

1
2 WATER RIGHTS COMPACT
3

4 STATE OF MONTANA
5

6 UNITED STATES OF AMERICA, FISH AND WILDLIFE SERVICE
7

8 This Compact is entered into by the State of Montana and the
9 United States of America to settle for all time any and all
10 claims existing on the effective date of the Compact to water for
11 Red Rock Lakes National Wildlife Refuge and Wilderness Area
12 ("Refuge") administered by the U.S. Fish and Wildlife Service
13 (FWS) within the State of Montana.
14

15 RECITALS
16

17 WHEREAS, the State of Montana, in 1979 pursuant to Title 85,
18 Chapter 2 of the Montana Code Annotated, commenced a general
19 adjudication of the rights to the use of water within the State
20 of Montana including all federal reserved and appropriative water
21 rights;
22

23 WHEREAS, 85-2-703, MCA, provides that the state may negotiate
24 compacts concerning the equitable division and apportionment of
25 water between the state and its people and the federal government
26 with claims to non-Indian reserved water rights within the State
27 of Montana;
28

29 WHEREAS, the United States wishes to quantify and have decreed
30 the amount of water necessary to fulfill the purposes of Red Rock
31 Lakes National Wildlife Refuge and Wilderness Area, in the State
32 of Montana;
33

34 WHEREAS, the United States, in quantifying its water rights
35 recognizes the need to accommodate the interests of the State and
36 its citizens by providing for the development and use of water in
37 the vicinity of the Fish and Wildlife Service Refuges to the
38 extent that it is possible to do so without materially affecting
39 the rights and interests of the United States;
40

41 WHEREAS, the United States Attorney General, or a duly designated
42 official of the United States Department of Justice, has
43 authority to execute this Compact on behalf of the United States
44 pursuant to the authority to settle litigation contained in 28
45 U.S.C. §§ 516-17 (1968);
46

47 WHEREAS The Secretary of the Interior, or a duly designated
48 official of the United States Department of the Interior, has
49 authority to execute this Compact on behalf of the United States
50 Department of Interior pursuant to 43 U.S.C. § 1457 (1986; Supp.
51 1992);

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

3
4 ARTICLE I

5
6 DEFINITIONS

7
8 For purposes of this Compact only, the following definitions
9 shall apply:

10 (1) "Abstract" means the copy of the document entitled "Abstract
11 of U.S. Fish and Wildlife Service Water Rights" referenced in
12 this Compact as Appendix 1.

13
14 (2) "Consumptive" when referring to a water right recognized
15 under state law means a use of water which removes water from the
16 source of supply such that the quality or quantity is reduced or
17 the timing of return delayed, making it unusable or unavailable
18 for use by others, and includes evaporative loss from
19 impoundments or natural lakes.

20
21 (3) "Department" means the Montana Department of Natural
22 Resources and Conservation or its successor.

23
24 (4) "Developed spring" means any diversion from a spring for
25 beneficial use under state law and does not require augmentation
26 of flow.

27
28 (5) "Effective date of this Compact" means the date of the
29 ratification of the Compact by the Montana legislature, written
30 approval by the United States Department of the Interior, or
31 written approval by the United States Department of Justice,
32 whichever is latest.

33
34 (6) "Groundwater" means water that is beneath the ground
35 surface.

36
37 (7) "Minimum flow" means the flow of water in a stream measured
38 in cubic feet per second at the point designated in Article II of
39 the Compact, at or below which the United States has the right to
40 seek curtailment of junior water rights upstream from the Refuge.

41
42 (8) "Natural flow" means the water that the parties agree shall
43 remain in the stream in satisfaction of the United States' water
44 right for the purposes of the federal reservation.

