

**IN THE WATER COURT OF THE STATE OF MONTANA  
UNITED STATES BUREAU OF LAND MANAGEMENT–MONTANA COMPACT**

IN THE MATTER OF THE ADJUDICATION )  
OF EXISTING AND RESERVED RIGHTS )  
TO THE USE OF WATER, BOTH SURFACE )  
AND UNDERGROUND, OF THE UNITED )  
STATES DEPARTMENT OF THE INTERIOR )  
BUREAU OF LAND MANAGEMENT )  
WITHIN THE STATE OF MONTANA )

**CASE NO. WC-2008-10**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND  
ORDER FOR COMMENCEMENT OF SPECIAL PROCEEDINGS  
FOR CONSIDERATION OF THE  
UNITED STATES BUREAU OF LAND MANAGEMENT–MONTANA COMPACT**

THIS MATTER came before the Court on motion of the State of Montana and the United States of America (collectively “Settling Parties”), to commence the proceedings required under applicable law to review and approve the Compact settling the reserved water right claims of the United States for the Upper Missouri National Wild and Scenic River and for the Bear Trap Canyon Public Recreation Site. Based on the submissions of the Settling Parties, and being otherwise advised in these matters, the Court FINDS, CONCLUDES, and ORDERS as follows:

**FINDINGS OF FACT**

1. The Settling Parties have concluded a compact settling the reserved water right claims of the United States of America for the Upper Missouri National Wild and Scenic River and for the Bear Trap Canyon Public Recreation Site in accordance with Mont. Code Ann. § 85-2-703. The United States Bureau of Land Management–Montana Compact (“Compact”) was ratified by the 1997 Montana Legislature (see, 1997 Mont. L., ch. 170, § 1), Mont. Code Ann. § 85-20-501, and was approved by the Secretary of the Interior and the Department of Justice effective September 10, 1997.

2. In Article II, the Compact identifies specific federal reserved water rights of the United States for the Upper Missouri National Wild and Scenic River and for the Bear Trap

Canyon Public Recreation Site. The identified water rights are located in four of the 85 minor drainage basins identified by basin code in the Atlas of Water Resources of Montana prepared by the Montana Water Resources Board. Rule 2(8), W.R.C.E.R. The four basins are 41Q, 41T, 40EJ, and 41F. Hereinafter, these four basins will be collectively referred to as the “BLM Basins.”

3. On November 20, 2008, the Settling Parties filed with the Water Court a Joint Motion for Incorporation of the United States Bureau of Land Management – Montana Compact into Preliminary and Final Decrees. On November 20, 2008, the Settling Parties filed their Joint Motion for Commencement of Special Proceedings for Consideration of the United States Bureau of Land Management – Montana Compact. The Settling Parties requested the Court, in accordance with Mont. Code Ann. § 85-2-215, to consolidate the BLM Basins into a single judicial unit and to issue a Preliminary Decree of a single class of claims encompassing the water rights recognized in the Compact. Furthermore, the Settling Parties requested the Court to direct the Montana Department of Natural Resources and Conservation (“DNRC”) to provide Notice of the Preliminary Decree to water users in the BLM Basins and to publish notice of availability of the Preliminary Decree at least once each week for three consecutive weeks in newspapers of partial or general circulation within the BLM Basins and newspapers of general circulation in the upper Missouri River basins.

4. The Court finds that the Settling Parties have established special circumstances as to why the Court should issue the Compact as a single Preliminary Decree in the BLM Basins, rather than to include the compacted water rights in separate decrees in the four individual basins. While the Court is unable to accord priority status to all claims filed in the adjudication, there exist sufficient reasons for prioritization of this matter.

*First*, the requested procedure is consistent with procedures adopted for other compacts, including the National Park Service Compact proceedings involving 12 basins (Case No. WC-94-1), the Fort Peck Compact proceedings involving six basins (Case No. WC-92-1), and the USDA Forest Service Compact proceedings involving 50 basins (Case No. WC-2007-03).

*Second*, in this Compact, the Settling Parties have reached an agreement to resolve reserved water rights located in administrative or political boundaries which overlap the water divisions utilized in Montana's statewide adjudication effort. Specifically, this Compact quantifies instream flow water rights for the Upper Missouri National Wild and Scenic River located in three water basins and two water divisions – the Upper and Lower Missouri River Divisions.

*Third*, this Compact identifies current water usage in basins 41Q, 41T, 40EJ and 41F. The Upper Missouri National Wild and Scenic River stretch, from Ft. Benton to the Fred Robinson Bridge, flows through basins 41Q, 41T and 40EJ. The state based water right claims in basins 41Q and 41T are currently being examined. However, basin 40EJ has yet to be examined and is not scheduled for a decree for several years. Bear Trap Canyon Public Recreation Site is in basin 41F. The state based water right claims in basin 41F are included in a temporary preliminary decree and a preliminary decree will not likely be issued for many years. If review of the Compact's individual basin water rights is delayed for so many years, background information necessary to evaluate the Compact terms could become stale.

