

HOUSE BILL NO. 692

INTRODUCED BY WANZENRIED, GROSFIELD, YELLOWTAIL,
HARPER, SWYSGOOD, HALLIGAN, BECK, BROOKE, SWANSON,
RANEY, GILBERT, GRINDE, FAGG, SCHYE

IN THE HOUSE

APRIL 5, 1993 INTRODUCED AND REFERRED TO COMMITTEE
 ON NATURAL RESOURCES.

 FIRST READING.

APRIL 13, 1993 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

APRIL 14, 1993 PRINTING REPORT.

 SECOND READING, DO PASS AS AMENDED.

APRIL 15, 1993 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 81; NOES, 19.

 TRANSMITTED TO SENATE.

IN THE SENATE

APRIL 15, 1993 ON MOTION, RULES SUSPENDED TO ALLOW
 LATE TRANSMITTAL.

APRIL 16, 1993 INTRODUCED AND REFERRED TO COMMITTEE
 ON JUDICIARY.

 FIRST READING.

APRIL 19, 1993 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN. REPORT ADOPTED.

APRIL 20, 1993 SECOND READING, CONCURRED IN.

 ON MOTION, RULES SUSPENDED TO ALLOW
 THIRD READING THIS DAY.

 THIRD READING, CONCURRED IN.
 AYES, 41; NOES, 6.

 RETURNED TO HOUSE.

IN THE HOUSE

APRIL 21, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Howe BILL NO. 692
 2 INTRODUCED BY ~~UNIDENTIFIED~~ Grastrell Yellowtail
 3 Swagwood Wallace Beck Beck Swanson Raney
 4 Billert Gruber Jays Schye
 A BILL FOR AN ACT ENTITLED "AN ACT RATIFYING A RESERVED

5 WATER RIGHTS COMPACT BETWEEN THE UNITED STATES NATIONAL PARK
 6 SERVICE AND THE STATE OF MONTANA; ESTABLISHING A STATUTORY
 7 APPROPRIATION; AND AMENDING SECTION 17-7-502, MCA."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 NEW SECTION. Section 1. United States National Park
 11 Service -- Montana compact ratified. The compact entered
 12 into by the state of Montana and the United States National
 13 Park Service and filed with the secretary of state of the
 14 state of Montana under the provisions of 85-2-702 on [date
 15 of filing] is ratified. The compact is as follows:

16 WATER RIGHTS COMPACT
 17 STATE OF MONTANA

18 UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

19 This Compact is entered into by the State of Montana and
 20 the United States of America to settle for all time any and
 21 all claims to water for certain lands administered by the
 22 National Park Service within the State of Montana at the
 23 time of the effective date of this Compact.

24 RECITALS

25 WHEREAS, in 1979 the United States filed in the United

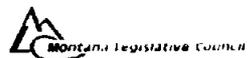
1 States District Court for the District of Montana several
 2 actions to adjudicate, inter alia, its rights to water with
 3 respect to Glacier National Park, see United States v.
 4 Aageson, No. CV-79-21-GF; United States v. Abell, No.
 5 CV-79-33-M; and United States v. AMS Ranch, Inc., No.
 6 CV-79-22-GF.

7 WHEREAS, the State of Montana, in 1979 pursuant to Title
 8 85, Chapter 2 of the Montana Code Annotated, commenced a
 9 general adjudication of the rights to the use of water
 10 within the State of Montana including all federal reserved
 11 and appropriative water rights;

12 WHEREAS, 85-2-703, MCA, provides that the state may
 13 negotiate settlement of claims by the federal government to
 14 non-Indian reserved waters within the State of Montana;

15 WHEREAS, the United States wishes to quantify and have
 16 decreed the amount of water necessary to fulfill the
 17 purposes of the existing National Park Service units in the
 18 State of Montana, including those reserved water rights
 19 necessary to preserve Glacier National Park and Yellowstone
 20 National Park unimpaired for future generations;

21 WHEREAS, the United States, in quantifying its reserved
 22 water rights recognizes the need to accommodate the
 23 interests of the state and its citizens by providing for the
 24 development and use of water in the vicinity of the Park
 25 units to the extent that it is possible to do so without



1 materially affecting the rights and interests of the United
2 States;

3 WHEREAS, the United States Attorney General, or a duly
4 designated official of the United States Department of
5 Justice, has authority to execute this Compact on behalf of
6 the United States pursuant to the authority to settle
7 litigation contained in 28 U.S.C. 516-17 (1968);

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

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

15 ARTICLE I
16 DEFINITIONS

17 For purposes of this Compact only, the following
18 definitions shall apply:

19 (1) "Abstract" means the copy of the document entitled
20 "Abstract of National Park Service Water Rights" referenced
21 in this Compact as Appendix 1.

22 (2) "Big Hole National Battlefield" or "BHNBF" means
23 those lands located in Montana that were acquired pursuant
24 to, or withdrawn and reserved by Executive Order No. 1216 of
25 June 23, 1910; Presidential Proclamation No. 2339 of June

1 29, 1939, 53 Stat. 2544; and Act of May 17, 1963, 77 Stat.
2 18.

3 (3) "Bighorn Canyon National Recreation Area" or
4 "BCNRA" means those lands located in Montana that were
5 acquired pursuant to, or designated as such by Act of
6 October 15, 1966, 80 Stat. 913.

7 (4) "Bureau" means the Montana Bureau of Mines and
8 Geology or its successor.

9 (5) "Category 1 stream" means a stream that headwaters
10 on the reserved land administered by the National Park
11 Service.

12 (6) "Category 1a stream" means a stream that headwaters
13 on the reserved land administered by the National Park
14 Service and which, in part, carries water that drains
15 non-federal land within the boundaries of the same reserved
16 land.

17 (7) "Category 2 stream" means a stream that headwaters
18 in a Wilderness Area in Montana outside the respective Park
19 unit which flows into the reserved land administered by the
20 National Park Service, and which is not the source for a
21 consumptive water right recognized under state law on the
22 effective date of this Compact and drains a hydrologic basin
23 that contains only federal land.

24 (8) "Category 3 stream" means a stream that headwaters
25 in Montana outside the reserved land administered by the

1 National Park Service that flows into the reserved land and
2 is the source for consumptive use water rights recognized
3 under state law on the effective date of this Compact.

4 (9) "Category 4 stream" means a stream that is treated
5 individually due to special circumstances.

6 (10) "Consumptive use" means use of surface water not
7 considered a non-consumptive use under (24) and use of
8 groundwater which is shown to be hydrologically connected to
9 surface water pursuant to Article II.

10 (a) "Current consumptive use", when referring to water
11 rights recognized under state law only, means all
12 consumptive use water rights recognized under state law with
13 a priority date before January 1, 1993.

14 (b) "Future consumptive use", when referring to a water
15 right recognized under state law only, means a consumptive
16 use water right recognized under state law with a priority
17 date on or after January 1, 1993.

18 (11) "Credible information" means credible evidence
19 sufficient to support a prima facie basis for the theory
20 asserted.

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

23 (13) "Effective date of this Compact" means the date of
24 the ratification of the Compact by the Montana legislature,
25 written approval by the United States Department of the

1 Interior, or written approval by the United States
2 Department of Justice, whichever is later.

3 (14) "Glacier National Park" or "GNP" means those lands
4 located in Montana that were acquired pursuant to, or
5 withdrawn and reserved by the Act of May 11, 1910, 36 Stat.
6 354; Act of February 27, 1915, 38 Stat. 814; and Act of
7 April 11, 1972, 86 Stat. 120.

8 (15) "Grant Kohrs Ranch National Historic Site" means
9 those lands acquired by the United States and designated as
10 such pursuant to Public Law 92-406, August 25, 1972.

11 (16) "Groundwater" means water that is beneath the
12 ground surface.

13 (17) (a) "Hydrologically connected", for the purposes
14 of Articles II and III, means groundwater that is connected
15 to surface water such that appropriation at the proposed
16 rate will cause a calculable reduction in surface water
17 flow. A "calculable reduction in surface water flow" means a
18 theoretical reduction based on credible information as
19 opposed to a measured reduction.

20 (b) "Hydrologically connected" for the purposes of
21 Article IV, means groundwater that is considered to be
22 connected to the hydrothermal system within the reserved
23 land of Yellowstone National Park based on scientific
24 evidence according to the procedures in Article IV.

25 (18) "Hydrothermal system" means the groundwater system,

1 including cold water recharge, transmission and warm water
2 discharge that is hydrologically connected to the
3 hydrothermal features within the reserved land of
4 Yellowstone National Park.

5 (19) "Hydrothermal discharge water" means groundwater
6 with a temperature in excess of 59 degrees Fahrenheit that
7 is hydrologically connected to the hydrothermal system
8 within the reserved land of Yellowstone National Park.

9 (20) "Hydrothermal feature" means a surface
10 manifestation of a hydrothermal system, including but not
11 limited to: hot springs, geysers, mud pots, and fumaroles.

12 (21) "Instream flow" means the water that the parties
13 agree shall remain in the stream in satisfaction of the
14 United States' reserved water right for the purposes of the
15 reserved land.

16 (22) "Little Bighorn Battlefield National Monument" or
17 "LBBNM" means those lands located in Montana that were
18 acquired pursuant to or withdrawn and reserved by
19 Presidential Proclamation of December 7, 1886.

20 (23) "Nez Perce National Historical Park" means those
21 lands in Montana acquired and added to the Nez Perce
22 National Historical Park by Congress on October 30, 1992,
23 pursuant to Public Law 102-576.

24 (24) (a) "Non-consumptive use" when applied to a mining
25 or hydropower use for which a water right is recognized

1 under state law with a priority date on or after January 1,
2 1993, means an appropriation that does not cause a net loss
3 in the surface source of supply, and where substantially all
4 of the diverted water becomes return flow with little or no
5 delay between the time of diversion and the time of return,
6 and without adverse effect on the quantity or quality of
7 water necessary to fulfill the purposes of the reserved
8 land.

9 (b) "Non-consumptive use" when applied to a water right
10 recognized under state law other than a mining or hydropower
11 use with a priority date on or after January 1, 1993, or a
12 water right recognized under state law with a priority date
13 before January 1, 1993, means a water right considered to be
14 non-consumptive by the decree, permit or law authorizing the
15 use.

16 (25) "Parties" means the State of Montana and the United
17 States.

18 (26) "Person" means an individual, association,
19 partnership, corporation, state agency, political
20 subdivision, or any other entity, but does not include the
21 United States.

22 (27) "Recognized under state law" when referring to a
23 water right or use means a water right or use protected by
24 state law, but does not include state recognition of a
25 federal or tribal reserved water right.

1 (28) "Return flow" means the portion of water diverted
2 from a source that is returned to the same source, at or
3 near the point of diversion.

4 (29) "Scientific evidence" means geologic, geophysical,
5 geochemical and hydrologic information.

6 (30) "State" means the State of Montana and all
7 officers, agents, departments, and political subdivisions
8 thereof. Unless otherwise indicated, for purposes of
9 notification or consent, "state" means the Director of the
10 Montana Department of Natural Resources and Conservation or
11 his or her designee.

12 (31) "Technical Oversight Committee" or "TOC" means the
13 scientific committee established by Article IV of this
14 Compact.

15 (32) "Tributary to" means surface water that originates
16 in the same hydrologic basin or subbasin as the stream
17 referred to and which contributes water to the same stream.

18 (33) "United States" means the federal government and
19 all officers, agencies, departments and political
20 subdivisions thereof. Unless otherwise indicated, for
21 purposes of notification or consent other than service in
22 litigation, "United States" means the Secretary of the
23 Department of the Interior, or his or her designees.

24 (34) "Working Group Report" means the Abridged and
25 Unabridged reports by Custer, S., et. al. dated January 5,

1 1993, and titled Recommended Boundary for Controlled
2 Groundwater Area in Montana Near Yellowstone National Park
3 and accompanying maps.

4 (35) "Yellowstone National Park" or "YNP" means those
5 lands located in Montana that were acquired pursuant to, or
6 withdrawn and reserved for Yellowstone National Park by the
7 Act of March 1, 1872, 17 Stat. 32; Act of May 26, 1926, 44
8 Stat. 655; Act of March 1, 1929, 45 Stat. 1435; Act of April
9 19, 1930, 46 Stat. 220; and Proclamation No. 2013 of October
10 20, 1932, 47 Stat. 2537.

11 ARTICLE II

12 IMPLEMENTATION

13 A. Abstract:

14 Concurrent with this Compact, the parties have prepared
15 an Abstract, a copy of which is referenced as Appendix 1,
16 which is a specific listing of all of the United States'
17 water rights that are described in this Compact and
18 quantified in accordance with this Compact. The parties
19 prepared the Abstract to comply with the requirements for a
20 final decree as set forth in 85-2-234(4) and (7), MCA, and
21 in an effort to assist the state courts in the process of
22 entering decrees accurately and comprehensively reflecting
23 the rights described in this Compact. The rights specified
24 in the Abstract are subject to the terms of this Compact. In
25 the event of a discrepancy between a right listed in the

1 Abstract and that same right as quantified in accordance
 2 with Articles II and III of this Compact, the parties intend
 3 that the quantification in accordance with Articles II and
 4 III of this Compact shall be reflected in a final decree.

5 B. Method of Allocation of Water on Category 3 and 4
 6 Streams:

7 This section explains the method of quantification of
 8 the reserved instream flow water rights of the United States
 9 for Category 3 and 4 streams and the method of calculating
 10 the quantity of consumptive use pursuant to state law within
 11 a basin to which the United States agrees to subordinate its
 12 reserved instream flow water right. The method set forth in
 13 this section shall be used to determine whether the limits
 14 on consumptive use pursuant to state law set forth in
 15 Article III have been reached. Addition to the Abstract of a
 16 reserved instream flow water right on a stream inadvertently
 17 omitted by the parties or reclassification of a stream due
 18 to a water right recognized under state law and
 19 inadvertently omitted by the parties shall be consistent
 20 with this section and shall not be deemed a modification of
 21 this Compact.

22 1. Allocation to Instream Flow:

23 The allocation of water to instream flow on Category 3
 24 and 4 streams is arrived at using the following method as
 25 explained in general terms:

1 a. The United States' reserved water right for instream
 2 flow includes the entire flow of that stream within the
 3 State of Montana at the point where the stream flows over or
 4 forms the boundary of the specified reserved land after: (1)
 5 all consumptive use water rights of any agency of the United
 6 States recognized under federal or state law are satisfied;
 7 and (2) subordination of the reserved water right for
 8 instream flow to water rights recognized under state law as
 9 set forth in and limited by Article III and more
 10 specifically in the Abstract.

11 b. Actual use of water in Wyoming or Canada shall not
 12 diminish the quantity of water designated for consumptive
 13 use pursuant to state law as set forth in Article III.

14 2. Method of Calculation of Consumptive Use Rights
 15 Recognized Under State Law:

16 To determine whether water is available for
 17 appropriation for consumptive use pursuant to state law on
 18 Category 3 and 4 streams, and for determining whether the
 19 limit on subordination of the United States' water rights to
 20 consumptive uses has been reached, the following provisions
 21 shall apply:

22 a. Tributary Water: The calculation of total
 23 consumptive use on a Category 3 or 4 stream shall include
 24 all current and future consumptive use, recognized under
 25 state law, of surface water tributary to the stream to the

1 point it enters the reserved land. The limits on total
 2 consumptive use on a Category 4 stream that forms the
 3 boundary of the reserved land shall include all current and
 4 future consumptive use recognized under state law, of
 5 surface water tributary to the stream to the most downstream
 6 point that the stream forms the boundary of the reserved
 7 land.

8 b. Groundwater:

9 i. An exemption from state permit requirements for
 10 wells or developed springs shall not apply to appropriations
 11 within a basin tributary to the reserved portion of a
 12 Category 3 or 4 stream after the effective date of this
 13 Compact, provided that the registration process set forth in
 14 Article II, section B.2.b.ii.(3)(b) shall apply to
 15 applications for a permit for a well of 35 gpm or less, not
 16 to exceed 10 acre-feet per year. In addition, all
 17 groundwater appropriations within the Yellowstone Controlled
 18 Groundwater Area shall be subject to Article IV.

19 ii. The calculation of total consumptive use on a
 20 Category 3 or 4 stream shall include appropriations of
 21 groundwater as follows:

22 (1) Pre-January 1, 1993: An appropriation of
 23 groundwater with a priority date before January 1, 1993,
 24 shall not be included in the calculation of total
 25 consumptive use.

1 (2) January 1, 1993 - Effective Date: An appropriation
 2 of groundwater with a priority date on or after January 1,
 3 1993, but before the effective date of this Compact shall be
 4 included in the calculation of total consumptive use if the
 5 following procedural requirements are met and the
 6 appropriation is found to be hydrologically connected to
 7 surface water tributary to the reserved portion of a
 8 Category 3 or 4 stream.

9 (a) Within 120 days after the effective date of this
 10 Compact, the Department shall provide the United States with
 11 notice of all groundwater appropriations in drainages
 12 tributary to the reserved portion of a Category 3 or 4
 13 stream that, according to the records of the Department,
 14 have a priority date on or after January 1, 1993 and before
 15 the effective date of this Compact.

16 (b) Up to 120 days following mailing of such notice the
 17 United States shall provide the Department with credible
 18 information that a groundwater appropriation included in the
 19 notice is hydrologically connected to surface flow tributary
 20 to the reserved portion of a Category 3 or 4 stream.

21 (c) Within 60 days of receipt of such information, the
 22 Department shall issue an order stating that (1) the
 23 appropriation is hydrologically connected to surface water
 24 tributary to the Category 3 or 4 stream; and (2) the action
 25 to be taken with respect to the appropriation. The order is

1 effective within 60 days of issuance unless the appropriator
 2 enters an appearance to contest the order. If credible
 3 information of hydrologic connection has not been provided
 4 by the United States, the Department shall issue an order
 5 stating its determination and reasons therefore.

6 (d) If the appropriator enters an appearance to contest
 7 the order, the Department shall (1) issue an order staying
 8 use of the appropriation pending a final decision on the
 9 matter by the Department only if the limits on total
 10 consumptive use for that drainage have been reached; (2) set
 11 a date for a hearing; and (3) proceed pursuant to the
 12 provisions for a contested case under the Montana
 13 Administrative Procedures Act, Title 2, Chapter 4, of the
 14 Montana Code Annotated, provided that the burden of proving
 15 hydrologic connection shall be as set forth in Article II,
 16 section B.2.b.(3). The Department shall, whenever possible,
 17 consolidate any proceedings on the groundwater application
 18 pursuant to Article IV with any proceeding made necessary by
 19 this Article.

20 (3) Post-Effective Date: An appropriation of
 21 groundwater recognized under state law with a priority date
 22 after the effective date of this Compact shall be included
 23 in the calculation of total consumptive use if the following
 24 conditions apply:

25 (a) Wells in excess of 35 gallons per minute or 10

1 acre-feet per year: The limit on total consumptive use shall
 2 include groundwater appropriation by a well or developed
 3 spring with a permit amount in excess of 35 gpm or any well
 4 with a volume of use greater than 10 acre-feet per year,
 5 including a combined appropriation from the same source from
 6 two or more wells or developed springs that exceeds these
 7 limitations, unless the applicant is able to show by a
 8 preponderance of the evidence that the appropriation is not
 9 hydrologically connected to surface flow tributary to the
 10 reserved portion of a Category 3 or 4 stream.

