

Unofficial Draft Copy

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LCWPIC

**** Bill No. ****

*****DRAFT FOR DISCUSSION PURPOSES*****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act delegating water-related duties from the environmental quality council to the water policy committee; transferring administrative rule review, draft legislation review, program evaluation, and monitoring functions from the environmental quality council to the water policy committee for issues where the primary concern is the quality or quantity of water; transferring various reporting requirements from the environmental quality council to the water policy committee; and amending sections 5-5-202, 5-5-231, 75-1-208, 75-1-324, 75-5-313, 75-5-703, 85-1-203, 85-1-621, 85-2-105, 85-2-281, 85-2-350, 85-2-436, and 85-20-1401, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-5-202, MCA, is amended to read:

"5-5-202. Interim committees. (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, environmental quality council, ~~water policy~~

~~committee~~, and state-tribal relations committee are provided for in the statutes governing those committees.

(2) The following are the interim committees of the legislature:

- (a) economic affairs committee;
- (b) education and local government committee;
- (c) children, families, health, and human services

committee;

- (d) law and justice committee;
- (e) energy and telecommunications committee;
- (f) revenue and transportation committee; ~~and~~
- (g) state administration and veterans' affairs committee;

and

- (i) water policy committee.

(3) An interim committee or the environmental quality council may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Upon the acceptance of the referred issue, the accepting committee shall consider the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee retains jurisdiction.

(4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject, the legislative council shall determine the most appropriate committee and assign the subject to that committee. If there is an entity that is attached to an agency for administrative purposes under the

jurisdiction of an interim committee and another interim committee has a justification to seek jurisdiction and petitions the legislative council, the legislative council may assign that entity to the interim committee seeking jurisdiction unless otherwise provided by law."

{ Internal References to 5-5-202:

5-5-231a 5-11-105x 47-1-105x }

Section 2. Section 5-5-231, MCA, is amended to read:

"5-5-231. Water policy committee. (1) There is a water policy committee. ~~Except as provided in subsection (2), the committee is treated as an interim committee for the purposes of 5-5-211 through 5-5-214.~~ The committee shall:

- (a) determine which water policy issues it examines;
- (b) conduct interim studies as assigned pursuant to 5-5-217;
- (c) subject to the provisions of 5-5-202(4), coordinate with the environmental quality council and other interim committees to avoid duplication of efforts; ~~and~~
- (d) report its activities, findings, recommendations, and any proposed legislation as provided in 5-11-210; and
- (e) in accordance with 5-5-215, for issues where the primary concern is the quality or quantity of water, perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of an interim committee for the following executive branch agencies and the entities attached to the agencies for administrative purposes:

- (i) department of environmental quality;
- (ii) department of fish, wildlife, and parks; and
- (iii) department of natural resources and conservation.

(2) At least two members of the committee must possess experience in agriculture."

{ Internal References to 5-5-231:
85-2-427x }

Section 3. Section 75-1-208, MCA, is amended to read:

"75-1-208. Environmental review procedure. (1) (a) Except as provided in 75-1-205(4) and subsection (1)(b) of this section, an agency shall comply with this section when completing any environmental review required under this part.

(b) To the extent that the requirements of this section are inconsistent with federal requirements, the requirements of this section do not apply to an environmental review that is being prepared jointly by a state agency pursuant to this part and a federal agency pursuant to the National Environmental Policy Act or to an environmental review that must comply with the requirements of the National Environmental Policy Act.

~~(2)~~ (2) (a) Except as provided in subsection (2)(b), a project sponsor may, after providing a 30-day notice, appear before the environmental quality council at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The environmental quality council shall ensure that the appropriate agency personnel are available to answer questions.

(2) (b) If the primary concern of the agency's environmental review of the project is the quality or the quantity of water, a project sponsor may, after providing a 30-day notice, appear before the water policy committee established in 5-5-231 at any regularly scheduled meeting to discuss issues regarding the agency's environmental review of the project. The water policy committee shall ensure that the appropriate agency personnel are available to answer questions.

