

**UNITED STATES DEPARTMENT OF INTERIOR, FISH AND WILDLIFE SERVICE,  
CHARLES M. RUSSELL NATIONAL WILDLIFE REFUGE—MONTANA COMPACT**

**CASE WC-2015-05**

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND  
ORDER FOR COMMENCEMENT OF SPECIAL PROCEEDINGS  
FOR CONSIDERATION OF THE UNITED STATES DEPARTMENT OF  
INTERIOR, FISH AND WILDLIFE SERVICE, CHARLES M. RUSSELL  
NATIONAL WILDLIFE REFUGE—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 Charles M. Russell National Wildlife Refuge. Based on the submissions of the Settling Parties, 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 Charles M. Russell National Wildlife Refuge in accordance with Section 85-2-703, MCA. The United States Fish and Wildlife Service Charles M. Russell National Wildlife Refuge – Montana Compact (“Compact”) was ratified by the 2013 Montana Legislature (see, 2013 Mont. L., ch. 227, § 1), Section 85-20-1701, MCA, and was approved by the Secretary of the Interior and the Department of Justice effective May 11, 2015.

2. In Article III, the Compact identifies specific federal reserved water rights of the United States for the Charles M. Russell National Wildlife Refuge. The identified water rights are located in Basins 40C, 40D, 40E, 40EJ, 40O and 40S 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 June 26, 2015, the Settling Parties filed with the Water Court a Joint Motion for Incorporation of the Compact into Preliminary and Final Decrees and their Joint Motion for Commencement of Special Proceedings for Consideration of the United States Charles M. Russell National Wildlife Refuge Compact. The Settling Parties requested the Court, in accordance with Section 85-2-215, MCA, to consolidate the Charles M. Russell National Wildlife Refuge 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 to direct the Montana Department of Natural Resources and Conservation (“DNRC”) to provide notice of the Preliminary Decree to water users in Basins 40C, 40D, 40E, 40EJ, 40O and 40S, and to publish notice of availability of the Preliminary Decree at least once each week for three consecutive weeks in the *Billings Gazette*, *Glasgow Courier*, *Great Falls Tribune* and *Lewistown News-Argus*.

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 right Compacts.

*Second*, the Montana Legislature’s policy of promoting the settlement of reserved water right claims (see, § 85-2-702, MCA) 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 Charles M. Russell National Wildlife Refuge 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 Sections 3-7-224(2) and 85-2-231, MCA.

### **CONCLUSIONS OF LAW**

1. Issuance of the Preliminary Decree containing the Compact as authorized by Section 85-2-231(2), MCA 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 a decree for this matter under Section 85-2-218(1)(b), MCA.

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 2013 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 for Commencement of Special Proceedings to consider the United States Fish and Wildlife Service, Charles M. Russell National Wildlife Refuge–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 Section 85-2-232, MCA.

2. The Compact shall be incorporated into a Preliminary Decree in Basins 40C, 40D, 40E, 40EJ, 40O and 40S.

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 Section 85-2-231, MCA. This Preliminary Decree contains the following information only: (a)

the Decree of the Compact; (b) the contents of the Compact, including its five appendices; and (c) these Findings of Fact and Conclusions of Law and Order.

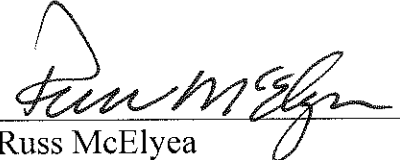
4. The Court, by separate Order of this date, will instruct the DNRC to serve Notice of Entry of United States Fish and Wildlife Service, Charles M. Russell National Wildlife Refuge–Montana Compact Preliminary Decree and Notice of Availability to all persons with water rights in Basins 40C, 40D, 40E, 40EJ, 40O and 40S. Additionally, the Court will instruct the DNRC to publish the Notice (or a modified Notice better suited for publication purposes) in the *Billings Gazette*, *Glasgow Courier*, *Great Falls Tribune* and *Lewistown News-Argus* in the manner set forth in that separate Order.

5. In addition to the requirements set forth in Section 85-2-233(2), MCA, 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 29<sup>th</sup> day of July, 2015.

  
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Chief Water Judge

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