45
46 (9) "Non-consumptive" see "consumptive"

47
48 (10) "Parties" means the State of Montana and the United States.
49
50

1 (11) "Person" means an individual, association, partnership,
2 corporation, state agency, political subdivision, or any other
3 entity, but does not include the United States.
4

5 (12) "Recognized under state law" when referring to a water
6 right or use means a water right or use protected by state law,
7 but does not include state recognition of a federal or tribal
8 reserved water right arising under federal law.
9

10 (13) "Red Rock Lakes National Wildlife Refuge" means those lands
11 located in Montana that were withdrawn and reserved by Executive
12 Orders No. 7023 of April 22, 1935, and 7172 of September 4, 1935,
13 and all lands acquired by the United States Fish and Wildlife
14 Service within the boundaries established by Executive Orders
15 7023 and 7172.
16

17 (14) "Red Rock Lakes Wilderness Area" means those lands within
18 Red Rock Lakes National Wildlife Refuge designated as wilderness
19 by Public Law 94-557 of October 19, 1976, 16 USC 1132.
20

21 (15) "Refuge" means both the Red Rock Lakes National Wildlife
22 Refuge and the Red Rock Lakes Wilderness Area.
23

24 (16) "State" means the State of Montana and all officers,
25 agents, departments, and political subdivisions thereof. Unless
26 otherwise indicated, for purposes of notification or consent,
27 "state" means the Director of the Montana Department of Natural
28 Resources and Conservation or his or her designee.
29

30 (17) "United States" means the federal government and all
31 officers, agencies, departments and political subdivisions
32 thereof. Unless otherwise indicated, for purposes of
33 notification or consent other than service in litigation, "United
34 States" means the Secretary of the Department of the Interior, or
35 his or her designees.
36

37 ARTICLE II

38 WATER RIGHT

39
40
41 The parties agree that the following water rights are in
42 settlement of all of the United States' water rights for the
43 Refuge, including federal reserved and state-based water rights
44 acquired with the purchase of land. The parties to this
45 agreement recognize that the water rights described in this
46 Compact are junior to any tribal water rights with a priority
47 date before the effective date of the Compact, including
48 aboriginal rights, if any, in the basins affected. All water
49 rights described in this Article are subject to Article IV.A. of
50 this Compact.
51

A. Quantification: The United States shall have the right to water from the following sources where they occur on the Refuge:

1. Consumptive Use:

Red Rock Lake National Wildlife Refuge -- Consumptive Use

	Legal Description of impoundment or POD	Elevation of Dam	Surface Acres	Acre-Feet Capacity	Future Acre-Feet	Natural or Manmade	Canal	Diversion Rate	Source of Diverted Water
	McDonald Pond	6629.63	13	44		NWS	Mallard	10	Culver Springs
	Widgeon Pond	6636.3	88	585		NWS	Hacket Cr	20	Culver Springs
	Culver Pond	6651.7	27	110		NWS			Culver Springs
	East Pintail Ditch Pond		3	3		M	Mallard	10	Elk Creek
	Pintail Ditch Pond		21	24		M	Mallard	10	Elk Creek
1	Swan Lake		649	1168		N			Elk Creek
3	Buck Pond		11	16		N	Mallard	10	Groundwater
1	East Swan lake		65	78		N			Groundwater
2	Sora Pond		1	2		N			Groundwater
	Antelope Pond		10	12		N			Groundwater
	Campground Spring			8		M		10 gpm	Groundwater
4	Shambow Pond		7	26		N			Groundwater
2	Rail Pond		6	9		N	Mallard	10	Groundwater
	Irrigation				3000	M		25	Odell Creek
1	Sparrow Slough Dam	6627	63	190		M			Odell Creek
1	Sparrow Slough Pond	6629.3	21.	34		NWS	ditch	17.5	Odell Creek
	Upper Red Rock Lake		3467	89582		N			Red Rock Creek
	Lower Red Rock Lake	6607.5	5492			NWS			Red Rock Creek
	Tuck Slough South		29	63		M	Harlequin	30	Red Rock Creek
	Tuck Slough North		103	2003		M	Harlequin	30	Red Rock Creek
2	Shoveler Pond		6	9		N	Harlequin	30	Red Rock Creek
	Refuge Headquarters domestic			8	8	M			Groundwater
	Irrigation of Refuge Headquarters					M	ditch	0.5	Shambow Creek
	Irrigation of Bunkhouse grounds					M	ditch	1	Shambow Creek

Bold letters denote data taken from the dam safety reports, all other data is derived from topographic maps and Refuge staff estimates.