(3) If a project sponsor experiences problems in dealing with the agency or any consultant hired by the agency regarding an environmental review, the project sponsor may submit a written request to the agency director requesting a meeting to discuss the issues. The written request must sufficiently state the issues to allow the agency to prepare for the meeting. If the issues remain unresolved after the meeting with the agency director, the project sponsor may submit a written request to appear before the appropriate board, if any, to discuss the remaining issues. A written request to the appropriate board must sufficiently state the issues to allow the agency and the board to prepare for the meeting.

(4) (a) Subject to the requirements of subsection (5), to ensure a timely completion of the environmental review process, an agency is subject to the time limits listed in this subsection (4) unless other time limits are provided by law. All time limits are measured from the date the agency receives a complete application. An agency has:

(i) 60 days to complete a public scoping process, if any;

(ii) 90 days to complete an environmental review unless a detailed statement pursuant to 75-1-201(1)(b)(iv) or 75-1-205(4) is required; and

(iii) 180 days to complete a detailed statement pursuant to 75-1-201(1)(b)(iv).

(b) The period of time between the request for a review by a board and the completion of a review by a board under 75-1-201(9) or subsection (10) of this section may not be included for the purposes of determining compliance with the time limits established for conducting an environmental review under this subsection or the time limits established for permitting in 75-2-211, 75-2-218, 75-20-216, 75-20-231, 76-4-125, 82-4-122, 82-4-231, 82-4-337, and 82-4-432.

(5) An agency may extend the time limits in subsection (4) by notifying the project sponsor in writing that an extension is necessary and stating the basis for the extension. The agency may extend the time limit one time, and the extension may not exceed 50% of the original time period as listed in subsection (4). After one extension, the agency may not extend the time limit unless the agency and the project sponsor mutually agree to the extension.

(6) If the project sponsor disagrees with the need for the extension, the project sponsor may request that the appropriate board, if any, conduct a review of the agency's decision to extend the time period. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(7) (a) Except as provided in subsection (7)(b), if an agency has not completed the environmental review by the expiration of the original or extended time period, the agency may not withhold a permit or other authority to act unless the agency makes a written finding that there is a likelihood that permit issuance or other approval to act would result in the violation of a statutory or regulatory requirement.

(b) Subsection (7)(a) does not apply to a permit granted under Title 75, chapter 2, or under Title 82, chapter 4, parts 1 and 2.

(8) Under this part, an agency may only request that information from the project sponsor that is relevant to the environmental review required under this part.

(9) An agency shall ensure that the notification for any public scoping process associated with an environmental review conducted by the agency is presented in an objective and neutral manner and that the notification does not speculate on the potential impacts of the project.

(10) An agency may not require the project sponsor to provide engineering designs in greater detail than that necessary to fairly evaluate the proposed project. The project sponsor may request that the appropriate board, if any, review an agency's request regarding the level of design detail information that the agency believes is necessary to conduct the environmental review. The appropriate board may, at its discretion, submit an advisory recommendation to the agency regarding the issue.

(11) An agency shall, when appropriate, evaluate the

cumulative impacts of a proposed project. However, related future actions may only be considered when these actions are under concurrent consideration by any agency through preimpact statement studies, separate impact statement evaluations, or permit processing procedures."

{ Internal References to 75-1-208:

75-1-201x	75-1-201 x	75-1-205 x	75-1-205 x
75-1-205 x	75-2-211 x	75-2-211 x	75-2-218 x
75-20-216 x	75-20-216x	75-20-231x	76-4-125 x
82-4-122 x	82-4-231x	82-4-231 x	82-4-231 x
82-4-432 x}			

Section 4. Section 75-1-324, MCA, is amended to read:

"75-1-324. Duties of environmental quality council. The environmental quality council shall:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields in which legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan;

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the

situations; and

(10) except as provided for in 5-5-231, perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of an interim committee for the following executive branch agencies and the entities attached to the agencies for administrative purposes:

- (a) department of environmental quality;
- (b) department of fish, wildlife, and parks; and
- (c) department of natural resources and conservation."

