

FILED

SEP 30 2011

Montana Water Court

**IN THE WATER COURT OF THE STATE OF MONTANA
UNITED STATES FISH AND WILDLIFE SERVICE,
NATIONAL BISON RANGE–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)
FISH AND WILDLIFE SERVICE,)
NATIONAL BISON RANGE WITHIN THE)
STATE OF MONTANA)

CASE NO. WC-2011-01

**FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND
ORDER FOR COMMENCEMENT OF SPECIAL PROCEEDINGS
FOR CONSIDERATION OF THE
UNITED STATES FISH AND WILDLIFE SERVICE
NATIONAL BISON RANGE–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 National Bison Range. 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 National Bison Range in accordance with Mont. Code Ann. § 85-2-703. The United States Fish and Wildlife Service (National Bison Range) – Montana Compact (“Compact”) was ratified by the 2009 Montana Legislature (see, 2009 Mont. L., ch. 280, § 1), Mont. Code Ann. § 85-20-1601, and was approved by the Secretary of the Interior and the Department of Justice effective April 15, 2011.

2. In Article III, the Compact identifies specific federal reserved water rights of the United States for the National Bison Range. The identified water rights are located in Basin 76L 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.

3. On September 27, 2011, the Settling Parties filed with the Water Court a Joint Motion for Incorporation of the Compact into Preliminary and Final Decrees and a Joint Motion for Commencement of Special Proceedings for Consideration of the United States National Bison Range Compact. The Settling Parties requested the Court, in accordance with Mont. Code Ann. § 85-2-215, to consolidate the National Bison Range water rights 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 (1) to direct the Montana Department of Natural

Resources and Conservation (“DNRC”) to provide Notice of the Preliminary Decree to all water users asserting claim to 858 water right claims set forth in attachments to the Settling Parties’ Joint Motion for Commencement of Special Proceedings, all of whose places of use and/or points of diversion lie within the area reflected on the map also attached thereto, and (2) to publish notice of availability of the Preliminary Decree at least once each week for three consecutive weeks in the Charkoosta News, the Missoulian, and the Ronan Valley Journal.

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. 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 Federal Reserved Rights compacts.

Second, 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 prioritized proceedings to confirm settlements of this magnitude, reached after years of negotiation, on their own merits.

Third, the Fish and Wildlife Service 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 National Bison Range 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 2009 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.

5. The scope of the provision of personal and publication notice proposed by the Settling Parties, and the rationale set forth for the scope of service of personal notice, *see* Affidavit of John Hoeglund attached as Appendix 2 to the Settling Parties' Motion for Commencement of Special Proceedings, are reasonable and appropriate given the facts and circumstances of this matter, and comport with due process.

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

ORDER

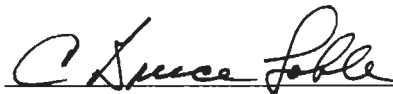
1. The Court grants the Settling Parties' Motion to commence special proceedings to consider the United States Fish and Wildlife Service, National Bison Range–Montana Compact. The Court sets forth in this Order the initial set of procedures necessary to commence these special proceedings and to provide notice of the Compact in accordance with Mont. Code Ann. § 85-2-232.
2. The Compact shall be incorporated into a Preliminary Decree in Basin 76L.
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 to serve Notice of Entry of United States Fish and Wildlife Service, National Bison Range–Montana Compact Preliminary Decree and Notice of Availability, a Summary Description of the Compact, and a map to all water users set forth in the table attached thereto, all of whose places of use and/or points of diversion lie within the area reflected on the map attached thereto. Additionally, the Court will publish the Notice (or a modified Notice better suited for publication purposes) in three newspapers of general circulation, to wit: the Charkoosta News, the Missoulian, and the Ronan Valley Journal.

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 30th day of September 2011.



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