

**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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**DECREE**

This matter is before the Court on the joint motion of the United States of America and the State of Montana for the entry of a decree confirming the reserved water rights as recognized in the United States Fish and Wildlife Service, Charles M. Russell National Wildlife Refuge-Montana Compact (“Compact”). Upon hearing the motion, objections thereto, the evidence, the claims of the United States on behalf of the United States Department of Interior, Fish and Wildlife Service, arguments of counsel, and being otherwise fully advised, the Court has determined that the motion should be GRANTED. The United States of America has claimed federal reserved water rights within the State of Montana as set forth in Article III of the Compact. Those rights are described as follows:

I. Name and Mailing Address of Holder of Rights:

United States of America  
Department of Interior  
Fish and Wildlife Service  
Division of Water Resources  
Region 6  
P.O. Box 25486 – Denver Federal Center  
Denver, CO 80225-0286

II. Federal Reserved Water Right:

The entirety of the Compact is set forth below without change.

This compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to federal reserved water rights for the Charles M. Russell National Wildlife Refuge administered by the U.S. Fish and Wildlife Service within the State of Montana.

## ARTICLE I RECITALS

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

WHEREAS, 85-2-228, MCA, provides that a federal reserved water right with a priority date of July 1, 1973, or later be subject to the same process and adjudication as a federal reserved water right with a priority date before July 1, 1973;

WHEREAS, 85-2-703 and 85-2-228(3), MCA, provide that the Montana Reserved Water Rights Compact Commission may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the Charles M. Russell National Wildlife Refuge as articulated in Executive Order 7509 of December 11, 1936;

WHEREAS, the Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. 516-517 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. 1457 (1986, Supp. 1992);

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

## ARTICLE II DEFINITIONS

For purposes of this compact only, the following definitions shall apply:

(1) "Abstract" means copies of the documents collectively entitled "Abstracts of U.S. Fish and Wildlife Service Water Rights for the Charles M. Russell National Wildlife Refuge" referenced in this compact as Appendices 1-3.

(2) "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.

(3) "Charles M. Russell National Wildlife Refuge" means the federal reservation of land that was designated under the Act of June 25, 1910, ch. 421, 36 Stat. 847, as amended by the Act of August 24, 1912, ch. 369, 37 Stat. 497.

(4) "Coextensive" means equal or coincident in space, time or scope. As applied to this compact, "Coextensive" rights to instream flow are non-additive water rights that

constitute a usufructuary interest held by two or more parties with each party being subject to the same limits on quantity of water regardless of whether one or both parties are exercising the right.

(5) “Department” means the Montana Department of Natural Resources and Conservation or its successor.

(6) “Effective Date” means the date on which the compact is given ratification by the Montana Legislature, written approval by the United States Department of the Interior, and written approval by the United States Department of Justice, whichever occurs later.

(7) “Groundwater” means any water that is beneath the ground surface.

(8) “Instream Flow” means the water that the Parties agree must remain in the stream for non-consumptive uses to protect and maintain water flow and Wildlife Habitat throughout the Refuge for the purposes of the federal reservation.

(9) “Non-Consumptive Use” means a beneficial use of water that does not cause a reduction in the source of supply or result in a reduction in the quantity or quality of water and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(10) “Order” means Executive Order 7509, withdrawing from the public domain the Fort Peck Game Range, signed December 11, 1936.

(11) “Parties” means the State of Montana and the United States.

(12) “Recognized Under State Law” when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right arising under federal law.

(13) “Refuge” means the Charles M. Russell National Wildlife Refuge.

(14) “Reserved Right” means collectively the United States’ water rights for stock, wildlife, and Wildlife Habitat within Refuge as described herein.

(15) “Restricted Reach” means the portion of stream reach subject to the on-stream impoundment limitation described in Articles III.E. and IV.C. and depicted in Appendix 5 of this compact.

(16) “Stacked” means a series of impoundments on the same stream placed in proximity to one another such that water impounded by a down-stream dam reaches an elevation less than or equal to five feet below the elevation of the base of the embankment of the next upstream dam.

(17) “State” means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, “state” means the Director of the Montana Department of Natural Resources and Conservation or the Director’s designee.

(18) “United States” means the federal government and all officers, agencies, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, “United States” means the Secretary of the Department of the Interior or the Secretary’s designee.

(19) “Wildlife Habitat” means a combination of food, water, shelter, and space that sustains wildlife and includes, but is not limited to, riparian areas and the stream

flows that sustain them. This definition may not be construed to increase the quantity of the water rights set forth in Article III of this compact.