N = Natural lake

NWS = Natural lake with manmade structure

M = Manmade lake

1 = Estimated average depth 2

3 = Estimated average depth 3 feet

2 = Estimated average depth 2.5 feet

4 = Estimated average depth 6 feet

1 2. Natural Flow: The United States has a water right to the
2 natural flow in all the tributaries entering the Refuge above the
3 most downstream point on the Refuge at the point the tributary
4 enters the Refuge in the amount of the natural flow remaining
5 after satisfaction of the following water rights: (1) all rights
6 recognized under state law upstream from the Refuge with a
7 priority date prior to the effective date of this Compact; (2)
8 any rights exempt from the basin closure set forth in Article
9 III.A. of this Compact.

10
11 3. Minimum Flow: Subject to the provisions of Article III.C.1.,
12 the United States has a water right for minimum flows on Red
13 Rocks, Tom and Odell Creeks as follows:

14
15 a. Red Rocks Creek: 15 cfs, measured at NE SE NW Sec. 17, T14S,
16 R1E;

17
18 b. Tom Creek: 1.4 cfs, measured at the county road in SW NE NE
19 Sec. 25, T14S, R1W;

20
21 c. Odell Creek: 11 cfs, measured at the county road in SW SW SE
22 Sec. 24 T14S, R2W.

23
24 4. Lake Level: The United States has the right to maintain the
25 natural lake level of Lower Red Rocks Lake at an elevation of
26 6607.5 feet. The United States may store additional water only
27 to the extent consistent with the Memorandum of Understanding of
28 February 4, 1987, between the United States and the Water Users
29 Irrigation Company (Lima Reservoir) and East Bench Irrigation
30 District.

31
32 5. Emergency Fire Suppression: The use of water for emergency
33 fire suppression benefits the public, and is necessary for the
34 purposes of the Refuge. The United States may, as part of its
35 water right, divert water for fire suppression at the Refuge as
36 needed and without a definition of the specific elements of a
37 recordable water right. Use of water for fire suppression shall
38 not be considered an exercise of the United States' water rights
39 for consumptive use or a violation of its water rights for
40 natural or minimum flow.

41
42 B. Relative Priority:

43
44 1. Priority Date:

45
46 a. Consumptive Use and Natural Flow: Subject to the
47 subordination provisions of Article II.B.2.a., the United States
48 has a priority date of April 22, 1935, for the water rights for

1 consumptive use and natural flow described in Article II.A.1. and
2 2. of this Compact.

3
4 b. Minimum Flow: Subject to the provisions of Article III.C.1.
5 setting forth the means to satisfy the minimum flow rights for
6 the Refuge and the subordination provisions of Article II.B.2.b.,
7 the United States has a priority date of October 30, 1888, for
8 the 15 cfs minimum flow on Red Rocks Creek; June 15, 1894, for
9 the 1.4 cfs minimum flow on Tom Creek; and June 28, 1889, for the
10 11 cfs minimum flow on Odell Creek.

11
12 2. Subordination:

13
14 a. Consumptive Use Natural Flow and Lake Levels: The water rights
15 for consumptive use set forth in Article II.A.1. and natural flow
16 set forth in Article II.A.2. and lake levels set forth in Article
17 II.A.4. are subordinate to the following rights upstream from the
18 most downstream point on the Refuge: (1) any right recognized
19 under state law with a priority date before the effective date of
20 this Compact; and (2) any right exempt from the basin closure set
21 forth in Article III.A. of this Compact.

22
23 b. Minimum Flow: The water rights for minimum flows on Red
24 Rocks, Tom and Odell Creeks set forth in Article II.A.3. of this
25 Compact are subordinate to the following rights upstream from the
26 Refuge: (1) any right for the purpose of domestic use; (2) any
27 right for the purpose of instream stockwatering; and (3) any
28 change in use of a water right for the purpose of instream
29 stockwatering to off-stream stockwatering that does not result in
30 an increase in the historic consumptive use of water.