11 (i) The applicant shall submit credible information,
 12 including a report to the Department prepared by a
 13 professional qualified in the science of groundwater
 14 hydrology verifying that the appropriation is not
 15 hydrologically connected to surface flow tributary to the
 16 reserved portion of a Category 3 or 4 stream. If the
 17 applicant fails to submit the report, the application shall
 18 be considered defective and shall be returned to the
 19 applicant for completion as provided by state law.

20 (ii) The Department shall provide notice of the proposed
 21 appropriation and a copy of the report to the United States
 22 concurrent with notice pursuant 85-2-307, MCA.

23 (iii) Within 60 days of the mailing of notice, the
 24 United States shall file an objection to the proposed
 25 appropriation on the basis that it is hydrologically

1 connected to surface water.

2 (iv) The Department shall not exclude the appropriation
3 from the limits on total consumptive use unless the
4 applicant proves by a preponderance of the evidence that the
5 proposed appropriation is not hydrologically connected to
6 surface flows tributary to the reserved portion of the
7 Category 3 or 4 stream. In doing so the Department shall
8 make a specific finding on the adequacy of the report
9 provided by the applicant.

10 (v) If the proposed appropriation is determined not to
11 be hydrologically connected to surface water, or if the
12 limit on consumptive use has not been reached, the
13 Department may issue a permit in accordance with state law
14 and the applicant may complete the appropriation.

15 (b) Wells of 35 gallons per minute or less and 10
16 acre-feet per year or less:

17 (i) An applicant for an appropriation of groundwater of
18 35 gpm or less, not to exceed 10 acre-feet per year shall
19 register for a permit by filing a form prescribed by the
20 department.

21 (ii) The Department shall provide notice of the
22 registration for a permit to the United States within 30
23 days of the filing. Within 30 days of the receipt of notice,
24 the United States may file an objection to the application
25 on the basis that the proposed appropriation is of

1 groundwater that is hydrologically connected to surface flow
2 tributary to the reserved portion of a Category 3 or 4
3 stream.

4 (iii) As long as the limit on consumptive use rights for
5 a Category 3 or 4 stream has not been reached, the
6 calculation of total consumptive use shall not include
7 groundwater appropriations by well or a developed spring of
8 35 gallons per minute or less that do not exceed 10 acre
9 feet per year unless the United States shows by a
10 preponderance of the evidence that the proposed
11 appropriation is hydrologically connected to the reserved
12 portion of a Category 3 or 4 stream. If the United States
13 meets this burden, the Department shall include the
14 appropriation in the calculation of total consumptive use.

15 (iv) After the limit on consumptive use rights has been
16 reached on a particular stream, the necessary showing by the
17 United States' shall be to file an objection and come
18 forward with credible information showing that the proposed
19 appropriation is hydrologically connected to surface flows
20 tributary to the reserved portion of the Category 3 or 4
21 stream. If the United States makes such a showing, the
22 Department shall consider the application under the criteria
23 in Article II, section B.2.b.(3)(b)(v) and (vi).

24 (v) The Department shall not exclude the appropriation
25 from the limits on total consumptive use unless the

1 applicant proves by a preponderance of the evidence that the
2 proposed appropriation is not hydrologically connected to
3 surface flows tributary to the reserved portion of the
4 Category 3 or 4 stream.

5 (vi) If the proposed appropriation is determined not to
6 be hydrologically connected to surface water the Department
7 may issue a permit in accordance with state law and the
8 applicant may complete the appropriation.

9 iii. Within 2 years after the effective date of this
10 Compact, the Department, in consultation with the United
11 States, is directed to promulgate rules as may be necessary
12 to implement Article II, section B.2.b. Said rules shall not
13 alter the rights or obligations of the parties hereto.

14 c. Effect of Decree in Calculation of Consumptive Use:
15 Except as provided in Article II, section G., for the
16 purposes of this Compact, the flow rate of a consumptive use
17 shall be as finally decreed in a general adjudication, or
18 recognized under state law until such final decree. At each
19 stage in an adjudication, the allocation to current use as
20 set forth in Article III and more specifically in the
21 Abstract shall be adjusted to reflect the decreed amount.

22 d. Abandonment: When a consumptive use right recognized
23 under state law on a Category 3 or 4 stream is abandoned and
24 such abandonment causes water to become available for
25 appropriation within the limits of the total amounts of

1 water allocated to consumptive use rights recognized under
2 state law established for that stream by Article III, the
3 increment of water below that limit is available for new
4 appropriation in accordance with state law and this Compact.
5 State law governs the issue of whether an abandonment has
6 occurred.

7 e. Non-Consumptive Use: The limit on total consumptive
8 use rights recognized under state law shall not include
9 non-consumptive uses as defined by this Compact.

10 C. Subordination of Instream Flow Right:

11 1. The United States agrees to subordinate its reserved
12 water right for instream flow to consumptive uses calculated
13 according to this Article in a manner that is specific to
14 each stream on which a reserved water right is described.
15 This subordination is set forth for each stream in Article
16 III. Curtailment of uses to which the reserved water rights
17 described in this Compact have not been subordinated during
18 periods of low flow shall proceed on the basis of priority
19 and may be initiated in a state or federal court of
20 competent jurisdiction pursuant to Article II, section I.

21 2. The reserved water rights described in this Compact
22 shall not be subordinate to water rights which were
23 forfeited by 85-2-212 as interpreted in In the Matter of the
24 Adjudication of the Water Rights within the Yellowstone
25 River, 253 Mont. 167, 832 P.2d 1210 (1992), nor shall any

1 claimant of such forfeited water right have standing, based
 2 solely on such claimed right, to object to this Compact or
 3 any reserved water right described in this Compact.

4 D. Location of Instream Flow Rights: The United States'
 5 reserved water rights for instream flow apply to the portion
 6 of the Categories 1 through 4 streams specified in this
 7 Compact that flow over or form the boundary to reserved land
 8 administered by the National Park Service.

9 E. Change in Instream Flow Right: Except as provided in
 10 Article II, section J.2.b., the water rights dedicated to
 11 instream flow by this Compact shall not be changed to any
 12 other use.

13 F. Prohibition on Future Impoundments: With the
 14 exception of the North Fork of the Big Hole River and its
 15 tributaries, no new impoundments may be permitted on the
 16 mainstem of a Category 2, 3, or 4 stream upstream of, or
 17 along, the portion of the stream for which a water right for
 18 instream flow is described in this Compact after the
 19 effective date of this Compact. This prohibition shall
 20 include impoundments that are exempt from permit
 21 requirements under state law. Reclamation, repair or
 22 rehabilitation of an existing impoundment shall not be
 23 considered a new impoundment, provided that without the
 24 consent of the United States, reclamation, repair or
 25 rehabilitation shall not cause the impoundment to exceed the

1 original constructed capacity of the impoundment. This
 2 prohibition shall not apply to impoundments constructed to
 3 store a Tribal water right or to implement settlement of
 4 litigation regarding quantification of a Tribal water right.
 5 On Category 3 and 4 streams for which an instream flow right
 6 is described for periods of low flow as set forth in Article
 7 III, sections G.3.c. and d., such water right has not been
 8 subordinated to a new water right with the method of
 9 diversion as an impoundment on the mainstem of the stream
 10 with a priority date on or after January 1, 1993, but before
 11 the effective date of this Compact.

12 G. Management to Maximize Use by Montana Water Users of
 13 the Water Allocated to Consumptive Use Rights Recognized
 14 Under State Law: If any type of conservation or water
 15 distribution plan which includes measurement of actual water
 16 use, including use pursuant to rights recognized under state
 17 law with a priority date before January 1, 1993, is adopted
 18 pursuant to state law, the limits established for
 19 consumptive use appropriated pursuant to state law shall
 20 apply to actual measured use, not permitted and decreed or
 21 claimed rights, provided that records of actual use be made
 22 available to the United States on request and provided
 23 further that, such plan shall not diminish the reserved
 24 water right of the United States as described in this
 25 Compact.

1 **H. Basin Closure**

2 1. Except as provided in Article II, section B.2.d., in
3 the following drainage basins upstream of the portion of the
4 stream for which a reserved water right for instream flow is
5 described in this Compact, the Department shall not process
6 or grant an application or registration for a permit to
7 appropriate or to reserve water for future consumptive use
8 as defined by this Compact once the limits on consumptive
9 use tabulated in Article III and set forth more specifically
10 in the Abstract are reached:

11 Big Hole National Battlefield:

12 North Fork of the Big Hole River

13 Glacier National Park:

14 North Fork of the Flathead River

15 Middle Fork of the Flathead River

16 Yellowstone National Park:

17 Bacon Rind, Buffalo, Cottonwood, Coyote,

18 Hellroaring, Little Cottonwood, Snowslide, Crevice,

19 Dry Canyon, Slough, Teepee, and Soda Butte Creeks,

20 and the Gallatin, Madison, and Yellowstone Rivers

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

1 **I. Enforcement of Water Right**

2 1. The United States, the state, or the holder of a
3 water right recognized under state law, may petition a state
4 or federal court of competent jurisdiction for relief when a
5 controversy arises between the United States' reserved water
6 right described by this Compact, and a holder of a water
7 right recognized under state law. Resolution of the
8 controversy shall be governed by the terms of this Compact
9 where applicable, or to the extent not applicable, by
10 applicable state or federal law.

11 2. The United States agrees that a water commissioner
12 appointed by a state or federal court of competent
13 jurisdiction, or other official authorized by future changes
14 in law, may enter a federal reservation for which a water
15 right is described in this Compact for the purpose of data
16 collection, including the collection of information
17 necessary for water distribution on or off the federal
18 reservation, and to inspect structures for the diversion and
19 measurement of water described in this Compact for
20 consumptive use and for the measurement of instream flow.
21 The terms of entry shall be as specified in an order of a
22 state or federal court of competent jurisdiction.

23 3. The Department or the Bureau may enter a federal
24 enclave for which a reserved water right is described in
25 this Compact, at a reasonable hour of the day, for the

1 purposes of data collection on water diversion and stream
2 flow or inspection of devices maintained by the United
3 States pursuant to this Compact. The Department or Bureau
4 shall notify the United States by certified mail or in
5 person, at least 24 hours prior to entry.

6 4. The United States may request an investigation by
7 the Department of a diversion located upstream of the
8 reserved portion of a stream for which a reserved water
9 right is described in this Compact. The Department may
10 investigate. If an investigation occurs, the United States
11 may accompany the Department.

12 5. The United States shall maintain structures,
13 including wellhead equipment and casing, for the diversion
14 and measurement of water authorized for consumptive use by
15 this Compact. The United States shall maintain the devices
16 it deems necessary for enforcement of its reserved water
17 right for instream flow described in this Compact.

18 6. A person who violates or refuses or neglects to
19 comply with the provisions of this Compact, an order of the
20 Department pursuant to this Compact, or an action by the
21 Bureau pursuant to this Compact is subject to the penalties
22 provided by state law, including but not limited to,
23 revocation of a permit issued pursuant to Article IV after
24 the effective date of this Compact.

25 7. For any appeal to state court of an administrative

1 decision authorized by this Compact, venue shall be the
2 First Judicial District in Helena and the review shall be
3 conducted according to the procedures for judicial review of
4 contested cases under the Montana Administrative Procedures
5 Act, Title 2, Chapter 4, of the Montana Code Annotated.

6 8. In any contested case proceeding held under the
7 Montana Administrative Procedures Act, Title 2, Chapter 4,
8 of the Montana Code Annotated, pursuant to this Compact, the
9 common law and statutory rules of evidence shall apply only
10 upon stipulation of all parties to a proceeding.

11 J. Change in Use

12 1. Change in Use Defined: For the purpose of this
13 Article, the following actions affecting the use of a
14 reserved water right for consumptive use described in this
15 Compact shall be considered a change in use:

16 a. An action that alters type of use, place of use,
17 point of diversion, place or means of storage, period of use
18 or point of return flow that will:

19 i. increase the net depletion on a source; or
20 ii. adversely affect water quality at the point the
21 reserved water right ends; or

22 iii. result in a change in point of diversion or point
23 of return flow relative to a holder of a water right
24 recognized under state law; or

25 iv. change the point of diversion from groundwater to

1 surface water, or from surface to groundwater; or

2 v. in any other manner, adversely affects the
3 reasonable exercise of a water right that is recognized
4 under state law.

5 b. The exercise of a reserved water right to future
6 consumptive use as authorized by this Compact shall not be
7 considered a change in use.

8 2. Instream flow: Reserved water rights specified in
9 this Compact for instream flow shall not be subject to
10 change to any other use, provided that:

11 a. the emergency use of water for fire suppression as
12 provided for in Article III.H. shall not be deemed a change
13 or alteration in use, or violation of a reserved water right
14 for instream flow; and

15 b. the United States may seek to appropriate water for
16 a consumptive use on a source for which no consumptive use
17 is described in this Compact by seeking a permit under state
18 law for consumptive use, provided that the water right
19 granted shall not be counted against the limits on
20 allocation for state consumptive use water rights imposed by
21 this Compact. The water right so acquired shall be
22 administered in accordance with Article V, section B.

23 3. Consumptive uses: The United States may take action
24 affecting the use of its consumptive use water rights
25 provided that (1) the action shall be in fulfillment of the

1 purposes of the reservation; (2) the total use shall not
2 exceed the amount described in this Compact; and (3) the
3 action shall not adversely affect a water right that is
4 recognized under state law.

5 4. Notice of intent to change use: At least 180 days
6 prior to a change in use, the United States agrees to
7 provide notice to the Department.

8 a. The notice shall contain the facts pertinent to the
9 proposed change including, where applicable:

10 i. The location of a new point of diversion.

11 ii. The new source of water.

12 iii. The new means of diversion.

13 iv. If a well is involved, the depth and locations of
14 the old and new well.

15 v. The new use and its impact on actual consumption and
16 water quality.

17 vi. If the change includes storage, the location, period
18 and capacity of the storage facility.

19 vii. An estimate of when the change will be effective.

20 viii. A map showing the existing system and the proposed
21 change.

22 b. At least 120 days prior to the proposed change, the
23 United States agrees to publish the notice required by
24 Article II, section J.4.a. with a statement that within 60
25 days following publication or service of notice, relief may

1 be sought in a state or federal court of competent
 2 jurisdiction, once in a newspaper of general circulation in
 3 the area of the source, and to serve the notice by
 4 first-class mail on interested and potentially affected
 5 persons as identified by the records of the Department,
 6 including:

7 i. an appropriator of water or applicant for or holder
 8 of a permit who, according to the records of the Department,
 9 may be affected by the proposed appropriation;

10 ii. a purchaser under contract for deed that, according
 11 to the records of the Department, may be affected by the
 12 proposed appropriation;

13 iii. any public agency that has reserved water in the
 14 source recognized under state law; and

15 iv. a federal agency or Tribe that claim a reserved
 16 water right or other water rights in the source.

17 c. On request by the United States, the Department
 18 shall provide the information contained in its records
 19 identifying any person potentially affected by the proposed
 20 change. The United States agrees to reimburse the Department
 21 for the expense of providing this information.

22 d. In the event that future changes in state law
 23 establish a method of notice of a proposed change in use to
 24 interested and potentially affected persons other than by
 25 first-class mail, the United States may alter the method of

1 notification accordingly.

2 e. Prior to the actual change, the United States agrees
 3 to provide the Department with proof of notice by affidavit.

4 5. Objection to proposed change: Within 60 days
 5 following the notice pursuant to Article II, section J.4.b.,
 6 the Department or any other person may bring an action
 7 against the proposed change in use in a state or federal
 8 court of competent jurisdiction, if a property right, water
 9 right, or other interest protected under state law would be
 10 adversely affected, or if the proposed change is not in
 11 compliance with this Compact.

12 6. Notice of Change:

13 a. The United States agrees to notify the state and
 14 provide a copy of the final order within 60 days of its
 15 entry by a state or federal court of competent jurisdiction
 16 resolving any objections to the change in use of a federal
 17 reserved water right described in this Compact,

18 b. The United States agrees to provide the state with
 19 notice of completion of the change within 60 days after the
 20 completion.

21 7. Reporting by the United States: For any action
 22 affecting the use of a consumptive right whether or not such
 23 action is deemed a change in use, the United States agrees
 24 to provide the following information to the Department:

25 a. Well log: For a use that includes the drilling of a

1 well or enlargement of an existing wellbore, the United
2 States agrees to provide a well log to the state within 60
3 days of the completion of the well.

4 b. Emergency Use: Within 60 days after the commencement
5 of a temporary emergency use for fire suppression described
6 in Section III.H. of this Compact, the United States agrees
7 to notify the state of the use to which the water was put,
8 the dates of use, and the estimated amount of water used.

9 c. Annual Report: Between April 1 and May 1 of each
10 year, the United States agrees to provide the Department
11 with a report on (1) actions during the preceding year
12 affecting the use of a consumptive use right described in
13 this Compact, regardless of whether the action is deemed a
14 change in use pursuant to Article II, section J.1.; (2) the
15 initiation of new uses that were completed during the
16 preceding year; and (3) any data and documents generated or
17 received by the National Park Service during the preceding
18 year on measurement of instream flow on a Category 3 or 4
19 stream.

20 8. Reporting by the State: Between December 1 and
21 December 31 of each year, the Department shall provide the
22 United States with a report of: (1) changes in use during
23 the preceding year, as defined by state law, of water rights
24 upstream of or within the boundaries of reserved land for
25 which a reserved water right is described in this Compact;

1 (2) new permits issued during the preceding year according
2 to the records of the Department; and (3) any data and
3 documents generated by the Department during the preceding
4 year on the measurement of streamflows, diversions and well
5 use on or tributary to Category 3 or 4 streams.

6 ARTICLE III

7 WATER RIGHT

8 The parties agree that the following water rights are in
9 settlement of the reserved water rights of the United States
10 for the reservations described. All reserved water rights
11 described in this Article are subject to Article V, section
12 A.

13 A. Big Hole National Battlefield

14 1. Priority Date

15 The United States has a priority date of June 29, 1939
16 for the reserved water rights described in this Compact for
17 BHNB.

18 2. Consumptive Use

19 The United States has a reserved water right for current
20 and future consumptive use for the purposes of the BHNB as
21 set forth in Table 1. The period of use shall be from
22 January 1 through December 31. The source and place of use
23 shall be as set forth more specifically in the Abstract. The
24 place of use or point of diversion of a consumptive use
25 water right at BHNB shall include any non-reserved land

1 within BHNB boundaries as the boundaries exist on the
 2 effective date of this Compact.