### ARTICLE III WATER RIGHT

The Parties agree that the following water rights are in settlement of the reserved water rights of the United States for the Refuge. All water rights described in this Article are subject to Article IV of this compact as well as any specific additional conditions set forth below.

A. Priority date. The Reserved Right for stock, wildlife and Wildlife Habitat uses within the Refuge described herein has a priority date of December 11, 1936. The United States agrees to subordinate its 1936 Reserved Right to water rights Recognized Under State Law existing on the Effective Date of this compact. Accordingly, any water right Recognized Under State Law with a priority date prior to the Effective Date of this compact is functionally senior in priority to any component of the Reserved Right and is not subject to a call for enforcement or administration by the United States in the exercise of the Reserved Right. The final decree for the United States' Reserved Right must include the above prohibition on call.

B. Quantified instream rights. The United States holds water rights in the following named streams from the point furthest upstream where the Refuge boundary crosses the mainstem stream channel to its confluence with Fort Peck Lake or the Missouri River. The water right is in the amount of one (1) or one-half (½) cubic feet per second (cfs) for instream use for the purposes of stock, wildlife, and Wildlife Habitat as set forth in Table 1 and the Abstracts attached to this compact as Appendix 1, and as depicted in Appendix 4. The period of use is March 1 to June 30. The United States may exercise its quantified instream rights during the period of use provided by this Compact if water is available:

**Table 1**

<b>Stream Name</b>	<b>Amount (cfs)</b>	<b>Upstream Limit</b>	<b>Downstream Limit</b>
Alkali Creek	0.5	NWSW Sec.27 19N29E	SESW Sec.36 19N29E
Antelope Creek	0.5	NWNE Sec.3 22N23E	SESE Sec.21 22N23E
Armells Creek	1.0	NWSW Sec.18 21N23E	SWSW Sec.32 22N24E
Ash Creek	0.5	NWNW Sec.28 22N42E	SESW Sec.27 22N42E
Bear Creek	0.5	NENE Sec.15 25N42E	SWSE Sec.10 25N42E
Beauchamp Creek	0.5	NWNE Sec.16 22N28E	SESE Sec.35 22N28E
Big Coulee Creek	0.5	NWSW Sec.16 21N33E	SWSW Sec.12 21N33E
Big Dry Creek	1.0	SWSW Sec.26 20N42E	NESW Sec.12 20N42E
Billy Creek	0.5	SESE Sec.33 22N34E	NWNE Sec.22 22N34E
Box Creek, North Fork	0.5	SWSW Sec.18 23N42E	NENE Sec.19 23N42E
Box Creek, South Fork	0.5	SWNW Sec.19 23N42E	SENE Sec.19 23N42E
Bridge Coulee	0.5	SWNW Sec.1 20N42E	NENE Sec.12 20N42E
Cabin Coulee	0.5	SESW Sec.21 23N35E	SWSE Sec.5 22N36E

