaries);
- (c) streams that are wholly contained within the boundaries of the Reservation (Chelsea Creek, Tule Creek, Wolf Creek, Oswego Creek, and Little Porcupine Creek); and
- (d) all other watercourses that traverse the Reservation.

(28) “Wasteful” means the unreasonable loss of water through the design or negligent operation of a diversion or of a water distribution facility.

ARTICLE III TRIBAL WATER RIGHT

A. General Statement of the Tribal Water Right. The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation have the right to divert annually from the

Missouri River, certain of its tributaries, and ground water beneath the Reservation the lesser of (i) 1,050,472 acre-feet of water, or (ii) the quantity of water necessary to supply a consumptive use of 525,236 acre-feet per year for the uses and purposes set forth in this Compact with a priority date of May 1, 1888, provided that no more than 950,000 acre-feet of water, or the quantity of water necessary to supply a consumptive use of 475,000 acre-feet may be diverted annually from surface water sources. This right is held in trust by the United States for the benefit of the Tribes and is further defined and limited as set forth in this Compact.

B. Persons Who May Use the Tribal Water Right. All uses of water authorized under any applicable law by the following persons shall be considered and calculated as uses of the Tribal Water Right:

1. the Tribes within or outside the Reservation;
2. all individual Indians using water within the Reservation including, but not limited to, Indians exercising uses established pursuant to state law prior to the effective date of this Compact;
3. all non-Indian successors-in-interest to any allottee actually using water within the Reservation by virtue of a water right arising under the laws of the United States, which water right was acquired directly or indirectly from an Indian predecessor-in-interest;
4. all other persons receiving water from the Fort Peck Irrigation Project including, but not limited to, persons exercising uses established pursuant to state law prior to the effective date of this Compact;
5. all other persons authorized to use water by the Tribes pursuant to this Compact, within or outside the Reservation;
6. the United States as trustee for the Tribes or any Indian including, but not limited to, persons exercising uses established pursuant to state law prior to the effective date of this Compact.

C. Measure of Consumptive Use for Irrigation. Irrigation usage of the Tribal Water Right shall be conclusively deemed to cause a consumptive use of 1.8 acre-feet per acre per year for full service irrigation and 0.48 acre-feet per acre per year for partial service irrigation. Any loss of water due to evaporation from reservoirs constructed in the future for conservation (carry-over) storage rather than for regulatory storage by the United States for the benefit of the Tribes or any Indian, or constructed for such conservation storage by the Tribes or by any Indian, shall be counted as a consumptive use.

D. Purposes for Which the Tribal Water Right May be Used. Within the Reservation, use of water in the exercise of the Tribal Water Right for any purpose may be authorized by the Tribes without regard to whether such use is beneficial as defined by valid state law. No use of the Tribal Water Right may be wasteful or inconsistent with the terms of this Compact. Outside the Reservation, any use of water in the exercise of the Tribal Water Right shall be beneficial as defined by valid state law on the date the Tribes give notice to the State of a proposed use outside the Reservation.

E. Facilities Diverting or Using the Tribal Water Right Outside the Reservation. All persons diverting or using the Tribal Water Right outside the Reservation, including the Tribes as sovereign, shall apply for all permits, certificates, variances and other

authorizations required by valid state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water located outside the Reservation, and shall comply with all applicable provisions of this Compact. A diversion or use of water in the exercise of the Tribal Water Right may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained, and the diversion or use has not been found unlawful by a court of competent jurisdiction.

F. Amounts To Be Diverted from the Missouri River.

1. Diversions of water for use within or outside the Reservation may be made in the exercise of the Tribal Water Right from Fort Peck Reservoir and the mainstem of the Missouri River--but without utilization of the conservation (carry-over) storage of Fort Peck Reservoir--in the following amounts:
 - (a) during the months of November, December, January, February and March, not to exceed 40,000 acre-feet per month;
 - (b) during the months of April and October, not to exceed 50,000 acre-feet per month;
 - (c) during the months of May and September, not to exceed 105,000 acre-feet per month;
 - (d) during the month of June, not to exceed 145,000 acre-feet;
 - (e) during the month of July, not to exceed 215,000 acre-feet;
 - (f) during the month of August, not to exceed 180,000 acre-feet.

Provided that the aggregate of monthly diversions in the exercise of the Tribal Water Right from surface water shall not exceed 950,000 acre-feet per year, and the total annual consumptive use shall not exceed 475,000 acre-feet.

2. The Tribes shall report the amount of all actual diversions from Fort Peck Reservoir and the mainstem of the Missouri River to the United States Army Corps of Engineers by April 1st of the calendar year following the year in which such diversions are made in accordance with paragraph 5 of section J of this Article.
3. All diversions authorized by paragraph 1 of this section may be made without payment to the United States, but the Tribes and any user of the Tribal Water Right shall otherwise comply with all generally applicable laws and regulations of the United States.

G. Export of the Tribal Water Right Outside the State. Use of the Tribal Water Right outside the State shall be in compliance with all valid provisions of state law in effect at the time of the proposed transfer that prohibit, regulate, condition, or permit the transportation of water outside the State.

H. Non-use of the Tribal Water Right not a Forfeiture. Non-use of any part of the Tribal Water Right shall not constitute a relinquishment, forfeiture or abandonment of the right to such use.

I. Sources of Diversions of the Tribal Water Right. In the exercise of the Tribal Water Right water may be diverted:

1. Within the Reservation for use within the Reservation from:

- (a) the mainstem of the Missouri River within or adjacent to the Reservation;
 - (b) any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River; and
 - (c) any ground water source.
2. Outside the Reservation for use within the Reservation from:
- (a) Fort Peck Reservoir;
 - (b) any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River; and
 - (c) the mainstem of the Missouri River below Fort Peck Dam.

Diversions authorized by subparagraphs (a) and (c) shall comply with paragraph 1 of section J of this Article.

3. Within or outside the Reservation for use outside the Reservation from:
- (a) Fort Peck Reservoir;
 - (b) any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River, provided that water from these sources shall not be transported outside the respective watershed of each stream;
 - (c) the mainstem of the Missouri River below Fort Peck Dam; and
 - (d) the mainstem of the Missouri River above Fort Peck Reservoir.

Diversions authorized by subparagraphs (a) and (c) shall comply with paragraph 1 of section J of this Article. Diversions authorized by subparagraph (b) shall comply with paragraph 4 of section K of this Article. Diversions authorized by subparagraph (d) shall comply with paragraph 3 of section J of this Article.

J. Notice of and Conditions upon Diversions and Uses of the Tribal Water Right.

1. The Tribes shall give the State not less than 180 days advance written notice of any proposed diversion or use of the Tribal Water Right authorized by subparagraphs 2(a) and 2(c) and subparagraphs 3(a) and 3(c) of section I of this Article and shall, in the case of any transfer of the Tribal Water Right, except agreements on the tributaries pursuant to paragraph 4 of section K of this Article, offer the State an opportunity to participate as provided in paragraph 2 of section K of this Article. Such notice shall include sufficient documentation to demonstrate that:
- (a) the proposed use of water complies with section D of this Article;
 - (b) for diversions outside the Reservation, the proposed means of diversion and the construction and operation of the diversion works are adequate;
 - (c) the proposed use and diversion will not adversely affect, except with the consent of the owner of such right, any of the following rights to the use of water existing at that time:
 - (i) any water right arising under the laws of the United States;
 - (ii) any appropriative right to the use of water established pursuant to the laws of the State that has not been abandoned, but excluding any reservation of water made pursuant to the laws of the State which has not been put to actual beneficial use by the date notice is given;

- (d) the proposed use does not cause any unreasonable significant adverse environmental impact; and
- (e) proposed diversions in excess of 4,000 acre-feet per year and 5.5 cubic feet per second of water will not:
 - (i) substantially impair the quality of water for existing uses in the source of water from which the diversion is made;
 - (ii) be made where low quality water which can economically be used is legally and physically available to the Tribes for the proposed use;
 - (iii) create or substantially contribute to saline seep; or
 - (iv) substantially injure fish or wildlife populations in the source of water from which the diversion is made.

The requirements of subparagraph (c) of this paragraph may be satisfied by a showing that the owner of such right has consented to the adverse effect. Subparagraph (c) shall not be construed to alter or avoid in any way the consequences resulting from such consent under state law.

2. A proposed diversion or use of the Tribal Water Right outside the Reservation authorized by subparagraphs 2(a) and 2(c) and subparagraphs 3(a) and 3(c) of section I of this Article may be challenged only:
 - (a) within 30 days after the expiration of the notice period provided in paragraph 1 of this section;
 - (b) in a court of competent jurisdiction; and
 - (c) by the State or by a person whose rights are adversely affected by the proposed diversion or use.

In any such case, the Tribes shall have the burden of going forward and the burden of proving by a preponderance of the evidence that they have satisfied the requirements of paragraph 1 of this section.

3. Diversions of water in the exercise of the Tribal Water Right outside the Reservation from the mainstem of the Missouri River above Fort Peck Reservoir, as authorized in subparagraph 3(d) of section I of this Article, may be made so long as the Tribes or any user of the Tribal Water Right:
 - (a) comply with all the laws of the State in effect at the time the diversion is proposed, including but not limited to state water use statutes;
 - (b) give not less than 180 days advance written notice of any proposed diversion in the manner required in paragraph 5 of this section:
 - (i) if the diversion is to be made from a reservoir, to the operator of the reservoir; or
 - (ii) if the diversion is not to be made from a reservoir, to the operator of the first dam, upstream and downstream, if any, from the point of diversion;
 - (c) obtain approval of the diversion from the State legislature.
4. For purposes of demonstrating compliance with subparagraph 1(c) and subparagraph 3(a) of this section and paragraph 6 of Section K of this Article, the portion of the Tribal Water Right to be diverted will be deemed an appropriative right which has:

- (a) been acquired on May 1, 1888;
 - (b) a point of diversion and use where the water is actually being diverted and used or, if not actually being diverted, where the water would first flow on or adjacent to the Reservation;
 - (c) the existing use or, if not actually in use, an irrigation use provided, however, that the use can be transferred to a purpose other than irrigation without restriction as to period of use so long as the requirements of Section F of this Article are observed;
 - (d) the actual consumptive use or, if not actually in use or if being used for irrigation purposes, a consumptive use of 1.8 acre-feet per acre per year; and
 - (e) not been abandoned or forfeited.
5. Any notice of a diversion required by paragraph 3 of this section and any report of a diversion required by paragraph 2 of section F of this Article shall specify:
- (a) the person authorized to make the diversion;
 - (b) the amount of water proposed or authorized to be diverted annually;
 - (c) the amount proposed or authorized for annual consumptive use;
 - (d) the point of diversion;
 - (e) the period of use;
 - (f) the place of use; and
 - (g) the purposes for which the water may be used.

K. Transfers of the Tribal Water Right.

- 1. As an incident to and in the exercise of the Tribal Water Right, the Tribes may transfer within or outside the Reservation, as authorized by federal law and this Compact, the right to use water but may not permanently alienate such right or any part thereof. Any such transfer of water by the Tribes shall be subject to all provisions of this Compact.
- 2. Prior to making any transfer which authorizes use of water outside the Reservation to be diverted from the mainstem of the Missouri River, including Fort Peck Reservoir, the Tribes shall give not less than 180 days advance written notice to the State of the proposed terms and conditions of the transfer, and shall offer the State the opportunity to participate in the transfer as a substantially equal partner with the Tribes, assuming obligations and receiving benefits of the transfer under terms and conditions agreed to by the Parties. If the State does not accept the opportunity within the 180-day notice period, or if the State unreasonably delays the institution or completion of approval processes required by state law or unreasonably delays resolution of any litigation arising from its decision to accept the opportunity, the Tribes may proceed with the proposed transfer without State participation, provided that the proposed transfer shall be subject to all other provisions of this Compact. If the State does not accept the opportunity, or if State participation in the joint transfer is not approved, the State shall not later pursue the opportunity, except in accordance with all the terms of this Compact, including paragraph 3 of this section.

3. Prior to making any transfer allowing use or diversion of water from Fort Peck Reservoir or from the mainstem of the Missouri River below Fort Peck Dam, the State shall give not less than 180 days advance written notice to the Tribes of the proposed terms and conditions of the transfer and shall offer the Tribes the same opportunity to participate in the transfer as a substantially equal partner with the State, assuming obligations and receiving benefits of the transfer on terms and conditions agreed to by the Parties. If the Tribes do not accept the opportunity within the 180 day notice period, the State may proceed with the proposed transfer without the Tribes' participation, and the Tribes shall not later pursue the opportunity except in accordance with all the terms of this Compact, including paragraph 2 of this section.
4. If otherwise authorized by federal law, the Tribes may enter into an agreement with any person who is exercising or proposing to exercise a right under the laws of the State to use surface water outside the Reservation on any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River, which agreement allows such person's diversion and use and protects it from any other exercise of the Tribal Water Right provided, however, that:
 - (a) before use of such water, the person shall have complied with all applicable state laws concerning the acquisition of a water right;
 - (b) subsequent to acquisition of the state water right, regulation of its use shall be subject to state law;
 - (c) the amount of water subject to the agreement shall be considered a consumptive use of the Tribal Water Right;
 - (d) the agreement shall not permanently alienate the Tribal Water Right or any part thereof.
5. The Tribes may transfer annually only the following amounts of water for consumptive use outside the Reservation:
 - (a) 50,000 acre-feet;
 - (b) plus 35 percent of any amount over 200,000 acre-feet but less than 300,000 acre-feet authorized by state law to be transferred annually by the State from waters within the State;
 - (c) plus 50 percent of any amount over 300,000 acre-feet authorized by state law to be transferred annually by the State from waters within the State.

Transfers of the Tribal Water Right shall not be considered as part of any amounts authorized by state law to be transferred annually by the State.

6. In no event shall the Tribes be authorized to transfer less than 50,000 acre-feet of water per year outside the Reservation. The limits established in paragraph 5 of this section shall apply so long as the State is authorized to transfer annually at least 50,000 acre-feet of water pursuant to state law. If statutory authorization for the State to transfer water is not enacted, is repealed, or is held invalid, or if the amount of water authorized by state law to be transferred by the State is less than 50,000 acre-feet per year, then for any period in which the authorization or the limitation is not in force the Tribes may transfer water in accordance with all terms and conditions of this Compact other than paragraph 5 of this

section. However, such transfers will be subject to any volume limitations provided by federal law or, in the absence of any federal volume limitations, the Tribes may transfer water in accordance with all terms and conditions in this Compact other than paragraph 5 of this section and with any volume limitations imposed by state law which would apply to a holder of a right to the use of water established pursuant to state law. For the purposes of complying with volume limitations imposed by state law, the Tribal Water Right will be deemed to have the characteristics set forth in paragraph 4 of section J of this Article.

7. Unless authorized by federal law, the State shall not in any manner whatsoever tax any proceeds received by the Tribes as consideration for any transfer of the Tribal Water Right.

L. Instream Flows.

1. At any time within five years after the effective date of this Compact, the Tribes may establish a schedule of instream flows to maintain any fish or wildlife resource in those portions of streams, excluding the mainstem of the Milk River, which are tributaries of the Missouri River that flow through or adjacent to the Reservation. These instream flows shall be a part of the Tribal Water Right with a priority date of May 1, 1888. Water remaining in a stream to maintain instream flows pursuant to such a schedule shall be counted by the Tribes as a consumptive use of surface water.

2. Instream flows may be established by the Tribes only in accordance with this section. The Tribes may change the use of water for maintenance of instream flows to another purpose only with the consent of the State.

M. No Other Diversion or Use of the Tribal Water Right. No other diversion or use of the Tribal Water Right shall be made other than those authorized or recognized by this Article.

ARTICLE IV PROTECTION OF USES UNDER STATE LAW

A. Uses Protected.

1. The following existing and proposed uses of water by Indians within the Reservation are protected and shall not be subordinated to any other uses by subsequent provisions of this Article:

- (a) a maximum of 113 acres of irrigated land within the Wolf Creek watershed;
 - (b) a maximum of 11 acres of irrigated land within the Poplar River watershed;
 - (c) a maximum of 523 acres of irrigated land within the Big Muddy Creek watershed;
- and

(d) a maximum of 300 acres of land irrigated with ground water near the confluence of Porcupine Creek and the Milk River.

2. Uses of water by Indians within the Reservation for stockwatering purposes not in excess of 20 acre-feet per year for each impoundment and for all domestic uses are protected and shall not be subordinated to any other uses by subsequent provisions of this Article.

3. With the exception of the uses protected in paragraphs 1 and 2 of this section, diversion and use of water in the exercise of the Tribal Water Right except from the mainstem of the Missouri River, including water allocated to instream flow

purposes, shall be subordinate to the following uses of water in the Porcupine Creek, Poplar River, Big Muddy Creek, Little Porcupine Creek, Wolf Creek, Tule Creek, and Chelsea Creek watersheds, including all tributary streams within those watersheds, and all underlying ground water whether or not hydrologically connected with the surface water:

- (a) the beneficial uses of water with a priority date of December 31, 1984 or earlier established under the laws of the State and identified in Appendix A to this Compact;
 - (b) such rights of the United States Fish and Wildlife Service to the waters of Big Muddy Creek for the Medicine Lake National Wildlife Refuge as may be finally determined by the state water court;
 - (c) beneficial uses of water for domestic purposes;
 - (d) beneficial uses of water for stock watering purposes in existence prior to December 31, 1984, and beneficial uses of water for stock watering subsequent to that date not in excess of 20 acre-feet per year for each impoundment.
4. Except as to the rights protected in paragraph 3 of this section, the Tribal Water Right shall be prior to all rights to the use of surface and ground water established under the laws of the State with a priority date later than May 1, 1888.
- B. Changes of Protected Uses.
1. The rights to the use of water protected by paragraph 3 of section A of this Article may be changed in accordance with state law as to point of diversion, period of use, place of use, purpose of use, or ownership of the right provided that:
 - (a) the proposed change will not adversely affect any use of the Tribal Water Right existing at the time of the proposed change;
 - (b) the amount of surface water flowing onto the Reservation within the Poplar River, the Big Muddy Creek, or the Porcupine Creek watersheds, will not be changed; and
 - (c) the source of the water will not be changed from surface to ground water, or from ground to surface water, or from one watershed to another.
 2. Upon receiving an application for a proposed change authorized by paragraph 1 of this section, the State shall give the Tribes such advance written notice as is required by state law.
 3. If an irrigation use is changed in any manner, or if a reservoir is constructed or operated which results in the consumptive use of water by evaporation, the following limitations apply:
 - (a) no more than 1.8 acre-feet of consumptive use per year may be authorized for each acre of land retired from full service irrigation; and
 - (b) no more than 0.48 acre-feet of consumptive use per year may be authorized for each acre of land retired from partial service irrigation;
 - (c) evaporation from any reservoir shall be charged as a consumptive use in accordance with definition 4 in Article II.
 4. If an irrigation use is changed to an industrial use, all diversions and return flows shall be measured by a device acceptable to and subject to periodic inspection

and testing by the State and the Tribes at the expense of the owner. The owner shall also have the quality of the return flows sampled and tested by a laboratory acceptable to the State and the Tribes as often as reasonably required by the State and the Tribes and at the expense of the owner.

ARTICLE V ADMINISTRATION OF WATER RIGHTS

A. United States Administration. All rights to the use of water received from the Fort Peck Irrigation Project shall be administered by the United States, and the United States has the final and exclusive jurisdiction to resolve all disputes concerning uses of water received from the Fort Peck Irrigation Project subject to any judicial review provided by applicable law.

B. Tribal Administration.

1. The Tribal Water Right shall be administered by the Tribes, and the Tribes have the final and exclusive jurisdiction to resolve all disputes between users of the Tribal Water Right, except for disputes concerning uses of water received from the Fort Peck Irrigation Project and disputes involving users of the Tribal Water Right pursuant to agreements authorized in Article III, section K, paragraph 4.
2. Administration and enforcement of the Tribal Water Right shall be pursuant to a water code, which shall be adopted by the Tribes and submitted for approval to the Secretary of the Interior within one year after ratification of this Compact by the Parties. Such code shall take effect 18 months after ratification of this Compact unless sooner disapproved by the Secretary of the Interior. Pending the adoption and approval of the tribal water code, administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior as trustee for the Tribes. The Tribes shall not administer the Tribal Water Right in a manner which denies any person a water right owned by that person which arises under the laws of the United States.
3. Within six months after the tribal water code takes effect or within six months after disapproval of the code by the Secretary, the Tribes or the Secretary of the Interior shall provide the State with notice of each existing use of the Tribal Water Right which shall show:
 - (a) the person authorized to make the diversion;
 - (b) the amount of water authorized to be diverted annually;
 - (c) the amount of water authorized for annual consumptive use;
 - (d) the point of diversion;
 - (e) the period of use;
 - (f) the place of use;
 - (g) the uses for which the water may be diverted; and
 - (h) the relative priority of the use as against other uses of the Tribal Water Right.
4. The Tribes shall thereafter notify the State within sixty days after the end of each quarter year of all new uses of surface and ground water authorized by the Tribes during the preceding quarter year and of all new uses of the Tribal Water Right actually commenced during that quarter year.

C. State Administration.

1. The State shall administer all rights to the use of surface water and ground water within or outside the Reservation which are not a part of the Tribal Water Right to the fullest extent allowed by law. The State shall have the final and exclusive jurisdiction to resolve all disputes between users of rights established under state law.
2. Within two years after ratification of this Compact, the State shall notify the Tribes of all existing uses authorized by the State on the mainstem of the Missouri River below Fort Peck Dam and on all tributaries of the Missouri River that flow through or adjacent to the Reservation, except the mainstem of the Milk River. The State shall notify the Tribes within sixty days after the end of each quarter year of all new uses of surface and ground water permitted by the State on each of these sources during the preceding quarter year and of all new uses of water actually commenced pursuant to the laws of the State during that quarter year on each of these sources. Notices required by this paragraph shall include the information required by paragraph 3 of section B of this Article.
3. No agency of the State shall administer any part of the Tribal Water Right. From and after the effective date of this Compact, unless the Tribal Water Right confirmed in Article III is fully utilized at the time application is made for a permit or other authorization, the State shall issue no permit or other authorization to divert or use water within the Reservation to the following persons:
 - (a) the Tribes;
 - (b) any Indian;
 - (c) any non-Indian successor-in-interest to any allottee on the Reservation by virtue of that person's assertion of a right arising under the laws of the United States; or
 - (d) the United States for the benefit of the Tribes or any Indian or any non-Indian successor-in-interest to any allottee.

D. Regulation of Ground Water.

1. With the exception of uses protected in Article IV, neither the State nor the Tribes shall authorize or continue the use of ground water without the consent of the other if such use will:
 - (a) result in degradation of instream flows established pursuant to section L of Article III; or
 - (b) contribute to the permanent depletion or the significant degradation of the quality of a ground water source which in whole or in part underlies the Reservation.
2. With the exception of uses protected in Article IV, the State shall not, without the Tribes' consent, authorize or continue the use of ground water that unreasonably interferes with a use of ground water authorized by the Tribes. The Tribes shall not, without the consent of the State, authorize or continue the use of ground water that unreasonably interferes with a use of ground water authorized by the State and protected by Article IV of this Compact.

ARTICLE VI FORT PECK-MONTANA COMPACT BOARD

A. Board established. There is hereby established the Fort Peck-Montana Compact Board, which shall exercise powers and responsibilities as set forth in this Article.

B. Membership.

1. The Board shall consist of three members. One member shall be appointed by the Governor of the State of Montana or, in lieu of such appointment, shall be the Governor. The salary and expenses of that member shall be paid by the State. One member shall be appointed by the Chairman of the Tribes, or in lieu of such appointment, shall be the Tribal Chairman. The salary and expenses of that member shall be paid by the Tribes. The third member shall be selected by agreement of the other two members. The salary and expenses of that member and all other expenses of the Board shall be shared equally by the State and the Tribes subject to the availability of funds. Each member duly appointed or selected shall hold office for a term of six years, and for so long thereafter until a successor shall be appointed or selected. The initial term of each member shall be staggered, with one member serving a six-year term, one a four-year term, and one a two-year term. The initial term of each member shall be chosen by lot, or by any other procedure and agreed upon in writing by the first three members of the Board. If the Governor or the Tribal Chairman serves on the Board, such person shall not serve on the Board beyond his or her term as Governor or Tribal Chairman.
2. Should the two appointed members fail to agree within sixty days of the effective date of this Compact or within thirty days after any vacancy occurs, on the selection of the third member, the following procedure shall be utilized:
 - (a) within five days each member shall nominate no more than five and no less than three persons to serve as a member of the Board;
 - (b) within fifteen days thereafter each member shall reject all but one of the persons nominated by the other member;
 - (c) the chief judge of the United States District Court for the District of Montana shall select the third member of the Board from the remaining two nominees. If the chief judge declines for any reason to select the third member, the chief justice of the Montana Supreme Court shall make the selection from the remaining two nominees.
3. Vacancies on the board shall be filled by appointment of a person to serve the unexpired term of the member whose seat has become vacant. If the member appointed by the Governor becomes unable or unwilling to serve on the Board, the Governor shall make the appointment within fifteen days. If the member appointed by the Tribal Chairman becomes unable or unwilling to serve, the Tribal Chairman shall make the appointment within fifteen days. If the third member of the Board becomes unable or unwilling to serve on the Board, the remaining members shall fill the vacancy under the procedure set forth in paragraphs 1 and 2 of this section.

C. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice has been provided in advance to the absent member. Meetings may be in person or, in appropriate circumstances, by telephone. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be delivered to all parties in the proceeding before the Board, and to both Parties to this Compact.

D. Jurisdiction of the Board. The Board shall have exclusive jurisdiction, only as provided in this Compact, to resolve any controversy over the use of ground water to which this Compact pertains, any controversy over the use of surface water within the Reservation or from any tributary of the Missouri River that flows through or adjacent to the Reservation, except the mainstem of the Milk River, and any controversy as to the meaning of this Compact between: (i) on the one hand, the Tribes or any person or persons claiming a right to use the Tribal Water Right; and (ii) on the other hand, the State or any person or persons claiming a right to use water under the laws of the State.

E. Powers and Duties of the Board.

1. The Board shall have power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence. The courts of the Tribes and the State shall enforce any subpoena issued by the Board in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued in a civil action by courts of the Tribes and the State.
2. The Board shall hold hearings in proceedings before it and shall give advance notice to the Tribes, the State and all parties to any proceeding personally or by registered mail not less than five days before any hearing. Appearance at a hearing waives such notice. The Board may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The Tribes, the State and all parties to the proceeding are entitled to be heard, to present evidence material to the controversy, to cross-examine witnesses appearing at the hearing, and to be represented by counsel at their own expense.
3. The Board may enter an order after hearing granting any party to the dispute before it temporary or preliminary injunctive relief, or any other relief which the Board deems appropriate except money damages. The Board or any party to a proceeding before the Board may invoke the jurisdiction of a court of competent jurisdiction to enforce any temporary or preliminary injunction so issued by the Board by filing a petition for enforcement naming the enjoined person as respondent. Upon filing the petition, the court shall enter any order it deems appropriate for enforcement of the injunction ordered by the Board, including but not limited to injunctive relief on such terms as to bond or otherwise as it deems proper for the security of the rights of the enjoined party. The United States, the State, and the Tribes shall not be required to post any bond. The court may appoint a water commissioner or master to monitor compliance with such relief.

4. The Board shall adopt rules and regulations to govern its procedures and to carry out its responsibilities under this Compact. Such rules and regulations must be consistent with all provisions of this Compact. All records of the Board shall be open to public inspection except for privileged information.
 5. The Board may employ or seek assistance of such clerical or other personnel and may establish such offices as it deems necessary for the performance of its functions according to this Compact. Pending the establishment of a principal office, the Board's office shall be located at Fort Peck Agency of the Bureau of Indian Affairs.
 6. The annual budget of the Board shall be subject to approval of the Parties to this Compact and to the availability of funds appropriated by the Parties.
- F. Review and Enforcement of Board Decisions.
1. Decisions by the Board shall be effective immediately, unless stayed for a period of time prescribed by the Board. On application of a party within a reasonable time, but in any event no more than ninety days after a decision is rendered, the Board may modify or correct any decision:
 - (a) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the decision;
 - (b) where the decision is imperfect in a matter of form not affecting the merits of the controversy; or
 - (c) where the decision requires clarification.
 2. Any party before the Board may, within ten days of any final decision, apply to the Board to modify or set aside any aspect of the decision. Notice of such application shall be served personally or by registered mail upon all parties to the proceeding. Any other party shall have ten days within which to respond to the application. The Board shall act on such application within ten days after a response is filed or, if no response is filed, within fifteen days after the application is filed. If the Board fails to act within the time limitations set forth in this paragraph, the application shall be deemed denied. The time for appeal provided in paragraph 3 of this section shall not begin to run until the application is determined as provided in this paragraph.
 3. Any party before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty days of such decision. The notice of appeal shall be filed with the Board and served personally or by registered mail upon the Tribes, the State and all parties to the proceeding before the Board, and all such persons shall thereafter have the right to participate in the appeal.
 4. In any appeal, the Board's decision shall be presumed to be valid, and may be vacated by the court only on one of the following grounds:
 - (a) the decision is not supported by substantial evidence;
 - (b) the decision was procured by corruption, fraud or undue means;
 - (c) there was evident partiality or corruption by the Board or by any member;
 - (d) the Board was guilty of misconduct in refusing to hear the dispute, or in refusing to hear evidence pertinent and material to the controversy, or

- any other clear misbehavior by which the rights of any party have been substantially prejudiced;
- (e) the Board exceeded its authority under the terms of this Compact; or
 - (f) the decision is contrary to law.
5. Unless an appeal is timely filed as provided in paragraph 3 of this section, any decision of the Board shall be confirmed or enforced by any court of competent jurisdiction on petition of the Board, the Tribes, the State or any party before the Board in the proceeding in which the decision was made.
 6. A court of competent jurisdiction in which a timely appeal is filed pursuant to paragraph 3 of this section, or in which a petition to confirm or enforce is filed pursuant to paragraph 5 of this section, may order such temporary or permanent relief as it considers just and proper.
 7. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to paragraph 3 of this section, or in which a petition to confirm or enforce is filed pursuant to paragraph 5 of this section, in the manner and to the same extent as from orders or judgments of the court in a civil action.
 8. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board.
- G. Waiver of Immunity. The Tribes and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, to permit the appeal or judicial enforcement of Board decisions as provided in this Compact, except that such waivers shall not extend to any action for money damages including costs and attorneys' fees as a result of such judicial action.

ARTICLE VII FINALITY AND EFFECTIVENESS OF COMPACT

- A. Ratification. This Compact shall become effective as to both parties when ratified by the Legislature of the State of Montana and the Fort Peck Tribal Executive Board and approved by the United States Departments of Justice and the Interior. Ratification by the State and by the Tribes is irrevocable, and this Compact may not be modified in any manner whatsoever except with the joint consent of the legislative body of both Parties.
- B. Incorporation into Decrees and Disposition of Federal Suits.
1. The Parties and the United States shall petition for incorporation of this Compact into the preliminary decrees and final decrees in any state water court proceedings to adjudicate any right to the use of water to which this Compact pertains, and this Compact may not be modified in any manner whatsoever without the consent of both Parties as provided in section A of this Article. The United States shall not be bound by provisions of this Compact until it is incorporated into the final decree, as provided in this section.
 2. This Compact shall only be filed as a proposed consent decree in United States v. Aageson, Civ. No. 79-21-GF (D. Mont.), or United States v. Aasheim, Civ. No. 79-40-BLG (D. Mont.) if there is a final determination by the state courts that they lack jurisdiction over, or that the state proceedings are inadequate to adjudicate, some or all of the water rights asserted in either of the above

cases. Upon a final determination that the state courts have jurisdiction over, and that the state proceedings are adequate to adjudicate all of the water rights in the above cases, the United States and the Parties will immediately execute a joint motion pursuant to Rule 41(a) of the Federal Rules of Civil Procedure to dismiss with prejudice and on their merits all claims by the Tribes and the United States on behalf of the Tribes in the pending cases.

ARTICLE VIII DISCLAIMERS AND RESERVATION OF RIGHTS

- A. Disclaimers. Nothing in this Compact shall be so construed or interpreted:
1. to establish the nature, extent, transferability, or manner of enforcement of water rights of any Indian reservation other than the Fort Peck Indian Reservation;
 2. to preclude the acquisition or exercise of an appropriative right to the use of water under state law by the Tribes or any individual Indian outside the Reservation by purchase of such right or by purchase of land, or by application to the State;
 3. to preclude the acquisition or exercise of an appropriative right to the use of water under state law by the Tribes or any individual Indian within the Reservation:
 - (a) by purchase of such right or by purchase of land, provided that water rights acquired by such purchase after ratification of this Compact shall be deemed to be an exercise of the Tribal Water Right; or
 - (b) by application to the State, provided that the Tribal Water Right confirmed in Article III has been fully utilized at the time an application is made;
 4. to determine the relative rights inter sese of persons using water under the authority of the State or the Tribes;
 5. to limit in any way the rights of the Parties or any other person to litigate any issues or questions not resolved by this Compact;
 6. to authorize the taking of a water right which is vested under state or federal law;
 7. to create or deny substantive rights through headings or captions used in this Compact; or
 8. to address or prejudge whether, in any interstate apportionment of the waters of the Missouri River Basin, the Tribal Water Right shall be counted as a part of the waters apportioned to the State.
- B. Reservation of Rights. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

ARTICLE IX TRIBAL RELINQUISHMENT OF OTHER WATER CLAIMS

The Tribal Water Right confirmed in Article III shall be final and conclusive. With the exception of the Tribal Water Right recognized herein and rights established under state law as authorized by this Compact, the Tribes and the United States as trustee for the Tribes hereby relinquish forever any and all existing and future claims to water from any source and for any purpose. This relinquishment includes, but is not limited to, any claim for water derived from: aboriginal use of land or water; any Indian treaties; any act of Congress; and any executive act of the United States.

ARTICLE X BINDING EFFECT

A. Persons Bound. Upon the effectiveness of this Compact, its terms will be binding:

1. upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana, provided that for purposes of consent, ratification, or authorization the validity of consent, ratification, or authorization is to be determined by Montana law; and
2. upon the Tribes and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribes, or any right arising under tribal law, provided that for purposes of consent, ratification, or authorization the validity of consent, ratification or authorization is to be determined by Tribal law. Notwithstanding any other provision of law, the Tribal Water Right confirmed in Article III of the Fort Peck-Montana Compact includes conclusively and forever the water rights arising under the laws of the United States of all persons on the Fort Peck Reservation by virtue of the ownership or purchase of any Indian allotment, and the courts of the State shall not have jurisdiction to adjudicate or decree any such right claimed by any such person.

B. Effect on Other Laws. The provisions of the Fort Peck-Montana Compact shall supersede any present or future enactment or common law rule inconsistent with such Compact including but not limited to Montana Code Annotated 28-2-708.

ARTICLE XI SEVERABILITY

Should any part of this Compact other than Articles III, IV, VII, or IX be held to be invalid, all other parts thereof shall continue to be in full force and effect. Should any part of Articles III, IV, VII, or IX be held invalid, either party may withdraw from the remaining provisions of this Compact by action of its legislative body taken within one year from the determination of such invalidity.

ARTICLE XII LEGISLATION

A. Future legislation. The parties agree to seek enactment of further legislation if it becomes necessary to effectuate the provisions and purposes of this Compact, and to protect such provisions and purposes from challenge and attack, provided that no provisions of the Compact shall be modified as to substance except as provided in Article VII.

B. Petition to Congress.

1. The Parties hereby request the Montana legislature to petition Congress to enact the following legislation in substantially the following form:

“Sec. 2. For purposes of this Act, the term:

- (a) “Fort Peck-Montana Compact” means that Compact pertaining to the reserved water rights of the Assiniboine and Sioux Tribes of the Fort Peck

Reservation ratified by the legislature of the State of Montana on May 15, 1985 and by the Tribes on April 29, 1985.

- (b) "Reservation" means the Fort Peck Indian Reservation as defined in the agreement of December 28 and December 31, 1886, and confirmed by the Act of May 1, 1888, 25 Stat. 113.
- (c) "Secretary" means the Secretary of the Interior.
- (d) "Tribes" means the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

"Sec. 3.

"(a) The Tribes, subject to the approval of the Secretary, may enter into any joint venture, service contract, lease, exchange or other agreement, or any amendment, supplement or other modification of such agreement (hereinafter referred to as a "Water Agreement") authorizing the delivery, use or transfer of any part of the water right confirmed in the Tribes by the Fort Peck-Montana Compact for a specified term, not to exceed fifty years, inclusive of all renewal periods. A Water Agreement may authorize the diversion or use of water within or outside the Reservation subject to all terms of the Fort Peck-Montana Compact.

"(b) The Secretary shall approve or disapprove any Water Agreement within (1) one hundred and eighty days after submission or (2) sixty days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) and any other requirement of federal law, whichever is later. Any party to such an agreement may enforce the provisions of this subsection pursuant to 28 U.S.C. 1361. Notwithstanding any other law, all projections, studies, data or other information possessed by the Department of the Interior regarding the terms and conditions of the Water Agreement or the financial return to the Tribes, shall be held by the Department of the Interior as privileged proprietary information of the Tribes."

- 2. The provisions of this Compact shall have no force and effect until the resolution set forth in paragraph 1 of this section is approved by the Montana Legislature and submitted to Congress.

IN WITNESS WHEREOF the representatives of the State of Montana and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation have signed this Compact in five original counterparts on the 10th day of April, 1985.

For the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation

.....
Walter Clark

.....
Norman Hollow

.....
Caleb Shields

For the State of Montana

Montana Reserved Water Rights Compact Commission

.....
W. Gordon McOmber, Chairman

.....
Daniel O. Kemmis

.....
Jack E. Galt, Vice Chairman

.....
A.B. Linford

.....
William M. Day

.....
Joseph P. Mazurek

.....
Audrey G. Roth

.....
Everett C. Elliott

.....
Chris D. Tweeten

APPROVED:
For the Secretary of the Interior

.....
For the Attorney General of the United States

.....
History: En. Sec. 1, Ch. 735, L. 1985.

**NORTHERN CHEYENNE
– MONTANA COMPACT**

Northern Cheyenne
– Montana Compact



Title 85 Water Use
Chapter 20 Water Compacts

85-20-301. Northern Cheyenne-Montana compact ratified. The compact entered into by the state of Montana and the Northern Cheyenne tribe of the Northern Cheyenne Indian reservation and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on May 20, 1991, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA

NORTHERN CHEYENNE TRIBE
UNITED STATES OF AMERICA

This Compact is entered into by and among the Northern Cheyenne Tribe of the Northern Cheyenne Reservation, the State of Montana, and the United States of America to settle, for all time, any and all existing claims of or on behalf of the Northern Cheyenne Tribe to water within the State of Montana.

RECITALS

WHEREAS, in 1975, the Northern Cheyenne Tribe and the United States, on behalf of the Tribe, brought suits in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights;

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Northern Cheyenne water rights;

WHEREAS, the federal district court suits were stayed in 1983 pending the outcome of Montana State court water adjudication proceedings;

WHEREAS, the adjudication of Northern Cheyenne water rights under state law has been suspended while negotiations have proceeded to conclude a compact resolving all reserved water rights claims of the Northern Cheyenne Tribe;

WHEREAS, the Northern Cheyenne Tribe and the United States agree that the Tribal Water Right described in this Compact shall be in satisfaction of the Tribe's reserved water rights claims and any claims to water rights made on behalf of the Tribe by the United States;

WHEREAS, it is in the best interest of all parties that the reserved water rights claims of the Northern Cheyenne Tribe be settled through a Water Rights Compact;

WHEREAS, the parties agree that settlement of the reserved water rights claims of the Northern Cheyenne Tribe is dependent on the repair and enlargement of the Tongue River Reservoir;

NOW THEREFORE, the parties agree as follows:

Article I

Definitions

The following definitions shall apply for purposes of this Compact:

1. “Acre-foot” means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet.
2. “Alluvial groundwater” means water located below the land surface within the Quaternary hydrostratigraphic unit that borders or underlies major perennial and intermittent streams in the Tongue River and Rosebud Creek basins. This unit is composed of unconsolidated alluvial deposits of clay, silt, sand, and gravel. For the purposes of this Compact, all other water below the land surface will be deemed nonalluvial groundwater.
3. “Annual” or “per year” means during one year as defined by this Compact.
4. “Board” means the Northern Cheyenne-Montana Compact Board established by Article IV of this Compact.
5. “Completion date” means the date of completion of a project to repair and enlarge the Tongue River Dam to a degree sufficient to provide the storage component of the Tribal Water Right subject to the conditions provided in this Compact.
6. “Depletion” means, for any diversion of water, the difference between the quantity of water diverted and the quantity of return flows within the basin.
7. “Direct flow of the Tongue River” means the water in the Tongue River and its tributaries that has not been stored in the Tongue River Reservoir.
8. “Domestic use” means the diversion of water by one or more individuals, family units or households for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.
9. “Excess water” means increases in the Tongue River basin water supply resulting from conditions different from those assumed in the Tongue River Water Model.
10. “Exchange water” means water available to the Tribe from the Tongue River direct flow or from the Tongue River Reservoir storage in exchange for Tribal return flows made available to other Tongue River water users.
11. “Indian” means any person who: a) is an enrolled member of the Northern Cheyenne Tribe; or b) is a member of a tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or c) holds, or is recognized by the Secretary of the Interior as eligible to hold, trust and restricted property on the Northern Cheyenne Reservation.
12. “Manifolded well system” means a water distribution or conveyance facility that is supplied by two or more wells.
13. “Miles City Decree water right” means a water right, finally decreed in any general adjudication of the Tongue River, or recognized under state law until such final adjudication, which is based on the decree entered in Miles City Canal & Irrigating Co. v. Lee, et al., Montana Seventh Judicial District, No. 2809, May 20, 1914, and which has a priority date of March 24, 1909, or earlier.
14. “Parties” means the Tribe, the State of Montana, and the United States.

15. “Person” means an individual or any other entity, public or private, including the State, the Tribe, and the government of the United States and all officers, agents, and departments thereof.

16. “Ratification date” means the date this Compact has been approved by the Northern Cheyenne Tribal Council and the Legislature of the State of Montana.

17. “Reservation” means the Northern Cheyenne Reservation as established by Executive Orders of November 26, 1884 and March 19, 1900.

18. “State” means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, “State” means the Director of the State Department of Natural Resources and Conservation or its successor agency.

19. “State contract right” means a right to receive stored water from the Tongue River Reservoir, not to exceed a cumulative total of 40,000 acre-feet per year, pursuant to a contract that allocates the storage rights of the Montana Department of Natural Resources and Conservation or its successor agency.

20. “Tongue River Water Model” means the Tongue River Reservoir Operations computer model that is documented in: Tongue River Modeling Study, Final Report, submitted on July 20, 1990, to the Engineering Bureau of the Water Resources Division of the Montana Department of Natural Resources and Conservation, or any revision agreed to by the parties. The Final Report and any agreed revisions are incorporated herein by reference as though set forth in full.

21. “Transfer” means any authorization for the delivery or use of water from the Tribe or any person authorized by the Tribe to any other person by a service contract, lease, sale, exchange or other similar agreement.

22. “Tribal Water Right” means the right to divert or use water as described by Articles II and III of this Compact.

23. “Tribe” means the Northern Cheyenne Tribe of the Northern Cheyenne Reservation and all officers, agents and departments thereof. Unless otherwise indicated, for purposes of notification or consent, “Tribe” means the Tribal President or the Chief Executive Official of the Tribe.

24. “United States” means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, “United States” means the Secretary of the Department of the Interior.

25. “Year” means the twelve-month period beginning April 1st and ending March 31st.

Article II

Tribal Water Right

A. Quantification of Water Right.

The water rights of the Northern Cheyenne Tribe are as follows:

1. Existing Non-Agricultural Uses.

Tribal and individual Indian stockwater, domestic and municipal water uses on the Reservation and in existence as of the ratification date are hereby recognized

and protected as part of the Tribal Water Right, and are in addition to the water rights set forth in Sections A.2., A.3., and A.4. of this Article. All such existing uses shall be governed by the terms of this Compact.

2. Tongue River.

Subject to the terms of this Compact, the Tribal Water Right in the Tongue River basin consists of the right to divert or use or to permit the diversion or use of up to 32,500 acre-feet per year, from a combination of direct flow, storage, and exchange water. Tribal and individual Indian irrigation uses in existence on the Reservation in the Tongue River basin as of the ratification date are recognized and protected, and shall be counted as a use of the 32,500 acre-feet per year right described in Section A.2. of this Article.

a. Direct Flow Right. The Tribe has a right to divert or use or permit the diversion or use of up to 12,500 acre-feet of water per year from direct flow of the Tongue River and its tributaries with a priority date of October 1, 1881; provided, that:

i. The Tribe's annual depletion of its direct flow water right in the Tongue River and its tributaries shall not exceed 75 percent of the amount diverted, or 9,375 acre-feet per year; and

ii. The Tribe's direct flow water right in the Tongue River and its tributaries may not be used in a manner that adversely affects:

A. Miles City Decree water rights, or

B. Water rights from off-Reservation tributaries of the Tongue River, which are finally decreed in any general adjudication of the Tongue River, or are recognized under state law until such final adjudication, and which have a priority date of June 30, 1973 or earlier and are based on the use of an irrigation system in place and not abandoned as of June 30, 1973.

b. Storage and Exchange Water. The Tribe has a right to divert or deplete, or permit the diversion or depletion of, up to 20,000 acre-feet per year from a combination of water stored in the Tongue River Reservoir and exchange water. The availability of the 20,000 acre-feet per year depends, as provided in the Tongue River Water Model, upon the annual schedule utilized by the Tribe for diversions of Tongue River direct flows. Except as provided in paragraph A.2.c.ii. of this Article, any reduction in Tongue River Reservoir stored water resulting from Tribal diversions of Tongue River direct flows shall not affect State contract rights, as defined in this Compact, but shall be satisfied exclusively from the right described in this paragraph. Tribal use of stored water from the Tongue River Reservoir shall be measured at the Reservoir.

c. Shortages.

i. The Tribal Water Right in the Tongue River basin shall be subject to shortages due to natural low flows that are consistent with the period of record used in the Tongue River Water Model in diversion amounts not to exceed 50% in any one year and 100% cumulative in any ten-year period.

- ii. Decreases in the amount of water stored in the Tongue River Reservoir that are caused by: (i) sedimentation; (ii) Reservoir inflows lower than those assumed in the Tongue River Water Model; (iii) normal and expected maintenance of the Tongue River Dam and associated structures; or (iv) normal and expected deterioration of the Tongue River Dam and associated structures shall not be considered a failure of the Tongue River Dam as that term is utilized in paragraph A.2.f. of this Article. All such decreases in water availability shall be shared pro rata among all users of stored water including the Tribe.
 - d. Excess Water. The Tribe shall, as part of the Tribal Water Right, have the first right to use excess water, as defined in this Compact; provided, that total use of the Tongue River Tribal Water Right shall not exceed 32,500 acre-feet per year diverted from direct flow, storage, and exchange water. Tribal nonuse of excess water in any one year shall not affect the right of the Tribe to use excess water in any subsequent year.
 - e. Contract Water. Nothing in this Compact shall affect the water, and any rights therein, secured to the Tribe by Water Purchase Contract No. 232 for 7,500 acre-feet per year, dated March 15, 1938, between the Tongue River Water Users Association, the Water Conservation Board of the State of Montana and the United States, through the Secretary of the Interior. Any water entitlement pursuant to the Contract shall be in addition to and not a part of the 32,500 acre-feet per year Tribal Water Right set forth above.
 - f. Failure of Tongue River Dam. In the event of a failure of the Tongue River Dam which causes a substantial diminution of the Tribe's storage right set forth in paragraph A.2.b. of this Article, and notwithstanding the provisions of Article V.A. of this Compact, any party may within 180 days of said failure request the others to renegotiate this Compact. The parties shall have three years from the date of the request to reach a new agreement, during which time all of the provisions in this Compact shall remain in full force and effect. If no party requests renegotiation, or if a new agreement is not reached within three years of the request, the provisions of paragraph A.2.a.ii. of this Article concerning the subordination of the Tongue River direct flow Tribal Water Right to other specified water rights, shall become null and void; provided, that all other provisions of this Compact shall remain in full force and effect. The Tribe shall not be entitled to void or terminate this Compact, or to assert that the State is in breach of the Compact, for a failure of the Tongue River Dam; provided, that any and all other rights of the Tribe arising from such event shall not be affected by this paragraph.
3. Rosebud Creek.
- a. Water Right. The Tribe has a right to divert or use or to permit the diversion or use from Rosebud Creek and its tributaries, for agricultural purposes only, of 1,800 acre-feet of water per year, or enough water to irrigate 600 acres of land per year, whichever is less, with a priority date of October

- 1, 1881. Tribal and individual Indian irrigation uses in existence as of the ratification date on-Reservation in the Rosebud Creek basin are recognized and protected, and shall be considered a use of the 1,800 acre-feet per year right described in this paragraph.
- b. Implementation. The Tribe agrees that in the period between May 1, 1991 and July 1, 1993, the Tribe, or persons authorized by it, will develop no more than 200 acres of land in addition to irrigation uses in existence as of May 1, 1991, through irrigation methods involving pumping of alluvial groundwater, except that the Tribe, or persons authorized by it, may develop up to the full 600 acres of land, or any portion thereof, by any other method. During this period, the Tribe and the State agree to share any hydrologic data available for use in connection with any test which the State undertakes to evaluate impacts, if any, of development of on-Reservation lands on off-Reservation lands. After July 1, 1993, the Tribe, or persons authorized by it, may develop the full 600 acres of land by any irrigation method.
 - c. Additional Water Right. In addition to the water right described in paragraph A.3.a. of this Article, the Tribe has a right to divert or use or permit the diversion or use from Rosebud Creek and its tributaries, for any purpose, of up to 19,530 acre-feet of water per year, or enough water to irrigate 6,510 acres of land per year, whichever is less, with a priority date of October 1, 1881. The Tribe may not exercise the water right set forth in this paragraph in a manner that adversely affects a water right finally decreed in any general adjudication of the Rosebud Creek basin or, until such final decree is issued, a water right recognized under state law, which 1) has a priority date of June 30, 1973 or earlier, and 2) is based on the use of an irrigation system in place and not abandoned as of June 30, 1973; provided, that the state law water rights protected in this paragraph shall not exceed:
 - i. North of the Reservation, 8,100 acre-feet of water per year or enough water to irrigate 2,700 acres of land per year, whichever is less; and
 - ii. South of the Reservation, 540 acre-feet of water per year or enough water to irrigate 180 acres of land per year, whichever is less.
 - d. Dams and Impoundments. The Tribe shall not construct, within the Rosebud Creek basin, any dams or impoundments to store water naturally arising in Rosebud Creek and its tributaries; provided, that the Tribe may construct stockwater impoundments pursuant to paragraph A.5. of this Article, and, subject to other applicable provisions of this Compact, may construct dams or impoundments within the Rosebud Creek basin to store water from sources outside the basin, including non-alluvial groundwater.
 - e. Moratorium on Permits. The Montana Department of Natural Resources and Conservation shall order a moratorium on the issuance of permits in the Rosebud Creek basin concurrent with the ratification date of this Compact. The moratorium shall not apply to applications for permits by

persons who have entered into deferral agreements with the Tribe for Rosebud Creek basin water as provided in Section G. of this Article. The Department may order the moratorium lifted if it determines that water is available over and above the amount necessary to fulfill the Tribal Water Right described in paragraph A.3.a. and Section A.3.c. of this Article. The Tribe may challenge the Department's determination to lift the moratorium under the procedure set forth in Article IV of this Compact.

4. Groundwater.
 - a. Alluvial Groundwater. The Tribe has a right to withdraw and use, or permit the withdrawal and use of, alluvial groundwater in lieu of surface water diversions of the Tongue River and Rosebud Creek Tribal Water Right, subject to the same terms and conditions of this Compact that apply to such surface water diversions. Alluvial water withdrawn from wells or manifolded well systems with a capacity of 100 gallons per minute or less shall not be deducted from the Tribal Water Right. For wells or manifolded well systems with a capacity of withdrawing greater than 100 gallons per minute of alluvial water, the entire amount withdrawn shall be deducted from the Tribal Water Right.
 - b. Non-alluvial Groundwater. Except where a Tribal right to non-alluvial groundwater is established pursuant to Article VII.B. of this Compact, Tribal use or authorization of use of non-alluvial groundwater shall, at the election of the Tribe, comply with state law in effect at the time of the use or with the alluvial groundwater provisions of paragraph A.4.a. of this Article.
5. Stockwater Impoundments. The Tribe may construct, or permit the construction of, stockwater impoundments on the Reservation, where the capacity of the impoundment is less than 15 acre-feet and the impoundment is constructed on a source other than a perennial flowing stream. The amount of water so impounded shall not be deducted from the Tribal Water Right.
6. Subirrigation. The Tribe shall be entitled to take advantage of any natural subirrigation occurring on the Reservation. Where otherwise consistent with state law, persons outside the Reservation shall also be entitled to take advantage of natural subirrigation.
7. Big Horn Reservoir (Yellowtail) Storage.
 - a. Tribal Allocation. As a part of the Tribal Water Right, the Secretary of the Interior shall allocate 30,000 acre-feet per year of stored water in Big Horn Reservoir, Yellowtail Unit, Lower Bighorn Division, Pick-Sloan Missouri Program, Montana, measured at the dam, for use or disposition by the Tribe for any beneficial purpose, either on or off the Reservation, pursuant to the terms of this Compact. This allocation is subject to the prior reserved water rights, if any, of any Indian tribe, or of persons claiming water through that tribe, to that water. Any use or disposition of water from Big Horn Reservoir off the Reservation by the Tribe is subject to the specific provisions relating to such use or disposition in any act of Congress ratifying this Compact.

- b. Payment for Tribal Allocation. The Tribe shall not be required to make payments to the United States for any portion of the Tribal Water Right stored in Yellowtail Reservoir unless and until the water is used or sold by the Tribe in which case the Tribe shall make annual payments to the United States as hereinafter provided.
 - i. Use or Sale for Municipal and Industrial (M&I) Purposes. For each acre-foot of stored water used or sold for M&I purposes, the Tribe shall pay annually to the United States an amount to cover the proportionate share of the annual operation, maintenance and replacement (OM&R) costs, and the proportionate share of the capital costs with appropriate interest for the Yellowtail Unit allocable to the Tribe's stored water. Upon full payment of the capital costs allocable to the Tribe's stored water supply, the annual payments shall include only a proportionate share of the annual OM&R costs. Such annual payments shall be reviewed and adjusted, as appropriate, to reflect the actual capital and OM&R costs for the Yellowtail Unit.
 - ii. Agricultural, Domestic, Livestock, and Other Uses. For each acre-foot of stored water used or sold for other than M&I purposes, the Tribe shall pay annually to the United States an amount to cover the OM&R cost for the Yellowtail Unit allocable to the Tribe's stored water, which amount shall be reviewed and adjusted, as appropriate, to reflect the actual OM&R costs for the Yellowtail Unit. The Bureau of Indian Affairs shall transfer sufficient funds on a nonreimbursable basis to the Bureau of Reclamation to cover allocable OM&R costs under this paragraph.
- c. Rates and Revenues. Except for payments required to be made to the United States as set forth above, the Tribe shall set such rates as it deems proper for its use or sale of stored water and shall retain all revenues from its use or sale of said stored water; provided, that the United States reserves the right to use any and all water stored in Yellowtail Reservoir for hydropower generation.
- d. Agreement. Following ratification of this Compact, and upon development of a demand for the water under Section A.7. of this Article, the United States and the Tribe shall enter into an appropriate agreement, if required, setting forth the terms and conditions under which water will be made available to the Tribe, and for the collection and disposition of revenues in connection therewith.

B. Persons Entitled to Use the Tribal Water Right.

The Tribal Water Right may be used by the Tribe, or persons authorized to use water by the Tribe pursuant to Article III; provided, that:

1. Such use is in accordance with the terms of this Compact;
2. That the Tribe shall give preference to Tribal members to use the Tribal Water Right; and

3. Such water right may be transferred from one Tribal member to another Tribal member for agricultural purposes only upon the transfer of land on the Reservation from one Tribal member to another Tribal member.

C. Place of Use of the Tribal Water Right.

Pursuant to a Tribal water code adopted as prescribed in Article III of this Compact, and subject to all other provisions of this Compact, the Tribe shall have the right to use or permit use of the Tribal Water Right with any point of diversion or any place of use on or off the Reservation; provided, that any use of the Tribal Water Right off the Reservation shall not be deemed to convert the Tribal Water Right to a state water right, and subsequent nonuse of the Tribal Water Right off the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the Right.

D. Purposes of the Tribal Water Right.

Except as provided in paragraph A.3.a. of this Article, the Tribe may authorize use of the Tribal Water Right on the Reservation for any purpose without regard to whether such use is beneficial as defined by state law. Off the Reservation, any use of the Tribal Water Right shall comply with Article III.B.

E. Conditions Upon Uses of the Tribal Water Right.

The Tribe shall adopt appropriate regulations to ensure that use of the Tribal Water Right is not wasteful and does not degrade water quality.

F. Transfer of Tribal Water Right.

The Tribe shall not transfer water naturally arising in Rosebud Creek or its tributaries for use off the Reservation. The Tribe may transfer any other part of the Tribal Water Right for use on or off the Reservation pursuant to the terms of this Compact. This paragraph shall not affect the right of the Tribe to enter into a deferral agreement regarding Rosebud Creek water pursuant to Section G. of this Article.

G. Deferral Agreements.

After the ratification date, the Tribe may enter into an agreement with any person who is exercising or proposing to exercise a right under state law to use surface water off the Reservation, which agreement protects the person's right from any exercise of the Tribal Water Right; provided, that:

1. Before use of such water, the person shall have complied with all applicable state laws concerning the acquisition of a water right;
2. Subsequent to acquisition of the state water right, regulation of its use shall be subject to state law;
3. The amount of water subject to the agreement shall be deducted from the amount of water available for depletion by the Tribe in the basin from which the water is being diverted; and
4. The agreement shall not permanently alienate the Tribal Water Right or any part thereof.

H. Effect of Non-Use of Tribal Water Right.

Non-use of any part of the Tribal Water Right shall not constitute a relinquishment, forfeiture or abandonment of the Right.

I. Tribal Water Right to be Held in Trust.

The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribe.

Article III

Administration of Water Rights

A. Tribal Administration.

1. Except as otherwise provided in this Compact, the use of the Tribal Water Right shall be administered by the Tribe, and the Tribe has the final and exclusive jurisdiction to resolve all disputes between users of the Tribal Water Right. Administration and enforcement of the Tribal Water Right shall be pursuant to a water code, which shall be developed and adopted by the Tribe and submitted for approval to the Secretary of the Interior within one year after ratification of this Compact. Pending the adoption and approval of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.
2. Within six months after the Tribal water code takes effect, the Tribe shall provide the State with notice of each use of the Tribal Water Right, including uses in existence as of the ratification date of this Compact and those established since that time, which shall show:
 - a. The person authorized to make the diversion;
 - b. The amount of water authorized to be diverted annually;
 - c. The amount of water authorized for annual consumption;
 - d. The point of diversion;
 - e. The period of use;
 - f. The place of use;
 - g. The uses for which the water may be diverted; and
 - h. The relative priority of the use as against other uses of the Tribal Water Right.
3. The Tribe shall thereafter notify the State within sixty days after the end of each quarter year of all new uses of surface and groundwater authorized by the Tribe during the preceding quarter year and of all new uses of the Tribal Water Right actually commenced during that quarter year. The notice shall be in the same format as that prescribed in Section A.2. of this Article.
4. The Tribe shall provide the State with not less than 180-days written notice prior to the start of construction of any project to divert any portion of the Tribal Water Right from the Big Horn River or the Big Horn Reservoir for use on the Reservation, or from the Tongue River or the Tongue River Reservoir for use on the Reservation in the Rosebud Creek basin. The notice shall describe: any diversion, conveyance and storage facilities; the amounts of water to be diverted and consumed; and the purpose, place, and period of the proposed use. Diversion or use of water from such project may be made only after all permits, certificates, variances or other authorizations described in paragraph B.3. of this Article have been obtained. With respect to any such project or diversion, the State or any affected person may seek such remedies as may be available under federal, state, or tribal law, and nothing in this Compact shall be construed to affect the rights of any party under such law.

B. Off-Reservation Uses of the Tribal Water Right.

1. Off-Reservation Uses. Any use of the Tribal Water Right involving a point of diversion or place of use located off the Reservation shall be considered an off-Reservation use; provided, that releases or diversions from Big Horn Reservoir or Tongue River Reservoir for use on the Reservation shall not be considered off-Reservation uses.
2. Subsequent Federal or State Law. All off-Reservation uses of the Tribal Water Right shall comply with the requirements set forth in Section B. of this Article until such time as the statutory or common law of the United States or the State of Montana establishes that off-Reservation uses of Indian water rights may occur without regard to state law.

3. Diversions Facilities.

With respect to diversion or transportation facilities located off the Reservation, the Tribe or persons using the Tribal Water Right shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of the Tribal Water Right may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.

4. Off-Reservation Uses in Tongue and Rosebud Basins.

- a. The Tribe shall provide the State with not less than 180-days advance written notice of any off-Reservation use, transfer, or change of use of the Tribal Water Right:
 - i. Within the Tongue River basin, or
 - ii. Utilizing Tongue River water off-Reservation in the Rosebud Creek basin.
- b. The notice shall include sufficient documentation to demonstrate that:
 - i. The proposed use of water is a beneficial use as defined by Montana law in effect at that time;
 - ii. The proposed means of diversion, and the construction and operation of the diversion works are adequate;
 - iii. The proposed use, transfer, or change of use will not adversely affect, except with the consent of the owner of such right:
 - A. Any water right arising under the laws of the United States, or
 - B. Any right to the use of water established pursuant to the laws of the State; except that, if the portion of the Tribal Water Right that is the subject of the proposed off-Reservation use, transfer or change of use is the storage and exchange right set forth in Article II.A.2.b. of this Compact, the Tribe need only demonstrate that Miles City Decree rights will not be adversely affected by such use, transfer, or change of use.
 - iv. The proposed use, transfer, or change of use does not cause any unreasonable significant adverse environmental impact; and

- v. Proposed uses, transfers, or changes in use in excess of 4,000 acre-feet per year and 5.5 cubic feet per second of water will not:
 - A. Substantially impair the quality of water for existing uses in the source of water from which the diversion is made;
 - B. Be made where low quality water which can economically be used is legally and physically available to the Tribe for the proposed use;
 - C. Create or substantially contribute to saline seep; or
 - D. Substantially injure fish or wildlife populations in the source of water from which the diversion is made.
- c. A proposed use, transfer or change of use of the Tribal Water Right pursuant to Section B.4. of this Article may be challenged:
 - i. Within 30 days after the expiration of the notice period provided in Section B.4.a. of this Article;
 - ii. In a court of competent jurisdiction; and
 - iii. By the State or by a person whose rights are adversely affected by the proposed use, transfer, or change of use.

In any such case, the Tribe shall have the burden of proving by a preponderance of the evidence that it has satisfied the requirements of Section B.4.b. of this Article. A Tribal notice that conforms to the requirements of Section B.4.b. of this Article shall be prima facie evidence of its contents.

5. Off-Reservation Uses Outside Tongue and Rosebud Basins.

Except as provided in Section B.4. of this Article, no person may initiate an off-Reservation use, transfer, or change of use of the Tribal Water Right without first applying for and receiving authorization for the use, transfer, or change of use pursuant to Montana law in effect at the time of the application.

C. State Administration.

1. The State shall administer all rights to the use of surface water and groundwater within the Reservation which are not a part of the Tribal Water Right. The State shall have the final and exclusive jurisdiction to resolve all disputes between users of rights established under state law.

2. Within one year after ratification of this Compact, the State shall notify the Tribe of all existing uses of surface and groundwater for which a permit has been issued by the State in the Tongue River or Rosebud Creek basins. The notice shall state:

- a. The person authorized to make the diversion;
- b. The amount of water authorized to be diverted annually;
- c. The amount of water authorized for annual consumption;
- d. The point of diversion;
- e. The period of use;
- f. The place of use;
- g. The uses for which the water may be diverted; and
- h. The priority date of the use.

3. The State shall notify the Tribe within sixty days after the end of each quarter year of all new uses of surface and groundwater for which a permit has been issued by the State in the Tongue River or Rosebud Creek basins during the preceding quarter year and of all new uses of water actually commenced pursuant to the laws of the State

during that quarter year on each of these sources. The notice shall be in the same format as that prescribed in Section C.2. of this Article.

D. Operation of Tongue River Reservoir.

1. To provide for Tongue River Reservoir operation procedures that are consistent with the purposes of this Compact, a reservoir operation plan shall be developed by a five-member advisory committee. The committee shall have representatives from the State of Montana, the Tongue River Water Users Association, the Northern Cheyenne Tribe, the United States, and a fifth member to be selected by the other four. The advisory committee shall annually agree upon a reservoir operation schedule setting forth proposed uses of storage and direct flow for the year. The Department of Natural Resources and Conservation or its successor shall thereupon be responsible, consistent with the terms of this Compact and other applicable law, for the daily operation of the Reservoir and for implementation of the reservoir operation plan.
2. The reservoir operation plan shall provide for the operation of the project for fish and wildlife purposes depending on the availability of water on an annual basis. This provision shall not create an operational preference for fish and wildlife purposes relative to other project purposes.
3. The Secretary of the Interior shall pay annually to the State an amount to cover the proportionate share of the annual operation, maintenance and replacement (OM&R) costs for the Tongue River Dam allocable to the Tribe's stored water in the Reservoir.

Article IV

Northern Cheyenne-Montana Compact Board

A. Establishment of Board.

There is hereby established the Northern Cheyenne-Montana Compact Board. The Board shall consist of three members: one member appointed by the Governor of the State of Montana; one member appointed by the Northern Cheyenne Tribal Council; and one member selected by the other two members. All members shall be appointed within six months of the ratification date of this Compact and within thirty days of the date any vacancy occurs. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

B. Membership.

Should the two appointed members fail to agree on the selection of a third member within sixty days of the ratification date of this Compact or within thirty days after any vacancy occurs, the following procedure shall be utilized:

1. Within five days each member shall nominate three persons to serve as a member of the Board;

2. Within fifteen days thereafter each member shall reject two of the persons nominated by the other member;
3. The chief judge of the United States District Court for the District of Montana shall select the third member of the Board from the remaining two nominees. If the chief judge declines for any reason to select the third member, the chief justice of the Montana Supreme Court shall make the selection from the remaining two nominees.

C. Quorum and Vote Required.

Two members of the Board shall constitute a quorum if reasonable notice has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the parties to this Compact.

D. Jurisdiction of the Board.

The Northern Cheyenne-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water between users of the Tribal Water Right on the one hand and users of state water rights on the other hand. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact, and disputes concerning the operation of the Tongue River Reservoir as it affects the Tribal Water Right.

E. Powers and Duties.

The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence. The Tribe, the State, and the United States shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe, the State, or the United States for enforcing a subpoena issued by its courts in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy based on the evidence, and grant any appropriate relief, except money damages. All decisions of the Board shall be by majority and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All records of the Board shall be open to public inspection except for privileged information.

F. Review and Enforcement of Board Decisions.

1. Decisions by the Board shall be effective immediately, unless stayed for a period of time prescribed by the Board. Any party before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty days of such decision. The notice of appeal shall be filed with the Board and served personally or by registered mail upon the Tribe, the State, the United States and all parties to the proceeding before the Board, and all such persons shall thereafter have the right to participate in the appeal.
2. In any appeal, the Board's decision shall be presumed to be valid, and may be vacated by the court only on one of the following grounds:
 - a. The decision is not supported by substantial evidence;
 - b. The decision was procured by corruption, fraud or undue means;

- c. There was evident partiality or corruption by the Board or by any member;
 - d. The Board was guilty of misconduct in refusing to hear the dispute, or in refusing to hear evidence pertinent and material to the controversy, or any other clear misbehavior by which the rights of any party have been substantially prejudiced;
 - e. The Board exceeded its authority under the terms of this Compact; or
 - f. The decision is contrary to law.
3. Unless an appeal is timely filed as provided in paragraph F.1. of this Article, any decision of the Board shall be confirmed or enforced by any court of competent jurisdiction on petition of the Board, the Tribe, the State, the United States, or any party before the Board in the proceeding in which the decision was made.
 4. A court of competent jurisdiction in which a timely appeal is filed pursuant to paragraph F.1. of this Article, or in which a petition to confirm or enforce is filed pursuant to paragraph F.3. of this Article, may order such temporary or permanent relief as it considers just and proper.
 5. Any appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to paragraph F.1. of this Article, or in which a petition to confirm or enforce is filed pursuant to paragraph F.3. of this Article, in the manner and to the same extent as from orders or judgments of the court in a civil action.
 6. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board.

G. Waiver of Immunity.

The Tribe, the United States and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Northern Cheyenne-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe, the United States, or the State shall not extend to any action for money damages including costs and attorneys' fees.

Article V

Finality and Effectiveness of Compact

A. Ratification and Effectiveness of Compact.

1. Upon ratification by the Northern Cheyenne Tribal Council and the Legislature of the State of Montana, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of the parties; provided, that except as set forth in Section A.2. of this Article, this Compact shall not become effective until ratification by the United States Congress and the completion date occurs, notwithstanding the provisions of Section 85-2-702(2), MCA. If the completion date does not occur on or before December 31, 1997, or any later date agreed to in writing by the parties, this Compact, including all provisions that become effective on the ratification date, shall become null and void without

further action by any party. Notwithstanding the provisions of Section 85-2-702(3), MCA, this Compact shall not be included in any preliminary decree or final decree in any State water court proceeding unless and until this Compact becomes effective as set forth in this Article.

2. As between the State and the Tribe, all of the provisions of this Compact shall become effective upon the ratification date except insofar as they:
 - a. Quantify or provide for the administration of the Tongue River Tribal Water Right;
 - b. Provide for the management or operation of the Tongue River Reservoir;
or
 - c. Require Congressional authorization.

All of the provisions that do not become effective upon the ratification date shall become effective on the completion date, unless Congress provides otherwise.

B. Incorporation Into Decrees and Disposition of Federal Suits.

Within sixty days after the completion date, the parties shall petition for incorporation of this Compact into a decree in any appropriate State court proceeding commenced in accordance with 43 U.S.C. 666. Upon the issuance of a final decree by the State water court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall within thirty days execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in Northern Cheyenne Tribe of the Northern Cheyenne Reservation v. Adsit, et al., No. 75-6-BLG (D. Mont.); United States v. Big Horn Low Line Canal Company, et al., No. 75-34-BLG (D. Mont.); and United States v. Tongue River Water Users Association, et al., No. 75-20-BLG (D. Mont.), (hereinafter collectively referred to as "the federal suits"), with prejudice. This Compact shall be filed as a consent decree in the federal suits only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgment binding upon the State of Montana that the State courts lack jurisdiction over, or that the State court proceedings are inadequate to adjudicate, some or all of the water rights asserted in the federal suits.

Article VI

General Provisions

- A. Nothing in this Compact shall be so construed or interpreted:
 1. To establish the nature, extent, or manner of administration of water rights of any Indian reservation or other federal reservation other than the Northern Cheyenne Reservation;
 2. To preclude the acquisition or exercise of a right to the use of water by the Tribe or any individual Indian outside the Reservation by purchase of such right or by acquisition of land, or by application to the State;
 3. To preclude the acquisition or exercise of an appropriative right to the use of water under state law by the Tribe or any individual Indian within the Reservation:
 - a. By purchase of such right or by purchase of land; provided, that water rights acquired by such purchase after the ratification date of this Compact

shall be in addition to and shall become part of the Tribal Water Right and shall be governed by this Compact; or

- b. By application to the State. Except for applications for non-alluvial groundwater pursuant to Article II.A.4.b., and applications for storage appropriations authorized by paragraph A.8. of this Article, any such application shall not be granted by the State until the Tribal Water Right in the basin where the diversion that is the subject of the application is located has been fully utilized;
 4. To determine the relative rights inter sese of persons using water under the authority of the State or the Tribe;
 5. To limit in any way the rights of the parties or any other person to litigate any issues or questions not resolved by this Compact;
 6. To authorize the taking of a water right which is vested under state or federal law;
 7. To create or deny substantive rights through headings or captions used in this Compact;
 8. To preclude or to discourage the Tribe from establishing the right to, or contracting for, water from any further enlargements of the Tongue River Dam, or from any future storage facilities that may be built within the Tongue River or Rosebud Creek basins, or in any other water basins;
 9. To address or prejudge whether, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State; or
 10. To alter or amend any provisions of the Yellowstone River Compact, Act of October 30, 1951, ch. 629, 65 Stat. 663 (1951).
 11. To prohibit the Tribe or the United States from challenging any claims to water in any general adjudication of the Tongue River or Rosebud Creek basins.
- B. The parties expressly reserve all rights not granted, recognized or relinquished in this Compact.
- C. The Secretary of the Interior shall comply with all aspects of the National Environmental Policy Act, 42 U.S.C. 4331-4335, and the Endangered Species Act, 16 U.S.C. 1531, et seq., and other applicable environmental acts and regulations in implementing this Compact.

Article VII

Tribal Relinquishment of Other Water Claims

A. With the exception of the Tribe's claim to non-alluvial groundwater in paragraph B. of this Article and any rights to water which may exist with respect to land held by the Tribe or a Tribal member outside the present Reservation, the Tribe and the United States as trustee for the Tribe hereby relinquish forever any and all claims, in existence on the ratification date of this Compact, to water within the State of Montana. The relinquishment includes, but is not limited to, any claim for water derived from aboriginal use of land or water, any Indian treaties, any Act of Congress, and any executive act of the United States.

B. The parties intend that the water right as confirmed to the Tribe in Article II is in full satisfaction of its federal reserved water right based on Winters v. United States, 207 U.S. 564 (1908). Notwithstanding the provisions of paragraph A. of this Article, the Tribe retains the right to assert a claim that it has a right, not based on the federal reserved water rights doctrine, to the use of any non-alluvial groundwater underlying the Reservation. In any such action, the Tribe shall be estopped to assert that its right to non-alluvial groundwater is a federal reserved water right, that the Tribal Water Right confirmed in Article II is inadequate to satisfy the purposes for which the Reservation was created, or from collaterally attacking this Compact in any manner. Any right to non-alluvial groundwater established by the Tribe under this paragraph is not subject to this Compact. Nothing in this Compact shall be construed to waive any defenses of the State or any water user to a Tribal claim for non-alluvial groundwater.

Article VIII

Binding Effect

Upon the effectiveness of any provision of this Compact, its terms will be binding:

A. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification, or authorization is to be determined by Montana law;

B. Upon the Tribe and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe, or any right arising under tribal law; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification or authorization is to be determined by tribal law; and

C. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided, that for purposes of consent, ratification, or authorization, the validity of consent, ratification or authorization is to be determined by federal law, and further provided that nothing contained in this Compact affects any claim of any Indian tribe, or of persons claiming water through that tribe, or the right of any Indian tribe, or persons claiming water through that tribe, to pursue a claim to any water from any source based on any theory of right or entitlement.