3 TABLE 1

4 United States National Park Service

5 Big Hole National Battlefield Consumptive Use

| 6 Place of Use | 7 Total 8 Volume (ac-ft) | 9 Maximum 10 Flow Rate (gpm) |
|----------------------|--------------------------------|------------------------------------|
| 11 Visitor center | | |
| 12 Museum | | |
| 13 Maintenance area | | |
| 14 Residences | | |
| 15 Picnic area | | |
| 16 Irrigation | | |
| 17 Total for all use | 7.14 | 50 |

18 3. Instream Flow

19 The North Fork of the Big Hole River is designated a
 20 Category 4 stream where it flows over the reserved land of
 21 BHNB. The United States has a reserved water right for
 22 instream flow on the North Fork of the Big Hole River where
 23 it flows over the reserved land of BHNB. The reserved water
 24 right for instream flow is quantified and defined as
 25 follows:

a. Instream Flow Quantification for November through
 March: The United States has a reserved water right for

1 instream flow on the North Fork of the Big Hole River at the
 2 point the river enters the reserved land of BHNB in the
 3 amount of 10 cfs for November through March. The instream
 4 flow water right is subordinate to (1) any use recognized
 5 under state law with a priority date before January 1, 1993;
 6 (2) any use considered non-consumptive as defined by this
 7 Compact; and (3) any use of groundwater not included in the
 8 calculation of consumptive use pursuant to Article II.

b. Instream Flow Quantification for April through
 October: The United States has a reserved water right for
 11 instream flow on the North Fork of the Big Hole River for
 12 April through October in the amount of water left in the
 13 river after satisfaction of current and future consumptive
 14 uses pursuant to state law in the amounts up to but no
 15 greater than provided in Table 2, provided, that the limits
 16 of Table 2 notwithstanding, the instream flow water right of
 17 the United States is subordinate to (1) any water rights
 18 recognized under state law with a priority date before
 19 January 1, 1993; (2) any use considered non-consumptive as
 20 defined by this Compact; and (3) any use of groundwater not
 21 included in the calculation of consumptive use pursuant to
 22 Article II.

23 TABLE 2

24 State Law Based

25 Total Current and Future Consumptive Use Rights (cfs)

1 Tributary to the Reserved Portion of the
 2 North Fork of the Big Hole River

| 3 Month | Consumptive Use |
|---------|-----------------|
| 4 April | 4.85 |
| 5 May | 23.85 |
| 6 June | 18.70 |
| 7 July | 4.05 |
| 8 Aug. | 1.75 |
| 9 Sept. | 1.35 |
| 10 Oct. | 1.50 |

11 4. Nothing in this Compact may affect an existing right
 12 to divert water from a point within BHNB and transport it
 13 for use off BHNB.

14 B. Bighorn Canyon National Recreation Area

15 The parties were unable to finalize agreement on
 16 quantification of the water rights for BCNRA prior to the
 17 effective date of this Compact. The parties agree to
 18 continue to pursue, in good faith, quantification of water
 19 rights, and further agree that all other relevant provisions
 20 of this Compact apply to a settlement of this water right
 21 through this process. In the event the parties are unable to
 22 agree on quantification, the United States retains its right
 23 to have the quantity of any reserved water right for BCNRA
 24 adjudicated in a state or federal court of competent
 25 jurisdiction.

1 C. Glacier National Park

2 1. Priority Date

3 The United States has a priority date of May 11, 1910
 4 for reserved water rights described in this Compact for GNP.
 5 The United States recognizes that this date is junior to the
 6 priority dates for reserved water rights of the Confederated
 7 Salish and Kootenai Tribes of the Flathead Indian
 8 Reservation, and the Blackfeet Tribe of the Blackfeet Indian
 9 Reservation.

10 2. Consumptive Use

11 The United States has a reserved water right for current
 12 and future consumptive use for the purposes of GNP as set
 13 forth in Table 3. The period of use shall be from January 1
 14 through December 31. The source and place of use shall be as
 15 set forth more specifically in the Abstract. The place of
 16 use or point of diversion of a consumptive use water right
 17 at GNP shall include any non-reserved land within GNP
 18 boundaries as the boundaries exist on the effective date of
 19 this Compact.

20 TABLE 3
 21 United States National Park Service
 22 Glacier National Park Consumptive Use

| 23 Place of Use | Total | Maximum |
|-----------------|---------|-----------|
| 24 | Volume | Flow Rate |
| 25 | (ac-ft) | (gpm) |

| | | | |
|----|-----------------------------------|--------|------|
| 1 | <u>North Fork Flathead River</u> | | |
| 2 | <u>Basin</u> | | |
| 3 | Station, campground | 4.7 | 70 |
| 4 | Backcountry Use | 1.98 | |
| 5 | Backcountry Patrol Cabins | 2.06 | 55 |
| 6 | <u>Middle Fork Flathead River</u> | | |
| 7 | <u>Basin</u> | | |
| 8 | McDonald Creek areas | 246.00 | 1720 |
| 9 | Middle Fork areas | 0.70 | 10 |
| 10 | Backcountry Use | 2.42 | |
| 11 | Backcountry Patrol Cabins | 2.06 | 55 |
| 12 | <u>Saint Mary River Basin</u> | | |
| 13 | Northern Border areas | 2.20 | 20 |
| 14 | Many Glacier areas | 166.40 | 600 |
| 15 | Saint Mary areas | 128.40 | 915 |
| 16 | Backcountry Use | 2.02 | |
| 17 | Backcountry Patrol Cabins | 1.50 | 40 |
| 18 | <u>Two Medicine River Basin</u> | | |
| 19 | Two Medicine areas | 6.40 | 70 |
| 20 | Backcountry Use | 0.38 | |
| 21 | Backcountry Patrol Cabins | 0.19 | 5 |
| 22 | <u>Cut Bank River Basin</u> | | |
| 23 | Backcountry Use | 0.18 | |
| 24 | Backcountry Patrol Cabins | 0.19 | |
| 25 | <u>Milk River Basin</u> | | |

| | | |
|----|--|--------|
| 1 | Backcountry Use | 0.02 |
| 2 | GNP TOTAL | 567.80 |
| 3 | 3. <u>Instream Flow Right</u> | |
| 4 | a. <u>Category 1:</u> | |
| 5 | i. <u>Identification:</u> | |
| 6 | The following streams are designated as "Category 1:" | |
| 7 | Sage, Spruce, Kishenehn, Starvation, Kintla, Red | |
| 8 | Medicine Bow, Agassiz, Ford, Parke, Long Bow, Akokala, Numa, | |
| 9 | Pocket, Jefferson, Bowman, Rainbow, Cummings, Logging, | |
| 10 | Anaconda, McGee, Camas, Fern, Fish, Howe, Longfellow, | |
| 11 | Trapper, Continental, Flattop, Kipp, Cattle Queen, Ahern, | |
| 12 | Mineral, Alder, Haystack, Logan, Hidden, Avalanche, Snyder, | |
| 13 | Sprague, Walton, Lincoln, Thompson, Pacific, Stimson, Nyack, | |
| 14 | Peril, Pinchot, Elk, Coal, Muir, Park, Debris, Ole, Shields, | |
| 15 | Autumn, Upper Bear, Boundary, Olson, South Fork Valentine, | |
| 16 | Valentine, Kootenai, Pass, Camp, Cleveland, Street, | |
| 17 | Whitecrow, Redgap, Lee, Otatso, Kennedy, Windy, Appekunny, | |
| 18 | Ptarmigan, Iceberg, Wilbur, Cataract, Allen, Swiftcurrent, | |
| 19 | Boulder, Two Dog, Rose, Baring, Siyeh, Reynolds, Virginia, | |
| 20 | Medicine Owl, Hudson Bay, Red Eagle, Atlantic, North Fork | |
| 21 | Cut Bank, Lake, Dry Fork, Aster, Paradise, Appistoki, Two | |
| 22 | Medicine, Fortymile, Fortyone Mile, Midvale, Railroad, | |
| 23 | Coonsa, Long Knife, Jackson, Grinnell, Kaina, Lunch, | |
| 24 | Pyramid, Thunderbird and Upper Summit Creeks and Waterton, | |
| 25 | St. Mary, North Fork Belly, Mokowanis and Belly Rivers. | |

1 ii. Instream Flow
 2 The United States has a reserved water right for
 3 instream flow on the Category 1 streams in the amount of the
 4 entire flow of the streams, less any United States'
 5 consumptive use rights described in this Compact. This
 6 reserved water right ends at the point the stream exits the
 7 reserved land of GNP. The relationship between this water
 8 right and a water right to water stored within GNP held by
 9 the United States shall be governed by the rule of priority.

10 b. Category 1a Streams
 11 i. Identification:
 12 The following streams are designated as "Category 1a:"
 13 Apgar, Canyon, Dutch, Harrison, McDonald, and Quartz
 14 Creeks.

15 ii. Instream Flow:
 16 (a) The United States has a reserved water right for
 17 instream flow on the Category 1a streams in the amount of
 18 the entire flow of the streams, less (1) any United States'
 19 consumptive use rights described in this Compact; and (2)
 20 all water rights appurtenant to non-federal land within the
 21 boundaries of GNP recognized under state law with a priority
 22 date before January 1, 1993. This reserved water right ends
 23 at the most downstream point that the stream exits the
 24 reserved land of GNP.

25 (b) In the event all non-federal land on a Category 1a

1 stream is acquired by the United States for the purpose of
 2 addition to GNP, the stream may be reclassified as a
 3 Category 1 stream at the request of the United States.

4 c. Category 4 Streams
 5 i. Identification:
 6 The following streams are designated as Category 4: the
 7 North Fork of the Flathead River, the Middle Fork of the
 8 Flathead River, Divide, Jule, Rubideau and Wild Creeks.

9 ii. Instream Flow for the North and Middle Forks of the
 10 Flathead River:
 11 The United States has a reserved water right for
 12 instream flow on the North and Middle Forks of the Flathead
 13 River in the amount of the entire flow of the rivers, less
 14 any United States' consumptive use rights described in this
 15 Compact provided that, the instream flow water right is
 16 subordinate to 1) all water rights recognized under state
 17 law with a priority date before January 1, 1993, 2) future
 18 consumptive use rights calculated according to Article II up
 19 to the limits set forth in Table 4; (3) any use considered
 20 non-consumptive as defined by this Compact; and (4) any use
 21 of groundwater not included in the calculation of
 22 consumptive use according to Article II. This reserved water
 23 right ends at the most downstream point that the River forms
 24 the boundary of the reserved land of GNP.

TABLE 4

1 State Law Based

2 Future Consumptive Use Rights (cfs)

3 Tributary to the Reserved Portion of the Flathead River

| 4 Month | North Fork 5 Flathead River | Middle Fork Flathead River |
|----------|--------------------------------|-------------------------------|
| 6 Jan. | 7.5 | 7.1 |
| 7 Feb. | 7.2 | 6.9 |
| 8 Mar. | 8.9 | 8.1 |
| 9 April | # | # |
| 10 May | # | # |
| 11 June | # | # |
| 12 July | 40.5 | # |
| 13 Aug. | 16.2 | 13.7 |
| 14 Sept. | 11.8 | 9.7 |
| 15 Oct. | 11.8 | 10.6 |
| 16 Nov. | 12.0 | 11.6 |
| 17 Dec. | 9.0 | 9.2 |

18 # The amount of water available for future
 19 consumptive use in these months shall be an amount
 20 equivalent to the flow rate for all consumptive
 21 uses recognized under state law on December 31,
 22 1992. The amount shall be adjusted to reflect the
 23 flow rates in a decree issued by a state or federal
 24 court of competent jurisdiction after December 31,
 25 1992. At such time as final decrees are entered in

1 these basins, the Department shall tabulate these
 2 rights, insert the appropriate amounts into Table
 3 4, and submit the revised Table to the United
 4 States and the state for inclusion in this Compact.
 5 Revision of Table 4 to reflect this agreement shall
 6 not be deemed a modification of this Compact.

7 iii. Instream Flow for Divide, Jule, Rubideau and Wild
 8 Creeks

9 The United States has a reserved water right for
 10 instream flow on Divide, Jule and Wild Creeks in the amount
 11 of the entire flow of the stream, less any United States'
 12 consumptive use rights described in this Compact. This water
 13 right ends at the most downstream point that the stream
 14 exits or no longer forms the boundary to the reserved land
 15 of GNP. This right is subject to the provisions of Article
 16 V, section A., and (1) on Divide Creek, is subordinate to
 17 any water rights recognized under state law with a priority
 18 date before January 1, 1993; and (2) on Rubideau Creek, is
 19 subordinate to any water rights recognized under state law
 20 with a priority date before January 1, 1993, provided that
 21 the use of such right is consistent with federal law.

22 4. Lakes

23 The United States has a reserved water right for the
 24 maintenance of natural water levels in all naturally
 25 occurring lakes within the boundaries of GNP for the purpose

1 of preserving unimpaired these Park resources. The water
 2 right for the maintenance of lake levels is subordinate to
 3 (1) any United States' consumptive use rights described in
 4 this Compact; and (2) any water right recognized under state
 5 law with a priority date before January 1, 1993. The named
 6 and unnamed lakes in which the United States has a reserved
 7 water right are those set forth specifically in the
 8 Abstract.

9 D. Grant Kohrs Ranch National Historic Site

10 The Grant Kohrs Ranch National Historic Site in Montana
 11 does not include reserved land. The United States may apply
 12 for a permit to appropriate water or seek recognition of any
 13 existing water rights in accordance with state law.

14 E. Little Bighorn Battlefield National Monument

15 The parties were unable to finalize agreement on
 16 quantification of the water rights for LBBNM prior to the
 17 effective date of this Compact. For the purposes of
 18 settlement of the reserved water rights for land
 19 administered by the National Park Service in Montana, the
 20 parties agree that a water right for instream flow is
 21 necessary for the historic purposes of LBBNM. The parties
 22 agree to continue to pursue, in good faith, quantification
 23 of water rights and further agree that all other relevant
 24 provisions of this Compact apply to a settlement of this
 25 water right through this process. In the event the parties

1 are unable to agree on quantification, the United States
 2 retains its right to have the quantity of any reserved water
 3 right for LBBNM adjudicated in a state or federal court of
 4 competent jurisdiction.

5 F. Nez Perce National Historical Park

6 The Nez Perce National Historical Park in Montana does
 7 not include reserved land. The United States may apply for a
 8 permit to appropriate water or seek recognition of any
 9 existing water rights in accordance with state law.

10 G. Yellowstone National Park

11 1. Priority Date

12 The United States has a priority date of March 1, 1872
 13 for the reserved water rights described in this Compact for
 14 YNP.

15 2. Consumptive Use

16 The United States has a reserved water right for current
 17 and future consumptive use for the purposes of YNP as set
 18 forth in Table 5. The period of use shall be from January 1
 19 through December 31. The source and place of use shall be as
 20 set forth more specifically in the Abstract. The place of
 21 use or point of diversion of a consumptive use water right
 22 at YNP shall include any non-reserved land within YNP as the
 23 boundaries exist on the effective date of this Compact.

24 TABLE 5

25 United States National Park Service

| Yellowstone National Park Consumptive Use | | | |
|---|---------|-----------|--|
| Place of Use | Total | Maximum | |
| | Volume | Flow Rate | |
| | (ac-ft) | (gpm) | |
| <u>Yellowstone River Basin</u> | | | |
| North Entrance | 1.70 | 35 | |
| Stephens Creek facilities | 12.00 | 50 | |
| TW facilities (Gardiner) | 58.70 | 300 | |
| NE Entrance | 15.60 | 50 | |
| Backcountry Use | 10.70 | | |
| Backcountry Patrol Cabins | 2.00 | 15 | |
| Day Use Areas | 2.40 | 6 | |
| <u>Gallatin River Basin</u> | | | |
| NW Entrance Area | 15.00 | 50 | |
| Backcountry Use | 2.80 | | |
| Backcountry Patrol Cabins | 0.50 | 10 | |
| Day Use Areas | 0.60 | 6 | |
| <u>Madison River Basin</u> | | | |
| West Entrance | 48.90 | 200 | |
| Backcountry Use | 2.80 | | |
| Backcountry Patrol Cabins | 0.50 | 10 | |
| Day Use Areas | 0.70 | 6 | |
| YNP TOTAL | 174.90 | | |
| 3. <u>Instream Flow Right</u> | | | |
| a. <u>Category 1:</u> | | | |

i. Identification:
 The following streams are designated as "Category 1:"
 Black Bear Canyon, Black Butte, Blacktail Deer, Cougar, Daly, Duck, Fan, Grayling, Landslide, Mol Heron, Pebble, Specimen, Stephens, Upper Reese, and Wickiup Creeks, and the Gardner River.

ii. Instream Flow:
 The United States has a reserved water right for instream flow on the Category 1 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact. This reserved water right ends at the most downstream point that the stream exits the reserved land of YNP.

b. Category 2:

i. Identification:
 The following streams are designated as "Category 2:"
 Bacon Rind, Buffalo, Cottonwood, Coyote, Hellroaring, Little Cottonwood, and Snowslide Creeks.

ii. Instream Flow
 The United States has a reserved water right for instream flow on the Category 2 streams in the amount of the entire flow of the streams, less any consumptive use rights of an agency of the United States recognized under federal or state law. This reserved water right ends at the most downstream point that the stream exits the reserved land of

1 YNP.

2 iii. Change in Wilderness Designation

3 In the event that the Congress of the United States

4 repeals the Wilderness designation assigned to the

5 headwaters of an above named Category 2 stream, then, to the

6 extent consistent with the law repealing the Wilderness

7 designation as it pertains to water use, the stream

8 headwatered in the former Wilderness may be reclassified in

9 the appropriate category on request by the state.

10 c. Category 3:

11 i. Identification:

12 The following streams are designated as "Category 3:"

13 Crevice, Dry Canyon, Slough, and Teepee Creeks.

14 ii. The United States has a reserved water right for

15 instream flow on Category 3 streams in the amount of the

16 entire flow of the streams, less any United States'

17 consumptive use rights described in this Compact, provided

18 that, the instream flow right is subordinate to (1) the sum

19 of all water rights recognized under state law with a

20 priority date before January 1, 1993, plus any future

21 consumptive use rights calculated according to Article II,

22 until the limit on total current and future consumptive use

23 set forth in Table 6 is reached; (2) any use considered

24 non-consumptive as defined by this Compact; and (3) any use

25 of groundwater not included in the calculation of

1 consumptive use according to Article II.

2 **TABLE 6**

3 **State Law Based**

4 **Total Current and Future Consumptive Use Rights (cfs)**

5 **Tributary to the Reserved Portion of Category 3 Streams**

| 6 Month | 7 Crevice Creek | 8 Dry Canyon Creek | 9 Slough Creek | 10 Teepee Creek |
|----------|--------------------|-----------------------|-------------------|--------------------|
| 11 Jan. | 12 0.2 | 13 0.1 | 14 1.5 | 15 0.3 |
| 16 Feb. | 17 0.2 | 18 0.1 | 19 1.6 | 20 0.3 |
| 21 Mar. | 22 0.3 | 23 0.1 | 24 1.9 | 25 0.4 |
| 26 April | 27 1.1 | 28 0.2 | 29 5.6 | 30 1.2 |
| 31 May | 32 3.8 | 33 1.3 | 34 19.8 | 35 4.5 |
| 36 June | 37 3.4 | 38 1.2 | 39 22.4 | 40 5.3 |
| 41 July | 42 1.0 | 43 0.3 | 44 7.3 | 45 1.7 |
| 46 Aug. | 47 0.4 | 48 0.2 | 49 2.9 | 50 0.8 |
| 51 Sept. | 52 0.4 | 53 0.1 | 54 2.3 | 55 0.6 |
| 56 Oct. | 57 0.4 | 58 0.1 | 59 2.4 | 60 0.6 |
| 61 Nov. | 62 0.3 | 63 0.1 | 64 2.1 | 65 0.5 |
| 66 Dec. | 67 0.2 | 68 0.1 | 69 1.8 | 70 0.4 |

21 iii. The provisions of Article III, section G.3.c.ii

22 notwithstanding, in the event of a period of low flow such

23 that Crevice, Dry Canyon, Slough, or Teepee Creeks fall

24 below the critical levels of instream flow shown in Table 7

25 at the point the stream enters the reserved land of YNP, the

United States' water right for instream flow is not

1 subordinate to consumptive use water rights recognized under
2 state law with a priority date on or after January 1, 1993.