31
32 C. Period of Use:

33
34 1. Natural Flow / Consumptive Use: The period of use of the
35 United States' water rights for natural flow and consumptive use
36 set forth in Article II.A.1. and 2. shall be from January 1
37 through December 31 of each year.

38
39 2. Minimum Flow: The period of use of the United States' water
40 rights for minimum flows set forth in Article II.A.3. shall be
41 from April 1 through November 30 of each year.

42
43 D. Points and means of diversion / Location of natural and
44 minimum flow rights:

45
46 1. Consumptive Use: See Table at Article II.A.1.

47
48 2. Natural Flow: The United States' water rights for natural
49 flow apply to the portion of the streams specified in this

1 Compact that flow over or form the boundary of land administered
2 by the Fish and Wildlife Service.

3
4 3. Minimum Flow: The United States' water rights for minimum
5 flow are measured at the points set forth in Article II.A.3.

6
7 E. Purposes: The United States' rights to water may be used
8 for the following purposes:

9
10 1. Consumptive Use: The United States' water rights for
11 consumptive use shall be used for the purposes of the Refuge
12 including wildlife habitat maintenance and enhancement. Subject
13 to the limitations set forth in Article III.E., the United States
14 may change the use of water identified for consumptive use in
15 Article II.A.1.

16
17 2. Natural and Minimum Flows: The United States' water rights
18 to natural and minimum flows shall be used on the Refuge for
19 wildlife habitat maintenance and enhancement. The United States'
20 water rights to natural flow set forth in Article II.A.2. and to
21 minimum flows set forth in Article II.A.3. shall be used only for
22 the purpose of instream flow and shall not be changed or diverted
23 for any other use, except for fire suppression as set forth in
24 Article II.A.5.

25
26 ARTICLE III

27
28 IMPLEMENTATION

29
30 A. Basin Closure

31
32 1. In the drainage basins upstream of the most downstream point
33 on the Refuge, the Department shall not process or grant an
34 application for a permit to appropriate or to reserve water for
35 consumptive use after the effective date of this Compact,
36 provided that, the following appropriations are exempt from this
37 closure:

38
39 a. certificates of water right for appropriation of groundwater
40 by means of a well or developed spring with a maximum
41 appropriation of 35 gallons per minute or less that does not
42 exceed a total appropriation of 10 acre-feet per year;

43
44 b. permits for appropriation of groundwater by means of a well or
45 developed spring with an appropriation of greater than 35 gallons
46 per minute or a total appropriation in excess of 10 acre-feet per
47 year, if the Department determines by a preponderance of the
48 evidence based on information provided by the applicant or
49 information from any other source available to the Department

1 that the groundwater is not hydrologically connected to surface
2 water upstream from the Refuge;

3
4 c. permits or changes in water right for appropriation of
5 groundwater for irrigation purposes when the permit or change in
6 water right will be accompanied by a corresponding decrease in
7 the number of acres irrigated from surface water sources upstream
8 from the Refuge;

9
10 d. permits for stock watering ponds with a maximum capacity of
11 the impoundment or pit of less than 15 acre-feet and an
12 appropriation of less than 30 acre-feet per year from a source
13 other than a perennial flowing stream;

14
15 e. permits for domestic use;

16
17 f. permits for nonconsumptive use; and,

18
19 g. temporary emergency appropriations.

20
21 2. If a temporary or permanent basin closure is enacted under
22 state law for a drainage basin or subbasin for which future
23 consumptive water use is limited under this Compact, the most
24 restrictive measures applicable to consumptive use of surface or
25 groundwater shall control.

26
27 3. Within 180 days following the effective date of this Compact,
28 the Department shall mail notice of the basin closure to every
29 person or public agency of record with a claim of water right or
30 permit in the portion of the drainage basins subject to closure.