Article IX

Contributions to Settlement

A. The United States agrees to provide \$31,500,000 to repair the Tongue River Dam and spillway and to raise the Tongue River Dam spillway crest to secure the Tribe's existing contract water under Article II.A.2.e. and to provide additional storage capacity to secure the Tribe's storage and exchange water right under Article II.A.2.b.

B. The State agrees to provide \$16,500,000 to repair the Tongue River Dam and spillway with the understanding that the State's portion will be paid through a

combination of cash and federal loans, in proportions to be agreed upon by the parties.

C. The Provisions of this Article are subject to the separate Letter of Agreement dated April 17, 1991, between the State and the United States explaining in detail the allocation of the costs of the project. The State and the United States will enter into a further agreement providing for the expenditure of the contributions and loans of the United States hereunder.

D. The United States agrees to provide \$10,000,000 for a Tribal Development Fund payable in equal amounts of \$2,000,000 each fiscal year for five years. These funds shall not be distributed on a per capita basis to members of the Tribe and shall only be used for land and natural resources administration, planning and development within the Northern Cheyenne Reservation or for land acquisition by the Tribe within the Northern Cheyenne Reservation.

E. Federal financial contributions to paragraph A of this Article will be budgeted for, subject to the availability of funds, by October 1 of the year following the ratification of this Compact by Congress and the authorization by Congress of the Tongue River Dam project. Federal financial contributions to paragraph D of this Article will be budgeted for, subject to the availability of funds, by October 1 of the second year following the ratification of this Compact by Congress and the authorization by Congress of the Tongue River Dam project.

F. The Tribe and the United States agree to pursue through the normal Bureau of Indian Affairs and Department of the Interior budget process such additional sums as are necessary to implement the terms of this Compact, to develop a Tribal water code, and to provide increased agricultural development on the Reservation. The State agrees to support the efforts of the Tribe and the United States in this regard.

Article X

Legislation

The Parties agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks; provided, that no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Northern Cheyenne Tribe, and the United States have signed this Compact on the 11th day of June, 1991.

FOR THE STATE OF MONTANA
MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION

.....
Jack E. Galt, Chairman

.....
Gene J. Etchart

.....
Chris D. Tweeten, Vice Chairman

.....
Dennis Iverson

.....
Carl M. Davis

.....
Senator Joseph P. Mazurek

.....
Everett C. Elliott

.....
Gordon McOmber

FOR THE NORTHERN CHEYENNE TRIBE

.....
Gary L. Spaeth

.....
FOR THE SECRETARY OF THE
INTERIOR

.....
FOR THE UNITED STATES
ATTORNEY GENERAL

History: En. Sec. 1, Ch. 812, L. 1991.

85-20-302. Consent to federal act and modification of compact. (1) Pursuant to Article V, section A.1., of the Northern Cheyenne-Montana Compact, section 85-20-301, MCA, the Legislature hereby gives its consent to, ratifies, and adopts the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Public Law 102-374, 106 Stat. 1186). This consent includes:

- (a) any amendment to the act that clarifies that environmental compliance costs for the Tongue River Dam Project are the responsibility of the federal government;
or
 - (b) any amendment to section 4(c) of the act that provides that, except for the authorizations contained in subsections 7(b)(1)(A), 7(b)(1)(B), and 7(e), the authorization of appropriations in the act are not effective until such time as the Montana water court enters and approves a decree as provided in subsection 4(d) of the act.
- (2) The provisions of the compact that are inconsistent with the federal act or with the amendments specified in subsections (1)(a) and (1)(b) of this section shall be deemed to be modified to the extent necessary to conform therewith.

History: En. Sec. 1, Ch. 7, Sp. L. November 1993.

**NATIONAL PARK SERVICE
– MONTANA COMPACT**

National Park Service
– Montana Compact



Title 85 Water Use
Chapter 20 Water Compacts

85-20-401. United States National Park Service-Montana compact ratified. The compact entered into by the state of Montana and the United States National Park Service and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on May 12, 1993, is ratified. The compact is as follows:

WATER RIGHTS COMPACT STATE OF MONTANA UNITED STATES OF
AMERICA, NATIONAL PARK SERVICE

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 water for certain lands administered by the National Park Service within the State of Montana at the time of the effective date of this Compact.

A Compact between the State of Montana and the United States of America regarding water rights for National Park Service lands was executed January 31, 1994. The parties were unable to finalize agreement on quantification of the water rights for Bighorn Canyon National Recreation Area and the Little Bighorn Battlefield National Monument prior to the completion of the Compact executed January 31, 1994. This Compact is the final agreement regarding the water rights attributable to these two NPS Units.

RECITALS

WHEREAS, in 1979 the United States filed in the United States District Court for the District of Montana several actions to adjudicate, *inter alia*, its rights to water with respect to Glacier National Park, *see United States v. Aageson*, No. CV-79-21-GF; *United States v. Abell*, No. CV-79-33-M; and *United States v. AMS Ranch, Inc.*, No. CV-79-22-GF.

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, 85-2-703, MCA, provides that the state 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 existing National Park Service units in the State of Montana, including those reserved water rights necessary to preserve Glacier National Park and Yellowstone National Park unimpaired for future generations;

WHEREAS, the United States, in quantifying its reserved water rights recognizes the need to accommodate the interests of the state and its citizens by providing for the development and use of water in the vicinity of the Park units to the extent that it is possible to do so without materially affecting the rights and interests of the United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1968);

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

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

ARTICLE I DEFINITIONS

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

(1) “Abstract” means the copy of the document entitled “Abstract of National Park Service Water Rights” referenced in this Compact as Appendix 1 [and] the copy of the document entitled “Abstract of National Park Service Water Rights - BCNRA and LBBNM” referenced in this Compact as Appendix 2.

(2) “Big Hole National Battlefield” or “BHNB” means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by Executive Order No. 1216 of June 23, 1910; Presidential Proclamation No. 2339 of June 29, 1939, 53 Stat. 2544; and Act of May 17, 1963, 77 Stat. 18.

(3) “Bighorn Canyon National Recreation Area” or “BCNRA” means those lands located in Montana that were acquired pursuant to, or designated as such by Act of October 15, 1966, 80 Stat. 913.

(4) “Bureau” means the Montana Bureau of Mines and Geology or its successor.

(5) “Category 1 stream” means a stream that headwaters on the reserved land administered by the National Park Service.

(6) “Category 1a stream” means a stream that headwaters on the reserved land administered by the National Park Service and which, in part, carries water that drains non-federal land within the boundaries of the same reserved land.

(7) “Category 2 stream” means a stream that headwaters in a Wilderness Area in Montana outside the respective Park unit which flows into the reserved land administered by the National Park Service, and which is not the source for a consumptive use water right recognized under state law on the effective date of this Compact and drains a hydrologic basin that contains only federal land.

(8) “Category 3 stream” means a stream that headwaters in Montana outside the reserved land administered by the National Park Service that flows into the reserved land and is the source for consumptive use water rights recognized under state law on the effective date of this Compact.

(9) “Category 4 stream” means a stream that is treated individually due to special circumstances.

(10) “Consumptive use” means use of surface water not considered a non-consumptive use under (26) and use of groundwater which is shown to be hydrologically connected to surface water pursuant to Article II.

- (a) “Current consumptive use”, when referring to water rights recognized under state law only, means all consumptive use water rights recognized under state law with a priority date before January 1, 1993 [, with respect to BHNB, GNP, or YNP and] on or before the effective date of the compact [with respect to BCNRA and LBBNM].
- (b) “Future consumptive use”, when referring to a water right recognized under state law only, means a consumptive use water right recognized under state law with a priority date on or after January 1, 1993 [, with respect to BHNB, GNP, or YNP and] after the effective date of the compact [with respect to BCNRA and LBBNM].
- (11) “Credible information” means credible evidence sufficient to support a prima facie basis for the theory asserted.
- (12) “Crow Tribal Water Rights” means those senior reserved water rights and any aboriginal water rights held by the United States in trust for the Crow Tribe which are being quantified as part of the general adjudication of water rights in Montana.
- (13) “Curtailement” means action pursuant to this Compact to reduce or shut-off diversions by a junior water user to satisfy the senior instream flow right of the National Park Service.
- (14) “Department” means the Montana Department of Natural Resources and Conservation or its successor.
- (15) “Effective date of this Compact” means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is later.
- (16) “Glacier National Park” or “GNP” means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by the Act of May 11, 1910, 36 Stat. 354; Act of February 27, 1915, 38 Stat. 814; and Act of April 11, 1972, 86 Stat. 120.
- (17) “Grant Kohrs Ranch National Historic Site” means those lands acquired by the United States and designated as such pursuant to Public Law 92-406, August 25, 1972.
- (18) “Groundwater” means water that is beneath the ground surface.
- (19) (a) “Hydrologically connected” for the purposes of Articles II and III, means groundwater that is connected to surface water such that appropriation at the proposed rate will cause a calculable reduction in surface water flow. A “calculable reduction in surface water flow” means a theoretical reduction based on credible information as opposed to a measured reduction.
- (b) “Hydrologically connected” for the purposes of Article IV, means groundwater that is considered to be connected to the hydrothermal system within the reserved land of Yellowstone National Park based on scientific evidence according to the procedures in Article IV.
- (20) “Hydrothermal system” means the groundwater system, including cold water recharge, transmission and warm water discharge that is hydrologically connected to the hydrothermal features within the reserved land of Yellowstone National Park.

(21) “Hydrothermal discharge water” means groundwater with a temperature in excess of 59 degrees Fahrenheit that is hydrologically connected to the hydrothermal system within the reserved land of Yellowstone National Park.

(22) “Hydrothermal feature” means a surface manifestation of a hydrothermal system, including but not limited to: hot springs, geysers, mud pots, and fumaroles.

(23) “Instream flow” means the water that the parties agree shall remain in the stream in satisfaction of the United States’ reserved water right for the purposes of the reserved land.

(24) “Little Bighorn Battlefield National Monument” or “LBBNM” means those lands located in Montana that were acquired pursuant to or withdrawn and reserved by Presidential Proclamation of December 7, 1886, and by Act of March 22, 1946, 60 Stat. 59.

(25) “Nez Perce National Historical Park” means those lands in Montana acquired and added to the Nez Perce National Historical Park by Congress on October 30, 1992, pursuant to Public Law 102-576.

(26) (a) “Non-consumptive use” when applied to a mining or hydropower use for which a water right is recognized under state law with a priority date on or after January 1, 1993, [with respect to BHNB, GNP, or YNP and] after the effective date of this compact [with respect to BCNRA and LBBNM], means an appropriation that does not cause a net loss in the surface source of supply, and where substantially all of the diverted water becomes return flow with little or no delay between the time of diversion and the time of return, and without adverse effect on the quantity or quality of water necessary to fulfill the purposes of the reserved land.

(b) “Non-consumptive use” when applied to a water right recognized under state law other than a mining or hydropower use with a priority date on or after January 1, 1993, [with respect to BHNB, GNP, or YNP and] after the effective date of this compact [with respect to BCNRA and LBBNM], or a water right recognized under state law with a priority date before January 1, 1993, [with respect to BHNB, GNP, or YNP and] on or before the effective date of this compact [with respect to BCNRA and LBBNM], means a water right considered to be non-consumptive by the decree, permit or law authorizing the use.

(27) “Parkman Sandstone” means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) “Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana,” USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(28) “Parties” means the State of Montana and the United States.

(29) “Person” means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(30) “Quaternary Alluvium” means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) “Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana,” USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(31) “Quaternary Terrace Deposits” means the unit as defined in Moulder, E.A., Klug, M.F., Morris, D.A., and Swenson, F.A. (1960) “Geology and Ground-Water Resources of the Lower Little Bighorn River Valley Big Horn County, Montana,” USGS Water Supply Paper 1487, where it occurs along the Little Bighorn River and its tributaries between the Montana-Wyoming line and the Little Bighorn Battlefield National Monument.

(32) “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 state recognition of a federal or tribal reserved water right.

(33) “Return flow” means the portion of water diverted from a source that is returned to the same source, at or near the point of diversion.

(34) “Scientific evidence” means geologic, geophysical, geochemical and hydrologic information.

(35) “State” means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, “state” means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

(36) “Technical Oversight Committee” or “TOC” means the scientific committee established by Article IV of this Compact.

(37) “Tributary to” means surface water that originates in the same hydrologic basin or subbasin as the stream referred to and which contributes water to the same stream.

(38) “Unincorporated municipality” includes but is not limited to a rural special improvement district or any other entity that serves community water needs.

(39) “United States” means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, “United States” means the Secretary of the Department of the Interior, or his or her designees.

(40) “Working Group Report” means the Abridged and Unabridged reports by Custer, S., et. al. dated January 5, 1993, and titled Recommended Boundary for Controlled Groundwater Area in Montana Near Yellowstone National Park and accompanying maps.

(41) “Yellowstone National Park” or “YNP” means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved for Yellowstone National Park by the Act of March 1, 1872, 17 Stat. 32; Act of May 26, 1926, 44 Stat. 655; Act of March 1, 1929, 45 Stat. 1435; Act of April 19, 1930, 46 Stat. 220; and Proclamation No. 2013 of October 20, 1932, 47 Stat. 2537.

ARTICLE II IMPLEMENTATION

A. Abstract:

Concurrent with this Compact, the parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States’ water rights [for Big Hole National Battlefield, Glacier National Park, and Yellowstone National Park, and] prepared an Abstract, a copy of which is referenced as Appendix 2, which is a specific listing of all of the United States’ water rights for Bighorn Canyon

National Recreation Area and the Little Bighorn Battlefield National Monument that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234 (4) and (7), MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles II and III of this Compact, the parties intend that the quantification in accordance with Articles II and III of this Compact shall be reflected in a final decree.

B. Method of Allocation of Water on Category 3 and 4 Streams and of Determining Rights Subject to Curtailment on the Little Bighorn River and its Tributaries:

This section explains the method of quantification of the reserved instream flow water rights of the United States for Category 3 and 4 streams and the method of calculating the quantity of consumptive use pursuant to state law within a basin to which the United States agrees to subordinate its reserved instream flow water right. The method set forth in this section shall be used to determine whether the limits on consumptive use pursuant to state law set forth in Article III have been reached and whether a water right on the Little Bighorn River and its tributaries upstream from the LBBNM shall be subject to curtailment to satisfy the reserved instream flow water right for LBBNM. Addition to the Abstract of a reserved instream flow water right on a stream inadvertently omitted by the parties or reclassification of a stream due to a water right recognized under state law and inadvertently omitted by the parties shall be consistent with this section and shall not be deemed a modification of this Compact.

1. Allocation to Instream Flow:

With the exception of the reserved instream flow rights for LBBNM, the allocation of water to instream flow on Category 3 and 4 streams is arrived at using the following method as explained in general terms:

- a. The United States' reserved water right for instream flow includes the entire flow of that stream within the State of Montana at the point where the stream flows over or forms the boundary of the specified reserved land after: (1) all consumptive use water rights of any agency of the United States recognized under federal or state law are satisfied; and (2) subordination of the reserved water right for instream flow to water rights recognized under state law as set forth in and limited by Article III and more specifically in the Abstract.
- b. Actual use of water in Wyoming or Canada shall not diminish the quantity of water designated for consumptive use pursuant to state law as set forth in Article III.

2. Method of Calculation of Consumptive Use Rights Recognized Under State Law:

To determine whether water is available for appropriation for consumptive use pursuant to state law on Category 3 and 4 streams, and for determining whether the limit on subordination of the United States' water rights to consumptive uses has been reached, the following provisions shall apply:

- a. Tributary Water: The calculation of total consumptive use on a Category 3 or 4 stream shall include all current and future consumptive use, recognized under state law, of surface water tributary to the stream to the point it enters the reserved land. The limits on total consumptive use on a Category 4 stream that forms the boundary of the reserved land shall include all current and future consumptive use recognized under state law, of surface water tributary to the stream to the most downstream point that the stream forms the boundary of the reserved land.
- b. Groundwater: [The following sections i., ii., and iii. shall apply to BHNB, GNP, and YNP.] The following sections iii. and iv. shall apply to BCNRA. The following sections iii. and v. shall apply to LBBNM.
 - i. An exemption from state permit requirements for wells or developed springs shall not apply to appropriations within a basin tributary to the reserved portion of a Category 3 or 4 stream after the effective date of this Compact, provided that the registration process set forth in Article II, section B.2.b.ii.(3)(b) shall apply to applications for a permit for a well of 35 gpm or less, not to exceed 10 acre-feet per year. In addition, all groundwater appropriations within the Yellowstone Controlled Groundwater Area shall be subject to Article IV.
 - ii. The calculation of total consumptive use on a Category 3 or 4 stream shall include appropriations of groundwater as follows:
 - (1) Pre-January 1, 1993: An appropriation of groundwater with a priority date before January 1, 1993, shall not be included in the calculation of total consumptive use.
 - (2) January 1, 1993 - Effective Date: An appropriation of groundwater with a priority date on or after January 1, 1993, but before the effective date of this Compact shall be included in the calculation of total consumptive use if the following procedural requirements are met and the appropriation is found to be hydrologically connected to surface water tributary to the reserved portion of a Category 3 or 4 stream.
 - (a) Within 120 days after the effective date of this Compact, the Department shall provide the United States with notice of all groundwater appropriations in drainages tributary to the reserved portion of a Category 3 or 4 stream that, according to the records of the Department, have a priority date on or after January 1, 1993 and before the effective date of this Compact.
 - (b) Up to 120 days following mailing of such notice the United States shall provide the Department with credible information that a groundwater appropriation included in the notice is hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.
 - (c) Within 60 days of receipt of such information, the Department shall issue an order stating that (1) the appropriation is hydrologically connected to surface water tributary to the Category 3 or 4 stream;

and (2) the action to be taken with respect to the appropriation. The order is effective within 60 days of issuance unless the appropriator enters an appearance to contest the order. If credible information of hydrologic connection has not been provided by the United States, the Department shall issue an order stating its determination and reasons therefore.

- (d) If the appropriator enters an appearance to contest the order, the Department shall (1) issue an order staying use of the appropriation pending a final decision on the matter by the Department only if the limits on total consumptive use for that drainage have been reached; (2) set a date for a hearing; and (3) proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated, provided that the burden of proving hydrologic connection shall be as set forth in Article II, section B.2.b.[ii.](3). The Department shall, whenever possible, consolidate any proceedings on the groundwater application pursuant to Article IV with any proceeding made necessary by this Article.
- (3) Post-Effective Date: An appropriation of groundwater recognized under state law with a priority date after the effective date of this Compact shall be included in the calculation of total consumptive use if the following conditions apply:
 - (a) Wells in excess of 35 gallons per minute or 10 acre-feet per year: The limit on total consumptive use shall include groundwater appropriation by a well or developed spring with a permit amount in excess of 35 gpm or any well with a volume of use greater than 10 acre-feet per year, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the applicant is able to show by a preponderance of the evidence that the appropriation is not hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.
 - (i) The applicant shall submit credible information, including a report to the Department prepared by a professional qualified in the science of groundwater hydrology verifying that the appropriation is not hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream. If the applicant fails to submit the report, the application shall be considered defective and shall be returned to the applicant for completion as provided by state law.
 - (ii) The Department shall provide notice of the proposed appropriation and a copy of the report to the United States concurrent with notice pursuant [to] 85-2-307, MCA.
 - (iii) Within 60 days of the mailing of notice, the United States shall file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water.

- (iv) The Department shall not exclude the appropriation from the limits on total consumptive use unless the applicant proves by a preponderance of the evidence that the proposed appropriation is not hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream. In doing so the Department shall make a specific finding on the adequacy of the report provided by the applicant.
- (v) If the proposed appropriation is determined not to be hydrologically connected to surface water, or if the limit on consumptive use has not been reached, the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.
- (b) Wells of 35 gallons per minute or less and 10 acre-feet per year or less:
 - (i) An applicant for an appropriation of groundwater of 35 gpm or less, not to exceed 10 acre-feet per year shall register for a permit by filing a form prescribed by the department.
 - (ii) The Department shall provide notice of the registration for a permit to the United States within 30 days of the filing. Within 30 days of the receipt of notice, the United States may file an objection to the application on the basis that the proposed appropriation is of groundwater that is hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.
 - (iii) As long as the limit on consumptive use rights for a Category 3 or 4 stream has not been reached, the calculation of total consumptive use shall not include groundwater appropriations by well or a developed spring of 35 gallons per minute or less that do not exceed 10 acre feet per year unless the United States shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to the reserved portion of a Category 3 or 4 stream. If the United States meets this burden, the Department shall include the appropriation in the calculation of total consumptive use.
 - (iv) After the limit on consumptive use rights has been reached on a particular stream, the necessary showing by the United States' shall be to file an objection and come forward with credible information showing that the proposed appropriation is hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream. If the United States makes such a showing, the Department shall consider the application under the criteria in Article II, section B.2.b.[ii.](3)(b)(v) and (vi).
 - (v) The Department shall not exclude the appropriation from the limits on total consumptive use unless the applicant proves by a preponderance of the evidence that the proposed appropriation is not hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream.

- (vi) If the proposed appropriation is determined not to be hydrologically connected to surface water the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.
- iii. Within 2 years after the effective date of this Compact, the Department, in consultation with the United States, is directed to promulgate rules as may be necessary to implement Article II, section B.2.b. Said rules shall not alter the rights or obligations of the parties hereto.
- iv. The calculation of total future consumptive use on Category 3 or 4 streams at BCNRA shall include appropriations of groundwater as follows:
 - (1) The calculation of total future consumptive use shall not include appropriation of groundwater by means of a well or developed spring with an appropriation of 35 gallons per minute (gpm) or less that does not exceed 10 acre feet per year (afy).
 - (2) The limit on total consumptive use shall not include an appropriation of groundwater by means of a well or developed spring with a permit amount in excess of 35 gpm or with a volume of use greater than 10 afy, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the United States shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to surface water tributary to the reserved portion of a Category 3 or 4 stream. If the United States meets this burden, the Department shall include the appropriation in the calculation of total consumptive use.
 - (a) The Department shall provide notice of the proposed appropriation to the United States concurrent with notice pursuant to 85-2-307, MCA.
 - (b) Within 60 days of the mailing of notice, the United States may file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water.
 - (c) If the proposed appropriation is determined not to be hydrologically connected to surface water, or if the limit on consumptive use has not been reached, the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.
- v. Determination of whether an appropriation of groundwater after the effective date of the this Compact shall be subject to a curtailment to satisfy the instream flow water right at LBBNM shall be made as follows:
 - (1) Groundwater appropriations subject to curtailment shall not include an appropriation of groundwater for stock or domestic purposes by means of a well or developed spring with an appropriation of 35 gpm or less that does not exceed 10 afy.
 - (2) Groundwater appropriations subject to curtailment to satisfy the 51 cfs instream flow water rights for LBBNM shall not include an

appropriation of groundwater by means of a well or developed spring with a permit amount in excess of 35 gpm or with a volume of use greater than 10 afy, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the United States shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to the Little Bighorn River or its tributaries upstream from LBBNM.

- (a) The Department shall provide notice of the proposed appropriation to the United States concurrent with notice pursuant to 85-2-307, MCA.
 - (b) Within 60 days of the mailing of notice, the United States may file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water.
 - (c) If the proposed appropriation is determined not to be hydrologically connected to surface water the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.
 - (d) If the proposed appropriation is determined to be hydrologically connected to surface water the Department may issue the permit in accordance with state law with notice that the appropriation is subject to curtailment to satisfy the instream flow water right of the LBBNM and the applicant may complete the appropriation.
- (3) Groundwater appropriations subject to curtailment to satisfy the 950 cfs instream flow water rights for LBBNM shall not include an appropriation of groundwater by means of a well or developed spring with a permit amount in excess of 35 gpm or with a volume of use greater than 10 afy, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the United States shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to the Little Bighorn River or its tributaries upstream from LBBNM and the appropriation is completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone.
- (a) The Department shall provide notice of the proposed appropriation to the United States concurrent with notice pursuant to 85-2-307, MCA.
 - (b) Within 60 days of the mailing of notice, the United States may file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water and the proposed appropriation is to be completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone.
 - (c) If the proposed appropriation is determined not to be hydrologically connected to surface water or not to be completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

- (d) If the proposed appropriation is determined to be hydrologically connected to surface water and to be completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone the Department may issue the permit in accordance with state law with notice that the appropriation is subject to curtailment to satisfy the instream flow water right of the LBBNM and the applicant may complete the appropriation.
 - c. Effect of Decree in Calculation of Consumptive Use: Except as provided in Article II, section G., for the purposes of this Compact, the flow rate of a consumptive use shall be as finally decreed in a general adjudication, or recognized under state law until such final decree. At each stage in an adjudication, the allocation to current use as set forth in Article III and more specifically in the Abstract shall be adjusted to reflect the decreed amount.
 - d. Abandonment: When a consumptive use right recognized under state law on a Category 3 or 4 stream is abandoned and such abandonment causes water to become available for appropriation within the limits of the total amounts of water allocated to consumptive use rights recognized under state law established for that stream by Article III, the increment of water below that limit is available for new appropriation in accordance with state law and this Compact. State law governs the issue of whether an abandonment has occurred.
 - e. Non-Consumptive Use: The limit on total consumptive use rights recognized under state law shall not include non-consumptive uses as defined by this Compact.
- C. Subordination of Instream Flow Right:
1. The United States agrees to subordinate its reserved water right for instream flow to consumptive uses calculated according to this Article in a manner that is specific to each stream on which a reserved water right is described. This subordination is set forth for each stream in Article III. Curtailment of uses to which the reserved water rights described in this Compact have not been subordinated during periods of low flow shall proceed on the basis of priority and may be initiated in a state or federal court of competent jurisdiction pursuant to Article II, sections I and K.
 2. The reserved water rights described in this Compact shall not be subordinate to water rights which were forfeited by 85-2-212 [or] 85-2-226 as interpreted in In the Matter of the Adjudication of the Water Rights within the Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), nor shall any claimant of such forfeited water right have standing, based solely on such claimed right, to object to this Compact or any reserved water right described in this Compact, provided that water allocated to future consumptive use pursuant to Article III[B.] of this Compact may be used to satisfy claims filed pursuant to 85-2-221(3), MCA in order of priority.
- D. Location of Instream Flow Rights: The United States' reserved water rights for instream flow apply to the portion of the Categories 1 through 4 streams specified

in this Compact that flow over or form the boundary to reserved land administered by the National Park Service.

E. Change in Instream Flow Right: Except as provided in Article II, section J.2.b., the water rights dedicated to instream flow by this Compact shall not be changed to any other use.

F. Prohibition on Future Impoundments: With the exception of the North Fork of the Big Hole River and its tributaries, no new impoundments may be permitted on the mainstem of a Category 2, 3, or 4 stream upstream of, or along, the portion of the stream for which a water right for instream flow is described in this Compact [and] no new impoundments may be permitted on the mainstem of the Little Bighorn River in Montana upstream of the LBBNM after the effective date of this Compact. This prohibition shall include impoundments that are exempt from permit requirements under state law. Reclamation, repair or rehabilitation of an existing impoundment shall not be considered a new impoundment, provided that without the consent of the United States, reclamation, repair or rehabilitation shall not cause the impoundment to exceed the original constructed capacity of the impoundment. This prohibition shall not apply to impoundments constructed to store a Tribal water right or to implement settlement of litigation regarding quantification of a Tribal water right. On Category 3 and 4 streams for which an instream flow right is described for periods of low flow as set forth in Article III, sections G.3.c. and d., such water right has not been subordinated to a new water right with the method of diversion as an impoundment on the mainstem of the stream with a priority date on or after January 1, 1993, but before the effective date of this Compact.

G. Management to Maximize Use by Montana Water Users of the Water Allocated to Consumptive Use Rights Recognized Under State Law: If any type of conservation or water distribution plan which includes measurement of actual water use, including use pursuant to rights recognized under state law with a priority date before January 1, 1993, [with respect to BHNB, GNP, and YNP and] before the effective date of this compact [with respect to BCNRA and LBBNM], is adopted pursuant to state law, the limits established for consumptive use appropriated pursuant to state law shall apply to actual measured use, not permitted and decreed or claimed rights, provided that records of actual use be made available to the United States on request and provided further that, such plan shall not diminish the reserved water right of the United States as described in this Compact.

H. Basin Closure

1. Except as provided in Article II, section B.2.d., in the following drainage basins upstream of the portion of the stream for which a reserved water right for instream flow is described in this Compact, the Department shall not process or grant an application or registration for a permit to appropriate or to reserve water for future consumptive use as defined by this Compact once the limits on consumptive use tabulated in Article III and set forth more specifically in the Abstract are reached:

Big Hole National Battlefield:

North Fork of the Big Hole River

Big Horn Canyon National Recreation Area:

Dry Head, Deadman, Davis and Layout Creeks

Glacier National Park:

North Fork of the Flathead River

Middle Fork of the Flathead River

Yellowstone National Park:

Bacon Rind, Buffalo, Cottonwood, Coyote, Hellroaring, Little Cottonwood, Snowslide, Crevice, Dry Canyon, Slough, Tepee, and Soda Butte Creeks, and the Gallatin, Madison, and Yellowstone Rivers

2. If a temporary or permanent basin closure is enacted under state law for a drainage basin or subbasin for which future consumptive water use is limited under this Compact, the most restrictive measures applicable to consumptive use of surface or groundwater shall control.

- I. Enforcement of Water Right

1. The United States, the state, or the holder of a water right recognized under state law, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water right described by this Compact, and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state or federal law.
2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by future changes in law, may enter a federal reservation for which a water right is described in this Compact for the purpose of data collection, including the collection of information necessary for water distribution on or off the federal reservation, and to inspect structures for the diversion and measurement of water described in this Compact for consumptive use and for the measurement of instream flow. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.
3. The Department or the Bureau may enter a federal enclave for which a reserved water right is described in this Compact, at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department or Bureau shall notify the United States by certified mail or in person, at least 24 hours prior to entry.
4. The United States may request an investigation by the Department of a diversion located upstream of the reserved portion of a stream for which a reserved water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.
5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact. The United States shall maintain the devices it deems necessary for enforcement of its reserved water right for instream flow described in this Compact. The United States shall install and maintain a rated gauge to measure instream flows in the Little Bighorn River. The gauge on the Little

Bighorn River shall be on the reach of the river which forms the boundary of the LBBNM, the exact location of which shall be at the discretion of the NPS. The NPS shall resurvey the channel cross section as necessary to maintain gauge accuracy, but in any event not less frequently than every three (3) years. The United States may not seek curtailment of junior water uses unless the channel has been resurveyed within three (3) years of the date on which curtailment is sought.

6. A person who violates or refuses or neglects to comply with the provisions of this Compact, an order of the Department pursuant to this Compact, or an action by the Bureau pursuant to this Compact is subject to the penalties provided by state law, including but not limited to, revocation of a permit issued pursuant to Article IV after the effective date of this Compact.
7. For any appeal to state court of an administrative decision authorized by this Compact, venue shall be the First Judicial District in Helena and the review shall be conducted according to the procedures for judicial review of contested cases under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.
8. In any contested case proceeding held under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated, pursuant to this Compact, the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a proceeding.

J. Change in Use

1. Change in Use Defined: For the purpose of this Article, the following actions affecting the use of a reserved water right for consumptive use described in this Compact shall be considered a change in use:
 - a. An action that alters type of use, place of use, point of diversion, place or means of storage, period of use or point of return flow that will:
 - i. increase the net depletion on a source; or
 - ii. adversely affect water quality at the point the reserved water right ends; or
 - iii. result in a change in point of diversion or point of return flow relative to a holder of a water right recognized under state law; or
 - iv. change the point of diversion from groundwater to surface water, or from surface to groundwater; or
 - v. in any other manner, adversely affects the reasonable exercise of a water right that is recognized under state law.
 - b. The exercise of a reserved water right to future consumptive use as authorized by this Compact shall not be considered a change in use.
2. Instream flow: Reserved water rights specified in this Compact for instream flow shall not be subject to change to any other use, provided that:
 - a. the emergency use of water for fire suppression as provided for in Article III.H. shall not be deemed a change or alteration in use, or violation of a reserved water right for instream flow; and
 - b. the United States may seek to appropriate water for a consumptive use on a source for which no consumptive use is described in this Compact by

seeking a permit under state law for consumptive use, provided that the water right granted shall not be counted against the limits on allocation for state consumptive use water rights imposed by this Compact. The water right so acquired shall be administered in accordance with Article V, section B.

3. Consumptive uses: The United States may take action affecting the use of its consumptive use water rights provided that (1) the action shall be in fulfillment of the purposes of the reservation; (2) the total use shall not exceed the amount described in this Compact; and (3) the action shall not adversely affect a water right that is recognized under state law.
4. Notice of intent to change use: At least 180 days prior to a change in use, the United States agrees to provide notice to the Department.
 - a. The notice shall contain the facts pertinent to the proposed change including, where applicable:
 - i. The location of a new point of diversion.
 - ii. The new source of water.
 - iii. The new means of diversion.
 - iv. If a well is involved, the depth and locations of the old and new well.
 - v. The new use and its impact on actual consumption and water quality.
 - vi. If the change includes storage, the location, period and capacity of the storage facility.
 - vii. An estimate of when the change will be effective.
 - viii. A map showing the existing system and the proposed change.
 - b. At least 120 days prior to the proposed change, the United States agrees to publish the notice required by Article II, section J.4.a. with a statement that within 60 days following publication or service of notice, relief may be sought in a state or federal court of competent jurisdiction, once in a newspaper of general circulation in the area of the source, and to serve the notice by first-class mail on interested and potentially affected persons as identified by the records of the Department, including:
 - i. an appropriator of water or applicant for or holder of a permit who, according to the records of the Department, may be affected by the proposed appropriation;
 - ii. a purchaser under contract for deed that, according to the records of the Department, may be affected by the proposed appropriation;
 - iii. any public agency that has reserved water in the source recognized under state law; and
 - iv. a federal agency or Tribe that claims a reserved water right or other water rights in the source.
 - c. On request by the United States, the Department shall provide the information contained in its records identifying any person potentially

- affected by the proposed change. The United States agrees to reimburse the Department for the expense of providing this information.
- d. In the event that future changes in state law establish a method of notice of a proposed change in use to interested and potentially affected persons other than by first-class mail, the United States may alter the method of notification accordingly.
 - e. Prior to the actual change, the United States agrees to provide the Department with proof of notice by affidavit.
5. Objection to proposed change: Within 60 days following the notice pursuant to Article II, section J.4.b., the Department or any other person may bring an action against the proposed change in use in a state or federal court of competent jurisdiction, if a property right, water right, or other interest protected under state law would be adversely affected, or if the proposed change is not in compliance with this Compact.
6. Notice of Change:
- a. The United States agrees to notify the state and provide a copy of the final order within 60 days of its entry by a state or federal court of competent jurisdiction resolving any objections to the change in use of a federal reserved water right described in this Compact,
 - b. The United States agrees to provide the state with notice of completion of the change within 60 days after the completion.
7. Reporting by the United States: For any action affecting the use of a consumptive right whether or not such action is deemed a change in use, the United States agrees to provide the following information to the Department:
- a. Well log: For a use that includes the drilling of a well or enlargement of an existing wellbore, the United States agrees to provide a well log to the state within 60 days of the completion of the well.
 - b. Emergency Use: Within 60 days after the commencement of a temporary emergency use for fire suppression described in Section III.H. of this Compact, the United States agrees to notify the state of the use to which the water was put, the dates of use, and the estimated amount of water used.
 - c. Annual Report: Between April 1 and May 1 of each year, the United States agrees to provide the Department with a report on (1) actions during the preceding year affecting the use of a consumptive use right described in this Compact, regardless of whether the action is deemed a change in use pursuant to Article II, section J.1.; (2) the initiation of new uses that were completed during the preceding year; and (3) any data and documents generated or received by the National Park Service during the preceding year on measurement of instream flow on a Category 3 or 4 stream.
8. Reporting by the State: Between December 1 and December 31 of each year, the Department shall provide the United States with a report of: (1) changes in use during the preceding year, as defined by state law, of water rights upstream of or within the boundaries of reserved land for which a reserved water right is described in this Compact; (2) new permits issued during the preceding year according to the records of the Department; and (3) any data and documents

generated by the Department during the preceding year on the measurement of streamflows, diversions and well use on or tributary to Category 3 or 4 streams.

K. Administration of Little Bighorn Instream Flow

This section governs the administration of instream flow rights of the United States on the Little Bighorn River described in Article III. section E.3., in relation to junior water rights initiated after the effective date of this Compact to which the United States has not subordinated and which are not a part of the Crow Tribal Water Rights. Nothing in these provisions, or in this Compact, regarding administration affects or in any way impairs any ability or authority of the Crow Tribe to administer, regulate or manage any water rights within the boundaries of the Crow Indian Reservation.

1. For purposes of administering the instream flow water right of the United States described in Article III. section E.3. the United States shall establish and maintain a discharge gauge at the LBBNM gauge site. The United States shall keep a record of daily flows for the period from March 1 through June 30 of each year in which the United States seeks curtailment of junior water rights.
2. The United States may seek curtailment to enforce its 950 cfs instream flow water right, described in Article III. section E.3.b., at the LBBNM gauge site any time from May 1 through June 30. The decision to seek curtailment shall be initiated by the NPS and at the NPS's discretion.
 - a. A decision to seek curtailment to enforce the 950 cfs instream flow water right shall be based on a determination that the flow at the LBBNM gauge site plus claimed or permitted appropriations by non-subordinated junior water users equals 950 cfs or more.
 - b. Once curtailment is sought and confirmed as set forth in Article II. section K.3, it may last for up to 15 consecutive days, or through June 30, whichever occurs first, provided, however, that the 15 days shall be reduced by subtracting the number of days between March 1st and the date of confirmation of curtailment that the flow at the LBBNM gauge site has equalled or exceeded 950 cfs.
 - c. Any curtailment based upon the 950 cfs water right shall be limited to direct surface diversions from the Little Bighorn River and its tributaries, and wells completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone, as described in Article II. section B.2.b.v.(3).
3. Notice by NPS that it seeks curtailment to enforce the 950 cfs instream flow water right shall be by either written or verbal notice to the appropriate DNRC office. The NPS shall use its best efforts to maintain contact with the DNRC beginning May 1st of each year to provide advance warning of stream flow conditions.
 - a. Upon receipt of notice from the NPS that the United States requests curtailment to enforce the 950 cfs instream flow water right, the DNRC shall, within 24 hours, verify actual diversions by non-subordinated junior water users and confirm that the sum of flow at the LBBNM and actual diversions by non-subordinated junior water users equals or exceeds 950 cfs. If the DNRC determines that the actual diversions are insufficient to

bring the flow at the LBBNM gauge site to 950 cfs, it shall not proceed with curtailment. If a decision is made not to proceed with curtailment, the DNRC shall notify the NPS the same day. After notification, the NPS may again seek curtailment beginning the following day if conditions of flow and time of year meet the conditions set forth in Article II. section K.2.

- b. If the DNRC proceeds with curtailment to enforce the 950 cfs water right, the DNRC shall, without delay, shut off non-subordinated junior water uses in reverse order of priority to the extent necessary to bring the flow at the LBBNM gauge site to 950 cfs, provided that, DNRC has the discretion to forgo curtailment of a particular water right if it determines that curtailment of that water right to satisfy the 950 cfs instream flow right would be futile.
 - c. Should flow at the LBBNM gauge site exceed 950 cfs at any time during curtailment, the DNRC may reopen diversions in order of priority until 950 cfs is reached. Should the flow at the LBBNM gauge site drop below 950 cfs at any time during the curtailment, non-subordinated junior water uses shall remain shut off provided that, if the NPS reasonably determines the flow at the LBBNM gauge site is not likely to come back up to 950 cfs during the remainder of the curtailment period, it may consent to end the curtailment.
4. Notice by NPS that it seeks curtailment to enforce the 51 cfs instream flow water right described in Article III. section E.3.a., shall be by either written or verbal notice to the appropriate DNRC office. Upon receipt of notice from the NPS that the United States requests a curtailment to enforce the 51 cfs instream flow water right, the DNRC shall, within 24 hours, verify actual diversions by non-subordinated junior water users. If diversions are being made by non-subordinated junior water users, the DNRC shall, without delay, shut off non-subordinated junior water uses in order of priority to the extent necessary to bring the flow at the LBBNM gauge site to 51 cfs, provided that, DNRC has the discretion to forgo curtailment of a particular water right if it determines that curtailment of that water right to satisfy the 51 cfs instream flow right would be futile.
5. All permits within the Little Bighorn River Basin upstream of the LBBNM gauge site with a priority date after the effective date of this Compact shall be conditioned on the prior right of the NPS for 950 cfs instream flow water right at the LBBNM during May and June, and for the 51 cfs instream flow water right during any portion of the year, and on the authority of DNRC to curtail use to satisfy the instream flow right.
6. All diversions from the Little Bighorn River or its tributaries above LBBNM with a priority date after the effective date of this Compact, shall have the duty to establish and maintain a controllable headgate and an adequate measuring device and shall also be required to maintain a record of daily water diversions, including noting the number of hours for which diversions are made for each day and the flow rate at which water is diverted.

7. DNRC and NPS shall work together to develop a quantitative prediction relationship between the flow at the LBBNM gauge site, diversions by non-subordinated junior water users, and the prediction of curtailment requirements.
8. Either party has the right to petition a court of competent jurisdiction for administration of water rights or for appointment of a water commissioner should cooperative administration not be proceeding as planned or should cooperative administration become burdensome. Any water commissioner shall enforce the curtailment as described in this Compact. Exhaustion of administrative remedies pursuant to this Article is not a prerequisite to any such suit.

ARTICLE III WATER RIGHT

The parties agree that the following water rights are in settlement of the reserved water rights of the United States for the reservations described. The parties to this agreement recognize that the water rights for these NPS Units [BCNRA and LBBNM] are junior to Crow Tribal Water Rights. All reserved water rights described in this Article are subject to Article V, section A.

A. Big Hole National Battlefield

1. Priority Date

The United States has a priority date of June 29, 1939 for the reserved water rights described in this Compact for BHNB.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of the BHNB as set forth in Table 1. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at BHNB shall include any non-reserved land within BHNB boundaries as the boundaries exist on the effective date of this Compact.

TABLE 1 United States National Park Service Big Hole National Battlefield Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
Visitor center		
Museum		
Maintenance area		
Residences		
Picnic area		
Irrigation		
Total for all use	7.14	50

3. Instream Flow

The North Fork of the Big Hole River is designated a Category 4 stream where it flows over the reserved land of BHNB. The United States has a reserved water right for instream flow on the North Fork of the Big Hole River where it

flows over the reserved land of BHNB. The reserved water right for instream flow is quantified and defined as follows:

- a. Instream Flow Quantification for November through March: The United States has a reserved water right for instream flow on the North Fork of the Big Hole River at the point the river enters the reserved land of BHNB in the amount of 10 cfs for November through March. The instream flow water right is subordinate to (1) any use recognized under state law with a priority date before January 1, 1993; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use pursuant to Article II.
- b. Instream Flow Quantification for April through October: The United States has a reserved water right for instream flow on the North Fork of the Big Hole River for April through October in the amount of water left in the river after satisfaction of current and future consumptive uses pursuant to state law in the amounts up to but no greater than provided in Table 2, provided, that the limits of Table 2 notwithstanding, the instream flow water right of the United States is subordinate to (1) any water rights recognized under state law with a priority date before January 1, 1993; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use pursuant to Article II.

TABLE 2 State Law Based Total Current and Future Consumptive Use Rights (cfs) Tributary to the Reserved Portion of the North Fork of the Big Hole River

Month	Consumptive Use
April	4.85
May	23.85
June	18.70
July	4.05
Aug.	1.75
Sept.	1.35
Oct.	1.50

- 4. Nothing in this Compact may affect an existing right to divert water from a point within BHNB and transport it for use off BHNB.
- B. Bighorn Canyon National Recreation Area
 - 1. Priority Date: The United States has a priority date of October 15, 1966 for the water rights described in this Compact for Bighorn Canyon National Recreation Area. The United States recognizes that its water rights for the BCNRA are junior in priority to Crow Tribal Water Rights.
 - 2. Consumptive Use: The United States has water rights for current and future consumptive use for the purposes of the Bighorn Canyon National Recreation Area (BCNRA) as set forth in the following Table [3]. The period of use shall

be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract.

TABLE 3 United States National Park Service Bighorn Canyon National Recreation Area Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
Fort Smith Visitor center	17.6	110
Ok-A Beh/Marina	6.9	35
Grapevine Creek Overflow Campground	12.5	110
Barry’s Landing, Trail Creek, Chain Canyon	29.3	180
Bighorn River Ranch	4.7	35
Layout Creek Ranger Station, Sorenson Ranch	140.4	230
Lockhart Ranch	25.6	110
Hillsboro Site	11.0	230
Stock and Wildlife Watering	3.5	
Total Volume of Use:	251.5 acre-feet	

3. Instream Flow

The United States has water rights for instream flow in the streams which flow over the land of Bighorn Canyon National Recreation Area. These water rights for instream flow are quantified and defined as follows:

a. Category 1a:

- i. Identification: The following streams are designated as “Category 1a”: North Fork Trail Creek, South Fork Trail Creek, and Trail Creek.
- ii. Instream Flow: The United States has a water right for instream flow on the Category 1a streams where they enter the BCNRA in the amount of the entire flow of the streams, less (1) any United States’ consumptive use rights described in this Compact and any Crow Tribal Water Rights; and (2) all water rights appurtenant to nonfederal land within the boundaries of BCNRA recognized under state law and having a priority date before the effective date of this Compact.

In the event that all non-federal land on a Category 1a stream is acquired by the United States for the purpose of addition to BCNRA, the stream may be reclassified as a Category 1 stream at the request of the United States.

b. Category 3:

- i. Identification: The following streams are designated as “Category 3”: Dry Head Creek, Deadman Creek, Davis Creek (aka Medicine Creek), and Layout Creek.

- ii. The United States has a water right for instream flow on Category 3 streams in the amount of the entire flow of the streams, less any United States’ consumptive use rights described in this Compact, and any Crow Tribal Water Rights, provided that, the instream flow right is subordinate to (1) the sum of all water rights recognized under state law with a priority date before the effective date of this Compact, plus any future consumptive use rights calculated according to Article II of this Compact until the limit on future consumptive use set forth in the Table [4] below is reached; (2) any use considered non-consumptive as defined by this Compact; (3) any use for instream stockwatering or for stockwater or domestic uses by wells or developed springs with an appropriation of 35 gpm or less that does not exceed 10 afy; and (4) any use of groundwater not included in the calculation of consumptive use according to Article II of this Compact.

TABLE 4 State Law Based Total Future Consumptive Use Rights (cfs) Tributary to the Reserved Portion of Category 3 Streams

Dry Head	Deadman	Davis	Layout
2.23*	1.59**	0.50	0.11

* Or the amount of net depletions reasonably necessary to irrigate 20 acres, whichever is largest.

** Or the amount of net depletions reasonably necessary to irrigate 35 acres, whichever is largest.

c. Category 4:

- i. Identification: The following streams are designated as “Category 4”: Pete’s Canyon Creek, the tributary of Deadman Creek that issues from Annerer Spring and flows across BCNRA land in the N1/2NW1/4 Sec. 8, T8S, R29E, M.P.M.
 - (1) The United States has a water right for instream flow on Pete’s Canyon Creek in the amount of one-half (1/2) of the naturally occurring flow that originates from Pete’s Spring.
 - (2) The United States has a water right for the tributary of Deadman Creek, in the amount of one (1) gallon per minute.

4. Springs

The United States has a water right for instream flows for the following springs identified by location, in the amount of the entire flow of the springs, less any consumptive use rights of the United States described by this Compact.

Sorenson Spring	Sec. 09, T9S, R28E
Lockhart #1 Spring	Sec. 13, T8S, R28E
Lockhart #2 Spring	Sec. 13, T8S, R28E
Hillsboro Spring	Sec. 36, T8S, R28E

This list of springs may be modified based on field verification of any spring located entirely within the boundaries of the BCNRA that is not the source of a water right

recognized under state law. Springs that occur on Crow Reservation lands are excluded from any water rights for springs.

C. Glacier National Park

1. Priority Date

The United States has a priority date of May 11, 1910 for reserved water rights described in this Compact for GNP. The United States recognizes that this date is junior to the priority dates for reserved water rights of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, and the Blackfeet Tribe of the Blackfeet Indian Reservation.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of GNP as set forth in Table 5. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at GNP shall include any non-reserved land within GNP boundaries as the boundaries exist on the effective date of this Compact.

TABLE 5 United States National Park Service Glacier National Park Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
North Fork Flathead River Basin		
Station, campground	4.7	70
Backcountry Use	1.98	
Backcountry Patrol Cabins	2.06	55
Middle Fork Flathead River Basin		
McDonald Creek areas	246.00	1720
Middle Fork areas	0.70	10
Backcountry Use	2.42	
Backcountry Patrol Cabins	2.06	55
<u>Saint Mary River Basin</u>		
Northern Border areas	2.20	20
Many Glacier areas	166.40	600
Saint Mary areas	128.40	915
Backcountry Use	2.02	
Backcountry Patrol Cabins	1.50	40
<u>Two Medicine River Basin</u>		
Two Medicine areas	6.40	70
Backcountry Use	0.38	
Backcountry Patrol Cabins	0.19	5
<u>Cut Bank River Basin</u>		
Backcountry Use	0.18	
Backcountry Patrol Cabins	0.19	
<u>Milk River Basin</u>		
Backcountry Use	0.02	
GNP TOTAL	567.80	

3. Instream Flow Right

a. Category 1:

i. Identification:

The following streams are designated as “Category 1:”

Sage, Spruce, Kishenehn, Starvation, Kintla, Red Medicine Bow, Agassiz, Ford, Parke, Long Bow, Akokala, Numa, Pocket, Jefferson, Bowman, Rainbow, Cummings, Logging, Anaconda, McGee, Camas, Fern, Fish, Howe, Longfellow, Trapper, Continental, Flattop, Kipp, Cattle Queen, Ahern, Mineral, Alder, Haystack, Logan, Hidden, Avalanche, Snyder, Sprague, Walton, Lincoln, Thompson, Pacific, Stimson, Nyack, Peril, Pinchot, Elk, Coal, Muir, Park, Debris, Ole, Shields, Autumn, Upper Bear, Boundary, Olson, South Fork Valentine, Valentine, Kootenai, Pass, Camp, Cleveland, Street, Whitecrow, Redgap, Lee, Otatso, Kennedy, Windy, Appekunny, Ptermigan, Iceberg, Wilbur, Cataract, Allen, Swiftcurrent, Boulder, Two Dog, Rose, Baring, Siyeh, Reynolds, Virginia, Medicine Owl, Hudson Bay, Red Eagle, Atlantic, North Fork Cut Bank, Lake, Dry Fork, Aster, Paradise, Appistoki, Two Medicine, Fortymile, Fortyone Mile, Midvale, Railroad, Coonsa, Long Knife, Jackson, Grinnell, Kaina, Lunch, Pyramid, Thunderbird and Upper Summit Creeks and Waterton, St. Mary, North Fork Belly, Mokowanis and Belly Rivers.

ii. Instream Flow

The United States has a reserved water right for instream flow on the Category 1 streams in the amount of the entire flow of the streams, less any United States’ consumptive use rights described in this Compact. This reserved water right ends at the point the stream exits the reserved land of GNP. The relationship between this water right and a water right to water stored within GNP held by the United States shall be governed by the rule of priority.

b. Category 1a Streams

i. Identification:

The following streams are designated as “Category 1a:”

Apgar, Canyon, Dutch, Harrison, McDonald, and Quartz Creeks.

ii. Instream Flow:

(a) The United States has a reserved water right for instream flow on the Category 1a streams in the amount of the entire flow of the streams, less (1) any United States’ consumptive use rights described in this Compact; and (2) all water rights appurtenant to non-federal land within the boundaries of GNP recognized under state law with a priority date before January 1, 1993. This reserved water right ends at the most downstream point that the stream exits the reserved land of GNP.

(b) In the event all non-federal land on a Category 1a stream is acquired by the United States for the purpose of addition to GNP, the stream may be reclassified as a Category 1 stream at the request of the United States.

c. Category 4 Streams

i. Identification:

The following streams are designated as Category 4: the North Fork of the Flathead River, the Middle Fork of the Flathead River, Divide, Jule, Rubideau and Wild Creeks.

ii. Instream Flow for the North and Middle Forks of the Flathead River:

The United States has a reserved water right for instream flow on the North and Middle Forks of the Flathead River in the amount of the entire flow of the rivers, less any United States' consumptive use rights described in this Compact provided that, the instream flow water right is subordinate to 1) all water rights recognized under state law with a priority date before January 1, 1993, 2) future consumptive use rights calculated according to Article II up to the limits set forth in Table 6; (3) any use considered non-consumptive as defined by this Compact; and (4) any use of groundwater not included in the calculation of consumptive use according to Article II. This reserved water right ends at the most downstream point that the River forms the boundary of the reserved land of GNP.

TABLE 6 State Law Based Future Consumptive Use Rights (cfs) Tributary to the Reserved Portion of the Flathead River

Month	North Fork Flathead River	Middle Fork Flathead River
Jan.	7.5	7.1
Feb.	7.2	6.9
Mar.	8.9	8.1
April	#	#
May	#	#
June	#	#
July	40.5	#
Aug.	16.2	13.7
Sept.	11.8	9.7
Oct.	11.8	10.6
Nov.	12.0	11.6
Dec.	9.0	9.2

The amount of water available for future consumptive use in these months shall be an amount equivalent to the flow rate for all consumptive uses recognized under state law on December 31, 1992. The amount shall be adjusted to reflect the flow rates in a decree issued by a state or federal court of competent jurisdiction after December 31, 1992. At such time as final decrees are entered in these basins, the Department shall tabulate these rights, insert the appropriate amounts into Table 6, and submit the revised Table to the United States and the state for inclusion in this Compact. Revision of Table 6 to reflect this agreement shall not be deemed a modification of this Compact.

iii. Instream Flow for Divide, Jule, Rubideau and Wild Creeks

The United States has a reserved water right for instream flow on Divide, Jule, Rubideau, and Wild Creeks in the amount of the entire flow of

the stream, less any United States' consumptive use rights described in this Compact. This water right ends at the most downstream point that the stream exits or no longer forms the boundary to the reserved land of GNP. This right is subject to the provisions of Article V, section A., and (1) on Divide Creek, is subordinate to any water rights recognized under state law with a priority date before January 1, 1993; and (2) on Rubideau Creek, is subordinate to any water rights recognized under state law with a priority date before January 1, 1993, provided that the use of such right is consistent with federal law.

4. Lakes

The United States has a reserved water right for the maintenance of natural water levels in all naturally occurring lakes within the boundaries of GNP for the purpose of preserving unimpaired these Park resources. The water right for the maintenance of lake levels is subordinate to (1) any United States' consumptive use rights described in this Compact; and (2) any water right recognized under state law with a priority date before January 1, 1993. The named and unnamed lakes in which the United States has a reserved water right are those set forth specifically in the Abstract.

D. Grant Kohrs Ranch National Historic Site

The Grant Kohrs Ranch National Historic Site in Montana does not include reserved land. The United States may apply for a permit to appropriate water or seek recognition of any existing water rights in accordance with state law.

E. Little Bighorn Battlefield National Monument

1. Priority Date

- a. The United States has a priority date of December 7, 1886 for current and future consumptive uses under the water rights reserved for the irrigation, maintenance and administration of the Little Bighorn Battlefield National Monument. The United States recognizes that its water rights for the BCNRA are junior in priority to Crow Tribal Water Rights.
- b. The United States has a priority date of March 22, 1946 for the instream flow water rights reserved for use as part of the Little Bighorn Battlefield National Monument, and necessary for historical interpretation of the battle. The United States recognizes that its water rights for the LBBNM are junior in priority to Crow Tribal Water Rights.

2. Consumptive Use

- a. The United States has a reserved water right for current and future consumptive uses for the purposes of LBBNM as set forth in Table 7. The period of use shall be from January 1 through December 31. The place of use or point of diversion of a consumptive use water right at LBBNM shall include any non-reserved land within LBBNM boundaries as the boundaries exist on the effective date of this Compact.

TABLE 7 United States National Park Service Little Bighorn National Battlefield Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)	Source
Cemetery, Visitors Center, Administrative Offices, Residences, Historic Buildings Maintenance Area, and Firehouse Facilities.	84.9	450	ground-water well

3. Instream Flow

The United States has a reserved water right for instream flow on the Little Bighorn River where it forms the boundary of the Little Bighorn Battlefield National Monument as follows:

- a. The United States has a reserved water right for minimum instream flow in the amount of 51.0 cfs with a priority of March 22, 1946, for the period January 1 through December 31, provided that, the instream flow water right is subordinate to:
 - (1) any water rights recognized under the state law with a priority date before the effective date of this Compact;
 - (2) any instream stockwater use;
 - (3) any use of groundwater through wells or developed springs with an appropriation of 35 gpm or less that does not exceed 10 afy;
 - (4) any use considered non-consumptive as defined by this Compact;
 - (5) any use of groundwater not included in the calculation of consumptive use according to Article II of this Compact.
- b. The United States has a reserved water right for instream flow in the amount of 950 cfs, with a priority date of March 22, 1946, for 15 days during the period of May 1st through June 30th, subject to the terms and conditions regarding implementation as set forth in Article II, section K, provided that, the instream flow water right is subordinate to:
 - (1) any water rights recognized under the state law with a priority date before the effective date of this Compact;
 - (2) any instream stockwater use;
 - (3) any use of ground water from wells completed outside of the Quaternary Alluvium or Quaternary Terrace Deposits of the Little Bighorn River and its tributaries or the Parkman Sandstone;
 - (4) any use of groundwater from wells or developed springs completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone with an appropriation of 35 gpm or less that does not exceed 10 afy;
 - (5) any use of groundwater from wells completed in the Quaternary Alluvium, Quaternary Terrace Deposits, or the Parkman Sandstone

with a permit amount in excess of 35 gpm or 10 afy that is not determined to be hydrologically connected to the Little Bighorn River or its tributaries pursuant to Article II. section B.2.b.v. of this Compact;

(6) any use considered non-consumptive as defined by this Compact.

c. Instream Flow Rights Not Cumulative: The 950 cfs instream flow, when it occurs, is not additive to the 51.0 cfs year-round minimum flow.

F. Nez Perce National Historical Park

The Nez Perce National Historical Park in Montana does not include reserved land. The United States may apply for a permit to appropriate water or seek recognition of any existing water rights in accordance with state law.

G. Yellowstone National Park

1. Priority Date

The United States has a priority date of March 1, 1872 for the reserved water rights described in this Compact for YNP.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of YNP as set forth in Table 8. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at YNP shall include any non-reserved land within YNP as the boundaries exist on the effective date of this Compact.

TABLE 8 United States National Park Service Yellowstone National Park Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
Yellowstone River Basin		
North Entrance	1.70	35
Stephens Creek facilities	12.00	50
TW facilities (Gardiner)	58.70	300
NE Entrance	15.60	50
Backcountry Use	10.70	
Backcountry Patrol Cabins	2.00	15
Day Use Areas	2.40	6
Gallatin River Basin		
NW Entrance Area	15.00	50
Backcountry Use	2.80	
Backcountry Patrol Cabins	0.50	10
Day Use Areas	0.60	6
Madison River Basin		
West Entrance	48.90	200
Backcountry Use	2.80	
Backcountry Patrol Cabins	0.50	10
Day Use Areas	0.70	6
YNP TOTAL	174.90	

3. Instream Flow Right

a. Category 1:

i. Identification:

The following streams are designated as “Category 1:”
Black Bear Canyon, Black Butte, Blacktail Deer, Cougar, Daly, Duck, Fan, Grayling, Landslide, Mol Heron, Pebble, Specimen, Stephens, Upper Reese, and Wickiup Creeks, and the Gardner River.

ii. Instream Flow:

The United States has a reserved water right for instream flow on the Category 1 streams in the amount of the entire flow of the streams, less any United States’ consumptive use rights described in this Compact. This reserved water right ends at the most downstream point that the stream exits the reserved land of YNP.

b. Category 2:

i. Identification:

The following streams are designated as “Category 2:”
Bacon Rind, Buffalo, Cottonwood, Coyote, Hellroaring, Little Cottonwood, and Snowslide Creeks.

ii. Instream Flow

The United States has a reserved water right for instream flow on the Category 2 streams in the amount of the entire flow of the streams, less any consumptive use rights of an agency of the United States recognized under federal or state law. This reserved water right ends at the most downstream point that the stream exits the reserved land of YNP.

iii. Change in Wilderness Designation

In the event that the Congress of the United States repeals the Wilderness designation assigned to the headwaters of an above named Category 2 stream, then, to the extent consistent with the law repealing the Wilderness designation as it pertains to water use, the stream headwatered in the former Wilderness may be reclassified in the appropriate category on request by the state.

c. Category 3:

i. Identification:

The following streams are designated as “Category 3:”
Crevice, Dry Canyon, Slough, and Tepee Creeks.

ii. The United States has a reserved water right for instream flow on Category 3 streams in the amount of the entire flow of the streams, less any United States’ consumptive use rights described in this Compact, provided that, the instream flow right is subordinate to (1) the sum of all water rights recognized under state law with a priority date before January 1, 1993, plus any future consumptive use rights calculated according to Article II, until the limit on total current and future consumptive use set forth in Table 9 is reached; (2) any use considered non-consumptive as defined by this Compact; and (3) any

use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 9 State Law Based Total Current and Future Consumptive Use Rights (cfs) Tributary to the Reserved Portion of Category 3 Streams

Month	Crevice Creek	Dry Canyon Creek	Slough Creek	Tepee Creek
Jan.	0.2	0.1	1.5	0.3
Feb.	0.2	0.1	1.6	0.3
Mar.	0.3	0.1	1.9	0.4
April	1.1	0.2	5.6	1.2
May	3.8	1.3	19.8	4.5
June	3.4	1.2	22.4	5.3
July	1.0	0.3	7.3	1.7
Aug.	0.4	0.2	2.9	0.8
Sept.	0.4	0.1	2.3	0.6
Oct.	0.4	0.1	2.4	0.6
Nov.	0.3	0.1	2.1	0.5
Dec.	0.2	0.1	1.8	0.4

- iii. The provisions of Article III, section G.3.c.ii notwithstanding, in the event of a period of low flow such that Crevice, Dry Canyon, Slough, or Tepee Creeks fall below the critical levels of instream flow shown in Table 10 at the point the stream enters the reserved land of YNP, the United States' water right for instream flow is not subordinate to consumptive use water rights recognized under state law with a priority date on or after January 1, 1993.

TABLE 10 Low Stream Flow Levels at which Subordination is Limited (cfs)

Month	Crevice Creek	Dry Canyon Creek	Slough Creek	Tepee Creek
Jan.	3.8	1.1	28.9	6.5
Feb.	4.5	1.0	30.6	6.5
Mar.	5.2	1.2	35.4	7.7
April	20.2	4.7	106.4	23.7
May	71.8	24.0	376.2	84.6
June	63.8	22.9	425.6	100.1
July	18.7	6.6	138.7	33.2
Aug.	8.1	3.1	55.2	14.9
Sept.	7.0	2.0	44.2	10.9
Oct.	7.1	1.9	46.0	10.8
Nov.	5.2	1.5	39.5	9.1
Dec	3.9	1.4	34.1	801

- d. Category 4:
The following streams are designated as Category 4: Soda Butte Creek within the state, and the Gallatin, Madison and Yellowstone Rivers where they flow within or form the boundary to reserved land of YNP within the state.

- i. Soda Butte Creek

- (1) The United States has a reserved water right for instream flow on Soda Butte Creek in the amount of the entire flow of the stream, less any United States' consumptive use rights described in this Compact, provided that, the instream flow right is subordinate to: (a) any water rights recognized under state law with a priority date before January 1, 1993; (b) any future consumptive use rights calculated according to Article II, as long as the limit on total current and future consumptive use set forth in Table 11 has not already been reached or exceeded by the rights protected under subsection (1)(a); (c) any use considered non-consumptive as defined by this Compact; and (d) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 11 State Law Based Total Current and Future Consumptive Use Rights (cfs)
Tributary to the Reserved Portion of Soda Butte Creek

Month	Flow
Jan.	0.3
Feb.	0.3
Mar.	0.2
April	0.1
May	6.2
June	17.5
July	6.4
Aug.	2.4
Sept.	0.8
Oct.	0.7
Nov.	0.5
Dec.	0.3

- (2) The provisions of Article III, section G.3.d.i.(1) notwithstanding, in the event of a period of low flow such that Soda Butte Creek falls below the critical levels of instream flow shown in Table 12 at the point the stream enters the reserved land of YNP, the United States' water right for instream flow shall be subordinate only to: (a) any water right for domestic use of 35 gpm or less and to any water right held by an incorporated or unincorporated municipality, recognized under state law with a priority date before January 1, 1993; (b) any use considered non-consumptive as defined by this Compact; and (c) any use of groundwater not included in the calculation of consumptive use according to Article II.
- (3) In the event that the Congress of the United States repeals the Wilderness designation assigned to the land over which Republic and Hayden Creeks and two unnamed tributaries to Soda Butte Creek flow in Wyoming, or otherwise makes water from such tributaries available for appropriation in Wyoming, the state may seek modification of Article III, section G.3.d.i.(2). of this Compact as provided in Article VI, section A.2.

TABLE 12 Low Stream Flow Levels at which Subordination is Limited (cfs) Soda Butte Creek

Month	Flow
Jan.	5.4
Feb.	5.1
Mar.	4.0
April	1.7
May	116.9
June	332.5
July	120.7
Aug.	46.4
Sept.	15.3
Oct.	14.2
Nov.	9.3
Dec.	6.3

ii. The Gallatin, Madison and Yellowstone Rivers

The United States has a water right for instream flow on the Gallatin, Madison and Yellowstone Rivers in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact, provided that, the right is subordinate to: (1) the sum of all water rights recognized under state law with a priority date before January 1, 1993, plus any future consumptive use rights calculated according to Article II, until the limit on total current and future consumptive use rights set forth in Table 13 is reached; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 13 State Law Based Total Current and Future Consumptive Use Rights (cfs) Tributary to the Reserved Portion of these Rivers

Month	Gallatin River	Madison River	Yellowstone River
Jan.	3.1	19.9	41.2
Feb.	3.1	19.7	40.6
Mar.	3.5	20.0	44.5
April	9.8	24.3	73.7
May	39.3	40.92	84.7
June	48.0	40.2	556.7
July	15.7	24.7	335.0
Aug.	5.8	21.4	156.5
Sept.	4.4	21.1	96.0
Oct.	4.6	21.4	75.0
Nov.	4.2	21.0	58.4
Dec.	3.8	20.4	47.2

4. Hot Springs tributary to Bear Creek and the Yellowstone River

The hot springs that contribute to Bear Creek outside the boundaries of YNP are important to maintenance of biologic values of reserved

water in the Yellowstone River downstream from the confluence with Bear Creek. As part of the settlement of the reserved water right for YNP, the state agrees to grant the United States a water right under state law to all of the natural flow of the Bear Creek hot springs located at the mouth of Bear Creek in S1/2 S1/2, sec. 19, T9S, R9E, Montana Principle Meridian. The priority date is the effective date of this Compact.

5. Lakes

The United States has a reserved water right for the maintenance of natural water levels in all naturally occurring lakes within the boundaries of YNP for the purpose of preserving unimpaired these Park resources. The water right for the maintenance of lake levels is subordinate to (1) any United States' consumptive use rights described in this Compact; and (2) any water right recognized under state law with a priority date before January 1, 1993. The named and unnamed lakes in which the United States has a reserved water right are those set forth more specifically in the Abstract.

H. Emergency Fire Suppression

The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the various Park reservations. The United States, may as part of its reserved water right, divert water for fire suppression at all of the National Park Service Units as needed, and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be deemed an exercise of the United States' reserved water rights for consumptive use or a violation of its reserved water rights for instream flow.

ARTICLE IV YELLOWSTONE CONTROLLED GROUNDWATER AREA

A. Statement of Intent

Yellowstone National Park was reserved for the express purpose of "preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition." 17 Stat. 32. The parties agree that Congress reserved water necessary to preserve the hydrothermal features within the reserved land of YNP. These reserved water rights have priorities as of the date on which the land was reserved.

The parties understand that knowledge of the interrelationship of hydrothermal features within YNP, the hydrothermal system that supports those features, and groundwater in surrounding areas of Montana will benefit from increased study. The parties agree that the hydrothermal features of YNP are a unique and irreplaceable resource and represent one of the few undisturbed hydrothermal systems in the United States.

This Compact does not recognize a reserved water right to groundwater outside the boundaries of the reserved land of YNP. However, the parties agree that restrictions shall be placed on the development of groundwater adjacent to YNP to the extent necessary to prevent adverse effect on the reserved water right to groundwater within YNP. The parties agree that the goal of establishment and administration of the Yellowstone

Controlled Groundwater Area shall be to allow no impact to the hydrothermal system within the reserved land of YNP.

B. Findings

Ratification of this Compact by the Montana legislature constitutes a finding that:

1. unrestricted use of groundwater adjacent to Yellowstone National Park is likely to interfere with the water rights reserved by the United States in 1872, 1929, 1930, and 1932, for the preservation of hydrothermal features within YNP;
2. prevention of adverse effect on the United States' reserved water right to groundwater within the reserved land of YNP is a benefit to the state and to the United States;
3. the public interest and welfare requires that a corrective control be adopted to regulate groundwater development adjacent to YNP; and
4. the cooperative state-federal management and oversight established by this Article is an effective means to achieve protection of the reserved water right to groundwater necessary to preserve the hydrothermal system within the reserved land of YNP.

C. General Provisions

1. Establishment: The Yellowstone Controlled Groundwater Area or "Area" is hereby established and shall be defined and administered according to this Compact.
2. Funding: The United States agrees that it receives substantial benefit from the establishment and administration of the Yellowstone Controlled Groundwater Area, and that the national and international public benefit extends far beyond the boundaries of the state. Thus, the United States agrees that the relatively small population of the state should not bear the entire cost of protection of the United States' reserved water right. To this end, the Department of the Interior agrees, subject to appropriations by Congress, to reimburse the state for the expense of establishment, administration and enforcement of the Yellowstone Controlled Groundwater Area by the Department; to fund the inventory, sampling, reporting and database management by the Bureau; and, except as provided in Article IV, section J.1.c., to fund the administrative costs and the cost of any study or any other necessary activity pursuant to this Article by the Technical Oversight Committee.
3. Implementation Contingent on Funds: Such funding shall be accomplished pursuant to the terms and conditions of a separate agreement which shall incorporate terms and conditions necessary to specify the activities to be funded and appropriate cost and accounting principles consistent with generally applicable guidelines for federal funding in similar circumstances, and consistent with the terms of this Compact, including, but not limited to, the enumeration of state expenses to be reimbursed in Article IV, section C.2. The state is relieved of its obligation to establish, administer, inventory, sample and maintain a database on the Controlled Groundwater Area in the absence of a funding agreement and the provision of the funds specified therein. If the state is relieved of its obligation to implement all or a portion of this Article, all other terms of this Compact shall remain in effect, including all reserved water rights

established herein. Such agreement may be amended, extended, renewed or terminated pursuant to its terms.

4. Interim Measures:

The state agrees that the following interim measures shall apply from the effective date of this Compact until the receipt of funds from the United States or December 31, 1995, whichever occurs first. The United States agrees to reimburse the state for the cost of the interim measures, subject to the appropriation of funds by Congress. The parties agree that, even if funding is not received by December 31, 1995 and interim measures are suspended, the state and the Department of the Interior will continue to recommend federal funding.

- a. The Department shall issue the notice required by Article IV, section F.
- b. All permits issued within this time period within the Area shall be conditioned on appropriation of water of less than 60° F., measured at the wellhead.
- c. The Department shall require that each applicant for a permit or person filing a notice of completion for issuance of a certificate of water right to appropriate groundwater within the Area report the following information on filing of a well log: (1) well location to the quarter-quarter-quarter-quarter section; (2) ground elevation at the wellhead; (3) well depth; (4) water level; (5) flow rate or maximum pump capacity; and (6) water temperature measured at the wellhead.
- d. The Department shall not issue a certificate of water right for the appropriation of groundwater with a temperature of 60° F. or more within the Area during this time period. The Department shall order temporary abandonment of any well in the Area for which a conditional permit was issued or notice of completion for issuance of a certificate of water right was filed within this time period that produces groundwater with a temperature of 60° F. or more, measured at the wellhead. Temporary abandonment shall be according to the rules of the Montana Board of Water Well Contractors.
- e. Following receipt of funds from the United States, the Department shall notify the applicant that the appropriation is subject to the terms of this Compact and shall proceed according to the procedures set forth in this Article. If funds are not received by December 31, 1995, the Department may remove the order of temporary abandonment and remove the condition on the permit or issue the certificate of water right pursuant to state law. The Department shall continue to require that each applicant for a permit or certificate of water right to appropriate groundwater within the Area report the following information on filing of a well log: (1) well location to the quarter-quarter-quarter-quarter section; (2) ground elevation at the wellhead; (3) well depth; (4) water level; (5) flow rate or maximum pump capacity; and (6) water temperature measured at the wellhead.

5. Additional Studies: In addition to appropriations necessary to implement this Article, the state and the National Park Service agree to recommend federal funding for a baseline study of hydrothermal features in YNP and within the

Controlled Groundwater Area, for continued monitoring of these features, and for geologic and geophysical studies including, but not limited to, geologic mapping, and monitoring of microearthquakes and subsidence in and adjacent to YNP. Implementation of this Article is not contingent on such appropriation.

6. Access for Studies: Consistent with the purposes of YNP, the United States agrees to allow reasonable access to and across YNP to the extent necessary to accomplish the data collection authorized by this Article or additional studies recommended pursuant to Article IV, section C.5. In seeking access, the Department or Bureau shall comply with the provisions of Article II, section I.3.
7. Effect of Modification of Area: It is the intent of the parties that the initial boundaries of the Area set forth in Article IV, section D. and Appendix 3, and initial restrictions set forth in Article IV, section E. may be modified pursuant to Article IV, section J., or with respect to a single appropriation pursuant to Article IV, section G.2.c. and shall not be deemed to be a modification of this Compact. Any other modification of this Article shall be considered a modification of this Compact and is subject to the terms of Article VI, section A.2.
8. It is the intention of the Department of the Interior to protect the hydrothermal resources of Yellowstone National Park through the system established by Article IV.
 - a. The National Park Service agrees, consistent with 43 U.S.C. § 666, that enforcement will not be sought against the holder of a water right recognized under state law with a priority date on or after January 1, 1993, unless the NPS has, in the first instance, sought enforcement through the state under the terms of this Compact.
 - b. Notwithstanding the preceding subparagraph, if the National Park Service, in its judgment, determines that circumstances warrant, nothing in this Compact prohibits the United States from petitioning a state or federal court of competent jurisdiction for injunctive or declarative relief. Nothing in this Compact shall alter the courts' application of the test for injunctive relief; neither shall the administrative determination by the National Park Service to seek relief in said court be deemed to establish or preclude any determination in such judicial proceedings. Prior to such an administrative determination, the National Park Service agrees that it will provide the State written notice and will identify a time frame during which it will await the State's efforts to address the concern.
 - c. As to an action against the holder of a right to withdraw groundwater recognized under state law with a priority date before January 1, 1993, the United States agrees that this Compact shall not be used or relied upon as evidence to show that: (1) a reserved water right of the United States exists appurtenant to any land other than the reserved land of YNP; or (2) the priority date associated with any portion of reserved land of YNP is other than the date on which that portion of land was actually reserved.