TABLE 7

4 Low Stream Flow Levels at which Subordination is Limited (cfs)

| 5 Month | Crevice 6 Creek | Dry Canyon Creek | Slough Creek | Tepee Creek |
|----------|--------------------|---------------------|-----------------|----------------|
| 7 Jan. | 3.8 | 1.1 | 28.9 | 6.5 |
| 8 Feb. | 4.5 | 1.0 | 30.6 | 6.5 |
| 9 Mar. | 5.2 | 1.2 | 35.4 | 7.7 |
| 10 April | 20.2 | 4.7 | 106.4 | 23.7 |
| 11 May | 71.8 | 24.0 | 376.2 | 84.6 |
| 12 June | 63.8 | 22.9 | 425.6 | 100.1 |
| 13 July | 18.7 | 6.6 | 138.7 | 33.2 |
| 14 Aug. | 8.1 | 3.1 | 55.2 | 14.9 |
| 15 Sept. | 7.0 | 2.0 | 44.2 | 10.9 |
| 16 Oct. | 7.1 | 1.9 | 46.0 | 10.8 |
| 17 Nov. | 5.2 | 1.5 | 39.5 | 9.1 |
| 18 Dec. | 3.9 | 1.4 | 34.1 | 8.1 |

19 d. Category 4:

20 The following streams are designated as Category 4: Soda
21 Butte Creek within the state, and the Gallatin, Madison and
22 Yellowstone Rivers where they flow within or form the
23 boundary to reserved land of YNP within the state.

24 i. Soda Butte Creek

25 (1) The United States has a reserved water right for

1 instream flow on Soda Butte Creek in the amount of the
2 entire flow of the stream, less any United States'
3 consumptive use rights described in this Compact, provided
4 that, the instream flow right is subordinate to: (a) the sum
5 of any water rights recognized under state law with a
6 priority date before January 1, 1993, plus any future
7 consumptive use rights calculated according to Article II,
8 until the limit on total current and future consumptive use
9 set forth in Table 8 is reached; (b) any use considered
10 non-consumptive as defined by this Compact; and (c) any use
11 of groundwater not included in the calculation of
12 consumptive use according to Article II.

TABLE 8

State Law Based

| 15 Total Current and Future Consumptive Use Rights (cfs) | 16 Tributary to the Reserved Portion of Soda Butte Creek |
|--|--|
| 17 Month | |
| 18 Jan. | 0.3 |
| 19 Feb. | 0.3 |
| 20 Mar. | 0.2 |
| 21 April | 0.1 |
| 22 May | 6.2 |
| 23 June | 17.5 |
| 24 July | 6.4 |
| 25 Aug. | 2.4 |

| | | |
|---|-------|-----|
| 1 | Sept. | 0.8 |
| 2 | Oct. | 0.7 |
| 3 | Nov. | 0.5 |
| 4 | Dec. | 0.3 |

5 (2) The provisions of Article III, section G.3.d.i.(1)
6 notwithstanding, in the event of a period of low flow such
7 that Soda Butte Creek falls below the critical levels of
8 instream flow shown in Table 9 at the point the stream
9 enters the reserved land of YNP, the United States' water
10 right for instream flow shall be subordinate only to: (a)
11 any water right for domestic use of 35 gpm or less and to
12 any water right held by an incorporated or unincorporated
13 municipality, recognized under state law with a priority
14 date before January 1, 1993; (b) any use considered
15 non-consumptive as defined by this Compact; and (c) any use
16 of groundwater not included in the calculation of
17 consumptive use according to Article II.

18 (3) In the event that the Congress of the United States
19 repeals the Wilderness designation assigned to the land over
20 which Republic and Hayden Creeks and two unnamed tributaries
21 to Soda Butte Creek flow in Wyoming, or otherwise makes
22 water from such tributaries available for appropriation in
23 Wyoming, the state may seek modification of Article III,
24 section G.3.d.i.(2). of this Compact as provided in Article
25 VI, section A.2.

| | | |
|----|--|-------|
| 1 | TABLE 9 | |
| 2 | Low Stream Flow Levels at which Subordination is Limited (cfs) | |
| 3 | Soda Butte Creek | |
| 4 | Month | Flow |
| 5 | Jan. | 5.4 |
| 6 | Feb. | 5.1 |
| 7 | Mar. | 4.0 |
| 8 | April | 1.7 |
| 9 | May | 116.9 |
| 10 | June | 332.5 |
| 11 | July | 120.7 |
| 12 | Aug. | 46.4 |
| 13 | Sept. | 15.3 |
| 14 | Oct. | 14.2 |
| 15 | Nov. | 9.3 |
| 16 | Dec. | 6.3 |

17 ii. The Gallatin, Madison and Yellowstone Rivers

18 The United States has a water right for instream flow on
19 the Gallatin, Madison and Yellowstone Rivers in the amount
20 of the entire flow of the streams, less any United States'
21 consumptive use rights described in this Compact, provided
22 that, the right is subordinate to: (1) the sum of all water
23 rights recognized under state law with a priority date
24 before January 1, 1993, plus any future consumptive use
25 rights calculated according to Article II, until the limit

1 on total current and future consumptive use rights set forth
 2 in Table 10 is reached; (2) any use considered
 3 non-consumptive as defined by this Compact; and (3) any use
 4 of groundwater not included in the calculation of
 5 consumptive use according to Article II.

6 TABLE 10

7 State Law Based

8 Total Current and Future Consumptive Use Rights (cfs)

9 Tributary to the Reserved Portion of these Rivers

| 10 | | Gallatin | Madison | Yellowstone |
|----|-------|----------|---------|-------------|
| 11 | Month | River | River | River |
| 12 | Jan. | 3.1 | 19.9 | 41.2 |
| 13 | Feb. | 3.1 | 19.7 | 40.6 |
| 14 | Mar. | 3.5 | 20.0 | 44.5 |
| 15 | April | 9.8 | 24.3 | 73.7 |
| 16 | May | 39.3 | 40.9 | 284.7 |
| 17 | June | 48.0 | 40.2 | 556.7 |
| 18 | July | 15.7 | 24.7 | 335.0 |
| 19 | Aug. | 5.8 | 21.4 | 156.5 |
| 20 | Sept. | 4.4 | 21.1 | 96.0 |
| 21 | Oct. | 4.6 | 21.4 | 75.0 |
| 22 | Nov. | 4.2 | 21.0 | 58.4 |
| 23 | Dec. | 3.8 | 20.4 | 47.2 |

24 4. Hot Springs tributary to Bear Creek and the
 25 Yellowstone River

1 The hot springs that contribute to Bear Creek outside
 2 the boundaries of YNP are important to maintenance of
 3 biologic values of reserved water in the Yellowstone River
 4 downstream from the confluence with Bear Creek. As part of
 5 the settlement of the reserved water right for YNP, the
 6 state agrees to grant the United States a water right under
 7 state law to all of the natural flow of the Bear Creek hot
 8 springs located at the mouth of Bear Creek in S1/2 S1/2,
 9 sec. 19, T9S, R9E, Montana Principle Meridian. The priority
 10 date is the effective date of this Compact.

11 5. Lakes

12 The United States has a reserved water right for the
 13 maintenance of natural water levels in all naturally
 14 occurring lakes within the boundaries of YNP for the purpose
 15 of preserving unimpaired these Park resources. The water
 16 right for the maintenance of lake levels is subordinate to
 17 (1) any United States' consumptive use rights described in
 18 this Compact; and (2) any water right recognized under state
 19 law with a priority date before January 1, 1993. The named
 20 and unnamed lakes in which the United States has a reserved
 21 water right are those set forth more specifically in the
 22 Abstract.

23 H. Emergency Fire Suppression

24 The use of water for emergency fire suppression benefits
 25 the public, and is necessary for the purposes of the various

1 Park reservations. The United States, may as part of its
 2 reserved water right, divert water for fire suppression at
 3 all of the National Park Service Units as needed, and
 4 without a definition of the specific elements of a
 5 recordable water right. Use of water for fire suppression
 6 shall not be deemed an exercise of the United States'
 7 reserved water rights for consumptive use or a violation of
 8 its reserved water rights for instream flow.

9 ARTICLE IV

10 YELLOWSTONE CONTROLLED GROUNDWATER AREA

11 A. Statement of Intent

12 Yellowstone National Park was reserved for the express
 13 purpose of "preservation, from injury or spoliation, of all
 14 timber, mineral deposits, natural curiosities, or wonders
 15 within said park, and their retention in their natural
 16 condition." 17 Stat. 32. The parties agree that Congress
 17 reserved water necessary to preserve the hydrothermal
 18 features within the reserved land of YNP. These reserved
 19 water rights have priorities as of the date on which the
 20 land was reserved.

21 The parties understand that knowledge of the
 22 interrelationship of hydrothermal features within YNP, the
 23 hydrothermal system that supports those features, and
 24 groundwater in surrounding areas of Montana will benefit
 25 from increased study. The parties agree that the

1 hydrothermal features of YNP are a unique and irreplaceable
 2 resource and represent one of the few undisturbed
 3 hydrothermal systems in the United States.

4 This Compact does not recognize a reserved water right
 5 to groundwater outside the boundaries of the reserved land
 6 of YNP. However, the parties agree that restrictions shall
 7 be placed on the development of groundwater adjacent to YNP
 8 to the extent necessary to prevent adverse effect on the
 9 reserved water right to groundwater within YNP. The parties
 10 agree that the goal of establishment and administration of
 11 the Yellowstone Controlled Groundwater Area shall be to
 12 allow no impact to the hydrothermal system within the
 13 reserved land of YNP.

14 B. Findings

15 Ratification of this Compact by the Montana legislature
 16 constitutes a finding that:

17 1. unrestricted use of groundwater adjacent to
 18 Yellowstone National Park is likely to interfere with the
 19 water rights reserved by the United States in 1872, 1929,
 20 1930, and 1932, for the preservation of hydrothermal
 21 features within YNP;

22 2. prevention of adverse effect on the United States'
 23 reserved water right to groundwater within the reserved land
 24 of YNP is a benefit to the state and to the United States;

25 3. the public interest and welfare requires that a

1 corrective control be adopted to regulate groundwater
2 development adjacent to YNP; and

3 4. the cooperative state-federal management and
4 oversight established by this Article is an effective means
5 to achieve protection of the reserved water right to
6 groundwater necessary to preserve the hydrothermal system
7 within the reserved land of YNP.

8 C. General Provisions

9 1. Establishment: The Yellowstone Controlled
10 Groundwater Area or "Area" is hereby established and shall
11 be defined and administered according to this Compact.

12 2. Funding: The United States agrees that it receives
13 substantial benefit from the establishment and
14 administration of the Yellowstone Controlled Groundwater
15 Area, and that the national and international public benefit
16 extends far beyond the boundaries of the state. Thus, the
17 United States agrees that the relatively small population of
18 the state should not bear the entire cost of protection of
19 the United States' reserved water right. To this end, the
20 Department of the Interior agrees, subject to appropriations
21 by Congress, to reimburse the state for the expense of
22 establishment, administration and enforcement of the
23 Yellowstone Controlled Groundwater Area by the Department;
24 to fund the inventory, sampling, reporting and database
25 management by the Bureau; and, except as provided in Article

1 IV, section J.1.c., to fund the administrative costs and the
2 cost of any study or any other necessary activity pursuant
3 to this Article by the Technical Oversight Committee.

4 3. Implementation Contingent on Funds: Such funding
5 shall be accomplished pursuant to the terms and conditions
6 of a separate agreement which shall incorporate terms and
7 conditions necessary to specify the activities to be funded
8 and appropriate cost and accounting principles consistent
9 with generally applicable guidelines for federal funding in
10 similar circumstances, and consistent with the terms of this
11 Compact, including, but not limited to, the enumeration of
12 state expenses to be reimbursed in Article IV, section C.2.
13 The state is relieved of its obligation to establish,
14 administer, inventory, sample and maintain a database on the
15 Controlled Groundwater Area in the absence of a funding
16 agreement and the provision of the funds specified therein.
17 If the state is relieved of its obligation to implement all
18 or a portion of this Article, all other terms of this
19 Compact shall remain in effect, including all reserved water
20 rights established herein. Such agreement may be amended,
21 extended, renewed or terminated pursuant to its terms.

22 4. Interim Measures:

23 The state agrees that the following interim measures
24 shall apply from the effective date of this Compact until
25 the receipt of funds from the United States or December 31,

1 1995, whichever occurs first. The United States agrees to
 2 reimburse the state for the cost of the interim measures,
 3 subject to the appropriation of funds by Congress. The
 4 parties agree that, even if funding is not received by
 5 December 31, 1995 and interim measures are suspended, the
 6 state and the Department of the Interior will continue to
 7 recommend federal funding.

8 a. The Department shall issue the notice required by
 9 Article IV, section F.

10 b. All permits issued within this time period within
 11 the Area shall be conditioned on appropriation of water of
 12 less than 60F., measured at the wellhead.

13 c. The Department shall require that each applicant for
 14 a permit or person filing a notice of completion for
 15 issuance of a certificate of water right to appropriate
 16 groundwater within the Area report the following information
 17 on filing of a well log: (1) well location to the
 18 quarter-quarter-quarter-quarter section; (2) ground
 19 elevation at the wellhead; (3) well depth; (4) water level;
 20 (5) flow rate or maximum pump capacity; and (6) water
 21 temperature measured at the wellhead.

22 d. The Department shall not issue a certificate of
 23 water right for the appropriation of groundwater with a
 24 temperature of 60 F. or more within the Area during this
 25 time period. The Department shall order temporary

1 abandonment of any well in the Area for which a conditional
 2 permit was issued or notice of completion for issuance of a
 3 certificate of water right was filed within this time period
 4 that produces groundwater with a temperature of 60F. or
 5 more, measured at the wellhead. Temporary abandonment shall
 6 be according to the rules of the Montana Board of Water Well
 7 Contractors.

8 e. Following receipt of funds from the United States,
 9 the Department shall notify the applicant that the
 10 appropriation is subject to the terms of this Compact and
 11 shall proceed according to the procedures set forth in this
 12 Article. If funds are not received by December 31, 1995, the
 13 Department may remove the order of temporary abandonment and
 14 remove the condition on the permit or issue the certificate
 15 of water right pursuant to state law. The Department shall
 16 continue to require that each applicant for a permit or
 17 certificate of water right to appropriate groundwater within
 18 the Area report the following information on filing of a
 19 well log: (1) well location to the
 20 quarter-quarter-quarter-quarter section; (2) ground
 21 elevation at the wellhead; (3) well depth; (4) water level;
 22 (5) flow rate or maximum pump capacity; and (6) water
 23 temperature measured at the wellhead.

24 5. Additional Studies: In addition to appropriations
 25 necessary to implement this Article, the state and the

1 National Park Service agree to recommend federal funding for
 2 a baseline study of hydrothermal features in YNP and within
 3 the Controlled Groundwater Area, for continued monitoring of
 4 these features, and for geologic and geophysical studies
 5 including, but not limited to, geologic mapping, and
 6 monitoring of microearthquakes and subsidence in and
 7 adjacent to YNP. Implementation of this Article is not
 8 contingent on such appropriation.

9 6. Access for Studies: Consistent with the purposes of
 10 YNP, the United States agrees to allow reasonable access to
 11 and across YNP to the extent necessary to accomplish the
 12 data collection authorized by this Article or additional
 13 studies recommended pursuant to Article IV, section C.5. In
 14 seeking access, the Department or Bureau shall comply with
 15 the provisions of Article II, section I.3.

16 7. Effect of Modification of Area: It is the intent of
 17 the parties that the initial boundaries of the Area set
 18 forth in Article IV, section D. and Appendix 2, and initial
 19 restrictions set forth in Article IV, section E. may be
 20 modified pursuant to Article IV, section J., or with respect
 21 to a single appropriation pursuant to Article IV, section
 22 G.2.c. and shall not be deemed to be a modification of this
 23 Compact. Any other modification of this Article shall be
 24 considered a modification of this Compact and is subject to
 25 the terms of Article VI, section A.2.

1 8. It is the intention of the Department of the
 2 Interior to protect the hydrothermal resources of
 3 Yellowstone National Park through the system established by
 4 Article IV.

5 a. The National Park Service agrees, consistent with 43
 6 U.S.C. 666, that enforcement will not be sought against the
 7 holder of a water right recognized under state law with a
 8 priority date on or after January 1, 1993, unless the NPS
 9 has, in the first instance, sought enforcement through the
 10 state under the terms of this Compact.

11 b. Notwithstanding the preceding subparagraph, if the
 12 National Park Service, in its judgment, determines that
 13 circumstances warrant, nothing in this Compact prohibits the
 14 United States from petitioning a state or federal court of
 15 competent jurisdiction for injunctive or declarative relief.
 16 Nothing in this Compact shall alter the courts' application
 17 of the test for injunctive relief; neither shall the
 18 administrative determination by the National Park Service to
 19 seek relief in said court be deemed to establish or preclude
 20 any determination in such judicial proceedings. Prior to
 21 such an administrative determination, the National Park
 22 Service agrees that it will provide the State written notice
 23 and will identify a time frame during which it will await
 24 the State's efforts to address the concern.

25 c. As to an action against the holder of a right to

1 withdraw groundwater recognized under state law with a
 2 priority date before January 1, 1993, the United States
 3 agrees that this Compact shall not be used or relied upon as
 4 evidence to show that: (1) a reserved water right of the
 5 United States exists appurtenant to any land other than the
 6 reserved land of YNP; or (2) the priority date associated
 7 with any portion of reserved land of YNP is other than the
 8 date on which that portion of land was actually reserved.

9 D. Initial Boundaries of the Yellowstone Controlled
 10 Groundwater Area

11 The initial boundaries of the Yellowstone Controlled
 12 Groundwater Area and Subareas are defined to include the
 13 area in the State of Montana located within the geographic
 14 boundaries shown on Appendix 2. Appendix 2 is hereby
 15 incorporated in this Compact by this reference as though set
 16 forth here in full.

17 1. Subarea I:

18 The initial geographic boundaries of the subarea
 19 referred to as Yellowstone Controlled Groundwater Subarea I
 20 shall include all of the area in Montana North and West of
 21 YNP within the boundary delineated as subarea I on Appendix
 22 2.

23 2. Subarea II:

24 The initial geographic boundaries of the subarea
 25 referred to as Yellowstone Controlled Groundwater Subarea II

1 shall include all the area in Montana North and West of YNP
 2 within the boundary delineated as subarea II on Appendix 2.

3 E. Initial Restrictions on Groundwater Development
 4 within the Yellowstone Controlled Groundwater Area

5 Until the initial boundaries or restrictions set forth
 6 in this Article are modified pursuant to Article IV, section
 7 J., the restrictions set forth in this section shall apply
 8 to groundwater appropriations within the Area with a
 9 priority date on or after January 1, 1993. Such
 10 appropriations shall follow the procedural requirements of
 11 Article IV, section G.

