

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

Case No. WC-2008-10

**NOTICE OF ENTRY OF UNITED STATES BUREAU OF LAND MANAGEMENT–
MONTANA COMPACT
PRELIMINARY DECREE AND NOTICE OF AVAILABILITY**

AS A WATER USER YOU MUST READ ALL OF THIS NOTICE

The Montana Water Court has been asked to approve a Compact settling and defining all of the reserved water rights for the Upper Missouri National Wild and Scenic River and Bear Trap Canyon Public Recreation Site claimed by the United States of America on behalf of the U.S. Department of the Interior – Bureau of Land Management (“BLM”). The United States Bureau of Land Management–Montana Compact (“the Compact” or “BLM Compact”) was negotiated by the State of Montana and the United States, and ratified by the 1997 Montana Legislature. The Compact needs your review before the Court determines whether to approve the Compact in accordance with applicable law.

The Compact defines the water rights of the United States for the Upper Missouri National Wild and Scenic River in basins 41Q (Missouri River from Sun River to Marias River), 41T (Missouri River from Marias River to and including Bullwhacker Creek), and 40EJ (Missouri River between Bullwhacker Creek and Musselshell River), and the water rights of the United States for Bear Trap Canyon Public Recreation Site in basin 41F (Madison River). A summary description of the water rights in the Compact is enclosed with this Notice.

You are receiving this Notice because the State’s water right records indicate you have filed a statement of claim, have applied for or received a permit to appropriate water, or have a water

reservation in one of the four basins in which a reserved water right in the Compact is located. Since your water rights may be affected by the Compact, you should review the Compact. Accordingly,

THIS IS YOUR OFFICIAL NOTIFICATION that the Montana Water Court has entered a Preliminary Decree containing the United States Bureau of Land Management–Montana Compact. If the Court approves the Compact, it will enter a final decree adjudicating the reserved water rights of the United States as they are recognized in the Compact. That final decree will be binding on all water users.

WHAT IS A PRELIMINARY DECREE AND WHAT ARE YOUR RIGHTS AND OBLIGATIONS TO OBJECT TO THE COMPACT?

This Preliminary Decree is a decree entered by the Water Court in accordance with Mont. Code Ann. § 85-2-231. At this stage in the adjudication, all affected parties are required to state any objections that they may have to the Compact. If you do not agree with the water rights recognized by the Compact, you may file an objection and request a hearing and the Water Court will hear your objection. **This will be your only opportunity to object to the United States Bureau of Land Management–Montana Compact. Any Final Decree entered by the Water Court adjudicating the reserved water rights for the Upper Missouri National Wild and Scenic River and the Bear Trap Canyon Public Recreation Site will be binding on you.**

RIGHT TO APPEAL

If you do not participate in Water Court proceedings, your right to appeal an adverse decision is limited. Mont. Code Ann. § 85-2-235, provides that (1) a person whose existing rights and priorities are finally determined may appeal that determination only if: (a) the person requested a hearing and appeared and entered objections in the Preliminary Decree; (b) the person's rights or

priorities as determined in the decree were affected as the result of an objection filed by another person; (c) the person requested a hearing and appeared before the Water Court to finally resolve an issue remark; or (d) the person is a claimant appealing an adverse decision when the Water Court issued the decision as the result of an evidentiary hearing or as the result of calling the claim in on the Court's own motion. (2) If the Attorney General participated as an intervenor as provided in Mont. Code Ann. § 85-2-248, the Attorney General may appeal a decision. (3) An interlocutory ruling by a water judge upon a question of law may be appealed by a party affected by the decision and who participated in the matter in which the ruling was issued.

SHOULD YOU FILE AN OBJECTION?

Only you can answer this question. To help you determine whether you should file an objection to the Compact, you should first examine the Compact and the abstracts. Your examination should not stop there, however. You must also compare the water rights in the Compact with the claims that you have filed with the Water Court or the water right permits or certificates that you have received from the Montana Department of Natural Resources and Conservation, and possibly the claims and permits of others within the four affected Basins.

The following documents can be viewed at the list of offices identified below:

- A. The BLM Compact;
- B. The abstracts of the water rights for the Upper Missouri National Wild and Scenic River and Bear Trap Canyon Public Recreation Site;
- C. All the water right claims that have been filed and all water right permits and certificates located in the four water basins affected by the Compact; and
- D. The Court's Findings of Fact, Conclusions of Law, and Order for Commencement of Special Proceedings authorizing this proceeding.

The offices at which some or all of these referenced documents may be viewed are:

1. The Montana Water Court, 601 Haggerty Lane, Bozeman, Montana. (BLM Compact, abstracts, Findings of Fact, Conclusions of Law and Order of Commencement only.)
2. The following Montana Department of Natural Resources and Conservation offices:
 - a. Helena - Water Rights Adjudication Office, 910 Helena Ave. Telephone (406) 444-0560;
 - b. Havre - 210 Sixth Ave – Telephone (406) 265-5516;
 - c. Lewistown - 613 NE Main, Suite E – Telephone (406) 538-7459;
 - d. Bozeman - 2273 Boothill Court – Telephone (406) 586-3136.
3. Clerk of District Court office for the following counties: Blaine; Chouteau; Fergus; Madison; and, Phillips. (BLM Compact, abstracts, Findings of Fact, Conclusions of Law and Order of Commencement only.)

Internet information at www.dnrc.mt.gov/wrd/water_rts/adjudication is also available.

Scroll down through the various basins to BLM Compact. Click on BLM Compact and click on the Decree information that interests you.

A summary description of the BLM Compact and maps of the general area are attached.