31
32 B. Lake Levels: The United States agrees to continue efforts to
33 coordinate lake water level management with Water Users
34 Irrigation Company (Lima Reservoir) and East Bench Irrigation
35 District or their successors in interest. It is not intended
36 that this Compact affect in any way the Memorandum of
37 Understanding between the United States and the Irrigation
38 Company and Irrigation District listed above, or the ability of
39 the parties to modify that agreement.

40
41 C. Enforcement of Water Right:

42
43 1. Minimum flow:

44
45 a. Minimum flow rights set forth in Article II.A.3. may be
46 satisfied through cooperative agreements entered into by the FWS
47 and any person holding a water right with a point of diversion on
48 Red Rock, Tom or Odell Creeks or their tributaries upstream of
49 the Refuge. The FWS may, on agreement with the parties to a

1 cooperative agreement, modify an existing agreement. The FWS may
2 enter into additional cooperative agreements after the effective
3 date of the Compact. Modification of a cooperative agreement or
4 entry into a new cooperative agreement shall not be considered a
5 modification of the Compact. As between the FWS and signatories
6 to cooperative agreements, the FWS will use its best efforts to
7 seek satisfaction of the minimum flow rights pursuant to the
8 cooperative agreements prior to resorting to remedies set forth
9 in Article III.C.2.

10
11 b. Prior to seeking satisfaction of the minimum flow, the FWS
12 shall cease its own diversions, if any, from (1) Red Rock Creek
13 and its tributaries upstream from the point of measurement when
14 measured flow is approximately 25 cfs; (2) Odell Creek and its
15 tributaries upstream from the point of measurement when measured
16 flow is approximately 20 cfs; and (3) Tom Creek and its
17 tributaries upstream from the point of measurement when measured
18 flow is approximately 5 cfs. On acquisition by or transfer to
19 the FWS of any water right subject to a cooperative agreement,
20 the FWS will continue to exercise the water right in a manner
21 that satisfies the minimum flow at least to the degree set forth
22 in the cooperative agreement, and the provisions of this
23 paragraph requiring curtailment of FWS diversions shall apply.
24

25 c. In the absence of a cooperative agreement, the FWS may seek
26 curtailment of a water use to satisfy the minimum flow by resort
27 to a court of competent jurisdiction pursuant to Article III.C.2.
28 In any proceeding before a court of competent jurisdiction, the
29 FWS will not seek curtailment of any water right which, based on
30 the experience and observation of the FWS, does not cause a
31 measured or cumulative reduction in flow of Red Rock, Tom, or
32 Odell Creeks at the point of measurement set forth in Article
33 II.A.3., and will limit the period for which curtailment is
34 sought to that necessary to maintain the minimum flow.
35

36 2. The United States, the State, or a holder of a water right
37 recognized under state law, may petition a state or federal court
38 of competent jurisdiction for relief when a controversy arises
39 between the United States' reserved water rights described by
40 this Compact, and a holder of a water right recognized under
41 state law. Resolution of the controversy shall be governed by the
42 terms of this Compact where applicable or, to the extent not
43 applicable, by appropriate state or federal law.
44

45 3. The United States agrees that a water commissioner appointed
46 by a state or federal court of competent jurisdiction, or other
47 official authorized by future changes in law, may enter the
48 Refuge for the purpose of data collection, including the
49 collection of information necessary for water distribution on or

1 off the Refuge, and to inspect structures for the diversion and
2 measurement of water described in this Compact for consumptive
3 use and for the measurement of natural and minimum flow. The
4 terms of entry shall be as specified in an order of a state or
5 federal court of competent jurisdiction.
6

7 4. The Department may enter the Refuge, at a reasonable hour of
8 the day, for the purposes of data collection on water diversion
9 and stream flow or inspection of devices maintained by the United
10 States pursuant to this Compact. The Department shall notify the
11 United States by certified mail or in person, at least 24 hours
12 prior to entry.
13

14 5. The United States may request an investigation by the
15 Department of a diversion located upstream of the portion of a
16 stream for which a water right is described in this Compact. The
17 Department may investigate. If an investigation occurs, the
18 United States may accompany the Department.
19