12 1. The parties agree that the initial restrictions on
 13 development of groundwater and any modification thereof,
 14 shall not apply to appropriations with a priority date
 15 before January 1, 1993. The sole provisions of this Article
 16 applicable to such appropriations shall be those providing
 17 for inventory and sampling of current use set forth in
 18 Article IV, section H. Groundwater appropriations with a
 19 priority date before January 1, 1993 are subject to
 20 applicable state law including, but not limited to, issuance
 21 of a certificate of water right following final adjudication
 22 of existing water rights. Nothing herein waives the right of
 23 the United States to seek protection of its reserved water
 24 right for protection of the hydrothermal features within the
 25 reserved land of YNP from groundwater appropriations with a

1 priority date before January 1, 1993 in a state or federal
 2 court of competent jurisdiction, provided that the
 3 limitation on use of this Compact in an action by the United
 4 States against any such appropriator set forth in Article
 5 IV, section C.8.c. shall apply.

6 2. The Department shall not issue a permit to
 7 appropriate groundwater that is hydrothermal discharge water
 8 as defined by this Compact unless either: (1) modification
 9 occurs pursuant to Article IV, section J. altering pertinent
 10 boundaries or restrictions; or (2) an application is
 11 approved pursuant to Article IV, section G.2.c. Unless
 12 modification occurs pursuant to Article IV, section J., the
 13 Department shall not limit an appropriation of groundwater
 14 that is not hydrothermal discharge water unless required to
 15 do so by Article II and III of this Compact or any other
 16 provision of state law.

17 F. General Notice of Establishment of the Yellowstone
 18 Controlled Groundwater Area

19 1. Notice: Within 120 days after the effective date of
 20 this Compact and within 60 days of any decision by the
 21 Department to modify the Area as set forth in Article IV,
 22 section J., the Department shall publish a notice of
 23 establishment or modification of the Area setting forth:

24 a. the description by legal subdivisions of all lands
 25 included in the controlled groundwater area;

1 b. the purpose of the controlled groundwater area or
 2 modification; and

3 c. the permit requirements, restrictions, inventory,
 4 sampling and monitoring applicable within each subarea.

5 2. Publication and Service: Such notice shall be
 6 published in a newspaper of general circulation in the
 7 county or counties in which the Area is located. The
 8 Department shall also serve a copy of the notice by mail on
 9 each well driller licensed in Montana whose address is
 10 within any county in which any part of the Area is located;
 11 on each well driller known by the Department to operate in
 12 the Area; on the Montana State Bureau of Mines and Geology;
 13 on the mayor or chair of the governing body of each county
 14 or incorporated municipality located in whole or in part
 15 within the Area; and on the United States. The Department
 16 may also serve notice on any other person or state or
 17 federal agency that the Department believes may be
 18 interested in or affected by the proposed designation or
 19 modification of the Area. A copy of the notice shall be
 20 mailed to each person's last known address according to the
 21 records of the Department.

22 G. Appropriations of Groundwater within the Yellowstone
 23 Controlled Groundwater Area With a Priority Date on or After
 24 January 1, 1993

25 1. Appropriation of Groundwater within the Area with a

1 Priority Date on or after January 1, 1993 and before the
 2 Effective Date of this Compact:

3 The initial restrictions on groundwater development set
 4 forth in Article IV, section E. apply to appropriations of
 5 groundwater with a priority date on or after January 1, 1993
 6 and before the effective date of this Compact provided that
 7 the following procedural requirements are met:

8 a. Within 120 days after the effective date of this
 9 Compact or the receipt of adequate funds from Congress,
 10 whichever occurs later, the Department shall provide the
 11 United States with notice of all groundwater appropriations
 12 within the Area that, according to the records of the
 13 Department, have a priority date on or after January 1, 1993
 14 and before the effective date of this Compact.

15 b. Subsequent to the notice provided for in Article IV,
 16 section G.1.a. and up to 120 days following mailing of the
 17 report on inventory provided in Article IV, section
 18 H.1.b.iii., the United States may provide the Department
 19 with credible information on any groundwater appropriation
 20 within the Area with a priority date on or after January 1,
 21 1993 and before the effective date of this Compact, showing
 22 that the appropriation is of water with a temperature of
 23 60F. or more.

24 c. If the United States provides the information set
 25 forth in Article IV, section G.1.b., the Department shall,

1 within 60 days of receipt of the information, issue an order
 2 requiring that the appropriator comply with the applicable
 3 restrictions. The order is effective within 60 days of
 4 issuance unless the appropriator enters an appearance to
 5 contest the order.

6 d. If the appropriator enters an appearance to contest
 7 the order, the Department shall: (1) issue an order staying
 8 use of the appropriation pending final decision on the
 9 matter by the Department; (2) set a date for a hearing; and
 10 (3) proceed pursuant to the provisions for a contested case
 11 under the Montana Administrative Procedures Act, Title 2,
 12 Chapter 4 of the Montana Code Annotated, provided that in
 13 such a proceeding the United States has the burden of
 14 proving by a preponderance of the evidence that the
 15 appropriation is of groundwater of 60F or more. If the
 16 United States meets this burden, the appropriator shall
 17 comply with procedures and restrictions set forth in Article
 18 IV, section G.2.

19 2. Appropriations of Groundwater with a Priority Date
 20 after the Effective Date of this Compact

21 a. General Provisions

22 i. All groundwater appropriations within the Area after
 23 the effective date of this Compact are subject to this
 24 Article. Applications and registration for a permit for the
 25 appropriation of groundwater within the Area after the

1 effective date of this Compact shall include a statement of
 2 whether the proposed use requires water with temperature of
 3 60F. or more. In addition, the Department shall not issue a
 4 permit for appropriation of groundwater unless the
 5 requirements of Articles II and III are met, if applicable.

6 ii. A permit issued pursuant to this Article shall
 7 provide that:

8 (1) The permittee shall install a device to meter total
 9 volume of water use in compliance with rules promulgated by
 10 the Department pursuant to Article IV, section 1.5. The
 11 Department shall specify the metering method and location of
 12 installation. On or before January 15 of each year, the
 13 permittee shall report annual use to the Bureau at: Montana
 14 Bureau of Mines and Geology, Main Hall, Montana Tech, Butte
 15 MT, 59701. Meters shall be made available to the permittee
 16 at the Department of Natural Resources and Conservation
 17 Regional Water Rights Office at: 111 North Tracy, Bozeman,
 18 Montana, 59715. Meters shall be acquired for distribution by
 19 the Department of Natural Resources and Conservation
 20 Regional Water Rights Office as part of the inventory and
 21 sampling program authorized by Article IV, section I.

22 (2) The Department has the authority to modify or
 23 revoke a permit if the provisions listed below are
 24 applicable, and all other administrative or judicial
 25 enforcement authority provided under Title 85, part 2, of

1 the Montana Code Annotated applies to this part. The
 2 Department may exercise its enforcement authority if (1) the
 3 appropriator fails to allow access for sampling provided for
 4 in Article IV, section H.; (2) the character of the
 5 groundwater produced changes such that a restriction applies
 6 pursuant to this Article; (3) new restrictions imposed
 7 pursuant to Article IV, section J. are applicable; or (4)
 8 the appropriator violates any other provision of this part.

9 (3) A permit to appropriate hydrothermal discharge
 10 water may include limits and conditions on appropriation
 11 including but not limited to (a) limits on total withdrawal
 12 by day, month or year; (b) a requirement to adhere to a
 13 system of rotation of use within the Area; and (c) a
 14 provision adjusting the total withdrawal from two or more
 15 wells in the area used by the same appropriator.

16 (4) A permit to appropriate hydrothermal discharge
 17 water shall include any applicable monitoring requirement
 18 recommended by the Working Group Report or recommendations
 19 by the TOC superseding that report unless the applicant
 20 shows by clear and convincing evidence that such monitoring
 21 is inappropriate.

22 iii. If, subsequent to the effective date of this
 23 Compact, modification pursuant to Article IV, section J.
 24 removes the restrictions set forth in Article IV, section
 25 E., the monitoring recommended by the Working Group Report

1 or as superseded by the TOC shall continue to apply unless
 2 the applicant shows by clear and convincing evidence that
 3 such monitoring is inappropriate, according to the criteria
 4 in the Working Group Report or as superseded by the TOC.

5 b. Appropriations of Groundwater with a Temperature of
 6 less than 60F

7 i. Registration and Application

8 (1) An applicant for an appropriation of groundwater of
 9 35 gpm or less, not to exceed 10 acre-feet per year shall
 10 register for a permit by filing a form prescribed by the
 11 Department that shall include, but not be limited to, a
 12 statement of whether the proposed use requires water with
 13 temperature of 60F. or more, the well location, and intended
 14 use and shall comply with the provisions of Article II and
 15 III, if applicable. The Department shall provide notice of
 16 the registration for a permit to the United States within 30
 17 days of the filing.

18 (2) An applicant for a permit to appropriate
 19 groundwater of greater than 35 gpm or 10 acre-feet per year
 20 after the effective date of this Compact, shall comply with
 21 existing state law for permits to appropriate water and the
 22 limits on groundwater appropriations set forth in Articles
 23 II and III, if applicable. The Department may issue an
 24 interim permit for the proposed appropriation to an
 25 applicant seeking an appropriation for a use that does not

1 require water with a temperature of 60F. or more if the
 2 requirements of this section are met.

3 ii. Drilling

4 (1) On filing a proper registration form, an applicant
 5 for an appropriation of 35 gpm or less, not to exceed 10
 6 acre-feet per year, with a proposed use that does not
 7 require water with a temperature of 60F. or more may
 8 complete the proposed well subject to state law and the
 9 terms of this Compact, but shall not put the water to
 10 beneficial use until issuance of a permit.

11 (2) Upon issuance of an interim permit, an applicant
 12 for an appropriation of greater than 35 gpm or 10 acre-feet
 13 per year may drill the well subject to state law and the
 14 terms of this Compact, but shall not put the water to
 15 beneficial use until issuance of a permit.

16 iii. Within 60 days of drilling of the well, the
 17 applicant or registrant shall provide the Department with a
 18 well log on a form provided by the Department. The well log
 19 shall include well location to the
 20 quarter-quarter-quarter-quarter section; ground elevation at
 21 the wellhead; well depth; water level; flow rate or maximum
 22 pump rate; water temperature measured at the wellhead; and
 23 specific conductance of the water produced using a device
 24 provided by the Water Resources Regional Office.

25 iv. The Department shall forward a copy of the well log

1 to the United States and to the Bureau on receipt.

2 v. Following receipt of the well log, the Department
3 may inspect the well at a reasonable hour of the day to
4 verify the information on the well log report. The United
5 States may request to accompany the inspector as set forth
6 in Article II, section I.4.

7 vi. The United States has 60 days from the mailing of
8 the report to file an objection setting forth credible
9 information that the appropriation is of groundwater with
10 characteristics to which restrictions established pursuant
11 to this Article apply.

12 vii. The Department may issue a permit to appropriate
13 if: (1) the well log and any verification confirm that the
14 appropriation is of water to which no restrictions pursuant
15 to this Article apply; and (2) all other requirements of
16 state law and this Compact have been met, unless the United
17 States files an objection pursuant to Article IV, section
18 G.2.b.vi. If the well log or verification indicate
19 appropriation of water to which restrictions pursuant to
20 this Article apply or if the United States files a proper
21 objection, the applicant shall be subject to the provisions
22 of Article IV, section G.2.c.

23 viii. If a permit is issued, the applicant or registrant
24 may complete the appropriation and apply the water to
25 beneficial use.

1 ix. Within 60 days of completion of the appropriation,
2 the permittee shall file a notice of completion with the
3 Department pursuant to state law.

4 c. Appropriation of Groundwater with a Temperature of
5 60F. or Greater

6 If an application or registration for a permit within
7 the Area is for a use requiring groundwater with a
8 temperature of 60F. or more or the well log or any
9 verification indicates water of 60F. or more, the following
10 provisions apply:

11 i. Subarea I - groundwater with a temperature of 85F.
12 or more:

13 Groundwater of 85F. or more in Subarea I is presumed to
14 be hydrothermal discharge water. The Department shall not
15 process or grant an application for a permit to appropriate
16 water with a temperature of 85F. or more in Subarea I,
17 unless the appropriation is consistent with modification of
18 restrictions pursuant to Article IV, section J., or pursuant
19 to the procedures set forth below. An application for an
20 appropriation that proposes to do no more than divert the
21 unenhanced natural surface flow of a spring that is not
22 located in the mainstem of the reserved portion of a stream
23 to which a reserved water right for instream flow is
24 described in Article III of this Compact is not subject to
25 these restrictions.

1 (1) The application shall set forth credible
2 information that the proposed appropriation does not include
3 contribution by hydrothermal discharge water;

4 (2) Within 30 days of receipt of the information the
5 Department shall seek review of the application by the TOC.

6 (3) The TOC shall review the report to determine if the
7 appropriation can take place without adverse effect on the
8 hydrothermal system within YNP. In performing the review,
9 the TOC shall utilize the best available scientific
10 information. The TOC shall resolve doubt in favor of
11 protection of the hydrothermal system within YNP.

12 (4) Within 60 days of the request by the Department,
13 the TOC shall recommend, in a report to the Department, if,
14 and under what conditions the appropriation could be allowed
15 without adverse effect on the hydrothermal system within
16 YNP. The TOC may recommend limits or conditions on the
17 proposed appropriation that, in the opinion of the TOC,
18 would allow the development while protecting the
19 hydrothermal system within YNP. The TOC shall also provide
20 the Department with a dissenting report pursuant to Article
21 IV, section J.1., if applicable.

22 (5) On receipt of the report or reports, the Department
23 shall provide a copy to the United States and the applicant
24 and shall schedule a hearing no less than 60 and no more
25 than 90 days from mailing of the report.

1 (6) The hearing shall proceed as a contested case under
2 the Montana Administrative Procedure Act, Title 2, Chapter 4
3 of the Montana Code Annotated.

4 (7) The report or reports, data and other written
5 information produced by the TOC shall be admissible in the
6 hearing without further foundation and not subject to the
7 hearsay objection, subject to the rights of any party or
8 claimant to cross-examine the producer or drafter of the
9 written material and to controvert the same by other
10 evidence. The hearing officer may request that members of
11 the TOC appear to provide expert testimony in the case.

12 (8) The report and recommendations provided by the TOC
13 have a rebuttable presumption of validity for the purposes
14 of Article IV. The dissenting report, if any, may be used as
15 rebuttal evidence.

16 (9) If the report recommends denial of the application,
17 the applicant may overcome the presumption by proving by
18 clear and convincing evidence that the proposed
19 appropriation does not include hydrothermal discharge water.

20 (10) If the application is denied, the Department shall
21 order that the well be temporarily abandoned; or, if
22 multiple water zones are encountered, the zone of excess
23 temperature be closed to production. Abandonment shall be
24 according to the rules of the Montana Board of Water Well
25 Contractors unless alternative procedures are recommended by

1 the TOC. The abandonment order shall not be lifted until a
2 modification order pursuant to Section IV.J. allows the
3 appropriation or determines that the well should be
4 permanently abandoned.

5 (11) Within 30 days of an order by the Department
6 pursuant to this section, appeal on the record may be made
7 to a state or federal court of competent jurisdiction. For
8 an appeal to state court, venue shall be the First Judicial
9 District in Helena and the review must be conducted
10 according to the procedures for judicial review of a
11 contested case under the Montana Administrative Procedures
12 Act, Title 2, Chapter 4, of the Montana Code Annotated.

13 ii. Subarea I - groundwater with a temperature of 60F.
14 or more, but less than 85F:

15 Appropriation of groundwater with a temperature of 60F.
16 or more, but less than 85F. in subarea I is subject to the
17 following provisions.

18 (1) The applicant shall provide credible information
19 that the water meets the following criteria:

20 (a) the proposed appropriation will do no more than
21 divert the unenhanced natural surface flow of a spring that
22 is not located in the mainstem of the reserved portion of a
23 stream to which a reserved water right for instream flow is
24 described in Article III of this Compact, or

25 (b) the proposed appropriation meets all of the

1 following criteria:

2 (i) The water temperature is the result of the normal
3 thermal gradient of the earth plus the mean annual air
4 temperature at the site plus 14F. Unless modified by the
5 TOC, the Department shall use the following equation to
6 estimate the water temperature expected:

7 $(0.01646 \times \text{the depth of the production zone in feet}) +$
8 $59.3F.$

9 If the temperature measured at the wellhead is equal to
10 or less than the temperature estimated by this equation, the
11 appropriation meets this criteria.

12 (ii) the concentration of soluble chloride is less than
13 ten parts per million; and

14 (iii) the well does not contain a production zone
15 completed within the Madison Group of formations as defined
16 by the Catalog of Stratigraphic Names for Montana, Bureau of
17 Mines and Geology, Special Publication 54, March 1971.

18 (2) The Department may issue a permit to appropriate
19 groundwater with a temperature of 60F or more, but less than
20 85F. to an applicant that meets the above criteria and is in
21 compliance with the provisions of Article IV, section G.2.c.
22 unless (a) restrictions are consistent with modification
23 pursuant to Article IV, section J.; or (b) the United States
24 objects and shows by a preponderance of the evidence that
25 the criteria have not been met or, for another scientific

1 reason, the temperature is the result of contribution by
2 hydrothermal discharge water.

3 (3) If the applicant fails to meet the above criteria
4 or the United States meets its burden, the applicant shall
5 comply with the provisions of Article IV, section G.2.c.i.
6 for water or 85F or more.

7 (4) The three criteria set forth in Article IV, section
8 G.2.c.ii.(1)(b) may be modified on recommendation by the
9 TOC.

10 iii. Subarea II:

11 (1) Groundwater of 85F. or more in subarea II is
12 presumed to be hydrothermal discharge water. The applicant
13 shall follow the procedures of Article IV, section G.2.c.i.
14 including review by the TOC, provided that, if a permit to
15 appropriate is issued the monitoring recommended in the
16 Working Group Report or as superseded by the TOC for subarea
17 II, not subarea I, shall apply.

18 (2) An applicant who encounters groundwater of 60F. or
19 more but less than 85F. shall comply with the provisions of
20 Article IV, section G.2.c.ii., provided that, if a permit to
21 appropriate is issued the monitoring recommended in the
22 Working Group Report or as superseded by the TOC for subarea
23 II, not subarea I, shall apply.

24 3. Change in Character of Groundwater: Within 60 days
25 of the receipt of information indicating a change in the

1 character of the groundwater appropriated under a permit
2 issued in the Area on or after January 1, 1993 that
3 indicates the production of groundwater for which a
4 restriction applies, the Department shall issue an order
5 requiring that the appropriator comply with the limitations
6 on appropriation of hydrothermal groundwater authorized in
7 this Article. The order shall take affect 60 days following
8 the date issued unless the appropriator appears to contest
9 the order. If the appropriator appears to contest the order,
10 the Department shall set a date for a hearing and proceed
11 pursuant to the provisions for a contested case under the
12 Montana Administrative Procedures Act, title 2, Chapter 4,
13 of the Montana Code Annotated, provided that the
14 appropriator shall have the burden to prove by a
15 preponderance of the evidence that the water produced does
16 not meet the criteria to which restrictions apply.