Carroll Coulee	0.5	SWNW Sec.31 21N26E	SENE Sec.22 21N26E
Cart Trail Coulee	0.5	NWNW Sec.35 23N33E	NENW Sec.1 22N33E
Cat Creek	0.5	NWSW Sec.29 23N42E	SWSW Sec.28 23N42E
Cattle Creek	0.5	SWSE Sec.15 22N39E	SWSE Sec.10 22N39E
CK Creek	0.5	NWNE Sec.1 22N26E	SESE Sec.12 21N27E
Crooked Creek (Garfield County)	0.5	SESE Sec.19 22N39E	NENE Sec.19 22N39E
Sacagawea River/ Crooked Creek	0.5	SWSW Sec.27 20N29E	SWNW Sec.36 20N29E
Dawson Creek	0.5	NWSW Sec.6 23N42E	SWSE Sec.6 23N42E
Devils Creek	0.5	NENE Sec.16 21N32E	SENE Sec.5 21N32E
Doney Coulee	0.5	NWNE Sec.30 23N34E	SESW Sec.29 23N34E
Duck Creek	0.5	NWNW Sec.1 23N37E	NWSE Sec.1 23N37E
Duval Creek	0.5	NENW Sec.5 22N24E	NWSE Sec.34 22N24E
Fifth Coulee	0.5	SWNW Sec.33 25N39E	SESE Sec.2 24N39E
Fourchette Creek	1.0	NWNW Sec.15 22N30E	NWSE Sec.8 22N31E
Germaine Coulee	0.5	SESE Sec.22 19N30E	SWSW Sec.16 19N30E
Gilbert Creek	0.5	SWSE Sec.17 22N40E	NESE Sec.4 22N40E
Hawley Creek	0.5	NENW Sec.35 22N29E	NENE Sec.2 21N28E
Hell Creek	0.5	SESE Sec.16 21N37E	NWNW Sec.13 21N37E
Hilliard Coulee	0.5	NENE Sec.20 26N42E	NWSW Sec.17 26N42E
Kill Woman Creek	0.5	NENE Sec.3 22N32E	SESE Sec.10 22N32E
King Coulee	0.5	NWNW Sec.6 23N37E	SESW Sec.9 23N37E
Lone Tree Creek	0.5	NWSW Sec.34 22N42E	NESW Sec.34 22N42E
Lost Creek	0.5	SWSE Sec.36 21N31E	NWNW Sec.33 21N31E
Middle Eighth Coulee	0.5	NENE Sec.28 24N38E	SWNE Sec.35 24N38E
Nelson Creek	0.5	SESW Sec.26 21N43E	NENW Sec.27 21N43E
Nichols Coulee	0.5	SWSW Sec.7 22N27E	SESE Sec.10 21N27E
North Fork Rock Creek	0.5	NENE Sec.21 23N43E	SWSE Sec.17 23N43E
Norville Creek	0.5	NWNW Sec.36 24N41E	NWNW Sec.31 24N42E
Renick Coulee	0.5	SESE Sec.24 23N40E	NENE Sec.23 23N40E
Ried Coulee	0.5	SWSW Sec.18 21N38E	NWNE Sec.13 21N37E
Rock Creek	1.0	NENE Sec.6 22N25E	NWNE Sec.11 21N25E
Sand Arroyo	0.5	NWNE Sec.20 24N43E	NESW Sec.20 24N43E
Sand Creek	0.5	SWSW Sec.16 21N24E	NENE Sec.9 21N25E
Sandburn Coulee	0.5	SESE Sec.1 19N30E	SESE Sec.25 20N30E
Seven Blackfoot Creek	0.5	SWSE Sec.13 21N33E	NENW Sec.13 21N33E
Sevenmile Creek	0.5	NENW Sec.6 22N26E	SESE Sec.7 21N27E
Seventh Coulee	0.5	NWSW Sec.18 24N39E	SWNW Sec.20 24N39E
Sherman Coulee	0.5	NESE Sec.33 19N30E	NENE Sec.30 19N30E
Siparyann Creek	1.0	NWNW Sec.2 22N24E	SESE Sec.32 22N25E
Sixth Coulee	0.5	NWNW Sec.5 24N39E	SWNW Sec.14 24N39E
Snap Creek	0.5	SWSW Sec.23 21N42E	SENE Sec.26 21N42E
Snow Creek	0.5	SWSW Sec.3 21N36E	NESW Sec.2 21N36E
Soda Creek	0.5	SWNW Sec.33 21N29E	SWNW Sec.8 20N30E
South Fork Duck Creek	0.5	NWNW Sec.21 25N39E	SWNW Sec.14 25N39E
South Fork Rock Creek	0.5	SENE Sec.33 23N43E	NWNE Sec.32 23N43E
Spring Creek	0.5	NESE Sec.11 24N42E	SESE Sec.10 24N42E
Nancy Russell Creek/ Squaw Creek	0.5	SESE Sec.29 20N31E	SWNE Sec.30 20N31E

Sutherland Creek	0.5	SWNW Sec.13 23N36E	SWSW Sec.18 23N37E
Telegraph Creek*	0.5	NENW Sec.30 23N31E	SWSE Sec.31 23N31E
Timber Creek (McCone)	0.5	NENE Sec.17 20N43E	SWSE Sec.6 20N43E
Two Calf Creek	0.5	NWNW Sec.30 22N23E	NENW Sec.28 22N23E
Upper Eighth Coulee	0.5	NWSW Sec.33 24N38E	SENE Sec.4 23N38E
Valentine Creek*	0.5	NWNE Sec.10 21N30E	SENE Sec.14 22N30E
Wilder Creek	0.5	NENW Sec.12 22N25E	SWSE Sec.6 21N26E
Wyatt Coulee	0.5	NWNW Sec.22 23N34E	NESW Sec.22 23N34E

\*The downstream end of the quantified reaches of Telegraph Creek and Valentine Creek end at their confluence with Fourchette Creek.