You may obtain a paper or electronic copy of the Preliminary Decree from the Montana Water Court, P.O. Box 1389, Bozeman, MT 59771-1389. The cost of a paper copy of the Preliminary Decree, which includes the BLM Compact, abstracts, Findings of Fact, Conclusions of Law, and Order of Commencement, is \$10.00. An electronic copy of these documents on a compact disk (CD) is FREE.

The BLM Compact is published in section 85-20-501 of the Montana Code Annotated beginning at page 835 of Volume 10 (2007 edition). The Montana Code Annotated can be found in many public offices and public libraries.

HOW TO FILE AN OBJECTION AND REQUEST A HEARING

An objection to the Compact must be filed on forms provided by the Water Court. Objection forms can be found at any of the offices listed above. **All objections must be received by the Montana Water Court, P.O. Box 1389, Bozeman, Montana 59771-1389, on or before September 2, 2009. LATE OBJECTIONS WILL NOT BE CONSIDERED.**

INFORMATIONAL MEETING WITH THE CHIEF WATER JUDGE

One public telephone conference call and two public meetings will be held to explain the Water Court procedures and the BLM Compact. The public **telephone conference call** will be held on **May 5, 2009 at 7:00 p.m.** To participate in the conference call, dial the following toll free telephone number on May 5 at 7:00 p.m.: **1-866-479-6576**. At the prompt, enter the following participant code number and pound sign: **46309676#**.

The two public meetings will be held in:

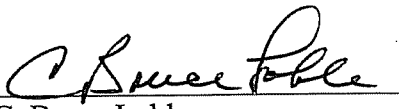
- 1) Ennis, Montana on **May 12, 2009** in the Ennis Town Hall at 328 West Main at 7:00 p.m.;
- 2) Fort Benton, Montana on **May 13, 2009** in the Montana Agricultural Center at 1205 20th Street at 7:00 p.m.

Representatives of the Settling Parties will be present to answer your questions.

ANY QUESTIONS?

Use our toll-free number 1-800-624-3270 (in Montana). Our regular office number is (406) 586-4364, and is not toll-free. Or call your regional DNRC office at the telephone number listed in paragraphs 2.b–2.d above.

DATED this 6th day of March, 2009.


C. Bruce Loble
Chief Water Judge

WATER RIGHTS COMPACT
STATE OF MONTANA-BUREAU OF LAND MANAGEMENT
For the UPPER MISSOURI NATIONAL WILD AND SCENIC RIVER and
BEAR TRAP CANYON PUBLIC RECREATION SITE

INTRODUCTION

The Montana Reserved Water Rights Compact Commission (RWRCC) was created by the Montana Legislature in 1979 to act of behalf of the State and its water users to negotiate federal reserved water rights associated with reserved federal land. The process of settling federal reserved water rights is part of the state-wide water adjudication. A federal reserved water right is created when an Act of the U.S. Congress or a Presidential Executive Order or Proclamation sets aside federal land from the public domain for a specified purpose. The water right then carries the priority date of the Act or authorization that reserved the land, even if the water for the federal land was not put to use at that time. The amount of water to which a reservation is entitled depends on the purpose for which the land was reserved. By state law a negotiated settlement must pass the Montana Legislature, be signed by the appropriate federal officials, and go through a final objection process in Montana Water Court. If all objections are resolved in the Water Court, the Court issues a decree in each basin, integrating state and federal water rights.

COMPACT AGREEMENT

This Compact between the State of Montana and the U. S. Department of the Interior, Bureau of Land Management (BLM) settles the reserved water rights for the Upper Missouri National Wild and Scenic River and the Bear Trap Canyon Public Recreation Site. The Compact passed the Montana legislature in 1997 and was signed by federal officials on September 10, 1997. Mont. Code Ann. § 85-20-501 (2007).

1. Upper Missouri National Wild and Scenic River.

Designated by Congress as a component of the Wild and Scenic River System on October 12, 1976, the designation includes 149 miles of the Missouri River corridor from Fort Benton downstream to Fred Robinson Bridge.

The RWRCC and the BLM were unable to agree on primary purposes for quantification of the reserved water right, but agreed that when Congress designated the Wild and Scenic River it anticipated that future State development would occur. Therefore, the Compact:

- Sets aside a large volume of water by month to meet future State demands. This volume is sufficient to irrigate approximately 100,000 acres of new direct-flow full-service irrigation and municipal and industrial needs plus approximately 500,000 acre-feet of new storage. Domestic, small groundwater, non-consumptive, supplemental, lawn and garden, instream stock uses, late claims, and other federal and Indian reserved water rights are not counted against the State's available water supply. Once the State has exhausted the available water supply, the basin above the downstream boundary of the Upper Missouri National Wild and Scenic River will be closed to new appropriations for that month. The reserved water right for instream flow is limited to the water left after the State's future development.
- Protects all valid existing water rights, permits and water reservations.
- No new impoundments on the mainstem Missouri River without U.S. consent.
- BLM will not have standing to object to new appropriations or changes in appropriation.
- No appropriations will have terms, conditions, or limitations as result of this agreement.
- BLM cannot make a call on the Missouri River to require junior users to let water pass.

2. Bear Trap Canyon Public Recreation Site.

Set aside by the Secretary of the Interior on June 9, 1971, pursuant to authority granted by Presidential Executive Order. The public recreation site is located in the Madison River corridor directly below Ennis Lake.

- The reserved water right is for 1,100 cfs year round for instream flow with a June 9, 1971 priority date.
- Montana Power Company's successor PPL Montana operates Madison Dam at Ennis Lake and is required by licensing agreement to make a minimum release of 1, 100 cfs.