17 H. Inventory and Sampling of Groundwater

18 1. Initial Inventory

19 All groundwater appropriations in the Area with a
20 priority date before the effective date of this Compact
21 shall be inventoried as set forth below:

22 a. Notice of Inventory

23 Within 120 days after the effective date of this Compact
24 or the receipt of funding from the United States, whichever
25 occurs later, the Department shall serve notice by mail on

1 each person or public agency known from an examination of
2 the records in the Department's office to be an appropriator
3 of groundwater with a priority date before the effective
4 date of this Compact. The notice shall set forth:

5 i. the contents of the notice required in Article IV,
6 section F.; and

7 ii. a statement that within 3 years from the date of
8 notice the Bureau may visit the wellsite to measure
9 temperature; flow rate or maximum pump capacity; water
10 level, or pump level if the well cannot be entered; and may
11 collect a water sample for additional analysis.

12 b. Inventory

13 i. Within 3 years of notice pursuant to Article IV,
14 section H.1.a., a representative of the Bureau shall
15 inventory each well drilled pursuant to an appropriation
16 recognized under state law with a priority date before the
17 effective date of this Compact. The inventory shall be
18 considered complete when the Bureau has inventoried
19 substantially all of the wells that can be located and
20 accessed with reasonable diligence. The inventory shall
21 include, but not be limited to, the following:

- 22 (1) well location to the
- 23 quarter-quarter-quarter-quarter section;
- 24 (2) ground elevation at the wellhead;
- 25 (3) flow rate or maximum pump capacity;

1 (4) water level, or pump level if the well cannot be
2 entered;

3 (5) water temperature at the wellhead;

4 (6) specific conductance of the water at the wellhead;

5 (7) chloride content of the water at the wellhead;

6 (8) water samples from a representative number of wells
7 selected by the Bureau. The water samples shall be analyzed
8 by the Bureau, or by a qualified lab contracted by the
9 Bureau. Samples shall be analyzed for chemistry, and, if
10 applicable, gas and isotopes. Choice of analyses shall be at
11 the discretion of the Bureau using the Working Group Report
12 or a report by the TOC superseding the Working Group Report
13 as a guideline. The Bureau may consult with the TOC
14 concerning well selection and analysis; and,

15 (9) any additional information deemed necessary for
16 implementation of this Article by the Bureau in consultation
17 with the TOC.

18 ii. The inventory shall be prioritized to complete
19 Subarea I first.

20 iii. Within 6 months of completion of the inventory in
21 each Subarea, the Bureau shall provide a report to the
22 Department, the TOC, and the United States, verifying that
23 the inventory is complete and setting forth the data
24 obtained in the inventory. The report shall be made
25 available to the public by the Department. In addition, the

1 Bureau shall maintain an adequate database pursuant to
2 Article IV, section H.2.

3 2. Sampling Program and Database

4 a. Following the initial inventory of all current
5 groundwater appropriations in the Area provided for in
6 Article VI, section H.1., the Bureau shall sample wells
7 selected in consultation with the TOC and at a frequency
8 determined in consultation with the TOC. The wells may
9 include appropriations made prior to, on or after January 1,
10 1993. The number of wells sampled and the analyses performed
11 shall be as determined by the Bureau in consultation with
12 the TOC. Until superseded due to recommendation by the TOC,
13 the Working Group Report shall be used as a guideline in
14 making this determination. Within 6 months of the completion
15 of each inventory and sampling program, the Bureau shall
16 provide the Department, the TOC and the United States with a
17 report on the results.

18 b. The Bureau shall maintain an adequate database on
19 the Yellowstone Controlled Groundwater Area which shall
20 include, at a minimum, analyses of water chemistry,
21 temperature, well depth, well capacity and well location.

22 c. The United States agrees to provide an annual report
23 to the Bureau for incorporation into the database on the
24 water chemistry, temperature and flow rate of any well in
25 use or spring sampled in the portion of YNP within the

1 state, and may include such information for any well or
2 spring in the portion of YNP outside the state.

3 d. The information in the database shall be available
4 to the public through the Natural Resources Information
5 System, currently located at 1515 E. Sixth Avenue, Helena,
6 Montana 59620-1800.

7 I. Administration of the Yellowstone Controlled
8 Groundwater Area

9 1. The Yellowstone Controlled Groundwater Area
10 established by this Compact shall be administered pursuant
11 to applicable state law and the terms of this Compact.

12 2. In addition to the requirements imposed by state
13 law, the Department shall provide the United States with
14 notice of any application or registration for a permit to
15 appropriate groundwater within the Area in the same manner
16 and time as required by state law for notice to groundwater
17 appropriators in a controlled groundwater area.

18 3. The United States may be an objector to any
19 application or registration for a permit to appropriate
20 groundwater or in a hearing for modification of a permit to
21 appropriate groundwater within the Area pursuant to the
22 provisions of Article IV, section G.

23 4. The Department shall, whenever possible, consolidate
24 any proceedings on groundwater applications or registration
25 pursuant to Articles II and III with any proceeding made

1 necessary by this Article.

2 5. Within 2 years after the effective date of this
3 Compact or the receipt of the requested funding from the
4 United States, whichever occurs later, the Department is
5 directed to promulgate such additional rules necessary to
6 effectuate this Compact and to establish criteria which may
7 be necessary to implement this Article. Said rules shall not
8 alter the rights or obligations of the parties hereto. In
9 doing so, the Department shall consult with the United
10 States and the TOC. Until modified by the TOC, the
11 Department shall adopt the Working Group Report to govern
12 sampling, reporting and monitoring requirements, except as
13 modified by Article IV, section G. In reviewing any permit
14 to appropriate hydrothermal discharge water the Department
15 shall consider the criteria set forth in the Working Group
16 Report or a subsequent report by the TOC, including, but not
17 limited to, the identification of risk associated with
18 volume of appropriation and distance from the reserved land
19 of YNP.

20 J. Modification of the Yellowstone Controlled
21 Groundwater Area

22 1. Technical Oversight Committee: Establishment and
23 Authority

24 a. A joint federal-state Technical Oversight Committee
25 is hereby established to review scientific evidence related

1 to the Yellowstone Controlled Groundwater Area; to advise
2 the Department on administration of the Area, including
3 review of applications to appropriate water of 60F. or more;
4 to consult with the Bureau on inventory and sampling; and to
5 recommend modification of boundaries and restrictions.

6 b. The committee shall consist of five qualified
7 scientists with experience related to hydrothermal systems.
8 The committee members shall be appointed within six months
9 following the effective date of this Compact: one appointed
10 by the National Park Service; one appointed by the United
11 States Geological Survey; one appointed by the Department;
12 one appointed from the Montana University system by the
13 Montana State Geologist; and one selected by the other four
14 members. Appointments and selections shall be made, to the
15 extent possible, to ensure that three of the qualified
16 scientists with experience related to hydrothermal systems
17 also have experience in (1) geochemistry; (2) geophysics;
18 and (3) hydrogeology. Vacancies due to expiration of terms
19 or resignation of a member shall be filled in the same
20 manner. Should the four members fail to agree on the
21 selection of additional members within 60 days after
22 appointment of all four members or within 30 days after a
23 vacancy occurs, the following procedure shall be utilized:

24 (i) Within 5 days each member shall nominate one person
25 for each vacancy and submit the nominations to a judge of

1 the First Judicial District in Helena; and

2 (ii) A judge of the First Judicial District in Helena
3 shall fill the vacancy by selecting a member from each set
4 of nominations.

5 c. Each member shall serve a five-year term and shall
6 be eligible for reappointment. Expenses of the members shall
7 be born by the entity appointing the member. The per diem or
8 salary, and travel expenses of the three members-at-large
9 shall be born equally by the United States and the state,
10 subject to the availability of funds. All other expenses of
11 the TOC shall be born by the United States subject to
12 Congressional appropriation as set forth in Article IV,
13 section C.

14 d. The recommendation of any of the following by the
15 TOC shall be based on a supermajority of four to one: (1)
16 modification of the Area pursuant to Article IV, section J;
17 (2) review of an application to appropriate groundwater with
18 a temperature of 60F. or more; and (3) removal of any of the
19 criteria specified in Article IV, section G.c.ii.(1)(b).
20 Failure to achieve a supermajority shall result in a
21 recommendation of no modification or no permit approval. In
22 the absence of a unanimous decision, the TOC shall provide
23 both a report supporting the recommendation that there be no
24 modification or no permit approval, and a dissenting report
25 to the Department. In all other instances in which the TOC

1 consults with or makes recommendations to the Department or
2 the Bureau, recommendations shall be made by a simple
3 majority of the entire committee.

4 e. The TOC shall:

5 i. review the boundaries of the Area and the Subareas;
6 ii. review the initial restrictions on groundwater
7 development imposed pursuant to this Article, and future
8 modifications of those restrictions;

9 iii. assess the cumulative impact of all development in
10 the Area;

11 iv. review changes in the groundwater and hydrothermal
12 systems revealed by inventory and analyses done by the
13 Bureau, and any other pertinent scientific evidence;

14 v. review new scientific evidence pertinent to the
15 Area;

16 vi. consult with the Bureau or the Department on
17 request;

18 vii. present evidence and make recommendations to the
19 Department in accordance with Article IV, section J.2.

20 viii. review applications for a permit to appropriate
21 groundwater on request by the Department as set forth in
22 Article IV, section G.2.c.; and

23 ix. take any additional action necessary to implement
24 this Article.

25 f. The Department and the Bureau shall provide the TOC

1 with all information in their records regarding
2 appropriations of groundwater within the Area including
3 reports required by this Article.

4 g. The initial review shall take place within 1 year of
5 the receipt of the inventory report done by the Bureau
6 pursuant to Article IV, section H. Subsequent reviews shall
7 take place every 5 years following the initial inventory or
8 following the issuance of 75 permits to appropriate water
9 within the Area by the Department, whichever occurs first.
10 Additional review shall also take place on request by the
11 United States or the state.

12 h. Within 6 months of initiation of a review, the TOC
13 shall provide a report of the review, including any
14 recommendation for modification, and a dissenting report, if
15 any, to the Department and the United States.
16 Recommendations shall be based on a determination by a
17 supermajority of the entire TOC that the modification is
18 necessary to prevent adverse effect to the hydrothermal
19 system within the reserved land of YNP, or that modification
20 may be made without the threat of adverse effect on the
21 hydrothermal system within the reserved land of YNP. The
22 recommendation shall be made in good faith and based on
23 scientific evidence including, but not limited to, the
24 following:

25 i. in the case of extension of boundaries, the criteria

1 set out in the Working Group Report for designation of the
2 boundary of the Area to be enlarged is found to exist within
3 the proposed extension;

4 ii. the cumulative effect of groundwater development
5 within the Area or a portion of the Area has resulted in
6 declining hydraulic head and modification of boundaries or
7 restrictions are necessary to prevent adverse effect on the
8 hydrothermal system within the reserved land of YNP;

9 iii. changes in groundwater revealed by the inventory
10 and sampling program are such that modification is necessary
11 to prevent adverse effect on the hydrothermal system within
12 the reserved land of YNP;

13 iv. scientific evidence indicates that modification is
14 necessary to prevent adverse effect on the hydrothermal
15 system within the reserved land of YNP;

16 v. based on scientific evidence, restrictions can be
17 removed or boundary modifications made without the threat of
18 adverse effect to the hydrothermal system within the
19 reserved land of YNP.

20 2. Modification Pursuant to Review

21 a. Within 60 days of mailing of the report in Article
22 IV, section J.1.h., and if (1) the TOC recommends
23 modification; (2) the United States, state or a person with
24 property or water rights within the Area petitions for a
25 hearing; or (3) a person with an interest that would be

1 adversely affected by the recommendation, petitions for a
2 hearing, the Department shall provide for notice of a
3 hearing pursuant to state law.

4 b. The Department shall follow the rules for a
5 contested case under the Montana Administrative Procedures
6 Act, Title 2, Chapter 4 of the Montana Code Annotated. In
7 addition, the Department shall apply the following
8 provisions:

9 i. The report or reports, data and other written
10 information produced by the TOC shall be admissible in the
11 hearing without further foundation and not subject to the
12 hearsay objection, subject to the rights of any party or
13 claimant to cross-examine the producer or drafter of the
14 written material and to controvert the same by other
15 evidence. The hearing officer may request that members of
16 the TOC appear to provide expert testimony in the case. The
17 hearing officer shall also hear any oral and written
18 scientific evidence presented by the state, the United
19 States, any applicant for a permit to appropriate who has
20 requested review, and any person with property or water
21 rights in the Area, or an interest that would be adversely
22 affected by the recommended modification.

23 ii. The scientific evidence and recommendations
24 presented in the report by the TOC have a rebuttable
25 presumption of validity for the purposes of Article IV. The

1 Department shall adopt the recommendations of the TOC unless
2 the recommendation by the TOC is refuted by clear and
3 convincing scientific evidence. The dissenting report of the
4 TOC, if any, may be used as rebuttal evidence.

5 iii. The Department shall issue an order stating
6 findings of fact and conclusions of law.

7 c. Within 30 days of an order by the Department, a
8 person aggrieved by the order may appeal on the record to a
9 state or federal court of competent jurisdiction. For an
10 appeal to state court, venue shall be the First Judicial
11 District in Helena and the review must be conducted
12 according to the procedures for judicial review of a
13 contested case under the Montana Administrative Procedures
14 Act, Title 2, Chapter 4, of the Montana Code Annotated.

15 ARTICLE V

16 GENERAL PROVISIONS

17 A. No Effect on Tribal Rights or Other Federal Reserved 18 Water Rights:

19 1. Nothing in this Compact may be construed or
20 interpreted in any manner to establish the nature, extent or
21 manner of administration of the rights to water of an Indian
22 Tribe in Montana, or of a water right of an individual that
23 is derivative of such right, or of the United States on
24 behalf of such tribe or tribal member. The relationship
25 between the water rights of the National Park Service

1 described herein and any rights to water of an Indian Tribe
2 in Montana, or of a water right of an individual that is
3 derivative of such right, or of the United States on behalf
4 of such tribe or tribal member shall be determined by the
5 rule of priority.

6 2. Nothing in this Compact is otherwise intended to
7 conflict with or abrogate a right or claim of an Indian
8 Tribe regarding boundaries or property interests in the
9 State of Montana.

10 3. Nothing in this Compact may be construed or
11 interpreted in any manner to establish the nature, extent or
12 manner of administration of the rights to water of any other
13 federal agency or federal lands in Montana other than those
14 of the National Park Service. The exercise of a water right
15 of the United States, if any, to water for a consumptive use
16 on land administered by the United States Forest Service
17 upstream of a water right to instream flow described in this
18 Compact shall be allocated from the United States' share for
19 instream flow, not the state's share for consumptive use.

20 **B. State Water Rights**

21 Nothing in this Compact may limit the exclusive
22 authority of the state, including the authority of a water
23 commissioner authorized by state law, to administer all
24 current and future water rights recognized under state law
25 within and upstream of the reserved land covered by this

1 Compact, provided that in administration of those water
2 rights in which the United States has an interest, such
3 authority is limited to that granted under federal law.

4 **C. General Disclaimers**

5 Nothing in this Compact may be construed or interpreted:

6 1. as a precedent for the litigation or the
7 interpretation or administration of future compacts between
8 the United States and the state; or of the United States and
9 any other state;

10 2. as a waiver by the United States of its right under
11 state law to raise objections in state court to individual
12 water rights claimed pursuant to the state Water Use Act,
13 Title 85, of the Montana Code Annotated, in the basins
14 affected by this Compact;

15 3. as a waiver by the United States of its right to
16 seek relief from a conflicting water use not entitled to
17 protection under the terms of this Compact;

18 4. to establish a precedent for other agreements
19 between the state and the United States or an Indian tribe;

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

24 6. to create or deny substantive rights through
25 headings or captions used in this Compact;

1 7. to expand or restrict any waiver of sovereign
2 immunity existing pursuant to federal law as of the
3 effective date of this Compact;

4 8. to affect the right of the state to seek fees or
5 reimbursement for costs or the right of the United States to
6 contest the imposition of such fees or costs, pursuant to a
7 ruling by a state or federal court of competent jurisdiction
8 or Act of Congress;

9 9. to affect in any manner the entitlement to or
10 quantification of other federal water rights. This Compact
11 is only binding on the United States with regard to the
12 water rights of the National Park Service, and does not
13 affect the water rights of any other federal agency.

14 D. Use of Water Right

15 Except as otherwise provided in this Compact, the rights
16 of the United States described in this agreement are federal
17 reserved water rights. Non-use of all or a part of the
18 federal reserved water rights described in this Compact
19 shall not constitute abandonment of the right. The federal
20 reserved water rights described in this Compact need not be
21 applied to a use deemed beneficial under state law, but
22 shall be restricted to uses necessary to fulfill the
23 purposes of the associated reserved land.

24 E. Appropriation Pursuant to State Law

25 Nothing in this Compact may prevent the United States

1 from seeking a permit to appropriate water under state law
2 for use outside the boundaries of the federal reservations
3 for which a water right is described in this Compact,
4 provided that, no such use may be included in the
5 calculation of total current or future consumptive use
6 rights allocated to use pursuant to state law by this
7 Compact, and provided further that, a water right obtained
8 in this manner shall be considered a state water right and
9 shall be administered pursuant to general provisions of
10 state law as provided in Article II, section J.2.b.

11 F. Reservation of Rights

12 The parties expressly reserve all rights not granted,
13 described or relinquished in this Compact.

14 G. Severability

15 Except as provided in Article IV, the provisions of this
16 Compact are not severable.

17 H. Multiple Originals

18 This Compact is executed in quintuplicate. Each of the
19 five (5) Compacts bearing original signatures shall be
20 deemed an original.

21 I. Notice

22 Unless otherwise specifically provided for in this
23 Compact, service of notice required hereunder, except
24 service in litigation, shall be:

25 1. State: Upon the Director of the Department and such

1 other officials as he or she may designate in writing.

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

5 ARTICLE VI

6 FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

7 A. Binding Effect

8 1. The effective date of this Compact is the date of
9 the ratification of this Compact by the Montana legislature,
10 written approval by the United States Department of the
11 Interior, or written approval by the United States
12 Department of Justice, whichever occurs later. Once
13 effective, all of the provisions of this Compact shall be
14 binding on:

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

19 b. except as otherwise provided in Article V, section
20 A., the United States, a person or entity of any nature
21 whatsoever using, claiming, or in any manner asserting a
22 right under the authority of the United States to the use of
23 water.

24 2. Following the effective date, this Compact shall not
25 be modified without the consent of both parties. Either

1 party may seek enforcement of this Compact in a court of
2 competent jurisdiction. Except as provided in Article IV
3 concerning the appropriation of funds, attempt to
4 unilaterally modify this Compact by either party shall
5 render this Compact voidable at the election of the other
6 party.

7 3. On approval of this Compact by a state or federal
8 court of competent jurisdiction and entry of a decree by
9 such court confirming the rights described herein, this
10 Compact and such rights are binding on all persons bound by
11 the final order of the court.

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

15 B. Disposition of Actions

16 Subject to the following stipulations and within one
17 hundred eighty (180) days of the effective date, the parties
18 shall submit this Compact to an appropriate state court or
19 courts having jurisdiction over this matter in an action
20 commenced pursuant to 43 U.S.C. 666, for approval in
21 accordance with state law and for the incorporation of the
22 reserved water rights described in this Compact into a
23 decree or decrees entered therein. The parties understand
24 and agree that the submission of this Compact to a state
25 court or courts, as provided for in this Compact, is solely

1 to comply with the provisions of 85-2-702(3), MCA, and does
 2 not expand [sic] the jurisdiction of the state court or
 3 expand in any manner the limited waiver or sovereign
 4 immunity of the United States in the McCarran Amendment, 43
 5 U.S.C. 666 or other provision of federal law.