D. Initial Boundaries of the Yellowstone Controlled Groundwater Area

The initial boundaries of the Yellowstone Controlled Groundwater Area and Subareas

are defined to include the area in the State of Montana located within the geographic boundaries shown on Appendix 3. Appendix 3 is hereby incorporated in this Compact by this reference as though set forth here in full.

1. Subarea I:

The initial geographic boundaries of the subarea referred to as Yellowstone Controlled Groundwater Subarea I shall include all of the area in Montana North and West of YNP within the boundary delineated as subarea I on Appendix 3.

2. Subarea II:

The initial geographic boundaries of the subarea referred to as Yellowstone Controlled Groundwater Subarea II shall include all the area in Montana North and West of YNP within the boundary delineated as subarea II on Appendix 3.

E. Initial Restrictions on Groundwater Development within the Yellowstone Controlled Groundwater Area

Until the initial boundaries or restrictions set forth in this Article are modified pursuant to Article IV, section J., the restrictions set forth in this section shall apply to groundwater appropriations within the Area with a priority date on or after January 1, 1993. Such appropriations shall follow the procedural requirements of Article IV, section G.

1. The parties agree that the initial restrictions on development of groundwater and any modification thereof, shall not apply to appropriations with a priority date before January 1, 1993. The sole provisions of this Article applicable to such appropriations shall be those providing for inventory and sampling of current use set forth in Article IV, section H. Groundwater appropriations with a priority date before January 1, 1993 are subject to applicable state law including, but not limited to, issuance of a certificate of water right following final adjudication of existing water rights. Nothing herein waives the right of the United States to seek protection of its reserved water right for protection of the hydrothermal features within the reserved land of YNP from groundwater appropriations with a priority date before January 1, 1993 in a state or federal court of competent jurisdiction, provided that the limitation on use of this Compact in an action by the United States against any such appropriator set forth in Article IV, section C.8.c. shall apply.
2. The Department shall not issue a permit to appropriate groundwater that is hydrothermal discharge water as defined by this Compact unless either: (1) modification occurs pursuant to Article IV, section J. altering pertinent boundaries or restrictions; or (2) an application is approved pursuant to Article IV, section G.2.c. Unless modification occurs pursuant to Article IV, section J., the Department shall not limit an appropriation of groundwater that is not hydrothermal discharge water unless required to do so by Article II and III of this Compact or any other provision of state law.

F. General Notice of Establishment of the Yellowstone Controlled Groundwater Area

1. Notice: Within 120 days after the effective date of this Compact and within 60 days of any decision by the Department to modify the Area as set forth in

Article IV, section J., the Department shall publish a notice of establishment or modification of the Area setting forth:

- a. the description by legal subdivisions of all lands included in the controlled groundwater area;
 - b. the purpose of the controlled groundwater area or modification; and
 - c. the permit requirements, restrictions, inventory, sampling and monitoring applicable within each subarea.
2. Publication and Service: Such notice shall be published in a newspaper of general circulation in the county or counties in which the Area is located. The Department shall also serve a copy of the notice by mail on each well driller licensed in Montana whose address is within any county in which any part of the Area is located; on each well driller known by the Department to operate in the Area; on the Montana State Bureau of Mines and Geology; on the mayor or chair of the governing body of each county or incorporated municipality located in whole or in part within the Area; and on the United States. The Department may also serve notice on any other person or state or federal agency that the Department believes may be interested in or affected by the proposed designation or modification of the Area. A copy of the notice shall be mailed to each person's last known address according to the records of the Department.

G. Appropriations of Groundwater within the Yellowstone Controlled Groundwater Area With a Priority Date on or After January 1, 1993

1. Appropriation of Groundwater within the Area with a Priority Date on or after January 1, 1993 and before the Effective Date of this Compact:

The initial restrictions on groundwater development set forth in Article IV, section E. apply to appropriations of groundwater with a priority date on or after January 1, 1993 and before the effective date of this Compact provided that the following procedural requirements are met:

- a. Within 120 days after the effective date of this Compact or the receipt of adequate funds from Congress, whichever occurs later, the Department shall provide the United States with notice of all groundwater appropriations within the Area that, according to the records of the Department, have a priority date on or after January 1, 1993 and before the effective date of this Compact.
- b. Subsequent to the notice provided for in Article IV, section G.1.a. and up to 120 days following mailing of the report on inventory provided in Article IV, section H.1.b.iii., the United States may provide the Department with credible information on any groundwater appropriation within the Area with a priority date on or after January 1, 1993 and before the effective date of this Compact, showing that the appropriation is of water with a temperature of 60< F. or more.
- c. If the United States provides the information set forth in Article IV, section G.1.b., the Department shall, within 60 days of receipt of the information, issue an order requiring that the appropriator comply with the applicable restrictions. The order is effective within 60 days of issuance unless the appropriator enters an appearance to contest the order.

- d. If the appropriator enters an appearance to contest the order, the Department shall: (1) issue an order staying use of the appropriation pending final decision on the matter by the Department; (2) set a date for a hearing; and (3) proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4 of the Montana Code Annotated, provided that in such a proceeding the United States has the burden of proving by a preponderance of the evidence that the appropriation is of groundwater of 60< F or more. If the United States meets this burden, the appropriator shall comply with procedures and restrictions set forth in Article IV, section G.2.
2. Appropriations of Groundwater with a Priority Date after the Effective Date of this Compact
 - a. General Provisions
 - i. All groundwater appropriations within the Area after the effective date of this Compact are subject to this Article. Applications and registration for a permit for the appropriation of groundwater within the Area after the effective date of this Compact shall include a statement of whether the proposed use requires water with temperature of 60< F. or more. In addition, the Department shall not issue a permit for appropriation of groundwater unless the requirements of Articles II and III are met, if applicable.
 - ii. A permit issued pursuant to this Article shall provide that:
 - (1) The permittee shall install a device to meter total volume of water use in compliance with rules promulgated by the Department pursuant to Article IV, section I.5. The Department shall specify the metering method and location of installation. On or before January 15 of each year, the permittee shall report annual use to the Bureau at: Montana Bureau of Mines and Geology, Main Hall, Montana Tech, Butte MT, 59701. Meters shall be made available to the permittee at the Department of Natural Resources and Conservation Regional Water Rights Office at: 111 North Tracy, Bozeman, Montana, 59715. Meters shall be acquired for distribution by the Department of Natural Resources and Conservation Regional Water Rights Office as part of the inventory and sampling program authorized by Article IV, section I.
 - (2) The Department has the authority to modify or revoke a permit if the provisions listed below are applicable, and all other administrative or judicial enforcement authority provided under Title 85, part 2, of the Montana Code Annotated applies to this part. The Department may exercise its enforcement authority if (1) the appropriator fails to allow access for sampling provided for in Article IV, section H.; (2) the character of the groundwater produced changes such that a restriction applies pursuant to this Article; (3) new restrictions imposed pursuant to Article IV, section J. are applicable; or (4) the appropriator violates any other provision of this part.

- (3) A permit to appropriate hydrothermal discharge water may include limits and conditions on appropriation including but not limited to (a) limits on total withdrawal by day, month or year; (b) a requirement to adhere to a system of rotation of use within the Area; and (c) a provision adjusting the total withdrawal from two or more wells in the area used by the same appropriator.
- (4) A permit to appropriate hydrothermal discharge water shall include any applicable monitoring requirement recommended by the Working Group Report or recommendations by the TOC superseding that report unless the applicant shows by clear and convincing evidence that such monitoring is inappropriate.
- iii. If, subsequent to the effective date of this Compact, modification pursuant to Article IV, section J. removes the restrictions set forth in Article IV, section E., the monitoring recommended by the Working Group Report or as superseded by the TOC shall continue to apply unless the applicant shows by clear and convincing evidence that such monitoring is inappropriate, according to the criteria in the Working Group Report or as superseded by the TOC.
- b. Appropriations of Groundwater with a Temperature of less than 60< F
 - i. Registration and Application
 - (1) An applicant for an appropriation of groundwater of 35 gpm or less, not to exceed 10 acre-feet per year shall register for a permit by filing a form prescribed by the Department that shall include, but not be limited to, a statement of whether the proposed use requires water with temperature of 60< F. or more, the well location, and intended use and shall comply with the provisions of Article II and III, if applicable. The Department shall provide notice of the registration for a permit to the United States within 30 days of the filing.
 - (2) An applicant for a permit to appropriate groundwater of greater than 35 gpm or 10 acre-feet per year after the effective date of this Compact, shall comply with existing state law for permits to appropriate water and the limits on groundwater appropriations set forth in Articles II and III, if applicable. The Department may issue an interim permit for the proposed appropriation to an applicant seeking an appropriation for a use that does not require water with a temperature of 60< F. or more if the requirements of this section are met.
 - ii. Drilling
 - (1) On filing a proper registration form, an applicant for an appropriation of 35 gpm or less, not to exceed 10 acre-feet per year, with a proposed use that does not require water with a temperature of 60< F. or more may complete the proposed well subject to state law and the terms of this Compact, but shall not put the water to beneficial use until issuance of a permit.

- (2) Upon issuance of an interim permit, an applicant for an appropriation of greater than 35 gpm or 10 acre-feet per year may drill the well subject to state law and the terms of this Compact, but shall not put the water to beneficial use until issuance of a permit.
- iii. Within 60 days of drilling of the well, the applicant or registrant shall provide the Department with a well log on a form provided by the Department. The well log shall include well location to the quarter-quarter-quarter-quarter section; ground elevation at the wellhead; well depth; water level; flow rate or maximum pump rate; water temperature measured at the wellhead; and specific conductance of the water produced using a device provided by the Water Resources Regional Office.
- iv. The Department shall forward a copy of the well log to the United States and to the Bureau on receipt.
- v. Following receipt of the well log, the Department may inspect the well at a reasonable hour of the day to verify the information on the well log report. The United States may request to accompany the inspector as set forth in Article II, section I.4.
- vi. The United States has 60 days from the mailing of the report to file an objection setting forth credible information that the appropriation is of groundwater with characteristics to which restrictions established pursuant to this Article apply.
- vii. The Department may issue a permit to appropriate if: (1) the well log and any verification confirm that the appropriation is of water to which no restrictions pursuant to this Article apply; and (2) all other requirements of state law and this Compact have been met, unless the United States files an objection pursuant to Article IV, section G.2.b.vi. If the well log or verification indicate appropriation of water to which restrictions pursuant to this Article apply or if the United States files a proper objection, the applicant shall be subject to the provisions of Article IV, section G.2.c.
- viii. If a permit is issued, the applicant or registrant may complete the appropriation and apply the water to beneficial use.
- ix. Within 60 days of completion of the appropriation, the permittee shall file a notice of completion with the Department pursuant to state law.
- c. Appropriation of Groundwater with a Temperature of 60< F. or Greater
If an application or registration for a permit within the Area is for a use requiring groundwater with a temperature of 60< F. or more or the well log or any verification indicates water of 60< F. or more, the following provisions apply:
 - i. Subarea I - groundwater with a temperature of 85< F. or more:
Groundwater of 85< F. or more in Subarea I is presumed to be hydrothermal discharge water. The Department shall not process or grant an application for a permit to appropriate water with a temperature

of 85< F. or more in Subarea I, unless the appropriation is consistent with modification of restrictions pursuant to Article IV, section J., or pursuant to the procedures set forth below. An application for an appropriation that proposes to do no more than divert the unenhanced natural surface flow of a spring that is not located in the mainstem of the reserved portion of a stream to which a reserved water right for instream flow is described in Article III of this Compact is not subject to these restrictions.

- (1) The application shall set forth credible information that the proposed appropriation does not include contribution by hydrothermal discharge water;
- (2) Within 30 days of receipt of the information the Department shall seek review of the application by the TOC.
- (3) The TOC shall review the report to determine if the appropriation can take place without adverse effect on the hydrothermal system within YNP. In performing the review, the TOC shall utilize the best available scientific information. The TOC shall resolve doubt in favor of protection of the hydrothermal system within YNP.
- (4) Within 60 days of the request by the Department, the TOC shall recommend, in a report to the Department, if, and under what conditions the appropriation could be allowed without adverse effect on the hydrothermal system within YNP. The TOC may recommend limits or conditions on the proposed appropriation that, in the opinion of the TOC, would allow the development while protecting the hydrothermal system within YNP. The TOC shall also provide the Department with a dissenting report pursuant to Article IV, section J.1., if applicable.
- (5) On receipt of the report or reports, the Department shall provide a copy to the United States and the applicant and shall schedule a hearing no less than 60 and no more than 90 days from mailing of the report.
- (6) The hearing shall proceed as a contested case under the Montana Administrative Procedure Act, Title 2, Chapter 4 of the Montana Code Annotated.
- (7) The report or reports, data and other written information produced by the TOC shall be admissible in the hearing without further foundation and not subject to the hearsay objection, subject to the rights of any party or claimant to cross-examine the producer or drafter of the written material and to controvert the same by other evidence. The hearing officer may request that members of the TOC appear to provide expert testimony in the case.
- (8) The report and recommendations provided by the TOC have a rebuttable presumption of validity for the purposes of Article IV. The dissenting report, if any, may be used as rebuttal evidence.

- (9) If the report recommends denial of the application, the applicant may overcome the presumption by proving by clear and convincing evidence that the proposed appropriation does not include hydrothermal discharge water.
- (10) If the application is denied, the Department shall order that the well be temporarily abandoned; or, if multiple water zones are encountered, the zone of excess temperature be closed to production. Abandonment shall be according to the rules of the Montana Board of Water Well Contractors unless alternative procedures are recommended by the TOC. The abandonment order shall not be lifted until a modification order pursuant to Section IV.J. allows the appropriation or until the department determines that the well should be permanently abandoned.
- (11) Within 30 days of an order by the Department pursuant to this section, appeal on the record may be made to a state or federal court of competent jurisdiction. For an appeal to state court, venue shall be the First Judicial District in Helena and the review must be conducted according to the procedures for judicial review of a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.
- ii. Subarea I - groundwater with a temperature of 60< F. or more, but less than 85< F:
 Appropriation of groundwater with a temperature of 60< F. or more, but less than 85< F. in subarea I is subject to the following provisions.
- (1) The applicant shall provide credible information that the water meets the following criteria:
- (a) the proposed appropriation will do no more than divert the unenhanced natural surface flow of a spring that is not located in the mainstem of the reserved portion of a stream to which a reserved water right for instream flow is described in Article III of this Compact, or
- (b) the proposed appropriation meets all of the following criteria:
- (i) The water temperature is the result of the normal thermal gradient of the earth plus the mean annual air temperature at the site plus 14< F. Unless modified by the TOC, the Department shall use the following equation to estimate the water temperature expected:
 $(0.01646 \times \text{the depth of the production zone in feet}) + 59.3< \text{ F.}$
 If the temperature measured at the wellhead is equal to or less than the temperature estimated by this equation, the appropriation meets this criteria.
- (ii) the concentration of soluble chloride is less than ten parts per million; and
- (iii) the well does not contain a production zone completed within the Madison Group of formations as defined by the Catalog of Stratigraphic Names for Montana, Bureau of Mines and Geology, Special Publication 54, March 1971.

- (2) The Department may issue a permit to appropriate groundwater with a temperature of 60< F or more, but less than 85< F. to an applicant that meets the above criteria and is in compliance with the provisions of Article IV, section G.2.c. unless (a) restrictions are consistent with modification pursuant to Article IV, section J.; or (b) the United States objects and shows by a preponderance of the evidence that the criteria have not been met or, for another scientific reason, the temperature is the result of contribution by hydrothermal discharge water.
- (3) If the applicant fails to meet the above criteria or the United States meets its burden, the applicant shall comply with the provisions of Article IV, section G.2.c.i. for water or 85< F or more.
- (4) The three criteria set forth in Article IV, section G.2.c.ii.(1)(b) may be modified on recommendation by the TOC.

iii. Subarea II:

- (1) Groundwater of 85< F. or more in subarea II is presumed to be hydrothermal discharge water. The applicant shall follow the procedures of Article IV, section G.2.c.i. including review by the TOC, provided that, if a permit to appropriate is issued the monitoring recommended in the Working Group Report or as superseded by the TOC for subarea II, not subarea I, shall apply.
- (2) An applicant who encounters groundwater of 60< F. or more but less than 85< F. shall comply with the provisions of Article IV, section G.2.c.ii., provided that, if a permit to appropriate is issued the monitoring recommended in the Working Group Report or as superseded by the TOC for subarea II, not subarea I, shall apply.
3. Change in Character of Groundwater: Within 60 days of the receipt of information indicating a change in the character of the groundwater appropriated under a permit issued in the Area on or after January 1, 1993 that indicates the production of groundwater for which a restriction applies, the Department shall issue an order requiring that the appropriator comply with the limitations on appropriation of hydrothermal groundwater authorized in this Article. The order shall take affect 60 days following the date issued unless the appropriator appears to contest the order. If the appropriator appears to contest the order, the Department shall set a date for a hearing and proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, title 2, Chapter 4, of the Montana Code Annotated, provided that the appropriator shall have the burden to prove by a preponderance of the evidence that the water produced does not meet the criteria to which restrictions apply.

H. Inventory and Sampling of Groundwater

1. Initial Inventory

All groundwater appropriations in the Area with a priority date before the effective date of this Compact shall be inventoried as set forth below:

a. Notice of Inventory

Within 120 days after the effective date of this Compact or the receipt of funding from the United States, whichever occurs later, the Department shall serve notice by mail on each person or public agency known from an examination of the records in the Department's office to be an appropriator of groundwater with a priority date before the effective date of this Compact. The notice shall set forth:

- i. the contents of the notice required in Article IV, section F.; and
- ii. a statement that within 3 years from the date of notice the Bureau may visit the wellsite to measure temperature; flow rate or maximum pump capacity; water level, or pump level if the well cannot be entered; and may collect a water sample for additional analysis.

b. Inventory

i. Within 3 years of notice pursuant to Article IV, section H.1.a., a representative of the Bureau shall inventory each well drilled pursuant to an appropriation recognized under state law with a priority date before the effective date of this Compact. The inventory shall be considered complete when the Bureau has inventoried substantially all of the wells that can be located and accessed with reasonable diligence. The inventory shall include, but not be limited to, the following:

- (1) well location to the quarter-quarter-quarter-quarter section;
 - (2) ground elevation at the wellhead;
 - (3) flow rate or maximum pump capacity;
 - (4) water level, or pump level if the well cannot be entered;
 - (5) water temperature at the wellhead;
 - (6) specific conductance of the water at the wellhead;
 - (7) chloride content of the water at the wellhead;
 - (8) water samples from a representative number of wells selected by the Bureau. The water samples shall be analyzed by the Bureau, or by a qualified lab contracted by the Bureau. Samples shall be analyzed for chemistry, and, if applicable, gas and isotopes. Choice of analyses shall be at the discretion of the Bureau using the Working Group Report or a report by the TOC superseding the Working Group Report as a guideline. The Bureau may consult with the TOC concerning well selection and analysis; and,
 - (9) any additional information deemed necessary for implementation of this Article by the Bureau in consultation with the TOC.
- ii. The inventory shall be prioritized to complete Subarea I first.
 - iii. Within 6 months of completion of the inventory in each Subarea, the Bureau shall provide a report to the Department, the TOC, and the United States, verifying that the inventory is complete and setting forth the data obtained in the inventory. The report shall be made available to the public by the Department. In addition, the Bureau shall maintain an adequate database pursuant to Article IV, section H.2.

2. Sampling Program and Database
 - a. Following the initial inventory of all current groundwater appropriations in the Area provided for in Article VI, section H.1., the Bureau shall sample wells selected in consultation with the TOC and at a frequency determined in consultation with the TOC. The wells may include appropriations made prior to, on or after January 1, 1993. The number of wells sampled and the analyses performed shall be as determined by the Bureau in consultation with the TOC. Until superseded due to recommendation by the TOC, the Working Group Report shall be used as a guideline in making this determination. Within 6 months of the completion of each inventory and sampling program, the Bureau shall provide the Department, the TOC and the United States with a report on the results.
 - b. The Bureau shall maintain an adequate database on the Yellowstone Controlled Groundwater Area which shall include, at a minimum, analyses of water chemistry, temperature, well depth, well capacity and well location.
 - c. The United States agrees to provide an annual report to the Bureau for incorporation into the database on the water chemistry, temperature and flow rate of any well in use or spring sampled in the portion of YNP within the state, and may include such information for any well or spring in the portion of YNP outside the state.
 - d. The information in the database shall be available to the public through the Natural Resources Information System, currently located at 1515 E. Sixth Avenue, Helena, Montana 59620-1800.
- I. Administration of the Yellowstone Controlled Groundwater Area
 1. The Yellowstone Controlled Groundwater Area established by this Compact shall be administered pursuant to applicable state law and the terms of this Compact.
 2. In addition to the requirements imposed by state law, the Department shall provide the United States with notice of any application or registration for a permit to appropriate groundwater within the Area in the same manner and time as required by state law for notice to groundwater appropriators in a controlled groundwater area.
 3. The United States may be an objector to any application or registration for a permit to appropriate groundwater or in a hearing for modification of a permit to appropriate groundwater within the Area pursuant to the provisions of Article IV, section G.
 4. The Department shall, whenever possible, consolidate any proceedings on groundwater applications or registration pursuant to Articles II and III with any proceeding made necessary by this Article.
 5. Within 2 years after the effective date of this Compact or the receipt of the requested funding from the United States, whichever occurs later, the Department is directed to promulgate such additional rules necessary to effectuate this Compact and to establish criteria which may be necessary to implement this Article. Said rules shall not alter the rights or obligations of the parties hereto.

In doing so, the Department shall consult with the United States and the TOC. Until modified by the TOC, the Department shall adopt the Working Group Report to govern sampling, reporting and monitoring requirements, except as modified by Article IV, section G. In reviewing any permit to appropriate hydrothermal discharge water the Department shall consider the criteria set forth in the Working Group Report or a subsequent report by the TOC, including, but not limited to, the identification of risk associated with volume of appropriation and distance from the reserved land of YNP.

J. Modification of the Yellowstone Controlled Groundwater Area

1. Technical Oversight Committee: Establishment and Authority

- a. A joint federal-state Technical Oversight Committee is hereby established to review scientific evidence related to the Yellowstone Controlled Groundwater Area; to advise the Department on administration of the Area, including review of applications to appropriate water of 60° F. or more; to consult with the Bureau on inventory and sampling; and to recommend modification of boundaries and restrictions.
- b. The committee shall consist of five qualified scientists with experience related to hydrothermal systems. The committee members shall be appointed within six months following the effective date of this Compact: one appointed by the National Park Service; one appointed by the United States Geological Survey; one appointed by the Department; one appointed from the Montana University system by the Montana State Geologist; and one selected by the other four members. Appointments and selections shall be made, to the extent possible, to ensure that three of the qualified scientists with experience related to hydrothermal systems also have experience in (1) geochemistry; (2) geophysics; and (3) hydrogeology. Vacancies due to expiration of terms or resignation of a member shall be filled in the same manner. Should the four members fail to agree on the selection of additional members within 60 days after appointment of all four members or within 30 days after a vacancy occurs, the following procedure shall be utilized:
 - (i) Within 5 days each member shall nominate one person for each vacancy and submit the nominations to a judge of the First Judicial District in Helena; and
 - (ii) A judge of the First Judicial District in Helena shall fill the vacancy by selecting a member from each set of nominations.
- c. Each member shall serve a five-year term and shall be eligible for reappointment. Expenses of the members shall be born by the entity appointing the member. The per diem or salary, and travel expenses of the three members-at-large shall be born equally by the United States and the state, subject to the availability of funds. All other expenses of the TOC shall be born by the United States subject to Congressional appropriation as set forth in Article IV, section C.
- d. The recommendation of any of the following by the TOC shall be based on a supermajority of four to one: (1) modification of the Area pursuant to

Article IV, section J; (2) review of an application to appropriate groundwater with a temperature of 60< F. or more; and (3) removal of any of the criteria specified in Article IV, section G.[2.]c.ii.(1)(b). Failure to achieve a supermajority shall result in a recommendation of no modification or no permit approval. In the absence of a unanimous decision, the TOC shall provide both a report supporting the recommendation that there be no modification or no permit approval, and a dissenting report to the Department. In all other instances in which the TOC consults with or makes recommendations to the Department or the Bureau, recommendations shall be made by a simple majority of the entire committee.

- e. The TOC shall:
 - i. review the boundaries of the Area and the Subareas;
 - ii. review the initial restrictions on groundwater development imposed pursuant to this Article, and future modifications of those restrictions;
 - iii. assess the cumulative impact of all development in the Area;
 - iv. review changes in the groundwater and hydrothermal systems revealed by inventory and analyses done by the Bureau, and any other pertinent scientific evidence;
 - v. review new scientific evidence pertinent to the Area;
 - vi. consult with the Bureau or the Department on request;
 - vii. present evidence and make recommendations to the Department in accordance with Article IV, section J.2.
 - viii. review applications for a permit to appropriate groundwater on request by the Department as set forth in Article IV, section G.2.c.; and
 - ix. take any additional action necessary to implement this Article.
- f. The Department and the Bureau shall provide the TOC with all information in their records regarding appropriations of groundwater within the Area including reports required by this Article.
- g. The initial review shall take place within 1 year of the receipt of the inventory report done by the Bureau pursuant to Article IV, section H. Subsequent reviews shall take place every 5 years following the initial inventory or following the issuance of 75 permits to appropriate water within the Area by the Department, whichever occurs first. Additional review shall also take place on request by the United States or the state.
- h. Within 6 months of initiation of a review, the TOC shall provide a report of the review, including any recommendation for modification, and a dissenting report, if any, to the Department and the United States. Recommendations shall be based on a determination by a supermajority of the entire TOC that the modification is necessary to prevent adverse effect to the hydrothermal system within the reserved land of YNP, or that modification may be made without the threat of adverse effect on the hydrothermal system within the reserved land of YNP. The recommendation shall be made in good faith and based on scientific evidence including, but not limited to, the following:

- i. in the case of extension of boundaries, the criteria set out in the Working Group Report for designation of the boundary of the Area to be enlarged is found to exist within the proposed extension;
 - ii. the cumulative effect of groundwater development within the Area or a portion of the Area has resulted in declining hydraulic head and modification of boundaries or restrictions are necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;
 - iii. changes in groundwater revealed by the inventory and sampling program are such that modification is necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;
 - iv. scientific evidence indicates that modification is necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;
 - v. based on scientific evidence, restrictions can be removed or boundary modifications made without the threat of adverse effect to the hydrothermal system within the reserved land of YNP.
2. Modification Pursuant to Review
- a. Within 60 days of mailing of the report in Article IV, section J.1.h., and if (1) the TOC recommends modification; (2) the United States, state or a person with property or water rights within the Area petitions for a hearing; or (3) a person with an interest that would be adversely affected by the recommendation, petitions for a hearing, the Department shall provide for notice of a hearing pursuant to state law.
 - b. The Department shall follow the rules for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4 of the Montana Code Annotated. In addition, the Department shall apply the following provisions:
 - i. The report or reports, data and other written information produced by the TOC shall be admissible in the hearing without further foundation and not subject to the hearsay objection, subject to the rights of any party or claimant to cross-examine the producer or drafter of the written material and to controvert the same by other evidence. The hearing officer may request that members of the TOC appear to provide expert testimony in the case. The hearing officer shall also hear any oral and written scientific evidence presented by the state, the United States, any applicant for a permit to appropriate who has requested review, and any person with property or water rights in the Area, or an interest that would be adversely affected by the recommended modification.
 - ii. The scientific evidence and recommendations presented in the report by the TOC have a rebuttable presumption of validity for the purposes of Article IV. The Department shall adopt the recommendations of the TOC unless the recommendation by the TOC is refuted by clear and

convincing scientific evidence. The dissenting report of the TOC, if any, may be used as rebuttal evidence.

- iii. The Department shall issue an order stating findings of fact and conclusions of law.
- c. Within 30 days of an order by the Department, a person aggrieved by the order may appeal on the record to a state or federal court of competent jurisdiction. For an appeal to state court, venue shall be the First Judicial District in Helena and the review must be conducted according to the procedures for judicial review of a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.

ARTICLE V GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights:

1. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water [with respect to BHNB, GNP, and YNP or] the nature or extent of the rights to water or the right to administer water [with respect to BCNRA and LBBNM] of an Indian Tribe in Montana, or of a water right of an individual that is derivative of such right, or of the United States on behalf of such tribe or tribal member. The relationship between the water rights of the National Park Service described herein and any rights to water of an Indian Tribe in Montana, or of a water right of an individual that is derivative of such right, or of the United States on behalf of such tribe or tribal member shall be determined by the rule of priority. The United States specifically recognizes the seniority of the Crow Tribal Water Rights.
2. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe regarding boundaries or property interests in the State of Montana.
3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the National Park Service. The exercise of a water right of the United States, if any, to water for a consumptive use on land administered by the United States Forest Service upstream of a water right to instream flow described in this Compact shall be allocated from the United States' share for instream flow, not the state's share for consumptive use.

B. State Water Rights

Nothing in this Compact may limit the exclusive authority of the state, including the authority of a water commissioner authorized by state law, to administer all current and future water rights recognized under state law within and upstream of the reserved land covered by this Compact, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law.

C. General Disclaimers

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation or the interpretation or administration of future compacts between the United States and the state; or of the United States and any other state;
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 state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;
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;
4. to establish a precedent for other agreements between the state and the United States or an Indian tribe;
5. to determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;
6. to create or deny substantive rights through headings or captions used in this Compact;
7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;
8. 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 such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;
9. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the National Park Service, and does not affect the water rights of any other federal agency.
10. to alter or amend any provisions of the Yellowstone River Compact, Act of October 30, 1951, ch. 629, 65 Stat. 663 (1951).

D. Use of Water Right

Except as otherwise provided in this Compact, the rights of the United States described in this agreement are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the associated reserved land.

E. Appropriation Pursuant to State Law

Nothing in this Compact may prevent the United States from seeking a permit to appropriate water under state law for use outside the boundaries of the federal reservations for which a water right is described in this Compact, provided that, no such use may be included in the calculation of total current or future consumptive use rights allocated to use pursuant to state law by this Compact, and provided further that, a water right obtained in this manner shall be considered a state water right and shall be administered pursuant to general provisions of state law as provided in Article II, section J.2.b.

F. Reservation of Rights

The parties expressly reserve all rights not granted, described or relinquished in this Compact.

G. Severability

Except as provided in Article IV, the provisions of this Compact are not severable, provided that for the purposes of Sec. 85-2-702(3) MCA, the water rights described in this Compact for the LBBNM and BCNRA Units shall be considered as separate Compacts.

H. Multiple Originals

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

I. Notice

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as he or she may designate in writing.
2. United States: Upon the Secretary of the Interior and such other officials as he or she may designate in writing.

ARTICLE VI FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

A. Binding Effect

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 Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on:
 - 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 to the use of water; and
 - b. except as otherwise provided in Article V, section A., the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.
2. Following the effective date, this Compact shall not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Except as provided in Article IV concerning the appropriation of funds, attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.
3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all persons bound by the final order of the court.
4. If an objection to this Compact is sustained pursuant to 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. Disposition of Actions

Subject to the following stipulations and within one hundred eighty (180) days of the effective date, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. §666, for approval in accordance with state law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the limited waiver or sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. §666 or other provision of federal law.

1. Dismissal of Filed Claims: At the time the state courts approve the reserved water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 4 to this Compact. If this Compact fails approval or a reserved water right described herein is not confirmed, the specified claims shall not be dismissed.
2. Disposition of Federal Suits: Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the reserved water rights described herein, and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the parties shall execute and file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to dismiss with prejudice those claims made by the United States for Glacier National Park in United States v. Aageson, No. CV-79-21-GF (D. Mont.); United States v. Abell, No. CV-79-33M (D. Mont.); and United States v. AMS Ranch, Inc., No. CV-79-22-GF (D. Mont.) and any claims made by the United States for LBBNM or BCNRA in federal court. This Compact may be filed as a consent decree in those federal suits, only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgement binding on the State of Montana that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

C. Settlement of Claims

The parties intend that, with the exceptions noted herein, the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land administered by the National Park Service in Montana on the effective date of this Compact. Pursuant to this settlement, by which certain federal reserved water rights are expressly recognized by the state in this Compact and other water rights claims of the United States are expressly retained in Article III, sections D. and F. in the Compact for YNP, GNP, and BBNM, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for reserved land administered by the National Park Service in Montana relinquishes

forever all said claims on the effective date of this Compact to water within the State of Montana for reserved land administered by the National Park Service. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

Specifically excepted from this final settlement of water rights are water rights Claims No. 43P-W-162354-00 and 43P-W-162348-00, both of which are claimed in the general adjudication of water rights as state law based water rights. Claim No. 43P-W-162354-00 is for 0.75 cfs from the Big Horn Canal for irrigation purposes at the Bighorn River Ranch site within BCNRA. Claim No. 43P-W-162348-00 is for 50 gpm from Pete's Spring for recreation and wildlife purposes and is located outside of the BCNRA boundary.

D. The parties agree to seek enactment of legislation and to recommend appropriation of federal funds necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the 30th day of May, 1995.

FOR THE STATE OF MONTANA MONTANA RESERVED WATER RIGHTS
COMPACT COMMISSION FOR THE UNITED STATES

History: En. Sec. 1, Ch. 635, L. 1993; Sec. , MCA 1993; redes. by Code Commissioner, 1994; amd. Sec. 1, Ch. 149, L. 1995.

85-20-402. Accounting for federal funds. (1) There must be created those accounts that are necessary within the federal special revenue fund established under 17-2-102 for the purposes of this part.

(2) Federal funds deposited in the accounts and interest and earnings on the accounts must be used for the following purposes or to reimburse the state for expenditures incurred for the following purposes:

- (a) establishment, administration, and enforcement of the Yellowstone controlled ground water area;
- (b) inventory, sampling, reporting, and database management;
- (c) provision for administrative costs and the cost of any study or any other necessary activity by the technical oversight committee; and
- (d) any other necessary activity pursuant to this part.

History: En. Sec. 2, Ch. 635, L. 1993; Sec. , MCA 1993; redes. by Code Commissioner, 1994; amd. Sec. 30, Ch. 389, L. 1999.

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT –
MONTANA COMPACT**

U.S. Department of the
Interior Bureau of Land
Management – Montana
Compact



Title 85 Water Use
Chapter 20 Water Compacts

85-20-501. United States Bureau of Land Management-Montana compact ratified. The compact entered into by the state of Montana and the United States Bureau of Land Management and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on March 28, 1997, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
UNITED STATES OF AMERICA, BUREAU OF LAND MANAGEMENT

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 water for certain lands administered by the Bureau of Land Management within the State of Montana at the time of the effective date of this Compact.

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 state 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 two Bureau of Land Management units in the State of Montana, specifically those reserved water rights necessary to preserve the Upper Missouri National Wild and Scenic River and the Bear Trap Canyon Public Recreation Site;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§516-17 (1968);

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

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

ARTICLE I

DEFINITIONS

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

- (1) “Annual Report” means the report prepared by the Montana Department of Natural Resources and Conservation providing information concerning water appropriations issued, modified, revoked, or abandoned in that year that affects the quantity of water in the Available Water Supply, and the current status of the Available Water Supply.
- (2) “Available Water Supply” or “AWS” means those monthly amounts of surface and groundwater available to meet the state’s projected demands, as identified in Table 1, in the Missouri River basin upstream from the point the Missouri River leaves the boundary of the Upper Missouri National Wild & Scenic River beyond that necessary to satisfy the United States’ reserved water right. All depletions from appropriations completed after December 31, 1987, shall be subtracted from the Available Water Supply.
- (3) “Bear Trap Canyon Public Recreation Site” or “BTCPRS” means those lands located in Montana that, pursuant to authority granted by Executive Order No. 10355 of May 26, 1952, were withdrawn and reserved by Secretary of the Interior Public Land Order 5062 (Montana 17093), published in the Federal Register on June 9, 1971.
- (4) “BLM” means the United States Bureau of Land Management or its successor.
- (5) “Department” means the Montana Department of Natural Resources and Conservation or its successor.
- (6) “Depletion” means, for water uses subtracted from the Available Water Supply, the amount of water reduced in the source of supply for each month as calculated in accordance with the Method for Calculation of Monthly Depletions. A depletion is a standard reduction amount based on depletion factors for the type of use as opposed to a measured deduction or a term, condition, restriction, or limitation on an appropriation.
- (7) “Groundwater” means any water that is beneath the ground surface.
- (8) “HYDROSS Model” means the United States Bureau of Reclamation’s Hydrologic Operations Study (HYDROSS) model for the Missouri River basin upstream from the point that the Missouri River leaves the boundary of the Upper Missouri National Wild & Scenic River. The HYDROSS Model is a water supply model that uses monthly water supply studies derived from a period of flow records to simulate the effect of existing and proposed water demands on the historic naturalized flow of the Missouri River. The HYDROSS model and information used to develop the model are archived in the Montana state library.
- (9) “Instream flow” means the water that the parties agree shall remain in the stream in satisfaction of the United States’ reserved water right for the purposes of the federal reservation.

- (10) “Method for Calculation of Monthly Depletions” means the procedure the Department will follow in calculating depletions subtracted from the Available Water Supply for appropriations completed after December 31, 1987. The Method for Calculation of Monthly Depletions is incorporated in this Compact and attached as Appendix 1.
- (11) “Non-Consumptive Use” means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.
- (12) “Parties” means the State of Montana and the United States.
- (13) “State” means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, “state” means the Director of the Montana Department of Natural Resources and Conservation or the Director’s designee.
- (14) “Supplemental Water” means a new appropriation issued for the same purpose of use and place of use already covered by a valid appropriation, with the same (or reduced) period of use, flow rate and, if applicable, volume of water. To be considered supplemental, no aspect of the new appropriation may exceed that of the original valid appropriation and only one appropriation or part of each may be used at the same time.
- (15) “Upper Missouri National Wild & Scenic River” or “UMNW&SR” means the segment of the Missouri River located in Montana that, pursuant to the Wild and Scenic Rivers Act, 16 U.S.C. 1271, et seq, (1986, Supp. 1992), was designated as a component of the National Wild and Scenic Rivers System by Public Law 94-486, Title II, 90 Stat. 2327-2329, on October 12, 1976.
- (16) “United States” means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, “United States” means the Secretary of the Department of the Interior or the Secretary’s designee.

ARTICLE II

WATER RIGHT

The parties agree that the following water rights are in settlement of the reserved water rights of the United States for the reservations described. The parties to this Compact recognize that the water rights described in this Compact are junior to any Tribal water rights with a priority date before the effective date of this Compact, including aboriginal rights, if any, in the basins affected. All reserved water rights described in this Article are subject to Article V, section A.

- A. Instream Flow for the Upper Missouri National Wild and Scenic River.
 - 1. Priority Date: The United States has a priority date of October 12, 1976, for the water right described in this Compact for the UMNW&SR.
 - 2. Instream Flow: The United States has a water right for instream flow in the Missouri River from Fort Benton one hundred and forty-nine miles downstream

to Fred Robinson Bridge, as specifically depicted on the map attached as Appendix 2. The water right is in the amount of the remaining flow of the river after (1) all water appropriations completed before December 31, 1987; (2) the volumes of water designated for the Available Water Supply as provided in Article III, section A; and (3) uses not subtracted from the Available Water Supply as provided in Article III, section C.

- B. Instream Flow for the Bear Trap Canyon Public Recreation Site.
 1. Priority Date: The United States has a priority date of June 9, 1971, for the water right described in this Compact for the BTCPRS.
 2. Instream Flow: The United States has a water right for instream flow in the Madison River which flows over the reserved land of Bear Trap Canyon Public Recreation Site, more specifically described as T4S R1E Sec. 20 SW1/4 downstream to T3S R1E Sec. 15 NE1/4. The water right is in the amount of 1,100 cubic feet per second from January 1 through December 31.

ARTICLE III

UMNW&SR WATER RIGHT IMPLEMENTATION

A. Available Water Supply.

The HYDROSS model incorporates information on water uses completed on or before December 31, 1987. The Department will calculate depletions from appropriations completed after December 31, 1987, on a monthly basis in accordance with Article III, section B and subtract such depletions from the water volumes designated for the Available Water Supply as set forth in Table 1.

TABLE 1 AVAILABLE WATER SUPPLY MONTHLY AMOUNTS

Month	Acre-feet
January	104,000
February	121,000
March	124,000
April	185,000
May	219,000
June	62,000
July	82,000
August	66,000
September	40,000
October	35,000
November	57,000
December	98,000

B. Method for Calculation of Monthly Depletions Subtracted from the Available Water Supply.

1. Surface Water. Except as provided in Article III, section C, the Department will calculate depletions from surface water based on monthly depletion factors for various types of water use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 in the month that the use occurs. The Department will subtract monthly depletions from the AWS monthly amounts.

2. Groundwater. Except as provided in Article III, section C, the Department will calculate depletions from groundwater based on monthly depletion factors for various types of water use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 and spread the depletions in equal increments throughout the year with 1/12th of the annual depletion volume subtracted from each AWS monthly amount.
 3. Stored Water. Except as provided in Article III, section C, the Department will calculate depletions from stored water based on monthly depletion factors for various types of water use for the months of use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1, but subtract such depletions from the AWS in the months when diverted as calculated in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1. The Department will calculate evaporation depletions in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 and subtract such depletions from the AWS monthly amounts.
 4. Water Reservations. Except as provided in Article III, section C, the Department will calculate depletions from state water reservations granted pursuant to 85-2-316 but not completed on or before December 31, 1987, based on the monthly depletion factors for various types of water use in accordance with the Method for Calculation of Monthly Depletions attached as Appendix 1 and subtract such depletions from the AWS monthly amounts, except that the Department will not subtract depletions from Water Reservation No. 72579-41T from the AWS monthly amounts. The Department will process state water reservations subtracted from the AWS monthly amounts that are abandoned, revoked, modified, or found invalid pursuant to Article III, section D.
- C. Uses Not Subtracted from the Available Water Supply.
1. Non-Consumptive Use. The Department will not subtract non-consumptive uses from the AWS monthly amounts.
 2. Uses of 35 gallons per minute or less, not to exceed 10 acre feet per year. The Department will not subtract groundwater uses of 35 gallons per minute or less, not to exceed 10 acre feet per year, and surface water appropriations of 35 gallons per minute or less, not to exceed 10 acre feet per year for domestic use from the AWS monthly amounts.
 3. Supplemental Water. The Department will not subtract supplemental water uses from the AWS monthly amounts.
 4. Lawn and Garden. The Department will not subtract depletions for appropriations to irrigate an area 5 acres or less from the AWS monthly amounts.
 5. Instream Stock Uses. The Department will not subtract instream stock uses from the AWS monthly amounts.
 6. Late Claims. The Department will not subtract valid late claims as defined by 85-2-221, MCA (1995) from the AWS monthly amounts.
 7. Federal and Tribal Water Rights. The Department will not subtract water rights created under federal law, water rights recognized in satisfaction of water rights created under federal law, and water rights owned by individuals that are derived from water rights created under federal law from the AWS monthly amounts.

D. Additions to the Available Water Supply.

1. Abandonment. When an appropriation right on a stream affected by this Compact is abandoned after December 31, 1987, and such abandonment causes water to become available for appropriation, the Department will calculate the previous depletion amount in accordance with the Method for Calculation of Monthly Depletions and add such amount to the water volumes designated for the Available Water Supply. State law governs the issue of whether an abandonment has occurred.
2. Modified, Revoked, or Invalid Appropriations. When an appropriation right on a stream affected by this Compact is modified, revoked, or found invalid and such modification, revocation, or invalidation causes water to become available for appropriation, the Department will calculate the previous depletion amount in accordance with the Method for Calculation of Monthly Depletions and add such amount to the water volumes designated for the Available Water Supply.

E. Basin Closure. Except for the uses provided for in Article III, section C, in the Missouri River basin upstream from the point that the Missouri River leaves the boundary of the UMNW&SR the Department shall not process or grant an application for an appropriation in any month in which the water volume designated for the Available Water Supply has been exhausted.

F. Prohibition on Future Mainstem Impoundment. No new impoundments may be permitted on the mainstem of the Missouri River upstream from the UMNW&SR. Reclamation, repair, or rehabilitation of an existing impoundment shall not be considered a new impoundment, provided that, without the consent of the United States, which for nonfederal power generating impoundments under the Federal Energy Regulatory Commission's jurisdiction shall be obtained through the Federal Energy Regulatory Commission, reclamation, repair, or rehabilitation shall not cause the impoundment to exceed the original constructed capacity of the impoundment.

G. Administration and Reporting by the State.

1. Department Administration. The Department will administer the AWS by subtracting depletions from the monthly available water amounts following the procedures set forth in the Method for Calculation of Monthly Depletions attached as Appendix 1. In order to monitor the water volumes in the AWS, the Department will calculate preliminary monthly depletions and subtract the amounts from the AWS. The Department will make final subtractions from the AWS when the Department determines that an appropriation is complete pursuant to 85-2-315 or 85-2-316(8)(b), MCA.
2. Annual Report. The Department will produce an Annual Report by March 1st of each year detailing its actions in administering the AWS for the previous calendar year, provided that the first Annual Report after ratification of this Compact shall include information concerning water appropriations issued, completed, modified, revoked, found invalid, or abandoned since January 1, 1988, through the previous calendar year. The Annual Report is final on April 15 of the year issued unless on or before that date the BLM submits written comments or a request for an annual meeting to the Department. If an annual meeting is requested, it shall be held within thirty days of the request. The

Department will make a final decision and issue a final Annual Report by June 1, unless the Department and the BLM agree to a different date.

3. Cooperative Review Process. The Department and the BLM will create a cooperative review process to allow discussion of depletion factors and depletion amounts assigned to the undefined uses as listed in the Method for Calculation of Monthly Depletions attached as Appendix 1 and any other issues concerning the Annual Report. Subject to Article III, section H(1), the Department will make the final decision concerning the administration of the AWS. The Department and the BLM will develop a Memorandum of Understanding describing the cooperative review process within six months of the ratification of this Compact.
4. Changes to the Method for Calculation of Monthly Depletions. The parties may make changes to the Method for Calculation of Monthly Depletions attached as Appendix 1 by written agreement and such changes shall not be deemed a modification of this Compact.

H. Action for Enforcement of Provisions of Article III.

The United States may file an action in a court of competent jurisdiction to enforce the provisions of Article III as follows:

1. Enforcement of Administration of Available Water Supply. After the Annual Report becomes final in accordance with Article III, section G(2), the United States shall have 90 days to file an action for enforcement of the provisions of Article III, section G of this Compact concerning the administration of the AWS. Any action challenging the administration of the AWS may consist only of trial de novo of the Department's actions for the previous calendar year. The United States may not challenge the Department's actions concerning administration of the AWS contained in previous Annual Reports. Except for appropriations issued in violation of Article III, section E, any court order concerning this subsection shall be limited to calculating depletion amounts from the AWS and does not affect the appropriations issued, revoked, modified, or abandoned or any other decision of the Department.
2. Enforcement of Other Provisions of Article III. The United States may file an action for enforcement of any provision of Article III except Article III, section G at any time.
3. No Standing to Object. The United States does not have standing to object to an application for an appropriation or change in appropriation right, or to participate in a revocation or modification proceeding, based on the property, water right, or interests of the United States for the UMNW&SR, provided that, for an appropriation applied for with a point of diversion or means of conveyance within the boundaries of the UMNW&SR, the Department shall not grant the appropriation unless the Department expressly conditions the appropriation on obtaining the necessary authorization for entry and use from the United States, and provided further that nothing in this Compact shall limit the United States' standing to object based on any other water rights of the United States or the reserved water right for the BTCPRS.

4. Exclusive Remedy. The remedy set forth in this section is the exclusive remedy for enforcement of Article III of this Compact. The United States shall not have to exhaust any administrative remedies in order to enforce Article III of this Compact.

ARTICLE IV

BTCPRS WATER RIGHT IMPLEMENTATION

A. Subject to Prior Uses. The United States' federal reserved water right for instream flow for the segment of the Madison River which flows over the reserved land of Bear Trap Canyon Public Recreation Site is subject to all water rights with a priority date before June 9, 1971 recognized under state or federal law. Nothing in this Compact may affect an existing right to divert water from a point within the BTCPRS and transport it for use outside the BTCPRS.

B. Change in Instream Flow Right. The federal reserved water right for instream flow as described in Article II, section B, shall not be changed to any other use.

C. Notice of Reopening of Madison River Basin. The Department shall notify the BLM if an application for a state water reservation pursuant to 85-2-316, MCA, may be processed and granted within the Madison River basin, as such basin is defined by 85-2-340(4).

D. Enforcement of Water Right. The United States may file an action in a court of competent jurisdiction to enforce the federal reserved water right described in Article II, section B.

E. Venue for Appeal of Administrative Decisions. For any appeal of an administrative decision, venue shall be the First Judicial District in Helena and the review shall be conducted according to the procedures for judicial review of contested cases under the Montana Administrative Procedures Act, Title 2, chapter 4, of the Montana Code Annotated.

ARTICLE V

GENERAL PROVISIONS

- A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.
 1. The relationship between the water rights of the Bureau of Land Management described herein and any rights to water of an Indian Tribe in Montana, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.
 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 to water of any Indian Tribes and Tribal members in Montana.
 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 interests in the State of Montana.
 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 to water

of any other federal agency or federal lands in Montana other than those of the Bureau of Land Management for the UMNW&SR and the BTCPRS.

B. General Disclaimers.

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the state; or of the United States and any other state;
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 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 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 Code Annotated, in the basins affected by this Compact;
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;
4. to establish a precedent for other agreements between the state and the United States or an Indian tribe;
5. to determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;
6. to create or deny substantive rights through headings or captions used in this Compact;
7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;
8. 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 such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;
9. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the BLM, and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact.

C. Use of Water Right.

The rights of the United States described in Article II of this Compact are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes outlined in applicable federal law.

D. Concurrent with other Non-consumptive Water Uses.

The federal reserved water right for instream flows for the UMNW&SR and the BTCPRS recognized by this Compact shall run concurrently with any other non-consumptive water uses including but not limited to all hydropower uses and other instream flow uses.

E. Appropriation Pursuant to State Law.

Nothing in this Compact may prevent the United States from seeking a water appropriation pursuant to state law for use on the reserved land within the UMNW&SR or the BTCPRS or for use outside the boundaries of the federal reservations for which a water right is described in this Compact, provided that a water right obtained in this manner shall be considered a state water right and shall be administered pursuant to state law.

F. Reservation of Rights.

The parties expressly reserve all rights not granted, described, or relinquished in this Compact.

G. Severability.

The provisions of this Compact are not severable, provided that for the purposes of 85-2-702(3), MCA, the water rights described in this Compact for the Upper Missouri National Wild and Scenic River and Bear Trap Canyon Public Recreation Site shall be considered as separate Compacts.

H. Multiple Originals.

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

I. Notice.

Unless otherwise specifically provided for in this Compact, service of notice, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing.
2. United States: Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

ARTICLE VI

FINALITY OF COMPACT

A. Binding Effect.

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 Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on:
 - 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 to the use of water; and
 - b. except as otherwise provided in Article V, section A, the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.
2. Following the effective date, this Compact shall not be modified without the consent of both parties. Any attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

B. Settlement of Claims.

The parties intend that the water rights described in this Compact are in full and final settlement of the reserved water right claims for the UMNW&SR and the BTCPRS. Pursuant to this settlement, by which certain federal reserved water 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 or which could have been filed by the United States for the UMNW&SR and the BTCPRS relinquishes forever all said claims on the effective date of this Compact to water within the State of Montana for reserved water rights for the above mentioned units. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as any other appropriation.

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

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the 10th day of September, 1997.

Appendix 1

Method for Calculation of Monthly Depletions

A. Surface Water.

Depletion factors are grouped by the use codes now employed by the Department, and the monthly depletion factors for each type of water use are set forth below.

1. Fishery, Wildlife, Recreational, and Wildlife/Waterfowl Uses:

- FS Fishery
- FW Fish and Wildlife
- RC Recreation
- WW Wildlife/Waterfowl.

The water loss resulting from fishery, wildlife, recreational, and wildlife/waterfowl uses occurs as evaporation from small ponds. The following table lists the monthly depletion factors for evaporative loss in feet per surface acre:

Table 2 Monthly Depletion Factors for Evaporation

January	0.00
February	0.00
March	0.00
April	0.08
May	0.17
June	0.26
July	0.50
August	0.51
September	0.35
October	0.26
November	0.04
December	0.00

The Department will calculate monthly depletions from evaporation by multiplying the above factors by maximum reservoir surface area (acres).

2. Geothermal and Power Generation Uses:

GE Geothermal

PG Power Generation.

The Department will determine depletions from geothermal and power generation uses on a case-by-case basis.

3. Domestic, Multiple Domestic, and Municipal Uses:

DM Domestic

MD Multiple Domestic

MC Municipal.

The Department will calculate monthly depletions from domestic uses over 35 gallons per minute, exceeding 10 acre feet per year, multi-family domestic, and municipal uses by multiplying the annual volume by the monthly depletion factors set forth below.

Table 3 Monthly Depletion Factors for Domestic, Multiple Domestic, and Municipal Uses

January	.0135
February	.0135
March	.0270
April	.0315
May	.0450
June	.0585
July	.0810
August	.0675
September	.0495
October	.0360
November	.0135
December	.0135

4. Irrigation including Lawn and Garden over 5 Acres:

IR Irrigation

LG Lawn and Garden.

The Department will calculate monthly depletions from irrigation uses (in acre feet) by multiplying the number of acres by the depletion factors set forth below.

Table 4 Monthly Depletion Factors for Irrigation Uses Monthly Depletion Factor

Month	(feet per acre)
January	0.0
February	0.0
March	0.0
April	0.0
May	0.2604
June	0.4656
July	0.7417
August	0.5885
September	0.1177
October	0.0
November	0.0
December	0.0

The Department will calculate monthly depletions from lawn and garden uses to irrigate an area greater than 5 acres using the method for irrigation set forth above.

5. Stock Uses:

ST Stock.

The Department will calculate monthly depletions from stock ponds using the monthly depletion factors for evaporation listed in Appendix 1, section A(1).

6. Commercial, Industrial, Institutional, Mining, and Other Uses:

CM Commercial

IN Industrial

IS Institutional

MN Mining.

OP Other Purpose

The Department will assign monthly depletions from commercial, industrial, institutional, mining, and other undefined uses as 50% of the annual volume spread in equal increments throughout the period of use. The Department will make any necessary changes to the assigned monthly depletions to reflect actual depletions when the appropriation is complete. The Department and the BLM may discuss the monthly depletions at the annual meeting and the Department will make the final monthly depletion determination.

7. Transbasin Diversions: The Department will calculate monthly depletions for transbasin diversions outside the drainage area of the Missouri River and its tributaries upstream from the point that the Missouri River leaves the boundary of the Upper Missouri National Wild & Scenic River at 100% of the diverted amount.

B. Groundwater.

The Department will subtract all groundwater uses over 35 gallons per minute, exceeding 10 acre feet per year, from the AWS monthly amounts regardless of location or source aquifer. The Department will calculate depletions from groundwater uses based on monthly depletion factors for the type of water use as listed in Appendix 1, section A and spread the depletions in equal increments throughout the year with 1/12th of the annual depletion volume subtracted from each AWS monthly amount.

C. Stored Water.

The Department will calculate depletions from storage projects by determining the annual depletion based on the monthly depletion factors for the type of use for which the water is stored as listed in Appendix 1, section A and subtract such depletion from the AWS monthly amounts as set forth in the schedule below. For purposes of subtracting the annual depletion for the type of use from the AWS monthly amounts, the Department will apply the following depletion schedule to all reservoirs unless the appropriation issued specifies a different fill regimen.

Table 5 Monthly Storage Depletion Schedule

Month	% of Calculated
Annual Depletion	
November	7%
December	8%
January	7%
February	7%
March	10%
April	21%
May	38%
June	2%
Total	100%

The Department will also subtract the monthly depletions from evaporation based on the monthly depletion factors for evaporation listed in Appendix 1, section A(1).

History: En. Sec. 1, Ch. 170, L. 1997.

**CHIPPEWA CREE TRIBE
– MONTANA COMPACT**

Chippewa Cree Tribe
– Montana Compact



Title 85 Water Use
Chapter 20 Water Compacts

85-20-601. Chippewa Cree Tribe-Montana compact ratified. The compact entered into by the State of Montana and the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702 on April 15, 1997, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION
UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Chippewa Cree Tribe of the Rocky Boy's Reservation, and the United States of America for the purpose of settling any and all existing water rights claims of the Chippewa Cree Tribe in the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1979, the United States, on behalf of the Chippewa Cree Tribe of the Rocky Boy's Reservation, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights claims, see, United States v. Aageson, No. CIV-79-21-GF (filed April 5, 1979); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribe; see, "the McCarran Amendment", 43 U.S.C. 666 (1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Chippewa Cree tribal water rights; and

WHEREAS, the United States has filed claims on behalf of the Chippewa Cree Tribe in the general stream adjudication initiated by the State of Montana; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see, 721 F.2d 1189; and

WHEREAS, the adjudication of Chippewa Cree tribal water rights in the state court proceedings has been suspended while negotiations are proceeding to conclude a compact resolving all water rights claims of the Chippewa Cree Tribe within the State of Montana; and

WHEREAS, the Chippewa Cree Business Committee, or its duly designated representatives, have authority to negotiate this Compact pursuant to 1(a), of Article VI of the Tribal Constitution; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. Sections 516-17 (1993); and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. Section 1457 (1986), inter alia; and

WHEREAS, the Chippewa Cree Tribe, the State of Montana, and the United States agree that the Tribal Water Right described in this Compact shall be in satisfaction of the Tribe's water rights claims within the State of Montana; and

WHEREAS, it is in the best interest of all parties that the water rights claims of the Chippewa Cree Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United States;

NOW THEREFORE, the parties agree to enter into this Compact for the purpose of settling the water rights claims of the Chippewa Cree Tribe within the State of Montana.

ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of this Compact:

1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43560 cubic feet.
2. "Adverse effect" means an interference with the reasonable exercise of a water right.
3. "Acre feet per year" or "AFY" means the quantity of water to which the Tribe has a right each year measured in acre feet over a period of a year.
4. "Ancestral Missouri River Channel Aquifer" means that material deposited by the Missouri River prior to Pleistocene glaciation, and glacial deposits underlying post-glacial alluvial deposits in the River valley that are sufficiently permeable to conduct groundwater and to yield water to wells. This aquifer is located in the valley of Big Sandy Creek at a depth of 150 feet or more beneath the surface of the ground as shown in Appendix 11 and described in USGS Water Supply Paper 1460-B, Swenson, Frank, "Geology and Ground-Water Resources of the Lower Marias Irrigation Project Montana," (1957).
5. "Beaver Creek Drainage" means Beaver Creek and its tributaries from its headwaters to the confluence with the Milk River, as shown in Appendices 5 and 6.
6. "Big Sandy Creek Basin" means the mainstem of Big Sandy Creek and its tributaries (exclusive of Sage Creek and Lonesome Lake) in Water Court Basin 40H from the headwaters to the confluence with the Milk River, as shown in Appendices 5 and 6.
7. "Board" means the Chippewa Cree - Montana Compact Board established by Section D. of Article IV of this Compact.

8. “Bonneau Reservoir” means the water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

9. “Box Elder Creek Drainage” means the sub-basin of Big Sandy Creek Basin containing the reach of Box Elder Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

10. “Brown’s Reservoir” means the proposed water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

11. “Bypass” means the designated streamflow around or through a diversion.

12. “Camp Creek Drainage” means the sub-basin of Big Sandy Creek Basin containing the reach of Camp Creek from its headwaters to its confluence with Duck Creek, as shown in Appendix 6.

13. “Change in use” means a change in the point of diversion, the place of use, the purpose of use, or the place or means of storage.

14. “Consumptive use” means use of water other than a “non-consumptive use” as defined in this Article.

15. “Continuously store” or “continuous storage” means the right to fill and then continually refill the active storage capacity of an impoundment from the natural flow of the source on which the impoundment is located.

16. “DNRC” means the Montana Department of Natural Resources and Conservation, or any successor agency.

17. “Drainage Stipulation” means an agreement entered into between and among the Tribe, the United States acting in its capacity as trustee for the Tribe, and one or more signatory non-tribal water users for entry as a stipulation in Montana Water Court. Drainage stipulations are set forth in Appendix 2.

18. “Drainage of Origin” means the drainage in which the water initially arises. See Appendix 6 showing drainage area boundaries.

19. “Duck Creek Drainage” means the sub-basin of Big Sandy Creek Basin containing the reach of Duck Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

20. “East Fork Reservoir” means the proposed water impoundment as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

21. “Evaporative Loss” means reduction in the quantity of water due to the process of evaporation and shall be three (3) acre feet per surface acre rounded off as set forth in Article III.

22. “Fish and Wildlife Enhancement” means the use of water to improve existing habitat for fish and wildlife use, protection, conservation or management through physical or operational modifications of impoundments, within the areas designated in Appendix 4.

23. “Gorman Creek Drainage” means the sub-basin of Big Sandy Creek Basin containing the reach of Gorman Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

24. “Gravel Coulee Drainage” means the sub-basin of Big Sandy Creek Basin containing the reach of Gravel Coulee from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

25. “Groundwater” means any water that is beneath the ground surface.

26. “Hydrologically Connected” means the interconnection of groundwater and surface water such that they constitute one water supply and use of either results in an impact to both.

27. “Lake Elwell” means the water impounded on the Marias River by Tiber Dam.

28. “Lonesome Lake Coulee” means the mainstem of Lonesome Lake Coulee and its tributaries in Water Court Basin 40H from its headwaters to its confluence with Big Sandy Creek, as shown in Appendices 5 & 6.

29. “Lower Big Sandy Creek Drainage” means the sub-basin of Big Sandy Creek Basin containing the reach of Big Sandy Creek below its confluence with Box Elder Creek as shown in Appendix 6.

30. “Minimum Pool” means the quantity of water in an impoundment, as measured in acre-feet, or by the water surface elevation in feet above sea level, that is not available for release for designated water uses.

31. “MR&I Water” means water for use for municipal, rural, industrial, domestic, and incidental drought relief purposes on the Reservation.

32. “Municipal/Domestic Uses” means water for domestic, public, commercial and industrial uses.

33. “Net Depletion” means the difference between the quantity of water diverted from a source and the quantity of water returned to the same source at or near the point of diversion.

34. “New reserved water rights” means any reserved water rights created with acquisition of land by the Tribe or the United States to be held in trust by the United States for the Tribe, after the date of ratification of this Compact by the State and the Tribe, whichever is later.

35. “Non-consumptive use” means a use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream or groundwater conditions.

36. “Non-Irrigation Water Uses” means the use of water for purposes other than the production of agricultural commodities, such as, but not limited to domestic, livestock, fish and wildlife, and recreational uses, including development of golf courses.

37. “Parties” means the Tribe, the State of Montana, and the United States.

38. “Person” means an individual or any other entity, public or private, including the State, the Tribe and the government of the United States and all officers, agents, and departments thereof.

39. “Ratification date” means the date on which the Compact is finally approved by the Business Committee of the Chippewa Cree Tribe, by the Montana Legislature, and by the Congress of the United States, whichever date is latest.

40. “Recognized under state law” when referring to a water right means a water right arising under state law, but does not include water rights arising under federal law.

41. “Release” means (verb) to discharge water from storage, or (noun) the discharge of water from storage.

42. “Reservation” means the Rocky Boy’s Reservation and includes all lands and interests in lands which are held in trust by the United States for the Chippewa Cree Tribe, including future additions to the Reservation.

43. “Sage Creek” means the main stem of Sage Creek and its tributaries in Water Court Basin 40G from the headwaters to the confluence with Big Sandy Creek, as shown in Appendices 5 and 6.

44. “Secretary” means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.

45. “Shallow Alluvium Aquifer” means the material deposited by flowing water generally during, or after Pleistocene glaciation that is sufficiently permeable to conduct groundwater and to yield water to wells and springs.

46. “State” means the state of Montana and all officers, agents, departments, and political subdivisions thereof.

47. “Stockwatering” means the storage and use of water for the purpose of providing water to domesticated animals and wildlife.

48. “Stoneman Farms” means the tribal agricultural projects shown in Appendix 6.

49. “Stoneman Reservoir” means the water impoundment, as shown in Appendix 6, including the existing storage capacity and the proposed expanded storage capacity, and for which a water right is described in Article III of this Compact.

50. “Subordinate” means to rank the priority in which a water right is fulfilled behind other specified water rights without regard to relative priority dates.

51. “Supplemental Irrigation Water” means water used for irrigation, as a secondary supply, once it becomes apparent that the primary supply will be unable to meet the full annual demand.

52. “Surface Acres” means the horizontal area in acres associated with the water surface in an impoundment when filled to the maximum capacity.

53. “Transfer” means (verb) to authorize a person to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration; (noun) a service contract, lease, or other similar agreement of limited duration authorizing the use of all or any part of the Tribal Water Right.

54. “Tribal Water Resources Department” or “TWRD” means the Chippewa Cree Tribal Water Resources Department, or any successor agency.

55. “Tribal Water Right” means the right of the Chippewa Cree Tribe of the Rocky Boy’s Reservation to divert, use, or store water as described by Article III of this Compact.

56. “Tribe” means the Chippewa Cree Tribe of the Rocky Boy’s Reservation and all officers, agents and departments thereof.

57. “United States” means the federal government and all officers, agencies, departments, and political subdivisions thereof.

58. “Upper Big Sandy Creek Drainage” means the sub-basin of Big Sandy Creek Basin containing the reach of Big Sandy Creek from its headwaters to its confluence with Box Elder Creek, as shown in Appendix 6.

59. “Volcanic Bedrock Aquifer” means those Tertiary igneous rock units that are sufficiently permeable to conduct groundwater and to yield water to wells and springs as shown in USGS Miscellaneous Geologic Investigations Map I-234, “Preliminary General Geologic Map of the Laredo Quadrangle, Bearpaw Mountains, Montana,” and Map I-235, “Preliminary Geologic Map of the Centennial Mountain Quadrangle, Bearpaw Mountains, Montana,” and shown as surface outcrop in Appendix 11.

ARTICLE III - TRIBAL WATER RIGHT

A. Basin 40H: Big Sandy Creek Basin.

1. Gravel Coulee/Lower Big Sandy Creek Drainages - 1690 AFY diversion - 1000 AF continuous storage.

a. Quantification - Source - Volume.

- (1) Storage. The Tribe shall have the right to continuously store or permit the continuous storage of up to a capacity of 1000 AF of water in Stoneman Dam and Reservoir from the natural flow of Gravel Coulee. Subject to the 1000 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 1480 AFY from the direct flow of Lower Big Sandy Creek and up to 445 AFY from groundwater for storage in Stoneman Dam and Reservoir as set forth in Section A.1.a.(2) of Article III. The quantity impounded by continuous storage shall not decrease the 1480 AFY which the Tribe may divert for the purposes allowed in Section A.1.e. of Article III. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife purposes, as set forth in Sections A.1.e.(3) and (4) of Article III.
- (2) Diversion. The Tribe shall have the right to divert or use or permit the diversion or use of 1690 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 1690 AFY:
 - (a) Direct Flow. The Tribe shall have the right to divert or use or permit the diversion or use of up to 1690 AFY from the direct flow of Gravel Coulee and Lower Big Sandy Creek and its tributaries. 1480 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section A.1.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.
 - (b) Storage. Of the 1690 AFY, the Tribe shall have the right to divert 1480 AFY from storage in Stoneman Reservoir for irrigation and non-irrigation purposes as more specifically provided in Sections A.1.e.(1) and (2) of Article III; provided that, the right to divert 1480 AFY from Lower Big Sandy Creek to storage is not reduced by the

amount of water diverted for irrigation or non-irrigation purposes from water derived from storage.

- (c) Groundwater. Of the 1690 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 445 AFY of groundwater in the Gravel Coulee and Lower Big Sandy Creek drainages in compliance with Sections A.6.a. and b. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section A.1.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.
 - (i) Of the 445 AFY, 100 AFY may be appropriated from the shallow alluvium along Gravel Coulee and Lower Big Sandy Creek.
 - (ii) Of the 445 AFY, 345 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer in the Gravel Coulee and Lower Big Sandy Creek drainages. Groundwater from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.
- b. Priority Date. The water rights to surface flow, groundwater, and storage as set forth in Section A.1. of Article III, for the Gravel Coulee and Lower Big Sandy drainages shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.
- c. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.
- d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means on Lower Big Sandy Creek and Gravel Coulee drainages on the Reservation.
- e. Purposes. The Tribe's right to 1690 AFY from the Gravel Coulee and Lower Big Sandy drainages may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for irrigation and non-irrigation purposes.
 - (1) Irrigation.
 - (a) Volume. 1380 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for irrigation.
 - (b) Source. The 1380 AFY for irrigation may come from a combination of direct flow, storage and groundwater in the Gravel Coulee and Lower Big Sandy drainages.
 - (c) Place of use. The 1380 AFY may be used to irrigate 540 acres at Stoneman Farms on the Reservation.

- (2) Non-Irrigation.
 - (a) Volume. 100 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for non-irrigation purposes.
 - (b) Source. The 100 AFY for non-irrigation purposes may come from a combination of direct flow, storage, and groundwater in the Gravel Coulee and Lower Big Sandy drainages.
 - (c) Point of diversion. The 100 AFY for non-irrigation purposes may be diverted on the Reservation within the Lower Big Sandy and Gravel Coulee drainages.
- (3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (a) Volume. 160 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 40 surface acres of impoundments on Lower Big Sandy drainage and 13 surface acres of impoundments on Gravel Coulee drainage. The Tribe shall have the right to continuously store water in these impoundments.
 - (b) Source.
 - i. Of the 160 AFY, 120 AFY for stockwatering may come from the direct flow of Lower Big Sandy Creek.
 - ii. Of the 160 AFY, 40 AFY for stockwatering may come from the direct flow of Gravel Coulee.
 - iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.
 - (c) Place of use. The Tribal Water Right for stockwatering in the Gravel Coulee and Lower Big Sandy Creek drainages may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.
- (4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within

the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

- (a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 16 surface acres of impoundments in the Gravel Coulee and Lower Big Sandy Creek drainages. The Tribe shall have the right to continuously store water in these impoundments.
 - (b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gravel Coulee and Big Sandy Creek.
 - (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Gravel Coulee and Big Sandy Creek drainages, in the respective drainages of origin.
2. Box Elder Creek Drainage - 6940 AFY diversion - 4800 AF continuous storage.
- a. Quantification - Source - Volume.
 - (1) Storage. The Tribe shall have the right to continuously store, or permit the continuous storage in Bonneau Reservoir, Brown's Reservoir, and in any new impoundments, of up to a capacity of 4800 AF from the natural flow of Box Elder Creek, or any natural flow from the source on which the impoundment is located. Subject to the 4800 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 6310 AFY from the direct flow of Box Elder Creek for storage in Brown's Reservoir and in any new impoundments not located on Box Elder Creek and to divert 1950 AFY from groundwater for storage in any new or existing impoundment wherever located, as set forth in Section A.2.a.(2) of Article III. The quantity impounded by continuous storage shall not decrease the 6310 AFY, which the Tribe may divert for the purposes allowed in Section A.2.e. of Article III. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.2.e.(4) and (5) of Article III.
 - (2) Diversion. The Tribe shall have the right to use or permit the use of 6940 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 6940 AFY:
 - (a) Direct Flow. Of the 6940 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 6590 AFY from Box Elder Creek and its tributaries. 6310 AFY of the water from direct flow may be diverted to storage prior to application to any purposes

allowed in Section A.2.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

- (b) Storage. Of the 6940 AFY, the Tribe shall have the right to divert a total of 6310 AFY from storage in one or more of the following reservoirs: Bonneau Reservoir, Brown's Reservoir, and any new impoundments for irrigation and non-irrigation purposes. The right to divert 6310 AFY from Box Elder Creek to storage is not reduced by the amount of water diverted for irrigation or non-irrigation purposes from water derived from storage.
- (c) Groundwater. Of the 6940 AFY, the Tribe shall have the right to withdraw and use or to permit the withdrawal and use of up to 1950 AFY of groundwater in the Box Elder Creek drainage in compliance with Sections A.6.a. and b. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section A.2.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.
 - (i) Of the 1950 AFY, 180 AFY may be appropriated from the shallow alluvium in the Box Elder Creek drainage.
 - (ii) Of the 1950 AFY, 230 AFY may be appropriated from the volcanic bedrock in the Box Elder Creek drainage.
 - (iii) Of the 1950 AFY, 1570 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer; provided that, should water be imported to the Reservation, the entire 1950 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer. Water from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.
- b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.2. of Article III, for the Box Elder Creek drainage, including water supplied by Box Elder Creek for off-stream storage, shall have a priority date of September 10, 1888, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.
- c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.
- d. Points and Means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Box Elder Creek drainage on the Reservation.
- e. Purposes. The Tribe's right to 6940 AFY in the Box Elder Creek drainage may be used for the following purposes; provided that, subject to the

limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for irrigation, non-irrigation and municipal/ domestic purposes.

- (1) Irrigation.
 - (a) Volume. 6280 AFY of water in the Box Elder Creek drainage may be used for irrigation.
 - (b) Source. The 6280 AFY for irrigation may come from a combination of direct flow, storage and groundwater. Water from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.
 - (c) Place of use. The 6280 AFY may be used to irrigate 1930 acres at the Stoneman Farms on the Reservation.
- (2) Non-Irrigation.
 - (a) Volume. 30 AFY of water in the Box Elder Creek drainage may be used for non-irrigation purposes.
 - (b) Source. The 30 AFY for non-irrigation purposes may come from direct flow, storage, or groundwater or a combination thereof in the Box Elder Creek drainage. The 30 AFY for non-irrigation use may be developed from either the shallow alluvium or volcanic bedrock aquifers.
- (3) Municipal / Domestic.
 - (a) Volume. 350 AFY of water in the Box Elder Creek drainage may be used for municipal/domestic purposes.
 - (b) Source. The 350 AFY for municipal/domestic purposes may come from the following sources:
 - i. 150 AFY from the shallow alluvium adjacent to Box Elder Creek.
 - ii. 200 AFY from the volcanic bedrock.
- (4) Stockwatering - Evaporative Loss. Use of the Tribal Water Right set forth for stockwatering in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 44 surface

- acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
- (b) Source. The 130 AFY for stockwatering may come from the direct flow of Box Elder Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.
 - (c) Place of use. The Tribal Water Right for stockwatering in the Box Elder Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.
 - (5) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 50 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
 - (b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Box Elder Creek and its tributaries.
 - (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Box Elder Creek drainage, in the drainage of origin.
3. Camp Creek and Duck Creek Drainages - 280 AFY diversion.
- a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 280 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 280 AFY:
 - (1) Direct Flow. Of the 280 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 230 AFY from Duck and Camp Creeks and their respective tributaries in the following proportions:
 - (a) 170 AFY from Duck Creek.
 - (b) 60 AFY from Camp Creek.

