

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 appropriative 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	Priority Date	National Forests	Current (AF/YR)	Discrete Administrative Uses		Total (AF/YR)	Dispersed Administrative Uses
				Future (AF/YR)	Volume (AF/YR)		
Basin							
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.