{*Internal References to 75-1-324:*
5-11-105x }

Section 5. Section 75-5-313, MCA, is amended to read:

"75-5-313. Nutrient standards variances -- individual, general, and alternative. (1) The department shall, on a case-by-case basis, approve the use of an individual nutrient standards variance in a discharge permit based upon adequate justification pursuant to subsection (2) that attainment of the base numeric nutrient standards is precluded due to economic impacts, limits of technology, or both.

(2) (a) The department, in consultation with the nutrient work group, shall develop guidelines for individual nutrient standards variances to ensure that the economic impacts from base numeric nutrient standards on public and private systems are equally and adequately addressed. In developing those guidelines, the department and the nutrient work group shall consider economic impacts appropriate for application within Montana,

acknowledging that advanced treatment technologies for removing nutrients will result in significant and widespread economic impacts.

(b) The department shall consult with the nutrient work group prior to recommending base numeric nutrient standards to the board and shall continue to consult with the nutrient work group in implementing individual nutrient standards variances.

(3) The department shall review each application for an individual nutrient standards variance on a case-by-case basis to determine if there are reasonable alternatives, such as trading, permit compliance schedules, or the alternatives provided in subsections (5), (10), and (11), that preclude the need for the individual nutrient standards variance.

(4) Individual nutrient standards variances approved by the department become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

(5) (a) Because the treatment of wastewater to base numeric nutrient standards would result in substantial and widespread economic impacts on a statewide basis, a permittee who meets the requirements established in subsection (5)(b) may, subject to subsection (6), apply for a general nutrient standards variance.

(b) The department shall approve the use of a general nutrient standards variance for permittees with wastewater treatment facilities that discharge to surface water:

(i) in an amount greater than or equal to 1 million gallons per day of effluent if the permittee treats the discharge to, at

a minimum, 1 milligram total phosphorus per liter and 10 milligrams total nitrogen per liter, calculated as a monthly average during the period in which the base numeric nutrient standards apply;

(ii) in an amount less than 1 million gallons per day of effluent if the permittee treats the discharge to, at a minimum, 2 milligrams total phosphorus per liter and 15 milligrams total nitrogen per liter, calculated as a monthly average during the period in which the base numeric nutrient standards apply; or

(iii) from lagoons that were not designed to actively remove nutrients if the permittee maintains the performance of the lagoon at a level equal to the performance of the lagoon on October 1, 2011.

(6) (a) The monthly average concentrations for total nitrogen and total phosphorus in subsection (5)(b) are the highest concentrations allowed in each category and remain in effect until May 31, 2016.

(b) Categories and concentrations in subsection (5)(b) must be adopted by rule by May 31, 2016.

(7) (a) Immediately after May 31, 2016, and every 3 years thereafter, the department, in consultation with the nutrient work group, shall revisit and update the concentration levels provided in subsection (5)(b).

(b) If more cost-effective and efficient treatment technologies are available, the concentration levels provided in subsection (5)(b) must be updated pursuant to subsection (7)(c) to reflect those changes.

(c) The updates become effective and may be incorporated into a permit only after a public hearing and adoption by the department under the rulemaking procedures of Title 2, chapter 4, part 3.

(8) An individual, general, or alternative nutrient standards variance may be established for a period not to exceed 20 years and must be reviewed by the department every 3 years from the date of adoption to ensure that the justification for its adoption remains valid.

(9) (a) Permittees receiving an individual, general, or alternative nutrient standards variance shall evaluate current facility operations to optimize nutrient reduction with existing infrastructure and shall analyze cost-effective methods of reducing nutrient loading, including but not limited to nutrient trading without substantial investment in new infrastructure.

(b) The department may request that a permittee provide the results of an optimization study and nutrient reduction analysis to the department within 2 years of receiving an individual, general, or alternative nutrient variance.