- (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.3.e.(2) and (3) of Article III.
- (3) Groundwater. Of the 280 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 50 AFY of groundwater in the Camp and Duck Creek drainages on the Reservation, including groundwater that is hydrologically connected to surface water, in compliance with Sections A.6.a. and b. of Article IV. This right shall be exercised in the following proportions:
 - (a) 40 AFY from Duck Creek.
 - (b) 10 AFY from Camp Creek.
- b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.3. of Article III, for the Camp and Duck Creek drainages shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.
- c. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.
- d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Camp Creek and Duck Creek drainages on the Reservation.
- e. Purposes. The Tribe's right to 280 AFY in the Camp and Duck Creek drainages may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (1) Non-Irrigation.
 - (a) Volume. 50 AFY of water in the Camp and Duck Creek drainages may be used for non-irrigation purposes.
 - (b) Source. The 50 AFY for non-irrigation purposes may come from groundwater including groundwater that is hydrologically connected to surface water in the Camp and Duck Creek drainages.
 - (c) Place of use. The Tribal Water Right for non-irrigation purposes in Camp and Duck Creek drainages may be used in the drainage of origin on the Reservation.
 - (2) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Camp and Duck Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and

provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

- (a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 19 surface acres of impoundments in the Camp Creek drainage and 23 surface acres of impoundments on Duck Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
- (b) Source.
 - i. Of the 130 AFY, 60 AFY for stockwatering may come from the direct flow of Camp Creek.
 - ii. Of the 130 AFY, 70 AFY for stockwatering may come from the direct flow of Duck Creek.
 - iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.
- (c) Place of use. The Tribal Water Right for stockwatering in the Camp and Duck Creek drainages may be used in the drainage of origin on the Reservation. The current stockwater impoundments are shown in Appendix 7.
- (3) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Camp and Duck Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (a) Volume. 100 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 34 surface acres of impoundments in the Camp and Duck Creek drainages. The Tribe shall have the right to continuously store water in these impoundments.
 - (b) Source. The 100 AFY for fish and wildlife enhancement may come from the direct flow of Camp and Duck Creeks.

- (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Camp and Duck Creek drainages, in the drainage of origin.
4. Gorman Creek Drainage - 60 AFY diversion.
- a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 60 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 60 AFY.
 - (1) Direct Flow. Of the 60 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 60 AFY from Gorman Creek and its tributaries.
 - (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.4.e.(1) and (2) of Article III.
 - b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.4. of Article III, for the Gorman Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.
 - c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.
 - d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Gorman Creek drainage on the Reservation.
 - e. Purposes. The Tribe's right to 60 AFY in the Gorman Creek drainage may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (1) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gorman Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

- (a) Volume. 10 AFY of water in the Gorman Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 3 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
 - (b) Source. The 10 AFY for stockwatering may come from the direct flow of Gorman Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.
 - (c) Place of use. The Tribal Water Right for stockwatering in the Gorman Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.
- (2) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Gorman Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
- (a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 17 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
 - (b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gorman Creek.
 - (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Gorman Creek drainage, in the drainage of origin.
5. Upper Big Sandy Creek Drainage - 290 AFY diversion.
- a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 290 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 290 AFY.
 - (1) Direct Flow. Of the 290 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 240 AFY from the direct flow of Upper Big Sandy Creek and its tributaries;

- (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.5.e.(3) and (4) of Article III.
- (3) Groundwater. Of the 290 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 50 AFY of groundwater in the Upper Big Sandy Creek drainage including groundwater that is hydrologically connected to surface water, in compliance with Section A.6.a. and b. of Article IV.
- b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.5. of Article III, for the Upper Big Sandy Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.
- c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.
- d. Points and means of diversion. The Tribe may divert or permit the diversion of this water right from any place and by any means in the Upper Big Sandy Creek drainage on the Reservation; provided that, the Tribe may not construct or permit the construction of a diversion or diversions with a total capacity in excess of 100 gpm for the irrigation water right with a source on Upper Big Sandy Creek Drainage. This diversion limit also applies to any change(s) of use of this right.
- e. Purposes. The Tribe's right to 290 AFY in the Upper Big Sandy Creek drainage may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin, or to a place upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (1) Non-Irrigation.
 - (a) Volume. 50 AFY of water in the Upper Big Sandy Creek drainage may be used for non-irrigation purposes.
 - (b) Source. The 50 AFY for non-irrigation purposes may come from groundwater, including groundwater that is hydrologically connected to surface water, in the Upper Big Sandy Creek drainage on the Reservation.
 - (c) Place of use. The 50 AFY for non-irrigation purposes may be used on the Reservation within the drainage of origin.
 - (2) Irrigation.
 - (a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for irrigation.
 - (b) Source. The 45 AFY for irrigation may come from direct flow of Upper Big Sandy Creek on the Reservation.

- (c) Place of use. The 45 AFY may be used to irrigate 10 acres in the drainage of origin, on the Reservation.
- (3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Upper Big Sandy Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 15 surface acres of impoundments in the Upper Big Sandy Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
 - (b) Source. The 45 AFY for stockwatering may come from the direct flow of Upper Big Sandy Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.
 - (c) Place of use. The Tribal Water Right for stockwatering in the Upper Big Sandy Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.
- (4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in Upper Big Sandy Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 50 surface acres of impoundments in the Upper Big Sandy drainage. The Tribe shall have the right to continuously store water in these impoundments.

- (b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Upper Big Sandy Creek.
- (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Upper Big Sandy Creek drainage, in the drainage of origin.

B. Basin 40J: Beaver Creek Basin - 740 AFY diversion - 260 AFY net depletion - 665 AF continuous storage.

1. Quantification - Source - Volume.

- a. Storage. The Tribe shall have the right to continuously store, or permit the continuous storage in East Fork Reservoir of up to a capacity of 665 AF from the natural flow of the East Fork of Beaver Creek. Subject to the 665 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 390 AFY from the direct flow of the West Fork of Beaver Creek for storage in East Fork Reservoir as set forth in Section B.1.b. of Article III. The quantity impounded by continuous storage of the East Fork of Beaver Creek, shall not decrease the 390 AFY, which the Tribe has a right to divert from storage in East Fork Reservoir for non-irrigation purposes allowed in Section B.5. of Article III; provided that, the limit of 260 AFY on net depletion shall apply. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections B.5.b. and c. of Article III.
- b. Diversion. The Tribe shall have the right to divert 740 AFY of water in the Beaver Creek drainage from a combination of direct flow, storage and groundwater where they occur on the Reservation up to the limits on each source and the total limit of 740 AFY.
 - (1) Direct Flow. Of the 740 AFY, the Tribe shall have the right to divert or permit the diversion of up to 540 AFY from the direct flow of Beaver Creek and its tributaries on the Reservation. 390 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to those purposes until such water is re-diverted from storage and applied to such purposes.
 - (2) Storage. The Tribe shall have the right to divert 390 AFY for non-irrigation purposes from water stored in East Fork Reservoir. The right to divert 390 AFY from the West Fork of Beaver Creek to storage is not reduced by the amount of water diverted for non-irrigation purposes from water derived from storage.
 - (3) Groundwater.
 - (a) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 120 AFY of groundwater including groundwater that is hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III

without reducing the amount that can be applied to these purposes until such water is re-diverted and applied to such purposes.

- (b) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of an additional 200 AFY of groundwater from the volcanic bedrock aquifer and other aquifers that are not hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. The limit of 260 AFY on net depletion set forth in Section B.1.a.(2) of Article III, shall not apply to groundwater use pursuant to this section. Groundwater may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to these purposes until such water is re-diverted and applied to such purposes.
- c. Net Depletion. Of the 740 AFY diverted, the Tribe shall have a right to a net depletion of 260 AFY in the Beaver Creek drainage. The calculation of net depletion shall not include evaporative loss from fish and wildlife habitat, from stockwatering, or from East Fork Reservoir, and use of groundwater that is not hydrologically connected to surface water.
- 2. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section B. of Article III, for the Beaver Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.
- 3. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.
- 4. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Beaver Creek drainage on the Reservation.
- 5. Purposes. The Tribe's right to water in the Beaver Creek drainage may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for non-irrigation purposes.
 - a. Non-Irrigation
 - (1) Volume. 590 AFY of water in the Beaver Creek drainage may be used for non-irrigation purposes; provided that, the net depletion may not exceed 260 acre-feet per year in accordance with Section B.1.c. of Article III.
 - (2) Source. The 590 AFY for non-irrigation in the Beaver Creek drainage may come from a combination of direct flow, storage and groundwater.
 - (3) Place of use. The 590 AFY for non-irrigation may be used in the Beaver Creek drainage on the Reservation.
 - b. Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right

for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

- (1) Volume. 40 AFY of water in the Beaver Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 13 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
 - (2) Source. The 40 AFY for stockwatering may come from the direct flow of Beaver Creek on the Reservation. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.
 - (3) Place of use. The Tribal Water Right for stockwatering in the Beaver Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.
- c. Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
- (1) Volume. 110 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 35 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
 - (2) Source. The 110 AFY for fish and wildlife enhancement may come from the direct flow of Beaver Creek.
 - (3) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Beaver Creek drainage, in the drainage of origin.

C. Additional Development of Water.

In addition to the water rights specifically set forth in Sections A. and B. of Article III, the Tribe may develop water from the following sources:

1. Subject to Sections A.6.a. and b. and Section A.7.d. of Article IV, the Tribe may, as part of the Tribal Water Right, develop or permit the development of groundwater on the Reservation in addition to the amounts specified in Sections A. and B. of Article III, from new sources or from expanded use of existing sources. The priority date of such new appropriation shall be the date of development, and notwithstanding any other provision of this Compact, may only be used in priority with other water rights.
2. The Tribe may impound or permit the impoundment of surface water for stockwatering purposes in addition to the amounts set forth in Sections A. and B. of Article III; provided that the priority date of the new appropriation shall be the date of development and, notwithstanding any other provision of this Compact, may only be used in priority with other water rights; and further provided that, the maximum capacity of the impoundment or pit is less than 15 AF and the appropriation is less than 30 AFY and is from a source other than a perennial flowing stream. The Tribe may not transfer or make a change in use of the stockwater right obtained pursuant to this section.
3. On the acquisition of land after the Compact is ratified by the State and the Tribe, whichever date is later, the Tribe has the right to the use of any water right acquired as an appurtenance to the land. Such right shall become part of the Tribal Water Right in addition to the amount set forth in Article III of this Compact and shall be subject to the terms of this Compact; provided that, the right shall retain the priority date of the acquired right. The Tribe will notify DNRC of any acquisition of water in the Tribe's annual report and will identify the water right acquired.
4. The Tribe shall be entitled to use any new reserved water rights that may be created with acquisition of land after the Compact is ratified by the State and the Tribe, whichever date is later; provided that, in any drainage with a moratorium on new state permits pursuant to Section A.7.a. of Article IV, the Tribe shall defer exercise of new reserved water rights, if any, until the moratorium is lifted at which time the Tribe has the first right to use the excess water in accordance with Section A.7.b. of Article IV. The priority date of the excess water shall be the date of acquisition of the land.
5. After the ratification date of the Compact, the Tribe shall have the right to acquire off-Reservation water rights separate from acquisition of the land to which such water rights are appurtenant; provided that, water from the Tribal Water Right is not available for economic or other reasons; and provided further that, the rights shall retain the priority date held by the prior owner of the rights. Such rights shall become part of the Tribal Water Right and shall thereby become subject to Sections A.4.b.(1) and (2) of Article IV.
6. As a part of the Tribal Water Right, the Tribe shall be entitled to an allocation of 10,000 AFY of stored water in Lake Elwell, measured at the dam, for use or disposition by the Tribe for any beneficial purpose, either on or off the Reservation,

pursuant to the terms of this Compact; provided that, such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or of persons holding such reserved water rights through that tribe or through the United States. Any use or disposition of water from Lake Elwell off the Reservation by the Tribe is subject to the specific provisions relating to such use or disposition in any act of Congress ratifying this Compact.

D. Proposed Decree.

For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III and Section A.8. of Article IV is attached as Appendix 1.

ARTICLE IV - IMPLEMENTATION OF TRIBAL WATER RIGHT

A. General Provisions.

1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribe.
2. Tribal Water Right: Administration. Subject to the limitations imposed by this Compact and other federal law, the use of the Tribal Water Right shall be administered by the Tribe through the TWRD both on and off of the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth in D.4. of Article IV, concerning off-Reservation use of the Tribal Water Right which raise issues concerning the application of state or federal law shall be resolved in a court of competent jurisdiction. Those disputes concerning off-Reservation use of the Tribal Water Right which do not raise issues concerning the application of state or federal law will be within the exclusive jurisdiction of the Tribe. Subject to the limitations imposed by this Compact, the Tribe shall have the final and exclusive jurisdiction to resolve all disputes concerning the Tribal Water Right between users of the Tribal Water Right. The TWRD will, among other activities, develop policies and procedures for monitoring water use, diversions, and maintaining records of water use and development consistent with this Compact. The current and future water use and diversions will be identified by location and quantity. Final storage capacities will be based on project as-built plans, and will store no more than the water right set forth in Article III of this Compact. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water code, which shall be developed and adopted by the Tribe within two (2) years following the ratification date of this Compact pursuant to any requirements set forth in the Constitution of the Chippewa Cree Tribe. Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.
3. Use.
 - a. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe, or persons authorized by the Tribe.
 - b. Effect of Non-Use of Tribal Water Rights. Except as specifically provided herein, state law doctrines relating to the use of water rights, including

but not limited to relinquishment, forfeiture or abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.

4. Change in Use or Transfer.

a. On-Reservation Changes in Use or Transfer of the Tribal Water Right.

Unless otherwise stated in this Compact, the Tribe may make a change in use or transfer of a water right set forth in Article III of this Compact on the Rocky Boy Reservation, including the use of water salvaged through the application of water-saving methods to expand irrigation, provided that:

- (1) for each source quantified in Article III, any change in use or transfer shall not result in uses that exceed the water amount quantified for that source;
- (2) any change in use or transfer shall not result in an increase in net depletion in the Beaver Creek drainage in excess of the amount specified for that source;
- (3) any change in use or transfer shall not have an adverse effect on a water right recognized under state law with a priority date before the date of the change or transfer provided that for change in use or transfer of groundwater, the burden as to adverse effect shall be as set forth in Section A.6. of Article IV; and
- (4) any change in use or transfer shall not change the source of the water involved in any such changes.
- (5) The Tribe may not make a change in use or transfer of any water rights set forth in Article III for the purposes of stockwatering or fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for stockwatering or fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
- (6) The Tribe may not make a change in use or transfer any of the water rights set forth in Article III with a source on the drainages of Upper Big Sandy Creek, Camp Creek, Duck Creek and Gorman Creek that results in a change in the place of use, point of diversion or place or means of storage of the water outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

- (7) The Tribe may make a change in use or transfer of the irrigation water right with a source in Upper Big Sandy Creek drainage as set forth in Section A.5.e. of Article III so long as it does so within the diversionary limits set forth in Section A.5.d. of Article III; provided that, the net depletion shall not exceed 30 AFY.
- b. Off-Reservation Changes in Use or Transfer of the Tribal Water Right. Except as may be otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or permit a change in use or a transfer of the Tribal Water Right for use off the Reservation; provided that, any transfer shall be for a term of not to exceed 100 years, and may include provisions authorizing renewal for an additional term of not to exceed 100 years; and provided further that, no such transfer shall be a permanent alienation of the water transferred; and provided further that, no transfer or change in place of use shall be made to a location outside the watershed that forms the Missouri River drainage; and provided further that, if the Tribe receives a good faith offer from a third person from outside the Milk River drainage to acquire use of specified Tribal water rights and the Tribe is willing to accept the terms of the offer, the Tribe, before accepting the offer, shall allow water users in the Milk River drainage the opportunity to acquire use of such rights at the same price and on the same terms and conditions as those contained in the offer. Any change in use or transfer of any such water right involving a point of diversion or place of use located off the Reservation shall be considered an off-Reservation use; provided that, any off-Reservation use of Tribal water rights described in this Compact shall not be deemed to convert such rights to rights arising under state law, and nonuse of such rights off the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the rights; and provided further that, releases or diversions from Lake Elwell for use on the Reservation shall not be considered off-Reservation uses. The Tribe may change the point of diversion or purpose or place of use of the Tribal Water Right back to the Reservation without reduction in the amount of water provided in the Compact.
- (1) Applicable Law. No person may initiate an off-Reservation use, change in use, or transfer of a Tribal water right set forth in this Compact without first applying for and receiving authorization for the use, change in use, or transfer pursuant to Montana law in effect at the time of the application. Approval of an application for a use, change in use or transfer off the Reservation by the State shall be conditioned on a valid Tribal permit for such use, change in use or transfer by the Tribe. The applicant shall provide DNRC with proof of a valid Tribal permit prior to initiating the use, change in use, or transfer.
- (2) Diversion Facilities. With respect to diversion or transportation facilities located off the Reservation which are to be used in connection with the exercise of a water right set forth in this Compact, the

Tribe or persons using such water rights shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of such water rights may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.

- (3) Subsequent Federal or State Law. All off-Reservation uses of Tribal water rights set forth in this Compact shall comply with the requirements set forth in Section A.4.b.(1) and (2) of Article IV until such time as the statutory or common law of the United States or the State of Montana establish that off-Reservation uses of Indian water rights may occur without regard to state law.
 - c. Placement and Size Survey. Placement and size of stockwater impoundments and fish and wildlife enhancement areas shall be surveyed by the TWRD every five (5) years commencing one (1) year after the ratification date of this Compact. The initial survey method shall be through use of data obtained by aerial photography or an acceptable quantitative substitute with accuracy and verification equal to or greater than photography. The method may be modified by agreement between the TWRD and the DNRC. Such modification is pursuant to and shall not be deemed a modification of this Compact. The TWRD shall provide the DNRC with a completed survey for review within six (6) months of initiation of the survey.
 - d. Net Depletion Table. Net depletion for Tribal water uses in the Beaver Creek drainage and for irrigation uses in the Upper Big Sandy Creek drainage shall be as set forth in the table attached as Appendix 9 to this Compact. The TWRD and the DNRC may jointly agree to modify this initial table. Such modification is pursuant to, and will not be deemed a modification of, this Compact.
5. Reporting requirements.
- a. On an annual basis the DNRC shall provide the Tribe and the United States with a listing of all new uses of surface and groundwater for which a permit has been issued by the DNRC in the Big Sandy and Beaver Creek drainages, and of any change in use or transfer of surface water or groundwater approved by the DNRC in the Big Sandy and Beaver Creek drainages since the last report.
 - b. On an annual basis the TWRD shall provide the State and the United States with a listing of all new development of the water rights described in this Compact, the net depletion in the Beaver Creek drainage, and the net depletion for irrigation in the Upper Big Sandy Creek drainage, and of all changes in use or transfers of the water rights described in this Compact since the last report. The first report by the TWRD following adoption of a Tribal Water Code shall include a listing of existing uses.

- c. The TWRD, the DNRC, and the United States may agree to modify the reporting requirements set forth in subsections a. and b. of this section. Such modification is pursuant to, and will not be deemed a modification of, this Compact.
6. Groundwater.
- a. New Groundwater Development Without Adverse Effect.
 - (1) Limits on Additional Development of Groundwater from Sources on the Reservation. After the ratification date of this Compact, the Tribe may develop or permit the development of groundwater; provided that, such development is without an adverse effect on water rights recognized under state law with a priority date before the date of development of the new appropriation.
 - (2) Prerequisite Administrative Remedy. The following procedure for determining whether new development of groundwater will have an adverse effect on existing groundwater rights recognized under state law shall be followed prior to seeking relief from the Compact Board:
 - (a) Application for development of a groundwater use on the Reservation shall be made to the TWRD.
 - (b) The TWRD shall review the application and make a determination of whether the new use will have an adverse effect on existing water rights recognized under state law with a priority date before the application date. Upon request by the TWRD, the DNRC shall provide information on existing state water rights as recorded in the DNRC database to the TWRD.
 - (c) If the TWRD determines that the new development will have an adverse effect on a water right recognized under state law with a priority date before the application date, the TWRD shall deny the application. If the TWRD determines that the new development will not have an adverse effect on a water right recognized under state law with a priority date before the application date, the TWRD shall forward the application with its determination to the DNRC.
 - (d) If, based upon the evidence, DNRC agrees with the TWRD's determination, the application will be approved. If, however, based upon the evidence, the DNRC cannot agree with the determination of the TWRD, DNRC shall publish notice, of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any appropriator of water or holder of a permit who, according to the records of the department, has a water right with a priority date before the application date, and may be affected by the proposed development.
 - (e) DNRC and the TWRD shall attempt to resolve any disagreement on the determination of no adverse effect by the TWRD on a cooperative basis. If the DNRC or a holder of a water right recognized under state law with a priority date before the application date disagree with the

determination of no adverse effect, DNRC or the water users may seek relief from the Compact Board.

- (f) In any proceeding concerning the effect of new groundwater development on the Reservation either before the TWRD, the DNRC, or before the Compact Board, the following shall apply:
 - (i) 1 - 150 Feet Wells: For new Tribal groundwater wells completed at a depth beneath the surface of 1 to 150 feet, the Tribe shall bear the burden of showing no adverse effect to groundwater uses recognized under state law with a priority date before the application date.
 - (ii) 150 Feet or Deeper Wells: For Tribal groundwater wells completed at a depth beneath the surface of 150 feet or deeper, the owner of a water right recognized under state law with a priority date before the application date shall bear the burden of showing any adverse effect to the water right.
- b. Groundwater Development Exempt From The Showing Of No Adverse Effect. The following wells are exempt from the requirement of showing no adverse effect:
 - (1) Existing Tribal wells are exempt from the burden to show no adverse effect. The Tribe may develop existing wells, or replacements therefor, to their full capacity. The primary municipal and domestic wells are listed in Appendix 8. A comprehensive list of existing wells will be kept on file in TWRD offices as per the requirement to list existing uses in Section A.5. of Article IV.
 - (2) New Tribal groundwater wells producing from the Volcanic Bedrock Aquifer may be developed without a showing of no adverse effect.
- c. Ancestral Missouri River Channel Aquifer. Groundwater from the Ancestral Missouri River Channel Aquifer shall be a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

7. Moratorium.

- a. New State Permits. With the exceptions listed in subsection (1) of this section, the DNRC shall not process or grant an application for a permit to appropriate water from a source in the Big Sandy Creek Basin (excluding Sage Creek and Lonesome Lake Coulee), and in the Beaver Creek drainage after the date this Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. This moratorium shall remain in effect for a minimum of 10 years and shall only be lifted pursuant to the procedures set forth in Section A.7.b of Article IV. This moratorium is not intended to apply to applications for change in appropriation under state law.
 - (1) The moratorium shall not apply to the following appropriations:
 - (a) an appropriation of groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or

- less, not to exceed 10 acre-feet per year unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation;
- (b) an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream;
 - (c) an appropriation of groundwater from any deep aquifer not hydrologically connected to surface water.
- (2) Within 120 days following the date the moratorium takes effect, the DNRC shall publish notice of the moratorium once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on all appropriators of water or holders of permits who, according to the records of the department, have a water right with a source in the affected drainages.
 - (3) The moratorium applies only to new permits issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.
- b. Lifting of Moratorium. After 10 years, the Tribe or an individual seeking to appropriate water in the affected drainages may petition the DNRC for removal of the moratorium, or the DNRC may initiate proceedings to lift a moratorium on its own initiative. The DNRC shall comply with the following procedure in making a determination as to whether water is available in excess of the Tribal Water Right and rights recognized under state law. The DNRC and TWRD may agree to modify procedures or provide additional procedures. Such modification is pursuant to and shall not be deemed to be a modification of the Compact.
- (1) Proceedings initiated by TWRD.
 - (a) The TWRD shall have sixty (60) days following the filing of the petition requesting that the moratorium be lifted to provide the DNRC with data supporting its petition to lift the moratorium.
 - (b) Within sixty (60) days following the receipt of the data supporting TWRD's petition, the DNRC shall determine whether to lift the moratorium, and shall notify the TWRD of its determination and the grounds therefor. The TWRD shall be allowed reasonable access to any data relied upon by the DNRC for its determination.
 - (c) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The moratorium shall continue pending Compact Board proceedings and any appeal
 - (2) Proceedings initiated by DNRC.
 - (a) The DNRC may, on request by a water user or on its own initiative, commence proceedings to determine whether to lift a moratorium.

- (b) The DNRC shall notify the TWRD of the commencement of proceedings to determine whether to lift the moratorium and shall submit to the TWRD all data in support of the proceedings at the same time or as soon after such data becomes available as practical or shall give the TWRD reasonable access to such data within the same time frame.
 - (c) The TWRD shall be given sixty (60) days following receipt of the data in support of the proceedings to submit to the DNRC a statement of the Tribe's position concerning the issue along with any supporting data and argument.
 - (d) The DNRC shall notify the TWRD of its determination and the grounds therefor within sixty (60) days of receipt of the Tribe's statement.
 - (e) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The moratorium shall continue pending Compact Board proceedings and any appeal.
- c. Excess Water. If the moratorium is lifted pursuant to the procedure described in A.7.b. of Article IV, the Tribe shall have the first right to use the excess water for the purpose of fulfilling new reserved water rights, if any, on land acquired after the ratification date of this Compact, but before the date the moratorium is lifted. The excess water used by the Tribe shall become part of the Tribal Water Right and the tribe may make a change in use of, or transfer, including storage, of such water pursuant to Section A.4.a. of Article IV.
- d. Limit on New Tribal Groundwater Development. In any drainage with a moratorium, new Tribal groundwater development pursuant to Section C.1. of Article III, by a well or developed spring from an aquifer that is hydrologically connected to surface water shall be limited to a maximum appropriation or combined appropriation from two or more wells or developed springs in a single drainage defined by this Compact to 35 gallons per minute or less, not to exceed 10 acre-feet per year.
8. Mutual Subordination. To reduce the need for daily administration of water use on and off the Reservation, water rights shall not be administered in priority, but shall be satisfied according to the following agreements.
- a. Subordination to Non-Tribal Water Rights Upstream of the Reservation. The Tribal Water Right shall be subordinate to water rights recognized under state law upstream from any point on the Reservation with a priority date before the ratification date of this Compact. It is the intent of the parties that this subordination extends only to valid water rights, and not to statements of claim filed pursuant to 85-2-221, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights exempt from the permit process pursuant to 85-2-306, MCA, a list of rights as currently claimed is attached as Appendix 3. Appendix 3 will be modified by any final decree resolving claims on the

affected drainages. Appendix 3 may be modified due to clerical error or omission.

- b. Effect of Mitigation. Because the impact of development of the Tribal Water Right on downstream water rights recognized under State law has been mitigated by provisions of the Compact and by special measures set forth in drainage stipulations, any person claiming or holding a water right recognized under State law, or an interest in such water right, may not assert priority over, or make a call for, or claim any of the water rights of the Tribe set forth in this Compact, in any court, tribunal, or other forum.
9. Stockwatering Impoundments Limited by Surface Area. Except for new stock ponds developed under Section C.2. of Article III, the surface acreage limitations on stockwatering impoundments set forth in Article III shall be the measure of compliance with the quantification of water rights for the purpose of stockwatering.
 10. Impoundments for the Purpose of Enhancing Fish and Wildlife Habitat.
 - a. Fish and Wildlife Enhancement Impoundments Limited by Surface Area. The surface acreage limitations on impoundments for the purpose of fish and wildlife enhancement set forth in Article III shall be the measure of compliance with the quantification of water rights for the purpose of fish and wildlife enhancement.
 - b. Limits on Structures. No structure for the purpose of fish and wildlife enhancement may create a potential high water line beyond the existing wet riparian habitat delineated as fish and wildlife enhancement zones on the map attached as Appendix 4.
 11. Structures Mimic Natural Processes. No structure for the purpose of fish and wildlife enhancement, or new stockwatering impoundments on a perennial stream built after the ratification date of the Compact, excluding repair or replacement of existing structures, may stop the entire flow of surface water during filling of the impoundment. To accomplish this the Tribe shall build any structure to mimic natural processes by allowing water to flow through the structure, or bypass the structure during filling.
- B. Big Sandy Creek Basin.
1. Operation of Bonneau Reservoir.
 - a. Minimum Pool / 240 AFY Stored for Satisfaction of Release. The minimum pool at Bonneau Reservoir shall be established by the Tribe. The Tribe shall store annually the minimum pool plus 240 acre-feet, if water is available. The 240 acre-feet above the minimum pool shall be stored to satisfy the release set forth in this Article and shall not be available to satisfy the Tribal Water Right. Evaporative loss shall be accounted for in setting the minimum pool and shall not be subtracted from the 240 acre-foot pool stored for downstream water users. Any change in use of the water stored in Bonneau Reservoir from irrigation to other purposes shall be without adverse effect on downstream water uses recognized under state law with

- a priority date before the date of change, and measures to prevent adverse effect may include release of additional water from Bonneau Reservoir.
- b. Release for Off-Reservation Irrigation Use. The Tribe shall release no more than 104 AFY from Bonneau Reservoir or from direct flow of Box Elder Creek to satisfy the claims for irrigation water rights currently held by Bert Corcoran, and the Tribe shall deliver this water to a point of diversion specified in the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2; provided that, the Tribe shall have no responsibility to upgrade or to increase the capacity of the existing delivery system; and further provided that, the Tribe shall not be required to release water from Bonneau Reservoir below the minimum pool established by the Tribe plus 240 acre-feet prior to satisfaction of the 240 acre-feet per year release set forth in Section B.1.c. of Article IV, and the minimum pool at all other times. The 104 AFY release shall be in accordance with a delivery schedule agreed to by Mr. Corcoran, or his successors in interest, and the TWRD. Mr. Corcoran's claims for irrigation water rights shall be specified in the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2. Nothing in the drainage stipulation or in this Compact shall affect any existing right that Mr. Corcoran may have to the use of on-Reservation conveyance and distribution systems to deliver this water.
- c. 240 AFY Release. The Tribe shall annually release the first 240 acre-feet of water, as measured near the confluence of Box Elder Creek and Lower Big Sandy Creek, stored in Bonneau Reservoir above the minimum pool, at the request of the downstream irrigation water users as set forth below, for maintenance of instream flow and for domestic and stock purposes on Lower Big Sandy Creek. The 240 AF of water, once released, shall be designated as an instream flow and shall be senior to all Tribal diversions and all non-domestic and non-stockwater rights recognized under state law from the point of release to the confluence with the Milk River. The Tribe shall not divert from direct flow on Lower Big Sandy Creek between its confluence with Box Elder Creek and the Reservation boundary at Stoneman Farms, as that boundary exists on the effective date of this Compact, during release of the 240 AF of water to downstream water users in the months of July and August. A structure that will bypass the peak scheduled release will be constructed for any diversion of the Tribal Water Right upstream of the confluence of Big Sandy Creek with Gravel Coulee. Under no circumstances shall the Tribe be required to release more than 240 AFY of water to maintain instream flow and for domestic and stock purposes.
- d. Schedule for 240 AFY. The method for determining the schedule of releases is as follows: Water users on Lower Big Sandy Creek with drainage stipulations listed in Appendix 2 shall elect a three member Bonneau Release Committee to determine the schedule of release for the 240 AFY. The Committee shall notify the DNRC which shall notify the

TWRD by May 1st of each year of the requested schedule. The schedule shall not exceed the operating standards of Bonneau Reservoir or result in unreasonable interference of the Tribe's use of water stored in the Reservoir. If the TWRD does not receive notice by May 1 of any year, the TWRD shall release 2 cfs continuously for July and August in accordance with Section B.1.c. of Article IV. DNRC shall notify water users which, according to the records of the Department, have a water right recognized under state law with a source on Box Elder Creek, or on Big Sandy Creek between the confluence with Box Elder Creek and the confluence with the Milk River, that the release may not be diverted. After May 1, at the request of the Bonneau Release Committee, the DNRC shall request the Tribe to alter the rate of release and the Tribe may agree to comply. At the request of the Tribe, the DNRC shall request the Bonneau Release Committee to agree to forego the release, and if the Committee believes the purposes for the release as set forth in Section B.1.c. of Article IV are being satisfied without the release, the Committee may, in any year, agree to forego the release. When streamflow in lower Big Sandy Creek at the bypass structure referred to in Section B.1.c. of Article IV, exceeds the peak flow specified in the designated release schedule, such excess flow can be diverted by the Tribe, subject to the diversion limits designated in Article III.

- e. Effective Date for Bonneau Reservoir Operational Plan. Notwithstanding ratification of this Compact by the parties, the operational plan for Bonneau Reservoir set forth in Sections B.1.a. through c. of Article IV, shall not become effective until completion of the enlargement of Bonneau Dam.
2. Water Use on Lower Big Sandy Creek Drainage.
- a. 2 cfs Bypass at Stoneman Farms. Structures will be constructed at each point of diversion on Lower Big Sandy Creek which allow a minimum of 2 cfs of water flow from direct and return flow, if available, to pass year around from the most downstream diversion on the Reservation on Lower Big Sandy Creek. The 2 cfs shall be designated as an instream flow and shall be senior in priority to Tribal diversions and all non-domestic and non-stockwatering water rights recognized under state law with a point of diversion between the bypass and the confluence with the Milk River. When streamflow in Lower Big Sandy Creek exceeds 2 cfs outside the scheduled 240 AF release period, such excess flow can be diverted by the Tribe subject to diversion limits designated in Article III.
 - b. Water Quality Issues.
 - (1) Monitoring Wells. Within one year following the effective date of this Compact, a monitoring well network adequate to detect saline seep shall be installed to depths no greater than 30 feet near the proposed Enlarged Stoneman Reservoir site shown in Appendix 6. The location of the wells will be established by TWRD and DNRC (or its representative) and groundwater level and quality shall be measured on a quarterly basis to establish baseline conditions.

- (2) Water Quality Monitoring Before Construction. Within one year following the effective date of this Compact, a surface water quality network will be established by TWRD and DNRC and quarterly sampling continued for a sufficient period of time to establish the water quality baseline conditions referred to above, adjacent to and below the Stoneman Farms project. The results of the baseline analysis will be used to establish a threshold value for water quality degradation associated with salinity which will trigger the requirement for more extensive study.
- (3) Water Quality Monitoring After Construction. After construction of the Stoneman Reservoir enlargement, monitoring of the wells and surface water quality will be resumed to evaluate changes in water quality. If salinity measurements result in a trend of increasing salinity on a sustained basis over a reasonable period of time, the TWRD or DNRC may petition the Compact Board to appoint a technical expert to conduct an analysis to identify the causes of the increasing salinity and recommend appropriate remedies. The analysis and recommendations may include sources of salinity off the Reservation.
- (4) Remedies. The results of the analysis shall be submitted to the DNRC and to the TWRD which shall make a joint effort to resolve the degradation issue based on the analyses. If the analysis includes sources of salinity off the Reservation, the DNRC shall assist the TWRD in obtaining reasonable access onto the land off the Reservation for the purpose of observation. If the DNRC and the TWRD, are unable to resolve the issue within 30 days through joint effort, the DNRC, the TWRD, or any affected water user, may petition the Compact Board for relief. The Compact Board shall have jurisdiction over any contributor to the salinity problem and shall fashion its remedy in a manner proportionate to the causes contributing to the problem. The remedy fashioned by the Compact Board for salinity problems shall be limited to issuance of an order to cease and desist the practice or practices leading to the salinity problems. The remedies set forth in this section shall be in addition to any remedies or water quality standards provided for under other applicable law.

C. Beaver Creek Drainage.

1. Moratorium on Tribal Consumptive Uses. For a period of five years following the ratification date of the Compact, there shall be a moratorium on the development of Tribal consumptive uses from surface water in the Beaver Creek drainage. During this moratorium, a monitoring network consisting of three continuous recording stations will be installed and the resulting data analyzed to determine if Beaver Creek gains or loses flow between the confluence of East and West Fork and the Reservation boundary. Location of the three gages shall be:
 - (1) the West Fork of Beaver Creek at the location the Tribe intends to divert water to the East Fork;

- (2) the confluence of the East and West Forks of Beaver Creek; and
 - (3) the Reservation boundary at the most downstream point on Beaver Creek.
A staff gage shall also be installed in East Fork Reservoir following enlargement of the Reservoir.
2. Development of Management Plan. Based on the results of the five years of gage data on Beaver Creek, the Tribe and the Montana Department of Fish, Wildlife and Parks shall work cooperatively to develop a fishery and recreational management plan. The plan may include modifications in minimum instream flows set forth in Section C.3. of Article IV. Such modification is pursuant to, and will not be deemed a modification of, this Compact. The management plan is not binding on any party and shall not be used to modify minimum instream flows until it is approved by the Tribe and the Montana Department of Fish, Wildlife and Parks.
3. Operation of East Fork Reservoir Following Enlargement and Pending Adoption of a Management Plan. During the moratorium imposed by Section C.1. of Article IV, or pending adoption of the management plan authorized by Section C.2. of Article IV, East Fork Reservoir may be enlarged; provided that,
- a. The enlarged Reservoir shall be used only for recreational purposes during the five year moratorium. However, after the five year moratorium period and pending adoption of the management plan, the enlarged Reservoir may be utilized for multiple purposes, but remains subject to the limitations set forth under Sections C.3.b., c., and d. of Article IV.
 - b. Any surface water diversion from the West Fork of Beaver Creek and its tributaries on the Reservation to the East Fork of Beaver Creek shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year around; provided that, the storing of water in East Fork Reservoir from the East Fork of Beaver Creek shall not be considered a diversion for the purposes of this provision.
 - c. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year around; provided that, the storing of water in East Fork Reservoir from the East Fork of Beaver Creek shall not be considered a diversion for the purposes of this provision.
 - d. The Tribe shall release water from East Fork Reservoir to augment streamflow on Beaver Creek if the flow at the confluence of East and West Fork or below the most downstream diversion on the Reservation, whichever is the most downstream, falls below 1 cfs; provided that, the Tribe shall not be required to release water if the level of the enlarged Reservoir reaches or falls below the minimum pool; and provided further that, the Tribe shall not be required to release water if the flow at the Reservation boundary at the most downstream point on Beaver Creek exceeds 2 cfs.

4. Operation of East Fork Reservoir Prior to Enlargement. Prior to enlargement of East Fork Reservoir and pending adoption of the management plan authorized by Section C.2. of Article IV, the following diversionary constraints are in effect.
 - a. Any surface water diversion from the West and East Forks of Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass the structure year around.
 - b. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year round.
- D. Enforcement - Chippewa Cree-Montana Compact Board.
 1. Establishment of Board. There is hereby established the Chippewa Cree-Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana from up to six nominees, up to three nominated by the Commissioners of Chouteau County and up to three nominated by the Commissioners of Hill County; one member appointed by the Chippewa Cree Business Committee; and one member selected by the other two members. If the Governor fails to select a board member from the list of nominees, the Commissioners of Chouteau and Hill Counties may select the member. All members shall be appointed within six months of the ratification date of this Compact and within thirty days of the date any vacancy occurs. If an appointment is not timely made by the Governor or County Commissioners, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Chippewa Cree Business Committee, the Director of the TWRD or his/her designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.
 2. Membership. Should the two appointed members fail to agree on the selection of a third member within sixty days of the date of appointment of the second member, or within thirty days after any vacancy occurs, the following procedure shall be utilized:
 - a. Within five days thereafter each member shall nominate three persons to serve as a member of the Board;
 - b. Within fifteen days thereafter each member shall reject two of the persons nominated by the other member;

- c. Within five days thereafter, the remaining two nominees shall be submitted to the Dean of the University of Montana School of Law who shall select the third member from the two nominees.
3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the parties to this Compact.
4. Jurisdiction of the Board. The Chippewa Cree-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between users of the Tribal Water Right and users of water rights recognized under state law including any contributor to a salinity problem. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.
5. Pre-requisite Administrative Remedy.
 - a. Any non-tribal water user concerned that a new development or change in use of water by the Tribe is inconsistent with the Compact shall first contact the Havre Regional Office of the DNRC. If the DNRC and the TWRD are unable to resolve the issue in a reasonable time through discussion, DNRC, the water user, or the Tribe may seek relief through the Compact Board. The Tribe agrees to allow DNRC reasonable access onto Tribal land to observe the challenged development or change in use.
 - b. The Tribe or any tribal water user concerned that a new development or change in use or transfer of water by non-tribal water users is inconsistent with the Compact shall first contact the TWRD. If the TWRD and the DNRC are unable to resolve the issue in a reasonable time through discussion, the TWRD or the Tribal water user may seek relief through the Compact Board. The DNRC agrees to assist the TWRD in obtaining reasonable access onto the non-tribal water user's land to observe the challenged development or change in use or transfer.
 - c. The TWRD and the DNRC may jointly develop supplemental procedures as necessary or appropriate. Such supplemental procedures are pursuant to, and will not be deemed a modification of, this Compact.
6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint a technical expert for the purposes of Section B.2.b. of Article IV. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs, or attorneys fees. All

decisions of the Board shall be by majority vote and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board.

7. Review and Enforcement of Board Decisions.
 - a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only the United States and parties to the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of such decision. The hearing on appeal shall be a trial de novo. The notice of appeal shall be filed with the Board and served personally or by registered mail upon all parties to the proceeding before the Board.
 - b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in Section D.7.a. of Article IV, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which the decision was made.
 - c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, may order such temporary or permanent relief as it considers just and proper.
 - d. Any appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, in the manner and to the same extent as from orders or judgments of the court in a civil action.
 - e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.
8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Chippewa Cree-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall be as provided by Congress.

ARTICLE V - DISCLAIMERS AND RESERVATIONS

- A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.
 1. The relationship between the water rights of the Chippewa Cree Tribe described herein and any rights to water of any other Indian Tribe, or of any federally

derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

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 to water of any other Indian tribes and tribal members of other Indian tribes.
3. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe other than the Chippewa Cree Tribe regarding its boundaries or property interests.
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 to water of any other federal agency or federal lands other than those of the Chippewa Cree Tribe.

B. General Disclaimers.

Nothing in this Compact shall be so construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;
2. To preclude the acquisition or exercise of a right to the use of water by any member of the Tribe outside the Reservation by purchase of such right or by acquisition of land, or by application to the State.
3. To determine the relative rights inter sese of persons using water under the authority of the State or the Tribe;
4. To limit in any way the rights of the parties or any other person to litigate any issues or questions not resolved by this Compact;
5. To authorize the taking of a water right which is vested under state or federal law;
6. To create or deny substantive rights through headings or captions used in this Compact;
7. To preclude or to discourage the Tribe from acquiring, by contracting or by other means, water rights in addition to the rights acquired under this Compact from any existing or future federal storage facilities off the Reservation;
8. To address or prejudge whether, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State;
9. To prohibit the Tribe, or the United States on behalf of the Tribe, from objecting in any general stream adjudication in Montana Water Court to any claims to water rights not protected by a drainage stipulation set forth in Appendix 2 of this Compact; provided that, the United States, on behalf of any other Indian tribe, or in its own right, may raise valid objections to any claims listed in Appendix 2 and Appendix 3 of this Compact;
10. To constitute a waiver of sovereign immunity by the Tribe, State, or United States, except as is expressly set forth in this Compact;
11. Unless otherwise provided by Congress, to prevent the United States, as trustee for the Tribe, or the Tribe itself, from filing an action in any court of competent jurisdiction, to prevent any party from interfering with the Tribe in the enjoyment of any water right in this Compact.

C. Rights Reserved.

The parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

D. Obligations of United States Contingent.

Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on authorization by Congress.

E. Expenditures of Money Contingent.

The expenditure or advance of any money or the performance of any work by the United States or the Tribe pursuant to this Compact which may require appropriation of money by Congress or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

The Tribe and the State of Montana agree to support federal legislation ratifying this Compact that will accomplish the following:

A. Off-Reservation Water Sources.

1. Lake Elwell Water Supply. The State and the Tribe agree to support federal legislation that will provide an allocation of 10,000 acre-feet per year from storage water in Lake Elwell, as described in Section C.6. of Article III. The priority date of this water right shall be that established for the source of supply. This water right will be held in trust and will be part of the Tribal Water Right.
2. Right to Participate in Future Projects to Import Water to the Milk River. The Tribe shall have the right to participate in any project to augment the water supply in the Milk River system by transferring water from another drainage, and to have any such augmentation project deliver any entitlement of the Tribe to water to a point on the Reservation designated by the Tribe.

B. Provision Of A Municipal, Rural, And Industrial Water Supply System, And A Tribal Economic Development Fund.

The State and Tribe agree to support federal legislation that will authorize and fund a municipal, rural and industrial water system adequate to meet the future MR&I water needs of the Tribe, according to the needs and population projections as set forth in the Municipal, Rural and Industrial (MR&I) Water Supply System Needs Assessment prepared for the Bureau of Reclamation, U.S. Department of the Interior (January, 1996), through either a regional system or a system serving the Reservation only. The State and Tribe further agree to support federal legislation that will establish an economic development fund as agreed to by the Tribe and the Department of the Interior, or by the Tribe and the Montana Congressional Delegation. Support by the Department of Interior for the proposed MR&I system will depend on a demonstration of feasibility and appropriate allocation of costs.

C. Implementation Contingencies and Cost Share of Administration and Mitigation.

Implementation of this Compact shall be contingent upon the appropriation of necessary funds by the Congress and by the Montana Legislature. The performance of

any obligation by any party under this Compact shall be contingent upon appropriation of funds therefor. No liability shall accrue to any party in case necessary funds are not appropriated. The State and the Tribe agree to recommend the following cost share for administration and mitigation necessary to implement the Compact to the Montana State Legislature and the Congress for appropriation on a schedule consistent with implementation as contemplated in this Compact.

1. The State and the Tribe agree to support federal legislation to appropriate \$3,070,000 for the administration of the Tribal Water Right by the Tribal Water Resources Department as set forth in Articles III and IV of the Compact, including but not limited to: stream flow gages; diversion/bypass structures on Big Sandy Creek; aerial survey of impoundments on the Reservation; and development of a Tribal Water Code.
2. The State and the Tribe agree to support state legislation to appropriate \$150,000 for the following purposes as set forth in Articles III and IV of the Compact: water quality discharge monitoring wells and monitoring program; diversion structure on Big Sandy Creek; conveyance structure on Box Elder Creek; and purchase of contract water from Lower Beaver Creek Reservoir.
3. The state agrees to provide services, subject to the availability of funds, valued at \$400,000 for administration required by the Compact and for water quality sampling required by this Compact.

ARTICLE VII - FINALITY, SETTLEMENT OF CLAIMS, AND EFFECTIVENESS OF COMPACT

- A. Ratification and Effectiveness of Compact.
1. This Compact shall become effective on the date it is ratified by the Tribe, by the State, and by the Congress of the United States, whichever date is latest; provided that, notwithstanding the provisions of Section 85-2-702(2), MCA, those aspects of the Compact specifically designated in Section A.2. of Article VII, shall become effective as stated therein. Upon ratification of this Compact by the Tribe and by the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of both the Tribe and the State. Once ratified by Congress, the Tribe, and the State, the Compact may not be modified without the consent of the Tribe, the State, and the United States.
 2. As between the State and the Tribe, the moratorium on state permits in the Big Sandy Creek Basin set forth in Section A.7. of Article IV, shall become effective upon the date the Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. The reservoir operational plan for Bonneau Reservoir set forth in Section B.1 of Article IV shall not become effective until the Reservoir is enlarged.
 3. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw as a party to this Compact -
 - a. if Congress has not ratified this Compact within four (4) years from the date the Compact is ratified by the Tribe and by the State, whichever date is later, or

- b. if the municipal, rural, and industrial water supply system which the feasibility study identifies as the preferred alternative to serve the Rocky Boy's Reservation, or an equivalent water supply system as determined by the Tribe, is not authorized within four (4) years of the date the Compact is ratified by the Tribe and by the State, whichever date is later, or
- c. if appropriations are not authorized by Congress, including appropriations for planning, design, and other pre-construction work on the municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, within five (5) years of the date the Compact is ratified by the Tribe and by the State, whichever date is later, or
- d. if appropriations are not made in the manner contemplated by the federal legislation authorizing the Tribal municipal, rural, and industrial water supply system, or
- e. if construction of the Tribal municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, has not commenced within seven (7) years from the date the Compact is ratified by the Tribe and by the State, whichever date is later, or
- f. if construction of the Tribal municipal, rural, and industrial water supply system authorized by Congress to serve the Rocky Boy's Reservation, has not been completed within fourteen (14) years from the date the Compact is ratified by the Tribe and by the State, whichever date is later.

The Tribe may exercise its right to withdraw by sending to the Governor of the State of Montana and to the Secretary of the Interior by certified mail a resolution of the Chippewa Cree Business Committee stating the Tribe's intent to withdraw and specifying a withdrawal date not sooner than 30 days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any party, and the parties agree to resume negotiation in good faith for quantification of the water rights of the Chippewa Cree Tribe and entry of a decree in a court of competent jurisdiction. If the Tribe fails to take action to withdraw within five (5) years following the fourteen (14) year deadline for completion of the water system, all provisions of the Compact shall remain in effect.

4. Notwithstanding any other provision in this Compact, the Department of the Interior reserves the right to refuse support for federal legislation ratifying this Compact.

B. Incorporation Into Decrees and Disposition of Federal Suits.

- 1. The Tribe and the State agree to defend the provisions and purposes of this Compact including the quantification set forth in Article III, from all challenges and attacks in all proceedings pursuant to this Section B of Article VII.
- 2. Within 180 days of the date this Compact is ratified by the Chippewa Cree Business Committee, the State of Montana, and Congress, whichever is latest, the Tribe, the State, or the United States shall file, in the general stream adjudication filed by the State of Montana pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust for the Chippewa Cree Tribe of the Rocky Boy's Reservation. If the court does not approve the proposed decree

submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by agreement of the parties. If the court approves the proposed decree within three years, but the decree is subsequently set aside by the court or on appeal, the Compact shall be voidable by agreement of the parties. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666 or other provision of federal law.

3. Consistent with section 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of section 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, Section A.8. of Article IV, and Appendix 1, and may extend to other sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III and Section A.8. of Article IV as displayed in Appendix 1 and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to section 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.
4. Upon the issuance of a final decree by the Montana Water Court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in United States v. Aageson, No. CIV-79-21-GF (D. Mont. 1979) (hereinafter referred to as "Aageson") and such claims may only be refiled if the Tribe exercises its option to withdraw as a party to the Compact pursuant to Section A.3. of Article VII. This Compact shall be filed as a consent decree in Aageson only if, prior to the dismissal of Aageson as provided in this Article, it is finally determined in a judgment binding upon the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings are inadequate to adjudicate, some or all of the water rights asserted in Aageson.

C. Tribal Settlement of Water Claims.

The parties intend that the water rights and other rights confirmed to the Tribe in this Compact are in full satisfaction of the Tribe's water rights claims, including federal reserved water rights claims based on Winters v. United States, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe in this Compact, including rights to the future development of water pursuant to Section C. of Article III, and of performance by the State of Montana and the United States of all actions required by this Compact, including entry of a final order issuing the decree of the reserved water rights of the Tribe held in trust by the United States as quantified in the Compact and displayed in Appendix 1, the Tribe and the United States as trustee for the Tribe hereby relinquish any and all claims to water rights of the Chippewa Cree Tribe within the

State of Montana existing on the date this Compact is ratified by the State and the Tribe, whichever date is later.

D. Binding Effect.

Upon the effectiveness of any provision of this Compact, the terms of that provision will be binding:

1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;
2. Upon the Tribe and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the Tribe to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe; provided that, the validity of consent, ratification or authorization by the Tribe is to be determined by tribal law; and
3. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law; and further provided that, nothing contained in this Compact affects any claim of any Indian tribe other than the Chippewa Cree Tribe, or of persons claiming water through any such other Indian tribe, or the right of any Indian tribe other than the Chippewa Cree Tribe, or persons claiming water through any such other Indian tribe, to pursue a claim to any water from any source based on any theory of right or entitlement.

ARTICLE VIII - LEGISLATION

The State and Tribe agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks; provided that, no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Chippewa Cree Tribe of the Rocky Boy's Reservation, and the United States have signed this Compact on the 28th day of February, 2000.

History: En. Sec. 1, Ch. 265, L. 1997.

**U.S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE –
BLACK COULEE AND BENTON LAKE
- MONTANA COMPACT**

U.S. Department of the
Interior Fish and Wildlife
Service – Black Coulee and
Benton Lake – Montana
Compact



Title 85 Water Use
Chapter 20 Water Compacts

85-20-701. United States Fish and Wildlife Service-Montana compact ratified.
The compact entered into by the State of Montana and the United States Fish and Wildlife Service and filed with the secretary of state of the State of Montana under the provisions of 85-2-702 on March 26, 1997, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
UNITED STATES OF AMERICA, FISH AND WILDLIFE SERVICE

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 existing on the effective date of the Compact to water for Black Coulee and Benton Lake National Wildlife Refuges administered by the U.S. Fish and Wildlife Service within the State of Montana.

RECITALS

WHEREAS, in 1979 the United States filed in the United States District Court for the District of Montana several actions to adjudicate, *inter alia*, its rights to water with respect to Black Coulee National Wildlife Refuge, *see United States v. Aageson*, No. CV-79-21-GF;

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, 85-2-703, MCA, provides that the state 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 Benton Lake and Black Coulee National Wildlife Refuges, in the State of Montana;

WHEREAS, the United States, in quantifying its reserved water rights recognizes the need to accommodate the interests of the state and its citizens by providing for the development and use of water in the vicinity of the Fish and Wildlife Service Refuges to the extent that it is possible to do so without materially affecting the rights and interests of the United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1968);

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

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

ARTICLE I

DEFINITIONS

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

(1) “Abstract” means the copy of the document entitled “Abstract of U.S. Fish and Wildlife Service Water Rights” referenced in this Compact as Appendix 1.

(2) “Benton Lake National Wildlife Refuge” means those lands located in Montana that were withdrawn and reserved by Executive Order No. 5228 of November 21, 1929.

(3) “Black Coulee National Wildlife Refuge” means those lands and interests in lands located in Montana that were acquired pursuant to, or withdrawn and reserved by Executive Order 7801 of January 28, 1938.

(4) “Department” means the Montana Department of Natural Resources and Conservation or its successor.

(5) “Effective date of this Compact” means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is later.

(6) “Groundwater” means water that is beneath the ground surface.

(7) “Non-consumptive” means a water right considered to be non-consumptive by the decree, permit or law authorizing the use, because it results in no depletion of water from the source.

(8) “Parties” means the State of Montana and the United States.

(9) “Person” means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(10) “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 state recognition of a federal or tribal reserved water right.

(11) “State” means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, “state” means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

(12) “United States” means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, “United States” means the Secretary of the Department of the Interior, or his or her designees.

ARTICLE II

WATER RIGHT

The parties agree that the following water rights are in settlement of the reserved water rights of the United States for the Refuges described. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water

rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected. All reserved water rights described in this Article are subject to Article IV, section A of this Compact.

A. Benton Lake National Wildlife Refuge

1. Quantification: The United States shall have the right to water from the following sources where they occur on the Refuge:
 - a. Consumptive Use: The United States has a reserved water right to 2 acre-feet per year diverted at a maximum rate of 45 gpm from groundwater beneath the Benton Lake National Wildlife Refuge.
 - b. Natural Flow: The United States has a reserved water right to the natural flow in the Lake Creek drainage including the unnamed tributaries to Benton lake where the drainage enters the Refuge in the amount of the natural flow remaining after satisfaction of the following rights:
 - (1) all rights recognized under state law with a priority date prior to the effective date of this Compact;
 - (2) any rights for stock watering ponds with a priority date after the effective date of this Compact and a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and
 - (3) any right to appropriate groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.
2. a. Priority Date: The United States has a priority date of November 21, 1929, for the reserved water rights described in this Compact for Benton Lake National Wildlife Refuge.
 - b. Subordination: The natural flow water right is subordinate to:
 - (1) any use recognized under state law with a priority date before the effective date of this Compact;
 - (2) any use considered non-consumptive as defined by this Compact;
 - (3) stock watering ponds with a priority date after the effective date of this Compact and with a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and
 - (4) appropriation of groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.
3. Period of Use: The period of use of this water right shall be from January 1 through December 31 of each year.
4. Points and means of diversion: Any point on the Refuge and by any means subject to the terms of this Compact.

5. Purposes: The United States right to water may be used for the following purposes, provided that, subject to the limitations set forth in Article III. section E., the United States may change the use of water identified for consumptive use.
 - a. Consumptive Use: The United States water right to groundwater shall be used at the Refuge headquarters for the purposes of the Refuge.
 - b. Natural Flow: The United States water right to natural flow shall be used on the Benton Lake National Wildlife Refuge for wildlife habitat maintenance and enhancement.
- B. Black Coulee National Wildlife Refuge
 1. Quantification: The United States shall have the right to water from the following sources where they occur on Black Coulee National Wildlife Refuge:
 2. Natural Flow: The United States has a reserved water right for the natural flow in the Black Coulee drainage where the drainage enters the Refuge in the amount of the natural flow remaining after satisfaction of the following rights:
 - (1) all rights recognized under state law with a priority date prior to the effective date of this Compact;
 - (2) any rights for stock watering ponds with a priority date after the effective date of this Compact and a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and
 - (3) any right to appropriate groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.
 3.
 - a. Priority Date: The United States has a priority date of January 28, 1938 for the water rights described in this Compact for Black Coulee National Wildlife Refuge.
 - b. Subordination: The natural flow water right is subordinate to:
 - (1) any use recognized under state law with a priority date before the effective date of this Compact;
 - (2) any use considered non-consumptive as defined by this Compact;
 - (3) stock watering ponds with a priority date after the effective date of this Compact and with a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream; and
 - (4) appropriation of groundwater with a priority date after the effective date of this Compact by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year.
 4. Period of Use: The period of use of this water right shall be from January 1 through December 31 of each year.

5. Points and means of diversion: any point on the Refuge and by any means subject to the terms of this Compact.
 6. Purposes: The United States water right to natural flow shall be used on the Black Coulee National Wildlife Refuge for wildlife habitat maintenance and enhancement.
- C. Emergency Fire Suppression

The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the various Fish and Wildlife Service refuges. The United States, may as part of its reserved water right, divert water for fire suppression at all of the Fish and Wildlife Service Refuges as needed, and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be deemed an exercise of the United States' reserved water rights for consumptive use or a violation of its reserved water rights for natural flow.

ARTICLE III

IMPLEMENTATION

- A. Basin Closure
1. In the following drainage basins upstream of the most downstream point on the Refuges for which a reserved water right is described by this Compact, the Department shall not process or grant an application for a permit to appropriate or to reserve water for consumptive use after the effective date of this Compact, provided that, the Department may issue certificates of water right for appropriation of groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year, and permits for stock watering ponds with a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream:
Benton Lake National Wildlife Refuge:
Lake Creek Watershed including the unnamed tributaries of Benton Lake
Black Coulee National Wildlife Refuge:
Black Coulee Watershed
 2. If a temporary or permanent basin closure is enacted under state law for a drainage basin or subbasin for which future consumptive water use is limited under this Compact, the most restrictive measures applicable to consumptive use of surface or groundwater shall control.
 3. Within 180 days following the effective date of this Compact, the Department shall mail notice of the basin closure to every person or public agency of record with a claim of water right or permit in the source subject to closure.
- B. Enforcement of Water Right
1. The United States, the state, or a holder of a water right recognized under state law, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water right described by this Compact, and a holder of a water right recognized under

state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state or federal law.

2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by future changes in law, may enter a refuge for which a water right is described in this Compact for the purpose of data collection, including the collection of information necessary for water distribution on or off the refuge, and to inspect structures for the diversion and measurement of water described in this Compact for consumptive use and for the measurement of natural flow. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.
3. The Department may enter a federal enclave for which a reserved water right is described in this Compact, at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department shall notify the United States by certified mail or in person, at least 24 hours prior to entry.
4. The United States may request an investigation by the Department of a diversion located upstream of the reserved portion of a stream for which a reserved water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.
5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact. The United States shall maintain the devices it deems necessary for enforcement of its reserved water right for natural flow described in this Compact.
6. A person who violates or refuses or neglects to comply with the provisions of this Compact, an order of the Department pursuant to this Compact, or an action by the Bureau pursuant to this Compact is subject to the penalties provided by state law.

C. Use of Water Right

The rights of the United States described in this agreement are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the associated reserved land described in Article II, sections A.5. and B.5 and C.

D. Location of Natural Flow Rights

The United States' reserved water rights for natural flow apply to the portion of the streams specified in this Compact that flow over or form the boundary to land administered by the Fish and Wildlife Service.

E. Change in Use

1. Natural flow: Reserved water rights specified in this Compact for natural flow shall not be subject to change to any other use, provided that: the emergency use of water for fire suppression as provided for in Article II.C. shall not be deemed

- a change or alteration in use, or violation of a reserved water right for natural flow.
2. Consumptive uses: The United States may take action affecting the use of its consumptive use water rights provided that:
 - (1) the action shall be in fulfillment of the purposes of the refuge described in Article II, sections A.5;
 - (2) the total use shall not exceed the amount described in this Compact; and
 - (3) the action shall not adversely affect a water right that is recognized under state law.
 3. Reporting by the United States: For any action affecting the use of a consumptive right whether or not such action is deemed a change in use, the United States agrees to provide the following information to the Department:
 - a. Well log: For a use that includes the drilling of a well or enlargement of an existing wellbore, the United States agrees to provide a well log to the state within 60 days of the completion of the well.
 - b. Emergency Use: Within 60 days after the commencement of a temporary emergency use for fire suppression described in Article II, Section C. of this Compact, the United States agrees to notify the state of the use to which the water was put, the dates of use, and the estimated amount of water used.
 - c. Annual Report: Between April 1 and May 1 of each year, the United States agrees to provide the Department with a report on:
 - (1) actions during the preceding year affecting the use of a consumptive use right described in this Compact;
 - (2) the initiation of new uses that were completed during the preceding year; and
 - (3) any data and documents generated or received by the Fish and Wildlife Service during the preceding year on measurement of stream flow on a stream with a natural flow water right set forth in this Compact.
 4. Reporting by the State: Between December 1 and December 31 of each year, the Department shall provide the United States with a report of:
 - (1) changes in use during the preceding year, as defined by state law, of water rights upstream of or within the boundaries of reserved land for which a reserved water right is described in this Compact;
 - (2) any data and documents generated by the Department during the preceding year on the measurement of streamflows, diversions and well use on or tributary to a stream for which a water right for natural flow is described in this Compact;
 - (3) any certificate of water right issued during the preceding year for appropriation of groundwater; and
 - (4) any permit issued during the preceding year for a stock watering pond.

ARTICLE IV

GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights

1. The relationship between the water rights of the Fish and Wildlife Service described herein and any rights to water of an Indian Tribe in Montana, or of any federally derived water right of an individual, or of the United States on behalf of such tribe or individual shall be determined by the rule of priority. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected.
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 to water of any other federal agency or federal lands in Montana other than those of the Fish and Wildlife Service.
3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any Indian Tribes and tribal members in Montana.
4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests in the State of Montana.

B. State Water Rights

Nothing in this Compact may limit the exclusive authority of the state, including the authority of a water commissioner authorized by state law, to administer all current and future water rights recognized under state law within and upstream of the reserved land covered by this Compact, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law.

C. Abstract

Concurrent with this Compact, the parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights for Benton Lake and Black Coulee National Wildlife Refuges, that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles II and III of this Compact, the parties intend that the quantification in accordance with Articles II and III of this Compact shall be reflected in a final decree.

D. General Disclaimers

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State; or of the United States and any other state;
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 state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact; or any right 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 Code Annotated, in the basins affected by this Compact;
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;
4. to establish a precedent for other agreements between the state and the United States or an Indian tribe;
5. to determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;
6. to create or deny substantive rights through headings or captions used in this Compact;
7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;
8. 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 such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;
9. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the Fish and Wildlife Service, and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;
10. to prevent the United States from constructing or modifying an outlet to an impoundment at a Refuge in compliance with all applicable law;
11. to prevent the United States from seeking a permit to appropriate water under state law from a source not closed to new permits by this Compact or any other law.

E. Reservation of Rights

The parties expressly reserve all rights not granted, described or relinquished in this Compact.

F. Severability

The provisions of this Compact are not severable, provided that for the purposes of Sec.85-2-702(3), MCA, the water rights described in this Compact for each Fish and Wildlife Service Refuge shall be considered as separate Compacts.

G. Multiple Originals

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

H. Notice

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as he or she may designate in writing.
2. United States: Upon the Secretary of the Interior and such other officials as he or she may designate in writing.

ARTICLE V

FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

A. Binding Effect

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 Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on:
 - 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 to the use of water; and
 - b. Except as otherwise provided in Article IV, section A., the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.
2. Following the effective date, this Compact shall not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.
3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all persons bound by the final order of the court.
4. If an objection to this Compact is sustained pursuant to 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. Disposition of Actions

Subject to the following stipulations and within one hundred eighty (180) days of the effective date, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. § 666, for approval in accordance with state law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand

in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. § 666 or other provision of federal law.

1. Dismissal of Filed Claims: At the time the state courts approve the reserved water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 for Benton Lake National Wildlife Refuge and Appendix 3 for Black Coulee National Wildlife Refuge to this Compact. If this Compact fails approval or a reserved water right described herein is not confirmed, the specified claims shall not be dismissed.
2. Disposition of Federal Suits: Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the reserved water rights described herein, and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the parties shall execute and file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to dismiss with prejudice any claims made by the United States for the Fish and Wildlife Service Refuges described in this Compact in federal court. This Compact may be filed as a consent decree in those federal suits, only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgement binding on the State of Montana that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.
3. Continuation of Negotiations: The parties were unable to finalize agreement on quantification of the water rights for: Red Rocks National Wildlife Refuge and Wilderness Area; the National Bison Range; Bowdoin National Wildlife Area; and Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to the effective date of this Compact. The parties agree to continue to pursue, in good faith, quantification of water rights for these areas. In the event the parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for these areas adjudicated in a state or federal court of competent jurisdiction.

C. Settlement of Claims

The parties intend that the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land described in this Compact and administered by the Fish and Wildlife Service in Montana on the effective date of this Compact. Pursuant to this settlement, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for Black Coulee and Benton Lake National Wildlife Refuges, relinquishes forever on the effective date of this Compact all said claims to water within the State of Montana for Black Coulee and Benton Lake National Wildlife Refuges. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

D. The parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the 17th day of July, 1997.

History: En. Sec. 1, Ch. 137, L. 1997.

**U.S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE RED
ROCK LAKES – MONTANA COMPACT**

U.S. Department of the
Interior Fish and Wildlife
Service Red Rock Lakes
– Montana Compact



Title 85 Water Use
Chapter 20 Water Compacts

85-20-801. United States Fish and Wildlife Service, Red Rock Lakes-Montana compact ratified. The compact entered into by the State of Montana and the United States Fish and Wildlife Service and filed with the secretary of state of the State of Montana under the provisions of 85-2-702 on April 20, 1999, is ratified. The compact is as follows:

WATER RIGHTS COMPACT
STATE OF MONTANA
UNITED STATES OF AMERICA, FISH AND WILDLIFE SERVICE

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 existing on the effective date of the Compact to water for Red Rock Lakes National Wildlife Refuge and Wilderness Area (“Refuge”) administered by the U.S. Fish and Wildlife Service (FWS) within the State of Montana.

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, 85-2-703, MCA, provides that the state may negotiate compacts concerning the equitable division and apportionment of water between the state and its people and the federal government with claims to non-Indian reserved water rights 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 Red Rock Lakes National Wildlife Refuge and Wilderness Area, in the State of Montana;

WHEREAS, the United States, in quantifying its water rights recognizes the need to accommodate the interests of the State and its citizens by providing for the development and use of water in the vicinity of the Fish and Wildlife Service Refuges to the extent that it is possible to do so without materially affecting the rights and interests of the United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§516-17 (1968);

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

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

ARTICLE I - DEFINITIONS

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

1. “Abstract” means the copy of the document entitled “Abstract of U.S. Fish and Wildlife Service Water Rights” referenced in this Compact as Appendix 1.
2. “Consumptive” when referring to a water right recognized under state law means a use of water which removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments or natural lakes.
3. “Department” means the Montana Department of Natural Resources and Conservation or its successor.
4. “Developed spring” means any diversion from a spring for beneficial use under state law and does not require augmentation of flow.
5. “Effective date of this Compact” means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is latest.
6. “Groundwater” means water that is beneath the ground surface.
7. “Minimum flow” means the flow of water in a stream measured in cubic feet per second at the point designated in Article II of the Compact, at or below which the United States has the right to seek curtailment of junior water rights upstream from the Refuge.
8. “Natural flow” means the water that the parties agree shall remain in the stream in satisfaction of the United States’ water right for the purposes of the federal reservation.
9. “Non-consumptive” see “consumptive”
10. “Parties” means the State of Montana and the United States.
11. “Person” means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.
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 state recognition of a federal or tribal reserved water right arising under federal law.
13. “Red Rock Lakes National Wildlife Refuge” means those lands located in Montana that were withdrawn and reserved by Executive Orders No. 7023 of April 22, 1935, and 7172 of September 4, 1935, and all lands acquired by the United States Fish and Wildlife Service within the boundaries established by Executive Orders 7023 and 7172.
14. “Red Rock Lakes Wilderness Area” means those lands within Red Rock Lakes National Wildlife Refuge designated as wilderness by Public Law 94-557 of October 19, 1976, 16 USC 1132.
15. “Refuge” means both the Red Rock Lakes National Wildlife Refuge and the Red Rock Lakes Wilderness Area.

16. “State” means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, “state” means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

17. “United States” means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, “United States” means the Secretary of the Department of the Interior, or his or her designees.

ARTICLE II - WATER RIGHT

The parties agree that the following water rights are in settlement of all of the United States’ water rights for the Refuge, including federal reserved and state-based water rights acquired with the purchase of land. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected. All water rights described in this Article are subject to Article IV.A. of this Compact.

A. Quantification: The United States shall have the right to water from the following sources where they occur on the Refuge:

1. Consumptive Use: Red Rock Lakes National Wildlife Refuge — Consumptive Use

Table 1. Red Rock Lakes National Wildlife Refuge — Consumptive Use

	Legal Description of impoundment or POD			Elev. of Dam	Surface Acres	Acre Feet Capacity	Future Acre Feet	Natural Or Manmade	Canal	Diversion Rate CFS	Source of diverted water
	Qtr	Sec	Twp Range								
McDonald Pond	NW	6	14 S 1 E	6629.63	14	44		NWS	Mallard	10	Culver Springs
Widgeon Pond	NW	6	14 S 1 E	6636.3	150	585		NWS	Hackett Cr	20	Culver Springs
Culver Pond	NW	8	14 S 1 E	6651.7	65	110		NWS	Mallard		Culver Springs
East Pintail Ditch Pond	N2	1	14 S 1 W		3	3		M	Mallard	10	Culver Springs Groundwater
Pintail Ditch Pond	SW	34	13 S 1 W		21	24		M	Mallard	10	Culver Springs Groundwater
Swan Lake ³	N2	9	14 S 1 W		649	1168		N			Elk Creek Groundwater
Buck Pond ²	NE	4	14 S 1 W		11	16		N			Groundwater
East Swan Lake ¹	SW	3	14 S 1 W		65	78		N			Groundwater
Sora Pond ²	E2	33	13 S 1 W		1	2		N			Groundwater
Antelope Pond	N2	4	14 S 1 W		10	12		N			Groundwater
Campground Spring	SW/SWSE	21	14 S 1 W		8	8		M		10gpm	Groundwater
Shambo Pond ⁴	S2	20	14 S 1 W		7	26		N			Groundwater
Rail Pond ²	NW	3	14 S 1 W		6	9		N			Groundwater
Well	SESESE	28	13 S 1 W					M		40 gpm	Groundwater
Well	SESESE	28	13 S 1 W					M		15 gpm	Groundwater
Well	SWSESE	28	13 S 1 W					M		15 gpm	Groundwater
Well	NWSW/NW	28	13 S 1 W					M		3 gpm	Groundwater
Well	NESESE	28	13 S 1 W					M		20 gpm	Groundwater
Irrigation	SWSW	30	14 S 1 W				3000	M		25	Odell Creek
Sparrow Slough Pond	N2	13	14 S 2 W	6627	63	190		M		Odell Creek	Odell Creek
Sparrow Pond Creek	SW	13	14 S 2 W	6629.3	21	34		NWS	Ditch	17.5	Odell
Upper Red Rock Lake	W2	8	14 S 1 W		3467			N	Red Rock Creek		
Lower Red Rock Lake	NE	6	14 S 2 W	6612.5	5492	89582		NWS			Red Rock Creek
Tuck Slough South	SE	7	14 S 1 W		29	63		M	Harlequin	30	Red Rock Creek
Tuck Slough North	N2	7	14 S 1 W		103	200		M	Harlequin	30	Red Rock Creek
Shoveler Pond ²	W2	7	14 S 1 W		6	9		N	Harlequin	30	Red Rock Creek Groundwater
Refuge HQ domestic Well	SESESE	23	14 S 2 W			8		M			Groundwater
Irr. of Refuge HQ grnds	SW/NESW	23	14 S	2 W				M	pipeline	0.5	Shambo Creek
Irr. of Bunkhse grnds	SW/NESW	23	14 S	2 W				M	pipeline	0.2	Shambo Ck
Irr. of Bunkhouse Pasture	SW/SWNE	23	14 S	2 W				M	ditch	1.6	Shambo Ck

Bold letters denote data taken from the dam safety reports, all other data is derived from topographic maps and Refuge staff estimates.