C. Instream Flow right on Musselshell River. The United States holds a water right in the Musselshell River from the point furthest upstream where the mainstem river channel enters U.S. Fish and Wildlife Service owned land within the Refuge (near the SESE of section 11, T.18N, R.29E) to its confluence with Fort Peck Lake as described in the Abstract attached to this compact as Appendix 2. The water right is in the amount of a minimum instream flow of seventy (70) cfs. The water right is for the purposes of stock, wildlife, and Wildlife Habitat and must be Coextensive with any other non-consumptive instream uses during the specified period of use. The period of use for this right is from March 1 to June 30.

D. Wells, ponds, and springs. Water rights for wells, developed springs, and ponds will be recognized and quantified as set forth in the Abstracts attached to this compact as Appendix 3.

E. Conditions to be applied to permits issued after the Effective Date of the Compact. On the Restricted Reaches set forth in Table 2 and depicted in Appendix 5, no new on-stream impoundments may be constructed after the Effective Date of this Compact, except as provided by Article IV.C.

**Table 2**

Name of Group	Name at Endpoint	Upper or Lower	Quarter Quarter	Section	Township Range
Armells Creek	Armells Creek	Upper	NENE	12	20N21E
	Armells Creek	Lower	SWSW	32	22N24E
	Fargo Coulee	Upper	NESE	13	20N22E
	UT of Fargo Coulee	Upper	SENE	33	21 N23E
	UT of Fargo Coulee	Upper	NENW	1	20N22E
Ash Creek	Ash Creek	Upper	SWSW	11	22N41E
	Ash Creek	Lower	SESW	27	22N42E
Bear Creek	Bear Creek	Upper	NENE	15	25N42E
	Bear Creek	Lower	SWSE	10	25N42E
Beauchamp Creek	Beauchamp Creek	Upper	NESW	14	24N26E
	Beauchamp Creek	Lower	SESE	35	22N28E
Billy Creek	Billy Creek	Upper	SENE	17	21N34E
	Billy Creek	Lower	NWNE	22	22N34E
Bobcat Creek	Bobcat Creek	Upper	NENE	29	25N42E

	UT of Bobcat Creek	Upper	NESW	29	25N42E
	Bobcat Creek	Lower	NWNW	30	25N41E
Box Creek, North Fork	Box Creek, North Fork	Upper	SENE	4	23N41E
	UT of Box Creek, North Fork	Upper	NESW	9	23N41E
	Box Creek, North Fork	Lower	NENE	19	23N42E
Box Creek, South Fork	Box Creek, South Fork	Upper	NENW	22	23N41E
	Box Creek, South Fork	Lower	SENE	19	23N42E
Box Elder Creek	Box Elder Creek	Upper	NESW	29	23N32E
	Box Elder Creek	Lower	SENE	30	23N31E
Bridge Coulee	Bridge Coulee	Upper	SESW	33	21N42E
	Bridge Coulee	Lower	NENE	12	20N42E
	Carpenter Creek	Upper	NWNW	15	23N35E
Carroll Coulee	Carroll Coulee	Upper	SWNW	11	20N25E
	UT of Carroll Coulee	Upper	SESE	27	21N25E
	UT of Carroll Coulee	Upper	SWSW	1	20N25E
	UT of Carroll Coulee	Upper	NWNW	3	20N25E
	Carroll Coulee	Lower	SENE	22	21N26E
Cat Creek	Cat Creek	Upper	NWNW	34	23N41E
	Cat Creek	Lower	SWSW	28	23N42E
CK Creek	CK Creek	Upper	NESE	22	24N25E
	CK Creek	Lower	SESE	12	21N27E
	Cottonwood Creek	Upper	NWNW	36	24N24E
Crooked Creek (Garfield Co.)	Crooked Creek (Garfield Co.)	Upper	NWNE	4	21N39E
	Crooked Creek (Garfield Co.)	Lower	NENE	19	22N39E
Crooked Creek/Sacagawea River	Crooked Creek/Sacagawea River	Upper	SWNW	30	20N28E
	Crooked Creek/Sacagawea River	Lower	SENE	35	20N29E
Dawson Creek	Dawson Creek	Upper	NENE	3	23N41E
	Dawson Creek	Lower	SWSE	6	23N42E
Deadman Coulee	Deadman Coulee	Upper	SESE	20	21N32E
	Deadman Coulee	Lower	SWNE	22	21N31E
Devils Creek	Devils Creek	Upper	SESW	30	21N33E
	Devils Creek	Lower	SENE	5	21N32E
Doney Coulee	Doney Coulee	Upper	SESW	13	23N33E
	Doney Coulee	Lower	SESW	29	23N34E
Duval Creek	Duval Creek	Upper	NENW	5	22N24E
	Duval Creek	Lower	NWSE	34	22N24E
East Fork Crooked Creek	East Fork Crooked Creek	Upper	NWNW	25	22N39E
	East Fork Crooked Creek	Lower	SWSE	10	22N39E
Fifth Coulee	Fifth Coulee	Upper	NWNW	32	25N39E
	Fifth Coulee	Lower	SESE	2	24N39E
Fourchette Creek	Fourchette Creek	Upper	NESE	29	23N29E
	Fourchette Creek	Lower	NWSW	5	22N31E
Germaine Coulee	Germaine Coulee	Upper	SESE	24	19N30E
	Germaine Coulee	Lower	SWSW	16	19N30E
Gilbert Creek	Gilbert Creek	Upper	SENE	29	22N40E
	Gilbert Creek	Lower	NESE	4	22N40E
Hell Creek	Hell Creek	Upper	NWSE	27	21N36E
	Hell Creek	Lower	NWNW	13	21N37E
Hell Hole Coulee	Hell Hole Coulee	Upper	NENE	19	23N34E
	Hell Hole Coulee	Lower	NENE	28	23N34E
	Karsten Coulee	Upper	NWNW	12	22N28E
Kill Woman Creek	Kill Woman Creek	Upper	NESE	27	23N32E