(10) (a) A permittee may request that the department provide an alternative nutrient standards variance if the permittee demonstrates that achieving nutrient concentrations established for an individual or general nutrient standards variance would result in an insignificant reduction of instream nutrient loading.

(b) A permittee receiving an alternative nutrient standards variance shall comply with the requirements of subsections (8)

and (9) and shall demonstrate that the permittee's contribution to nutrient concentrations in the watershed continues to remain insignificant.

(11) The department shall encourage the use of alternative effluent management methods to reduce instream nutrient loading, including reuse, recharge, land application, and trading.

(12) On or before July 1 of each year, the department, in consultation with the nutrient work group, shall report to the ~~environmental quality council~~ water policy committee established in 5-5-231 by providing a summary of the status of the base numeric nutrient standards, the nutrient standards variances, and implementation of those standards and variances, including estimated economic impacts.

(13) On or before September 1 of each year preceding the convening of a regular session of the legislature, the department, in consultation with the nutrient work group, shall summarize the previous two reports provided in subsection (12) to the ~~environmental quality council~~ water policy committee established in 5-5-231 in accordance with 5-11-210."

{ *Internal References to 75-5-313:*
75-5-103x 75-5-103x }

Section 6. Section 75-5-703, MCA, is amended to read:

"75-5-703. Development and implementation of total maximum daily loads. (1) The department shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily loads or TMDLs for threatened or impaired

water bodies or segments of water bodies in order of the priority ranking established by the department under 75-5-702. Each TMDL must be established at a level that will achieve compliance with applicable water quality standards and must include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between the TMDL and water quality standards. The department shall consider applicable guidance from the federal environmental protection agency, as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

(2) In establishing TMDLs under subsection (1), the department may establish waste load allocations for point sources and may establish load allocations for nonpoint sources, as set forth in subsection (8), and may allow for effluent trading. The department shall, in consultation with local conservation districts and watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing established practices and programs for nonpoint sources.

(3) The department shall establish a schedule that provides a reasonable timeframe for TMDL development for impaired and threatened water bodies that are on the most recent list prepared pursuant to 75-5-702. On or before July 1 of each even-numbered year, the department shall report the progress in completing TMDLs and the current schedule for completion of TMDLs for the water bodies that remain on the list to the ~~environmental quality council~~ water policy committee established in 5-5-231.

(4) The department shall provide guidance for TMDL

development on any threatened or impaired water body, regardless of its priority ranking, if the necessary funding and resources from sources outside the department are available to develop the TMDL and to monitor the effectiveness of implementation efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the department, the department shall ensure implementation of the TMDL according to the provisions of subsections (6) through (8).

(5) For water bodies listed under 75-5-702, the department shall provide assistance and support to landowners, local conservation districts, and watershed advisory groups for interim measures that may restore water quality and remove the need to establish a TMDL, such as informational programs regarding control of nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in a way that gives credit for the pollution reduction efforts.

(6) After development of a TMDL and upon approval of the TMDL, the department shall:

(a) incorporate the TMDL into its current continuing planning process;

(b) incorporate the waste load allocation developed for point sources during the TMDL process into appropriate water discharge permits; and

(c) assist and inform landowners regarding the application of a voluntary program of reasonable land, soil, and water conservation practices developed pursuant to subsection (2).

(7) Once the control measures identified in subsection (6) have been implemented, the department shall, in consultation with the statewide TMDL advisory group, develop a monitoring program to assess the waters that are subject to the TMDL to determine whether compliance with water quality standards has been attained for a particular water body or whether the water body is no longer threatened. The monitoring program must be designed based on the specific impairments or pollution sources. The department's monitoring program must include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed.

(8) The department shall support a voluntary program of reasonable land, soil, and water conservation practices to achieve compliance with water quality standards for nonpoint source activities for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

(9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the department shall conduct a formal evaluation of progress in restoring water quality and the status of reasonable land, soil, and water conservation practice implementation to determine if:

(a) the implementation of a new or improved phase of

voluntary reasonable land, soil, and water conservation practice is necessary;

(b) water quality is improving but a specified time is needed for compliance with water quality standards; or

(c) revisions to the TMDL are necessary to achieve applicable water quality standards.