POD = Point of Diversion

1 = Estimated average depth 2 feet

2 = Estimated average depth 2.5 feet

3 = Estimated average depth 3 feet

4 = Estimated average depth 6 feet

N=Natural Lake

NWS = Natural lake with manmade structure

M= Manmade lake

2. Natural Flow: The United States has a water right to the natural flow in all the tributaries entering the Refuge above the most downstream point on the Refuge at the point the tributary enters the Refuge in the amount of the natural flow remaining after satisfaction of the following water rights:
 - a. all rights recognized under state law upstream from the Refuge with a priority date prior to the effective date of this Compact; and
 - b. any rights exempt from the basin closure set forth in Article III.A. of this Compact.
 3. Minimum Flow: Subject to the provisions of Article III.C.1., the United States has a water right for minimum flows on Red Rock, Tom and Odell Creeks as follows:
 - a. Red Rock Creek: 15 cfs, measured at NE SE NW Sec. 17, T14S, R1E;
 - b. Tom Creek: 1.4 cfs, measured at the county road in SW NE NE Sec. 25, T14S, R1W;
 - c. Odell Creek: 11 cfs, measured at the county road in SW SW SE Sec. 24, T14S, R2W.
 4. Lake Level: The United States has the right to maintain the natural lake level of Lower Red Rocks Lake at an elevation of 6607.5 feet. The United States may store additional water only to the extent consistent with the Memorandum of Understanding of February 4, 1987, between the United States and the Water Users Irrigation Company (Lima Reservoir) and East Bench Irrigation District and state water right permit number 65254-S41A.
 5. Emergency Fire Suppression: The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the Refuge. The United States may, as part of its water right, divert water for fire suppression at the Refuge as needed and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for consumptive use or a violation of its water rights for natural or minimum flow.
- B. Relative Priority:
1. Priority Date:
 - a. Consumptive Use and Natural Flow: Subject to the subordination provisions of Article II.B.2.a., the United States has a priority date of April 22, 1935, for the water rights for consumptive use and natural flow described in Article II.A.1. and 2. of this Compact.
 - b. Minimum Flow: Subject to the provisions of Article III.C.1. setting forth the means to satisfy the minimum flow rights for the Refuge and the subordination provisions of Article II.B.2.b., the United States has a priority date of October 30, 1888, for the 15 cfs minimum flow on Red Rock Creek; June 15, 1894, for the 1.4 cfs minimum flow on Tom Creek; and June 28, 1889, for the 11 cfs minimum flow on Odell Creek.
 2. Subordination:
 - a. Consumptive Use Natural Flow and Lake Levels: The water rights for consumptive use set forth in Article II.A.1. and natural flow set forth in Article II.A.2. and lake levels set forth in Article II.A.4. are subordinate

to the following rights upstream from the most downstream point on the Refuge:

- (1) any right recognized under state law with a priority date before the effective date of this Compact; and
 - (2) any right exempt from the basin closure set forth in Article III.A. of this Compact.
- b. Minimum Flow: The water rights for minimum flows on Red Rock, Tom and Odell Creeks set forth in Article II.A.3. of this Compact are subordinate to the following rights upstream from the Refuge:
- (1) any right for the purpose of domestic use;
 - (2) any right for the purpose of instream stockwatering; and
 - (3) any change in use of a water right for the purpose of instream stockwatering to off-stream stockwatering that does not result in an increase in the historic consumptive use of water.
- C. Period of Use:
1. Natural Flow/Consumptive Use: The period of use of the United States' water rights for natural flow and consumptive use set forth in Article II.A.1. and 2. shall be from January 1 through December 31 of each year.
 2. Minimum Flow: The period of use of the United States' water rights for minimum flows set forth in Article II.A.3. shall be from April 1 through November 30 of each year.
- D. Points and Means of Diversion/Location of Natural and Minimum Flow Rights:
1. Consumptive Use: See Table at Article II.A.1.
 2. Natural Flow: The United States' water rights for natural flow apply to the portion of the streams specified in this Compact that flow over or form the boundary of land administered by the Fish and Wildlife Service.
 3. Minimum Flow: The United States' water rights for minimum flow are measured at the points set forth in Article II.A.3.
- E. Purposes: The United States' rights to water may be used for the following purposes:
1. Consumptive Use: The United States' water rights for consumptive use shall be used for the purposes of the Refuge including wildlife habitat maintenance and enhancement. Subject to the limitations set forth in Article III.E., the United States may change the use of water identified for consumptive use in Article II.A.1.
 2. Natural and Minimum Flows: The United States' water rights to natural and minimum flows shall be used on the Refuge for wildlife habitat maintenance and enhancement. The United States' water rights to natural flow set forth in Article II.A.2. and to minimum flows set forth in Article II.A.3. shall be used only for the purpose of instream flow and shall not be changed or diverted for any other use, except for fire suppression as set forth in Article II.A.5.

ARTICLE III - IMPLEMENTATION

A. Basin Closure:

1. In the drainage basins upstream of the most downstream point on the Refuge, the Department shall not process or grant an application for a permit to appropriate or to reserve water for consumptive use after the effective date of this Compact, provided that, the following appropriations are exempt from this closure:
 - a. certificates of water right for appropriation of groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year;
 - b. permits for appropriation of groundwater by means of a well or developed spring with an appropriation of greater than 35 gallons per minute or a total appropriation in excess of 10 acre-feet per year, if the Department determines by a preponderance of the evidence based on information provided by the applicant or information from any other source available to the Department that the groundwater is not hydrologically connected to surface water upstream from or on the Refuge;
 - c. permits or changes in water right for appropriation of groundwater for irrigation purposes when the number of acres to be irrigated from groundwater under the permit or change in water right will be accompanied by a corresponding decrease in the number of acres irrigated from surface water sources upstream from the Refuge;
 - d. permits for stock watering ponds with a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream;
 - e. permits for domestic use;
 - f. permits for nonconsumptive use; and
 - g. temporary emergency appropriations.
2. If a temporary or permanent basin closure is enacted under state law for a drainage basin or subbasin for which future consumptive water use is limited under this Compact, the most restrictive measures applicable to consumptive use of surface or groundwater shall control.
3. Within 180 days following the effective date of this Compact, the Department shall mail notice of the basin closure to every person or public agency of record with a claim of water right or permit in the portion of the drainage basins subject to closure.

B. Lake Levels: The United States agrees to continue efforts to coordinate lake water level management with Water Users Irrigation Company (Lima Reservoir) and East Bench Irrigation District or their successors in interest. It is not intended that this Compact affect in any way the Memorandum of Understanding between the United States and the Irrigation Company and Irrigation District listed above, or the ability of the parties to modify that agreement.

- C. Enforcement of Water Right:
1. Minimum flow:
 - a. Minimum flow rights set forth in Article II.A.3. may be satisfied through cooperative agreements entered into by the FWS and any person holding a water right with a point of diversion on Red Rock, Tom or Odell Creeks or their tributaries upstream of the Refuge. The FWS may, on agreement with the parties to a cooperative agreement, modify an existing agreement. The FWS may enter into additional cooperative agreements after the effective date of the Compact. Modification of a cooperative agreement or entry into a new cooperative agreement shall not be considered a modification of the Compact. As between the FWS and signatories to cooperative agreements, the FWS will use its best efforts to seek satisfaction of the minimum flow rights pursuant to the cooperative agreements prior to resorting to remedies set forth in Article III.C.2.
 - b. Prior to seeking satisfaction of the minimum flow, the FWS shall cease its own diversions, if any, from:
 - (1) Red Rock Creek and its tributaries upstream from the point of measurement when measured flow is approximately 25 cfs;
 - (2) Odell Creek and its tributaries upstream from the point of measurement when measured flow is approximately 20 cfs; and
 - (3) Tom Creek and its tributaries upstream from the point of measurement when measured flow is approximately 5 cfs.
 - c. On acquisition by or transfer to the FWS of any water right subject to a cooperative agreement, the FWS will continue to exercise the water right in a manner that satisfies the minimum flow at least to the degree set forth in the cooperative agreement, and the provisions of Article III.C.1.b. requiring curtailment of FWS diversions shall apply.
 - d. In the absence of a cooperative agreement, the FWS may seek curtailment of a water use to satisfy the minimum flow by resort to a court of competent jurisdiction pursuant to Article III.C.2. In any proceeding before a court of competent jurisdiction, the FWS will not seek curtailment of any water right which, based on the experience and observation of the FWS, does not cause a measured or cumulative reduction in flow of Red Rock, Tom, or Odell Creeks at the point of measurement set forth in Article II.A.3., and will limit the period for which curtailment is sought to that necessary to maintain the minimum flow.
 2. The United States, the State, or a holder of a water right recognized under state law, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water rights described by this Compact, and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable or, to the extent not applicable, by appropriate state or federal law.
 3. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by future

changes in law, may enter the Refuge for the purpose of data collection, including the collection of information necessary for water distribution on or off the Refuge, and to inspect structures for the diversion and measurement of water described in this Compact for consumptive use and for the measurement of natural and minimum flow. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.

4. The Department may enter the Refuge, at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department shall notify the United States by certified mail or in person, at least 24 hours prior to entry.
5. The United States may request an investigation by the Department of a diversion located upstream of the portion of a stream for which a water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.
6. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact. The United States shall maintain the devices it considers necessary for enforcement of its reserved water right for natural and minimum flow described in this Compact.
7. A person who violates or refuses or neglects to comply with the provisions of this Compact or an order of the Department pursuant to this Compact is subject to the penalties provided by state law.

D. Use of Water Right: The rights of the United States described in this agreement are federal water rights. Non-use of all or a part of the federal water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the Refuge.

E. Change in Use:

1. Natural and Minimum Flow: Water rights specified in this Compact for natural and minimum flow shall not be subject to change to any other use, provided that: the emergency use of water for fire suppression as provided for in Article II.A.5. shall not be considered a change or alteration in use, or violation of a water right for natural or minimum flow.
2. Consumptive Uses:
 - a. The United States may make a change in the use of its consumptive use water rights, provided that:
 - (1) the action shall be in fulfillment of the purposes of the Refuge described in Article II.E. rather than with reference to a beneficial use as defined by state law;
 - (2) the total use shall not exceed the amount described in this Compact; and
 - (3) the action shall not adversely affect a water right that is recognized under state law.

- b. With the exception of the purpose for which the water right is used, the United States, in making the change, shall comply with the provisions of Title 85, Chapter 2, Montana Code Annotated, applicable to change in appropriative right at the time of the change. The United States may appeal any decision by the Department to a state or federal court of competent jurisdiction.

ARTICLE IV - GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights:

1. The relationship between the water rights of the United States described herein and any rights to water of an Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such tribe or individual shall be determined by the rule of priority. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected.
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 to water of any other federal agency or federal lands in Montana other than those of the Fish and Wildlife Service at the Refuge.
3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any Indian Tribes and tribal members.
4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests.

B. State Water Rights: Nothing in this Compact limits the exclusive authority of the State, including the authority of a water commissioner authorized by state law, to administer all current and future water rights recognized under state law within and upstream of the Refuge, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that not in conflict with federal law.

C. Abstract: Concurrent with this Compact, the parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights for the Refuge, that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles II and III of this Compact, the parties intend that the quantification in accordance with Articles II and III of this Compact shall govern and shall be reflected in a final decree.

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

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State; or of the United States and any other state;
2. except as agreed to in cooperative agreements authorized by Article III.C.1. of this Compact, as a waiver by the United States on behalf of the FWS of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact; or any right 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 Code Annotated, in the basins affected by this Compact;
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;
4. to establish a precedent for other agreements between the State and the United States or an Indian tribe;
5. to determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;
6. to create or deny substantive rights through headings or captions used in this Compact;
7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;
8. 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 such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;
9. to affect in any manner the entitlement to or quantification of other federal water rights;
10. to be binding on the United States with regard to the water rights of the United States for any area other than the Refuge;
11. to affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;
12. to prevent the United States from constructing or modifying an outlet to an impoundment at the Refuge in compliance with all applicable laws;
13. to prevent the United States from seeking a permit to appropriate water under state law from a source not closed to new permits by this Compact or any other law.

E. Reservation of Rights: The parties expressly reserve all rights not granted, described or relinquished in this Compact.

F. Severability: The provisions of this Compact are not severable.

G. Multiple Originals: This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

H. Notice: Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as he or she may designate in writing.

2. United States: Upon the Secretary of the Interior and such other officials as he or she may designate in writing.

ARTICLE V - FINALITY OF COMPACT

A. Binding Effect:

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 Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the parties.
2. Following the effective date, this Compact shall not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Any attempt unilaterally to modify this Compact by either party shall render this Compact voidable at the election of the other party.
3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all persons bound by the final order of the court.
4. If an objection to this Compact is sustained pursuant to 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. Disposition of Actions: Subject to the following stipulations and within one hundred eighty (180) days of the effective date of this Compact, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

1. Dismissal of Filed Claims: At the time the state courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 to this Compact. If this Compact is not approved or a water right described herein is not confirmed, the specified claims shall not be dismissed.
2. Federal Court: This Compact may be filed as a consent decree in federal court only if it is finally determined in a judgment binding on the State of Montana that the state courts lack jurisdiction over some or all of the water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the water rights described herein.

3. Continuation of Negotiations: The parties were unable to finalize agreement on quantification of the water rights for: the National Bison Range; Bowdoin National Wildlife Refuge; and Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to the effective date of this Compact. The parties agree to continue to pursue, in good faith, quantification of water rights for these areas. In the event the parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water rights for these areas adjudicated in a state or federal court of competent jurisdiction.

C. Settlement of Claims: The parties intend that the water rights described in this Compact are in full and final settlement of the water right claims for the Refuge land described in this Compact and administered by the Fish and Wildlife Service in Montana on the effective date of this Compact. On the effective date of this Compact, the United States hereby and in full settlement of any and all claims to water filed by the United States or which could have been filed by the United States for Red Rock Lakes National Wildlife Refuge and Wilderness Area, relinquishes forever all said claims to water within the State of Montana for Red Rock Lakes National Wildlife Refuge and Wilderness Area. The state agrees to recognize the water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

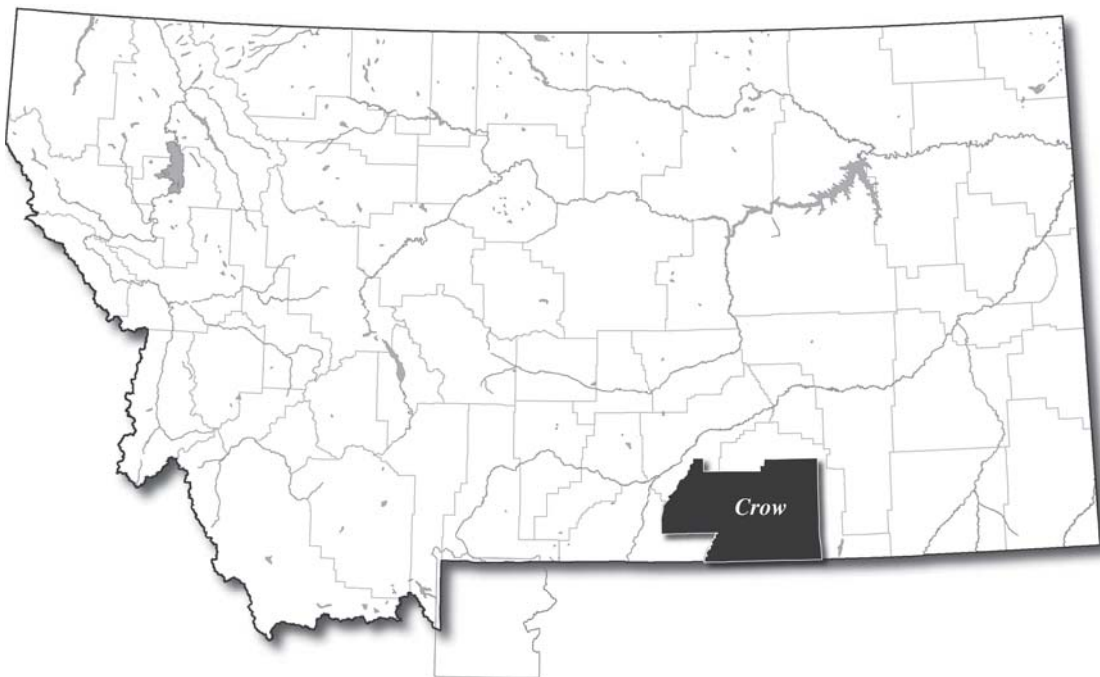
D. The parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the 1st day of February, 2000.

History: En. Sec. 1, Ch. 347, L. 1999; amd. Sec. 1, Ch. 187, L. 2001.

CROW TRIBE – MONTANA COMPACT

Crow Tribe – Montana
Compact



Title 85 Water Use
Chapter 20 Water Compacts

85-20-901. Crow Tribe-Montana compact ratified. The compact entered into by the State of Montana and the Crow Tribe and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702 on June 22, 1999, is ratified. The compact is as follows:

WATER RIGHTS COMPACT ENTERED INTO BY
THE STATE OF MONTANA,
THE CROW TRIBE,
AND THE UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Crow Tribe, and the United States of America for the purpose of settling any and all existing water rights claims of or on behalf of the Crow Tribe of Indians in the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1975, the United States, on behalf of the Crow Tribe, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights, see, U.S. v. Big Horn Low Line Canal Company, et al., No. CIV-75-34-BLG (filed April 17, 1975); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribe; see, "the McCarran Amendment", 43 U.S.C. §666(a)(1)(1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Crow tribal water rights; and

WHEREAS, the United States has filed claims on behalf of the Crow Tribe in the general stream adjudication initiated by the State of Montana; and

WHEREAS, the lands and waters constituting the Crow Indian Reservation and Tribal Interests in the Ceded Strip were part of the area recognized as the territory of the Crow Indians under the Treaty of Fort Laramie of September 17, 1851 and also were part of the area set apart for the Crow Tribe under the Treaty of Fort Laramie of May 7, 1868; and

WHEREAS, for the purposes of this Compact, the priority date for the Tribal Water recognized is May 7, 1868, which is the senior water right on the water sources covered by this Compact; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see, Northern

Cheyenne Tribe v. Adsit, 721 F.2d 1187, 1189 (9th Cir. 1983); and

WHEREAS, the adjudication of Crow tribal water rights in the state court proceedings has been suspended while negotiations are proceeding to conclude a compact resolving all water rights claims of the Crow Tribe within the State of Montana; and

WHEREAS, the Crow Tribal Council, or its duly designated representatives, have authority to negotiate this Compact pursuant to Resolution No. 99-33; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. Sections 516-17 (1993); and

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

WHEREAS, the Crow Tribe, the State of Montana, and the United States agree that the Tribal Water Right described in this Compact shall be in satisfaction of all the Tribe's water rights claims within the State of Montana; and

WHEREAS, it is in the best interest of all Parties that the water rights claims of the Crow Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United States; and

WHEREAS, in settling the water rights claims of the Crow Tribe the Parties do not intend to alter or amend or to adopt or preclude any interpretation of the Yellowstone River Compact (Act of October 10, 1951, ch. 629, 65 Stat.663 (1951));

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the Crow Tribe within the State of Montana.

ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of this Compact:

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

2. "Acre Feet Per Year" or "AFY" means the quantity of water to which the Tribe has a right each year measured in acre feet over a period of a year.

3. "Adverse Affect" or "Adversely Affect" means interference with or to interfere with the reasonable exercise of a water right.

4. "Bighorn River Basin" means Water Court Basin 43P, the mainstem of the Bighorn River and its tributaries (exclusive of the Little Bighorn River and its tributaries) within Montana to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

5. "Bighorn Lake" means the body of water impounded on the Bighorn River by Yellowtail Dam, Yellowtail Unit, Lower Bighorn Division, Pick-Sloan Missouri Program, Montana.

6. "Board" means the Crow - Montana Compact Board established by Section F, of Article IV of this Compact.

7. "Ceded Strip" means the area covered by Article III of the Act of April 27, 1904 (33 Stat.352), as depicted on the map attached as Appendix 5.

8. “Change in Use” as applied to the Tribal Water Right, means a change in the point of diversion, the place of use, the purpose of use, or the place or the means of storage.

9. “Clarks Fork Yellowstone River Basin” means Water Court Basin 43D, the mainstem of the Clarks Fork Yellowstone River and its tributaries from the Montana-Wyoming border to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

10. “Crow Irrigation Project” means the irrigation project authorized by the Act of March 3, 1891 (26 Stat. 989, 1040) managed by the United States, Department of the Interior, Bureau of Indian Affairs, as of the date this Compact has been ratified by the Montana legislature, consisting of the following project units: Agency, Big Horn, Forty Mile, Lodge Grass #1, Lodge Grass #2, Pryor, Reno, Soap Creek, and Upper Little Horn; and including land held in trust by the United States for the Tribe or a Tribal member within the Bozeman Trail and Two Leggins districts which are managed by private irrigation associations as of the date this Compact has been ratified by the Montana legislature.

11. “DNRC” means the Montana Department of Natural Resources and Conservation, or any successor agency.

12. “Effective Date” means the date on which the Compact is ratified by the Crow Tribal Council, by the Montana legislature, and by the Congress of the United States, whichever date is latest.

13. “Groundwater” means any water that is beneath the ground surface.

14. “Little Bighorn River Basin” means Water Court Basin 43O, the mainstem of the Little Bighorn River and its tributaries from the Montana-Wyoming border to its confluence with the Bighorn River, as depicted on the map attached as Appendix 2.

15. “Natural Flow” means water that would exist in the Bighorn River and its tributaries in the absence of human intervention.

16. “Parties” means the Tribe, the State, and the United States.

17. “Person” means an individual or any other entity, public or private, including the State, the Tribe, and the United States and all officers, agents, and departments of each of the above.

18. “Pryor Creek Basin” means Water Court Basin 43E, the mainstem of Pryor Creek and its tributaries from its headwaters to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

19. “Recognized Under State Law” when referring to a water right, means a water right arising under Montana law or a water right held by a nonmember of the Tribe on land not held in trust by the United States for the Tribe or a Tribal member.

20. “Release” means to discharge water from storage, or the discharge of water from storage.

21. “Reservation” means the Crow Indian Reservation consisting of the area as presently set apart for the Crow Tribe pursuant to the following Treaty and laws: Article 2 of the Fort Laramie Treaty of May 7, 1868 (15 Stat. 649); the Act of April 11, 1882 (22 Stat. 42); the Act of March 3, 1891 (26 Stat. 989); the Act of April 27, 1904 (33 Stat. 352); the Act of August 31, 1937 (50 Stat. 884); and, the Act of November 2, 1994 (108 Stat. 4636), as depicted on the map attached as Appendix 4.

22. “Rosebud Creek Basin” means Water Court Basin 42A, the mainstem of Rosebud Creek and its tributaries from its headwaters to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

23. “Secretary” means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.

24. “Shoshone River Basin” means Water Court Basin 43N, the mainstem of the Shoshone River and its tributaries within Montana, as depicted on the map attached as Appendix 2.

25. “State” means the State of Montana and all officers, agents, departments, and political subdivisions thereof.

26. “Tongue River Basin” means Water Court Basin 42B, the mainstem of the Tongue River and its tributaries from the Montana-Wyoming border to above and including Hanging Woman Creek, as depicted on the map attached as Appendix 2.

27. “Transfer” as applied to the Tribal Water Right, means to authorize a person to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration.

28. “Tribal Water Resources Department” or “TWRD” means the Crow Tribal Water Resources Department, or any successor agency.

29. “Tribal Interests in the Ceded Strip” means all present and acquired interests in real property, including mineral interests, held in trust by the United States for the Tribe or Tribal members within the Ceded Strip, consisting of: Crow Indian allotments held in trust by the United States for the Tribe or Tribal members; interests restored to the Tribe pursuant to the Act of May 19, 1958 (72 Stat. 121), as modified by the Act of August 14, 1958 (72 Stat. 575); and other interests held in trust by the United States for the Tribe or Tribal members.

30. “Tribal Water Right” means the right of the Crow Tribe, including any Tribal member, to divert, use, or store water as described in Article III of this Compact.

31. “Tribe” means the Crow Tribe and all officers, agents, and departments thereof.

32. “United States” means the federal government and all officers, agencies, and departments thereof.

33. “Yellowstone River Basin between Bighorn River and Tongue River” means Water Court Basin 42KJ, the mainstem of the Yellowstone River and its tributaries between Bighorn River and Tongue River, as depicted on the map attached as Appendix 2.

34. “Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River” means Water Court Basin 43Q, the mainstem of the Yellowstone River and its tributaries between Clarks Fork Yellowstone River and Bighorn River, as depicted on the map attached as Appendix 2.

ARTICLE III - TRIBAL WATER RIGHT

A. Basin 43P: Bighorn River.

1. Quantification - Source - Volume.

- a. Natural Flow. The Tribe has a quantified water right to the Natural Flow of the Bighorn River for current uses developed as of the date this Compact

has been ratified by the Montana legislature and new development within the Reservation of 500,000 AFY. The use of this right is subject to Sections A.6. and A.8.a., of Article III, and the terms and conditions of the streamflow and lake level management plan agreed to in accordance with Section A.7., of Article III.

- (1) The Tribe has a right to divert or use or to authorize the diversion or use of water from the Natural Flow of the Bighorn River within the Reservation, subject to the terms and conditions in Section C., of Article IV.
 - (2) The Tribe may change the source of water from the Natural Flow of the Bighorn River to surface flow or storage of any tributary within the Bighorn River Basin within the Reservation or to Groundwater within the Bighorn River Basin within the Reservation, subject to the terms and conditions in Section C.2.a., of Article IV.
 - (3) The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water from the Bighorn River as part of that project is a use of the Natural Flow Tribal Water Right set forth in Section A.1.a., of Article III, in the Bighorn River Basin, and the use of this water shall be subject to federal law.
- b. Storage in Bighorn Lake.
- (1) Subject to the approval of, and any terms and conditions specified by, Congress and to the terms and conditions of the streamflow and lake level management plan agreed to in accordance with Section A.7., of Article III, the Tribe shall be entitled to an allocation of 300,000 AFY of water stored in Bighorn Lake. The Tribe and the State agree to seek as a part of that allocation the following:
 - (a) not more than 150,000 AFY of the allocation provided in Section A.1.b.(1), of Article III may be used or diverted as authorized by the Tribe, subject to the terms and conditions in Section C., of Article IV; provided that, not more than 50,000 AFY may be used outside the Reservation subject to the terms and conditions in Section C.2.c., of Article IV. This storage allocation is in addition to the Natural Flow Tribal Water Right provided in Section A.1.a., of Article III.
 - (b) not less than 150,000 AFY of the allocation provided in Section A.1.b.(1) of Article III shall only be:
 - (i) managed so as to be available as a Release during low flow periods pursuant to streamflow and lake level management plan agreed to under Section A.7., of Article III; or
 - (ii) used for beneficial purposes including diversions for consumptive uses in years of excess Natural Flows and excess storage, if any, when unappropriated or unallocated water is available, and subject to the terms and conditions in Section C., of Article IV.
 - (2) All other water stored in Bighorn Lake, except for the 6,000 AFY currently allocated by contract to the Montana Power Company, or its successor-in-interest, and the 30,000 AFY allocated by Congress

to the Northern Cheyenne Tribe, shall be used only for flood control, production of power, maintenance of instream flows, maintenance of lake levels and carryover storage, consistent with Section A.7., of Article III and federal law.

2. Priority Date.
 - a. Natural Flow. The priority date of the Natural Flow Tribal Water Right set forth in Section A.1.a., of Article III shall be May 7, 1868.
 - b. Storage. The priority date of the Tribal Water Right to waters stored in Bighorn Lake set forth in Section A.1.b.(1)., of Article III shall be the priority date of the water right held by the Bureau of Reclamation as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA.
3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.
4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, and except for the 50,000 AFY that may be used outside the Reservation as provided in Section A.1.b.(1)(a)., of Article III, the Tribe may divert or permit the diversion of this water right from any place and by any means within the Reservation for use within the Reservation, provided that, any diversion structure of the Tribal Water Right upstream of the Two Leggins diversion on the Bighorn River will be constructed to bypass streamflows established or modified pursuant to Section A.7., of Article III.
5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used for any purpose within the Reservation allowed by Tribal and federal law.
6. Protection of Water Rights Recognized Under State Law.
 - a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:
 - (1) an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.
 - (2) new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.
 - b. The protection of water rights Recognized Under State Law set forth in Sections A.6.a.(1) and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC

(except for Water Reservation No. 1781-r (g)); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

- c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.
 - d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV. Measures to prevent Adverse Affect may include Release of water from Bighorn Lake.
 - e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.
7. Streamflow and Lake Level Management Plan. Pursuant to this Compact, the Tribe, the Secretary, and the State shall develop a streamflow and lake level management plan for the Bighorn River, from the Yellowtail Afterbay Dam to a point immediately upstream of the Two Leggins diversion, and for Bighorn Lake. The streamflow and lake level management plan shall be agreed to within one (1) year after this Compact has been ratified by the Montana legislature. If the streamflow and lake level management plan is not agreed to by the Tribe, the Secretary, or the State the provisions of Section A.4.d., of Article VII apply. The streamflow and lake level management plan is not required to be implemented until the Effective Date of this Compact. The streamflow and lake level management plan may be modified at any time with the consent of the Tribe, the Secretary, and the State. The Montana legislature intends that the streamflow management plan should provide enforceable mechanisms that protect the long-term biological viability of the blue ribbon wild trout fishery on the Bighorn River from the Yellowtail Afterbay Dam to the Two Leggins diversion.
8. Basin Closure within the Bighorn River Basin.
- a. In the Bighorn River Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana

legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, the DNRC may issue a certificate of water right or permit for use on fee land for:

- (1) an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.
- (2) an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.
- (3) temporary emergency appropriations as provided in 85-2-113(3), MCA.

- b. The basin closure applies only to appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.
- c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

B. Basin 430: Little Bighorn River.

1. Quantification - Source - Volume.

- a. The Tribe has a water right for all surface flow, Groundwater, and storage within the Little Bighorn River Basin, except as provided for in Sections B.6., and B.7.a., of Article III, and except for water apportioned to Wyoming, if any, as determined by a court of competent jurisdiction or Congress. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.
- b. The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water in the Little Bighorn River Basin as part of that project is a use of the Tribal Water Right set forth in Section B.1.a., of Article III, and the use of this water shall be subject to federal law. Water stored in Willow Creek Reservoir also is a use of the Tribal Water Right.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section B.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Little Bighorn River Basin within the Reservation for use within the Reservation or in connection with Tribal Interests in the Ceded Strip subject to the terms and conditions in Section F., of Article III and Section C.2.b., of Article IV.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.
6. Protection of Water Rights Recognized Under State Law.
 - a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Little Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:
 - (1) an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.
 - (2) new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Little Bighorn Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.
 - b. The protection of water rights Recognized Under State Law set forth in Sections B.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation No. 1781-r (g)); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.
 - c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.
 - d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Little Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

- e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.
7. Basin Closure within the Little Bighorn River Basin.
- a. In the Little Bighorn River Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:
 - (1) an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.
 - (2) an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.
 - (3) temporary emergency appropriations as provided in 85-2-113(3), MCA.
 - b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.
 - c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.
- C. Basin 43E: Pryor Creek.
- 1. Quantification - Source - Volume.
 - a. The Tribe has a water right for all surface flow, Groundwater, and storage within the Pryor Creek Basin within the Reservation, except as provided for in Sections C.6. and C.7.a., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.
 - b. The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water in the Pryor Creek Basin as part of that project is a use of the Tribal Water Right set forth in Section C.1.a., of Article III, and the use of this water shall be subject to federal law.
 - 2. Priority Date. The priority date of the Tribal Water Right set forth in Section C.1., of Article III shall be May 7, 1868.
 - 3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Pryor Creek Basin within the Reservation for use within the Reservation.
5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.
6. Protection of Water Rights Recognized Under State Law.
 - a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:
 - (1) an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.
 - (2) new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.
 - b. The protection of water rights Recognized Under State Law set forth in Sections C.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.
 - c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.
 - d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact

- has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.
- e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.
7. Basin Closure within the Pryor Creek Basin.
 - a. In the Pryor Creek Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:
 - (1) an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.
 - (2) an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.
 - (3) temporary emergency appropriations as provided in 85-2-113(3), MCA.
 - b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.
 - c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.
 - D. Basin 42A: Rosebud Creek.
 1. Quantification - Source - Volume. The Tribe has a water right for all surface flow, Groundwater, and storage within the Rosebud Creek Basin within the Reservation, except as provided for in Sections D.6. and D.7., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.
 2. Priority Date. The priority date of the Tribal Water Right set forth in Section D.1., of Article III shall be May 7, 1868.
 3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.
 4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Rosebud Creek Basin for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.
6. Protection of Water Rights Recognized Under State Law.
 - a. Within the Reservation. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Rosebud Creek Basin within the Reservation with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:
 - (1) an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.
 - (2) new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Rosebud Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.
 - b. The protection of water rights Recognized Under State Law set forth in Sections D.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued within the Reservation is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.
 - c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.
 - d. Outside the Reservation. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Rosebud Creek Basin outside the Reservation are protected from an assertion of senior priority in the exercise of the Crow Tribal Water Right to the same extent provided in the Northern Cheyenne - Montana Compact, Sections A.3.c.i. and ii., of Article II, 85-20-301, MCA. Protection from an assertion of senior

priority in the exercise of the Crow Tribal Water Right for the Northern Cheyenne Tribal Water Right shall only be as provided in Section D.7., of Article III.

- e. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Rosebud Creek Basin within the Reservation with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, or outside the Reservation to the same extent provided in the Northern Cheyenne - Montana Compact, Section A.3.c.i. and ii., of Article II, 85-20-301, MCA.
 - f. Existing uses of the Tribal Water Right shall not be Adversely Affected by development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect of uses of the Tribal Water Right on Tribally owned land.
7. Protection of Northern Cheyenne Tribal Water Rights within the Northern Cheyenne Reservation.
- a. Except as provided in Section G.2., of Article III, the Northern Cheyenne Tribal Water Right, recognized in the Northern Cheyenne - Montana Compact, Section A.3.a., of Article II, 85-20-301, MCA, is protected from an assertion of senior priority in the exercise of the Crow Tribal Water Right.
 - b. New development, Change in Use, or Transfer of the Crow Tribal Water Right shall not Adversely Affect the exercise of the Northern Cheyenne Tribal Water Right, recognized in the Northern Cheyenne - Montana Compact, Section A.3.a., of Article II, 85-20-301, MCA.
8. Basin Closure within the Rosebud Creek Basin within the Reservation.
- a. In the Rosebud Creek Basin upstream from the point that Rosebud Creek or any tributary of Rosebud Creek leaves the Reservation, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:
 - (1) an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.
 - (2) an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.
 - (3) temporary emergency appropriations as provided in 85-2-113(3), MCA.

- b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.
- c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

E. Youngs Creek drainage, Squirrel Creek drainage, Tanner Creek drainage, Dry Creek drainage, and Spring Creek drainage within Tongue River Basin; Sarpy Creek drainage within Yellowstone River Basin between Bighorn River and Tongue River; Cottonwood Creek drainage, Five Mile Creek drainage, and Bluewater Creek drainage within Clarks Fork Yellowstone River Basin; Sage Creek drainage within Shoshone River Basin; and, Fly Creek drainage, Blue Creek drainage, Dry Creek drainage, and Bitter Creek drainage within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River.

1. Quantification - Source - Volume. The Tribe has a water right for all surface flow, Groundwater, and storage within the Reservation within Youngs Creek drainage, Squirrel Creek drainage, Tanner Creek drainage, Dry Creek drainage, and Spring Creek drainage within Tongue River Basin; Sarpy Creek drainage within Yellowstone River Basin between Bighorn River and Tongue River; Cottonwood Creek drainage, Five Mile Creek drainage, and Bluewater Creek drainage within Clarks Fork Yellowstone River Basin; Sage Creek drainage within Shoshone River Basin; and, Fly Creek drainage, Blue Creek drainage, Dry Creek drainage, and Bitter Creek drainage within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River, except as provided in Sections E.6. and E.7.a., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., Article IV.
2. Priority Date. The priority date of the Tribal Water Right set forth in Section E.1., of Article III shall be May 7, 1868.
3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.
4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe divert or permit the diversion of the Tribal Water Right from any place and by any means within the drainages listed in Section E.1., of Article III within the Reservation for use within the Reservation.
5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used for any purpose within the Reservation allowed by Tribal and federal law.
6. Protection of Water Rights Recognized Under State Law.
 - a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the drainages listed in Section E.1., of Article III, with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

- (1) an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.
 - (2) new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the drainages listed in Section E.1., of Article III with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.
- b. The protection of water rights Recognized Under State Law set forth in Sections E.6.a.(1). and (2)., of Article III extends only to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basins. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.
 - c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.
 - d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in each drainage listed in Section E.1., of Article III, with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.
 - e. Existing uses of the Tribal Water Right shall not be Adversely Affected by development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect of uses of the Tribal Water Right on Tribally owned land.
7. Basin Closure within the Reservation.
 - a. In the drainages listed in Section E.1., of Article III, upstream from the point that each stream or its tributaries leaves the Reservation, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in

accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

- (1) an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.
 - (2) an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.
 - (3) temporary emergency appropriations as provided in 85-2-113(3), MCA.
- b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.
 - c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

F. Tribal Water Right in the Ceded Strip.

1. Quantification - Source - Volume.

- a. Tribal Interests in the Ceded Strip. As part of the Tribal Water Right, the Tribe has a right to divert a total of 47,000 AFY from surface flow, Groundwater, or storage within the Ceded Strip from portions of the Sarpy Creek drainage and Yellowstone River within Yellowstone River Basin between Bighorn River and Tongue River; Fly Creek drainage and Yellowstone River within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River; Pryor Creek Basin; and Bighorn River Basin for use in connection with Tribal Interests in the Ceded Strip; and, water imported to the Ceded Strip from the Little Bighorn River Basin for use in connection with Tribal Interests in the Ceded Strip. Diversion and use shall be subject to the terms and conditions in Sections C.1.c. and C.1.d., of Article IV.
 - (1) This 47,000 AFY is in addition to the Tribal Water Right set forth in Sections A.1., B.1., C.1., and E.1., of Article III, except that any diversion of this right from surface flow, Groundwater, or storage within the Bighorn River Basin shall be deducted from the Tribal Water Right as set forth in Section A.1., of Article III.
 - (2) No more than 47,000 AFY may be diverted and used in connection with Tribal Interests in the Ceded Strip from all water sources, provided that:

- (a) no more than 2,500 AFY from all water sources including the Yellowstone River may be diverted upstream from the confluence of the Bighorn River and the Yellowstone River.
 - (b) no more than 7,000 AF may be diverted from all sources including the Yellowstone River in any month, provided that, aggregate uses from all sources not exceed 47,000 AFY.
 - b. Use limited to within the Ceded Strip. The Tribal Water Right of 47,000 AFY for use in connection with Tribal Interests in the Ceded Strip shall be used only within the Ceded Strip and shall not be considered a Change in Use or Transfer outside the Reservation for purposes of Section C.2.c., of Article IV.
 - c. Any portion of the 50,000 AFY set forth in Section A.1.b.(1).(a)., of Article III which may be used outside the Reservation may also be used in connection with Tribal Interests in the Ceded Strip in addition to the Tribal Water Right of 47,000 AFY set forth in Section F.1.a., of Article III.
- 2. Priority Date. The priority date of the Tribal Water Right set forth in Section F.1.a., of Article III shall be May 7, 1868.
- 3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.
- 4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means for use in connection with Tribal Interests in the Ceded Strip within the Ceded Strip.
- 5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip may be used for beneficial purposes allowed by Tribal, federal and state law.
- 6. Protection of Water Rights Recognized Under State Law.
 - a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law affected by the exercise of the Tribal Water Right in the Ceded Strip with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:
 - (1) an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.
 - (2) new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.
 - b. The protection of water rights Recognized Under State Law set forth in Sections F.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to

85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation Nos. 1781-r and 10006-r); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basins. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

- c. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.
- d. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

G. Additional Rights to Water. As part of the water rights specifically set forth in Sections A., B., C., D., E., and F., of Article III, the Tribe has a right to water from the following sources:

- 1. Appurtenant Water Rights. For land within the Reservation acquired after the Effective Date of this Compact, the Tribe has the right to the use of any water right acquired as an appurtenance to the land. At such time that the acquired land is transferred to trust status, the water right appurtenant to the land acquired shall become part of and not in addition to the Tribal Water Right quantified in this Compact with a May 7, 1868 priority date, provided that, the acquired water right shall retain any protections set forth in this Compact. The Tribe shall notify DNRC of any acquisition of water in the Tribe's annual report and shall identify the water right acquired, as set forth in Section E.1., of Article IV. Any water right acquired shall be added as decreed by the Montana Water Court to the list of current uses of the Tribal Water Right as provided in Section E.2., of Article IV.
- 2. Exempt Rights.
 - a. Religious or cultural uses of the Tribal Water Right by Crow Tribal members within the Reservation in de minimis amounts shall be allowed without prior review by DNRC.
 - b. In accordance with the terms and conditions in Section C.1., of Article IV, TWRD may authorize development of the Tribal Water Right for:

- (1) an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.
 - (2) an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.
 - (3) temporary emergency appropriations necessary to protect lives or property.
- c. Uses of the Tribal Water Right provided for in Sections G.2.a. and G.2.b., of Article III, are not subject to protection of water rights Recognized Under State Law provided in Sections A.6., B.6., C.6., D.6., D.7., E.6., and F.6., of Article III, or streamflows established or modified pursuant to Section A.7., of Article III.

H. Proposed Decree. For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III is attached as Appendix 1. If there are differences between Appendix 1 and the Final Decree, the Final Decree shall control.

ARTICLE IV - IMPLEMENTATION OF TRIBAL WATER RIGHT

- A. General Provisions.
1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States.
 2. Tribal Water Right: Administration.
 - a. Subject to the limitations imposed by this Compact and federal law, the use of the Tribal Water Right shall be administered by the Tribe through TWRD within the Reservation, in the Ceded Strip, and outside the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth in F.4., of Article IV, concerning use of the Tribal Water Right in the Ceded Strip and outside the Reservation which raise issues concerning the application of state or federal law shall be resolved in a court of competent jurisdiction. Those disputes concerning use of the Tribal Water Right in the Ceded Strip and outside the Reservation which do not raise issues concerning the application of state or federal law shall be within the exclusive jurisdiction of the Tribe. Subject to the limitations imposed by this Compact, the Tribe shall have the final and exclusive jurisdiction to resolve all disputes concerning the Tribal Water Right between holders of water rights under the Tribal Water Right. TWRD shall develop policies and procedures for monitoring water use, diversions, and maintaining records of water use and development consistent with this Compact. The current water use and diversions and new development shall be identified by location and quantity.

- b. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water code, which shall be developed and adopted by the Tribe within two (2) years following the Effective Date of this Compact pursuant to any requirements set forth in the Constitution of the Crow Tribe. Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.
 - c. The Tribe shall not administer any water right Recognized Under State Law.
 - d. Administration, operation and maintenance, and delivery of the Tribal Water Right on the Crow Irrigation Project shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs, in accordance with applicable federal laws. Portions of the Project within the Bozeman Trail and Two Leggins Districts shall be administered in accordance with applicable law.
3. Water Rights Recognized Under State Law: Administration.
- a. The State shall administer and enforce all water rights Recognized Under State Law to the use of surface flows, Groundwater, and storage within or outside the Reservation. The State shall have the final and exclusive jurisdiction to resolve all disputes between holders of water rights Recognized Under State Law.
 - b. The State shall not administer or enforce any part of the Tribal Water Right.
 - c. For water rights Recognized Under State Law, if any, utilizing water delivered by the Crow Irrigation Project, administration and distribution of such water shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs, in accordance with applicable federal laws.
4. Distribution of Water Between the Parties. When water availability is insufficient to satisfy all water rights under the Tribal Water Right and all water rights Recognized Under State Law within the Reservation, administration and distribution shall be as follows:
- a. distribution between the water administered by the Tribe and the United States for current uses of the Tribal Water Right within the Reservation developed as of the date this Compact has been ratified by the Montana legislature and the water for water rights Recognized Under State Law within the Reservation with a priority date before this Compact has been ratified by the Montana legislature shall be on an equitable basis in proportion to the amount of water required for Tribal water use as listed pursuant to Section E.2., of Article IV, and the amount of water required for water rights Recognized Under State Law, provided that, the Parties recognize that distribution may not be on a precise proportional basis due to the need to take into account the physical constraints of water delivery. Administration and distribution by the Tribe, the United States, and the State within their proportional shares shall be pursuant to Tribal,

federal, and state law respectively, and shall be coordinated as necessary. This distribution shall not modify the right of a holder of a water right Recognized Under State Law to seek enforcement of such water right against other water rights Recognized Under State Law in priority without the agreement of the water right holder.

- b. future development of the Tribal Water Right after this Compact has been ratified by the Montana legislature shall be enforced as junior in priority to the water rights subject to a proportional distribution as set forth in Section A.4.a., of Article IV.
 - c. nothing in Section A.4.a., of Article IV shall prevent water users from agreeing to an alternative water distribution plan on the basis of individual water rights pursuant to applicable state, Tribal, or federal law.
5. Subsequent Federal or State Law. Administration under Sections A.2.d., A.3.a. and A.3.c., of Article IV shall be as set forth in this Compact except as may otherwise be determined by a court of competent jurisdiction or established by Congress.

B. Use of the Tribal Water Right.

1. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe, Tribal members, or Persons authorized by the Tribe, provided that, the Tribe may not limit or deprive Indians residing on the Reservation or in the Ceded Strip of any right, pursuant to 25 U.S.C. . 381, to a just and equal portion of the Tribal Water Right set forth in Article III.
2. Effect of Non-Use of the Tribal Water Right. State law doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture or abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.

C. Tribal Water Right: New Development, Change in Use, or Transfer.

1. New Development of Surface Flow, Groundwater, or Storage of the Tribal Water Right.
 - a. New Development of Surface Flow, Groundwater, or Storage Within the Reservation. After the Effective Date of this Compact, the Tribe may develop or authorize new development of surface flow, Groundwater, or storage of the Tribal Water Right within the Reservation; provided that, such development shall not Adversely Affect a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.
 - b. Prerequisite Administrative Procedure within the Reservation. The following procedure for determining whether new development of surface flow, Groundwater, or storage of the Tribal Water Right within the Reservation will have an Adverse Affect on water rights Recognized Under State Law shall be followed prior to seeking relief from the Compact Board:

- (1) Application for new development of a surface flow, Groundwater, or storage use within the Reservation shall be made to TWRD.
- (2) TWRD shall review the application and make a determination of whether the new development will have an Adverse Affect on water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV. Upon request by TWRD, DNRC shall provide information on state water rights as recorded in the DNRC database to TWRD.
- (3) If TWRD determines that the new development will have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, TWRD shall deny the application. If TWRD determines that the new development will not have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, TWRD shall forward the application with its determination to DNRC.
- (4) If, based upon the evidence, DNRC agrees with TWRD's determination, DNRC shall notify TWRD. If, however, based upon the evidence, DNRC cannot agree with TWRD's determination, DNRC shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Recognized Under State Law who, according to the records of the DNRC, has a water right with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, and may be affected by the proposed development. DNRC shall notify TWRD within ninety (90) days of DNRC's determination.
- (5) DNRC and TWRD should attempt to resolve any disagreement on TWRD's determination of no Adverse Affect on a cooperative basis. If DNRC or a holder of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, disagree with the determination of no Adverse Affect, DNRC or the water right holder may seek relief from the Compact Board.
- (6) In any proceeding concerning the effect of new Groundwater development of the Tribal Water Right within the Reservation either before TWRD, DNRC, or before the Compact Board, the following shall apply:
 - (a) Wells Less than 100 Feet: For new Groundwater wells to be completed at a depth beneath the surface of less than 100 feet, the applicant shall bear the burden of showing no Adverse Affect to a water right

Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

- (b) 100 Feet or Deeper Wells: For new Groundwater wells to be completed at a depth beneath the surface of 100 feet or deeper, the owner of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, shall bear the burden of showing Adverse Affect to the water right.
- (7) In any proceeding concerning the effect of new storage development of the Tribal Water Right within the Reservation either before TWRD, DNRC, or before the Compact Board, the following shall apply:
 - (a) Storage Over 50 AF: For new storage facilities with a planned constructed capacity of more than 50 AF, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.
 - (b) Storage 50 AF or Less: For new storage facilities with a planned constructed capacity of 50 AF or less, the owner of the water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, shall bear the burden of showing Adverse Affect to the water right.
- c. New Development of Surface Flow, Groundwater, or Storage for Use in Connection with Tribal Interests in the Ceded Strip. After the Effective Date of this Compact, the Tribe may develop or authorize new development, from surface flow, Groundwater, or storage, of the Tribal Water Right as set forth in Section F., of Article III and subject to the terms and conditions in Section F.1., of Article III for use in connection with Tribal Interests in the Ceded Strip; provided that, such development shall not Adversely Affect a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.
- d. Prerequisite Administrative Procedure within the Ceded Strip. The following procedure for determining whether new development of surface flow, Groundwater, or storage of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip will have an Adverse Affect on water rights Recognized Under State Law shall be followed prior to seeking relief from the Compact Board:
 - (1) Application for new development of surface flow, Groundwater, or storage of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip shall be made to TWRD.
 - (2) TWRD shall review the application and make a determination of whether the new development will have an Adverse Affect on water

rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA. Upon request by TWRD, DNRC shall provide information on state water rights as recorded in the DNRC database to TWRD.

- (3) If TWRD determines that the new development will have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, TWRD shall deny the application. If TWRD determines that the new development will not have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, TWRD shall forward the application with its determination to DNRC.
- (4) If, based upon the evidence, DNRC agrees with TWRD's determination, DNRC shall notify TWRD. If, however, based upon the evidence, DNRC cannot agree with TWRD's determination, DNRC shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Recognized Under State Law who, according to the records of the department, has a water right with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, and may be affected by the proposed development. DNRC shall notify TWRD within ninety (90) days of DNRC's determination.
- (5) DNRC and TWRD should attempt to resolve any disagreement on TWRD's determination of no Adverse Affect on a cooperative basis. If DNRC or a holder of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, disagree with the determination of no Adverse Affect, DNRC or the water right holder may seek relief from the Compact Board.
- (6) In any proceeding concerning the effect of new Groundwater development of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip either before TWRD, DNRC, or before the Compact Board, the following shall apply:
 - (a) Wells Less than 100 Feet: For new Groundwater wells to be completed at a depth beneath the surface of less than 100 feet, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact

has been ratified by the Montana legislature or exempt rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA.

- (b) 100 Feet or Deeper Wells: For new Groundwater wells to be completed at a depth beneath the surface of 100 feet or deeper, the owner of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, shall bear the burden of showing Adverse Affect to the water right.
- (7) In any proceeding concerning the effect of new storage development of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip either before TWRD, DNRC, or before the Compact Board, the following shall apply:
 - (a) Storage Over 50 AF: For new storage facilities with a planned constructed capacity of more than 50 AF, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA.
 - (b) Storage 50 AF or Less: For new storage facilities with a planned constructed capacity of 50 AF or less, the owner of the water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, shall bear the burden of showing Adverse Affect to the water right.
- e. Groundwater Development of the Tribal Water Right Exempt from the Showing of No Adverse Affect. The following wells are exempt from the requirement of showing no Adverse Affect:
 - (1) Wells developed as of the date this Compact has been ratified by the Montana legislature are exempt from the burden to show no Adverse Affect. These wells may be replaced, repaired or rehabilitated to the original constructed capacity. A comprehensive list of wells developed as of the date this Compact has been ratified by the Montana legislature shall be kept on file in TWRD offices as part of the requirement to list current uses of the Tribal Water Right in Section E.2., of Article IV.
 - (2) An authorized use of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.
- f. Storage Development of the Tribal Water Right Exempt from the Showing of No Adverse Affect. The following storage facilities are exempt from the requirement of showing no Adverse Affect:

- (1) Facilities storing the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature are exempt from the burden to show no Adverse Affect. These storage facilities may be replaced, repaired or rehabilitated to the original constructed capacity. A comprehensive list of storage facilities developed as of the date this Compact has been ratified by the Montana legislature shall be kept on file in TWRD offices as part of the requirement to list current uses of the Tribal Water Right in Section E.2., of Article IV.
 - (2) An authorized use of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.
2. Change in Use or Transfer of the Tribal Water Right.
- a. Change in Use or Transfer of the Tribal Water Right Within the Reservation.
Unless otherwise stated in this Compact, the Tribe may make or authorize a Change in Use or Transfer of a water right set forth in Article III of this Compact within the Reservation; provided that, such Change in Use or Transfer shall not Adversely Affect a water right Recognized Under State Law with a priority date before the date of the Change in Use or Transfer. Determination of Adverse Affect shall be made following the same procedure used for review of new surface flow, Groundwater, or storage development of the Tribal Water Right set forth in Sections C.1.a. and C.1.b., of Article IV.
 - b. Change in Use or Transfer of the Tribal Water Right Within the Ceded Strip.
Unless otherwise stated in this Compact, the Tribe may make or authorize a Change in Use or Transfer of the Tribal Water Right set forth in Section F.1.a., of Article III within the Ceded Strip; provided that, such Change in Use or Transfer shall not Adversely Affect a water right Recognized Under State Law with a priority date before the date of the Change in Use or Transfer. Determination of Adverse Affect shall be made following the same procedure used for review of new surface flow, Groundwater, or storage development of the Tribal Water Right within the Ceded Strip set forth in Sections C.1.c. and C.1.d., of Article IV.
 - c. Change in Use or Transfer of the Tribal Water Right Outside the Reservation.
Except as otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or authorize a Change in Use or a Transfer of the Tribal Water Right for up to 50,000 acre-feet of water as provided in Section A.1.b.(1).(a)., of Article III, for use outside the Reservation; provided that, any Transfer shall be for a term not to exceed 100 years, and may include provisions authorizing renewal for an additional term not to exceed 100 years; and provided that, no such Transfer shall be a permanent alienation of the water Transferred. Any Change in Use or Transfer of any such water right involving a point of diversion or place of use located outside the Reservation shall be considered a use outside the Reservation, except as provided in Section F., of Article III and Section

C.2.b., of Article IV; and, further provided that, any use of Tribal water rights described in this Compact outside the Reservation shall not be deemed to convert such rights to rights arising under state law, and non-use of such rights outside the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the rights. The Tribe may change the point of diversion or purpose or place of use of the Tribal Water Right back to the Reservation without reduction in the amount of water provided in the Compact.

- (1) **Applicable Law.** No person may initiate a use, Change in Use, or Transfer of a Tribal water right set forth in this Compact outside the Reservation without first complying with applicable state law. Approval of an application for a use, Change in Use, or Transfer outside the Reservation by the State shall be conditioned on a valid Tribal authorization for such use, Change in Use, or Transfer by the Tribe. The applicant shall provide DNRC with proof of a valid Tribal authorization prior to initiating the use, Change in Use, or Transfer.
- (2) **Diversion Facilities.** With respect to diversion or transportation facilities located outside the Reservation which are to be used in connection with the exercise of a water right set forth in this Compact, the Tribe or Persons using such water right shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of such water right may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.

D. Water Rights Recognized Under State Law: New Development, Change in Use, or Transfer.

1. Limit on New Development. DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature within the Reservation, and outside the Reservation in Bighorn River Basin and in Pryor Creek Basin, provided that, the Department may issue certificates of water right or permits for use on fee land for:
 - a. An appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.
 - b. An appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.
 - c. Temporary emergency appropriations as provided in 85-2-113(3), MCA.

2. Change in Use or Transfer of Water Rights Recognized Under State Law within the Reservation. The State may authorize a change in use or transfer of a water right Recognized Under State Law within the Reservation in accordance with state law, provided that, such change or transfer shall not Adversely Affect a use of the Tribal Water Right existing at the time of the application for change in use or transfer.
 - a. Prerequisite Administrative Procedure. The following procedure for determining whether a change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on an existing water right developed or authorized prior to the date of application for change of use or transfer under the Tribal Water Right shall be followed prior to seeking relief from the Compact Board:
 - (1) Application for a change in use or transfer of a water right Recognized Under State Law within the Reservation shall be made to DNRC.
 - (2) DNRC shall review the application and make a determination of whether the change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on a water right developed or authorized under the Tribal Water Right. Upon request by DNRC, TWRD shall provide information on developed and authorized Tribal Water Rights as recorded by TWRD to DNRC.
 - (3) If DNRC determines that the change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on a water right developed or authorized under the Tribal Water Right, DNRC shall deny the application. If DNRC determines that the change in use or transfer of a water right Recognized Under State Law within the Reservation will not have an Adverse Affect on a water right developed or authorized under the Tribal Water Right, DNRC shall forward the application with its determination to TWRD.
 - (4) If, based upon the evidence, TWRD agrees with DNRC's determination, TWRD shall notify DNRC. If, however, based upon the evidence, TWRD cannot agree with DNRC's determination, TWRD shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any Tribal Water Right holder who, according to the records of TWRD, has a water right developed or authorized before the application date and may be affected by the proposed change in use or transfer of a water right Recognized Under State Law within the Reservation. TWRD shall notify DNRC within ninety (90) days of TWRD's determination.
 - (5) TWRD and DNRC should attempt to resolve any disagreement on DNRC's determination of no Adverse Affect on a cooperative basis. If TWRD or a holder of a water right developed or authorized under the Tribal Water Right disagree with the determination of no Adverse

Affect, TWRD or the Tribal Water Right holder may seek relief from the Compact Board.

E. Reporting Requirements.

1. On an annual basis DNRC shall provide the Tribe and the United States with a listing of all uses of surface flow, Groundwater, or storage for which a certificate of water right or permit has been issued or a change in use or transfer has been approved by DNRC within the Reservation, in the Ceded Strip, and in drainages affected by this Compact.
2. Within one (1) year after this Compact has been ratified by the Montana legislature, the TWRD and the United States shall provide the DNRC with a report listing all current uses of the Tribal Water Right, including uses by Tribal members, existing as of the date this Compact has been ratified by the Montana legislature. DNRC may request additional information from TWRD or the United States to assist in reviewing the report. DNRC must approve or disapprove of the listing of all current uses of the Tribal Water Right within six (6) months after receipt of the report.
3. On an annual basis TWRD shall provide the DNRC and the United States with a listing of all new development of the Tribal Water Right described in this Compact within the Reservation, in the Ceded Strip, and outside the Reservation, and of all Changes in Use or Transfers of water rights within and outside the reservation since the last report.
4. TWRD, DNRC, and the United States may agree to modify the reporting requirements set forth in Sections D.1. and D.3., of Article IV. Such modification is pursuant to, and shall not be deemed a modification of, this Compact.
5. All reporting to the United States under this subsection shall be made to the Billings Area Office of the Bureau of Indian Affairs.

F. Enforcement: Crow-Montana Compact Board.

1. Establishment of Board. There is hereby established the Crow-Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana; one member appointed by the Crow Tribal Chairman; and one member selected by the other two members. All members shall be appointed within six (6) months of the Effective Date of this Compact and within thirty (30) days of the date any vacancy occurs. If an appointment is not timely made by the Governor, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Crow Tribal Chairman, the Director of TWRD or his/her designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.
2. Membership. Should the two appointed members fail to agree on the selection of a third member within sixty (60) days of the date of appointment of the second

member, or within thirty (30) days after any vacancy occurs, the following procedure shall be utilized:

- a. Within five (5) days thereafter each member shall nominate three persons to serve as a member of the Board;
 - b. Within fifteen (15) days thereafter each member shall reject two of the persons nominated by the other member;
 - c. Within five (5) days thereafter, the remaining two nominees shall be submitted to the Dean of the University of Montana School of Law who shall select the third member from the two nominees.
3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the Parties to this Compact.
4. Jurisdiction of the Board. The Crow-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between the Parties or holders of water rights developed or authorized under the Tribal Water Right and holders of water rights Recognized Under State Law. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.
5. Prerequisite Administrative Procedures.
- a. Any holder of a water right Recognized Under State Law concerned that a new development, Change in Use, or Transfer of the Tribal Water Right is inconsistent with the Compact shall first contact the Billings Regional Office of DNRC. If DNRC and TWRD are unable to resolve the issue in a manner acceptable to the water right holder within a reasonable time through discussion, DNRC or the water right holder may seek relief through the Compact Board. The Tribe agrees to allow DNRC reasonable access onto Tribal land or to assist DNRC in obtaining reasonable access onto the land of the Tribal Water Right holder to observe the challenged new development, Change in Use, or Transfer.
 - b. Any Tribal Water Right holder concerned that a new development, change in use, or transfer of water by a holder of a water right Recognized Under State Law is inconsistent with the Compact shall first contact TWRD. If TWRD and DNRC are unable to resolve the issue in a manner acceptable to the Tribal Water Right holder within a reasonable time through discussion, TWRD or the Tribal Water Right holder may seek relief through the Compact Board. DNRC agrees to assist TWRD in obtaining reasonable access onto the land of the holder of the water right Recognized Under State Law to observe the challenged development, change in use, or transfer.
 - c. TWRD and DNRC may jointly develop supplemental procedures as necessary or appropriate. Such supplemental procedures are pursuant to, and shall not be deemed a modification of, this Compact.

6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs, or attorneys' fees. All decisions of the Board shall be by majority vote and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six (6) months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board.
7. Review and Enforcement of Board Decisions.
 - a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only the United States and parties to the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of such decision. The hearing on appeal shall be a trial de novo. The notice of appeal shall be filed with the Board and served personally or by registered mail upon all parties to the proceeding before the Board.
 - b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in Section F.7.a., of Article IV, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which the decision was made.
 - c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Section F.7.a., of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section F.7.b., of Article IV, may order such temporary or permanent relief as it considers just and proper.
 - d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Section f.7.a., of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section F.7.b., of Article IV, in the manner and to the same extent as from orders or judgments of the court in a civil action.
 - e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.
8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Crow-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided

herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The Parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall be as provided by Congress.

ARTICLE V - DISCLAIMERS AND RESERVATIONS

- A. No Effect on Other Tribal Rights or Other Federal Reserved Water Rights.
1. Except as provided in Sections A.1.b.(2). and D.7., of Article III, the relationship between the Tribal Water Right described herein and any rights to water of any other Indian Tribe or its members, or of the United States on behalf of such Tribe or its members shall be determined by the rule of priority.
 2. Nothing in this Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes or their members outside of the Crow Reservation.
 3. Nothing in this Compact is otherwise intended to affect or abrogate a right or claim of an Indian Tribe other than the Crow Tribe.
 4. Except as otherwise provided herein and authorized by Congress, nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the reserved rights to water of any other federal agency or of any other federal lands. Such reserved rights will be subject to the rule of priority in their use.
- B. General Disclaimer. Nothing in this Compact shall be so construed or interpreted:
1. As a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;
 2. To preclude the acquisition or exercise of a right Recognized Under State Law to the use of water by any member of the Tribe outside the Reservation by purchase of such right or by acquisition of land, or by application to the State;
 3. To determine the relative rights inter sese of Persons using water under the authority of the State or the Tribe;
 4. To limit in any way the rights of the Parties or any other person to litigate any issues or questions not resolved by this Compact;
 5. To authorize the taking of a water right which is vested under state or federal law;
 6. To create or deny substantive rights through headings or captions used in this Compact;
 7. To address or prejudice whether or how, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State;
 8. To prohibit the Tribe, or the United States on behalf of the Tribe, from objecting in any general stream adjudication in Montana Water Court to any claims to water rights;

9. To constitute a waiver of sovereign immunity by the Tribe, State, or United States, except as is expressly set forth in this Compact;
 10. Unless otherwise provided by Congress, to prevent the United States, as trustee for the Tribe or Tribal members, or the Tribe itself, from filing an action in any court of competent jurisdiction, to prevent any party from interfering with the enjoyment of the Tribal Water Right;
 11. To impair, amend, or alter rights under existing state or federal law;
 12. To affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the Tribe or Tribal members within the Reservation or in connection with Tribal Interests in the Ceded Strip;
 13. To alter or amend any provision or to adopt or preclude any interpretation of the Yellowstone River Compact, Act of October 10, 1951, ch. 629, 65 Stat. 663 (1951);
 14. To alter or abridge any right reserved to the Crow Tribe of Indians under Article 4 of the May 7, 1868 Treaty of Fort Laramie; or
 15. To prejudice any right that Tribal members may have to secure a portion of the Tribal Water Right from the Tribe.
- C. Rights Reserved. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact.
- D. Obligations of United States Contingent.
1. Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on authorization by Congress.
 2. The State and the Tribe recognize that this Compact has not been reviewed and approved by the United States or any agency thereof and ratification by the Montana legislature or ratification by the Tribal Council in no manner binds or restricts the discretion of the United States in the negotiation of all related matters, including but not limited to, coal severance tax, Section 2 of the Crow Allotment Act (41 Stat. 751), water rights, and State and Federal contribution or cost share.
- E. Expenditures of Money Contingent. The expenditure or advance of any money or the performance of any work by the United States or the Tribe pursuant to this Compact which may require appropriation of money by Congress or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

- A. State Contribution to Settlement.
1. The State agrees to contribute the sum of \$15 million, in equal annual installments for a period of no more than fifteen years beginning July 1, 1999, to a fund for the use and benefit of the Tribe.
 2. Payment of the State's contributions for the benefit of the Tribe is contingent on the final approval of this Compact by the Tribe and Congress, the final inclusion of the rights set forth in the Compact in decrees by the Montana Water Court and the expiration of the time for appeal from all orders effecting such inclusion

or the affirmance of the decrees or orders on appeal, the provision of releases of claims as provided in Section A.4., of Article VI, and the fulfillment of any other conditions to the effectiveness of the Compact.

3. Until all conditions for payment are fulfilled, the State and the Tribe agree that any payments due shall be paid into an interest-bearing escrow account, to be held without distribution of principal or interest until all conditions for payment to the Tribe are satisfied.
4. The Tribe agrees that the State's contribution will be dedicated to economic development and water and sewer infrastructure within the Crow Reservation. The Tribe further agrees that the State's contributions as set forth in Section A.1., of Article VI and any other agreements that may be set forth in a separate coal severance tax settlement agreement between the State and Tribe should be considered as fully satisfying any cost-share obligation on the part of the State for this Compact. The Tribe further agrees that the State's contributions and agreements herein are full and adequate consideration for the Tribe's agreements as set forth in this Compact, and that the State's contributions, together with any other agreements that may be set forth in a separate coal severance tax settlement agreement between the State and the Tribe, are full and adequate consideration for the release of all claims by the Tribe and the United States in the civil action captioned Crow Tribe of Indians v. State of Montana, Cause No. CV-78-110-BLG-JDS (D. Mont.). The Tribe further agrees that in consideration of the State's contributions and other agreements set forth in a separate coal severance tax settlement agreement, the Tribe will provide releases of all claims, including any pleadings or proposed orders necessary to implement or otherwise give effect to the releases, in that action in a form acceptable to the Attorney General of the State.

B. Federal Legislation. The Tribe and the State agree to support federal legislation ratifying this Compact that will accomplish the following:

1. Bighorn Lake Water Supply. The State and the Tribe agree to support federal legislation that will provide an allocation of storage water in Bighorn Lake, as described in Section A.1.b., of Article III and which will reallocate the water in Bighorn Lake as set forth in Section A.1.b.(1).(b).(i.), of Article III. The priority date for the allocation shall be the date of the water right held by the Bureau of Reclamation as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA. This allocation shall be held in trust for the Tribe by the United States and will be part of the Tribal Water Right.
2. Right to Participate in Future Projects to Import Water. The Tribe shall have the right to initiate or participate in any project to augment the water supply in the Basins listed in Sections B., C., D. and E., of Article III, by transferring water from another drainage, and to have any such augmentation project deliver any entitlement of the Tribe to water to a point within the Reservation designated by the Tribe.
3. Federal Court Jurisdiction. That the federal courts shall have jurisdiction to enforce the provisions of this Compact and to hear appeals from and enforce decisions of the Compact Board in accordance with Section F.7., of Article IV.

C. Federal Contributions to Settlement. Federal contributions to settlement shall be as provided by Congress.

ARTICLE VII - FINALITY, SETTLEMENT OF CLAIMS,
EFFECTIVENESS OF COMPACT, AND WAIVER OF CLAIMS

- A. Ratification and Effectiveness of Compact.
1. This Compact shall become Effective on the date it is ratified by the Tribe, by the State, and by the Congress of the United States, whichever date is latest. Upon ratification of this Compact by the Tribe and by the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of both the Tribe and the State. Once ratified by Congress, the Tribe, and the State, the Compact may not be modified without the consent of the Tribe, the State, and the United States.
 2. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw as a Party to this Compact:
 - a. If Congress has not ratified this Compact within four (4) years from the date the Compact is ratified by the State;
 - b. If appropriations are not authorized by Congress within four (4) years of the date the Compact is ratified by the Tribe;
 - c. If the Tribe and the United States do not reach agreement on the federal contribution to settlement;
 - d. If appropriations are not made in the manner contemplated by the federal legislation ratifying the Compact; or
 - e. If the Tribe and the United States do not reach agreement on settlement of issues regarding Section 2 of the Crow Allotment Act (41 Stat.751).
 3. The Tribe may exercise its right to withdraw by sending to the Governor of the State of Montana and to the Secretary of the Interior by certified mail a resolution of the Crow Tribal Council stating the Tribe's intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Crow Tribe and entry of a decree in a court of competent jurisdiction.
 4. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party to this Compact:
 - a. If the Tribe and Congress have not ratified this Compact within five (5) years from the date the Compact is ratified by the State;
 - b. If Congress requires a state contribution to settlement that exceeds the contributions described in Section A., of Article VI;
 - c. If Congress resolves issues under Section 2 of the Crow Allotment Act (41 Stat. 751) in a manner Adversely Affecting water rights Recognized Under State Law;

- d. If a streamflow and lake level management plan pursuant to Section A.7., of Article III is not agreed to within one (1) year after this Compact has been ratified by the Montana legislature or any extended deadline agreed to by the State, or if federal legislation is inconsistent with the streamflow and lake level management plan; or
 - e. If the Department of Natural Resources and Conservation does not approve the list of current uses of the Tribal Water Right pursuant to Section E.2., of Article IV.
 5. The State may exercise its right to withdraw by sending to the Crow Tribal Chairman and to the Secretary of the Interior a letter delivered by certified mail from the Governor of the State of Montana stating the State's intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the letter. On the date designated in the letter for State withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Crow Tribe and entry of a decree in a court of competent jurisdiction.
 6. Notwithstanding any other provision in this Compact, the Department of the Interior reserves the right to refuse to support federal legislation ratifying this Compact.
 7. The Parties understand and accept that federal financial contributions to the Compact may not be budgeted until October of the year following the year of enactment of the Compact.
- B. Incorporation Into Decrees and Disposition of Federal Suit.
 1. The Tribe, the State, and the United States agree to defend the provisions and purposes of this Compact including the quantification set forth in Article III, from all challenges and attacks in all proceedings pursuant to this Section B., of Article VII.
 2. Within one hundred eighty (180) days of the date this Compact is ratified by the Crow Tribal Council, the State of Montana, and Congress, whichever is latest, the Tribe, the State, or the United States shall file, in the general stream adjudication initiated by the State of Montana, pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust for the Crow Tribe. If the Montana Water Court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by agreement of the State and the Tribe. If the Montana Water Court approves the proposed decree within three years, but the decree is subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by agreement of the State and the Tribe. Any effect of the failure of approval or setting aside of the decree on the approval, ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the

United States in the McCarran Amendment, 43 U.S.C. §666, or other provision of federal law.

3. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, and Appendix 1, and may extend to other sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III as displayed in Appendix 1, and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.
4. Upon the issuance of a final decree by the Montana Water Court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in U.S. v. Big Horn Low Line Canal Company, et al., No. CIV-75-34-BLG (filed April 17, 1975) (hereinafter referred to as "Low Line Canal") and such claims may only be refiled if the Tribe exercises its option to withdraw as a Party to the Compact pursuant to Section A.3., of Article VII. This Compact shall be filed as a consent decree in Low Line Canal only if, prior to the dismissal of Low Line Canal as provided in Section B., of Article VII, it is finally determined in a judgment binding upon the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings are inadequate to adjudicate, some or all of the water rights asserted in Low Line Canal.

C. Settlement of Water Right Claims. The water rights and other rights confirmed to the Tribe in this Compact are in full and final satisfaction of the water right claims of the Tribe and the United States on behalf of the Tribe and its members, including federal reserved water rights claims based on *Winters v. United States*, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe in this Compact, and of performance by the State of Montana and the United States of all actions required by this Compact, including entry of a final order issuing the decree of the reserved water rights of the Tribe held in trust by the United States as quantified in the Compact and displayed in Appendix 1, the Tribe and the United States as trustee for the Tribe and Tribal members hereby waive, release, and relinquish any and all claims to water rights or to the use of water within the State of Montana existing on the date this Compact is ratified by the State, the Tribe, and Congress and conditional upon a final decree, whichever date is later.

D. Binding Effect. After the Effective Date of this Compact, its terms shall be binding:

1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. Upon the Tribe, Tribal members, and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe or a Tribal member, or any right arising under tribal law; provided that, the validity of consent, ratification or authorization by the Tribe is to be determined by tribal law; and

3. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law.

E. Waiver of Claims or Objections.

1. After the Effective Date of this Compact, the Tribe, any individual claiming a right to use water based on or derived from the Tribe, and the United States on behalf of the Tribe or a Tribal member, shall be prohibited from objecting to, or bringing a claim against, the claim or holder of a right to use water based on the laws of the State of Montana, and any carriage, storage, or delivery facilities and rights of way associated therewith, based on the assertion that such right is invalid because 85-2-301(4), MCA, is invalid as applied to such right, or that such right is inconsistent with or otherwise impairs any right reserved by the Tribe under Article 4 of the May 7, 1868 Treaty of Fort Laramie. If and to the extent necessary to effectuate the intent of this paragraph the Tribe, any individual claiming a right to use water based on or derived from the Tribe, and the United States on behalf of the Tribe shall be deemed to have waived and relinquished any claims or objections they may have against a holder of a right to use water based on the laws of the State of Montana, and any carriage, storage, or delivery facilities and rights of way associated therewith, based on the aforementioned law and Treaty.

2. Waiver of claims by the Tribe against the United States shall be as provided by Congress.

ARTICLE VIII - LEGISLATION

The State and Tribe agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks; provided that, no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Crow Tribe, and the United States have signed this Compact on the ____ day of ____, 19__.

History: En. Sec. 1, Ch. 3, Sp. L. June 1999.

85-20-902. Findings and purpose. (1) It is the policy of the state of Montana to seek negotiated settlements of federal and Indian reserved water rights claims in Montana under Title 85, chapter 2, part 7.

(2) Pursuant to this policy, the commission commenced negotiations with the Crow Tribe regarding the Tribe's water rights claims on November 12, 1981.

(3) A water rights compact has been agreed to between the commission and the elected representatives of the government of the Crow Tribe that, among other things, provides an allocation of water to the Crow Tribe and provides protection for certain water rights recognized under state law in Montana.

(4) As consideration for the Crow Tribe's agreement to protect certain water rights recognized under state law in Montana and to release certain legal claims asserted against the state, the state of Montana has undertaken an obligation to make certain payments for the benefit of the Crow Tribe and has agreed that any future production taxes collected by the state on production of coal owned by the United States in trust for the Crow Tribe will be paid to the Crow Tribe.

(5) The commission's agreement to the compact and the state's obligation to make payments to the Crow Tribe thereunder is conditioned, among other things, upon the final approval of the compact as set forth in the compact and as required by state, federal, and tribal law and upon the execution and delivery by the Crow Tribe of sufficient releases for the legal claims that the Crow Tribe has agreed to release.

(6) The purposes of 85-20-902 through 85-20-905 are to provide for the implementation of the compact, to provide a mechanism for settlement of certain claims against the state, and to provide a means to fund the state's financial obligations for the upcoming biennium under its water rights compact with the Crow Tribe.

History: En. Sec. 1, Ch. 1, Sp. L. June 1999.