20 6. The United States shall maintain structures, including
21 wellhead equipment and casing, for the diversion and measurement
22 of water authorized for consumptive use by this Compact. The
23 United States shall maintain the devices it considers necessary
24 for enforcement of its reserved water right for natural and
25 minimum flow described in this Compact.
26

27 7. A person who violates or refuses or neglects to comply with
28 the provisions of this Compact or an order of the Department
29 pursuant to this Compact is subject to the penalties provided by
30 state law.
31

32 D. Use of Water Right

33

34 The rights of the United States described in this agreement are
35 federal water rights. Non-use of all or a part of the federal
36 water rights described in this Compact shall not constitute
37 abandonment or forfeiture of those right. The federal water
38 rights described in this Compact need not be applied to a use
39 deemed beneficial under state law, but shall be restricted to
40 uses necessary to fulfill the purposes of the Refuge.
41

42 E. Change in Use:

43

44 1. Natural and Minimum Flow: Water rights specified in this
45 Compact for natural and minimum flow shall not be subject to
46 change to any other use, provided that: the emergency use of
47 water for fire suppression as provided for in Article II.A.5.
48 shall not be considered a change or alteration in use, or
49 violation of a water right for natural or minimum flow.

1 2. Consumptive Uses: The United States may make a change in the
2 use of its consumptive use water rights, provided that; (1) the
3 action shall be in fulfillment of the purposes of the Refuge
4 described in Article II.E. rather than with reference to a
5 beneficial use as defined by state law; (2) the total use shall
6 not exceed the amount described in this Compact; and (3) the
7 action shall not adversely affect a water right that is
8 recognized under state law. With the exception of the purpose
9 for which the water right is used, the United States, in making
10 the change, shall comply with the provisions of the Montana Water
11 Use Act, Title 85, Chapter 2, Montana Code Annotated, applicable
12 to change in appropriative right at the time of the change. The
13 United States may appeal any decision by the Department may be
14 made to a state or federal court of competent jurisdiction.
15

16 ARTICLE IV

17
18 GENERAL PROVISIONS

19
20 A. No Effect on Tribal Rights or Other Federal Reserved Water
21 Rights:
22

23 1. The relationship between the water rights of the United
24 States described herein and any rights to water of an Indian
25 Tribe, or of any federally derived water right of an individual,
26 or of the United States on behalf of such tribe or individual
27 shall be determined by the rule of priority. The parties to this
28 agreement recognize that the water rights described in this
29 Compact are junior to any tribal water rights with a priority
30 date before the effective date of the Compact, including
31 aboriginal rights, if any, in the basins affected.
32

33 2. Nothing in this Compact may be construed or interpreted in
34 any manner to establish the nature, extent or manner of
35 administration of the rights to water of any other federal agency
36 or federal lands in Montana other than those of the Fish and
37 Wildlife Service at the Refuge.
38

39 3. Nothing in this Compact may be construed or interpreted in
40 any manner to establish the nature, extent or manner of
41 administration of the rights to water of any Indian Tribes and
42 tribal members.
43

44 4. Nothing in this Compact is otherwise intended to conflict
45 with or abrogate a right or claim of any Indian Tribe regarding
46 boundaries or property interests.
47

48 B. State Water Rights
49

1 Nothing in this Compact limits the exclusive authority of the
2 State, including the authority of a water commissioner authorized
3 by state law, to administer all current and future water rights
4 recognized under state law within and upstream of the Refuge,
5 provided that in administration of those water rights in which
6 the United States has an interest, such authority is limited to
7 that not in conflict with federal law.
8

9 C. Abstract: Concurrent with this Compact, the parties have
10 prepared an Abstract, a copy of which is referenced as Appendix
11 1, which is a specific listing of all of the United States' water
12 rights for the Refuge, that are described in this Compact and
13 quantified in accordance with this Compact. The parties prepared
14 the Abstract to comply with the requirements for a final decree
15 as set forth in 85-2-234, MCA, and in an effort to assist the
16 state courts in the process of entering decrees accurately and
17 comprehensively reflecting the rights described in this Compact.
18 The rights specified in the Abstract are subject to the terms of
19 this Compact. In the event of a discrepancy between a right
20 listed in the Abstract and that same right as quantified in
21 accordance with Articles II and III of this Compact, the parties
22 intend that the quantification in accordance with Articles II and
23 III of this Compact shall govern and shall be reflected in a
24 final decree.
25