(10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:

(a) point source discharges to a listed water body may commence or continue, provided that:

(i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent applicable for the particular discharge, the provisions of 75-5-303;

(ii) the discharge will not cause a decline in water quality for parameters by which the water body is impaired; and

(iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

(b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

(c) new or expanded nonpoint source activities affecting a listed water body may commence and continue if those activities are conducted in accordance with reasonable land, soil, and water conservation practices;

(d) for existing nonpoint source activities, the department shall continue to use educational nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).

(11) This section may not be construed to prevent a person from filing an application or petition under 75-5-302, 75-5-310, or 75-5-312."

{*Internal References to 75-5-703:*

75-5-103x 75-5-103x 75-5-702x 75-5-704x
75-5-704x }

Section 7. Section 85-1-203, MCA, is amended to read:

"85-1-203. State water plan. (1) The department shall gather from any source reliable information relating to Montana's water resources and prepare from the information a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may:

- (a) conduct studies;
- (b) adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies;
- (c) perform research or employ other competent agencies to perform research on a contract basis; and
- (d) hold public hearings in affected areas at which all interested parties must be given an opportunity to appear.

(2) The department shall formulate and adopt and amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, with some of these sections corresponding with hydrologic divisions of the state. The state water plan must set out a progressive program for the conservation, development, utilization, and sustainability of the state's water resources and propose the

most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses.

(3) Sections of the state water plan must be completed for the Missouri, Yellowstone, and Clark Fork River basins, submitted to the 2015 legislature, and updated at least every 20 years.

These basinwide plans must include:

(a) an inventory of consumptive and nonconsumptive uses associated with existing water rights;

(b) an estimate of the amount of surface and ground water needed to satisfy new future demands;

(c) analysis of the effects of frequent drought and new or increased depletions on the availability of future water supplies;

(d) proposals for the best means, such as an evaluation of opportunities for storage of water by both private and public entities, to satisfy existing water rights and new water demands;

(e) possible sources of water to meet the needs of the state; and

(f) any legislation necessary to address water resource concerns in these basins.

(4) (a) The department shall create a water user council in both the Yellowstone and Missouri River basins that is inclusive and representative of all water interests and interests in those basins. For the Clark Fork River basin, the department shall continue to utilize the Clark Fork River basin task force established pursuant to 85-2-350.

(b) The councils in the Missouri and Yellowstone River basins consist of representatives of existing watershed groups or councils within the basins.

(c) Each council may have up to 20 members.

(d) Each water user council shall make recommendations to the department on the basinwide plans required by subsection (3).

(5) Before adopting the state water plan or any section of the plan, the department shall hold public hearings in the state or in an area of the state encompassed by a section of the plan if adoption of a section is proposed. Notice of the hearing or hearings must be published for 2 consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section of the plan at least 30 days prior to the hearing.

(6) The department shall submit to the ~~environmental quality council established in 5-16-101~~ water policy committee established in 5-5-231 and to the legislature at the beginning of each regular session the state water plan or any section of the plan or amendments, additions, or revisions to the plan that the department has formulated and adopted.

(7) The legislature, by joint resolution, may revise the state water plan.

(8) The department shall prepare a continuing inventory of the ground water resources of the state. The ground water inventory must be included in the comprehensive water resources inventory described in subsection (1) but must be a separate component of the inventory.

(9) The department shall publish the comprehensive inventory, the state water plan, the ground water inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

(10) In developing and revising the state water plan as provided in this section, the department shall consult with the ~~environmental quality council established in 5-16-101~~ water policy committee established in 5-5-231 and solicit the advice of the ~~environmental quality council~~ water policy committee in carrying out its duties under this section."