85-20-903. Definitions. As used in 85-20-902 through 85-20-905, the following definitions apply:

- (1) "Commission" means the reserved water rights compact commission.
- (2) "Compact" means the Crow-Montana water rights compact as approved by the legislature in 85-20-901.
- (3) "Department" means the department of natural resources and conservation.

History: En. Sec. 2, Ch. 1, Sp. L. June 1999.

85-20-904. Payment of settlement funds into escrow -- requirements for escrow agreement -- notice from attorney general. (1) The department shall enter into an agreement with the Crow Tribe and, if necessary under federal or tribal law, the United States, selecting an escrow agent to hold any funds paid by the state prior to the time they become payable to the Crow Tribe under this section. When an escrow agent has been selected, the department shall negotiate the terms of an escrow agreement with the Crow Tribe, the escrow agent, and if necessary under federal or tribal law, the United States. The terms of the agreement must govern the holding of the funds paid pursuant to the settlement. The escrow agreement must provide that any costs and fees payable for the management of the escrow fund will be borne by the fund, that the funds placed in the escrow account will be invested and held at interest in trust for the Crow Tribe, and that the contents of the fund will become payable to the order of the Crow Tribe only upon the occurrence of all of the following conditions:

- (a) the compact has been approved by the Congress of the United States in a form satisfactory to the commission;

- (b) the compact has been approved by the Crow Tribe in the manner provided by federal and tribal law, including approval of any tribal referendum presently or later required by federal or tribal law;
- (c) the compact has been approved by the Montana water court for inclusion in the final decrees in all affected basins, and the order of approval has been affirmed on appeal or the time for appeal from the water court's approval has expired; and
- (d) the Crow Tribe and the United States have furnished releases, pleadings, and proposed orders, in forms acceptable to the attorney general, with respect to all claims, including but not limited to claims for costs and attorney fees, asserted in the civil action captioned Crow Tribe of Indians v. State of Montana et al., Cause No. CV-78-110-BLG-JDS (D. Mont.), or any appeal pending in that action.

(2) Within 20 days after all conditions set forth in subsections (1)(a) through (1)(d) have been satisfied, the attorney general shall provide written notice of the satisfaction of the conditions to the escrow agent. The escrow agreement must provide that upon receipt of the written notice provided in this section, the escrow agent shall pay the funds in escrow to the order of the Crow Tribe. This section does not preclude the Crow Tribe from entering into an agreement with the escrow agent or any other entity for the holding of the funds in trust for the Crow Tribe for a period in excess of that provided in this section.

(3) The escrow agreement must provide that in the event the conditions set forth in subsection (1) do not occur within any time limits set in the compact, as those limits may be extended pursuant to the compact by agreement of the parties and the approval of the legislature, or if any party to the compact terminates the compact as provided in the compact prior to payment of the funds to the Crow Tribe as provided in subsection (2), the contents of the escrow fund, including funds paid into the escrow fund by the state and any interest earned on the escrow fund, will revert to the state.

History: En. Sec. 3, Ch. 1, Sp. L. June 1999.

85-20-905. Settlement of litigation -- disposition of production taxes collected on coal owned in trust for Crow Tribe. (1) The governor and attorney general may enter into an agreement with the Crow Tribe and the United States for the settlement of the civil action captioned Crow Tribe of Indians v. State of Montana et al., Cause No. CV-78-110-BLG-JDS (D. Mont.), or any appeal pending in that action.

- (2) The agreement may:
 - (a) include a release of all claims asserted by the Crow Tribe and the United States in the action, including but not limited to claims for costs and attorney fees;
 - (b) provide payments as authorized in the compact and 85-20-902 through 85-20-905; and
 - (c) include an agreement by which the proceeds of any production taxes levied under Montana law on the severance or production of coal owned by the United States in trust for the Crow Tribe are to be paid to the Crow Tribe.

History: En. Sec. 4, Ch. 1, Sp. L. June 1999.

FORT BELKNAP – MONTANA COMPACT

Fort Belknap – Montana Compact



Title 85 Water Use
Chapter 20 Water Compacts

85-20-1001. Fort Belknap-Montana compact ratified. The Compact entered into by the State of Montana and the Fort Belknap Indian Community of the Fort Belknap Reservation and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702, MCA, on April 16, 2001, is ratified. The Compact is as follows:

WATER RIGHTS COMPACT ENTERED INTO BY
THE STATE OF MONTANA,
THE FORT BELKNAP INDIAN COMMUNITY
OF THE FORT BELKNAP RESERVATION,
AND THE UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Fort Belknap Indian Community of the Fort Belknap Reservation, and the United States of America for the purpose of settling all existing water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation in the State of Montana. The Compact is not effective until approved by the Tribes, the Montana Legislature, and the United States Congress. The participation of the United States in each relevant section of the Compact is not valid until the Compact is ratified by Congress.

ARTICLE I - RECITALS

WHEREAS, pursuant to the Treaty of 1855, 11 Stat. 657 and the Acts of Congress of 1874, 18 Stat. 28, and 1888, 25 Stat. 113, a Reservation was established in Montana for the Gros Ventre and Assiniboine Tribes; and

WHEREAS, pursuant to said Treaty and Acts of Congress, the Gros Ventre and Assiniboine Tribes claim reserved water rights to fulfill the purposes of the Treaty, the Acts of Congress, and *Winters v. United States*, 207 U.S. 564 (1908); and

WHEREAS, in 1979, the United States, on behalf of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribes' water rights claims, see *United States v. Aageson*, No. CIV-79-21-GF (filed April 5, 1979); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribes; see "the McCarran Amendment," 43 U.S.C. § 666(a)(1) (1952); *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976); *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Gros Ventre and Assiniboine tribal water rights; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, under § 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes and/or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana state court water adjudication proceedings, see *Northern Cheyenne v. Adsit*, 721 F.2d 1187 (9th Cir., 1983); and

WHEREAS, the adjudication of the Gros Ventre and Assiniboine tribal water rights in the state court proceedings has been suspended pursuant to § 85-2-217, MCA, while negotiations are proceeding to conclude a compact resolving all water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation within the State of Montana; and

WHEREAS, the Fort Belknap Community Council, or its duly designated representatives, have authority to negotiate this Compact pursuant to Resolution No. 19-81 of the Fort Belknap Community Council, February 17, 1981, as amended; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1993); and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. § 1457 (1986), *inter alia*; and

WHEREAS, the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation, the State of Montana, and the United States agree that the Tribal Water Right, water development, and water management described in this Compact are in satisfaction of the water rights claims of the Tribes, Tribal members, and Allottees, and of the United States on behalf of the Tribes and their members and Allottees within the State of Montana; and

WHEREAS, the Parties agree that it is in the best interest of all Parties that the water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation be settled through agreement between and among the Tribes, the State of Montana, and the United States.

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community, Tribal members, and Allottees of the Fort Belknap Reservation within the State of Montana.

ARTICLE II - DEFINITIONS

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

1. “Acre-feet per year” or “AFY” means an annual quantity of water measured in acre-feet over a period of a year.
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 cubic feet of water.
3. “Adverse Effect” or “Adversely Affect” means an actual interference with the reasonable exercise of a water right resulting in a material injury.
4. “Allottee” or “Allottees” means any individual or individuals who own or hold a trust allotment or interest in a trust allotment on the Fort Belknap Reservation

under the authority of the General Allotment Act and subject to the terms and conditions of that Act.

5. “Arising Under Federal Law” means, as applied to a water right, a water right created or defined under federal law.
6. “Arising Under State Law” means, as applied to a water right, a water right created under Montana law and does not include water rights Arising Under Federal Law.
7. “Beaver Creek Basin” means Montana Water Court Basin 40M, consisting of the mainstem of Beaver Creek and its tributaries, including Big Warm Creek and Little Warm Creek, to its confluence with the Milk River, as shown in Appendix 2.
8. “Board” means the Fort Belknap - Montana Compact Board established by Section D. of Article IV of this Compact.
9. “Calculated Undepleted Flow of the Milk River” means the flow available for the Tribal Water Right determined pursuant to Section E.2. of Article IV, and represents the calculated United States’ Share of the Natural Flow of the Milk River at the diversion point on the Reservation.
10. “Cfs” means cubic feet per second.
11. “Change in Use” means, as applied to the Tribal Water Right, a change in the point of diversion, the place of use, the purpose of use, or the place or means of storage.
12. “Combined Development” means, in reference to small wells and springs, a use or proposed use of water for the same purpose.
13. “Compact” means the water rights settlement entered into by the State of Montana, the Fort Belknap Indian Community of the Fort Belknap Reservation, and the United States of America.
14. “Depletion” means the amount of water consumptively used, or the difference between the amount of water diverted and returned to the source of supply.
15. “Direct Use” means diversion of water from the source to be used for a designated purpose without intermediate storage.
16. “DNRC” means the Montana Department of Natural Resources and Conservation, or any successor agency.
17. “Eastern Crossing” means the most downstream location at which the mainstem of the Milk River crosses the 49th parallel to re-enter the United States from Canada.
18. “Effective Date” means the date on which the Compact is finally approved by a referendum vote by the eligible members of the Fort Belknap Indian Community and ratified by the Fort Belknap Indian Community Council, by the Montana Legislature, and by the Congress of the United States, whichever date is latest.
19. “Exempt New Development” means new development of the Tribal Water Right that is exempt from review pursuant to Section A.4. of Article IV.
20. “Fort Belknap Indian Irrigation Project” means the irrigation projects authorized by federal law for development on the Reservation in the Milk River and Peoples Creek Basins.

21. “Groundwater” means any water that is beneath the ground surface.
22. “Hydrologically Connected” means the interconnection of groundwater and surface water such that they constitute one water supply and use of either results in an impact to both.
23. “Milk River Coordinating Committee” or “MRCC” means the basin organization established pursuant to Section C.1. of Article IV.
24. “Milk River Basin” means the mainstem of the Milk River and its tributaries from its headwaters to the confluence with the Missouri River and consists of: Montana Water Court Basins 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, and 40O; and the portion of the Milk River and its tributaries flowing through the Provinces of Alberta and Saskatchewan in Canada.
25. “Milk River Basin 40J” or “Basin 40J” means the portion of the Milk River Basin, including the tributaries of Threemile Creek, White Bear Creek and Fifteenmile Creek, constituting Water Court Basin 40J, as shown in Appendix 2.
26. “Milk River Project” means the Reclamation project on the Milk and St. Mary Rivers in Montana authorized by the Reclamation Act of 1902, 32 Stat. 388; 43 U.S.C. 391.
27. “Missouri River Basin 40EJ” or “Basin 40EJ” means the portion of the Missouri River Basin including the tributaries of Suction, Rattlesnake, Tin Cup, Little Suction, and Cow Creeks constituting Water Court Basin 40EJ, as shown in Appendix 2.
28. “Non-Exempt New Development” means new development of the Tribal Water Right that is subject to review pursuant to Section A.5. of Article IV.
29. “Parties” means the Fort Belknap Indian Community of the Fort Belknap Reservation, the State of Montana, and the United States of America.
30. “Peoples Creek Basin” means Water Court Basin 40I, consisting of the mainstem of Peoples Creek to its confluence with the Milk River, and its tributaries including: Duck Creek; the South Fork of Peoples Creek; Little Peoples Creek; Jim Brown Creek; Lodge Pole Creek; Lone Tree Coulee; and Mud Creek, as shown in Appendix 2.
31. “Perennial Flowing Stream” means a stream that historically flowed and is currently flowing continuously during all seasons of the year including dry as well as wet years.
32. “Person(s)” means an individual or individuals or any other entity, public or private, including the State, the Tribes, and the government of the United States and all officers, agents, and departments thereof.
33. “Reservation” means the Fort Belknap Reservation and includes all lands and interests in lands which are now and in the future held in trust by the United States for the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation within the boundary established by the Treaty ratified by Congress on May 1, 1888, 25 Stat. 113, as modified by: The Grinnell Agreement of October 9, 1895 and ratified by Congress in 1896, 29 Stat. 350; and the Fort Belknap Allotment Act of March 3, 1921, 41 Stat. 1355.

34. "Same Source" means the same aquifer in reference to wells and developed springs of 35 gallons per minute or less that do not exceed a use of 10 Acre-feet per year.
35. "Secretary" means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.
36. "Seniority of the Water Rights Set Forth in Sections B.1.a. and d. of this Article III Shall not be Asserted Over" means the senior water rights specified in Sections B.1.a. and d. of Article III shall be administered as subordinate to the junior water rights specified and referenced in Section B.2.a of Article III.
37. "State" means the State of Montana and all officers, agencies, departments, and political subdivisions thereof.
38. "Transfer" means, as applied to the Tribal Water Right, to authorize a Person or Persons to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration.
39. "Tribal Water Resources Department" or "TWRD" means the Fort Belknap Tribal Water Resources Department, or any successor agency.
40. "Tribal Water Right" means the right of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community, Tribal members, and Allottees within the Fort Belknap Reservation, to divert, use, or store water as described by Article III of this Compact.
41. "Tribes" means the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation and all officers, agencies, and departments thereof.
42. "Undepleted Flow" means the stream flow in a watershed without the effects of diminishment by water uses for specific beneficial purposes including, but not limited to, irrigation, municipal, domestic, mining, commercial, industrial, stockwatering, recreational, and environmental concerns.
43. "United States" means the federal government and all officers, agencies, and departments thereof.
44. "United States' Share of the Natural Flow of the Milk River" means the allocation to the United States of water in the Milk River and its tributaries pursuant to Article VI of the "Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States and Canada," January 11, 1909, and ratified by the Senate on May 13, 1910, 36 Stat. 2455, and the Order of the International Joint Commission on October 4, 1921, pertaining to "In the matter of the Measurement and Apportionment of the Waters of the St. Mary and Milk Rivers and their Tributaries in the State of Montana and the Provinces of Alberta and Saskatchewan."
45. "Water Bank" means a water purchasing mechanism whereby willing sellers are paid to forego use of a portion of their supplies in a year of water shortage, and purchased water is either stored or reallocated to meet specified needs.
46. "Western Crossing" means the most upstream location at which the mainstem of the Milk River crosses the 49th parallel to enter Canada from the United States.

ARTICLE III - TRIBAL WATER RIGHT

The Tribal Water Right set forth in this Article III shall be the water allocation in settlement of the claims including Winters reserved water rights claims of the Tribes, Tribal members, and Allottees, and the United States on behalf of the Tribes, Tribal members, and Allottees within the Fort Belknap Reservation, to water within the State of Montana, as those claims exist on the Effective Date of the Compact, and shall be held in trust by the United States for the benefit of the Tribes, Tribal members, and Allottees within the Fort Belknap Reservation. Non-use of all or any of the Tribal Water Right does not constitute a relinquishment, forfeiture, or abandonment of such rights.

A. Basin 40J: Milk River Basin 40J.

1. Quantification.

a. The Tribes have the right to divert up to 645 cubic feet per second “Cfs” of the United States’ Share of the Natural Flow of the Milk River and its tributaries upstream from the diversion point on the Reservation as calculated pursuant to Section E.2. of Article IV. The right to divert 645 Cfs is in addition to allocation to the Tribes of storage in Fresno Reservoir pursuant to the Memorandum of Agreement between the Bureau of Reclamation and the Office of Indian Affairs (BIA) Milk River Project Montana, I-1-Ind. 18725, July 8, 1946.

(1) Of the right to divert 645 Cfs, up to 125 Cfs may be diverted for Direct Use to a maximum of 10,425 irrigated acres within the Fort Belknap Indian Irrigation Project. This water right is intended to preserve the historic water use protected in *Winters v. United States*, 207 U.S. 564 (1908). Irrigation of the Fort Belknap Indian Irrigation Project pursuant to this paragraph may be on land within the external boundaries of the Project on the Effective Date of the Compact or as modified pursuant to applicable federal law.

(2) Of the right to divert 645 Cfs and in addition to the 125 Cfs water right quantified in Section A.1.a.(1) of this Article III, up to 520 Cfs may be diverted for Direct Use or to off-stream storage, or both, for subsequent use for both of the following: use on an additional 19,390 present and future irrigated acres (including land irrigated historically within the Milk River Basin 40J); and up to 4000 AFY of use for non-irrigation purposes. The off-stream storage pursuant to this Section A.1.a.(2) of Article III is limited to a maximum combined capacity of 60,000 Acre-feet. Irrigation by diversion to Direct Use pursuant to this paragraph may be accomplished through expansion or modification of the Fort Belknap Indian Irrigation Project pursuant to applicable federal law.

b. In addition to the water rights set forth in Section A.1.a. of this Article III, the Tribes have the right to divert surface flow from tributaries to the Milk River on the Reservation in Basin 40J to irrigate the acreage identified in Section A.1.a.(1) and (2) of this Article III.

- c. In addition to the water rights set forth in Sections A.1.a. and b. of this Article III, the Tribes have the right to develop surface water in the Milk River Basin 40J within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section A.1.c., of Article III following the Effective Date of this Compact may not exceed a storage capacity of fifteen Acre-feet times the number of square miles in Basin 40J on the Reservation. This capacity limit does not apply to the water right quantified in Sections A.1.a., b., and d. of this Article III.
 - d. In addition to the water rights set forth in Sections A.1.a., b., and c. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Milk River Basin 40J within the Reservation, provided that, any portion of this water right diverted from the mainstem of the Milk River shall be part of the 4000 AFY non-irrigation water right set forth in Section A.1.a.(2) of this Article III. These water uses are subject to the reporting requirements of Section A.7. of Article IV.
2. Priority Date/Administrative Priority.
- a. For purposes of this Compact only, the priority date of the water rights set forth in Sections A.1.a., b., and d. of this Article III is October 17, 1855. The Parties agree that the senior water right quantified in Section A.1.a. of this Article III, shall be satisfied in the following manner:
 - (1) In the event that the water available for use by the Tribes at the diversion point on the Reservation is less than the amount to which the Tribes are entitled to pursuant to Section A.1.a. of this Article III and Section E.1.b.(2) of Article IV, the Tribes shall seek delivery of the difference between what they are entitled to and what is available solely from release or bypass of water from or through Fresno Dam by the Milk River Project. The Milk River Project shall, pursuant to Section E. of Article IV and applicable federal law, release or bypass the additional water necessary to fulfill the water right of the Tribes.
 - (2) The allocation between and relative priority of satisfaction of the water rights set forth in Section A.1.a. of this Article III and the water right of the Blackfeet Tribe in the Milk River Basin shall be resolved among the Fort Belknap Indian Community of the Fort Belknap Reservation, the Blackfeet Tribe, and the United States, or in the event an agreement is not reached, as ultimately decreed by the Montana Water Court or other court of competent jurisdiction, and shall not be prejudiced by this Compact including any agreement on priority date. The amount of the United States' Share of the Natural Flow of the Milk River available to the Tribes as calculated pursuant to Section E.2. of Article IV shall be modified to reflect any adjudication

of the water rights of the Blackfeet Tribe or agreement between the Blackfeet Tribe and the Fort Belknap Indian Community of the Fort Belknap Reservation to the extent such agreement or adjudication affects the Calculated Undepleted Flow of the Milk River. The Milk River Project will not be required to provide any exchange water to the Tribes for diversion of the Blackfeet tribal water right.

- b. The priority date of the water rights set forth in Section A.1.c. of this Article III for stock impoundments shall be the date of development of the right.
3. Period of Use. The period of use of the water rights set forth in Section A.1. of this Article III is:
 - a. March 1 through October 31 of each year for the 125 Cfs diversion set forth in Section A.1.a.(1) of this Article III.
 - b. January 1 through December 31 of each year for the 520 Cfs right set forth in Section A.1.a.(2) of this Article III.
 - c. March 1 through October 31 for water diverted from tributaries set forth in Section A.1.b. of this Article III.
 - d. January 1 through December 31 of each year for the water rights set forth in Section A.1.c. and d. of this Article III.
4. Points and Means of Diversion.
 - a. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.a. of this Article III may be diverted from the mainstem of the Milk River in the Milk River Basin 40J, or from Groundwater beneath the Reservation that is Hydrologically Connected to the surface water from any place and by any means in the Milk River Basin 40J.
 - b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.b. of this Article III may be diverted for Direct Use from any place and by any means from tributaries to the Milk River in Basin 40J on the Reservation.
 - c. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.c. of this Article III may be developed from a surface water source anywhere within the Milk River Basin 40J within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.
 - d. Subject to the terms and conditions set forth in Article IV, the water rights set forth in Section A.1.d. of this Article III may be diverted from any place and by any means in Basin 40J from surface water or Groundwater that is Hydrologically Connected to surface water, within the Reservation in Basin 40J.
5. Place of Use.
 - a. Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Sections A.1.a. and b. of this Article III any place within the Reservation.

- b. Subject to the terms and conditions of Article IV, the Tribes may transfer water developed (pursuant to Section A.1.a. of this Article III) prior to the date of application for a Change in Use or Transfer or stored (pursuant to Section A.1.a.(2) of this Article III) prior to the date of application for a Change in Use or Transfer for use off the Reservation within the Missouri River Basin.
 - c. The Tribes may use or authorize the use of the water rights set forth in Sections A.1.c. and d. of this Article III any place within the Reservation.
6. Purposes.
- a. The water rights set forth in Sections A.1.a. and b. of this Article III may be used within the Reservation for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, Non-Exempt New Development, Change in Use, or Transfer of any portion of the Tribal Water Right, is subject to the terms and conditions of Section A. of Article IV
 - b. The water rights set forth in Section A.1.c. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.
 - c. The water rights set forth in Section A.1.d. of this Article III may be used within the Reservation in Basin 40J for any non-irrigation purposes.
- B. Basin 40I: Peoples Creek Basin.
1. Quantification.
- a. The Tribes have the right to the surface water and Groundwater that is Hydrologically Connected to surface water that remains in the Peoples Creek Basin within the Reservation after satisfaction of water rights Arising Under State Law set forth in Appendix 3. The Tribes have the right to store water within the Peoples Creek Basin pursuant to this water right. The reservoir or reservoirs must be entirely within the Reservation unless otherwise agreed to with affected landowners off the Reservation.
 - b. In addition to the water rights set forth in Section B.1.a. of this Article III, the Tribes' right to use water in the Peoples Creek Basin includes the right to use water conveyed from the Missouri River Basin 40EJ pursuant to Section E.1.b. of this Article III. The Tribes have the right to store water within the Peoples Creek Basin pursuant to this water right. The reservoir or reservoirs must be entirely within the Reservation unless otherwise agreed to with affected landowners off the Reservation.
 - c. In addition to the water rights set forth in Sections B.1.a. and b. of this Article III, the Tribes have the right to develop surface water in the Peoples Creek Basin within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section B.1.c., of this Article III following the Effective Date of this Compact may not exceed a storage capacity of fifteen Acre-feet times the number

of square miles in Basin 40I on the Reservation. This capacity limit does not apply to the water right quantified in Sections B.1.a., b., and d. of this Article III.

- d. In addition to the water rights set forth in Sections B.1.a., b., and c. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Peoples Creek Basin within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.
2. Priority Date/Administrative Priority.
 - a. For purposes of this Compact, the priority date of the water rights set forth in Sections B.1.a. and d. of this Article III is October 17, 1855. For the purposes of providing a more reliable water right and simplification of administration, the Parties agree that this senior water right shall be satisfied in the following manner:
 - (1) Subject to the terms of Section B.2.a.(2) of this Article III, the Seniority of the Water Rights Set Forth in Sections B.1.a. and d. of this Article III Shall Not be Asserted Over non-irrigation water rights Arising Under State Law upstream from the Reservation in the Peoples Creek Basin with a priority date before the Effective Date of the Compact, and irrigation water rights set forth in Appendix 3, provided that water rights numbers W017296, W166075, and C016704 are not protected by this agreement. The Tribes may assert the senior priority of water rights and storage that have been actually developed over water rights Arising Under State Law that are developed after the Effective Date of this Compact, and over any water rights Arising Under State Law not set forth in Appendix 3.
 - (2) The agreement set forth in Section B.2.a.(1) of this Article III is not effective until completion of construction of a reservoir or reservoirs of a minimum capacity of 3000 AF on the Reservation in upper Peoples Creek for use by the Tribes. Prior to construction of the reservoir, the Tribes may only assert the senior priority of water rights actually developed.
 - b. The priority date of the water right set forth in Section B.1.b. of this Article III shall be as set forth in Section E.2.b. of this Article III.
 - c. The priority date of the water rights set forth in Section B.1.c. of this Article III for stock impoundments shall be the date of development of the right.
 3. Period of Use. The period of use of the water rights set forth in Section B.1. of this Article III is January 1 through December 31 of each year.
 4. Points and Means of Diversion.
 - a. The water right set forth in Sections B.1.a. and d. of this Article III may be diverted for Direct Use or storage from surface water or from Groundwater that is Hydrologically Connected to surface water from any place and by any means within the Peoples Creek Basin within the Reservation.

- b. The point and means of diversion of the water right set forth in Section B.1.b. of this Article III shall be as set forth in Section E.4.b. of this Article III.
 - c. The water right set forth in Section B.1.c. of this Article III may be developed on a surface water source anywhere within the Peoples Creek Basin within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.
- 5. Place of Use.
 - a. The Tribes may use or authorize the use of the water rights set forth in Sections B.1.a. and b. of this Article III for use any place within the Reservation within the Peoples Creek Basin. Subject to the terms and conditions set forth in Article IV, the Tribes may Transfer water stored pursuant to Sections B.1.a. and b. of this Article III for use off the Reservation within the Milk River Basin.
 - b. The Tribes may use or authorize the use of the water rights set forth in Sections B.1.c., and d. of this Article III for use any place within the Reservation.
- 6. Purposes.
 - a. The water rights set forth in Sections B.1.a. and b. of this Article III may be used for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, any Transfer of the water rights stored pursuant to Sections B.1.a. and b. of this Article III off the Reservation, after the Effective Date of the Compact is subject to the terms and conditions of Section A. of Article IV.
 - b. The water rights set forth in Section B.1.c. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.
 - c. The water rights set forth in Section B.1.d. of this Article III may be used within the Reservation in Basin 40I for any non-irrigation purposes.
- C. Basin 40M: Beaver Creek Basin.
 - 1. Quantification.
 - a. The Tribes have the right to divert 8,024 AFY for irrigation of 2,241 acres from surface flow, or from Groundwater that is Hydrologically Connected to surface flow, within the Reservation in the Beaver Creek Basin. The Tribes agree to use their best efforts to bypass a minimum flow when naturally available.
 - b. In addition to the water rights set forth in Section C.1.a. of this Article III, the Tribes have the right to develop surface water in the Beaver Creek Basin within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section C.1.b., of this Article III following the Effective Date of this Compact may not exceed a storage capacity of 15 Acre-feet times the number of

square miles in Basin 40M on the Reservation. This capacity limit does not apply to the water right quantified in Sections C.1.a. and c. of this Article III.

- c. In addition to the water rights set forth in Sections C.1.a. and b. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Beaver Creek Basin within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.
2. Priority Date/Administrative Priority.
 - a. For purposes of this Compact, the priority date of the water rights set forth in Sections C.1.a. and c. of this Article III is October 17, 1855.
 - b. The priority date of the water rights set forth in Section C.1.b. of this Article III for stock impoundments shall be the date of development of the right.
3. Period of Use. The period of use of the water rights set forth in Section C.1. of this Article III is:
 - a. March 1 through October 31 for the 8,024 AFY water right set forth in Section C.1.a. of this Article III.
 - b. January 1 through December 31 of each year for the water rights set forth in Sections C.1.b. and c. of this Article III.
4. Points and Means of Diversion.
 - a. Subject to the terms and conditions set forth in Article IV, the Tribes may divert or authorize the diversion of the water rights set forth in Sections C.1.a. and c. of this Article III from any place and by any means from surface water or Groundwater that is Hydrologically Connected to surface water in the Beaver Creek Basin within the Reservation. When constructing diversion facilities, the Tribes agree to use their best efforts to allow bypass of a minimum flow, when naturally available.
 - b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section C.1.b. of this Article III may be developed on a surface water source anywhere within the Beaver Creek Basin within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.
5. Place of Use. Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Sections C.1.a., b., and c. of this Article III any place within the Reservation within the Beaver Creek Basin.
6. Purposes.
 - a. The Tribes may use or authorize the use of the water rights set forth in Section C.1.a. of this Article III within the Reservation for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, use of the water rights set forth in Section C.1.a. of this Article III, for any purpose other than irrigation is subject to the terms and conditions of Section A. of Article IV.

- b. The water rights set forth in Section C.1.b. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.
 - c. The water rights set forth in Section C.1.c. of this Article III may be used within the Reservation in the Beaver Creek Basin for any non-irrigation purposes.
- D. Reservation Portion of Missouri River Basin 40EJ.
1. Quantification.
 - a. The Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in Basin 40EJ within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.
 - b. In addition to the water rights set forth in Section D.1.a. of this Article III, the Tribes have the right to develop surface water in Basin 40EJ within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream.
 2. Priority Date/Administrative Priority.
 - a. For purposes of this Compact, the priority date of the water rights set forth in Section D.1.a. of this Article III is October 17, 1855.
 - b. The priority date of the water rights set forth in Section D.1.b. of this Article III for stock impoundments shall be the date of development of the right.
 3. Period of Use. The period of use of the water rights set forth in Section D.1. of this Article III is January 1 through December 31 of each year.
 4. Points and Means of Diversion.
 - a. Subject to the terms and conditions set forth in Article IV, the Tribes may continue to divert or authorize the diversion of the water rights set forth in Section D.1.a. of this Article III from any place and by any means from surface water or Groundwater that is Hydrologically Connected to surface water, within the Reservation in Basin 40EJ.
 - b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section D.1.b. of this Article III may be developed on a surface water source anywhere within Basin 40EJ within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.
 5. Place of Use. Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section D.1. of this Article III on any place within the Reservation within Basin 40EJ.
 6. Purposes.
 - a. The Tribes may use or authorize the use of the water rights set forth in Section D.1.a. of this Article III for any non-irrigation purposes.
 - b. The water rights set forth in Section D.1.b. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

E. Off-Reservation Tribal Fee and Trust Lands - Missouri Basin 40EJ and Peoples Creek Basin 40I. The Tribes have the following water rights on trust and fee land off the Reservation in Missouri Basin 40EJ and Peoples Creek Basin 40I. Unless Congress acts to modify the Reservation boundary to include the Tribal trust and fee land, the rights shall not be considered part of the Tribal Water Right for purposes of administration pursuant to Article IV. The water rights set forth in this Section E. of Article III shall be administered by the State pursuant to Section B.1.b. of Article IV, except that non-use of all or any of the rights shall not constitute a relinquishment, forfeiture, or abandonment of such rights.

1. Quantification.
 - a. The Tribes have the right to divert up to 1135 AFY for irrigation of:
 - (1) 297 acres of land historically irrigated in Basin 40EJ; and
 - (2) 18 acres of land in Basin 40EJ developed after the Effective Date of the Compact.
 - b. In addition to the water rights set forth in Section E.1.a. of this Article III, the Tribes have the right to divert up to 1290 AFY for conveyance to the Peoples Creek Basin.
 - c. In addition to the water rights set forth in Sections E.1.a. and b. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact on Tribal fee and trust land off the Reservation in Basin 40EJ and Basin 40I. These water uses are subject to the reporting requirements of Section A.7. of Article IV.
 - d. In addition to the water rights set forth in Sections E.1.a., b., and c. of this Article III, the Tribes have the right to develop surface and Groundwater in Basin 40EJ and Basin 40I on Tribal fee and trust land off the Reservation pursuant to State law.
 - e. In addition to the water rights set forth in Sections E.1.a., b., c., and d. of this Article III, the Tribes have the right, pursuant to State law, to develop surface water in Basin 40EJ and Basin 40I on Tribal fee and trust land off the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream.
2. Priority Date/Administrative Priority.
 - a. The priority date of the water rights set forth in Section E.1.a. of this Article III is:
 - (1) July 24, 1893 for the water right set forth in Section E.1.a.(1) of this Article III.
 - (2) The date of development for the 18 acres set forth in Section E.1.a.(2) of this Article III.
 - b. The priority date of the water right set forth in Section E.1.b. of this Article III is January 1, 1935.
 - c. The priority dates of the water rights set forth in Section E.1.c. of this Article III are the date on which the water was developed for stock and

- domestic purposes. The priority date of these rights is subject to the reporting requirements of Section A.7. of Article IV.
- d. The priority date of the water rights set forth in Sections E.1.d., and e. of this Article III shall be as provided by State law.
3. Period of Use. The period of use of the water rights set forth in Section E.1. of this Article III is:
 - a. March 1 through October 31 of each year for the irrigation water rights set forth in Section E.1.a. of this Article III.
 - b. January 1 through December 31 of each year for diversion of the water right set forth in Section E.1.b. of this Article III.
 - c. January 1 through December 31 of each year for the water rights set forth in Section E.1.c. of this Article III.
 - d. As provided by State law for the water rights set forth in Sections E.1.d., and e. of this Article III.
 4. Points and Means of Diversion.
 - a. The points and means of diversion for the water rights set forth in Section E.1.a. of this Article III are as follows:
 - (1) The water right set forth in Section E.1.a.(1) of this Article III may be diverted from any point by any means on Tribal trust or fee land within Section 30, T28N, R22E and the SW 1/4 of Section 18, T27N, R22E;
 - (2) The water right set forth in Section E.1.a.(2) of this Article III may be diverted from any point by any means on Tribal trust or fee land within Section 19, T27N, R22E.
 - b. The water right set forth in Section E.1.b. of this Article III may be diverted from any point by any means on Tribal trust or fee land in the SWSESW, Section 9, T26N, R22E.
 - c. The water rights set forth in Section E.1.c. of this Article III may be diverted from the place and by the means in use prior to the Effective Date of the Compact, on Tribal fee or trust land in Basin 40EJ and Basin 40I. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the point and means of diversion of a water right set forth in Section E.1.c. of this Article III to any place and any means from surface or Groundwater that is Hydrologically Connected to surface water, on Tribal fee or trust land in Basin 40EJ or Basin 40I.
 - d. The water right set forth in Sections E.1.d. and e. of this Article III may be diverted from any point by any means on Tribal fee or trust land in Basin 40EJ and Basin 40I, pursuant to State law.
 5. Place of Use.
 - a. The Tribes may use the water rights set forth in Section E.1.a.(1) of this Article III on Tribal trust or fee land in Sections 29, 30, 31, and 32, T28N, R22E, and on the W1/2 of the SE1/2 and the E1/2 of the W 1/2 of Section 19, T27N, R22E. The Tribes may use the water rights set forth in Section E.1.a.(2) of this Article III on Tribal trust or fee land in Sections 19 and 30, T27N, R22E.

- b. The water rights set forth in Section E.1.b. of this Article III may be used any place authorized in Section B.5.a. of this Article III, and shall be administered as part of the Tribal Water Right.
 - c. Subject to the requirements of State law, the water rights set forth in Section E.1.c. of this Article III may be used any place on Tribal fee or trust land in Basin 40EJ and Basin 40I on which the water has been used prior to the Effective Date of the Compact.
 - d. The water rights set forth in Sections E.1.d. and e. of this Article III may be used on any Tribal fee and trust land in Basin 40EJ and Basin 40I, pursuant to State law.
6. Purposes.
- a. The water rights set forth in Section E.1.a. of this Article III may be used for irrigation. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the use of the water rights set forth in Section E.1.a. of this Article III to any other purpose allowed by State law.
 - b. The water rights set forth in Section E.1.b. of this Article III may be used for any purpose allowed by federal and Tribal law.
 - c. The water rights set forth in Section E.1.c. of this Article III may continue to be used for stock and domestic purposes according to their purpose on the Effective Date of the Compact. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the use of the water rights set forth in Section E.1.c. of this Article III to any other purpose allowed by State law.
 - d. The water rights set forth in Sections E.1.d., and e. of this Article III may be used for any purpose allowed by State law.

F. Temporary Emergency Appropriations. The Tribes or the United States on behalf of the Tribes may divert water from sources on the Reservation for use on or off the Reservation for temporary emergency use necessary for public health and safety. Temporary emergency use of water from a source for which a water right is quantified in this Article III of this Compact shall not be considered an exercise of that right.

G. Groundwater.

1. Groundwater that is Hydrologically Connected to Surface Water. The Tribes have the right to develop Groundwater that is Hydrologically Connected to surface water within the quantification limits for surface water provided in Sections A., B., C., D., and E. of this Article III. The attributes of the water right are as set forth in Sections A., B, C., D., and E. of this Article III.
2. Existing Groundwater Development.
 - a. Quantification. The Tribes have the right to the use of Groundwater developed before the Effective Date of the Compact within the Reservation as provided in Sections A.1.d., B.1.d., C.1.c., and D.1.a. of this Article III. These Groundwater uses are subject to the reporting requirements of Section A.7. of Article IV.
3. New Development of Small Groundwater Wells and Springs.
 - a. Quantification. In addition to the water rights set forth in Sections A., B., C., and D., of this Article III, the Tribes have the right to develop

Groundwater within the Reservation by means of wells or developed springs if the maximum flow of each well or developed spring is 35 gallons per minute or less and does not exceed a use of 10 Acre-feet per year. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs.

b. Priority Date/Administrative Priority.

The priority date of the water rights set forth in Section G.3.a. of this Article III shall be the date of development of the right.

c. Period of Use. The period of use of the water rights set forth in Section G.3.a. of this Article III is January 1 through December 31 of each year.

d. Points and Means of Diversion. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section G.3.a. of this Article III may be diverted from Groundwater from any point by any means within the Reservation.

e. Place of Use. Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section G.3.a. of this Article III any place within the Reservation.

f. Purposes. Subject to the terms and conditions set forth in Article IV, the water rights set forth in Section G.3.a. of this Article III may be used for any purpose authorized by Tribal or federal law.

4. New Groundwater Development not Hydrologically Connected to Surface Water.

a. Quantification. In addition to the water rights set forth in Sections A., B., C., D., and E. of this Article III, the Tribes have the right to develop or authorize the development of Groundwater within the Reservation that is not Hydrologically Connected to surface water subject to the following conditions:

(1) The development of Groundwater that is not Hydrologically Connected to surface water must comply with the provisions of Sections A.5. and 6. of Article IV for determination of Adverse Effect. Pursuant to Section A.5.a. of Article IV, the Tribal Water Resources Department and the DNRC may jointly agree to exempt certain development of Groundwater from a showing of no Adverse Effect due to location, size, or other agreed upon parameter.

(2) If a conflict arises between use of the water right set forth in this Section G.4. of Article III and a water right Arising Under State Law, DNRC and TWRD shall attempt to resolve the controversy. In attempting to resolve the controversy, DNRC and TWRD may establish controlled Groundwater areas off and on the Reservation and may manage them cooperatively pursuant to Sections A.2.d. and B.2. of Article IV. If DNRC and TWRD are unable to resolve the controversy, the Tribes, State or the Person whose water use is affected may seek relief from the Compact Board. Among the remedies the Compact Board may order is imposition of a controlled Groundwater area that includes Groundwater use both on and off the Reservation pursuant to Sections

A.2.d. and B.2. of Article IV. The controlled Groundwater area is to be administered by the TWRD on the Reservation and the DNRC off the Reservation pursuant to Article IV and Tribal and State law.

- b. Priority Date. The priority date of the water rights set forth in Section G.4.a. of this Article III for new Groundwater development shall be the date of development of the right.
- c. Period of Use. The period of use of the water rights set forth in Section G.4.a. of this Article III for new Groundwater development is January 1 through December 31 of each year.
- d. Points and Means of Diversion. Subject to the requirements set forth in Article IV, the water rights set forth in Section G.4.a. of this Article III may be diverted from Groundwater that is not Hydrologically Connected to surface water at any point by any means within the Reservation.
- e. Place of Use. Subject to the requirements set forth in Article IV, the water rights set forth in Section G.4.a. of this Article III may be used on any place within the Reservation.
- f. Purpose. Subject to the requirements set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section G.4.a. of this Article III for any purpose allowed by Tribal and federal law.

H. Additional Water. As a part of the Tribal Water Right, the Tribes shall be entitled to an allocation of stored water in Lake Elwell as agreed to by the Parties and as provided by Congress, measured at the dam, for use or disposition by the Tribes for any beneficial purpose, either on or off the Reservation, pursuant to the terms of this Compact; provided that, such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or persons holding such reserved water rights through that tribe or through the United States. Any use or disposition of water from Lake Elwell off the Reservation by the Tribes is subject to the specific provisions relating to such use or disposition in any Act of Congress ratifying this Compact. The United States shall have no responsibility or obligation to provide any facility for the transport of the water allocated under this Section H. of Article III. to the Fort Belknap Reservation or to any other location.

I. Basin Closures.

- 1. The following closure does not apply to development of the Tribal Water Right as provided for in this Compact. In the Milk River Basin from the Eastern Crossing to the confluence between the Milk River and the Missouri River comprised of Basins 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, and 40O both above the Western Crossing and below the Eastern Crossing, DNRC shall not process or grant an application for an appropriation pursuant to State law after this Compact has been ratified by the Montana legislature, provided that, after compliance by the applicant with all applicable provisions of State and federal law, DNRC may issue a certificate of water right or permit for:
 - a. An appropriation for municipal use of surface or Groundwater that is Hydrologically Connected to surface water. In addition to compliance with applicable State law, the application shall be treated as a change in

- use for the purposes of Section B. of Article IV, if the point of diversion is located upstream from any point on the Reservation. For purposes of compliance with State law other than this Compact, the appropriation shall be treated as a new use.
- b. An appropriation of Groundwater that is not Hydrologically Connected to surface water. In addition to compliance with applicable State law, the application shall be treated as a change in use for the purposes of Section B. of Article IV, if the point of diversion is within an aquifer that might extend onto the Reservation. For purposes of compliance with State law other than this Compact, the appropriation shall be treated as a new use.
 - c. An appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a use of 10 Acre-feet per year. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs. This exemption includes development on fee land on the Reservation.
 - d. An appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 Acre-feet and the appropriation is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. This exemption includes development on fee land on the Reservation. With the exception of Peoples Creek Basin 40I, the cumulative development of stock impoundments pursuant to this exemption following the Effective Date of this Compact may not exceed a storage capacity of 15 Acre-feet times the number of square miles in the Water Court basin in which the new impoundment is located. In the Peoples Creek Basin 40I, development of stock impoundments pursuant to this exemption following the Effective Date of this Compact must be constructed with the ability to bypass inflow.
 - e. An appropriation for instream use of water by livestock.
 - f. Temporary emergency appropriations as provided in § 85-2-113(3), MCA.
 - g. An appropriation necessary for the purposes of new storage of imported water or modification and replacement of existing storage as set forth in Section I.4. of this Article III.
 - h. An appropriation necessary for new storage off the Reservation approved by the Milk River Coordinating Committee pursuant to Section C.3.g. of Article IV.
 - i. An appropriation for a nonconsumptive use as defined under State law.
 - j. With the exception of applications for appropriations in Basin 40I upstream from the Reservation, an appropriation of water for an impoundment of any size for use for fish and wildlife purposes if the cumulative development under this provision and Section I.1.d. of this Article III, does not exceed 15 Acre-feet times the number of square miles owned by the applicant in the Water Court basin in which the new impoundment is located.

2. The basin closure is not a limit on change of use or transfer of any water right Arising Under State Law, provided that, applicable provisions of State and federal law and this Compact are followed. For purposes of this Compact, any change in a water right for the purpose of moving instream stockwatering to off-stream stockwatering that does not result in an increase in the historic consumptive use of water shall be considered a change in use, and is not a new use subject to the basin closure.
3. Due to the shortage of water in the Milk River Basin, water salvaged through efficiency measures may not be used to expand irrigation from a water right Arising Under State Law with a point of diversion in the United States' portion of the Milk River Basin under the following circumstances:
 - a. the efficiency measures are funded in whole or in part by the State, United States, Tribes, or water users as part of the implementation of this Compact; or
 - b. the salvaged water may be used to alleviate water shortage in the Milk River Basin. Pursuant to Section B.3. of Article IV, DNRC may promulgate rules to implement this provision.
4. The basin closure is not a limit on: the modification or replacement of existing storage when there is no enlargement of that storage; the modification or development of storage pursuant to this Compact and the federal legislation that ratifies this Compact; or the development of storage to impound water imported to the Milk River Basin from another basin.
5. Within 120 days of the date this Compact is ratified by the Montana Legislature, DNRC shall publish notice of the basin closures set forth in Section I. of this Article III once in newspapers of general circulation in the area of the sources.

ARTICLE IV - IMPLEMENTATION OF COMPACT

- A. Tribal Administration.
 1. Tribal Authority Over Tribal Water Right.
 - a. The Tribes have the right, subject to the limits imposed by this Compact (including Sections C., D., and E. of this Article IV, and Section B.3. of Article VII), and federal law (including 25 U.S.C. § 381), to administer the use of the Tribal Water Right.
 - b. Once the Tribal Water Right is diverted to the facilities of the Fort Belknap Indian Irrigation Project on units held by the United States, distribution shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs or its successor in accordance with applicable federal laws. Operation and maintenance of the Fort Belknap Indian Irrigation Project shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs or its successor in accordance with applicable federal laws.
 - c. Once the Tribal Water Right is diverted to the facilities of the Ereaux Unit, and any other unit previously part of the Fort Belknap Indian Irrigation Project which has been subsequently quit claimed by the United States to specific irrigation companies, distribution shall be conducted by the

irrigation companies. Administration of the Tribal Water Right to the points of diversion of the listed irrigation projects shall be conducted by the Tribes on Peoples Creek and other tributaries to the Milk River on the Reservation, and pursuant to Sections C., D., and E., of this Article IV, and Section B.3. of Article VII on the mainstem of the Milk River.

- d. Owners of fee land within the Reservation may apply to the Tribes to continue their historic use of water in the manner and to the extent existing on the Effective Date of the Compact on fee land within the Reservation as determined by the TWRD pursuant to the Tribal water code as part of the Tribal Water Right if no claim was filed by the landowner in the state adjudication, or may continue their use pursuant to state law and as decreed by state court if a claim was filed.
2. Tribal Water Code. Administration of the Tribal Water Right by the Tribes shall be pursuant to a comprehensive Tribal water code governing the Tribal Water Right set forth in this Compact. Pending the adoption of the Tribal water code, the administration of the Tribal Water Right shall be by the Secretary of the Interior. The Tribal water code shall be developed and adopted by the Tribes with approval by the Secretary within two (2) years following the Effective Date of this Compact and shall include:
 - a. A process by which any Tribal member or Allottee may request and be provided with an equitable distribution of water for use on his or her trust lands.
 - b. A process for notice and a right to be heard for the consideration and determination of any request by a Tribal member or Allottee for an equitable distribution of water, including a process for formal review of denied or disputed distributions and for resolution of contested administrative decisions.
 - c. A process by which an owner of fee land within the boundaries of the Reservation may apply for use of a portion of the Tribal Water Right.
 - d. A process for establishment of a controlled Groundwater area and for management of such Area in cooperation with establishment of a contiguous controlled Groundwater area off the Reservation established pursuant to Section B.2. of this Article IV and State law.
 3. Persons Authorized to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribes, or Persons authorized by the Tribes (including Tribal members, Allottees, and holders of fee land within the boundaries of the Fort Belknap Reservation).
 4. Authorization for New Development of the Tribal Water Right. Subject to Article III and the following conditions, the Tribes may use or authorize the use of the Tribal Water Right within the Reservation for any purpose allowed by this Compact and Tribal and federal law:
 - a. Impact of new development of the Tribal Water Right within the Reservation for the purposes of irrigation and non-irrigation use as expressly identified under the quantification in Article III, and new development for any purpose within the Reservation within the Peoples Creek Basin, have been

accounted for in design of mitigation and administration in the Compact. Thus, new development for the purposes expressly identified in Article III within the Reservation and all new development within the Reservation within the Peoples Creek Basin are exempt from any review by DNRC under the process set forth in Sections A.5. and 6. of this Article IV. All such development will be referred to as “Exempt New Development.” Specifically, Exempt New-Development is as follows:

- (1) Use of the Tribal Water Right for purposes of irrigation with the place of use on the Reservation and as set forth in Article III.
 - (2) Use of up to 4000 AFY of water diverted from the Milk River pursuant to Section A.1.a.(2) of Article III for non-irrigation purposes on the Reservation.
 - (3) Use of the Tribal Water Right quantified for the Peoples Creek Basin within the Reservation for any purpose allowed by Tribal or federal law.
 - (4) Use of the Tribal Water Right for stockwatering on the Reservation if the maximum capacity of the impoundment or pit is less than 15 Acre-feet and the appropriation is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream.
 - (5) Use of Groundwater on the Reservation that is Hydrologically Connected to surface water by means of a well or developed spring with an appropriation of 35 gallons per minute or less, and a use that does not exceed 10 Acre-feet per year. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs.
- b. Any Tribal authorization for the development of Groundwater that is not Hydrologically Connected to surface water by means of a well or developed spring with an appropriation of greater than 35 gallons per minute, or in excess of 10 Acre-feet per year, developed after the Effective Date of this Compact, shall not have an Adverse Effect on water rights Arising Under State Law with a priority date before the date of the application for Groundwater development. The development is considered a Non-Exempt New Development and is subject to the procedures set forth in Sections A.5. and 6. of this Article IV.
5. Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right. Subject to the following conditions, the Tribes may make or authorize a Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right.
 - a. A Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right on or off the Reservation may not Adversely Affect a water right Arising Under State Law with a priority date before the date of the application to the TWRD for the Non-Exempt New Development, Change in Use, or Transfer. Determination of Adverse Effect for the purposes of this Section shall be pursuant to the procedures set forth in Section A.6. of this Article IV and Appendix 5. In addition, the TWRD

and DNRC may jointly agree to exempt certain Change in Use, Transfer or Non-Exempt New Development from a showing of no Adverse Effect due to location, size, or other agreed upon parameter.

- b. Off Reservation Change in Use or Transfer of the Tribal Water Right is limited as follows:
 - (1) Off Reservation use of the Tribal Water Right on non-Tribal land shall be limited to the following portion of the Tribal Water Right developed or stored prior to the date of application for Change in Use or Transfer:
 - (a) Water developed by Direct Use prior to the date of the application for Change in Use or Transfer from the Milk River pursuant to Section A.1.a. of Article III; or
 - (b) Water stored from the Milk River pursuant to Section A.1.a.(2) of Article III.
 - (c) Water stored from Peoples Creek pursuant to Sections B.1.a., and b. of Article III.
 - (2) The off-Reservation new development, Change in Use, or Transfer of the transferable portion of the Tribal Water Right set forth in Section A.1.a. of Article III is limited to a place of use within the Missouri River Basin.
 - (a) If the Tribes receive a good faith offer from a Person for Transfer of a portion of the Tribal Water Right outside the Milk River Basin, the Tribes shall allow water users receiving water from the Milk River Project the first opportunity, and other water users in the Milk River Basin the second opportunity, to acquire use of such rights at a price consistent with the market value of water within the Milk River Basin at the time of the offer.
 - (b) The Tribes are not required to offer the first or second right to use a portion of the Tribal Water Right to any water user in the Milk River Basin who is currently marketing a portion of their own water right.
 - (3) The off-Reservation new development, Change in Use, or Transfer of the transferable portion of the Tribal Water Right set forth in Sections B.1.a., and b. of Article III is limited to a place of use within the Milk River Basin.
 - (4) The off-Reservation new development, Change in Use, or Transfer of the portion of the Tribal Water Right set forth in Section H. of Article III is limited to a place of use in the Missouri River Basin.
 - (5) Any off-Reservation Change in Use or Transfer of a portion of the Tribal Water Right may not exceed a term of 100 years, but may include provisions authorizing renewal for an additional term not to exceed 100 years.
 - (6) No off-Reservation Change in Use or Transfer of a portion of the Tribal Water Right may permanently alienate the water right.
 - (7) The development or use of the Tribal Water Right pursuant to an off-Reservation new development, Change in Use, or Transfer must

comply with State law, provided that, approval of an application for a change in water right by DNRC shall be conditioned on a valid Tribal approval for such use, Change in Use or Transfer. Due to this requirement of compliance with State law, the off-Reservation Change in Use or Transfer shall be exempt from the process set forth in Section A.6. of this Article IV. Any diversion of the Tribal Water Right located off the Reservation for use on the Reservation shall not be considered an off-Reservation use for purposes of this provision.

- (8) The Tribes or any Person using diversion or transportation facilities located off the Reservation in connection with a use of the Tribal Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water, prior to exercising a use of the Tribal Water Right off the Reservation.
6. Administrative Procedure for Determination of Adverse Effect for Non-Exempt New Development, Change in Use, or Transfer, Within the Reservation.
 - a. The procedures set forth in Sections A.6.b. through i. of this Article IV apply to determine whether the following actions will Adversely Affect a water right Arising Under State Law and must be followed before a Person may seek relief from the Compact Board:
 - (1) A Change in Use or Transfer of the Tribal Water Right; and
 - (2) A Non-Exempt New Development of the Tribal Water Right.
 - b. The proposal for a Non-Exempt New Development, Change in Use, or Transfer of a portion of the Tribal Water Right after the Effective Date of this Compact shall be made to TWRD.
 - c. TWRD shall review the proposal and make a determination of whether it will Adversely Affect a water right Arising Under State Law with a priority date before the date of the proposal for the Non-Exempt New Development, Change in Use, or Transfer.
 - (1) Upon request, DNRC shall provide to TWRD information on water rights Arising Under State Law as recorded in the DNRC database.
 - (2) For purposes of determining whether a Non-Exempt New Development of surface water Adversely Affects a water right Arising Under State Law, the existing use shall be deemed to be the use for which the water right is quantified explicitly in Article III of this Compact.
 - (3) If TWRD determines that the Non-Exempt New Development, Change in Use, or Transfer will Adversely Affect a water right Arising Under State Law with a priority date before the date of the proposal for the Non-Exempt New Development, Change in Use, or Transfer, TWRD shall deny the proposal, provided that, the Tribal water code may allow the applicant to modify the proposal to eliminate Adverse Affect.

- (4) If TWRD determines that the Non-Exempt New Development, Change in Use, or Transfer will not Adversely Affect a water right Arising Under State Law with a priority date before the date of the proposal for the Non-Exempt New Development, Change in Use, or Transfer, TWRD shall forward the proposal with its determination to DNRC by certified mail with return receipt requested.
- d. Upon receipt of notice from the TWRD, DNRC shall publish notice of the proposed Non-Exempt New Development, Change in Use, or Transfer, once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Arising Under State Law who, according to the records of the DNRC, has a water right with a priority date before the date of the proposal that may be affected by the proposed Non-Exempt New Development, Change in Use, or Transfer. DNRC shall notify TWRD of the date of publication of notice.
 - e. A holder of a water right Arising Under State Law who objects to the proposed Non-Exempt New Development, Change in Use, or Transfer on the basis that it will Adversely Affect the exercise of their water right may notify DNRC, and must do so within thirty (30) days of the publication of notice.
 - f. DNRC shall review the proposal and the determination by TWRD of no Adverse Effect and any objections raised pursuant to Section A.6.e. of this Article IV. In its review, DNRC shall apply the same principles used in a determination of adverse effect or adverse affect pursuant to the Water Use Act, Title 85, Chapter 2, MCA, and Appendix 5. Any Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right to a place of use and point of diversion within the Reservation that is within the minimum depletions set forth in Appendix 5 shall be presumed by DNRC to have no Adverse Effect. The TWRD may provide information that the Adverse Effect will be less than that predicted by application of Appendix 5 and DNRC may use the new information in its evaluation.
 - g. DNRC shall notify TWRD of the outcome of its review within thirty (30) days after the end of the time period for objection set forth in Section A.6.e. of this Article IV. If TWRD is not notified by DNRC within sixty (60) days of publication of notice by DNRC, TWRD may authorize the proposal pursuant to Tribal law.
 - h. DNRC and TWRD shall attempt to resolve objections or disagreement on TWRD's determination of no Adverse Effect on a cooperative basis. Measures to resolve objections may include agreement to release water from storage.
 - i. If resolution of an objection or disagreement is not achieved, DNRC or an objector may seek relief from the Compact Board established in Section D. of this Article IV.

7. Reporting Requirements.
 - a. Upon request by DNRC, on no more than an annual basis, the TWRD shall provide the MRCC, State and the United States with a listing of: all Non-Exempt New Development and Exempt New Development of the Tribal Water Right and any temporary emergency use or diversion of water on the Reservation.
 - b. The Tribes or the United States on behalf of the Tribes shall inventory the use of water rights for water developed before the Effective Date of the Compact set forth in Sections A.1.d., B.1.d. C.1.c., D.1.a., E.1.c., and G.2.a. of Article III, and shall report the inventory to DNRC within one year of the decree of the Tribal Water Right. Developments of Groundwater by means of a well or developed spring if the maximum flow of each well or developed spring is 35 gallons per minute or less and does not exceed a use of 10 Acre-feet per year are not required to be included in the inventory. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs.
- B. State Administration.
 1. State Authority.
 - a. Except as provided in Section C., D., and E., of this Article IV and Section B.3. of Article VII, the State shall administer and enforce all water rights Arising Under State Law to the use of surface water and Groundwater.
 - b. The State shall administer and enforce water rights set forth in Section E. of Article III on Tribal trust and fee land for use in the portion of the Missouri Basin 40EJ and Peoples Creek Basin 40I off the Reservation unless Congress acts to modify the Reservation boundary to include the Tribal trust and fee land. In administering the Tribal water rights on trust and fee land off the Reservation in Basins 40EJ and 40I, the State shall treat the Tribal rights as water rights Arising Under State Law except that non-use of all or any of the Tribal water rights off the Reservation in Basins 40EJ and 40I shall not constitute a relinquishment, forfeiture, or abandonment of such rights.
 2. Cooperative Management of a Controlled Groundwater Area.
 - a. DNRC may designate or modify a controlled Groundwater area adjacent to the Reservation under the following circumstances:
 - (1) Pursuant to the requirements of § 85-2-506, MCA; or
 - (2) In cooperation with designation or modification by TWRD of a similar area on contiguous land within the Reservation; or
 - (3) Under order of the Compact Board as set forth in Section G.4.a.(2) of Article III.
 - b. The following procedures apply to designation or modification of a controlled Groundwater area pursuant to Section B.2.a. of this Article IV:
 - (1) Designation or modification of a controlled Groundwater area pursuant to Section B.2.a.(1) of this Article IV, or in the portion of an

- area off the Reservation pursuant to Section B.2.a.(2) of this Article IV, shall be governed by procedures set forth in § 85-2-506, MCA.
- (2) Designation or modification of a portion of a controlled Groundwater area off the Reservation pursuant to Section B.2.a.(3) of this Article IV shall be with substitution of the following procedures for those set forth in §§ 85-2-506(3) and (4), MCA:
 - (a) DNRC shall hold a meeting to inform the public of the designation or modification of a controlled Groundwater area as ordered by the Compact Board.
 - (b) The DNRC shall publish notice of the time and place of the meeting to inform the public of the designation or modification of a controlled Groundwater area. The notice shall include the description by legal subdivision of all lands included in the area, and shall be published at least once in each week for 3 successive weeks not less than 30 days before the date of the meeting in a newspaper of general circulation in the county or counties in which the controlled Groundwater area is located.
 - c. Management within the portion of a controlled Groundwater area adjacent to the Reservation shall be as follows:
 - (1) Management within a controlled Groundwater area established pursuant to Section B.2.a.(1) of this Article IV shall be pursuant to §§ 85-2-501 to 520, MCA.
 - (2) Management within the portion of a controlled Groundwater area off the Reservation established pursuant to Sections B.2.a.(2) and (3) of this Article IV shall be pursuant to §§ 85-2-501 to 520, MCA, and in cooperation with the TWRD.
3. New Development and Change in a Water Right Arising Under State Law.
- a. Any Person making a new development or change in a water right or portion of a water right Arising Under State Law, including a change in water right for the Milk River Project, must comply with State law, provided that, DNRC may not approve a change in water right for expansion of irrigation through use of salvaged water pursuant to § 85-2-402(2)(e), MCA, within the Milk River Basin under the following circumstances:
 - (1) the efficiency measures are funded in whole or in part by the State, United States, Tribes, or water users as part of the implementation of this Compact; or
 - (2) the salvaged water may be used to alleviate water shortage in the Milk River Basin. DNRC may promulgate rules to implement this provision.
 - b. Change in a water right Arising Under State Law upstream from any point on the Reservation, new development of water due to new storage approved by the Milk River Coordinating Committee, new development of water for municipal purposes upstream from any point on the Reservation, and new development of Groundwater that is not Hydrologically Connected to surface water within the Milk River Basin may not Adversely Affect

a use of the Tribal Water Right developed before the date of the change. Determination of Adverse Effect for the purposes of this Section shall be pursuant to the procedures set forth in Section B.4. of this Article IV. The TWRD and DNRC may jointly agree to exempt certain changes in water rights from a showing of no Adverse Effect to the Tribal Water Right due to location, size, or other agreed upon parameter.

4. Administrative Procedure for Preventing Adverse Effect Resulting from New Development or Change in a Water Right Arising Under State Law. Except for changes exempt by agreement pursuant to Section B.3.b. of this Article IV and new development of stock impoundments or small wells exempt from the basin closure pursuant to Sections I.1.c. and d. of Article III, the following procedure for determining whether a new development or change in a water right Arising Under State Law within the Milk River Basin (including all tributary basins) upstream from the Reservation and below the Eastern Crossing, must be followed in addition to procedures set forth under state law, prior to a Person seeking relief from the Compact Board:
 - a. Application for a permit for new development or for a change in a water right Arising Under State Law shall be made to DNRC pursuant to State law.
 - b. DNRC shall review any application for a permit for new development or for a change in a water right and make a determination of whether it will Adversely Affect any use of the Tribal Water Right developed before the date of the application. In its review, DNRC shall apply the same principles used in a determination of adverse effect or adverse affect pursuant to the Water Use Act, Title 85, Chapter 2, MCA.
 - (1) Upon request, TWRD shall provide to DNRC information on uses of the Tribal Water Right.
 - (2) If DNRC determines that the new development or change will Adversely Affect a use of the Tribal Water Right developed before the date of the change, DNRC shall deny the application.
 - (3) If DNRC determines that the new development or change will not Adversely Affect a use of the Tribal Water Right developed before the date of the change, DNRC shall forward the application with its determination to TWRD by certified mail with return receipt requested.
 - c. Upon receipt of notice from DNRC, TWRD shall follow any requirements set forth in the Tribal Water Code for notification and objection of Persons authorized to use the Tribal Water Right. TWRD shall notify DNRC of the date of any notice to Persons authorized to use the Tribal Water Right.
 - d. TWRD may allow up to thirty (30) days after notification to Persons authorized to use the Tribal Water Right for objection by Persons authorized to use the Tribal Water Right. Any objection shall be made to TWRD.
 - e. TWRD shall review the application and the determination by DNRC of no Adverse Effect and any objections raised pursuant to Section B.4.d. of this Article IV.

- f. TWRD shall notify DNRC of the outcome of its review within thirty (30) days of the end of the time period for objections set forth in Section B.4.d. of this Article IV. If DNRC is not notified by TWRD within sixty (60) days of notice by TWRD to Persons authorized to use the Tribal Water Right, DNRC may proceed with the application process.
 - g. DNRC and TWRD shall attempt to resolve objections or disagreement on DNRC's determination of no Adverse Effect on a cooperative basis.
 - h. If resolution of an objection or disagreement is not achieved, TWRD or an objector may seek relief from the Compact Board established in Section D. of this Article IV.
 - 5. Reporting Requirements. Upon request by TWRD on no more than an annual basis, the DNRC shall provide the MRCC, Tribes, and the United States with a listing of all new development of water rights Arising Under State Law and any temporary emergency use or diversion of water, for the off-Reservation portion of the Milk River Basin upstream from any point of diversion or place of use of the Tribal Water Right.
 - 6. Peoples Creek Administration
 - a. The DNRC shall develop a database covering water use upstream from the Reservation in Peoples Creek Basin 40I. The database shall include, at a minimum: identification of acreage irrigated on an annual basis; and any change in the use of a water right or storage facility.
 - b. If the Tribes or a Person authorized to use a portion of the Tribal Water Right within the Peoples Creek Basin 40I disputes a use or uses of water upstream from the Reservation in Basin 40I because the use or uses are in excess of a water right Arising Under State Law, or if the Tribes or Person authorized to use a portion of the Tribal Water Right believes that depletions in excess of water rights Arising Under State Law are occurring upstream from the Reservation but cannot identify the illegal use, the Tribes or Person shall contact the TWRD. The TWRD shall contact the DNRC concerning the dispute or excess depletion. If requested, the DNRC shall, within a reasonable time, investigate the disputed water use, or uses, or excess depletion and a representative of the TWRD may accompany DNRC on the investigation. If DNRC finds that the disputed water use or uses or excess depletion is in excess of a water right Arising Under State Law, DNRC may order any owner or operator of the diversion or storage facilities to curtail the use to within the water right. If any owner or operator does not comply with the order by DNRC or repeats the infraction, DNRC may: impose penalties pursuant to § 85-2-122, MCA; and may require any owner or operator of the appropriation facility to install and maintain suitable controlling and measuring devices to allow the DNRC to track compliance with the water right. Disputes unresolved by the process set forth in this Section may be brought before the Compact Board established pursuant to Section D. of this Article IV.
- C. Milk River Coordinating Committee. A basin-wide coordinating committee is necessary to improve the coordination of storage operations and to provide for the

coordination of releases of water from storage within or for the diversion to the Milk River Basin. A coordinating committee is also necessary to improve the management of diversions from the Milk River and to establish priorities for a grant and loan program to improve water supply conditions in the basin.

1. Establishment of Milk River Coordinating Committee. There is hereby established the Milk River Coordinating Committee (“MRCC.”).
2. Membership.
 - a. The MRCC consists of the following nine (9) voting members and four advisory members. Six (6) voting members of the MRCC constitutes a quorum and decisions shall be by a majority of the membership of the MRCC present, except as provided in Sections C.3.a. and C.5.c. of this Article IV. On the addition of members pursuant to Section C.3.a. of this Article IV, the quorum shall increase by one (1) for every two (2) members added to the original nine (9).
 - (1) Two (2) representatives of the Tribes;
 - (2) Three (3) representatives of the Joint Board of Control of the Milk River irrigation districts;
 - (3) One (1) representative of DNRC;
 - (4) One (1) representative of the Bureau of Reclamation;
 - (5) One (1) representative of the Bureau of Indian Affairs;
 - (6) One (1) representative selected at large by the other 8 members;
 - (7) One (1) advisory, non-voting, member from the United States Geological Survey;
 - (8) One (1) advisory, non-voting, member from the United States Fish and Wildlife Service;
 - (9) One (1) advisory, non-voting, member from the United States Bureau of Land Management; and
 - (10) One (1) advisory, non-voting, member from the Montana Department of Fish, Wildlife, and Parks.
 - b. All members shall be appointed by their respective agencies within six (6) months of the Effective Date of this Compact and within thirty (30) days of the date any vacancy occurs. Should the eight appointed members fail to agree, by a majority of a quorum as provided in Section C.2. of this Article IV, on the selection of a ninth member within sixty (60) days of the date of appointment of the eighth member, or within thirty (30) days after a vacancy in the ninth position occurs, the following procedure shall be utilized:
 - (1) Within five (5) days thereafter, each member shall nominate one person to serve as a member of the MRCC;
 - (2) Within five (5) days thereafter, the eight nominees shall be submitted to the chief judge of the United States District Court for the District of Montana for selection of the ninth member of the MRCC. If the chief judge declines for any reason to select the ninth member, the chief justice of the Montana Supreme Court shall make the selection from the eight nominees.

- c. Each member shall serve a five-year term and shall be eligible for reappointment. The initial terms of each voting member shall be staggered with three members serving a five-year term, three members a four-year term, and three members a three-year term. The initial term of each voting member shall be chosen by lot. The initial term of the advisory members shall be five years. A member seeking to resign prior to expiration of a term must provide written notice to the remaining MRCC members thirty (30) days prior to withdrawal.
 - d. The MRCC shall select a chair from the voting members within six (6) months of the initial selection of the ninth member and shall rotate the chairmanship on a yearly basis among the voting members.
 - e. The MRCC shall provide published notice of the time, place, and purpose of its meetings, or other proceedings, and shall hold such proceedings in a forum open to the public unless compelled to close certain portions of a proceeding to protect an individual right to privacy.
 - f. The MRCC shall adopt necessary rules, pursuant to the Montana Administrative Procedure Act §§ 2-4-101 et. seq. (MCA), to carry out its responsibilities within six (6) months of the initial selection of the ninth member. The MRCC may amend and repeal rules as necessary to carry out the purposes of this Article IV.
 - g. Costs and compensation for State, federal, and Tribal members of the MRCC shall be covered by their respective entities.
 - h. Subject to the availability of funds, the MRCC may compensate any MRCC member not compensated by the entity they represent for time and travel devoted to MRCC business. Compensation shall be based on the average hourly compensation of the other MRCC members.
3. Authority and Duties of the MRCC. Notwithstanding any other provision of State, Tribal, and, if this Compact is approved by Congress, federal law, the MRCC shall have the following authority and duties:
- a. The initial authority of the MRCC is restricted to the mainstem of the Milk River downstream from the Eastern Crossing. The MRCC has the authority to expand the boundaries of its area by a unanimous vote of the MRCC, including the area within which it may levy a tax, to include tributaries to the Milk River or the portion of the Milk River Basin upstream from the Western Crossing. Such expansion shall require the agreement of Persons holding a majority of the water rights by amount on the source added pursuant to the following procedure:
 - (1) Any Person or Persons owning 10% or more of the water rights by rate or volume on any tributary to the Milk River within the United States or on the mainstem of the Milk River upstream from the Western Crossing may petition the MRCC for addition to the area covered by the MRCC and for representation on the MRCC.
 - (2) On receipt of a petition, the MRCC shall notify DNRC and provide a copy of the petition.

- (3) Within 60 days of receipt of the petition, DNRC shall hold a hearing in or near the area proposed for addition. DNRC shall publish notice of the hearing once in a newspaper of general circulation in the proposed area and serve notice by first-class mail on any holder of a water right Arising Under State Law and any holder of an adjudicated federal or Indian water right who, according to the records of the DNRC, has a water right within the area proposed for addition with a priority date before the date of the petition.
 - (4) The MRCC shall preside over the hearing. If the MRCC determines, based on the facts presented at the hearing and other relevant facts and information as may be available, and in the interest of improving water supply or allocation, that there is a need for addition of the area, the MRCC will notify the DNRC.
 - (5) On receipt of notice for the addition of an area to the MRCC, the DNRC shall send a ballot by first-class mail, with a 30-day deadline for its return, providing for a vote on the proposed addition, to any holder of a water right Arising Under State Law and any holder of an adjudicated federal or Indian water right who, according to the records of the DNRC, has a water right with a priority date before the date of the petition.
 - (6) Following expiration of the 30 day deadline for receipt of ballots, the DNRC shall count the votes and notify the MRCC of the results.
 - (7) The area proposed for inclusion in the MRCC shall be added to the MRCC with a representative if a majority of those voting are in favor of the addition.
- b. Members of the MRCC may seek technical support from their respective agencies to facilitate the activities of the MRCC. To this end, the Parties agree to seek any necessary authorization to provide technical support to the MRCC. In addition, the MRCC shall have the following authority:
- (1) The MRCC may employ a secretary and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation.
 - (2) The MRCC shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.
 - (3) The MRCC may call upon the county attorney of any county in which the MRCC has authority or the attorney general of the state for any legal services it may require, or it may employ their own counsel and legal staff.
- c. The MRCC shall hold a meeting on an annual basis with, at a minimum, the Bureau of Reclamation, the Bureau of Indian Affairs, the Tribes, the

- Milk River Joint Board of Control, DNRC, and Hill County to coordinate reservoir storage.
- d. The MRCC shall coordinate the establishment and yearly update of a common database and associated maps on actual water use of water diverted from the mainstem of the Milk River downstream from the Eastern Crossing between: DNRC; the Bureau of Reclamation; the Bureau of Indian Affairs; the irrigation districts within the Milk River Project; and the Tribes. At a minimum, each entity will maintain a database and share information on daily diversions, yearly number of acres irrigated, and yearly changes in use. The MRCC role is one of coordination. The BOR, BIA, TWRD and irrigation districts will continue to maintain the portion of the database covering their own water distribution. The DNRC will continue to maintain its database covering water rights and diversions from the water sources.
 - (1) The MRCC shall make the database and associated maps available to any water commissioner appointed by a court to enforce water rights in the Milk River Basin.
 - (2) The DNRC and TWRD shall offer assistance as may be appropriate to the MRCC to update, maintain, and provide training for use of the database.
 - e. The MRCC shall consult with the Bureau of Reclamation in the Bureau's development of operating criteria pursuant to Section C.11. of this Article IV, for coordination of storage and release of water from storage facilities within the portion of the Milk River Basin in the United States and contributing to the water supply of the Milk River Basin, provided that, except as explicitly provided for in this Compact or by Congress, allocations in the federal and future Tribal reservoirs within the Milk River Basin or contributing to the water supply of the Milk River Basin shall remain unchanged and the right of the owner of a storage facility to exercise discretion in the daily operation and use of its facilities shall not be preempted.
 - f. Notwithstanding the rights to the use of water existing on the date of a determination by the BOR of excess water flow pursuant to Section C.11. f. of this Article IV, the MRCC may permit the owner of storage in the Milk River Basin to store water regardless of priority if capacity exists and the water would otherwise be lost to the Milk River Basin. Water stored pursuant to this provision may be used to satisfy water rights served by the entity storing the excess flow.
 - g. The MRCC shall review applications for new storage in the Milk River Basin below the Eastern Crossing.
 - (1) Any Person or Persons, including the Tribes, seeking to develop or enlarge storage in the United States' portion of the Milk River Basin below the Eastern Crossing, other than new or enlarged storage agreed to in the Compact or pursuant to the federal Act ratifying this Compact, must comply with each of the following criteria:

- (a) Application describing the project shall be made to the MRCC; and
 - (b) The applicant must prove by a preponderance of the evidence that the project will result in a net increase in available water supply within the Milk River Basin below the Eastern Crossing.
 - (2) The MRCC shall issue a report on its findings and determination.
 - (3) If the MRCC determines that the application for new storage does not meet the criteria in Section C.3.g.(1)(b) of this Article IV, the determination is final, subject to the right of appeal under the following subsection (4).
 - (4) Appeal of decisions by the MRCC concerning new storage may be sought in a court of competent jurisdiction. Any appeal heard by a court of competent jurisdiction shall be a trial de novo.
 - (5) Any applicant that the MRCC determines meets the criteria in Section C.3.g.(1)(b) of this Article IV must further comply with all other applicable State, federal, and Tribal law. The determination of the MRCC or any final appeal is binding on the Tribes, the State, and the United States in consideration of any application for development of new storage.
- h. The MRCC does not have the authority to coordinate storage or storage releases in a manner that is inconsistent with any applicable provisions of State, Tribal, and federal law, and the decrees of the Water Court. The responsibility for storage and storage releases in the Milk River Project facilities rests solely with the Bureau of Reclamation, its successors or assigns; provided that, if approved by Congress, the BOR shall participate in efforts at coordination as a member of the MRCC.
 - i. The MRCC shall have the authority to review applications for grants and loans from the Milk River Watershed Improvement Trusts and to determine prioritization for receipt of grants and loans pursuant to this Compact and § 85-20-1006, MCA, and C. 6., 7., 8., 9., and 10. of this Article IV. The DNRC shall offer assistance as may be appropriate to the MRCC for review of applications for grants and loans. The Milk River Watershed Improvement Trusts are permanent accounts established by this Compact and § 85-20-1005, MCA, to provide interest for grants for purchase of water for a Water Bank in times of significant short term water shortage, and for loans for long term improvements within the Milk River Basin.
4. Legal Status of MRCC - Immunity.
- a. The MRCC may make and execute agreements necessary to perform its responsibilities as provided in this Compact.
 - b. The MRCC may apply for State and federal grants and loans available to governmental entities or watershed organizations.
 - c. The MRCC may sue and be sued to enforce agreements entered into pursuant to this Section C.4. of Article IV in the name of the MRCC. The MRCC, an MRCC member, or MRCC employee is immune from suit for any liability that might otherwise be incurred or imposed for an act or omission committed while engaging in MRCC activities pursuant to this

Article IV, unless the act or omission constitutes criminal behavior, gross negligence, was committed in bad faith, or was committed with malicious purposes. Nothing in this provision is intended to waive immunity that is applicable to the United States or any federal employee, to the State or any State employee, or to the Tribes or any Tribal employee.