King Coulee	Kill Woman Creek	Lower	SESE	10	22N32E
	King Coulee	Upper	SWNE	36	24N36E
	King Coulee	Lower	SESW	9	23N37E
	Little Cottonwood Creek	Upper	NWNE	9	23N24E
Lone Tree Creek	Lone Tree Creek	Upper	NENW	27	22N41E
	Lone Tree Creek	Lower	NESW	34	22N42E
Lost Creek (east Garfield Co.)	Lost Creek (east Garfield Co.)	Upper	SWNE	8	22N42E
	Lost Creek (east Garfield Co.)	Lower	SWSW	3	22N42E
Lost Creek (west Garfield Co.)	Lost Creek (west Garfield Co.)	Upper	SWSW	32	21N32E
	Lost Creek (west Garfield Co.)	Lower	SENE	33	21 N31E
Middle Eighth Coulee	Middle Eighth Coulee	Upper	NENW	21	24N38E
	Middle Eighth Coulee	Lower	SWNE	35	24N38E
North Fork Rock Creek	North Fork Rock Creek	Upper	NWNW	36	24N43E
	North Fork Rock Creek	Lower	NWNE	20	23N43E
Norville Creek	Norville Creek	Upper	NESE	28	24N41E
	UT of Norville Creek	Upper	SESE	21	24N41E
	Norville Creek	Lower	NWNW	31	24N42E
Renick Coulee	Plum Creek	Upper	SENE	3	23N35E
	Renick Coulee	Upper	NWNW	32	23N41E
	Renick Coulee	Lower	NWNE	23	23N40E
Ried Coulee	Ried Coulee	Upper	NESE	32	21N38E
	Ried Coulee	Lower	NENE	13	21 N37E
Rock Creek	Rock Creek	Upper	SWNE	30	24N25E
	Rock Creek	Lower	NWNE	11	21N25E
Sage Creek	Sage Creek	Upper	NENE	8	23N41E
	Sage Creek	Lower	SWSW	31	24N41E
Sand Creek	Sand Creek	Upper	NENE	1	20N23E
	UT of Sand Creek	Upper	SWSE	35	21N24E
	UT of Sand Creek	Upper	SWSE	24	21N23E
	UT of Sand Creek	Upper	SWSE	33	21N24E
	UT of Sand Creek	Upper	SWSW	26	21N23E
	UT of Sand Creek	Upper	SWSE	14	21N23E
Seven Blackfoot Creek	Sand Creek	Lower	NENE	9	21N25E
	Seven Blackfoot Creek	Upper	SWNW	23	20N34E
Sevenmile Creek	Seven Blackfoot Creek	Lower	NENW	13	21 N33E
	Sevenmile Creek	Upper	SESW	14	23N25E
Sherman Coulee	Sevenmile Creek	Lower	SESE	7	21N27E
	Sherman Coulee	Upper	NWSW	1	18N30E
Short Creek	Sherman Coulee	Lower	NENE	30	19N30E
	Short Creek	Upper	SENE	10	21N42E
Siparyann Creek	Short Creek	Lower	SESE	11	21N42E
	Siparyann Creek	Upper	NENE	5	23N24E
Sixth Coulee	Siparyann Creek	Lower	SESE	32	22N25E
	Sixth Coulee	Upper	SWNW	31	25N39E
Snap Creek	Sixth Coulee	Lower	SWNW	14	24N39E
	Snap Creek	Upper	NENE	17	21N42E
Snow Creek	Snap Creek	Lower	NENE	26	21N42E
	Snow Creek	Upper	NWSW	14	21N35E
	Snow Creek	Lower	NESW	2	21N36E