{ Internal References to 85-1-203:
85-2-105a 85-2-350 x 85-2-350x }

Section 8. Section 85-1-621, MCA, is amended to read:

"85-1-621. Report. The department shall prepare a biennial report describing the status of the renewable resource grant and loan program. The report must describe ongoing projects and projects that have been completed during the biennium. The report must identify and rank in order of priority the projects for which the department has received applications. The report must also describe proposed projects and activities for the coming biennium and recommendations for necessary appropriations. A copy of the report must be submitted to the ~~environmental quality council established in 5-16-101~~ water policy committee established in 5-5-231."

{ Internal References to 85-1-621:
85-2-105a }

Section 9. Section 85-2-105, MCA, is amended to read:

**"85-2-105. ~~Environmental quality council -- water policy~~
Water policy interim committee duties.** (1) The ~~environmental quality council~~ water policy committee established in 5-5-231 shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the ~~environmental quality council~~ water policy committee may:

(a) advise the legislature on the adequacy of the state's water policy and on important state, regional, national, and international developments that affect Montana's water resources;

(b) oversee the policies and activities of the department, other state executive agencies, and other state institutions as those policies and activities affect the water resources of the state;

(c) assist with interagency coordination related to Montana's water resources; and

(d) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the ~~environmental quality council~~ water policy committee shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water information system maintained by the natural resource information system under 90-15-305; and

(e) report to the legislature as provided in 5-11-210.

~~(4) The legislative services division shall provide staff assistance to the environmental quality council to carry out its water policy duties."~~

{*Internal References to 85-2-105: None.*}

Section 10. Section 85-2-281, MCA, is amended to read:

"85-2-281. (Temporary) Reporting requirements. The department and the water court shall:

(1) provide reports to the ~~environmental quality council~~ water policy committee established in 5-5-231 at each meeting during a legislative interim on:

(a) the progress of the adjudication on a basin-by-basin basis; and

(b) the number of basins for which examination was completed during the reporting period;

(2) include a status report on the adjudication in their presentation to the applicable appropriation subcommittees during each legislative session including the number of basins for which examination was completed during the reporting period; and

(3) provide a budget that outlines how each of the entities

will be funded in the next biennium, including general fund money and state special revenue funds. (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005; sec. 11, Ch. 319, L. 2007.)"

{ *Internal References to 85-2-281:*
85-2-270 *x }

Section 11. Section 85-2-350, MCA, is amended to read:

"85-2-350. Clark Fork River basin task force -- duties -- water management plan. (1) The governor's office shall designate an appropriate entity to convene and coordinate a Clark Fork River basin task force to prepare proposed amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin. The designated appropriate entity shall:

(a) identify the individuals and organizations, public, tribal, and private, that are interested in or affected by water management in the Clark Fork River basin;

(b) provide advice and assistance in selecting representatives to serve on the task force;

(c) develop, in consultation with the task force, appropriate opportunities for public participation in studies of water management in the Clark Fork River basin; and

(d) ensure that all watershed and viewpoints within the basin are adequately represented on the task force, including a representation from the following:

(i) the reach of the Clark Fork River in Montana below its confluence with the Flathead River;

(ii) the Flathead River basin, including Flathead Lake, from

Flathead Lake to the confluence of the Flathead River and the Clark Fork River;

(iii) the Flathead River basin upstream from Flathead Lake;

(iv) the reach of the Clark Fork River between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River;

(v) the Bitterroot River basin as defined in 85-2-344; and

(vi) the Upper Clark Fork River basin as defined in 85-2-335.

(2) Task force members shall serve 2-year terms and may serve more than one term. The Confederated Salish and Kootenai tribal government has the right to appoint a representative to the task force.

(3) The task force shall:

(a) identify short-term and long-term water management issues and problems and alternatives for resolving any issues or problems identified;

(b) identify data gaps regarding basin water resources, especially ground water;

(c) coordinate water management by local basin watershed groups, water user organizations, and individual water users to ensure long-term sustainable water use;

(d) provide a forum for all interests to communicate about water issues;

(e) advise government agencies about water management and permitting activities in the Clark Fork River basin;

(f) consult with local and tribal governments within the

Clark Fork River basin;

(g) make recommendations, if recommendations are considered necessary, to the department for consideration as amendments to the state water plan provided for under 85-1-203 related to the Clark Fork River basin; and

(h) report to:

(i) the department on a periodic basis;

(ii) the ~~environmental quality council~~ water policy committee established in 5-5-231 annually; and

(iii) the appropriations subcommittee that deals with natural resources and commerce each legislative session."