5. MRCC Finance.

- a. The MRCC may request up to 15% per year of the interest on the Milk River Watershed Improvement Trusts to cover administrative costs, including but not limited to: the cost of review of applications for grants and loans; and the cost of compensation for MRCC members pursuant to Section C.2.h. of this Article IV.
- b. The MRCC may apply for grants and loans from applicable State, Federal, and Tribal programs.
- c. Subject to § 15-10-420, MCA, the MRCC may, on unanimous vote of all voting members, levy taxes on water use pursuant to a water right Arising Under State Law from the mainstem of the Milk River, including, water use under contract with the Bureau of Reclamation, to pay any obligation of the MRCC and to fulfill its duties established by this Compact.
 - (1) The assessment shall be limited to land irrigated by water from the Milk River, and other non-irrigation water use from the Milk River Project.
 - (2) The assessment in any one year may not exceed: 0.5% of the assessed value of irrigated land; 0.5% of the taxable portion of the assessed value of a household, and 0.5% of the taxable portion of the assessed value of industrial or commercial land where water is used, with such assessments as determined by the Montana Department of Revenue, without the consent of the majority of the water users subject to the assessment.
 - (3) Subject to § 15-10-420, MCA, the board of county commissioners of each county in which the MRCC imposes an assessment may, annually at the time of levying county taxes, levy an assessment on the applicable water use. The levy must be known as the “Milk River Coordinating Committee regular assessment.” The assessment must be certified to the Department of Revenue and entered on the property tax record of each county.
 - (4) Any special assessment levied pursuant to this Section shall constitute a lien against the property upon which such assessment is levied from the date of such levy. This lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.
- d. The Parties agree to seek funding to cover a Tribal contribution to the MRCC. Any Tribal participation in contribution shall be equivalent to assessments associated with lands and uses off the Reservation.
- e. On an annual basis, the MRCC shall make a report of its expenditures available to the public.

6. Milk River Watershed Improvement Trusts.
 - a. The Milk River Watershed Improvement Trusts established pursuant to this Compact and § 85-20-1005, MCA, are permanent trusts for the generation of interest on the Trusts' principal for the allocation of grants and loans to improve conditions of water supply, water quality, and habitat in the Milk River basin.
 - b. The MRCC shall review and rank in order of priority, pursuant to the criteria in Sections C. 6., 7., 8., 9., and 10. of this Article IV, applications for grants and loans from the Milk River Watershed Improvement Trusts. The MRCC may seek technical assistance from the Department of Natural Resources and Conservation, the TWRD, and the United States Bureau of Reclamation for review of applications for grants and loans.
 - c. Allocation of funds from the Milk River Watershed Improvement Trusts shall be managed by the Department of Natural Resources and Conservation. Disbursement of grants and loans from interest on the Milk River Watershed Improvement Trusts by DNRC must be pursuant to prioritization provided by the MRCC.
 - d. The DNRC shall adopt rules:
 - (1) prescribing the form and content of applications for grants and loans from the Milk River Watershed Improvement Trusts;
 - (2) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;
 - (3) providing for the confidentiality of financial statements submitted;
 - (4) prescribing the conditions for making grants and loans;
 - (5) establishing the interest rate for the loans; and
 - (6) determining the type and amount of security interest in real estate that will be accepted and any conditions to be made upon the security interest.
 - e. At the request of the MRCC, the DNRC may allocate up to 15% of the annual interest from the Milk River Watershed Improvement Trusts to cover capital and administrative costs of the MRCC.
7. Milk River Watershed Improvement Trusts - Applications for Grants and Loans for Watershed Improvements.
 - a. An application for a grant or loan from the Milk River Watershed Improvement Trusts established by this Compact and § 85-20-1005, MCA, must be in the form prescribed by the DNRC and contain or be accompanied by any information necessary to adequately describe the proposed project and provide for evaluation under Sections C.8., and 9., and 10. of this Article IV.
 - b. Application for a grant or loan from the Milk River Watershed Improvement Trusts may be made by Persons, including but not limited to:
 - (1) individuals holding water rights Arising Under State Law;
 - (2) tribes;
 - (3) persons authorized to use water by a tribe;

- (4) municipalities;
 - (5) irrigation districts; and
 - (6) conservation districts.
- 8. Milk River Watershed Improvement Trusts - Establishment of Water Bank. The purpose of this Section is to establish a water bank for implementation in years of significant short term water shortage. The bank is not intended to alleviate normal water shortage within the Milk River Basin.
 - a. By March 1 of each year and on a monthly basis through October 31, the BOR shall notify the MRCC, DNRC, the Tribes, the U.S. and the Milk River irrigation districts, if it expects, based on current information, water deliveries to be restricted during the current irrigation season due to a critical water shortage. Water shortage may be caused by factors which include, but are not limited to:
 - (1) low precipitation;
 - (2) requirements for fish and wildlife species of special concern; or
 - (3) temporary delivery system outage caused by an unexpected failure or a natural disaster.
 - b. Following notice by the BOR of expected restrictions in water delivery, the MRCC shall publish notice in newspapers of general circulation within the Milk River Basin of the availability of grants to purchase water for the purpose of alleviating shortage.
 - c. The MRCC may offer the grants at a fixed price per Acre-foot or may seek bids. For any applicant banking water received from the Milk River Project, the grant must be sufficient to cover payments to the Project, including any assessments or fees paid to an irrigation district.
 - d. The MRCC may allocate banked water to storage, or may market or allocate banked water to alleviate shortage. Any fees obtained by the MRCC through marketing of banked water must be returned to the Trust as part of the expendable interest. Banked water may be marketed or allocated: on a pro rata basis; to alleviate critical shortages; to meet critical environmental or water quality needs; for irrigation needs; or may be allocated to storage.
 - e. Grants obtained for the temporary retirement of Milk River Project water must first be used by the applicant to cover payments to the Milk River Project, including any assessments or fees paid to an irrigation district.
 - f. Nothing within this Section C.8. of Article IV is intended to preclude a more comprehensive water marketing system within the Milk River Basin.
- 9. Milk River Watershed Improvement Trusts - Eligibility for Grants for Water Banking or Water Transfers.
 - a. The Milk River Coordinating Committee shall apply the following criteria in ranking applications for grants:
 - (1) the need for temporary retirement of irrigation or conversion to low water-use crops for the purpose of banking water to alleviate a critical shortage of water in a particular year;

- (2) the extent to which the proposed water banking will alleviate significant short term water shortage in the Milk River Basin as set forth in Section C.8. of this Article IV;
 - (3) the proposed retirement of irrigation involves lands irrigated the year prior to the declaration of a critical water shortage in the Milk River Basin and involves a valid water right;
 - (4) the feasibility and practicality of the proposed irrigation retirement or conversion;
 - (5) the number of related resources that will benefit, including but not limited to: water quality, fisheries habitat, wildlife habitat, and recreation;
 - (6) preference for an applicant in an area identified by the MRCC as beneficial for temporary irrigation retirement, or if no specific area has been identified for preference, the MRCC shall attempt to rank applicants in a manner that distributes temporary irrigation retirement equally among the counties in the Milk River Basin; and
 - (7) any additional factor that, in the judgment of the MRCC, is important to the evaluation of land retirement in light of the purposes of the Milk River Watershed Improvement Trusts.
- b. The MRCC shall not recommend grants for acreage in excess of that necessary to save sufficient water to alleviate the temporary water shortage. The MRCC shall not recommend grants in excess of the interest available from the Milk River Watershed Improvement Trusts.
 - c. The DNRC may award a grant to an applicant ranked by the MRCC for the purpose of water banking only if the DNRC finds, based on the application, the investigation and evaluation of the proposal by members of the MRCC, and the technical review by DNRC, TWRD, and BOR, that the primary purpose of the application is:
 - (1) the temporary retirement of the right to irrigate land irrigated in the year prior to the declaration of a critical water shortage in the Milk River Basin; or
 - (2) the irrigation proposed for temporary retirement or crop conversion is subject to a valid water right pursuant to State, federal, or Tribal law, and the applicant has the legal right to transfer the water.
 - (3) the criteria set forth in Sections C.9.a. and b. of this Article IV have been met.
10. Milk River Watershed Improvement Trusts - Eligibility for a Loan.
 - a. The Milk River Coordinating Committee shall apply the following criteria in ranking applications for loans:
 - (1) the extent to which the project will alleviate water shortage in the Milk River Basin;
 - (2) the engineering feasibility and practicality of the project;
 - (3) the number of related benefits, including but not limited to improvements in: water quality; fish habitat; wildlife habitat;

- conservation; recreation; water use efficiency; water management; and water right measurement;
- (4) any additional factor that, in the judgment of the MRCC, is relevant to the purposes of the Milk River Watershed Improvement Trusts, including reducing the ranking due to the fact that the application is for a project in a portion of the Milk River Basin that is not a part of the Milk River Coordinating Committee regular assessment.
- b. The DNRC may award a loan to an applicant ranked by the MRCC, if the DNRC finds, based on the application, the investigation and evaluation of the proposal by members of the MRCC, and the technical review by DNRC, TWRD, and BOR, that:
 - (1) the criteria in Section C.10.a. of this Article IV have been met;
 - (2) the proposal will be economically feasible;
 - (3) the proposal will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;
 - (4) the applicant has adequate financial resources to construct, operate, develop, and maintain the project; and
 - (5) the applicant is credit-worthy and is able and willing to enter into a contract with the DNRC for loan repayment and for construction, operation, development, and maintenance of the proposed project.
11. Coordination of Storage and Release Within the Portion of the Milk River Basin in the United States and New Storage. Subject to the applicable provisions of State, Tribal, and federal law, the MRCC shall, within five (5) years of the Effective Date of the Compact, consult with the Bureau of Reclamation on development of operating criteria for coordination of storage and release of water from storage facilities within the portion of the Milk River Basin in the United States. Except as explicitly provided for in this Compact or by Congress, allocations in the federal and future Tribal reservoirs within the Milk River Basin or contributing to the water supply of the Milk River Basin, shall be unchanged. The operating criteria may be modified as necessary and such modification shall not be considered a modification of the Compact.
 - a. At a minimum, the operating criteria shall include coordination of storage among: Sherburne, Fresno, and Nelson Reservoirs and Hill County Reservoir near Havre, any new storage on the Reservation filled by diversion from the Milk River or Peoples Creek, and any new storage developed pursuant to Section C.3.g. of Article IV.
 - b. The Bureau of Reclamation shall take comment on development of the operating criteria from, at a minimum, any entity or individual owning, benefiting from, or operating storage within the Milk River Project, or operating storage within the Milk River Basin below the Eastern Crossing. The process for such comment may be pursuant to existing federal and State law.
 - c. In developing the operating criteria, the Bureau of Reclamation shall make all reasonable efforts to maximize the amount of water stored through

coordination of storage and release within the Milk River Basin as a whole without regard to the priority date of water rights associated with a particular storage facility. The purpose of coordination shall be to provide the maximum use of storage possible for the Milk River Basin, including providing flexibility on a temporary basis.

- d. The coordination of storage and release to maximize the amount of water stored shall not modify the storage right of any Person in any storage facility or alter the obligations of any Person to pay construction, operation, maintenance and replacement costs for a facility, or alter the right and discretion of the owner of a storage facility to use or release water to satisfy water rights under its jurisdiction.
 - e. The operating criteria shall include, at a minimum: a method for accounting for water stored in various storage facilities in the Milk River Basin; a method for coordination of fill and release from storage facilities in the Milk River Basin on a yearly basis; and a method for notification of Persons with the right to divert water from the mainstem of the Milk River below the Eastern Crossing of the predictions for water availability on a yearly basis.
 - f. As part of the process to develop operating criteria, the BOR will establish criteria for determining the existence of a critical shortage or excess water flows.
 - g. The Bureau of Reclamation in consultation with the MRCC shall modify the operating criteria as necessary to address changes in the Milk River Basin including the addition, modification, or reduction of storage. The operating criteria is required by, but is not in substance, a part of or enforceable under the Compact. Its modification is not a modification of the Compact.
- D. Compact Enforcement: Fort Belknap - Montana Compact Board
- 1. Establishment of Board. There is hereby established the Fort Belknap - Montana Compact Board.
 - 2. Membership.
 - a. The Board consists of three members: a member selected by the Governor of the State of Montana from up to four nominees, one nominated by the Commissioners of each of the following counties: Hill, Blaine, Phillips, and Valley; a Tribal member selected by the Fort Belknap Community Council Tribal Chair; and one member selected by the other two members.
 - b. All members shall be appointed within six (6) months of the Effective Date of this Compact and within thirty (30) days of the date any vacancy occurs. If an appointment is not timely made by the Governor, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Tribes, the Director of the TWRD or his/her designee shall fill the Tribes' position.
 - c. Should the two appointed members fail to agree on the selection of a third member within sixty (60) days of the date of appointment of the second member, or within thirty (30) days after a vacancy in the third position occurs, the following procedure shall be utilized:

- (1) Within five (5) days thereafter, each member shall nominate two persons to serve as a member of the Board;
 - (2) Within fifteen (15) days thereafter, each member shall reject one of the persons nominated by the other member;
 - (3) Within five (5) days thereafter, the remaining two nominees shall be submitted to the chief judge of the United States District Court for the District of Montana for selection of the third member of the Board. If the chief judge declines for any reason to select the third member, the chief justice of the Montana Supreme Court shall make the selection from the remaining two nominees.
- d. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. A member seeking to resign prior to expiration of a term must provide written notice to the remaining Board members thirty (30) days prior to withdrawal.
 - e. The Board shall provide reasonable notice of the time, place, and purpose of any meeting, hearing, or other proceeding to each of its members. Two members of the Board shall constitute a quorum.
 - f. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six (6) months after its first meeting.
3. Jurisdiction of the Board. The Fort Belknap-Montana Compact Board shall have the jurisdiction to resolve controversies over the right to the use of water between Persons authorized to use any portion of the Tribal Water Right and Persons holding any water rights Arising Under State Law. Controversies under the jurisdiction of the Compact Board may include disputes concerning the meaning of this Compact. The jurisdiction of the Compact Board does not extend to controversies within the scope of the order appointing a water commissioner or commissioners to distribute water from the mainstem of the Milk River pursuant to Section B.3. of Article VII. Such controversies shall be resolved by the court appointing the water commissioner or commissioners.
 4. Administrative Remedy Prior to Board Action.
 - a. Change in Use, Transfer, or Non-Exempt New Development of the Tribal Water Right: Any Person with a water right Arising Under State Law objecting to a Change in Use, Transfer, or Non-Exempt New Development of the Tribal Water Right, shall comply with the administrative procedures set forth in Section A.6. of this Article IV for review of applications for Change in Use, Transfer, or Non-Exempt New Development prior to seeking relief from the Compact Board.
 - b. Change in water rights Arising Under State Law: The Tribes or any Person authorized to use a portion of the Tribal Water Right objecting to a change in water right, or new development of a water right Arising Under State Law, shall comply with the administrative procedures set forth in

Section B.3. of this Article IV for review of applications for change in appropriative right, prior to seeking relief from the Compact Board.

5. Funding of the Board. Expenses of the members of the Board appointed by the State and the Tribe shall be the responsibility of the entity appointing the member, subject to the availability of funds. The expenses of the third member and all other expenses, including the cost of notice, shall be shared equally by the Tribe and the State, subject to the availability of funds.
6. Hearings Before the Board.
 - a. In proceedings before it, the Board shall issue notice and hold hearings. The Board may seek the assistance of DNRC and TWRD in issuing notice.
 - b. In proceedings before it, the Board shall have the power to administer oaths, take evidence, and issue subpoenas to compel attendance of witnesses or production of documents or other evidence. The Board may apply to a state or federal district court, or Tribal court to compel compliance with subpoenas or the giving of testimony. The Tribes and the State shall enforce the subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action.
 - c. The Board may appoint technical experts.
 - d. The parties to the controversy may present evidence and cross examine any witnesses.
 - e. The Board shall determine the controversy and order any appropriate relief, including the installation of measuring devices and temporary relief, provided that, the Board shall have no power to award money damages or attorneys fees. The Board may assess costs, provided that, the Board may not assess costs against the Tribes or the State, or against the United States.
 - f. All Board decisions shall be by a majority of the Board, shall be in writing, and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board and on the Parties to this Compact.
 - g. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board to protect matters of individual privacy.
 - h. Waiver of Immunity. The Tribes and the State waive their respective immunities from suit, including for the appeal or judicial enforcement of Board decisions, to permit the resolution of disputes by the Fort Belknap - Montana Compact Board. Such waiver of immunity by the Tribes or the State shall not extend to any action for money damages, costs, or attorneys' fees.
 - i. Review and Enforcement of Board Decisions.
 - (1) Decisions by the Board are effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only parties to the proceedings before the Board or the United States may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of service of such decision. The hearing on appeal

by any party except the United States (unless otherwise provided by Congress) shall be on the record. The United States may seek a trial de novo on appeal. The notice of appeal shall be filed with the Board and served personally or by registered mail on all parties to the proceeding before the Board.

- (2) Unless appeal is filed within thirty (30) days of a final decision of the Board, the decision shall be recognized and enforced by any court of competent jurisdiction on petition of: the Board; any party before the Board in the proceeding in which the decision was made; the State; the Tribes, or the United States.
- (3) A court of competent jurisdiction in which a timely appeal is filed or in which a petition to confirm or enforce a decision by the Board is filed, may order such temporary or permanent relief as it determines to be appropriate.
- (4) Any appeal may be taken from a decision of the court in which an appeal from a Board decision is filed or in which a petition to confirm or enforce a decision of the Board is filed, in the manner and to the same extent as from orders of judgments of the court in a civil action.
- (5) In any appeal from a Board decision or petition to confirm or enforce a Board decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of the filing of the appeal or petition.

E. Administration of the Milk River to Satisfy the Tribal Water Right.

1. Operation of the Milk River to Satisfy the Tribal Water Right.

- a. Delivery of water on the mainstem of the Milk River shall include measures necessary to assure satisfaction of the Tribal Water Right.
- b. To satisfy the Tribal Water Right, including to replace water depleted on tributaries to the Milk River excluding Peoples Creek, and water depleted on the mainstem of the Milk River upstream from the Western Crossing through exercise of water rights Arising Under State Law, the Milk River Project storage facilities shall be operated to release or bypass the water necessary to assure satisfaction of the water right set forth in Section A.1.a. of Article III, subject to the following conditions:
 - (1) The Tribes shall notify the Bureau of Reclamation or its successor as operator of the Milk River Project and any water commissioner appointed following petition by the Parties pursuant to Section B.3. of Article VII, or any other person or entity, when the Tribes seek release or bypass of water to satisfy the water right set forth in Section A.1.a. of Article III. The obligation of the Bureau of Reclamation ends with the release or bypass. Enforcement necessary to deliver the water to the Reservation shall be pursuant to this Compact.
 - (2) The amount of water released or bypassed to satisfy the water right set forth in Section A.1.a. of Article III shall not exceed the lesser of:

- i. 645 Cfs; or
 - ii. the Calculated Undepleted Flow of the Milk River calculated pursuant to Section E.2. of this Article IV, modified to reflect any agreement or adjudication between the Blackfeet Tribe and the Fort Belknap Indian Community of the Fort Belknap Reservation on allocation of water from the Milk River to the Blackfeet Tribe, to the extent such agreement or adjudication affects the Calculated Undepleted Flow of the Milk River; or
 - iii. the amount and flow rate of water the Tribes can actually divert for use, storage, or diversion under an agreement for Transfer at the time of their notice to the Bureau of Reclamation and any water commissioner.
 - (3) In assuring satisfaction of the Tribal Water Right, the operators of the Milk River Project storage facilities shall use their best efforts to operate those facilities consistent with the criteria developed pursuant to Section C.11. of this Article IV. Provided, however, that any effort to maximize the amount of storage within the Milk River Basin or to comply with the operating criteria developed pursuant to Section C.11. of this Article IV shall not diminish or alter the obligations contained in Sections E.1.a. and b. of this Article IV to assure satisfaction of the Tribal Water Right.
2. Calculated Undepleted Flow of the Milk River.
- a. The determination of the Calculated Undepleted Flow of the Milk River at the point where the Milk River intersects the diversion point on the Reservation shall be done by the United States Bureau of Reclamation, in consultation with DNRC and TWRD, with review by the U.S.G.S. pursuant to the formula set forth in Appendix 4.
 - b. The amount of the United States' Share of the Natural Flow of the Milk River available for the Tribes shall be modified as necessary to reflect any agreement between the Blackfeet Tribe and the Fort Belknap Indian Community of the Fort Belknap Reservation on allocation of water from the Milk River, or adjudication of the Blackfeet Tribe's reserved water rights.
 - c. The Calculated Undepleted Flow of the Milk River may be modified pursuant to Appendix 4. and such modification shall not be considered a modification of the Compact.

ARTICLE V - DISCLAIMERS AND RESERVATION OF RIGHTS

- A. No Effect on Other Tribal Rights or Federal Reserved Water Rights.
 - 1. Except as provided in Sections A.2.a. of Article III, the relationship between the Tribal Water Rights of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community, Tribal members, and Allottees on the Fort Belknap Reservation described in this Compact and any rights to water of any other Indian tribe, tribal member, or Indian owner of trust lands claiming water under federal or tribal law, or of the United States on behalf of such tribe,

tribal member, or Indian owner of trust lands, shall be determined by the rule of priority unless otherwise agreed to by such tribe, tribal member, or Indian owner of trust lands, or the United States on behalf of such tribe, tribal member, or Indian owner of trust lands.

2. Nothing in this Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes, tribal members, or Indian owner of trust land of other Indian tribes outside of the Fort Belknap Reservation.
3. Except as provided in Sections C., D., and E. of Article IV and Section B.3. of Article VII pertaining to administration in the Milk River Basin, nothing in this Compact is otherwise intended to affect a right or claim of an Indian Tribe other than the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation.
4. Except as provided in Sections C., D. and E, of Article IV and Section B.3. of Article VII pertaining to administration in the Milk River Basin, nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of the United States on federal lands outside the Fort Belknap Reservation.

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

1. As a precedent for the litigation of reserved water rights;
2. As a precedent for the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;
3. Except as provided in Section I. of Article III closing certain basins to new appropriations under State law, to preclude the acquisition or exercise of a right Arising Under State Law to the use of water by any Allottee or member of the Tribes outside the Reservation by purchase of such right or by application to the State in accordance with state law;
4. To determine the relative rights inter sese of Persons using water under the authority of the State or the Tribes;
5. To limit in any way the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Compact;
6. To authorize the taking of a water right which is vested under State or federal law;
7. To create or deny substantive rights through headings or captions used in this Compact;
8. To prejudge how, in any interstate apportionment, the Tribal Water Right shall be counted;
9. To constitute a waiver of sovereign immunity by the Tribes or State except as is expressly set forth in this Compact;
10. To constitute a waiver of sovereign immunity by the United States except as expressly set forth in 43 U.S.C. § 666 (1952);
11. To prohibit the Tribes, Tribal members, or Allottees, or the United States on behalf of the Tribes, Tribal members, or Allottees except as agreed to in

Appendix 3, or the United States in any other capacity from objecting in any general stream adjudication in Montana Water Court to any claims to water rights;

12. Except as provided by Congress, to prevent the Tribes, or the United States on behalf of the Tribes, from filing an action in a court of competent jurisdiction to prevent any Person or Party from interfering with the Tribes in the enjoyment of the Tribal Water Right;
13. To affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the Tribe, Tribal members, or Allottees, or the State or state water right holders, or the United States or the United States Bureau of Reclamation;
14. To modify any portion of Article VI of the “Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States and Canada,” January 11 1909, and ratified by the Senate on May 13, 1910, 36 Stat. 2455, and the Order of the International Joint Commission on October 4, 1921 pertaining to “In the matter of the Measurement and Apportionment of the Waters of the St. Mary and Milk Rivers and their Tributaries in the State of Montana and the Provinces of Alberta and Saskatchewan;”
15. To prevent the Tribes from participating in any project to import water to, or improve storage in the Milk River Basin; or
16. To modify or prevent modification of the Memorandum of Agreement between the Bureau of Reclamation and the Office of Indian Affairs Milk River Project Montana, I-1-Ind. 18725, July 8, 1946.
17. To prevent the water court from adjudicating claims to water rights Arising Under State Law on fee land within the Reservation.
18. Except as expressly provided herein, to modify the obligation of any agency of the United States pursuant to federal law.
19. To limit the ability of the State, the Tribes, or the United States to enforce any state, tribal, or federal laws or any common law rights relating to the protection of the environment.
20. To limit any existing, present, or future claims of the Tribes or the United States on behalf of the Tribes concerning water quality.
- C. Obligations of the United States Contingent.
 1. Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on ratification and necessary authorization by Congress.
 2. The expenditure or advance of any money or the performance of any work by the United States or the Tribes pursuant to this Compact which may require appropriation of money by Congress or allotment of funds is contingent on such appropriation or allotment being made.
 3. The State and the Tribes recognize that this Compact has not been approved by the United States or any agency thereof and ratification by the Montana

legislature or ratification by the Tribal Council in no manner binds or restricts the discretion of the United States in the negotiation of all related matters.

D. Obligations of the State Contingent. The expenditure or advance of any money or the performance of any work by the State pursuant to this Compact which may require appropriation of money by the Montana Legislature or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. St. Mary Diversion Facilities. The Parties agree that the delivery of water through the facilities of the Milk River Project at least at its existing or design capacities, and especially the St. Mary Diversion Facilities for diversion of water to the Milk River and use downstream from the Eastern Crossing, is essential to the permanent success of the Compact and the finality of the reserved water rights settlement and to the continued irrigation of lands in the Milk River Project. The Parties further understand and agree that the facilities of the Milk River Project, especially the St. Mary Diversion Facilities, are old and are in need of repair, rehabilitation, and to the extent feasible, restoration to their original design capacities. In recognition of the essential nature of the Milk River Project facilities, especially the St. Mary Diversion Facilities, the Parties agree to work with the United States, the Blackfoot Tribe, and the Milk River Project water users to obtain the necessary authorization and funding for the repair, rehabilitation, and restoration of the St. Mary Diversion facilities. The Parties agree that this Compact and its federal legislation may or may not be the appropriate means to fund this project. The Parties further agree that any discussion of the repair, rehabilitation, and restoration of the St. Mary Diversion facilities as part of the negotiation of the federal legislation ratifying this Compact shall be preceded by an invitation to the Blackfoot Tribe to participate as a party in such discussions.

B. Mitigation of Impacts on the Milk River Project.

1. The Parties agree that, as a result of development and use of the Tribal Water Right and protection of water use on tributaries, the Milk River Project and its water users will, at times, be adversely affected if no change is made to the Milk River System. The Parties agree that hydrologic and engineering analyses have identified the impacts and have demonstrated that such impacts can be mitigated through a number of alternatives. The Parties agree that such alternatives, together with such other alternatives as may be identified by the Parties or any other person or entity and by the Bureau of Reclamation, are currently included or will be included in the Bureau of Reclamation's Milk River Basin Regional Feasibility Study, authorized by Congress in Public Law 106-163, and will receive appropriate environmental analyses in that Study. The Parties further agree that funding for water efficiency improvements (Watershed Improvements) and water banking will be included in the total funding for the Compact. In addition to funding for voluntary efficiency improvements and for water banking, mitigation measures authorized and funded as a part of the Compact must mitigate at least to the level of 35,000 Acre-feet Per Year, or a larger amount on agreement by the Parties if information or improved modeling available at the time of completion of the Milk River Basin Regional

Feasibility Study indicates that more is necessary for mitigation based on full development of the Tribal Water Right on the Milk River and tributary protection as contemplated in Section A.1. of Article III. The Parties agree to seek establishment of a fund and a schedule for incremental development of mitigation measures to assure that such measures are in place when needed to prevent impact from development of the Tribal Water Right. Mitigation measures identified by the Parties to be studied in the Feasibility Study include the following:

- a. Pumped storage from the Milk River to Nelson Reservoir;
 - b. Enlargement of the storage capacity of Nelson Reservoir through the construction of a secondary dam or dike dividing the Reservoir into two separate controllable storage facilities;
 - c. Rehabilitation and restoration of the St. Mary Diversion Facilities;
 - d. Enlargement of Fresno Dam and Reservoir to restore storage capacity lost by siltation and obtain additional storage capacity;
 - e. Construction of a dam and reservoir on lower Peoples Creek on the Reservation and on other tributaries to the Milk River, including Thirtymile Creek;
 - f. Construction of new facilities to import water to the Milk River Basin, including but not limited to: the Virgelle diversion, direct importation from Lake Elwell; and importation from the Missouri River or Fort Peck Reservoir to Vandalia via Duck Creek;
 - g. Construction of facilities to improve the water quality of the Fish and Wildlife Service's Bowdoin National Wildlife Refuge and to allow the use of Bowdoin as a storage facility for mitigation of impacts of the Compact;
 - h. Such other mitigation alternatives which the Parties may identify to be included in the Bureau of Reclamation's Milk River Basin Regional Feasibility Study, or additional studies agreed to by the Parties.
2. On completion of the Milk River Basin Regional Feasibility Study, the Bureau of Reclamation, in consultation with the irrigation districts and the Parties, shall select the appropriate mitigation measures.

C. Upper Peoples Creek Dam and Reservoir. The Parties agree that, as a result of the protections provided to the Upper Peoples Creek water users in the Compact and the variable natural water supply in the Peoples Creek Basin, the water supply available for development of the Tribal Water Right in Peoples Creek may be limited. The Parties agree that such impacts can and shall be mitigated, in whole or in part, through the construction of a dam and reservoir for the benefit of the Tribes in the upper Peoples Creek Basin, if a dam and reservoir is determined to be feasible from an engineering, geologic, and environmental analysis. Accordingly, the Parties agree to seek authorization of appropriations, appropriations, and a schedule for development of a dam and reservoir on Peoples Creek for the benefit of the Tribes.

D. State Contribution to Settlement. The Parties agree that the State contribution to settlement shall be negotiated by the State, the Tribes, and the United States as part of the negotiations on the Federal legislation. The agreement to, expenditure, or advance

of any State contribution which may require authorization and appropriation of money by the Montana Legislature or allotment of funds is contingent on such appropriation or allotment being made. Any local contribution to cost share shall be allocated to all Persons that benefit from the protections provided by the Compact.

E. Federal Contribution to Settlement. The Parties agree that the federal contribution to settlement shall be negotiated by the State, the Tribes, and the United States as part of the negotiations on the Federal legislation.

F. State Lands on the Reservation. The Parties agree to work together in the future to obtain the authorization necessary to exchange State lands on the Reservation for federal lands off the Reservation, and that any State lands acquired by the United States in an exchange shall be held in trust for the Tribes.

G. Project Lands. The Parties agree to work together to facilitate land classification and reclassification in the Milk River Project.

ARTICLE VII - FINALITY

A. Ratification and Effectiveness of Compact.

1. This Compact becomes Effective on the latest of the dates it is ratified by the Tribes, the State and by Congress. Following the first ratification by any party, the terms of this Compact may not be modified without the consent of the Parties. In the event of permanent or long term loss of the continued operation of the St. Mary Diversion facilities for diversion of water to the Milk River and use downstream from the Eastern Crossing, either due to loss, or to reallocation of water on agreement by the Parties, the Parties agree to enter negotiations on alternative remedies to supply water to portions of the Reservation served from the Milk River and to water rights Arising Under State Law within the Milk River Project. Minor loss or reallocation of water from the St. Mary Diversion facilities shall not be considered a permanent or long term loss. Until satisfactory completion of the above referenced negotiation or litigation and construction of water supply facilities to remedy the long term loss of the continued operation of the St. Mary Diversion facilities, the Tribes' diversion right from the Milk River shall be the amount developed for diversion at the time of the failure. All other provisions of the Compact shall remain in place. Should the Parties fail to reach agreement on alternative remedies within five (5) years of the permanent or long term loss of the continued operation of the St. Mary Diversion facilities, the Parties may seek a remedy in court for opening of the decree and adjudication of the portion of the Tribal Water Right in the Milk River Basin 40J. In opening the decree, there shall be no question of the validity of the Tribes' right to water currently developed.
2. Notwithstanding any other provision in this Compact, the Tribes reserve the right to withdraw as a party if:
 - a. Congress has not ratified this Compact and authorized appropriations within five (5) years from the date the Compact is ratified by the State;
 - b. The Tribes and United States do not reach agreement on the federal contribution to settlement; or

- c. Appropriations are not made in the manner contemplated by the federal legislation ratifying this Compact.
 - d. The Parties do not reach agreement on the State contribution to settlement.
 - e. The State has not authorized appropriations within three (3) years from the date the Compact is ratified by the United States.
 - f. Appropriations are not made by the State in the manner contemplated by any agreement for contributions to settlement made pursuant to Section D. of Article VI of this Compact.
3. The Tribes may exercise their right to withdraw from the Compact under Section A.2. of Article VII of the Compact by sending to the Governor of Montana and to the Secretary of the Interior by certified mail a resolution of the Fort Belknap Community Council stating the Tribes' intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any party.
4. Improvements to the Milk River Project to mitigate the impact of potential development of the Tribal Water Right and of tributary protection is essential to the agreement of the State to this Compact. Thus, notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a party if:
- a. The Tribes and Congress have not ratified this Compact within five (5) years from the date the Compact is ratified by the State;
 - b. Congress requires a State contribution to settlement that exceeds the contribution authorized by the Montana Legislature or the contribution agreed to by the Parties if Congressional authorization precedes authorization by the Montana Legislature without the agreement of the State; or
 - c. Congress does not authorize and appropriate the federal share of funding for the modifications to the Milk River Project or other alternatives necessary to mitigate the impact of development of the Tribal Water Right as outlined generally in Section B. of Article VI, as enacted in the federal legislation ratifying this Compact and such modifications or other alternatives are not constructed
5. The State may exercise its right to withdraw from the Compact under Section A.4. of this Article VII of the Compact by sending to the Fort Belknap Tribal Chair and to the Secretary of the Interior by certified mail a letter from the Governor of Montana stating the intent of the State to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the letter. In considering exercise of the right to withdraw, the Governor shall consult with Persons affected by this Compact including the Milk River Joint Board of Control. On the date designated in the letter for State withdrawal, this Compact shall become null and void without further action by any party.

- B. Incorporation into Decrees.
1. Within one hundred eighty (180) days of the date this Compact is ratified by the Tribes, the State, and Congress, whichever is latest, the Tribes, and/or the State, and/or the United States shall file, in the general stream adjudication initiated by the State pursuant to the provisions of § 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust for the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community and Tribal members of the Fort Belknap Reservation. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of § 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666 or other provisions of federal law.
 2. Consistent with § 3-7-224, MCA, and for the purposes of § 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, and Appendix 1, and may extend to other Sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III as displayed in Appendix 1, and such other information as may be required by § 85-2-234, MCA. Nevertheless, pursuant to § 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.
 3. Concurrent with filing of the motion for entry of the proposed decree, the Parties shall seek appointment of a water commissioner or commissioners pursuant to Title 85, Chapter 2, Parts 1-3 of the Montana Code Annotated in the appropriate state district court pursuant to § 85-2-406, MCA, and as set forth in Appendix 1, to enforce water use pursuant to decrees of the Water Court, permits issued by DNRC, contracts issued by the BOR, and use pursuant to Tribal law, from the mainstem of the Milk River downstream from the Eastern Crossing pursuant to this Compact, federal, Tribal, and State law, and the final decrees. The Parties shall ask the district court to stay the appointment pending issuance of preliminary decrees on the Milk River Basin downstream from the Eastern Crossing. The request for appointment of a water commissioner by the Parties shall be sufficient to meet the requirements of § 85-5-101, MCA pertaining to the persons who may request appointment of a water commissioner. Notwithstanding the requirement of yearly appointment of a water commissioner under state law, the Parties shall seek, and the district court may appoint, a permanent water commissioner or commissioners. The petition by the Parties does not preclude the right of any Person to seek appointment of a water commissioner or enforcement of water rights pursuant to applicable law.
 4. The Parties agree to seek a mechanism for funding the Tribal share of the cost of the water commissioner or commissioners in the federal legislation ratifying the Compact.
 5. Water users with rights to divert water from the mainstem of the Milk River downstream from the Eastern Crossing under authority of State, federal or

Tribal law, shall notify the water commissioner within a reasonable period in advance of a need to divert water.

6. Any Person authorized to use water from the mainstem of the Milk River Basin downstream from the Eastern Crossing objecting to the distribution of water by the water commissioner, or to a use of water by another Person, may use the remedies provided by § 85-5-301, MCA.
7. In the distribution of water, the water commissioner or commissioners shall be bound by the decrees of the water court, however, the commissioner or commissioners may use the databases developed pursuant to Section C.3.d. of Article IV to facilitate understanding of the distribution of water within a particular water right.
8. Nothing in this Compact shall prevent the holders of water rights Arising Under State Law or Tribal Water Rights with a source on the mainstem of the Milk River below the Eastern Crossing from agreeing to an alternative water distribution plan that allows sharing of shortages, distribution of shortage, operation of storage, or exchange of storage in a manner other than priority. Such agreement shall be enforced by the court appointing the water commissioner.

C. Disposition of Federal Suit.

1. On issuance of a final decree by the Montana Water Court or its successor, and the completion of any direct appeals therefrom, or on expiration of the time for filing any such appeal, the United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.R.Civ.P., to dismiss without prejudice the claims of the Tribes, Tribal members, and Allottees and any claims made by the United States for benefit of the Tribes, Tribal members, and Allottees in *United States v. Aageson*, No. CIV-79-21-GF (filed April 5, 1979). The case may only be resumed if the State or Tribes exercise their rights under Section A. of this Article VII.
2. The Decree shall be filed by the Parties as a consent decree in *Aageson*, or in federal court as a new proceeding after the dismissal of *Aageson* conditional on agreement by the Parties to seek the necessary State, Tribal, and federal legislation to implement the remaining provisions of the Compact, if it is finally determined in a judgment binding on the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings are inadequate to adjudicate some or all of the water rights asserted in *Aageson*.

D. Settlement of Tribal Water Right Claims.

1. The water rights and other benefits confirmed to the Tribes in this Compact are in full and final satisfaction of and are intended to be in replacement of and substitution for all claims to water or to the use of water by the Tribes, Tribal members, and Allottees and the United States on behalf of the Tribes, Tribal members, and Allottees existing on the Effective Date of this Compact, including federal reserved water rights claims based on or recognized in *Winters v. United States*, 207 U.S. 564 (1908), within the State of Montana.
2. In consideration of the rights confirmed to the Tribes, Tribal members, and Allottees in this Compact, and of performance by the State and the United States of all actions required by this Compact, and on entry of a final order

issuing the decree of the Tribal Water Right held in trust by the United States as quantified in this Compact and displayed in Appendix 1, and except for water rights, benefits and uses confirmed in this Compact, the Tribes and the United States as trustee for the Tribes, Tribal members, and Allottees hereby waive, release, and relinquish any and all claims to water rights or to the use of water within the State existing on the Effective Date of this Compact.

3. Any claim to water by the Tribes, Tribal members, or Allottees within the Reservation shall be satisfied out of the Tribal Water Right confirmed by this Compact.

E. Settlement of Tribal Claims Against the United States. Waiver of claims against the United States, by the Tribes and Tribal members shall be as provided by Congress.

F. Binding Effect. After the Effective Date of this Compact and entry of a final decree, its terms shall be binding on:

1. The State and any Person or entity using, claiming or in any manner asserting any right under the authority of the State to the use of water in Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;
2. The Tribes and any Person or entity using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribes or Tribal members, or any rights arising under tribal law; provided that, the validity of consent, ratification or authorization by the Tribes is to be determined by Tribal law; and
3. The United States and any Person or entity using, claiming or in any manner asserting any right under the authority of the United States to the use of water in Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law;

ARTICLE VIII - LEGISLATION/DEFENSE OF COMPACT

A. State Legislation. The State and Tribes agree to seek ratification of the Compact by the Montana Legislature and any additional state legislation necessary to effectuate the Compact.

B. Federal Legislation. The State and Tribes agree to seek ratification of the Compact by Congress and any additional federal legislation necessary to effectuate the Compact.

C. Tribal Legislation. The State and Tribes agree to seek ratification of the Compact by the Fort Belknap Community Council and any Tribal legislation necessary to effectuate the Compact.

D. Defense of the Compact. The Parties agree to defend the Compact from all challenges and attacks and in all proceedings pursuant to Sections B. and C. of Article VII, and agree that no provision of the Compact shall be modified as to substance except as may be provided in the Compact, or by agreement among the Parties.

IN WITNESS WHEREOF the representatives of the State of Montana, the Fort Belknap Indian Community of the Fort Belknap Reservation, and the United States, have signed this Compact on the ____ day of _____, 20__.

History: En. Sec. 1, Ch. 256, L. 2001.

85-20-1002. Findings and purpose. (1) It is the policy of the state to seek negotiated settlements of federal and Indian reserved water rights claims in Montana under Title 85, chapter 2, part 7.

(2) Pursuant to this policy, the reserved water rights compact commission commenced negotiations with the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation and the United States.

(3) A compact, 85-20-1001, has been agreed to between the state of Montana and the Fort Belknap Indian Community of the Fort Belknap Reservation that, among other things, provides an allocation of water to the tribes in settlement of their water right claims and provides protection for certain water rights arising under state law. Approval of the compact by the United States requires ratification by congress.

(4) (a) For purposes of implementing the compact, 85-20-1002 through 85-20-1008:

- (i) establish accounts necessary to meet certain obligations agreed to in the compact;
 - (ii) provide a structure for the issuance of grants and loans; and
 - (iii) provide for the facilitation of the development of an economic development plan.
- (b) Funding for the accounts established under 85-20-1004, 85-20-1005, and 85-20-1007 is subject to state and federal cost-share negotiations, approval of state cost-share by the legislature, and approval of federal cost-share by the United States congress.
- (5) The state's obligation to provide funding to implement the compact and to satisfy the state's cost-share, once approved by the legislature, must be conditioned on:
- (a) final court approval of a decree of the water rights of the tribes as set forth in Article VII, sections B. through D., of the compact; and
 - (b) validity of the compact under Article VII, section A., of the compact.
- (6) Funds appropriated to accounts established under 85-20-1004, 85-20-1005, and 85-20-1007 and interest on appropriated funds are not available for expenditure unless the conditions, provided in subsection (5), are met.
- (7) If a court does not approve a final decree, if the compact becomes null and void, or if one of the parties withdraws from the compact, the funds appropriated by the state to accounts established in 85-20-1004, 85-20-1005, and 85-20-1007 must revert to the general fund and any federal funds must be returned to the United States treasury. If a portion of the funding or interest on funding provided in 85-20-1004, 85-20-1005 and 85-20-1007 has been expended prior to the return of funds to the general fund, any claim against the state by the tribes or by the United States on behalf of the tribes for adjudication of the

water rights of the tribes must be offset by the amount of the expenditures of state funds or interest on state funds.

History: En. Sec. 2, Ch. 256, L. 2001.

85-20-1003. Definitions. The definitions provided for in 85-20-1001 apply to 85-20-1002 through 85-20-1008. The absence of capitalization of defined terms in 85-20-1002 through 85-20-1008 does not affect the meaning or application of a defined term.

History: En. Sec. 3, Ch. 256, L. 2001.

85-20-1004. Mitigation account. (1) A private purpose trust account, called the mitigation account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds appropriated by the state for mitigation measures required by Article VI of the compact.

(2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the mitigation account must be made available to the United States bureau of reclamation to cover the state's cost-share for construction of mitigation measures chosen on completion of a feasibility study and appropriate state and federal environmental review by the bureau of reclamation and on consideration of the economic development plan authorized by 85-20-1008.

History: En. Sec. 4, Ch. 256, L. 2001; amd. Sec. 128, Ch. 114, L. 2003.

85-20-1005. Watershed improvement trusts. (1) A permanent fund account, called the state Milk River watershed improvement trust, is established, as provided for in 17-2-102, for deposit of funds appropriated pursuant to the compact for a permanent trust. Interest income may be used by the Milk River coordinating committee established pursuant to the compact for the purpose of allocating grants and loans.

(2) A permanent fund account, called the federal Milk River watershed improvement trust, is established, as provided for in 17-2-102, for receipt of federal funds appropriated for a permanent trust. Interest income may be used by the Milk River coordinating committee established pursuant to the compact for the purpose of allocating grants and loans.

(3) The state and federal Milk River watershed improvement trusts must be collectively referred to as the Milk River watershed improvement trusts.

History: En. Sec. 5, Ch. 256, L. 2001; amd. Sec. 129, Ch. 114, L. 2003.

85-20-1006. Terms and conditions of loan. A Milk River watershed improvement trusts loan is subject to the following terms and conditions:

(1) Except for loan agreements with an Indian tribe, the DNRC shall obtain a security interest in real estate that would be obtained by a reasonable, careful, and prudent lender.

(2) A current appraisal of real estate offered as security and a commitment for title insurance on that land must be secured by the borrower at the borrower's expense. All costs incident to the loan and loan closing must be paid by the borrower.

- (3) For a loan agreement with an Indian tribe, security must be pursuant to the appropriate federal authority to secure a loan on trust land, and with an allottee, security must be pursuant to 25 U.S.C. 483A.
- (4) The term of the loan may not be greater than the life of the project and may not exceed 30 years.

History: En. Sec. 6, Ch. 256, L. 2001.

85-20-1007. Peoples Creek minimum flow account. (1) A private purpose trust account, called the Peoples Creek minimum flow account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds appropriated by the state for efficiency improvements and bypass structures for irrigation upstream from the Fort Belknap Reservation in the Peoples Creek Basin 40I and for a reservoir on the Reservation for the purpose of improving minimum stream flow.

- (2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the Peoples Creek minimum flow account must be made available to the water users and the tribes to cover the cost of construction of improvements as agreed to in the state and federal cost-share negotiations.

History: En. Sec. 7, Ch. 256, L. 2001; amd. Sec. 130, Ch. 114, L. 2003.

85-20-1008. Economic development plan. (1) The DNRC is directed to facilitate development of an economic development plan focused on future use of water and currently irrigated land, including but not limited to use of water and irrigated land for irrigation, industrial, recreational, fisheries, and habitat purposes in the Milk River basin.

- (2) The Milk River regional feasibility study examines alternative measures for mitigation of impacts of development of the tribal water right for the purpose of determining feasibility and environmental impact. The purpose of the economic development plan is to supplement the federal studies and provide information to assist in choosing mitigation measures by examining the long-term economic potential of water use in the Milk River basin.
- (3) At a minimum, the DNRC shall include irrigation districts, individual irrigators, conservation districts, county governments, and municipalities in the development of the economic development plan.

History: En. Sec. 8, Ch. 256, L. 2001.

**U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURE RESEARCH SERVICE
FORT KEOGH LIVESTOCK AND RANGE
RESEARCH LABORATORY – MONTANA
COMPACT**

U.S. Department of
Agriculture Research
Service Fort Keogh
Livestock and Range
Research Laboratory
– Montana Compact



Title 85 Water Use
Chapter 20 Water Compacts

85-20-1101. United States of America, Department of Agriculture, Agricultural Research Service, Fort Keogh Livestock and Range Research Laboratory-Montana compact ratified. The Compact entered into by the State of Montana and the United States of America, Department of Agriculture, Agricultural Research Service, Fort Keogh Livestock and Range Research Laboratory and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702, MCA, on March 27, 2007, is ratified. The compact is as follows:

WATER RIGHTS COMPACT STATE OF MONTANA UNITED STATES
OF AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL
RESEARCH SERVICE, FORT KEOGH LIVESTOCK AND RANGE RESEARCH
LABORATORY

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 existing on the Effective Date of This Compact to reserved water rights in the State of Montana for the United States Fort Keogh Livestock and Range Research Laboratory administered by the U.S. Department of Agriculture, Agricultural Research Service.

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, 85-2-703, MCA, provides that the State may negotiate compacts concerning the equitable division and apportionment of water between the State and its people and the federal government with claims to non-Indian reserved water rights 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 reservation of lands for the United States Fort Keogh Livestock and Range Research Laboratory in the State of Montana;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-17 (1968);

WHEREAS, the Secretary of the Agriculture, or a duly designated official of the United States Department of the Agriculture, has authority to execute this Compact on behalf of the United States Department of Agriculture pursuant to 7 U.S.C. 2201 note, Section 1(a);

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

ARTICLE I DEFINITIONS

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

- (1) “Abstracts” mean the copy of the documents entitled “Abstracts of United States Fort Keogh Livestock and Range Research Laboratory Water Rights” referenced in this Compact as Appendices 2, 3, 4, 6, and 7.
- (2) “Acre-Foot per Year” means an annual quantity of water measured in acre-feet over a period of a year. “Acre-foot” or “Acre-feet” means the amount of water necessary to cover 1 acre to a depth of 1 foot and is equivalent to 43,560 cubic feet of water.
- (3) “Animal Unit” means a measure of livestock numbers, where one Animal Unit equals 1 beef cow, 1 beef cow and calf, 3 pigs, 5 sheep, or 300 chickens. One dairy cow or 1 horse equals 1.5 Animal Units.
- (4) “Consumptive” means a use of water which removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments or natural lakes.
- (5) “Department” means the Montana Department of Natural Resources and Conservation or its successor.
- (6) “Effective Date of This Compact” means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever is latest.
- (7) “Groundwater” means water that is beneath the ground surface.
- (8) “Parties” means the State of Montana and the United States.
- (9) “Person” means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.
- (10) “State” means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, “State” means the Director of the Department or the Director’s designee.
- (11) “Stock Use” means the use of water for livestock, including but not limited to cattle, horses, pigs, sheep, and chickens. This term does not include use of water for domestic animals, such as dogs or cats, or wild animals.
- (12) “Supplemental Right” means a separate water right for the same purpose, owned by the United States, and used on a common place of use.
- (13) “United States” means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, “United States” means the Secretary of the Department of Agriculture or the Secretary’s designee.
- (14) “United States Fort Keogh Livestock and Range Research Laboratory” means those lands located in the State of Montana that were withdrawn from disposition and reserved by the Act of April 15, 1924, 43 Stat. 99. The lands that comprise

the United States Fort Keogh Livestock and Range Research Laboratory are depicted on the map attached as Appendix 1 to this Compact.²

- (15) “Water Spreading” means surface flood irrigation involving the diversion of occasional (flood or runoff) surface water from natural, usually nonperennial, watercourses by means of dams, dikes, or ditches or a combination of these. It differs from conventional irrigation because it is totally dependent on and regulated by the availability of water, not crop needs.

ARTICLE II WATER RIGHT

The Parties agree that the following water rights are in settlement of all of the United States’ federal reserved water rights for the United States Fort Keogh Livestock and Range Research Laboratory.

A. Purpose of Reservation for the United States Fort Keogh Livestock and Range Research Laboratory.

The United States Fort Keogh Livestock and Range Research Laboratory was created for the purpose of stock raising experiments and growing of forage crops in connection therewith. Act of April 15, 1924, 43 Stat. 99. The United States’ federal reserved water rights for the United States Fort Keogh Livestock and Range Research Laboratory shall be used only for purposes relating to its experimental research regarding stock raising and crop growing on United States Fort Keogh Livestock and Range Research Laboratory lands.

B. Quantification.

Subject to the terms of Article III, the United States shall have the right to water for the following purposes from the sources identified on United States Fort Keogh Livestock and Range Research Laboratory lands.

1. Irrigation Use.

(a) Current Irrigation Use From the Yellowstone River -- Water Court Basin 42KJ.

(i) The United States has a federal reserved water right to withdraw or divert water from the Yellowstone River in Water Court Basin 42KJ of 58 cubic feet per second for current irrigation use on 1,523 acres within United States Fort Keogh Livestock and Range Research Laboratory lands. The specific elements of this right are set forth in the Abstract attached as Appendix 2 to this Compact. Provided that, the reserved right described in this subsection is a Supplemental Right to any United States’ water right under state law for irrigation use on United States Fort Keogh Livestock and Range Research Laboratory lands with a priority date senior to the reserved right described in this subsection.

(ii) The United States has a federal reserved water right for irrigation use by Water Spreading on Reservation Creek, a tributary of the Yellowstone River, in Water Court Basin 42KJ for current irrigation use on 450 acres within United States Fort Keogh Livestock and Range Research Laboratory lands. The specific elements of this right are set forth in the Abstract attached as Appendix 3 to this Compact.

- (b) Current Irrigation Use From the Tongue River Drainage -- Water Court Basin 42C.

The United States has a federal reserved water right for irrigation use by Water Spreading on an unnamed tributary of the Tongue River in Water Court Basin 42C for current irrigation use on 203 acres within United States Fort Keogh Livestock and Range Research Laboratory lands. The specific elements of this right are set forth in the Abstract attached as Appendix 4 to this Compact.

- (c) Future Irrigation Use From the Yellowstone River -- Water Court Basin 42KJ.

The United States has a federal reserved water right to withdraw or divert water from the Yellowstone River, a tributary, or Groundwater in Water Court Basin 42KJ for future irrigation use on up to a total of additional 620 acres on United States Fort Keogh Livestock and Range Research Laboratory lands with a combined flow rate of up to a total additional 23 cubic feet per second to fulfill the purposes of the United States Fort Keogh Livestock and Range Research Laboratory.

2. Stock Use.

- (a) Current Stock Use.

The United States has federal reserved water rights for Consumptive use for stockwatering purposes at the locations identified in the table attached as Appendix 5 for the volume of water specified from each source, provided that the total current Stock Use on United States Fort Keogh Livestock and Range Research Laboratory lands shall not exceed the historic maximum of 3,000 Animal Units. The specific elements of these rights are set forth in the Abstracts attached as Appendix 6 to this Compact.

- (b) Future Stock Use.

In addition to the current Stock Use described in Article II, section B.2.(a), the United States has federal reserved water rights for Consumptive use for stockwatering purposes at the same locations and the same volume of water as described in Article II, section B.2.(a) for future Stock Use on United States Fort Keogh Livestock and Range Research Laboratory lands not to exceed an additional 2,000 Animal Units.

3. Administrative Uses.

- (a) Current Administrative Uses.

The United States has federal reserved rights for Consumptive use for current administrative uses on United States Fort Keogh Livestock and Range Research Laboratory lands totaling 26.70 Acre-Feet per Year. The specific elements of these rights are set forth in the Abstracts attached as Appendix 7 to this Compact.

- (b) Future Administrative Uses.

The United States has federal reserved water rights from surface water or Groundwater for Consumptive use for future administrative uses up to a total additional volume of 18 Acre-Feet per Year to fulfill the purposes of the United States Fort Keogh Livestock and Range Research

Laboratory. The types of use of the United States' federal reserved water rights for administrative uses may include but are not limited to domestic, administrative, storage, dust abatement, reclamation, and research.

4. Emergency Fire Suppression.

The use of water for emergency fire suppression benefits the public and is necessary for the purposes of the United States Fort Keogh Livestock and Range Research Laboratory. The United States may, as part of its reserved water right, divert or withdraw water for fire suppression on the United States Fort Keogh Livestock and Range Research Laboratory lands as needed and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for Consumptive use.

5. Period of Use.

(a) The period of use of the United States' federal reserved water rights for Consumptive use set forth in Article II, sections B.1.(a)(i) shall be from March 15 to November 19 of each year.

(b) The period of use of the United States' federal reserved water rights for Consumptive use set forth in Article II, sections B.1.(a)(ii) and B.1.(b) shall be from January 1 to December 31 of each year.

(c) The period of use of the United States' federal reserved water rights for Consumptive use set forth in Article II, sections B.2. through B.4. shall be from January 1 to December 31 of each year.

6. Priority Date.

The priority date for all federal reserved water rights for the United States Fort Keogh Livestock and Range Research Laboratory is April 15, 1924.

ARTICLE III IMPLEMENTATION

A. Abstracts.

Concurrent with this Compact, the Parties have prepared Abstracts, copies of which are attached as Appendices 2, 3, 4, 6, and 7 to this Compact, which specifically identify all of the United States' current use of water for the United States Fort Keogh Livestock and Range Research Laboratory described in this Compact and quantified in accordance with this Compact. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstracts are subject to the terms of this Compact.

B. Enforcement and Administration of Water Right.

1. The United States, the State, or a holder of a water right recognized under state law may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water rights described by this Compact and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable or, to the extent not applicable, by appropriate state or federal law.

2. For purposes of the administration of federal reserved water rights provided for in Article II, the United States agrees that a water commissioner or other official appointed by a court of competent jurisdiction may enter the United States Fort Keogh Livestock and Range Research Laboratory lands to collect data, inspect structures for the diversion and measurement of water, and distribute the federal reserved water rights described in Article II. The terms of entry or distribution may be limited, as appropriate, by an order of a court of competent jurisdiction. Nothing herein waives the right of the United States, with respect to a specific action or anticipated action by a water commissioner or other official under this subsection, to seek terms of entry or distribution consistent with purposes of the United States Fort Keogh Livestock and Range Research Laboratory including but not limited to terms of entry that respect the integrity of ongoing or proposed research, or to seek terms of entry or distribution consistent with federal law if in conflict with state law.
 3. The Department may enter the United States Fort Keogh Livestock and Range Research Laboratory lands upon which a federal reserved water right is described in Article II for the purposes of data collection on United States Fort Keogh Livestock and Range Research Laboratory water diversions or water uses. The Department shall notify the United States by certified mail or in Person at least 24 hours prior to entry.
 4. The federal reserved water right described in Article II, section B.1.(b) shall not be the basis of a call on a water right recognized under state law and shall not be enforceable by the United States in an administrative or judicial proceeding except as needed to protect against a call from a junior water right under state law.
- C. Use of Federal Reserved Water Rights.
1. Federal Reserved Water Rights.
The reserved rights of the United States described in this agreement are federal water rights. Nonuse of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the United States Fort Keogh Livestock and Range Research Laboratory.
 2. Development of Future Uses.
The United States, without prior approval of the Department, may develop a future use after the Effective Date of This Compact as described in Article II, sections B.1.(c), B.2.(b), and B.3.(b), provided that:
 - (a) the purpose of use is for the use authorized under Article II, sections B.1.(c), B.2.(b), or B.3.(b);
 - (b) the total quantity of water shall not exceed the amount set forth in Article II, sections B.1.(c), B.2.(b), or B.3.(b);
 - (c) the source of supply shall be restricted as set forth in Article II, section B.1.(c);

- (d) any Groundwater development pursuant to Article II, section B.1.(c) in Section 8, Township 7 North, Range 47 East, Custer County, shall not interfere with the exercise of water right number 42C 183101-00 or 42C 183102-00; and
 - (e) the use shall not adversely affect a senior water right recognized under state law.
- D. Change in Use of Federal Reserved Water Rights.
1. Irrigation Use.
The United States may change its federal reserved water rights for irrigation use, provided that:
 - (a) the action shall be in fulfillment of the purposes of the United States Fort Keogh Livestock and Range Research Laboratory described in Article II, section A;
 - (b) the use of water is irrigation use;
 - (c) the total use shall not exceed the total acreage, and flow rate or volume described in Article II, sections B.1.(a) and B.1.(c) and the Abstracts attached as Appendices 2 and 3 to this Compact;
 - (d) the source of supply shall be restricted to the source of supply set forth in Article II, sections B.1.(a) and B.1.(c);
 - (e) the federal reserved water right for irrigation use described in Article II, section B.1.(b) shall not be subject to change; and
 - (f) the change shall not adversely affect a water right recognized under state law.
 2. Stock Use.
The United States may change its federal reserved water rights for Stock Use, provided that:
 - (a) the action shall be in fulfillment of the purposes of the United States Fort Keogh Livestock and Range Research Laboratory described in Article II, section A;
 - (b) the total Stock Use shall not exceed the amount of water or number of Animal Units described in Article II, section B.2.; and
 - (c) the change shall not adversely affect a water right recognized under state law.
 3. Administrative Use.
The United States may change its federal reserved water rights for administrative use, provided that:
 - (a) the action shall be in fulfillment of the purposes of the United States Fort Keogh Livestock and Range Research Laboratory described in Article II, section A;
 - (b) the total administrative use shall not exceed the amount of water described in Article II, section B.3.; and
 - (c) the change shall not adversely affect a water right recognized under state law.
 4. Emergency Fire Suppression.
The United States' federal reserved water right to divert or withdraw water for

emergency fire suppression as described in Article II, section B.4, shall not be changed to any other use.

E. Reporting Requirements.

The United States shall provide a report to the Department on an annual basis, or on a periodic basis agreed to by the Parties, containing specific information on:

1. the development of new uses as described in Article II, sections B.1.(c), B.2.(b), and B.3.(b);
2. changes in use as described in Article III, section D; and
3. the source of supply, the dates of use, and the estimated amount of water used for emergency fire suppression as described in Article II, section B.4.

ARTICLE IV GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.

1. The relationship between the water rights of the United States described herein and any rights to water of an Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.
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 to water of any other federal agency or federal lands in Montana other than those of the United States Fort Keogh Livestock and Range Research Laboratory.
3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and tribal members.
4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests.

B. General Disclaimers.

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State or of the United States and any other state;
2. as a waiver by the United States on behalf of the Agricultural Research Service of its right under state law to raise objections in state court to individual water rights claimed pursuant to the State Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact or any right 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 Code Annotated, in the basins affected by this Compact;
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;
4. to establish a precedent for other agreements between the State and the United States or an Indian Tribe;
5. to determine the relative rights, inter sese, of Persons using water under the authority of state law or to limit the rights of the Parties or a Person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;
7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of This Compact;
8. to limit the authority of the United States to manage its lands in accordance with the Constitution, statutes, and regulations of the United States;
9. to affect in any manner the entitlement to or quantification of other federal water rights;
10. to be binding on the United States with regard to the water rights of the United States for any area other than the United States Fort Keogh Livestock and Range Research Laboratory;
11. to affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;
12. to prevent the United States from seeking a permit to appropriate water under state law for use within or outside the United States Fort Keogh Livestock and Range Research Laboratory boundaries.

C. Reservation of Rights.

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

D. Severability.

The provisions of this Compact are not severable.

E. Multiple Originals.

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

F. Notice.

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing.
2. United States: Upon the Secretary of Agriculture, the United States Fort Keogh Livestock and Range Research Laboratory Research Leader, and such other officials as the Secretary may designate in writing.

ARTICLE V FINALITY OF COMPACT

A. Binding Effect.

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 Department of Agriculture, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the Parties.
2. Following the effective date, this Compact shall not be modified without the consent of both Parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction.
3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this

Compact and such rights are binding on all Persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-703, MCA, and 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. Filing Compact with State Court.

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of This Compact, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

C. Dismissal of Filed Claims.

At the time the state courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all water right claims specified in Appendix 8 of this Compact for the United States Fort Keogh Livestock and Range Research Laboratory. If this Compact is not approved or a water right described herein is not confirmed, these claims shall not be dismissed.

D. Settlement of Claims.

The Parties intend that the water rights described in this Compact are in full and final settlement of the federal reserved water right claims for the United States Fort Keogh Livestock and Range Research Laboratory land in Montana described in this Compact and administered by the Agricultural Research Service on the Effective Date of This Compact. On the Effective Date of This Compact, the United States hereby and in full settlement of any and all claims to federal reserved water rights by the United States, including all claims that the Agricultural Research Service filed or could have filed as part of the ongoing statewide adjudication process, relinquishes forever all claims to federal reserved water rights within the State of Montana for the United States Fort Keogh Livestock and Range Research Laboratory. The State agrees to recognize the water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the State. Nothing in this Compact precludes the Agricultural Research Service from filing for future water use permits under Montana state law.

E. Defense of Compact.

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the _____ day of _____, 200__.

History: En. Sec. 1, Ch. 79, L. 2007.

**U.S. DEPARTMENT OF AGRICULTURE,
AGRICULTURE RESEARCH SERVICE,
SHEEP EXPERIMENT STATION –
MONTANA COMPACT**

U.S. Department of
Agriculture, Agriculture
Research Service, Sheep
Experiment Station
– Montana Compact



Title 85 Water Use
Chapter 20 Water Compacts

85-20-1201. United States of America, Department of Agriculture, Agricultural Research Service, Sheep Experiment Station-Montana Compact ratified. The Compact entered into by the State of Montana and the United States of America, Department of Agriculture, Agricultural Research Service, Sheep Experiment Station, and filed with the secretary of state of the State of Montana under the provisions of 85-2-702, MCA, on March 27, 2007, is ratified. The compact is as follows:

WATER RIGHTS COMPACT STATE OF MONTANA UNITED STATES OF
AMERICA, DEPARTMENT OF AGRICULTURE, AGRICULTURAL RESEARCH
SERVICE, SHEEP EXPERIMENT STATION

This Compact is entered into by the State of Montana (“State”) and the United States of America (“United States”) to settle for all time any and all claims existing on the Effective Date of this Compact to reserved water rights in the State for the United States Sheep Experiment Station (“U.S. Sheep Experiment Station”) administered by the United States Department of Agriculture, Agricultural Research Service.

RECITALS

WHEREAS, the State, 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, including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the State may negotiate compacts concerning the equitable division and apportionment of water between the State and its people and the federal government with claims to non-Indian reserved water rights within the State;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the reservation of lands for the U.S. Sheep Experiment Station in the State;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516 and 517;

WHEREAS, the Secretary of Agriculture, or a duly designated official of the United States Department of Agriculture, has authority to execute this Compact on behalf of the United States Department of Agriculture pursuant to 7 U.S.C. 2201 note, Section 1(a).

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

ARTICLE I DEFINITIONS

For purposes of this Compact only, the following definitions apply:

- (1) “Abstracts” means the copy of the document entitled “Abstracts of U.S. Sheep Experiment Station Water Rights” referenced in this Compact as Appendix 3.

- (2) “Consumptive” means a use of water that removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments or natural lakes.
- (3) “Department” means the Montana Department of Natural Resources and Conservation or its successor.
- (4) “Effective Date of this Compact” means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever is latest.
- (5) “Groundwater” means water that is beneath the ground surface.
- (6) “Parties” means the State and the United States.
- (7) “Person” means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.
- (8) “State” means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, “State” means the Director of the Department or the Director’s designee.
- (9) “United States” means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, “United States” means the Secretary of the Department of Agriculture or the Secretary’s designee.
- (10) “U.S. Sheep Experiment Station” means those lands within Montana that were withdrawn and reserved by Executive Order No. 3767, dated December 19, 1922, as depicted on the map attached as Appendix 1 to this Compact. For purposes of this Compact, it does not include portions of the U.S. Sheep Experiment Station located in the State of Idaho that the United States owns and the U.S. Department of Agriculture, Agricultural Research Service, administers.

ARTICLE II WATER RIGHT

The Parties agree that the following water rights are in settlement of all of the United States’ federal reserved water rights for the U.S. Sheep Experiment Station.

A. Purpose of Reservation for the U.S. Sheep Experiment Station.

The U.S. Sheep Experiment Station was created for agricultural experiment purposes, and the land in Montana was set aside for experimental sheep grazing by Executive Order No. 3767, dated December 19, 1922.

B. Quantification.

Subject to the terms of Article III, the United States has federal reserved water rights from sources located on the U.S. Sheep Experiment Station as described below.

1. Current Stockwater Use.

The United States has federal reserved rights on U.S. Sheep Experiment Station lands for Consumptive use for stockwatering purposes at the 53 locations

identified in the table attached as Appendix 2 for the volume of water identified. Abstracts for each of these federal reserved water rights are attached as Appendix 3 to this Compact. In the event of a discrepancy between the summary of U.S. Sheep Experiment Station water rights in Appendix 2 and the Abstracts contained in Appendix 3, the Abstracts in Appendix 3 control. The period of use of the United States' water rights for Consumptive use set forth in Article II, section B.1., shall be from May 1 to October 31 of each year.

2. Future Uses.

In addition to the current stockwater uses identified in Article II, section B.1., the United States has a federal reserved water right to develop uses of surface water or Groundwater consistent with Article II, section B.5., to fulfill the purposes of the U.S. Sheep Experiment Station up to a total additional volume of 15 acre feet per year for uses within the U.S. Sheep Experiment Station.

3. Emergency Fire Suppression.

The use of water for emergency fire suppression benefits the public and is necessary for the purposes of the U.S. Sheep Experiment Station. The United States has a federal reserved water right to divert or withdraw water for fire suppression on U.S. Sheep Experiment Station lands as needed and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for current or future uses described in Article II, section B.1. and 2.

4. Priority Date.

The priority date for all federal reserved water rights for the U.S. Sheep Experiment Station is December 19, 1922.

5. Purposes.

The United States' reserved water rights for the U.S. Sheep Experiment Station shall be used for purposes as described in Article II, section A. The types of use may include but are not limited to: stockwater, domestic, irrigation, storage, dust abatement, reclamation, and research.

ARTICLE III IMPLEMENTATION

A. Abstracts.

Abstracts for all the United States' federal reserved water rights for current stockwater uses are set forth in Appendix 3. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstracts are subject to the terms of this Compact.

B. Enforcement and Administration of Water Right.

1. The United States, the State, or a holder of a water right recognized under state law may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water rights described by this Compact and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this

Compact where applicable or, to the extent not applicable, by appropriate state or federal law.

2. For purposes of the administration of federal reserved water rights provided for in Article II, the United States agrees that a water commissioner, or other official appointed by a court of competent jurisdiction, may enter the U.S. Sheep Experiment Station to collect data, inspect structures for the diversion and measurement of water, and distribute the federal reserved water rights in Article II. The terms of entry or distribution may be limited, as appropriate, by an order of a court of competent jurisdiction. Nothing herein waives the right of the United States, with respect to a specific action or anticipated action by a water commissioner or other official under this subsection, to seek terms of entry or distribution consistent with purposes of the U.S. Sheep Experiment Station, including but not limited to terms of entry that respect the integrity of ongoing or proposed research, or to seek terms of entry or distribution consistent with federal law if in conflict with state law.
3. The Department may enter the U.S. Sheep Experiment Station lands upon which a federal reserved water right is described in Article II for the purposes of data collection on U.S. Sheep Experiment Station water diversions or water uses. The Department shall notify the United States by certified mail or in person at least 72 hours prior to entry.

C. Use of Reserved Water Rights.

The reserved rights of the United States described in this agreement are federal water rights. Nonuse of all or a part of the federal water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the U.S. Sheep Experiment Station.

D. Change in Use.

1. The United States may make a change in the use of its reserved water rights described in Article II, sections B.1. and 2., provided that:
 - (a) the use must fulfill the purposes of the U.S. Sheep Experiment Station described in Article II, section A;
 - (b) the total use shall not exceed the amount described in this Compact; and
 - (c) the change shall not adversely affect a senior water right recognized under state law.
2. The United States' federal reserved water right to divert or withdraw water for emergency fire suppression as described in Article II, section B.3., shall not be changed to any other use.

E. Reporting Requirements.

The United States shall provide a report to the Department on an annual basis, or on a periodic basis agreed to by the Parties, containing specific information on:

1. the development of new uses as described in Article II, section B.2.;
2. changes in use as described in Article III, section D; and
3. the source of supply, the dates of use, and the estimated amount of water used for emergency fire suppression as described in Article II, section B.3.

ARTICLE IV GENERAL PROVISIONS

- A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.
1. The relationship between the water rights of the United States described herein and any rights to water of an Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such tribe or individual shall be determined by the rule of priority.
 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 to water of any other federal agency or federal lands in Montana other than those of the U.S. Sheep Experiment Station.
 3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and tribal members.
 4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding boundaries or property interests.
- B. General Disclaimers.

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State or of the United States and any other state;
2. as a waiver by the United States on behalf of the Agricultural Research Service of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact or any right 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 Code Annotated, in the basins affected by this Compact;
3. as a waiver by the United States of its right to seek relief from a conflicting water use;
4. to establish a precedent for other agreements between the State and the United States or an Indian tribe;
5. to determine the relative rights, inter sese, of Persons using water under the authority of state law or to limit the rights of the Parties or a Person to litigate an issue not resolved by this Compact;
6. to create or deny substantive rights through headings or captions used in this Compact;
7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this Compact;
8. to limit the authority of the United States to manage its lands in accordance with the Constitution, statutes, and regulations of the United States;
9. to affect in any manner the entitlement to or quantification of other federal water rights;
10. to be binding on the United States with regard to the water rights of the United States for any area other than the U.S. Sheep Experiment Station;

11. to affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;
12. to prevent the United States from seeking a permit to appropriate water under state law for use within or outside the U.S. Sheep Experiment Station boundaries.

C. Reservation of Rights.

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

D. Severability.

The provisions of this Compact are not severable.

E. Multiple Originals.

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

F. Notice.

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing.
2. United States: Upon the Secretary of Agriculture, the U.S. Sheep Experiment Station Director, and such other officials as the Secretary may designate in writing.

ARTICLE V FINALITY OF COMPACT

A. Binding Effect.

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 Department of Agriculture, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the Parties.
2. Following the Effective Date of this Compact, this Compact shall not be modified without the consent of both Parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction.
3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all Persons bound by the final order of the court.
4. If an objection to this Compact is sustained pursuant to 85-2-702(3) and 85-2-703, MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. Filing Compact with State Court.

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of this Compact, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666 for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein.

The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

C. Dismissal of Filed Claims.

At the time the state courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all water right claims specified in Appendix 4 of this Compact for the U.S. Sheep Experiment Station. If this Compact is not approved or a water right described herein is not confirmed, these claims shall not be dismissed.

D. Settlement of Claims.

The Parties intend that the water rights described in this Compact are in full and final settlement of the federal reserved water right claims for the U.S. Sheep Experiment Station land in Montana described in this Compact and administered by the Agricultural Research Service on the Effective Date of this Compact. On the Effective Date of this Compact, the United States hereby and in full settlement of any and all claims to federal reserved water rights by the United States, including all claims that the Agricultural Research Service filed or could have filed as part of the ongoing statewide adjudication process, relinquishes forever all claims to federal reserved water rights within the State for the U.S. Sheep Experiment Station. The State agrees to recognize the water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right under Montana state law. Nothing in this Compact precludes the Agricultural Research Service from filing for future water use permits under Montana state law.