6 1. Dismissal of Filed Claims: At the time the state
 7 courts approve the reserved water rights described in this
 8 Compact and enter a decree or decrees confirming the rights
 9 described herein, such courts shall dismiss, with prejudice,
 10 all of the water right claims specified in Appendix 3 to
 11 this Compact. If this Compact fails approval or a reserved
 12 water right described herein is not confirmed, the specified
 13 claims shall not be dismissed.

14 2. Disposition of Federal Suits: Within ninety (90)
 15 days of the issuance of a final decree or decrees by the
 16 state courts approving this Compact and confirming the
 17 reserved water rights described herein, and the completion
 18 of any direct appeals therefrom or the expiration of the
 19 time for filing such appeal, the parties shall execute and
 20 file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to
 21 dismiss with prejudice those claims made by the United
 22 States for Glacier National Park in United States v.
 23 Aageson, No. CV-79-21-GF (D. Mont.); United States v. Abell,
 24 No. CV-79-33M (D. Mont.); and United States v. AMS Ranch,
 25 Inc., No. CV-79-22-GF (D. Mont.). This Compact may be filed

1 as a consent decree in those federal suits, only if, prior
 2 to the dismissal of the federal suits as provided in this
 3 Article, it is finally determined in a judgement binding on
 4 the State of Montana that the state courts lack jurisdiction
 5 over some or all of the reserved water rights described in
 6 this Compact. Within one year of such judgment the United
 7 States agrees to commence such additional proceedings in the
 8 federal district court for the District of Montana as may be
 9 necessary to judicially confirm the reserved water rights
 10 described herein which are not included within an existing
 11 action.

12 C. Settlement of Claims

13 The parties intend that, with the exceptions noted
 14 herein, the water rights described in this Compact are in
 15 full and final settlement of the water right claims for the
 16 reserved land administered by the National Park Service in
 17 Montana on the effective date of this Compact. Pursuant to
 18 this settlement, by which certain federal reserved water
 19 rights are expressly recognized by the state in this Compact
 20 and other water rights claims of the United States are
 21 expressly retained in Article III, sections B., D., E, and
 22 F., the United States hereby and in full settlement of any
 23 and all claims filed by the United States or which could
 24 have been filed by the United States for reserved land
 25 administered by the National Park Service in Montana

1 relinquishes forever all said claims on the effective date
 2 of this Compact to water within the State of Montana for
 3 reserved land administered by the National Park Service. The
 4 state agrees to recognize the reserved water rights
 5 described and quantified herein, and shall, except as
 6 expressly provided for herein, treat them in the same manner
 7 as a water right recognized by the state.

8 D. The parties agree to seek enactment of legislation
 9 and to recommend appropriation of federal funds necessary to
 10 effectuate the provisions and purposes of this Compact, and
 11 to defend the provisions and purposes of this Compact from
 12 all challenges and attacks.

13 IN WITNESS WHEREOF the representatives of the State of
 14 Montana and the United States have signed this Compact on
 15 the ____ day of _____, 19__.

16 FOR THE STATE OF MONTANA

17 MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION

18 FOR THE UNITED STATES

19 NEW SECTION. **Section 2.** Statutory appropriation of
 20 federal funds. (1) There must be created those accounts that
 21 are necessary within the federal special revenue fund
 22 established under 17-2-102 for the purposes of this part.

23 (2) Federal funds deposited in the accounts and
 24 interest and earnings on the accounts are statutorily
 25 appropriated, as provided in 17-7-502, and must be used for

1 the following purposes or to reimburse the state for
 2 expenditures incurred for the following purposes:

3 (a) establishment, administration, and enforcement of
 4 the Yellowstone controlled ground water area;

5 (b) inventory, sampling, reporting, and data base
 6 management;

7 (c) provision for administrative costs and the cost of
 8 any study or any other necessary activity by the technical
 9 oversight committee; and

10 (d) any other necessary activity pursuant to this part.

11 **Section 3.** Section 17-7-502, MCA, is amended to read:

12 "17-7-502. Statutory appropriations -- definition --
 13 requisites for validity. (1) A statutory appropriation is an
 14 appropriation made by permanent law that authorizes spending
 15 by a state agency without the need for a biennial
 16 legislative appropriation or budget amendment.

17 (2) Except as provided in subsection (4), to be
 18 effective, a statutory appropriation must comply with both
 19 of the following provisions:

20 (a) The law containing the statutory authority must be
 21 listed in subsection (3).

22 (b) The law or portion of the law making a statutory
 23 appropriation must specifically state that a statutory
 24 appropriation is made as provided in this section.

25 (3) The following laws are the only laws containing

1 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
 2 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
 3 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;
 4 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
 5 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
 6 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;
 7 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
 8 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;
 9 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;
 10 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
 11 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;
 12 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206;
 13 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108;
 14 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310;
 15 82-11-136; 82-11-161; 85-1-220; [section 2]; 90-3-301;
 16 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

17 (4) There is a statutory appropriation to pay the
 18 principal, interest, premiums, and costs of issuing, paying,
 19 and securing all bonds, notes, or other obligations, as due,
 20 that have been authorized and issued pursuant to the laws of
 21 Montana. Agencies that have entered into agreements
 22 authorized by the laws of Montana to pay the state
 23 treasurer, for deposit in accordance with 17-2-101 through
 24 17-2-107, as determined by the state treasurer, an amount
 25 sufficient to pay the principal and interest as due on the

1 bonds or notes have statutory appropriation authority for
 2 the payments. (In subsection (3): pursuant to sec. 7, Ch.
 3 567, L. 1991, the inclusion of 19-6-709 terminates upon
 4 death of last recipient eligible for supplemental benefit;
 5 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
 6 22-3-811 terminates June 30, 1993.)"
 7 NEW SECTION. **Section 4.** Codification instruction.
 8 [Sections 1 and 2] are intended to be codified as an
 9 integral part of Title 85, chapter 20, and the provisions of
 10 Title 85, chapter 20, apply to [sections 1 and 2].

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 692

INTRODUCED BY WANZENRIED, GROSFIELD, YELLOWTAIL,
HARPER, SWYSGOOD, HALLIGAN, BECK, BROOKE, SWANSON,
RANEY, GILBERT, GRINDE, FAGG, SCHYE

A BILL FOR AN ACT ENTITLED: "AN ACT RATIFYING A RESERVED
WATER RIGHTS COMPACT BETWEEN THE UNITED STATES NATIONAL PARK
SERVICE AND THE STATE OF MONTANA; ESTABLISHING A STATUTORY
APPROPRIATION; AND AMENDING SECTION 17-7-502, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. United States National Park
Service -- Montana compact ratified.** The compact entered
into by the state of Montana and the United States National
Park Service and filed with the secretary of state of the
state of Montana under the provisions of 85-2-702 on [date
of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

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 water for certain lands administered by the
National Park Service within the State of Montana at the
time of the effective date of this Compact.

RECITALS

WHEREAS, in 1979 the United States filed in the United
States District Court for the District of Montana several
actions to adjudicate, inter alia, its rights to water with
respect to Glacier National Park, see United States v.
Aageson, No. CV-79-21-GP; United States v. Abell, No.
CV-79-33-M; and United States v. AMS Ranch, Inc., No.
CV-79-22-GP.

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, 85-2-703, MCA, provides that the state 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 existing National Park Service units in the
State of Montana, including those reserved water rights
necessary to preserve Glacier National Park and Yellowstone
National Park unimpaired for future generations;

WHEREAS, the United States, in quantifying its reserved
water rights recognizes the need to accommodate the
interests of the state and its citizens by providing for the



1 development and use of water in the vicinity of the Park
 2 units to the extent that it is possible to do so without
 3 materially affecting the rights and interests of the United
 4 States;

5 WHEREAS, the United States Attorney General, or a duly
 6 designated official of the United States Department of
 7 Justice, has authority to execute this Compact on behalf of
 8 the United States pursuant to the authority to settle
 9 litigation contained in 28 U.S.C. 516-17 (1968);

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

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

17 ARTICLE I

18 DEFINITIONS

19 For purposes of this Compact only, the following
 20 definitions shall apply:

21 (1) "Abstract" means the copy of the document entitled
 22 "Abstract of National Park Service Water Rights" referenced
 23 in this Compact as Appendix 1.

24 (2) "Big Hole National Battlefield" or "BHNB" means
 25 those lands located in Montana that were acquired pursuant

1 to, or withdrawn and reserved by Executive Order No. 1216 of
 2 June 23, 1910; Presidential Proclamation No. 2339 of June
 3 29, 1939, 53 Stat. 2544; and Act of May 17, 1963, 77 Stat.
 4 18.

5 (3) "Bighorn Canyon National Recreation Area" or
 6 "BCNRA" means those lands located in Montana that were
 7 acquired pursuant to, or designated as such by Act of
 8 October 15, 1966, 80 Stat. 913.

9 (4) "Bureau" means the Montana Bureau of Mines and
 10 Geology or its successor.

11 (5) "Category 1 stream" means a stream that headwaters
 12 on the reserved land administered by the National Park
 13 Service.

14 (6) "Category 1a stream" means a stream that headwaters
 15 on the reserved land administered by the National Park
 16 Service and which, in part, carries water that drains
 17 non-federal land within the boundaries of the same reserved
 18 land.

19 (7) "Category 2 stream" means a stream that headwaters
 20 in a Wilderness Area in Montana outside the respective Park
 21 unit which flows into the reserved land administered by the
 22 National Park Service, and which is not the source for a
 23 consumptive USE water right recognized under state law on
 24 the effective date of this Compact and drains a hydrologic
 25 basin that contains only federal land.

1 (8) "Category 3 stream" means a stream that headwaters
 2 in Montana outside the reserved land administered by the
 3 National Park Service that flows into the reserved land and
 4 is the source for consumptive use water rights recognized
 5 under state law on the effective date of this Compact.

6 (9) "Category 4 stream" means a stream that is treated
 7 individually due to special circumstances.

8 (10) "Consumptive use" means use of surface water not
 9 considered a non-consumptive use under (24) and use of
 10 groundwater which is shown to be hydrologically connected to
 11 surface water pursuant to Article II.

12 (a) "Current consumptive use", when referring to water
 13 rights recognized under state law only, means all
 14 consumptive use water rights recognized under state law with
 15 a priority date before January 1, 1993.

16 (b) "Future consumptive use", when referring to a water
 17 right recognized under state law only, means a consumptive
 18 use water right recognized under state law with a priority
 19 date on or after January 1, 1993.

20 (11) "Credible information" means credible evidence
 21 sufficient to support a prima facie basis for the theory
 22 asserted.

23 (12) "Department" means the Montana Department of
 24 Natural Resources and Conservation or its successor.

25 (13) "Effective date of this Compact" means the date of

1 the ratification of the Compact by the Montana legislature,
 2 written approval by the United States Department of the
 3 Interior, or written approval by the United States
 4 Department of Justice, whichever is later.

5 (14) "Glacier National Park" or "GNP" means those lands
 6 located in Montana that were acquired pursuant to, or
 7 withdrawn and reserved by the Act of May 11, 1910, 36 Stat.
 8 354; Act of February 27, 1915, 38 Stat. 814; and Act of
 9 April 11, 1972, 86 Stat. 120.

10 (15) "Grant Kohrs Ranch National Historic Site" means
 11 those lands acquired by the United States and designated as
 12 such pursuant to Public Law 92-406, August 25, 1972.

13 (16) "Groundwater" means water that is beneath the
 14 ground surface.

15 (17) (a) "Hydrologically connected", for the purposes
 16 of Articles II and III, means groundwater that is connected
 17 to surface water such that appropriation at the proposed
 18 rate will cause a calculable reduction in surface water
 19 flow. A "calculable reduction in surface water flow" means a
 20 theoretical reduction based on credible information as
 21 opposed to a measured reduction.

22 (b) "Hydrologically connected" for the purposes of
 23 Article IV, means groundwater that is considered to be
 24 connected to the hydrothermal system within the reserved
 25 land of Yellowstone National Park based on scientific

1 evidence according to the procedures in Article IV.

2 (18) "Hydrothermal system" means the groundwater system,
3 including cold water recharge, transmission and warm water
4 discharge that is hydrologically connected to the
5 hydrothermal features within the reserved land of
6 Yellowstone National Park.

7 (19) "Hydrothermal discharge water" means groundwater
8 with a temperature in excess of 59 degrees Fahrenheit that
9 is hydrologically connected to the hydrothermal system
10 within the reserved land of Yellowstone National Park.

11 (20) "Hydrothermal feature" means a surface
12 manifestation of a hydrothermal system, including but not
13 limited to: hot springs, geysers, mud pots, and fumaroles.

14 (21) "Instream flow" means the water that the parties
15 agree shall remain in the stream in satisfaction of the
16 United States' reserved water right for the purposes of the
17 reserved land.

18 (22) "Little Bighorn Battlefield National Monument" or
19 "LBBNM" means those lands located in Montana that were
20 acquired pursuant to or withdrawn and reserved by
21 Presidential Proclamation of December 7, 1886.

22 (23) "Nez Perce National Historical Park" means those
23 lands in Montana acquired and added to the Nez Perce
24 National Historical Park by Congress on October 30, 1992,
25 pursuant to Public Law 102-576.

1 (24) (a) "Non-consumptive use" when applied to a mining
2 or hydropower use for which a water right is recognized
3 under state law with a priority date on or after January 1,
4 1993, means an appropriation that does not cause a net loss
5 in the surface source of supply, and where substantially all
6 of the diverted water becomes return flow with little or no
7 delay between the time of diversion and the time of return,
8 and without adverse effect on the quantity or quality of
9 water necessary to fulfill the purposes of the reserved
10 land.

11 (b) "Non-consumptive use" when applied to a water right
12 recognized under state law other than a mining or hydropower
13 use with a priority date on or after January 1, 1993, or a
14 water right recognized under state law with a priority date
15 before January 1, 1993, means a water right considered to be
16 non-consumptive by the decree, permit or law authorizing the
17 use.

18 (25) "Parties" means the State of Montana and the United
19 States.

20 (26) "Person" means an individual, association,
21 partnership, corporation, state agency, political
22 subdivision, or any other entity, but does not include the
23 United States.

24 (27) "Recognized under state law" when referring to a
25 water right or use means a water right or use protected by

1 state law, but does not include state recognition of a
2 federal or tribal reserved water right.

3 (28) "Return flow" means the portion of water diverted
4 from a source that is returned to the same source, at or
5 near the point of diversion.

6 (29) "Scientific evidence" means geologic, geophysical,
7 geochemical and hydrologic information.

8 (30) "State" means the State of Montana and all
9 officers, agents, departments, and political subdivisions
10 thereof. Unless otherwise indicated, for purposes of
11 notification or consent, "state" means the Director of the
12 Montana Department of Natural Resources and Conservation or
13 his or her designee.

14 (31) "Technical Oversight Committee" or "TOC" means the
15 scientific committee established by Article IV of this
16 Compact.

17 (32) "Tributary to" means surface water that originates
18 in the same hydrologic basin or subbasin as the stream
19 referred to and which contributes water to the same stream.

20 (33) "UNINCORPORATED MUNICIPALITY" INCLUDES BUT IS NOT
21 LIMITED TO A RURAL SPECIAL IMPROVEMENT DISTRICT OR ANY OTHER
22 ENTITY THAT SERVES COMMUNITY WATER NEEDS.

23 ~~(33)~~(34) "United States" means the federal government
24 and all officers, agencies, departments and political
25 subdivisions thereof. Unless otherwise indicated, for

1 purposes of notification or consent other than service in
2 litigation, "United States" means the Secretary of the
3 Department of the Interior, or his or her designees.

4 ~~(34)~~(35) "Working Group Report" means the Abridged and
5 Unabridged reports by Custer, S., et. al. dated January 5,
6 1993, and titled Recommended Boundary for Controlled
7 Groundwater Area in Montana Near Yellowstone National Park
8 and accompanying maps.

9 ~~(35)~~(36) "Yellowstone National Park" or "YNP" means
10 those lands located in Montana that were acquired pursuant
11 to, or withdrawn and reserved for Yellowstone National Park
12 by the Act of March 1, 1872, 17 Stat. 32; Act of May 26,
13 1926, 44 Stat. 655; Act of March 1, 1929, 45 Stat. 1435; Act
14 of April 19, 1930, 46 Stat. 220; and Proclamation No. 2013
15 of October 20, 1932, 47 Stat. 2537.

16 ARTICLE II

17 IMPLEMENTATION

18 A. Abstract:

19 Concurrent with this Compact, the parties have prepared
20 an Abstract, a copy of which is referenced as Appendix 1,
21 which is a specific listing of all of the United States'
22 water rights that are described in this Compact and
23 quantified in accordance with this Compact. The parties
24 prepared the Abstract to comply with the requirements for a
25 final decree as set forth in 85-2-234(4) and (7), MCA, and

1 in an effort to assist the state courts in the process of
 2 entering decrees accurately and comprehensively reflecting
 3 the rights described in this Compact. The rights specified
 4 in the Abstract are subject to the terms of this Compact. In
 5 the event of a discrepancy between a right listed in the
 6 Abstract and that same right as quantified in accordance
 7 with Articles II and III of this Compact, the parties intend
 8 that the quantification in accordance with Articles II and
 9 III of this Compact shall be reflected in a final decree.

10 B. Method of Allocation of Water on Category 3 and 4
 11 Streams:

12 This section explains the method of quantification of
 13 the reserved instream flow water rights of the United States
 14 for Category 3 and 4 streams and the method of calculating
 15 the quantity of consumptive use pursuant to state law within
 16 a basin to which the United States agrees to subordinate its
 17 reserved instream flow water right. The method set forth in
 18 this section shall be used to determine whether the limits
 19 on consumptive use pursuant to state law set forth in
 20 Article III have been reached. Addition to the Abstract of a
 21 reserved instream flow water right on a stream inadvertently
 22 omitted by the parties or reclassification of a stream due
 23 to a water right recognized under state law and
 24 inadvertently omitted by the parties shall be consistent
 25 with this section and shall not be deemed a modification of

1 this Compact.

2 1. Allocation to Instream Flow:

3 The allocation of water to instream flow on Category 3
 4 and 4 streams is arrived at using the following method as
 5 explained in general terms:

6 a. The United States' reserved water right for instream
 7 flow includes the entire flow of that stream within the
 8 State of Montana at the point where the stream flows over or
 9 forms the boundary of the specified reserved land after: (1)
 10 all consumptive use water rights of any agency of the United
 11 States recognized under federal or state law are satisfied;
 12 and (2) subordination of the reserved water right for
 13 instream flow to water rights recognized under state law as
 14 set forth in and limited by Article III and more
 15 specifically in the Abstract.

16 b. Actual use of water in Wyoming or Canada shall not
 17 diminish the quantity of water designated for consumptive
 18 use pursuant to state law as set forth in Article III.