26 D. General Disclaimers
27

28 Nothing in this Compact may be construed or interpreted:
29

30 1. as a precedent for the litigation of reserved water rights or
31 the interpretation or administration of future compacts between
32 the United States and the State; or of the United States and any
33 other state;
34

35 2. except as agreed to in cooperative agreements authorized by
36 Article III.C.1. of this Compact, as a waiver by the United
37 States on behalf of the FWS of its right under state law to raise
38 objections in state court to individual water rights claimed
39 pursuant to the state Water Use Act, Title 85, of the Montana
40 Code Annotated, in the basins affected by this Compact; or any
41 right to raise objections in an appropriate forum to individual
42 water rights subject to a provisional permit under the state
43 Water Use Act, Title 85, of the Montana Code Annotated, in the
44 basins affected by this Compact;
45

46 3. as a waiver by the United States of its right to seek relief
47 from a conflicting water use not entitled to protection under the
48 terms of this Compact;
49

1 4. to establish a precedent for other agreements between the
2 State and the United States or an Indian tribe;

3
4 5. to determine the relative rights, inter sese, of persons
5 using water under the authority of state law or to limit the
6 rights of the parties or a person to litigate an issue not
7 resolved by this Compact;

8
9 6. to create or deny substantive rights through headings or
10 captions used in this Compact;

11
12 7. to expand or restrict any waiver of sovereign immunity
13 existing pursuant to federal law as of the effective date of this
14 Compact;

15
16 8. to affect the right of the State to seek fees or
17 reimbursement for costs or the right of the United States to
18 contest the imposition of such fees or costs, pursuant to a
19 ruling by a state or federal court of competent jurisdiction or
20 Act of Congress;

21
22 9. to affect in any manner the entitlement to or quantification
23 of other federal water rights. This Compact is only binding on
24 the United States with regard to the water rights of the United
25 States for the Refuge, and does not affect the water rights of
26 any other federal agency that is not a successor in interest to
27 the water rights subject to this Compact;

28
29 10. to prevent the United States from constructing or modifying
30 an outlet to an impoundment at the Refuge in compliance with all
31 applicable laws;

32
33 11. to prevent the United States from seeking a permit to
34 appropriate water under state law from a source not closed to new
35 permits by this Compact or any other law.

36
37 E. Reservation of Rights

38
39 The parties expressly reserve all rights not granted, described
40 or relinquished in this Compact.

41
42 F. Severability

43
44 The provisions of this Compact are not severable.

45
46 G. Multiple Originals

47
48 This Compact is executed in quintuplicate. Each of the five (5)
49 Compacts bearing original signatures shall be deemed an original.

1 H. Notice

2
3 Unless otherwise specifically provided for in this Compact,
4 service of notice required hereunder, except service in
5 litigation, shall be:

6
7 1. State: Upon the Director of the Department and such other
8 officials as he or she may designate in writing.

9
10 2. United States: Upon the Secretary of the Interior and such
11 other officials as he or she may designate in writing.

12
13 ARTICLE V

14
15 FINALITY OF COMPACT

16
17 A. Binding Effect

18
19 1. The effective date of this Compact is the date of the
20 ratification of this Compact by the Montana legislature, written
21 approval by the United States Department of the Interior, or
22 written approval by the United States Department of Justice,
23 whichever occurs later. Once effective, all of the provisions of
24 this Compact shall be binding on the parties.

25
26 2. Following the effective date, this Compact shall not be
27 modified without the consent of both parties. Either party may
28 seek enforcement of this Compact in a court of competent
29 jurisdiction. Any attempt unilaterally to modify this Compact by
30 either party shall render this Compact voidable at the election
31 of the other party.