Soda Creek	UT of Soda Creek	Upper	SWNE	30	21N29E
	UT of Soda Creek	Upper	NESW	31	21N29E
	UT of Soda Creek	Upper	NWNE	29	21N29E
	UT of Soda Creek	Upper	SESW	31	21N29E
Spring Creek	UT of Soda Creek	Upper	NENW	36	21N28E
	Soda Creek	Lower	SWNW	8	20N30E
	Spring Creek	Upper	NWNE	12	24N42E
	UT of Spring Creek	Upper	NESW	33	25N42E
	UT of Spring Creek	Upper	NENW	3	24N42E
	UT of Spring Creek	Upper	NENE	14	24N42E
	UT of Spring Creek	Upper	NWNW	34	25N42E
	Spring Creek	Lower	SESE	10	24N42E
Stole Creek	Stole Creek	Upper	SWSE	4	24N42E
	Stole Creek	Lower	SESE	9	24N42E
Sutherland Creek	Sutherland Creek	Upper	SWSW	30	24N36E
	UT of Sutherland Creek	Upper	NWNE	34	24N36E
	Sutherland Creek	Lower	SWSW	18	23N37E
Telegraph Creek	Telegraph Creek	Upper	SESE	25	24N31E
	Telegraph Creek	Lower	NWNE	6	22N31E
Two Calf Creek	Two Calf Creek	Upper	NENE	22	22N21E
	Two Calf Creek	Lower	NWNE	28	22N23E
UT of Musselshell River	UT of Musselshell River	Upper	NWSW	17	19N29E
	UT of Musselshell River	Lower	SWNW	30	19N30E
UT1 of Fort Peck Lake	UT1 of Fort Peck Lake	Upper	NWNE	14	22N40E
	UT1 of Fort Peck Lake	Lower	NENW	2	22N40E
UT2 of Fort Peck Lake	UT2 of Fort Peck Lake	Upper	NENE	17	24N41E
	UT2 of Fort Peck Lake	Upper	SWNW	21	24N41E
	UT2 of Fort Peck Lake	Upper	NENE	21	24N41E
	UT2 of Fort Peck Lake	Lower	SWNW	15	24N41E
UT3 of Fort Peck Lake	UT3 of Fort Peck Lake	Upper	NWSW	35	26N42E
	UT of UT3 of Fort Peck Lake	Upper	SENE	34	26N42E
	UT3 of Fort Peck Lake	Lower	SENE	4	25N42E
UT4 of Fort Peck Lake	UT4 of Fort Peck Lake	Upper	NENE	20	25N42E
	UT4 of Fort Peck Lake	Lower	SENE	8	23N42E
UT5 of Fort Peck Lake	UT5 of Fort Peck Lake	Upper	SENE	21	25N42E
	UT of UT5 of Fort Peck Lake	Upper	SENE	22	25N42E
	UT5 of Fort Peck Lake	Lower	SESW	10	25N42E
UT6 of Fort Peck Lake	UT6 of Fort Peck Lake	Upper	NWNE	19	25N41E
	UT6 of Fort Peck Lake	Lower	SESE	24	25N41E
UT7 of Fort Peck Lake	UT7 of Fort Peck Lake	Upper	SESE	14	24N42E
	UT7 of Fort Peck Lake	Lower	NWNE	15	24N42E
UT8 of Fort Peck Lake	UT8 of Fort Peck Lake	Upper	NWSE	13	24N42E
	UT8 of Fort Peck Lake	Lower	SENE	24	24N42E
West Fork Sand Arroyo	West Fork Sand Arroyo	Upper	SENE	9	24N43E
	West Fork Sand Arroyo	Lower	NESW	20	24N43E
Wyatt Coulee	Wyatt Coulee	Upper	SWNE	12	23N33E
	Wyatt Coulee	Lower	NESW	22	23N34E