{ *Internal References to 85-2-350:*
85-1-203x }

Section 12. Section 85-2-436, MCA, is amended to read:

"85-2-436. Instream flow to protect, maintain, or enhance streamflows to benefit fishery resource -- change in appropriation rights by department of fish, wildlife, and parks until June 30, 2019. (1) The department of fish, wildlife, and parks may change an appropriation right, which it either holds in fee simple or leases, to an instream flow purpose of use and a defined place of use to protect, maintain, or enhance streamflows to benefit the fishery resource.

(2) The change in purpose of use or place of use must meet all the criteria and process of 85-2-307 through 85-2-309, 85-2-401, and 85-2-402 and the additional criteria and process in subsection (3) of this section to protect the rights of other

appropriators from adverse impacts.

(3) (a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of protecting, maintaining, or enhancing streamflows to benefit the fishery resource.

(b) Upon receipt of a correct and complete application for a change in purpose of use or place of use from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe that they may be adversely affected by the proposed change in appropriation right may file an objection as provided in 85-2-308. A change in appropriation right may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a change of an existing appropriation right for the purpose of protecting, maintaining, or enhancing streamflows to benefit the fishery resource if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

(c) The application for a change in appropriation right authorization must include specific information on the length and location of the stream reach in which the streamflow is to be protected, maintained, or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be changed to instream flow is the amount historically diverted. However, only the amount historically consumed, or a smaller amount if

specified by the department in the change in appropriation right authorization, may be used to protect, maintain, or enhance streamflows below the point of diversion that existed prior to the change in appropriation right.

(e) A lease for instream flow purposes may be entered for a term of up to 10 years, except that a lease of water made available from the development of a water conservation or storage project may be for a term equal to the expected life of the project but not more than 30 years. All leases may be renewed an indefinite number of times but not for more than 10 years for each term. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 90 days for submission of new evidence of adverse effects to other water rights. A change in appropriation right authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (3)(i) submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a change in appropriation right authorization must be obtained according to the requirements of 85-2-402.

(f) The department may modify or revoke the change in appropriation right authorization up to 10 years after it is approved if an appropriator other than an appropriator described in subsection (3)(i) submits new evidence not available at the time the change in appropriation right was approved that proves by a preponderance of evidence that the appropriator's water

right is adversely affected.

(g) The priority of appropriation for a lease or change in appropriation right under this section is the same as the priority of appropriation of the right that is changed to an instream flow purpose.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of a leased appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a change in appropriation right authorization under this section may not object to the exercise of the changed water right according to its terms or the reversion of a leased appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan required under this section.

(4) (a) The department of fish, wildlife, and parks shall complete and submit to the department, commission, and ~~environmental quality council~~ water policy committee established in 5-5-231 a biennial progress report by December 1 of odd-numbered years. This report must include a summary of all appropriation rights changed to an instream flow purpose in the last 2 years.

(b) For each change in appropriation right to an instream flow purpose, the report must include a copy of the change

authorization issued by the department and must address:

- (i) the length of the stream reach and how it is determined;
- (ii) critical streamflow or volume needed to protect, maintain, or enhance streamflow to benefit the fishery resource;
- (iii) the amount of water available for instream flow as a result of the change in appropriation right;
- (iv) contractual parameters, conditions, and other steps taken to ensure that each change in appropriation right does not harm other appropriators, particularly if the stream is one that experiences natural dewatering; and
- (v) methods used to monitor use of water under each change in appropriation right.

(5) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired.

(6) (a) From May 8, 2007, through June 30, 2019, the department of fish, wildlife, and parks may change, pursuant to this section, the appropriation rights that it holds in fee simple to instream flow purposes on no more than 12 stream reaches.