*Fourth*, Article VI, section A, of the Compact provides that the Compact cannot be modified without the agreement of the Settling Parties. Four separate considerations of the Compact in separate decrees would delay final resolution of the Compact provisions for many years. Since the Water Court may only confirm or declare a compact void, an adverse decision

on the fourth decree would void the entire Compact, thereby vitiating all prior proceedings, and require the United States to file statements of claim to start the process all over again. Mont. Code Ann. §§ 85-2-702(3), 85-2-703, 85-2-228 and 85-2-233(8). Reviewing the Compact in this single proceeding will avoid waste of public and private resources that would result from multiple actions.

*Fifth*, the Montana Legislature's policy of promoting the settlement of reserved water right claims (see, Mont. Code Ann. § 85-2-702) supports the commencement of proceedings to confirm settlements of this magnitude, reached after years of negotiation, on their own merits, rather than incorporating their individual components into separate decrees to be issued piecemeal over several years.

*Sixth*, the Bureau of Land Management is willing to pay the costs for service and publication of the notice of the Preliminary Decree containing the Compact, and otherwise has represented to the Court that it is in the best interest of the Upper Missouri National Wild and Scenic River and the Bear Trap Canyon Public Recreation Site to have these water rights confirmed on a timely basis.

5. These Findings, Conclusions, and Order are issued by the Chief Water Judge under the authority of Mont. Code Ann. §§ 3-7-224(2), and 85-2-231.

#### **CONCLUSIONS OF LAW**

1. Issuance of the Preliminary Decree containing the Compact as authorized by Mont. Code Ann. § 85-2-231(2) is a reasonable and appropriate measure to commence a process that will lead to the approval and incorporation of the Compact into Montana's general water right adjudication effort or to the Compact's disapproval.

2. The Settling Parties have demonstrated good cause for entry of decree for this matter under Mont. Code Ann. § 85-2-218(1) (b).

3. Commencement of these special proceedings is consistent with prior Water Court practice in approving and incorporating reserved water rights compacts into the Montana adjudication.

4. Prioritization of this decree for issuance furthers the intent of the 1997 Montana legislature which approved this Compact and incorporated it into the Montana Codes. It is fitting and timely to issue the decree now to incorporate the Compact into the Water Court adjudication.

WHEREFORE, for good cause shown, the Court hereby enters the following:

**ORDER**

1. The Court grants the Settling Parties' Motion to commence special proceedings to consider the United States Bureau of Land Management–Montana Compact. The Court sets forth in this Order the initial set of procedures necessary to commence these special proceedings and to provide notice of the Compact in accordance with Mont. Code Ann. § 85-2-232.

2. The Compact shall be incorporated into a Preliminary Decree in the BLM Basins.

3. The Court hereby designates all of the reserved water rights recognized in the Compact as a single class of claims and issues a Preliminary Decree under Mont. Code Ann. § 85-2-231. This Preliminary Decree contains the following information only: (a) the proposed decree of the Compact; (b) the contents of the Compact; and (c) these Findings of Fact and Conclusions of Law and Order.

4. The Court, by separate order of this date, will instruct the DNRC and the United States of America to coordinate service of the Notice of Entry of United States Bureau of Land Management–Montana Compact Preliminary Decree and Notice of Availability to all persons

with water rights in the designated BLM Basins. Additionally, the United States of America will publish a modified Notice (provided by the Water Court and better suited for publication purposes) in newspapers with partial or general circulation within the BLM Basins and newspapers of general circulation in the upper Missouri River basins in the manner set forth in that separate order.

5. In addition to the requirements set forth in Mont. Code Ann. § 85-2-233(2), any objection filed to the Compact shall be on forms provided by the Court and shall include:

- A. the name and address of the objector;
- B. the name and address of the objector's attorney, if any; and
- C. a statement of the specific grounds and evidence on which the objection is based.

6. Any proceedings following the issuance of the Preliminary Decree and service of the Notice in accordance with this Order shall be pursuant to further order of this Court.

DATED this 26 day of February, 2009.



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C. Bruce Loble  
Chief Water Judge

**CERTIFICATE OF SERVICE**

I, Staci Green, hereby certify that a true and correct copy of the above **FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND ORDER FOR COMMENCEMENT OF SPECIAL PROCEEDINGS FOR CONSIDERATION OF THE UNITED STATES BUREAU OF LAND MANAGEMENT-MONTAN COMPACT** was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.


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DATED this *26* day of *February*, 2009.

  
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Staci Green  
Deputy Clerk of Court