## ARTICLE IV COMPACT IMPLEMENTATION

A. Quantified reaches. Flows of designated quantified reaches set forth in Table 1 and Appendix 1 that are not already appropriated as of the Effective Date of this compact will be available for future development, subject to the Reserved Right and applicable permit conditions described herein. The Department may approve new uses after the

Effective Date of this compact, but the Department shall condition any permit or approval of new uses to provide that such uses may not cause the quantified reaches to fall below the minimum flows set forth in Table 1 and Appendix 1 during the time period from March 1 to June 30. Appropriations occurring after the Effective Date of this compact will be subject to call by the United States in the exercise of the Reserved Right at any time streamflows are available but fall below the levels set forth in Table 1 and Appendix 1 of this compact, as measured where each quantified stream enters Fort Peck Lake or the Missouri River, or at the closest upstream confluence for those streams that intersect another stream before reaching Fort Peck Lake or the Missouri River, with a proper device for measurement of the waters flowing in the quantified reach.

B. Musselshell River. Musselshell River flows that are not already appropriated as of the Effective Date of this compact will be available for future development subject to the Reserved Right and applicable permit conditions described herein. The Department may approve new uses after the Effective Date of this compact but shall condition any permit or approval of new uses to provide that such uses may not cause the flow of the Musselshell River to fall below seventy (70) cfs where the mainstem river channel enters U.S. Fish and Wildlife Service owned land within the Refuge during the period from March 1 to June 30. Appropriations occurring after the Effective Date of this compact will be subject to a call by the United States in the exercise of the Reserved Right at any time streamflow falls below 70 cfs for five (5) consecutive days.

C. Conditions to be applied to permits issued after the Effective Date of the compact. Impoundments of less than the capacity and appropriation limits excepted from permitting under 85-2-306, MCA, may be constructed on the stream reaches identified in Table 2 and Appendix 5. These impoundments may not be Stacked to achieve a volume greater than the statutory exception. The Department may permit no new on-stream impoundments that do not meet the permit exception requirements of 85-2-306, MCA, on the Restricted Reaches identified in Table 2 and Appendix 5.

1. Reclamation, repair, or rehabilitation of an existing impoundment may not be considered a new impoundment, except that reclamation, repair, or rehabilitation cannot cause the impoundment to exceed the storage volume listed on the statement of claim.

2. Off-stream impoundments larger than the capacity and appropriation limits excepted from permitting by 85-2-306, MCA, may be constructed and filled in accordance with state permitting requirements from a diversion works located on the stream reaches identified in Table 2 and Appendix 5; and

3. On-stream impoundments larger than the capacity and appropriation limits excepted from permitting by 85-2-306, MCA, may be constructed and filled in accordance with state permitting requirements on the streams identified in Table 2 and Appendix 5 upstream of the designated Restricted Reach.

D. Uses exempted from curtailment by the United States' exercise of the Reserved Right during times of shortage. During times when there is insufficient water to satisfy the Reserved Right, and curtailment of junior water rights is otherwise contemplated under Article III, the following water rights will not be subject to call or curtailment for the benefit of the Reserved Right:

1. Non-Consumptive Uses located upstream of the instream reaches identified in Table I and Appendix 1.
2. Groundwater uses of thirty-five (35) gallons per minute (gpm) or less not to exceed ten (10) AF per year.
3. Stockwater impoundments of less than fifteen (15) AF capacity and total appropriation less than thirty (30) AF per year.
4. Temporary emergency appropriations under 85-2-113(3), MCA.
5. An application submitted pursuant to 85-20-1401, MCA, Article VI.
6. An application for a permit to appropriate surface water to conduct response actions related to natural resource restoration required for:
  - a. Remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;
  - b. Aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251-1387; or
  - c. Remedial actions taken pursuant to Title 75, chapter 10, part 7.
- E. Action for enforcement of provisions of Article III. The United States may file an original action in a court of competent jurisdiction to enforce the provisions of Article III at any time. The United States cannot be required to exhaust any administrative remedies in order to enforce Article III of this compact.