E. Defense of Compact.

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF, the representatives of the State of Montana and the United States have signed this Compact on the ____ day of _____, 2007.

History: En. Sec. 1, Ch. 80, L. 2007.

**U.S. DEPARTMENT OF INTERIOR, FISH
AND WILDLIFE SERVICE, BOWDOIN-
MONTANA COMPACT**

U.S. Department of Interior,
Fish and Wildlife Service,
Bowdoin – Montana
Compact



Title 85 Water Use
Chapter 20 Water Compacts

85-20-1301. United States of America, fish and wildlife service, Bowdoin national wildlife refuge — Montana compact ratified. The compact 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 Bowdoin National Wildlife Refuge administered by the U.S. Fish and Wildlife Service within the State of Montana and filed with the secretary of state of the State of Montana under the provisions of 85-2-703 on April 6, 2007, is ratified. The compact is as follows:

ARTICLE I - RECITALS

WHEREAS, in 1979, the United States brought several actions in the United States District Court for the District of Montana to adjudicate, inter alia, its rights to water with respect to the Bowdoin National Wildlife Refuge; see *United States v. Aageson*, No. CV-79-GF (filed April 5, 1979);

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America; see “the McCarran Amendment”, 43 U.S.C. 666(a)(1) (1952);

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

WHEREAS, the Montana Reserved Water Rights Compact Commission, pursuant to 85-2-703, MCA, is authorized to negotiate settlement of water rights claims filed by the United States for areas in which the United States claims 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 Bowdoin National Wildlife Refuge in the State of Montana;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-517 and 519 (1968);

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

WHEREAS, it is in the best interest of all Parties that the water rights claims for the Bowdoin National Wildlife Refuge be settled through agreement between the State of Montana and the United States;

NOW, THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the United States for the Bowdoin National Wildlife Refuge.

ARTICLE II - DEFINITIONS

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

- (1) "Abstract" means the copy of the document entitled "Abstract of U.S. Fish and Wildlife Service Water Rights" referenced in this Compact as Appendix 1.
- (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 cubic feet of water.
- (3) "Acre-Foot per Year" or "Acre-Feet per Year" or "AFY" means an annual quantity of water measured in Acre-Feet over a period of a year.
- (4) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.
- (5) "Arising Under State Law" means, as applied to a water right, a water right created under Montana law and does not include water rights created under federal law.
- (6) "Beaver Creek Basin" means Montana Water Court Basin 40M, consisting of the mainstem of Beaver Creek and its tributaries, including Big Warm Creek, Little Warm Creek, and Black Coulee, to its confluence with the Milk River.
- (7) "Bowdoin National Wildlife Refuge" or "Refuge" means those lands and interests in lands located in Montana that were acquired pursuant to or withdrawn and reserved by Executive Order No. 7295 of February 14, 1936, and Executive Order No. 8592 of November 12, 1940, for purposes of providing a refuge and breeding ground for migratory bird and other wildlife.
- (8) "Change in Use" means, as applied to the Refuge water right, a change in the point of diversion, the place of use, the purpose of use, or the place of storage.
- (9) "Consumptive Use" means a use of water that removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments and natural lakes.
- (10) "Deep Ground Water" means water extracted from any deep regional Aquifer that is located in any geologic formation dating from the Jurassic Period or older.
- (11) "Department" means the Montana Department of Natural Resources and Conservation or any successor agency.
- (12) "Effective Date" means the date on which the Compact is given ratification by the Montana Legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice or on which the Memorandum of Understanding concerning the exercise of certain of the water rights quantified in this Compact and attached hereto as Appendix 3 is executed by the State of Montana and the United States Fish and Wildlife Service, whichever date is latest.
- (13) "FWS" means the United States Fish and Wildlife Service of the United States Department of the Interior or any successor agency.
- (14) "Ground Water" means any water that is beneath the surface of the ground.
- (15) "Jurassic Period" means the middle period of the Mesozoic era, spanning the

time between approximately 213 million and 145 million years before the Effective Date of this Compact, as identified on the geologic table attached hereto as Appendix 4.

- (16) "Milk River Basin" means the mainstem of the Milk River and its tributaries from its headwaters to the confluence with the Missouri River and consists of: Montana Water Court Basins 40F, 40G, 40H, 40I, 40JW, 40JE, 40K, 40L, 40M, 40N, and 40O, as those Basin names may be modified by the Montana Water Court from time to time, and the portion of the Milk River and its tributaries flowing through the Provinces of Alberta and Saskatchewan in Canada.
- (17) "Party" or "Parties" means the State of Montana, the United States of America, or both.
- (18) "Person" or "Persons" means an individual or individuals or any other entity, public or private, including the State, a tribe, and the United States and all officers, agents, and departments thereof.
- (19) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof, and unless otherwise indicated, for purposes of notification or consent, "State" means the Director of the Department or the Director's designee.
- (20) "United States" means the federal government and all officers, agencies, and departments thereof, and unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior or the Secretary's designee.

ARTICLE III - REFUGE WATER RIGHT

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

A. Quantification.

The United States shall have the right to water from the following sources:

- 1. Natural Flow.
Subject to the provisions of Article III.B.2, the United States has the right to the surface flow in Basin 40M that drains naturally into the Refuge after satisfaction of the following water rights Arising Under State Law:
 - (a) all water rights Arising Under State Law with a priority date before the Effective Date of this Compact;
 - (b) any right excepted from the permitting requirements of State law to appropriate stock water for impoundments or pits with a priority date after the Effective Date of this Compact; and
 - (c) any right excepted from the permitting requirements of State law to appropriate Ground Water for domestic and/or lawn and garden use with a priority date after the Effective Date of this Compact.
- 2. Diversion from Beaver Creek - Consumptive Use.
Subject to the provisions of Article III.B.2, the United States has the right to divert up to 24,714 Acre-Feet per Year from Beaver Creek.

3. Ground Water - Consumptive Use.

Subject to the provisions of Article III.B.2:

- (a) the United States has the right to develop 223 Acre-Feet of Ground Water extracted from well(s) located within the exterior boundaries of the Refuge; and
- (b) subject also to the provisions of Article III.H, the United States has the right to develop 5,300 Acre-Feet of Deep Ground Water extracted from well(s) located any place within the Refuge.

B. Relative Priority.

1. Priority Date.

Subject to the provisions of Article III.H., the United States has a priority date of November 12, 1940, for the water rights described in this Compact for the Refuge.

2. Subordination.

The water rights described in Article III.A are subordinated to:

- (a) all rights Arising Under State Law with a priority date before the Effective Date of this Compact;
- (b) any right excepted from the permitting requirements of State law to appropriate stock water for impoundments or pits with a priority date after the Effective Date of this Compact; and
- (c) any right excepted from the permitting requirements of State law to appropriate Ground Water for domestic and/or lawn and garden use with a priority date after the Effective Date of this Compact.

C. Period of Use.

The period of use of the water right set forth in Article III.A is January 1 through December 31 of each year.

D. Points and Means of Diversion.

- 1. Diversion of the water right set forth in Article III.A.2 may be located on Beaver Creek off the Refuge, subject to applicable State and federal law and/or any place within the Refuge.
- 2. Diversion of the water right set forth in Article III.A.1 and 3 may be located any place within the Refuge.

E. Place of Use.

The water rights set forth in Article III.A may be used anywhere within the Refuge.

F. Purposes.

The water rights set forth in Article III.A may be used for the purposes of the Refuge, including wildlife habitat maintenance and enhancement (including grazing needs for habitat management purposes), stock watering, and administrative uses, including but not limited to domestic, lawn and garden, institutional, and dust abatement uses.

G. Temporary Emergency Appropriations.

The use of water for emergency fire suppression benefits the public and is necessary for the purposes of the Refuge. The United States may divert water for emergency fire suppression at the Refuge without definition of the specific elements of a recordable water right. Temporary emergency use of water for emergency fire suppression from

a source for which a water right is quantified in Article III shall not be considered an exercise of that right.

H. Deep Ground Water Use.

The development and use of the water right set forth in Article III.A.3(b) is subject to:

1. The provisions of Article III.I.1.b. and Article IV.B of the Fort Belknap-Montana Compact, 85-20-1001 through 85-20-1008, MCA; and
2. All applicable State laws pertaining to Ground Water wells, including but not limited to authorization under 85-2-311, MCA, and all state and federal water quality standards, with the exception that the priority date for this use shall be the Effective Date of this Compact and the water developed pursuant to this right may be used only for the purposes set forth in Article III.F of this Compact.

I. Exercise of Right Subject to Agreement.

In addition to the foregoing, the exercise of the water rights quantified in this Compact are subject to the provisions set forth in that Memorandum of Understanding (MOU) executed between the FWS and the State and attached hereto as Appendix 3. The MOU may at any time be modified by the mutual consent of the Parties, and such modification shall not be considered a modification of this Compact. Prior to execution of the MOU or of any changes to it, the Parties shall: (1) provide notice to water users in the affected basins of the proposed terms of the MOU and any proposed changes to it; (2) hold at least one meeting in Malta, Montana, and one meeting in Glasgow, Montana, preceded by such notice as may be required under State law for public meetings, at which representatives of the State and the United States will explain the proposed MOU or any change(s) to it and allow for public comment; and (3) provide a reasonable period for receipt of any written public comment concerning the MOU or the proposed change(s).

ARTICLE IV - IMPLEMENTATION OF COMPACT

A. Enforcement of Water Right.

1. The United States, the State, or a holder of a water right Arising Under State Law may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' water right described by this Compact and a holder of a water right Arising Under State Law. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state or federal law.
2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by law, may enter the Refuge for the purpose of data collection, including the collection of information necessary for water distribution on or off the Refuge, and to inspect structures for the diversion and measurement of water described in this Compact for Consumptive Use. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.
3. The Department may enter the Refuge at a reasonable hour of the day for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The

Department shall notify the United States by certified mail, telephone, e-mail, or in person, at least 24 hours prior to entry.

4. The United States may request an investigation by the Department of a diversion located on a stream for which a water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.
5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact and shall measure all exercises of its consumptive use water right. The United States shall maintain any devices it deems necessary for enforcement of its water right for natural flow described in this Compact.

B. Use of Water Right.

The rights of the United States described in this Compact are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under State law, but shall be restricted to uses necessary to fulfill the purposes of the Refuge.

C. Change in Use.

1. Natural flow.

Water rights specified in this Compact for natural flow shall not be subject to Change in Use, provided that: the emergency use of water for fire suppression as provided for in Article III.G. shall not be deemed a Change in Use or violation of a water right for natural flow.

2. Consumptive uses.

The United States may make a Change in Use of its Consumptive Use water rights described in Article III.A. of this Compact provided that:

- (a) the Change in Use shall be in fulfillment of the purposes of the Refuge;
- (b) the total Consumptive Use shall not exceed the amount described in this Compact;
- (c) the Change in Use shall not adversely affect any water right Arising Under State Law; and
- (d) with the exception of the provisions governing a change in the purpose for which the water right is used, the United States, in making the change, shall comply with the provisions of the Montana Water Use Act, Title 85, chapter 2, MCA, applicable to change in appropriation right at the time of the change.

3. Reporting by the United States.

For any action affecting the use of a consumptive right, whether or not such action is deemed a Change in Use, the United States agrees to provide the following information to the Department upon request:

(a) Well Log:

A well log for any use that includes the drilling of a well or enlargement of an existing wellbore, such well log(s) also to be supplied to the Montana Bureau of Mines and Geology.

- (b) Emergency Use:
 - (i) The use to which water was put, the dates of use, and the estimated amount of water used, for any temporary emergency use for fire suppression authorized by Article III.G of this Compact;
 - (ii) Such information needs to be provided to the Department, in response to its request, only after the commencement and subsequent cessation of any such emergency use.
 - (c) Periodic Report:

Within 60 days after receiving a request from the Department, the United States agrees to provide the Department with a report on:

 - (i) actions since the Effective Date of the Compact or any prior periodic report, whichever is later, affecting the use of a Consumptive Use right described in this Compact;
 - (ii) the initiation of new uses of any water right recognized in this Compact that were completed since the Effective Date of the Compact or any prior periodic report, whichever is later; and
 - (iii) any data and documents generated or received by the FWS since the Effective Date of the Compact or any prior periodic report, whichever is later, on measurement of stream flow on a stream with a natural flow water right set forth in this Compact.
4. Reporting by the State.
- Upon request and no more often than once in each calendar year, the Department shall provide the United States with a report of:
- (a) changes in appropriation granted, as defined by State law, since the Effective Date of the Compact or any prior report, whichever is later, of water rights upstream of the Refuge on Beaver Creek;
 - (b) any data and documents generated by the Department since the Effective Date of the Compact or any prior report, whichever is later, on the measurement of stream flows, diversions, and well use on or tributary to a stream for which a water right for natural flow is described in this Compact;
 - (c) any certificate of water right issued since the Effective Date of the Compact or any prior report, whichever is later, for the right to appropriate Ground Water in Basin 40M; and
 - (d) any permit issued since the Effective Date of the Compact or any prior report, whichever is later, for the right to appropriate stock water for impoundment or pit in Basin 40M.

ARTICLE V - GENERAL PROVISIONS

- A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.
 - 1. The relationship between the water rights of the United States described in this Compact and any rights to water of any Indian tribe, or any federally derived water right of an individual, or of the United States on behalf of such tribe or individual, shall be determined by the rule of priority. The Parties agree that the water rights described in this Compact are junior to any rights to water of

any Indian tribe, or any federally derived water right of an individual, or of the United States on behalf of such tribe or individual, currently quantified or as may be quantified after the Effective Date of this Compact and with a priority date before the Effective Date of this Compact, including aboriginal rights, if any, in the basins affected.

2. Nothing in the Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the FWS at the Refuge.
3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the water rights of any Indian tribe or tribal member.
4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian tribe regarding its boundaries or property interests in the State of Montana.

B. State Water Rights.

Nothing in this Compact may limit the exclusive authority of the State, including the authority of a water commissioner authorized by State law, to administer all current and future water rights Arising Under State Law within and upstream of the Refuge, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law.

C. Abstract.

Concurrent with this Compact, the Parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights for the Refuge that are described in this Compact and quantified in accordance with this Compact. The Parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles III and IV of this Compact, the Parties intend that the quantification in accordance with Articles III and IV of this Compact shall be reflected in a final decree.

D. General Disclaimers.

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State or the United States and any other state;
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 state Water Use Act, Title 85, MCA, in the basins affected by this Compact or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, MCA, in the basins affected by this Compact;

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;
4. to determine the relative rights inter sese of Persons using water under the authority of state or tribal law or to limit the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Compact;
5. to authorize the taking of a water right that is vested under state or federal law;
6. to create or deny substantive rights through headings or captions used in this Compact;
7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this Compact;
8. to affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the FWS;
9. 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 such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;
10. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the United States for the Refuge and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact.
11. to prevent the United States from constructing or modifying an outlet to an impoundment at the Refuge in compliance with all applicable laws;
12. to prevent the United States from seeking a permit to appropriate water under State law;
13. to modify or prevent modification of the March 9, 1937, Memorandum of Agreement between the Secretary of the Interior and the Secretary of Agriculture in the Matter of a Water Supply for the Lake Bowdoin Migratory Water Fowl Refuge;
14. to prevent the United States from entering into an agreement pursuant to applicable law(s) to obtain additional water from the Milk River or Beaver Creek Basins by contract, lease, or purchase or from participating in efforts to improve water supply in the Milk River Basin.

E. Reservation of Rights.

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

F. Severability.

The provisions of this Compact are not severable.

G. Multiple Originals.

This compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

H. Notice.

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as the Director may designate in writing; and
2. United States: Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

ARTICLE VI - FINALITY

A. Binding Effect.

1. After the Effective Date of this Compact, all of the provisions of this Compact shall be binding on:
 - (a) the State, and any Person, using, claiming, or in any manner asserting a right under the authority of the State to the use of water; and
 - (b) except as otherwise provided in Article V.A., the United States, and any Person, using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.
2. Following the Effective Date, this Compact shall not be modified without the mutual consent of the Parties. Either Party may seek enforcement of this Compact in a court of competent jurisdiction. Attempt to unilaterally modify this Compact by either Party shall render this Compact voidable at the election of the other Party.
3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all Persons bound by the final order of the court.
4. If an objection to this Compact is sustained pursuant to 85-2-702, MCA, this Compact shall be voidable by action of and without prejudice to either Party.
5. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party if, within five (5) years of ratification of this Compact by the Montana legislature:
 - (a) this Compact is not given written approval by the United States Department of the Interior;
 - (b) this Compact is not given written approval by the United States Department of Justice; or
 - (c) the Memorandum of Understanding concerning the exercise of certain of the water rights quantified in this Compact and attached hereto as Appendix 3 is not executed by the State and the FWS.
6. Notwithstanding any other provision in this Compact, the United States reserves the right to withdraw as a Party if, within five (5) years of ratification of this Compact by the Montana legislature, the Memorandum of Understanding concerning the exercise of certain of the water rights quantified in this Compact and attached hereto as Appendix 3 is not executed by the State and the FWS.
7. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party if, at any point subsequent to the Effective Date of

this Compact, the United States unilaterally withdraws from the Memorandum of Understanding attached hereto as Appendix 3.

B. Disposition of Actions.

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date, the Parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with State law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702, MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

1. Dismissal of Filed Claims.

At the time the state courts approve the reserved water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 to this Compact. If this Compact fails approval or a reserved water right described herein is not confirmed, the specified claims shall not be dismissed.

2. Disposition of Federal Suits.

Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the reserved water rights described herein and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the Parties shall execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss with prejudice any claims made by the United States for the FWS for the Refuge described in this Compact in federal court. This Compact may be filed as a consent decree in those federal suits only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgment binding on the State that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one (1) year of such judgment, the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

3. Continuation of Negotiations.

The Parties were unable to finalize agreement on quantification of the water rights for the National Bison Range and the Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to the Effective Date of this Compact. The Parties agree to continue to pursue, in good faith, quantification of water rights for these areas. In the event the Parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for these areas adjudicated in a state or federal court of competent jurisdiction.

C. Settlement of Claims.

The Parties intend that the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land described in this Compact and administered by the FWS in Montana on the Effective Date of this Compact. Pursuant to this settlement, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for the Refuge relinquishes forever on the Effective Date of this Compact all said claims to water within the State for the Refuge. The State agrees to recognize the reserved water rights described and quantified herein and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the State.

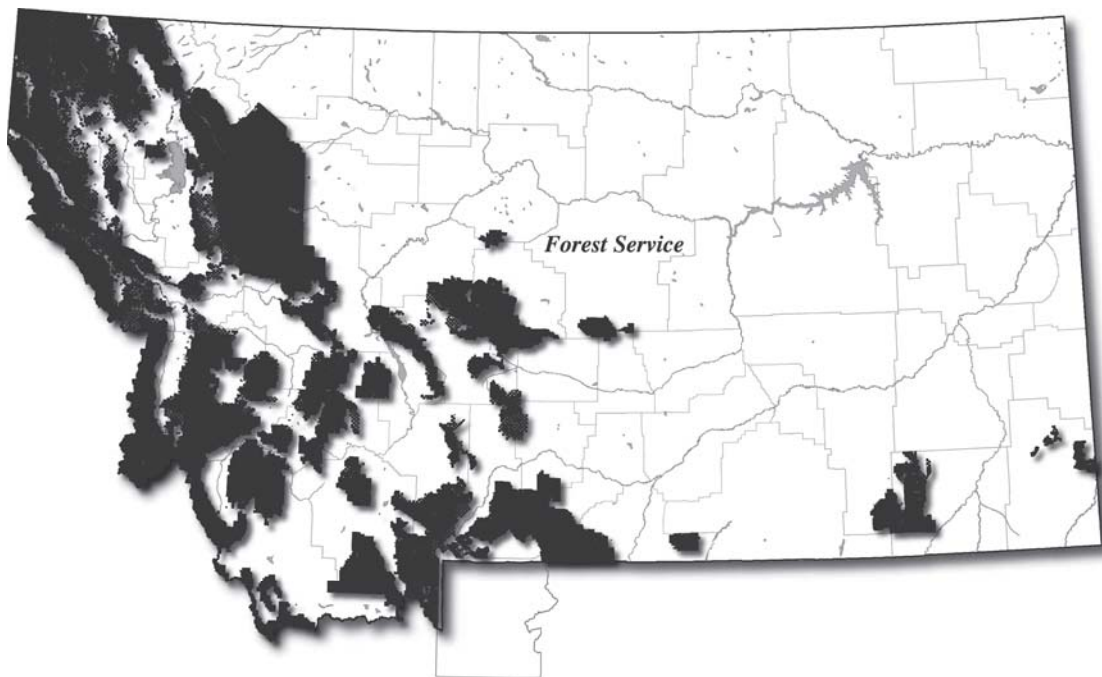
D. Defense of Compact.

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

History: En. Sec. 1, Ch. 161, L. 2007.

**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE – MONTANA
COMPACT**

U.S. Department of
Agriculture Forest Service
– Montana Compact



Title 85 Water Use
Chapter 20 Water Compacts

85-20-1401. United States of America, department of agriculture, forest service-Montana compact ratified. The compact entered into by the state of Montana and the United States of America, Department of Agriculture, Forest Service and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on April 17, 2007, is ratified. The compact is as follows:

WATER RIGHTS COMPACT STATE OF MONTANA UNITED STATES OF
AMERICA, DEPARTMENT OF AGRICULTURE, FOREST SERVICE

This Compact is entered into by the State of Montana (“State”) and the United States of America (“United States”) to settle for all time any and all claims existing on the Effective Date of This Compact to federal reserved water rights for National Forest System Lands administered by the Forest Service, an agency of the United States Department of Agriculture (“Forest Service”), within the State of Montana.

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 appropriate water rights;

WHEREAS, section 85-2-703, MCA, provides that the State may negotiate compacts concerning the equitable division and apportionment of water between the State and its people and the federal government with claims to non-Indian federal reserved water rights within the State of Montana;

WHEREAS, section 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, the United States wishes to secure water rights to fulfill the purposes of National Forest System Lands in the State of Montana;

WHEREAS, the United States, in quantifying and securing water rights to meet National Forest System purposes, seeks cooperatively to accommodate the interests of the State and its citizens and to avoid the conflict and uncertainty inherent in litigating federal reserved water rights claims. The United States believes that the natural flows needed for favorable conditions of flow, for fisheries, and for other resource management goals and obligations on National Forest System Lands can be achieved, without materially affecting the interests of the United States, through the use of state law as provided in this Compact.

WHEREAS, the United States Attorney General or a duly designated official of the United States Department of Justice has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516 and 517;

WHEREAS, The Secretary of Agriculture or a duly designated official of the United States Department of Agriculture has authority to execute this Compact on behalf of the

United States Department of Agriculture pursuant to 7 U.S.C. 2201 note, Section 1(a);
NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I DEFINITIONS

For purposes of this Compact only the following definitions shall apply:

- (1) “Abstracts” means the documents included in Appendix 1 of this Compact, entitled “Abstracts of Forest Service Federal Reserved Water Rights for Current Discrete Administrative Uses”, referenced in this Compact as Appendix 1.
- (2) “Concurrently” for the purposes of instream uses means not cumulative to the flow of other instream, nondiversionary water rights on the same reach of stream and for the purposes of in situ uses means not cumulative to the volume or flow of other in situ, nondiversionary water rights from the same source of water.
- (3) “Department” means the Montana Department of Natural Resources and Conservation or its successor.
- (4) “Discrete Administrative Use” means a federal reserved water right to divert or withdraw water from a source of supply for use authorized under the Organic Administrative Act, 16 U.S.C. 473, et seq., necessary to fulfill the primary purposes of a National Forest at administrative sites on National Forest System Lands and includes but is not limited to federal reserved water rights for the following purposes: water for district offices, ranger stations, guard stations, work centers, and housing; water used for facilities operated for administrative purposes; water used for permanently established tree nurseries and seed orchards; and water for maintaining riding and pack stock used for administrative purposes.
- (5) “Dispersed Administrative Use” means a federal reserved water right to divert or withdraw water from time to time, as needed, from a source of supply for use authorized under the Organic Administrative Act, 16 U.S.C. 473, et seq., necessary to fulfill the primary purposes of a National Forest within a specified area on National Forest System Lands and includes but is not limited to federal reserved water rights for the following purposes: water for dust abatement and road construction; water for prescribed fire management; water for reclamation; water used to establish vegetation; water used temporarily for establishment of nursery stock and seed orchards; and water for other incidental administrative purposes.
- (6) “Effective Date of This Compact” means the date of the ratification of the Compact by the Montana Legislature, written approval by the United States Department of Agriculture, or written approval by the United States Department of Justice, whichever is later.
- (7) “In situ” means water with a surface expression used in the place of its natural occurrence and without need of a diversion structure, measured as a flow, level, or volume of water.
- (8) “National Forest System Lands” means all lands within Montana that are owned by the United States and administered by the Secretary of Agriculture through the Forest Service, but does not include any lands within the exterior boundaries of National Forest System units that are not owned by the United States and administered by the Secretary of Agriculture through the Forest Service.
- (9) “Parties” means the State and the United States.

- (10) “Person” means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.
- (11) “South Fork Flathead Wild and Scenic River” means the segment of the South Fork of the Flathead River from its origin to Hungry Horse Reservoir located in Montana that, pursuant to the Wild and Scenic Rivers Act, 16 U.S.C. 1271, et seq., was designated as a component of the National Wild and Scenic Rivers System by Public Law 94-486, 16 U.S.C. 1274(a)(13), on October 12, 1976.
- (12) “State” means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, “State” means the Director of the Montana Department of Natural Resources and Conservation or the Director’s designee.
- (13) “United States” means the United States of America and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, “United States” means the Secretary of the Department of Agriculture or the Secretary’s designee.
- (14) “Water Right Recognized Under State Law” means a water right or use created and administered under Montana law and includes all Forest Service water rights created in Article V of this Compact and state water reservations granted, but does not include a federal or tribal reserved water right recognized by the State.
- (15) “Wetted Perimeter Methodology” means an instream flow methodology for fisheries flow based on habitat for food production in the shallow, fast-moving water of a stream. The wetted perimeter is the distance across the bottom and sides of a stream channel, measured at a riffle area, that is in contact with the water. A graph of the wetted perimeter versus discharge generally yields two inflection points. The upper inflection point of the graph is the level above which large increases in discharge result in a small increase of the wetted perimeter. The lower inflection point of the graph is the level below which small decreases in discharge result in large decreases of the wetted perimeter.

ARTICLE II FEDERAL RESERVED WATER RIGHTS

The Parties agree that the following water rights are the federal reserved water rights of the United States for the National Forest System Lands.

A. Discrete Administrative Uses on National Forest System Lands.

The United States has federal reserved water rights for current and future Discrete Administrative Uses on National Forest System Lands, subject to the terms of Article III of this Compact:

1. Current Discrete Administrative Uses on National Forest System Lands.
The United States has federal reserved water rights for current Discrete Administrative Uses on National Forest System Lands as set forth in Table 1 and the specific listing and Abstracts attached to this Compact as Appendix 1. In the event there is a discrepancy between Table 1 and an Abstract contained in Appendix 1, the Abstract in Appendix 1 controls.
2. Future Discrete Administrative Uses on National Forest System Lands.
The United States has federal reserved water rights for future Discrete Administrative Uses on National Forest System Lands as set forth in Table 1.

B. Dispersed Administrative Uses on National Forest System Lands.

The United States has federal reserved water rights for Dispersed Administrative Uses on National Forest System Lands, subject to the terms of Article III of this Compact, as set forth in Table 1. The period of use for Dispersed Administrative Uses on National Forest System Lands can be for any period throughout the year.

TABLE 1 Discrete and Dispersed Administrative Uses

MT Adj Basin	Priority Date	National Forests	Current (AF/YR)	Discrete Administrative Uses		Dispersed Administrative Uses	
				Future (AF/YR)	Total (AF/YR)	Volume (AF/YR)	
39E	1906-09-24	Custer	0.00	2.00	2.00	12.20	
39F	1906-09-24	Custer	0.25	2.00	2.25	11.90	
39FJ	1906-11-05	Custer	0.00	2.00	2.00	5.50	
40A	1902-08-16	Lewis & Clark	1.36	2.00	3.36	90.00	
	1906-08-10	Gallatin				3.30	
40B	1906-11-05	Lewis & Clark	0.00	2.00	2.00	5.50	
40C	1906-11-05	Lewis & Clark	0.00	2.00	2.00	2.70	
41A	1906-11-05	Beaverhead-Deerlodge	2.13	2.13	4.26	121.00	
41B	1906-11-05	Beaverhead-Deerlodge	1.26	2.00	3.26	42.90	
41C	1906-11-05	Beaverhead-Deerlodge	8.90	8.90	17.80	70.90	
41D	1906-11-05	Beaverhead-Deerlodge	202.27	49.27	251.54	310.60	
41E	1906-04-12	Beaverhead-Deerlodge	0.00	2.00	2.00	85.50	
	1905-05-12	Helena				1.20	
41F	1902-08-16	Beaverhead-Deerlodge	14.62	14.62	29.24	98.50	
	1902-08-16	Gallatin				69.50	
41G	1906-04-12	Beaverhead-Deerlodge	2.50	2.50	5.00	81.80	
41H	1906-03-07	Gallatin	14.63	14.63	29.26	147.60	
41I	1905-10-03	Gallatin	4.75	4.75	9.50	15.40	
	1905-10-03	Helena				169.30	
41J	1905-10-03	Helena	5.51	5.51	11.02	36.00	
	1906-11-06	Lewis & Clark				102.30	
41K	1897-02-22	Lewis & Clark	6.63	6.63	13.26	44.80	
41M	1897-02-22	Lewis & Clark	3.01	3.01	6.02	43.50	
41O	1897-02-22	Lewis & Clark	3.75	3.75	7.50	24.40	
41Q	1902-08-16	Lewis & Clark	0.33	2.00	2.33	72.10	
41QJ	1906-11-06	Lewis & Clark	0.00	2.00	2.00	0.80	
	1928-05-17	Helena				17.10	
41R	1903-12-12	Lewis & Clark	0.00	2.00	2.00	9.50	
41S	1902-08-16	Lewis & Clark	2.50	2.50	5.00	96.80	
41U	1897-02-22	Lewis & Clark	0.01	2.00	2.01	11.20	
	1928-05-17	Helena				14.40	
42B	1907-03-02	Custer	0.00	2.00	2.00	13.10	
42C	1907-03-02	Custer	39.35	39.35	78.70	133.70	
42J	1907-03-02	Custer	0.00	2.00	2.00	11.20	
43A	1906-08-10	Gallatin	1.51	2.00	3.51	43.40	
43B	1902-09-04	Gallatin	14.33	14.33	28.66	136.10	
43BJ	1902-09-04	Gallatin	9.64	9.64	19.28	22.50	
43BV	1902-09-04	Gallatin	0.00	2.00	2.00	8.20	
43C	1902-09-04	Custer	3.00	3.00	6.00	34.50	
43D	1902-09-04	Gallatin	2.25	2.25	4.50	3.40	
	1902-09-04	Custer				25.50	
43N	1906-11-06	Custer	0.00	2.00	2.00	14.40	
43P	1906-11-06	Custer	0.10	2.00	2.10	9.90	
76B	1906-08-13	Kootenai	0.02	2.00	2.02	129.10	
76C	1907-03-02	Kootenai	1.00	2.00	3.00	110.00	
76D	1907-03-02	Kootenai	9.60	9.60	19.20	384.30	
76E	1905-10-03	Beaverhead-Deerlodge	4.00	4.00	8.00	76.90	
	1905-10-03	Lolo				52.10	
76F	1928-05-17	Helena	19.40	19.40	38.80	65.90	
	1906-11-06	Lolo				123.70	
76G	1906-04-12	Beaverhead-Deerlodge	85.75	9.75	95.50	112.30	
	1906-04-12	Helena				35.00	
	1905-10-03	Lolo				17.00	
76GJ	1905-10-03	Beaverhead-Deerlodge	0.00	2.00	2.00	51.90	
76H	1897-02-22	Bitterroot	96.82	75.00	171.82	280.20	
	1897-02-22	Lolo				59.00	
76I	1897-02-22	Flathead	0.02	2.00	2.02	22.30	
76J	1897-02-22	Flathead	4,247.75	2.16	4,249.91	120.00	
76K	1897-02-22	Flathead	241.51	241.51	483.02	97.10	
76L	1907-03-02	Flathead	0.00	2.00	2.00	3.40	
	1907-03-02	Lolo				8.50	
76LJ	1907-03-02	Flathead	5.78	5.78	11.56	246.40	
	1897-02-22	Kootenai				12.20	
76M	1906-11-06	Lolo	1,000.28	335.28	1335.56	337.90	
76N	1907-03-02	Kootenai	4.26	4.26	8.52	138.80	
	1907-03-02	Lolo				168.40	

C. Emergency Fire Suppression.

The use of water for emergency fire suppression benefits the public and is necessary for the primary purposes of the National Forest System Lands in Montana. The United States has a federal reserved water right to divert or withdraw water on National Forest System Lands, with the priority date for each Water Court basin set forth in Table 1 of this Compact, from a stream, lake, or pond, as needed for emergency fire suppression for the benefit of National Forest System Lands, and without a definition of the specific elements of a recordable water right, subject to the terms of Article III. Use of water for emergency fire suppression shall not be considered an exercise of the United States' federal reserved water rights for Discrete Administrative Uses as described in Article II, section A., or Dispersed Administrative Uses as described in Article II, section B.

D. South Fork Flathead Wild and Scenic River.

The United States has a federal reserved water right with a priority date of October 12, 1976, for instream flow on the South Fork Flathead Wild and Scenic River in the amount of the entire flow of the river, less any of the United States' Discrete Administrative Uses as described in Article II, section A., and Dispersed Administrative Uses as described in Article II, section B., provided that the instream flow water right is subordinate to all Water Rights Recognized Under State Law with a priority date before the Effective Date of This Compact. This federal reserved water right ends at the point where the South Fork Flathead Wild and Scenic River flows into Hungry Horse Reservoir.

ARTICLE III IMPLEMENTATION OF FEDERAL RESERVED WATER RIGHTS

A. Abstracts.

Abstracts for all the United States' federal reserved water rights for Current Discrete Administrative Use on National Forest System Lands are set forth in Appendix 1. The Parties prepared the Abstracts to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights for current Discrete Administrative Uses as described in this Compact. The rights specified in the Abstracts are subject to the terms of this Compact.

B. Enforcement and Administration of Federal Reserved Water Rights.

1. When a controversy arises between the United States' federal reserved water rights described by this Compact and another holder of a Water Right Recognized Under State Law or, for enforcement pursuant to Article VIII, section B., when there is a question concerning the use of water on National Forest System Lands under this Compact, the United States, the State, or a holder of a Water Right Recognized Under State Law may petition a court of competent jurisdiction for relief. Resolution of any controversy must be governed by the terms of this Compact when applicable or, to the extent not applicable, by appropriate federal or state law.
2. For the purpose of the administration of federal reserved water rights provided for in Article II, the United States agrees that a water commissioner or other official appointed by a court of competent jurisdiction may enter National Forest System Lands to collect data, inspect structures for the diversion and measurement of water, and distribute the federal reserved water rights in Article

II. The terms of entry or distribution may be limited, as appropriate, by an order of a court of competent jurisdiction. Nothing in this Compact waives the right of the United States, with respect to a specific action or anticipated action by a water commissioner or other official under this subsection, to seek terms of entry or distribution consistent with federal law if in conflict with state law.

3. The Department may enter National Forest System Lands for which a federal reserved water right is described in Article II for the purposes of data collection on Forest Service water diversions or notice requirements by the United States, pursuant to Article III, section C.3., of this Compact.

C. Use of Federal Reserved Water Rights.

1. Federal Reserved Water Rights.

The rights of the United States described in Article II of this Compact are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right.

2. Development of Future Discrete Administrative Uses.

The United States, without prior approval of the Department, may develop a Discrete Administrative Use after the Effective Date of This Compact as described in Article II, section A.2., provided that:

- (a) the purpose of use of the water is for a Discrete Administrative Use as defined in Article I(4) and described in Article II, section A.2.;
- (b) the quantity of water for Discrete Administrative Uses diverted or withdrawn shall not exceed the total amount as set forth in Article II, Table 1; and
- (c) the use shall not adversely affect a senior Water Right Recognized Under State Law.

3. Use of Dispersed Administrative Uses.

The United States, without prior approval of the Department, may use its federal reserved water right for Dispersed Administrative Uses, as needed, provided that:

- (a) the purpose of use of the water is for a Dispersed Administrative Use as defined in Article I(5) and described in Article II, section B.;
- (b) the total quantity of water for Dispersed Administrative Uses diverted or withdrawn shall not exceed the amount as set forth in Article II, Table 1;
- (c) the Forest Service shall provide notice of a Dispersed Administrative Use as follows:
 - (i) for uses of 20,000 gallons or less per day from a single source of supply, no notice is required;
 - (ii) for uses greater than 20,000 gallons per day and less than 60,000 gallons per day from a single source of supply, a notice must be posted at the site of the diversion or withdrawal for the entire period during which water is being diverted or withdrawn. The notice posted shall be clearly legible and visible and provide the following information:
 - (a) source of water;
 - (b) purpose of use;
 - (c) starting and ending date of diversion;

- (D) place of use;
 - (E) diversion flow rate;
 - (F) maximum volume of water to be diverted or withdrawn per day; and
 - (G) name and contact information for the contractor, the local Forest Service Ranger District, and the local Department Water Resources Regional Office.
- (iii) for uses greater than 60,000 gallons per day from a single source of supply, the local Department Water Resources Regional Office must be notified at least 10 days but not more than 45 days in advance of the initial use of the water. Notice must be posted at the site of the diversion or withdrawal, as provided in Article III, section C.3.(c)(ii). Notification to the Department Water Resources Regional Office must provide the following information:
- (a) source of water;
 - (b) legal description of the point of diversion or withdrawal;
 - (c) place of use;
 - (D) map showing preceding three items;
 - (E) purpose of use;
 - (F) starting and ending date of use;
 - (G) diversion flow rate;
 - (H) maximum volume of water to be diverted or withdrawn per day; and
 - (I) name and contact information for the contractor and the local Forest Service Ranger District.
- (d) the diversion or withdrawal of water for a Dispersed Administrative Use shall not adversely affect a senior Water Right Recognized Under State Law; and
- (e) if notified that the diversion or withdrawal for a Dispersed Administrative Use is adversely affecting a senior Water Right Recognized Under State Law, the Forest Service will immediately cease diversion or withdrawal from that source of supply. To resume the diversion or withdrawal, the Forest Service can move the diversion or withdrawal to another source of supply or satisfy the senior user and the Department Water Resources Regional Office Manager that use will not adversely affect the senior user or users.
- D. Change in Use of Federal Reserved Water Rights.
1. Discrete Administrative Uses.
- The United States, without approval of the Department, may change a Discrete Administrative Use described in Article II, section A., provided that:
- (a) the purpose of use of the water remains a Discrete Administrative Use as defined in Article I(4) and described in Article II, section A.;
 - (b) the quantity of water for Discrete Administrative Uses diverted or withdrawn shall not exceed the total amount as set forth in Article II, Table 1; and
 - (c) the change shall not adversely affect a Water Right Recognized Under State Law.

2. Dispersed Administrative Uses.
The United States' federal reserved water right to divert or withdraw water for Dispersed Administrative Uses as described in Article II, section B., shall not be changed to any other use.
 3. Emergency Fire Suppression.
The United States' federal reserved water right to divert or withdraw water for Emergency Fire Suppression as described in Article II, section C., shall not be changed to any other use.
 4. South Fork Flathead Wild and Scenic River.
The United States' federal reserved water right for instream flow for the South Fork Flathead Wild and Scenic River, as described in Article II, section D., shall not be changed to any other use.
- E. Reporting Requirements.
1. The Forest Service agrees to provide a report to the Department on an annual basis or on a periodic basis agreed to by the Parties containing information on development of Discrete Administrative Uses, as described in Article III, section C.2., and any change of a Discrete Administrative Use, as described in Article III, section D.1.
 2. Upon request by the Department, the Forest Service shall report to the Department information it has regarding water use for Emergency Fire Suppression, as described in Article II, section C.
 3. For Dispersed Administrative Uses, as described in Article III, section C.3.(c)(ii) and (iii), upon request by the Department, the Forest Service shall provide copies of notice postings for the stream or basin requested.
 4. For Dispersed Administrative Uses, as described in Article III, section C.3.(c)(i), upon request by the Department, the Forest Service shall report information it has available. In the event the Department requests additional information for future reports on a stream or basin for enforcement or water distribution purposes, the Forest Service agrees to comply with the request.
- F. Ownership Interest in Water for Purposes of Statewide Adjudication.
The federal reserved water rights for Administrative Uses and Emergency Fire Suppression described in Article II, sections A., B., and C., are ownership interests in water and its use for each water source within National Forest System Lands that has been affected by a temporary preliminary decree or preliminary decree.

ARTICLE IV STATE LAW PROVISIONS

A. Compact Principles.

In order to promote settlement of issues between the United States and the State, the United States agrees to relinquish any and all claims to federal reserved water rights for instream flows on National Forest System Lands. The State agrees that, in consideration for the United States' agreement not to pursue federal reserved water rights for instream flows on National Forest System Lands, the following principles, subject to the terms of this Compact, shall be included in state law:

1. Forest Service Water Rights Recognized Under Law Created in This Compact. There shall be created by this Compact Water Rights Recognized Under State Law held by the Forest Service as set forth in Article V, Table 2.
 2. State Water Reservation Process.
 - (a) There shall be a state water reservation process providing a means for the United States to appropriate state-law-based water rights for a minimum instream flow, level, or quality of water that provides an opportunity for hearing and judicial review.
 - (i) Any appropriation granted under this process will result in a water right held by the United States that is protectable and enforceable under state law, and shall not be subject to periodic review or reallocation.
 - (ii) The date of appropriation for water rights granted under the state water reservation process will be the date of filing of the application for state water reservations and will be senior in priority to any applications for state water reservations filed after that date.
 - (b) The Parties agree that the language of 85-2-316, MCA, on the Effective Date of This Compact and the terms of Article VI of this Compact satisfy the principles in Article IV, section A.2.
 3. New State Water Reservation Section.

The United States shall have the right to apply for a state water reservation under a new specific procedure in limited circumstances for state water reservations as set forth in Article VI, section B.
 4. Standing.

In the ongoing statewide adjudication, the United States shall have the right to object to and participate as an objector to any water right claim for water use or storage on or water conveyed across National Forest System Lands. The Parties agree that the language of 85-2-233, MCA, on the Effective Date of This Compact satisfies the principles in Article IV, section A.4.
- B. State Law Adopted as a Condition Precedent to This Compact.
- Subject to Article VIII, section D., the Parties agree that as a condition precedent to this Compact, the following provisions will be adopted as state law:
1. Sequencing.
 - (a) The permitting process for water appropriations under state law and the permitting for the access and use of National Forest System Lands in relation to water appropriations will be sequenced to avoid conflict between state and federal permitting.
 - (b) The applicant is required to show proof of federal authorization before the application for a new appropriation of water or a change of appropriation will be correct and complete when:
 - (i) a state permit is required prior to a new appropriation of water, including ground water, or a change of appropriation; and
 - (ii) a federal authorization is required to occupy, use, or traverse National Forest System Lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water for the appropriation or change of appropriation.

- (c) The state permit for a new appropriation shall be subject to any terms, conditions and limitations related to the use of water contained in the required federal authorization.
 - (d) The Parties agree that the language of 85-2-302, 85-2-310, 85-2-311, 85-2-312, and 85-2-402, MCA, on the Effective Date of This Compact satisfies this condition precedent.
2. Change of Diversionary Use to Instream Flow.
- In addition to any other process available under state law, the Forest Service may apply for a change of use from an appropriation right to divert or withdraw water on land owned by the United States that is located within or immediately adjacent to the exterior boundaries of National Forest System Lands on the Effective Date of This Compact to an instream flow water right on National Forest System Lands within or immediately adjacent to the exterior boundaries of National Forest System Lands on the Effective Date of This Compact in accordance with procedures required under state law. The Parties agree that the language of 85-2-320 on the Effective Date of This Compact satisfies the principles in Article IV, section B.2.

ARTICLE V WATER RIGHTS RECOGNIZED UNDER STATE LAW

There is created by this Compact appropriations of Water Rights Recognized Under State Law held by the Forest Service for instream flow or in situ use as set forth in Article V.

A. Water Rights Recognized Under State Law

TABLE 2 Lower and Upper Stream Point Water Flow

Water Right Number	Source	Flow Rate (CFS) SEC	Lower Stream Point				Upper Stream Point			
			TWP	RGE	SEC	QTR	TWP	RGE	SEC	QTR
41F-30023850	Horse Creek	3.0	25	10S	01W	NESE	29	10S	01W	SWNW
41F-30023851	Sheep Creek	4.0	1	12S	02E	SWSE	20	12S	03E	SWNW
41H-30023852	East Fork Hyalite Creek	7.0	23	04S	06E	SWNW	12	05S	06E	SWSW
41H-30023853	Hyalite Creek	28.0	14	03S	05E	SESW	15	04S	06E	NWSW
41H-30023854	West Fork Hyalite Creek	12.0	26	04S	06E	NWNW	23	05S	06E	NW
41I-30023855	Beaver Creek	10.0	19	12N	02W	SWNE	11	12N	02W	SENE
41J-30023856	Sheep Creek	27.0	2	12N	05E	NWSW	5	12N	06E	SESE
41J-30023857	Tenderfoot Creek	15.0	30	14N	05E	NENE	22	14N	05E	NWSW
41S-30023858	Dry Wolf Creek	5.0	28	15N	10E	SWNW	31	15N	10E	SWSW
41S-30023859	South Fork Judith River	3.5	1	12N	11E	NENE	4	11N	11E	SENE
43B-30023860	Little Mission Creek	2.5	14	03S	11E	NENW	27	03S	11E	NWNE

43B-30023861	Pine Creek	4.0	8	04S	10E	NWSW	16	04S	10E	NWSW
43B-30023862	South Fork Deep Creek	7.0	5	04S	10E	NENW	14	04S	10E	NWNW
43B-30023863	Upper Deer Creek	2.0	13	02S	14E	NENW	29	03S	14E	SESE
76B-30023864	North Fork Yaak River	24.0	15	37N	31W	SWNE	4	37N	31W	NE
76B-30023865	Pete Creek	15.0	5	35N	32W	NENW	29	36N	32W	SWNW
76B-30023866	Seventeenmile Creek	40.0	27	34N	33W	NWSE	5	33N	32W	NWNW
76B-30023867	South Fork Yaak River	19.0	2	35N	32W	NENE	5	34N	31W	SWSW
76B-30023868	Spread Creek	50.0	3	35N	33W	SWSE	29	36N	33W	SENE
76B-30023869	West Fork Yaak River	30.0	32	37N	31W	NWNE	35	37N	32W	NENE
76C-30023870	East Fisher	15.0	31	26N	29W	NWNE	31	26N	29W	NENE
76C-30023871	Silver Butte/Fisher River	34.0	17	26N	29W	NENE	35	26N	30W	SENW
76C-30023872	West Fisher River	28.0	1	26N	30W	NWNW	4	26N	30W	SWSE
76D-30023873	Barron Creek	2.0	27	32N	29W	SWNW	21	32N	30W	NW
76D-30023874	Big Cherry Creek	40.0	27	29N	31W	SWSW	3	28N	31W	NENE
76D-30023875	Big Creek	19.0	3	34N	29W	NWNW	34	35N	30W	NWNW
76D-30023876	Bobtail Creek	5.0	20	31N	31W	NWSW	8	31N	31W	NESW
76D-30023877	Bristow Creek	12.0	14	32N	29W	NWNW	8	32N	29W	NESE
76D-30023878	Callahan Creek	60.0	24	31N	34W	NWNW	21	31N	34W	NWSE
76D-30023879	Canyon Creek	4.0	22	31N	29W	SWSE	29	31N	28W	SWSW
76D-30023880	Cripple Horse Creek	8.0	2	31N	29W	NESE	5	31N	28W	SWSW
76D-30023881	Five Mile Creek	4.0	17	32N	28W	SWNW	19	32N	27W	NENE
76D-30023882	Granite Creek	21.0	2	29N	31W	NWNW	5	29N	31W	NESE
76D-30023883	Libby Creek	40.0	16	28N	30W	NWNW	18	28N	30W	SESE
76D-30023884	Midas Creek	1.5	31	28N	30W	SWNW	8	27N	30W	SWSE
76D-30023885	North Fork Big Creek	14.0	28	35N	30W	SWSE	31	36N	30W	SWSE
76D-30023886	Parmenter Creek	10.0	7	30N	31W	SWNE	18	30N	32W	SWSW
76D-30023887	Quartz Creek	17.5	12	31N	32W	SESW	2	31N	32W	SWNE
76D-30023888	Ross Creek	20.0	8	28N	33W	NENE	17	28N	34W	SWNW
76D-30023889	South Fork Big Creek	20.0	33	35N	30W	SENE	5	32N	30W	NENE
76D-30023890	Therriault Creek	4.0	3	35N	26W	SWNW	3	35N	26W	SENW
76D-30023891	Young Creek	6.0	17	37N	28W	NESE	8	37N	29W	SE

76E-30023892	Middle Fork Rock Creek	41.0	18	04N	15W	NENE	25	04N	16W	NWSW
76E-30023893	Rock Creek at Bitterroot Flat	150.0	7	08N	17W	NWNW	7	07N	16W	SESE
76E-30023894	Rock Creek at Mouth	250.0	13	11N	17W	SENE	30	11N	16W	SWNW
76E-30023895	West Fork Rock Creek	12.0	35	06N	16W	NESE	2	05N	17W	NWSW
76F-30023896	Clearwater River at Lake Alva	13.0	24	18N	16W	SWSE	24	18N	16W	NWSE
76F-30023897	Copper Creek	11.0	26	15N	08W	SENE	9	15N	08W	NENE
76F-30023898	Morrell Creek	12.0	35	17N	15W	SWSE	1	17N	15W	NESE
76F-30023899	North Fork Blackfoot River	39.0	2	15N	11W	NWNW	27	16N	11W	NESE
76F-30023900	Placid Creek	7.0	13	16N	16W	SWSW	10	16N	16W	NWNW
76F-30023901	Poorman Creek	7.0	8	13N	08W	NWSW	24	13N	08W	SENE
76G-30023902	Little Blackfoot River	17.0	30	09N	06W	NENW	12	08N	07W	SWNE
76G-30023903	Schwartz Creek	10.0	4	11N	17W	NWNW	8	11N	17W	SESW
76H-30023904	Lolo Creek	41.0	29	12N	22W	NENE	25	12N	23W	NENW
76H-30023905	South Fork Lolo Creek	15.0	6	11N	21W	NWNW	7	11N	21W	NWNW
76J-30023906	Wounded Buck Creek	11.0	17	29N	18W	SWNW	30	29N	18W	SWSW
76K-30023907	Bond Creek	6.0	24	25N	18W	NWNW	17	25N	17W	NWSE
76K-30023908	Cedar Creek	7.0	12	22N	18W	NENW	21	22N	18W	SESE
76K-30023909	Cold Creek	22.0	28	21N	17W	SWNE	33	21N	18W	NENW
76K-30023910	Elk Creek	25.0	16	20N	17W	NENE	23	20N	18W	SENW
76K-30023911	Goat Creek	11.0	17	23N	17W	NWSW	12	23N	17W	NWNE
76K-30023912	Groom Creek	2.5	12	25N	18W	SWSW	5	25N	17W	SE
76K-30023913	Hall Creek	2.5	11	25N	18W	SENE	11	25N	18W	NENE
76K-30023914	Lion Creek	19.0	8	22N	17W	SWNE	10	22N	16W	NWSW
76K-30023916	North Fork Lost Creek	6.0	27	25N	17W	NWSE	5	24N	16W	NESE
76K-30023917	Piper Creek	9.0	8	22N	17W	SWSW	33	22N	18W	NENW
76K-30023918	Scout Creek	1.5	12	23N	17W	NWNE	19	23N	16W	SESE
76K-30023919	South Fork Lost Creek	6.0	6	24N	16W	SWSW	19	24N	16W	NWSE
76LJ-30023920	Red Meadow Creek	16.0	7	35N	21W	SWNW	11	35N	22W	NWNW
76LJ-30023921	Trail Creek	37.0	34	37N	22W	SESE	28	37N	22W	SESW
76M-30023922	Rattlesnake Creek	17.0	2	13N	19W	NWNE	14	14N	18W	NENW
76M-30023923	Trout Creek	28.0	23	16N	26W	SWSW	5	15N	26W	NESW

76N-30023924	Bull River	29.0	14	28N	33W	NWNW	14	28N	33W	NENW
76N-30023925	Graves Creek	28.0	36	23N	30W	SWSW	36	23N	30W	NWNE
76N-30023926	Trout Creek	14.0	24	24N	32W	NENE	28	24N	32W	SWSW
76N-30023927	Vermilion River	110.0	14	24N	31W	SWSE	7	24N	30W	NWSW
76M-30023928	Shoofly Meadow	50.75	4	14N	17W	SW				

B. Priority Date.

The priority date of each of the Forest Service Water Rights Recognized Under State Law created in Article V, section A., is the Effective Date of This Compact.

C. Purpose of Use.

Except for Water Right Number 76M-30023928, the purpose of use of each of the Forest Service Water Rights Recognized Under State Law created in Article V, section A., is fishery. The purpose of use for Water Right Number 76M-30023928, created in Article V, section A., is wildlife, which includes habitat.

D. Period of Use.

The period of use of each of the Forest Service Water Rights Recognized Under State Law created in Article V, section A., is January 1 to December 31.

E. Limitation on Objections to Changes.

A Forest Service Water Right Recognized Under State Law created in Article V, section A., shall not be the basis to preclude a change in point of diversion, means of diversion, or place of use of a senior, direct-from-source, stock water right within an allotment on National Forest System Lands if the change is for dispersing stock in the allotment and the proposed change does not expand historic consumptive use of the stock water right.

F. Administration and Enforcement.

The Forest Service Water Rights Recognized Under State Law created in Article V, section A., are appropriations under state law and, as such, will be administered by the State and enforced in accordance with state law. The United States, as owner and user of these water rights, is entitled to the same benefits and is subject to the same regulations as all other holders of a Water Right Recognized Under State Law.

G. Concurrent With Other Instream Flow Uses.

The Forest Service Water Rights Recognized Under State Law created in Article V, section A., are for instream uses or in situ nonconsumptive use, meaning that there is no diversion, impoundment, or withdrawal associated with the use and the use does not cause a net loss of water in the source of supply. The Forest Service Water Rights Recognized Under State Law created in Article V, section A., shall run Concurrently with other instream flow or in situ rights.

ARTICLE VI APPLICATIONS FOR STATE WATER RESERVATIONS UNDER STATE LAW

A. State Water Reservation.

The Forest Service may apply for a state water reservation to maintain a minimum flow, volume, level, or quality of water on National Forest System Lands under 85-2-

316, MCA, in all basins within the State including basins or subbasins closed to new appropriations on or after the Effective Date of This Compact, subject to the terms of this Compact, for any purpose authorized by federal law applicable to National Forest System Lands. Any purpose authorized by federal law applicable to National Forest System Lands shall be considered a beneficial use under state law for the purposes of this Compact but shall set no precedent as to whether such purposes are beneficial uses under state law outside the terms of this Compact. A state water reservation issued under 85-2-316, MCA, is a Water Right Recognized Under State Law.

B. Specific Procedure in Limited Circumstances.

1. (a) For a state water reservation application pursuant to Article VI, section A., when the purpose of the reservation is to maintain a minimum flow for fish and the amount requested is based on the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), a correct and complete application shall constitute:
 - (i) conclusive evidence of the purpose of the reservation;
 - (ii) conclusive evidence of the need for the reservation;
 - (iii) prima facie evidence that the amount requested is accurate and suitable:
 - (a) at the lower inflection point of the Wetted Perimeter Methodology; or
 - (b) at the upper inflection point of the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), when the purpose of the reservation is for an existing population of bull trout, westslope cutthroat trout, Yellowstone cutthroat trout, Columbia River redband trout, arctic grayling, or any other fish species listed in the future under the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq.; and
 - (iv) prima facie evidence that the reservation is in the public interest.
- (b) By mutual agreement of the Parties, the Department may propose an administrative rule under the Montana Administrative Procedure Act, Title 2, chapter 4, of the Montana Code Annotated, to establish a methodology, other than the Wetted Perimeter Methodology, for an application for a state water reservation to maintain a minimum flow under Article VI, section B.1.(a), for fish species identified in Article VI, section B.1.(a)(iii)(B). Rulemaking under this subsection shall not be considered a modification of this Compact. The Department may adopt a rule under this subsection only if it finds, based on scientific and technical evidence in the administrative record, that:
 - (i) the proposed methodology enjoys acceptance in the scientific community as a methodology for establishment of minimum flow for pertinent fish species based on evidence that includes the existence of peer-reviewed studies, testimony or publications by experts in the field, and previous use in Montana or another relevant location; and
 - (ii) the results of the proposed methodology with respect to the stream that

is the subject of the application are either based on field data collected with respect to the stream or susceptible to verification based on field data.

2. For purposes of Article VI, section B., a correct and complete application shall be substantially in the form attached to this Compact as Appendix 3. Appendix 3 may be modified at any time by the consent of both Parties and shall not be considered a modification of the Compact.
 3. For the purposes of Article VI, section B., the Department shall issue a state water reservation unless an objector proves by a preponderance of the evidence that:
 - (a) the amount of water under the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), was not accurately measured or calculated, that the Wetted Perimeter Methodology or other methodology adopted pursuant to Article VI, section B.1.(b), could not suitably be applied to the stream reach applied for, or that there is not an existing population of the fish species set forth in Article VI, section B.1.(a)(iii)(B), identified in the application for state water reservation in the stream reach applied for; or
 - (b) for the public interest, there is a projected water development project:
 - (i) that is feasible;
 - (ii) that is reliably projected to be commenced within ten (10) years or within ten (10) years after a basin closure is removed;
 - (iii) in which the objector has or can reasonably obtain a possessory interest or the written consent of the Person or Party with the possessory interest in the property where the water is to be diverted, impounded, stored, transported, and put to beneficial use;
 - (iv) for which the amount of water needed for the project is reasonable;
 - (v) for which water needed for the project is not reasonably available from any other water source;
 - (vi) for which the water needed for the project, based on amount and period of use, would be unavailable if the proposed reservation was granted;
 - (vii) that would not be feasible with water either in a lesser amount or at a different location if the reservation was granted; and
 - (viii) that serves a significant public need.
 4. If the Department determines that proofs under Article VI, section B.3.(a), are met or that proofs for all criteria under Article VI, section B.3.(b), are met, the Department may issue, modify, or deny the reservation or may subordinate the reservation to the actual development of the project identified in Article VI, section B.3.(b).
- C. General Provisions.
1. The Forest Service's ability to apply for a state water reservation pursuant to Article VI in any basin or subbasin terminates thirty (30) years after the state court issues a final decree for that water basin under 85-2-234(1), MCA,

or thirty (30) years after the Effective Date of This Compact, whichever is later. The termination of the Forest Service's ability to apply for a state water reservation pursuant to Article VI under this subsection shall not restrict the Forest Service's ability to apply for a water right in any process available to the Forest Service under state law, including 85-2-316, MCA, provided that, the terms of this Compact shall not apply.

2. A state water reservation issued to the Forest Service under Article VI shall not be the basis to preclude a change in point of diversion, means of diversion, or place of use of a senior, direct-from-source, stock water right within an allotment on National Forest System Lands if the change is for dispersing stock in the allotment and the proposed change does not expand historic consumptive use of the stock water right.
3. In any contested case proceeding held under the Montana Administrative Procedure Act, Title 2, chapter 4, of the Montana Code Annotated, pursuant to this Compact, the common law and statutory rules of evidence shall apply only upon stipulation of all entities who are involved in a proceeding.
4. Any appeal of an administrative decision under Article VI shall be in state court and shall be filed at the First Judicial District in Helena, and the review shall be conducted according to the procedures for judicial review of contested cases under the Montana Administrative Procedure Act, Title 2, chapter 4, of the Montana Code Annotated.
5. A state water reservation issued to the Forest Service pursuant to Article VI is not subject to periodic review by the Department as set forth in 85-2-316(10), MCA. A state water reservation issued to the Forest Service pursuant to Article VI shall not be reallocated to another qualified reservant with a retained priority date as set forth in 85-2-316(11), MCA. Unless provided in this Compact, all other provisions of state law apply to a state water reservation issued to the Forest Service.

D. Administration and Enforcement.

Any state water reservation issued pursuant to Article VI is a Water Right Recognized Under State Law and, as such, will be administered by the State and enforced in accordance with state law. The United States, as owner and user of these water rights, is entitled to the same benefits and is subject to the same regulations of water use as all other holders of a Water Right Recognized Under State Law.

E. Concurrent With Other Instream Flow Uses.

Any state water reservation issued pursuant to Article VI is a Water Right Recognized Under State Law for instream uses or in situ nonconsumptive uses, meaning that there is no diversion, impoundment, or withdrawal associated with the use and the use does not cause a net loss of water in the source of supply. Unless otherwise provided in the terms and conditions, a state water reservation issued pursuant to Article VI shall run Concurrently with other instream flow rights.

F. Department Reporting to Montana Legislature.

For the period of time set forth in Article VI, section C.1., the Department shall biennially report to the Environmental Quality Council or other appropriate legislative committee the state water reservations applied for by the Forest Service since the

previous report and the Department action on applications for state water reservations by the Forest Service since the previous report.

ARTICLE VII GENERAL PROVISIONS

- A. No Effect on Tribal Rights or Other Federal Reserved Water Rights.
1. The relationship between the water rights of the Forest Service described in this Compact and any rights to water of an Indian tribe in Montana or of any federally derived water right of an individual or of the United States on behalf of such tribe or individual shall be determined by the rule of priority. The Parties to this agreement recognize that the water rights described in This Compact are junior to any tribal water rights with a priority date before the Effective Date of This Compact, including aboriginal rights, if any, in the basins affected.
 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 to water of any other federal agency or federal lands in Montana other than National Forest System Lands.
 3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian tribes and tribal members in Montana.
 4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian tribe regarding boundaries or property interests in the State of Montana.
- B. General Disclaimers.
- Nothing in this Compact may be construed or interpreted:
1. as a precedent for the litigation of federal reserved water rights or the interpretation or administration of future compacts between the United States and the State or between the United States and any other state;
 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 state law on National Forest System Land in the basins affected by this Compact or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under state law in the basins affected by this Compact;
 3. to establish a precedent for other agreements between the State and the United States or an Indian tribe;
 4. to determine the relative rights, inter sese, of Persons using water under the authority of state law or to limit the rights of the Parties or a Person to litigate an issue not resolved by this Compact;
 5. to create or deny substantive rights through headings or captions used in this Compact;
 6. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of This Compact;
 7. with respect to federal reserved water rights, 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 such fees or costs pursuant to a ruling by a court of competent

- jurisdiction or Act of Congress;
8. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the Forest Service and does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;
 9. to prevent the United States from seeking a permit to appropriate water under state law from a source not closed to new permits by law; or
 10. to expand or restrict rights of the United States under federal law except as expressly provided in this Compact.

C. Reservation of Rights.

The Parties expressly reserve all rights not granted, described, or relinquished in this Compact.

D. Severability.

Except as provided in Article VIII, section C., the provisions of this Compact are not severable.

E. Multiple Originals.

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

F. Notice.

Unless otherwise specifically provided for in this Compact, service of notice required under this Compact, except service in litigation, shall be:

1. State: Upon the Director of the Department or other officials that the Director may designate in writing.
2. United States: Upon the Secretary of Agriculture or other officials that the Secretary may designate in writing.

ARTICLE VIII FINALITY OF COMPACT AND DISMISSAL OF CLAIMS

A. Binding Effect.

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 Department of Agriculture, or written approval by the United States Department of Justice, whichever occurs later. Subject to Article VIII, section C., once effective, all of the provisions of this Compact shall be binding on:
 - (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 to the use of water; and
 - (b) except as otherwise provided in Article VII, section A., the United States and a Person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.
2. Following the Effective Date of This Compact, this Compact shall not be modified without the consent of both Parties. Unilateral substantive modification of the terms of this Compact by either Party, as determined by a court of competent

- jurisdiction, shall render this Compact voidable at the election of the other Party.
3. On approval of this Compact by a court of competent jurisdiction and entry of a decree by such court confirming the rights described in this Compact, this Compact and such rights are binding on all Persons bound by the final order of the court.
 4. If an objection to this Compact is sustained under 85-2-233, MCA, this Compact shall be voidable by action of and without prejudice to either Party.
- B. Enforcement of Compact.
1. Either Party may seek enforcement of the terms of this Compact in a court of competent jurisdiction, subject to the limitations of remedies provided in Article VIII, section C.
 2. When the enforcement action involves issues of notice or reporting required under Article III, sections C.3.(c) and E., the State shall provide written notice to the Forest Service and allow a reasonable opportunity to resolve the issue prior to filing an enforcement action.
 3. Except as provided in Article VIII, section C., the remedy for an action for enforcement of the terms of this Compact shall not include termination of the Compact in whole or in part.
- C. Exclusive Remedy for Changes in State Law.
1. For the time period set forth in subsection 11, if the State enacts a law that results in an alleged material impairment of any principle set forth in Article IV, section A.2., A.3., or A.4., the United States may, within 90 days of the effective date of the law, provide notice to the State of the alleged material impairment. If the United States fails to provide notice within 90 days of the effective date of the law, the United States is barred from taking any action under this section regarding alleged material impairment by enactment of the law.
 2. Following the receipt of notice provided in subsection 1, the Parties shall meet within 30 days to discuss the alleged material impairment. The Parties may each appoint a negotiator and may utilize a neutral third party to discuss resolution of the alleged material impairment.
 3. If the State does not agree that the legislation has resulted in material impairment within 90 days or such time as the Parties may agree or if no other alternative resolution has been found, the United States may seek a judgment in a court of competent jurisdiction declaring that the specified act of the Montana Legislature has resulted in material impairment of a principle set forth in Article IV, section A.2., A.3., or A.4. The only remedy available under this subsection is a declaratory judgment as to whether or not the change in state law results in a material impairment of a principle set for in Article IV, section A.2., A.3., or A.4. The Parties shall jointly request the court to retain jurisdiction through all proceedings under this section.
 4. If the State agrees or if a court finds that changes to state law have materially impaired a principle set forth in Article IV, section A.2., A.3., or A.4., the United States may take no action under subsection 5 until the final adjournment of the

next regular session of the Montana Legislature. If the material impairment is cured through enacted legislation to the satisfaction of the United States, the United States is barred from taking further action under this section.

5. If, in the opinion of the United States, the State has failed to enact legislation that cures a material impairment as provided in subsection 4, the United States may initiate severance and termination of portions of the Compact as provided in subsection 8 by sending notice to the State within 90 days from the end of the regularly scheduled legislative session. If this notice is not served within the 90-day period, the United States is barred from severing and terminating portions of the Compact based on material impairment.
6. If the State has enacted a law to cure the material impairment and the United States does not agree that the material impairment has been cured by the enactment, the State shall have the opportunity within 90 days from receipt of the notice served by the United States to seek a judgment declaring that the specific enactment has cured the material impairment of a principle set forth in Article IV, section A.2., A.3., or A.4., either by:
 - (a) invoking any retained jurisdiction of the court; or
 - (b) if no court has retained jurisdiction over the dispute, seeking a judgment in a court of competent jurisdiction.
7. If the State does not file an action within the 90-day period provided in subsection 6, the notice served by the United States becomes effective at the expiration of the 90-day period. If the State files for declaratory judgment and the court finds that legislation enacted by the State cures the material impairment, then the notice served by the United States does not operate to sever or terminate portions of the Compact under subsection 8. If the court finds that the enacted legislation does not cure the material impairment, the notice served by the United States becomes effective when the court's judgment becomes final either through the exhaustion of all available appeals or the running of the time for taking an appeal.
8. If the United States elects to sever and terminate portions of the Compact under this section, the Parties agree that Article IV, section A.2., A.3., and A.4., and Article VI together and in their entirety are severed from the Compact and all rights and obligations under those provisions are terminated. All other provisions of this Compact remain in force and effect. If the portions of the Compact are severed and terminated, the Parties agree that the United States shall retain all water rights contained in Articles II and V and state water reservations granted to the United States prior to severance and termination under this subsection.
9. If the United States severs and terminates portions of the Compact as provided in subsection 8, the United States may file federal reserved water right claims in the state general stream adjudication, in the Montana Water Court or other state court that succeeds to the Montana Water Court's jurisdiction to conduct the general stream adjudication, for instream flow for any stream on which the United States has not been granted a Water Right Recognized Under State Law for an instream flow or an in situ right. The United States shall file all federal reserved water right claims for instream flow with the state court within

twelve (12) months after severance and termination of portions of the Compact become effective. The United States agrees that, regardless of the dates of the reservation of the National Forest System Lands for which a federal reserved water right is claimed, the priority date of the federal reserved water right claim will be the Effective Date of This Compact.

10. The remedy provided in Article VIII, section C., is the exclusive remedy for actions brought as a result of changes to state law that materially impair the provisions of Article IV, section A.2., A.3., or A.4. There is no remedy under this Compact for changes to state law except as applied under this section to Article IV, section A.2., A.3., and A.4., and as provided in Article VIII, section A.2.
11. This section and the procedure and remedy provided under this section shall remain in effect for a period of thirty (30) years after the state court issues a final decree for all water basins under 85-2-234(1), MCA, that contain National Forest System Lands. This period of time under this subsection is tolled for any period of time during which state law materially impaired the interest of the United States as agreed to by the State or determined by a court of competent jurisdiction. After this period, all rights and remedies under this section terminate.

D. Limits on Article IV, Section B.

Article IV, section B., is not an enforceable term of this Compact, and changes to the provisions of state law as described in Article IV, sections B.1. and B.2., after the Effective Date of This Compact shall not give rise to any cause of action in law or in equity or provide any remedy under this Compact.

E. State Court Filing.

Subject to the following stipulations and within one hundred eighty (180) days of the Effective Date of This Compact, the Parties shall submit this Compact to an appropriate state court having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the federal reserved water rights described in this Compact into a decree or decrees entered in the court. The Parties understand and agree that the submission of this Compact to a state court, as provided for in this Compact, does not expand or restrict the jurisdiction of the state court or expand or restrict in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

F. Dismissal of Filed Claims.

At the time the state courts approve the federal reserved water rights described in Article II of this Compact and enter a decree or decrees confirming the rights described, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 2 of this Compact for National Forest Service Lands. If this Compact fails approval or a federal reserved water right described in this Compact is not confirmed, the specified claims shall not be dismissed.

G. Consent Decree.

This Compact may be filed as a consent decree in federal court if it is finally determined in a judgment binding on the State of Montana that the state courts lack

jurisdiction over some or all of the water rights described in this Compact. Within one (1) year of such judgment, the United States agrees to commence such proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the water rights described in this Compact.

H. Settlement of Claims.

The Parties intend that the water rights described in this Compact, together with the rights and obligations set forth in Article IV, are in full and final settlement of all federal reserved water right claims filed by the United States or that could have been filed by the United States as of the Effective Date of This Compact for the primary purposes of the National Forest System Lands in the State of Montana. Pursuant to this settlement, the United States hereby relinquishes forever on the Effective Date of This Compact all said federal reserved water right claims.

I. Defense of Compact.

The Parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the ____ day of _____, 2007.

History: En. Sec. 1, Ch. 213, L. 2007.

BLACKFEET – MONTANA 2007 LEGISLATION

Title 85 Water Use
Chapter 20 Water Compacts



85-20-1501 through 85-20-1502 reserved.

85-20-1503. Definitions. As used in 2-20-1503 through 85-20-1506, the following definitions apply:

(1) “Blackfoot Tribe” means the Blackfoot Tribe of the Blackfoot Indian Reservation of Montana; and

(2) “Department” means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

History: En. Sec. 1, Ch. 489, L. 2007.

85-20-1504. Blackfoot Tribe water rights compact mitigation account -- use. (1) There is an account within the state special revenue fund called the Blackfoot Tribe water rights compact mitigation account. The department shall administer the account. Up to \$650,000 each fiscal year of interest and earnings on the account must be deposited in the account.

(2) The Blackfoot Tribe water rights compact mitigation account may be used only for:

- (a) expenditures for grants to or matching funds for federal or other grants to water right holders under state law for water from Birch Creek, Badger Creek, Cut Bank Creek, the Two Medicine River, and the portion of the Milk River within the exterior boundaries of the Blackfoot Indian Reservation for projects approved by the department to enhance water availability or otherwise mitigate the economic and hydrologic impacts on water right holders under state law caused by the development of the Blackfoot Tribe’s water rights under a water rights compact pursuant to 82-2-702 quantifying the water rights of the Blackfoot Tribe; and
- (b) implementation of the water rights compact among the Blackfoot Tribe, the state, and the United States and any associated agreements as may be specified in the compact or agreements.

(3) (a) The department may expend up to \$500,000 of the account to conduct preliminary feasibility studies and an associated environmental review for water compact purposes.

(b) The department may expend up to \$650,000 each fiscal year of the interest and income on the escrow account provided for in subsection (4)(b) for the purposes described in subsection (2)(b).

(4) (a) At least \$4.5 million of this account must be dedicated to mitigate impacts on water right holders under state law for use of water out of Birch Creek.

(b) The amount of \$10 million in this account must be held in escrow. The department shall negotiate the terms of an escrow agreement.

(5) Except as provided in subsection (3), funds from this account may not be disbursed unless a water rights compact among the Blackfoot Tribe, the state, and the United States has been finally ratified by the legislature, the Congress

of the United States, and the Blackfeet Tribe.

History: En. Sec. 2, Ch. 489, L. 2007.

85-20-1505. Blackfeet Tribe water rights compact infrastructure account -- use. (1) There is an account within the state special revenue fund called the Blackfeet Tribe water rights compact infrastructure account. The department shall administer the account.

- (2) The Blackfeet Tribe water rights compact infrastructure account may be used only for water-related infrastructure projects within the exterior boundaries of the Blackfeet Indian reservation.
- (3) Funds from this account may not be disbursed unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfeet Tribe.

History: En. Sec. 3, Ch. 489, L. 2007.

85-20-1506. Administrative rules. (1) The department shall adopt reasonable rules for implementing and administering 85-20-1503 through 85-20-1505.

- (2) In proposing rules, the department shall:
 - (a) consult with affected stakeholders, including the Pondera County conservation district and the Glacier County conservation district; and
 - (b) give priority to mitigating impacts on water right holders under state law who use water out of Birch Creek.

History: En. Sec. 4, Ch. 489, L. 2007.



**DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION**

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