(b) After June 30, 2019, the department of fish, wildlife, and parks may not change the appropriation rights that it holds in fee simple to instream flow purposes on any stream reaches.

(7) After June 30, 2019, the department of fish, wildlife, and parks may not enter into any new lease agreements pursuant to this section or renew any leases that expire after that date."

{*Internal References to 85-2-436:*

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85-2-102x	85-2-102x	85-2-308 x	85-2-402 x
85-2-402x	85-2-402x	85-2-404x	85-2-419x
85-2-419x	85-2-427x	85-2-602x	87-1-257x }

Section 13. Section 85-20-1401, MCA, is amended to read:

"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.

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(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		Dispersed				
		Administrative		Administrative				
		Uses		Uses				
MT	Priority	National	Current	Future	Total	Volume		
Adj	Date	Forests	(AF/YR)	(AF/YR)	(AF/YR)	(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				90.00		
		1.36	2.00	3.36				
	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
41C	1906-11-05	Beaverhead-Deerlodge				8.90	8.90	17.80

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	70.90						
41D	1906-11-05	Beaverhead-Deerlodge		202.27		49.27	
	251.54		310.60				
41E	1906-04-12	Beaverhead-Deerlodge				85.50	
			0.00	2.00	2.00		
	1905-05-12	Helena		1.20			
41F	1902-08-16	Beaverhead-Deerlodge				98.50	
			14.62	14.62	29.24		
	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		15.40			
			4.75	4.75	9.50		
	1905-10-03	Helena		169.30			
41J	1905-10-03	Helena		36.00			
			5.51	5.51	11.02		
	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		0.80			
			0.00	2.00	2.00		
	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	

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41U	1897-02-22	Lewis & Clark				11.20
			0.01	2.00	2.01	
	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				3.40
			2.25	2.25	4.50	
	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				76.90
			4.00	4.00	8.00	
	1905-10-03	Lolo				52.10
76F	1928-05-17	Helena				65.90
			19.40	19.40	38.80	
	1906-11-06	Lolo				123.70

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76G	1906-04-12	Beaverhead-Deerlodge					
			112.30				
			85.75	9.75	95.50		
	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			280.20		
			96.82	75.00	171.82		
	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			3.40		
			0.00	2.00	2.00		
	1907-03-02	Lolo			8.50		
76LJ	1907-03-02	Flathead			246.40		
			5.78	5.78	11.56		
	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			138.80		
			4.26	4.26	8.52		
	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;

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(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

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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 Stream Point	Upper Stream Point										
Water	Flow										
Right	Rate	QTR	QTR								
Number	Source	(CFS)	SEC	TWP	RGE	SEC	SEC	TWP	RGE	SEC	
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									

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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

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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						

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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
		32W	SWNE				31N
76D-30023888	Ross Creek	20.0	8	28N	33W	NENE	17
		34W	SWNW				28N
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	SENE			
76D-30023891	Young Creek	6.0	17	37N	28W	NESE	8
		29W	SE				37N
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
		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
		08W	NENE				15N
76F-30023898	Morrell Creek	12.0	35	17N	15W	SWSE	1
		15W	NESE				17N
76F-30023899	North Fork Blackfoot River	39.0	2		15N	11W	

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	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								

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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

Water Right Volume QTR

Number Source (AF/YR) SEC TWP RGE SEC

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~~ water policy committee established in 5-5-231 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 17th day of April, 2007."

{ Internal References to 85-20-1401:

85-2-102x	85-2-316 x	85-2-316x	85-2-316x
85-2-319x	85-2-320x	85-2-320x	85-2-331x
85-2-331 x	85-2-331 x	85-2-336x	85-2-336 x
85-2-336 x	85-2-341 x	85-2-343x	85-2-344 x
85-20-1701 x	85-20-1801x }		

- END -

{Name : Joe P. Kolman
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Unofficial Draft Copy

As of: October 14, 2014 (9:06pm)

LCWPIC

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