## ARTICLE V GENERAL PROVISIONS

- A. The Parties recognize that the U.S. Fish and Wildlife Service has an interest in maintaining water flow and wildlife habitat throughout the Refuge.
- B. No effect on tribal rights or other federal reserved water rights.
  1. The relationship between the water rights of the U.S. Fish and Wildlife Service described herein and any rights to water of an Indian Tribe in Montana, or of any federally derived water right of an individual, or of the United States on behalf of a Tribe or individual shall be determined by the rule of priority.
  2. Nothing in this compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any Indian Tribes and Tribal members in the State of Montana.
  3. Nothing in this compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe regarding boundaries or property interests in the State of Montana.
  4. Nothing in this compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of any other federal agency or federal lands in the State of Montana other than those of the U.S. Fish and Wildlife Service for the Charles M. Russell National Wildlife Refuge.
- C. General Disclaimers. Nothing in this Compact may be construed or interpreted:
  1. As a precedent for the litigation of reserved water rights or the interpretation or administration of existing or future compacts between the United States and the State; or of the United States and any other state;

2. As a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this compact, or, except as provided in this compact, any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this compact;

3. As a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this compact;

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

5. To determine the relative rights, inter se, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this compact;

6. To authorize the taking of a water right that is vested under state or federal law;

7. To create or deny substantive rights through headings or captions used in this compact;

8. To expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the Effective Date of this compact;

9. To affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the U.S. Fish and Wildlife Service;

10. To affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or an act of Congress;

11. To affect, in any manner, the entitlement to or quantification of other federal water rights. This compact is binding on the United States solely in regard to the water rights of the United States for the Charles M. Russell National Wildlife Refuge, and this compact does not affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this compact.

D. Use of water right. Non-use of all or a part of the Reserved Right may not constitute abandonment of the right. The Reserved Right need not be applied to a use deemed beneficial under state law, but must be restricted to uses necessary to fulfill the purposes outlined in the Order.

E. Coextensive with other non-consumptive instream water uses. The Reserved Right for Instream Flows for the Refuge described in this compact must be Coextensive with any other non-consumptive instream water uses, and may not be cumulative to other instream uses.

F. Appropriation pursuant to State law. Nothing in this compact may prevent the United States from seeking a water appropriation pursuant to state law for use on the reserved land within the Refuge or for use outside the boundaries of the federal reservation for which a water right is described in this compact. A water right obtained in this manner shall be Recognized Under State Law and must be administered pursuant to state law.

G. Reservation of rights. The Parties expressly reserve all rights not granted, described, or relinquished in this compact.

H. Severability. The provisions of this compact are not severable.

I. Multiple originals. This compact is executed in quintuplicate. Each of the five (5) compacts bearing original signatures must be deemed an original.

J. Notice. Unless otherwise specifically provided for in this compact, service of notice, except service in litigation, must be:

1. State. Upon the Director of the Department or its successor agency, and such other officials as the Director may designate in writing.

2. United States. Upon the Secretary of the Interior and such other officials as the Secretary may designate in writing.

## ARTICLE VI FINALITY OF COMPACT

A. Binding effect.

1. The Effective Date of this Compact is the date of the ratification of this compact by the Montana legislature, written approval by the United States Department of the Interior, and written approval by the United States Department of Justice. Once effective, all of the provisions of this compact shall be binding on:

a. The State and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the State to the use of water; and

b. Except as otherwise provided in Article V, Section B, the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the Effective Date, this compact may not be modified without the written consent of the Parties. Any attempt to unilaterally modify this compact by either Party shall render this compact voidable at the election of the other Party.

B. Settlement of claims. The Parties intend that the Reserved Right described in this compact is in full and final settlement of the reserved water right claims of the United States for the Charles M. Russell National Wildlife Refuge. Pursuant to this settlement, by which certain federal reserved water rights are expressly recognized by the State in this compact, the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for the Refuge relinquishes forever all said claims on the Effective Date of this compact to water within the State of Montana for federal reserved water rights for the above mentioned unit. The State agrees to recognize the Reserved Right described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as any other appropriation.

C. The parties agree to defend the provisions and purposes of this compact from all challenges and attacks.

### III. Relationship with Compact

This Decree is based upon the Compact. The Federal Reserved Water Rights confirmed in this decree are subject to all conditions upon use and administration set forth in the Compact. Nothing in this Decree is intended to modify, alter, or amend the terms and provisions of the Compact.

DATED this 29<sup>th</sup> day of July, 2015.

/s/ Russ McElyea  
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Montana Water Court

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