32
33 3. On approval of this Compact by a state or federal court of
34 competent jurisdiction and entry of a decree by such court
35 confirming the rights described herein, this Compact and such
36 rights are binding on all persons bound by the final order of the
37 court.

38
39 4. If an objection to this Compact is sustained pursuant to 85-
40 2-702(3), MCA, this Compact shall be voidable by action of and
41 without prejudice to either party.

42
43 B. Disposition of Actions

44
45 Subject to the following stipulations and within one hundred
46 eighty (180) days of the effective date of this Compact, the
47 parties shall submit this Compact to an appropriate state court
48 or courts having jurisdiction over this matter in an action
49 commenced pursuant to 43 U.S.C. § 666, for approval in accordance

1 with state law and for the incorporation of the water rights
2 described in this Compact into a decree or decrees entered
3 therein. The parties understand and agree that the submission of
4 this Compact to a state court or courts, as provided for in this
5 Compact, is solely to comply with the provisions of 85-2-702(3),
6 MCA, and does not expand the jurisdiction of the state court or
7 expand in any manner the waiver of sovereign immunity of the
8 United States in the McCarran Amendment, 43 U.S.C. § 666, or
9 other provision of federal law.

10
11 1. Dismissal of Filed Claims: At the time the state courts
12 approve the water rights described in this Compact and enter a
13 decree or decrees confirming the rights described herein, such
14 courts shall dismiss, with prejudice, all of the water right
15 claims specified in Appendix 2 to this Compact. If this Compact
16 is not approved or a water right described herein is not
17 confirmed, the specified claims shall not be dismissed.

18
19 2. Federal Court: This Compact may be filed as a consent decree
20 in federal court only if it is finally determined in a judgment
21 binding on the State of Montana that the state courts lack
22 jurisdiction over some or all of the water rights described in
23 this Compact. Within one year of such judgment the United States
24 agrees to commence such additional proceedings in the federal
25 district court for the District of Montana as may be necessary to
26 judicially confirm the water rights described herein.

27
28 3. Continuation of Negotiations: The parties were unable to
29 finalize agreement on quantification of the water rights for: the
30 National Bison Range; Bowdoin National Wildlife Refuge; and
31 Charles M. Russell and UL Bend National Wildlife Refuges and UL
32 Bend Wilderness Area, prior to the effective date of this
33 Compact. The parties agree to continue to pursue, in good faith,
34 quantification of water rights for these areas. In the event the
35 parties are unable to agree on quantification, the United States
36 retains its right to have the quantity of any reserved water
37 rights for these areas adjudicated in a state or federal court of
38 competent jurisdiction.

39
40 C. Settlement of Claims

41
42 The parties intend that the water rights described in this
43 Compact are in full and final settlement of the water right
44 claims for the Refuge land described in this Compact and
45 administered by the Fish and Wildlife Service in Montana on the
46 effective date of this Compact. On the effective date of this
47 Compact, the United States hereby and in full settlement of any
48 and all claims to water filed by the United States or which could
49 have been filed by the United States for Red Rock Lakes National

1 Wildlife Refuge and Wilderness Area, relinquishes forever all
2 said claims to water within the State of Montana for Red Rock
3 Lakes National Wildlife Refuge and Wilderness Area. The state
4 agrees to recognize the water rights described and quantified
5 herein, and shall, except as expressly provided for herein, treat
6 them in the same manner as a water right recognized by the state.
7

8 D. The parties agree to defend the provisions and purposes of
9 this Compact from all challenges and attacks.
10

11 IN WITNESS WHEREOF the representatives of the State of
12 Montana and the United States have signed this Compact on the
13 1st day of February, ~~XX~~ 2000.
14

15
16 FOR THE STATE OF MONTANA

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23 Marc Racicot, Governor
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FOR THE UNITED STATES
FISH AND WILDLIFE SERVICE



FOR THE DEPARTMENT OF INTERIOR



FOR THE DEPARTMENT OF JUSTICE