19 2. Method of Calculation of Consumptive Use Rights
 20 Recognized Under State Law:

21 To determine whether water is available for
 22 appropriation for consumptive use pursuant to state law on
 23 Category 3 and 4 streams, and for determining whether the
 24 limit on subordination of the United States' water rights to
 25 consumptive uses has been reached, the following provisions

1 shall apply:

2 a. Tributary Water: The calculation of total
3 consumptive use on a Category 3 or 4 stream shall include
4 all current and future consumptive use, recognized under
5 state law, of surface water tributary to the stream to the
6 point it enters the reserved land. The limits on total
7 consumptive use on a Category 4 stream that forms the
8 boundary of the reserved land shall include all current and
9 future consumptive use recognized under state law, of
10 surface water tributary to the stream to the most downstream
11 point that the stream forms the boundary of the reserved
12 land.

13 b. Groundwater:

14 i. An exemption from state permit requirements for
15 wells or developed springs shall not apply to appropriations
16 within a basin tributary to the reserved portion of a
17 Category 3 or 4 stream after the effective date of this
18 Compact, provided that the registration process set forth in
19 Article II, section B.2.b.ii.(3)(b) shall apply to
20 applications for a permit for a well of 35 gpm or less, not
21 to exceed 10 acre-feet per year. In addition, all
22 groundwater appropriations within the Yellowstone Controlled
23 Groundwater Area shall be subject to Article IV.

24 ii. The calculation of total consumptive use on a
25 Category 3 or 4 stream shall include appropriations of

1 groundwater as follows:

2 (1) Pre-January 1, 1993: An appropriation of
3 groundwater with a priority date before January 1, 1993,
4 shall not be included in the calculation of total
5 consumptive use.

6 (2) January 1, 1993 - Effective Date: An appropriation
7 of groundwater with a priority date on or after January 1,
8 1993, but before the effective date of this Compact shall be
9 included in the calculation of total consumptive use if the
10 following procedural requirements are met and the
11 appropriation is found to be hydrologically connected to
12 surface water tributary to the reserved portion of a
13 Category 3 or 4 stream.

14 (a) Within 120 days after the effective date of this
15 Compact, the Department shall provide the United States with
16 notice of all groundwater appropriations in drainages
17 tributary to the reserved portion of a Category 3 or 4
18 stream that, according to the records of the Department,
19 have a priority date on or after January 1, 1993 and before
20 the effective date of this Compact.

21 (b) Up to 120 days following mailing of such notice the
22 United States shall provide the Department with credible
23 information that a groundwater appropriation included in the
24 notice is hydrologically connected to surface flow tributary
25 to the reserved portion of a Category 3 or 4 stream.

1 (c) Within 60 days of receipt of such information, the
 2 Department shall issue an order stating that (1) the
 3 appropriation is hydrologically connected to surface water
 4 tributary to the Category 3 or 4 stream; and (2) the action
 5 to be taken with respect to the appropriation. The order is
 6 effective within 60 days of issuance unless the appropriator
 7 enters an appearance to contest the order. If credible
 8 information of hydrologic connection has not been provided
 9 by the United States, the Department shall issue an order
 10 stating its determination and reasons therefore.

11 (d) If the appropriator enters an appearance to contest
 12 the order, the Department shall (1) issue an order staying
 13 use of the appropriation pending a final decision on the
 14 matter by the Department only if the limits on total
 15 consumptive use for that drainage have been reached; (2) set
 16 a date for a hearing; and (3) proceed pursuant to the
 17 provisions for a contested case under the Montana
 18 Administrative Procedures Act, Title 2, Chapter 4, of the
 19 Montana Code Annotated, provided that the burden of proving
 20 hydrologic connection shall be as set forth in Article II,
 21 section B.2.b.(3). The Department shall, whenever possible,
 22 consolidate any proceedings on the groundwater application
 23 pursuant to Article IV with any proceeding made necessary by
 24 this Article.

25 (3) Post-Effective Date: An appropriation of

1 groundwater recognized under state law with a priority date
 2 after the effective date of this Compact shall be included
 3 in the calculation of total consumptive use if the following
 4 conditions apply:

5 (a) Wells in excess of 35 gallons per minute or 10
 6 acre-feet per year: The limit on total consumptive use shall
 7 include groundwater appropriation by a well or developed
 8 spring with a permit amount in excess of 35 gpm or any well
 9 with a volume of use greater than 10 acre-feet per year,
 10 including a combined appropriation from the same source from
 11 two or more wells or developed springs that exceeds these
 12 limitations, unless the applicant is able to show by a
 13 preponderance of the evidence that the appropriation is not
 14 hydrologically connected to surface flow tributary to the
 15 reserved portion of a Category 3 or 4 stream.

16 (i) The applicant shall submit credible information,
 17 including a report to the Department prepared by a
 18 professional qualified in the science of groundwater
 19 hydrology verifying that the appropriation is not
 20 hydrologically connected to surface flow tributary to the
 21 reserved portion of a Category 3 or 4 stream. If the
 22 applicant fails to submit the report, the application shall
 23 be considered defective and shall be returned to the
 24 applicant for completion as provided by state law.

25 (ii) The Department shall provide notice of the proposed

1 appropriation and a copy of the report to the United States
2 concurrent with notice pursuant 85-2-307, MCA.

3 (iii) Within 60 days of the mailing of notice, the
4 United States shall file an objection to the proposed
5 appropriation on the basis that it is hydrologically
6 connected to surface water.

7 (iv) The Department shall not exclude the appropriation
8 from the limits on total consumptive use unless the
9 applicant proves by a preponderance of the evidence that the
10 proposed appropriation is not hydrologically connected to
11 surface flows tributary to the reserved portion of the
12 Category 3 or 4 stream. In doing so the Department shall
13 make a specific finding on the adequacy of the report
14 provided by the applicant.

15 (v) If the proposed appropriation is determined not to
16 be hydrologically connected to surface water, or if the
17 limit on consumptive use has not been reached, the
18 Department may issue a permit in accordance with state law
19 and the applicant may complete the appropriation.

20 (b) Wells of 35 gallons per minute or less and 10
21 acre-feet per year or less:

22 (i) An applicant for an appropriation of groundwater of
23 35 gpm or less, not to exceed 10 acre-feet per year shall
24 register for a permit by filing a form prescribed by the
25 department.

1 (ii) The Department shall provide notice of the
2 registration for a permit to the United States within 30
3 days of the filing. Within 30 days of the receipt of notice,
4 the United States may file an objection to the application
5 on the basis that the proposed appropriation is of
6 groundwater that is hydrologically connected to surface flow
7 tributary to the reserved portion of a Category 3 or 4
8 stream.

9 (iii) As long as the limit on consumptive use rights for
10 a Category 3 or 4 stream has not been reached, the
11 calculation of total consumptive use shall not include
12 groundwater appropriations by well or a developed spring of
13 35 gallons per minute or less that do not exceed 10 acre
14 feet per year unless the United States shows by a
15 preponderance of the evidence that the proposed
16 appropriation is hydrologically connected to the reserved
17 portion of a Category 3 or 4 stream. If the United States
18 meets this burden, the Department shall include the
19 appropriation in the calculation of total consumptive use.

20 (iv) After the limit on consumptive use rights has been
21 reached on a particular stream, the necessary showing by the
22 United States' shall be to file an objection and come
23 forward with credible information showing that the proposed
24 appropriation is hydrologically connected to surface flows
25 tributary to the reserved portion of the Category 3 or 4

1 stream. If the United States makes such a showing, the
 2 Department shall consider the application under the criteria
 3 in Article II, section B.2.b.(3)(b)(v) and (vi).

4 (v) The Department shall not exclude the appropriation
 5 from the limits on total consumptive use unless the
 6 applicant proves by a preponderance of the evidence that the
 7 proposed appropriation is not hydrologically connected to
 8 surface flows tributary to the reserved portion of the
 9 Category 3 or 4 stream.

10 (vi) If the proposed appropriation is determined not to
 11 be hydrologically connected to surface water the Department
 12 may issue a permit in accordance with state law and the
 13 applicant may complete the appropriation.

14 iii. Within 2 years after the effective date of this
 15 Compact, the Department, in consultation with the United
 16 States, is directed to promulgate rules as may be necessary
 17 to implement Article II, section B.2.b. Said rules shall not
 18 alter the rights or obligations of the parties hereto.

19 c. Effect of Decree in Calculation of Consumptive Use:
 20 Except as provided in Article II, section G., for the
 21 purposes of this Compact, the flow rate of a consumptive use
 22 shall be as finally decreed in a general adjudication, or
 23 recognized under state law until such final decree. At each
 24 stage in an adjudication, the allocation to current use as
 25 set forth in Article III and more specifically in the

1 Abstract shall be adjusted to reflect the decreed amount.

2 d. Abandonment: When a consumptive use right recognized
 3 under state law on a Category 3 or 4 stream is abandoned and
 4 such abandonment causes water to become available for
 5 appropriation within the limits of the total amounts of
 6 water allocated to consumptive use rights recognized under
 7 state law established for that stream by Article III, the
 8 increment of water below that limit is available for new
 9 appropriation in accordance with state law and this Compact.
 10 State law governs the issue of whether an abandonment has
 11 occurred.

12 e. Non-Consumptive Use: The limit on total consumptive
 13 use rights recognized under state law shall not include
 14 non-consumptive uses as defined by this Compact.

15 C. Subordination of Instream Flow Right:

16 1. The United States agrees to subordinate its reserved
 17 water right for instream flow to consumptive uses calculated
 18 according to this Article in a manner that is specific to
 19 each stream on which a reserved water right is described.
 20 This subordination is set forth for each stream in Article
 21 III. Curtailment of uses to which the reserved water rights
 22 described in this Compact have not been subordinated during
 23 periods of low flow shall proceed on the basis of priority
 24 and may be initiated in a state or federal court of
 25 competent jurisdiction pursuant to Article II, section I.

1 2. The reserved water rights described in this Compact
2 shall not be subordinate to water rights which were
3 forfeited by ~~85-2-212~~ 85-2-226 as interpreted in In the
4 Matter of the Adjudication of the Water Rights within the
5 Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), nor
6 shall any claimant of such forfeited water right have
7 standing, based solely on such claimed right, to object to
8 this Compact or any reserved water right described in this
9 Compact.

10 D. Location of Instream Flow Rights: The United States'
11 reserved water rights for instream flow apply to the portion
12 of the Categories 1 through 4 streams specified in this
13 Compact that flow over or form the boundary to reserved land
14 administered by the National Park Service.

15 E. Change in Instream Flow Right: Except as provided in
16 Article II, section J.2.b., the water rights dedicated to
17 instream flow by this Compact shall not be changed to any
18 other use.

19 F. Prohibition on Future Impoundments: With the
20 exception of the North Fork of the Big Hole River and its
21 tributaries, no new impoundments may be permitted on the
22 mainstem of a Category 2, 3, or 4 stream upstream of, or
23 along, the portion of the stream for which a water right for
24 instream flow is described in this Compact after the
25 effective date of this Compact. This prohibition shall

1 include impoundments that are exempt from permit
2 requirements under state law. Reclamation, repair or
3 rehabilitation of an existing impoundment shall not be
4 considered a new impoundment, provided that without the
5 consent of the United States, reclamation, repair or
6 rehabilitation shall not cause the impoundment to exceed the
7 original constructed capacity of the impoundment. This
8 prohibition shall not apply to impoundments constructed to
9 store a Tribal water right or to implement settlement of
10 litigation regarding quantification of a Tribal water right.
11 On Category 3 and 4 streams for which an instream flow right
12 is described for periods of low flow as set forth in Article
13 III, sections G.3.c. and d., such water right has not been
14 subordinated to a new water right with the method of
15 diversion as an impoundment on the mainstem of the stream
16 with a priority date on or after January 1, 1993, but before
17 the effective date of this Compact.

18 G. Management to Maximize Use by Montana Water Users of
19 the Water Allocated to Consumptive Use Rights Recognized
20 Under State Law: If any type of conservation or water
21 distribution plan which includes measurement of actual water
22 use, including use pursuant to rights recognized under state
23 law with a priority date before January 1, 1993, is adopted
24 pursuant to state law, the limits established for
25 consumptive use appropriated pursuant to state law shall

1 apply to actual measured use, not permitted and decreed or
2 claimed rights, provided that records of actual use be made
3 available to the United States on request and provided
4 further that, such plan shall not diminish the reserved
5 water right of the United States as described in this
6 Compact.

7 H. Basin Closure

8 1. Except as provided in Article II, section B.2.d., in
9 the following drainage basins upstream of the portion of the
10 stream for which a reserved water right for instream flow is
11 described in this Compact, the Department shall not process
12 or grant an application or registration for a permit to
13 appropriate or to reserve water for future consumptive use
14 as defined by this Compact once the limits on consumptive
15 use tabulated in Article III and set forth more specifically
16 in the Abstract are reached:

17 Big Hole National Battlefield:

18 North Fork of the Big Hole River

19 Glacier National Park:

20 North Fork of the Flathead River

21 Middle Fork of the Flathead River

22 Yellowstone National Park:

23 Bacon Rind, Buffalo, Cottonwood, Coyote,

24 Hellroaring, Little Cottonwood, Snowslide, Crevice,

25 Dry Canyon, Slough, Tepee, and Soda Butte Creeks,

1 and the Gallatin, Madison, and Yellowstone Rivers
2 2. If a temporary or permanent basin closure is enacted
3 under state law for a drainage basin or subbasin for which
4 future consumptive water use is limited under this Compact,
5 the most restrictive measures applicable to consumptive use
6 of surface or groundwater shall control.

7 I. Enforcement of Water Right

8 1. The United States, the state, or the holder of a
9 water right recognized under state law, may petition a state
10 or federal court of competent jurisdiction for relief when a
11 controversy arises between the United States' reserved water
12 right described by this Compact, and a holder of a water
13 right recognized under state law. Resolution of the
14 controversy shall be governed by the terms of this Compact
15 where applicable, or to the extent not applicable, by
16 applicable state or federal law.

17 2. The United States agrees that a water commissioner
18 appointed by a state or federal court of competent
19 jurisdiction, or other official authorized by future changes
20 in law, may enter a federal reservation for which a water
21 right is described in this Compact for the purpose of data
22 collection, including the collection of information
23 necessary for water distribution on or off the federal
24 reservation, and to inspect structures for the diversion and
25 measurement of water described in this Compact for

1 consumptive use and for the measurement of instream flow.
 2 The terms of entry shall be as specified in an order of a
 3 state or federal court of competent jurisdiction.

4 3. The Department or the Bureau may enter a federal
 5 enclave for which a reserved water right is described in
 6 this Compact, at a reasonable hour of the day, for the
 7 purposes of data collection on water diversion and stream
 8 flow or inspection of devices maintained by the United
 9 States pursuant to this Compact. The Department or Bureau
 10 shall notify the United States by certified mail or in
 11 person, at least 24 hours prior to entry.

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

18 5. The United States shall maintain structures,
 19 including wellhead equipment and casing, for the diversion
 20 and measurement of water authorized for consumptive use by
 21 this Compact. The United States shall maintain the devices
 22 it deems necessary for enforcement of its reserved water
 23 right for instream flow described in this Compact.

24 6. A person who violates or refuses or neglects to
 25 comply with the provisions of this Compact, an order of the

1 Department pursuant to this Compact, or an action by the
 2 Bureau pursuant to this Compact is subject to the penalties
 3 provided by state law, including but not limited to,
 4 revocation of a permit issued pursuant to Article IV after
 5 the effective date of this Compact.

6 7. For any appeal to state court of an administrative
 7 decision authorized by this Compact, venue shall be the
 8 First Judicial District in Helena and the review shall be
 9 conducted according to the procedures for judicial review of
 10 contested cases under the Montana Administrative Procedures
 11 Act, Title 2, Chapter 4, of the Montana Code Annotated.

12 8. In any contested case proceeding held under the
 13 Montana Administrative Procedures Act, Title 2, Chapter 4,
 14 of the Montana Code Annotated, pursuant to this Compact, the
 15 common law and statutory rules of evidence shall apply only
 16 upon stipulation of all parties to a proceeding.

17 J. Change in Use

18 1. Change in Use Defined: For the purpose of this
 19 Article, the following actions affecting the use of a
 20 reserved water right for consumptive use described in this
 21 Compact shall be considered a change in use:

22 a. An action that alters type of use, place of use,
 23 point of diversion, place or means of storage, period of use
 24 or point of return flow that will:

25 i. increase the net depletion on a source; or

1 ii. adversely affect water quality at the point the
2 reserved water right ends; or

3 iii. result in a change in point of diversion or point
4 of return flow relative to a holder of a water right
5 recognized under state law; or

6 iv. change the point of diversion from groundwater to
7 surface water, or from surface to groundwater; or

8 v. in any other manner, adversely affects the
9 reasonable exercise of a water right that is recognized
10 under state law.

11 b. The exercise of a reserved water right to future
12 consumptive use as authorized by this Compact shall not be
13 considered a change in use.

14 2. Instream flow: Reserved water rights specified in
15 this Compact for instream flow shall not be subject to
16 change to any other use, provided that:

17 a. the emergency use of water for fire suppression as
18 provided for in Article III.H. shall not be deemed a change
19 or alteration in use, or violation of a reserved water right
20 for instream flow; and

21 b. the United States may seek to appropriate water for
22 a consumptive use on a source for which no consumptive use
23 is described in this Compact by seeking a permit under state
24 law for consumptive use, provided that the water right
25 granted shall not be counted against the limits on

1 allocation for state consumptive use water rights imposed by
2 this Compact. The water right so acquired shall be
3 administered in accordance with Article V, section B.

4 3. Consumptive uses: The United States may take action
5 affecting the use of its consumptive use water rights
6 provided that (1) the action shall be in fulfillment of the
7 purposes of the reservation; (2) the total use shall not
8 exceed the amount described in this Compact; and (3) the
9 action shall not adversely affect a water right that is
10 recognized under state law.

11 4. Notice of intent to change use: At least 180 days
12 prior to a change in use, the United States agrees to
13 provide notice to the Department.

14 a. The notice shall contain the facts pertinent to the
15 proposed change including, where applicable:

16 i. The location of a new point of diversion.

17 ii. The new source of water.

18 iii. The new means of diversion.

19 iv. If a well is involved, the depth and locations of
20 the old and new well.

21 v. The new use and its impact on actual consumption and
22 water quality.

23 vi. If the change includes storage, the location, period
24 and capacity of the storage facility.

25 vii. An estimate of when the change will be effective.

1 viii. A map showing the existing system and the proposed
2 change.

3 b. At least 120 days prior to the proposed change, the
4 United States agrees to publish the notice required by
5 Article II, section J.4.a. with a statement that within 60
6 days following publication or service of notice, relief may
7 be sought in a state or federal court of competent
8 jurisdiction, once in a newspaper of general circulation in
9 the area of the source, and to serve the notice by
10 first-class mail on interested and potentially affected
11 persons as identified by the records of the Department,
12 including:

13 i. an appropriator of water or applicant for or holder
14 of a permit who, according to the records of the Department,
15 may be affected by the proposed appropriation;

16 ii. a purchaser under contract for deed that, according
17 to the records of the Department, may be affected by the
18 proposed appropriation;

19 iii. any public agency that has reserved water in the
20 source recognized under state law; and

21 iv. a federal agency or Tribe that claim a reserved
22 water right or other water rights in the source.

23 c. On request by the United States, the Department
24 shall provide the information contained in its records
25 identifying any person potentially affected by the proposed

1 change. The United States agrees to reimburse the Department
2 for the expense of providing this information.

3 d. In the event that future changes in state law
4 establish a method of notice of a proposed change in use to
5 interested and potentially affected persons other than by
6 first-class mail, the United States may alter the method of
7 notification accordingly.

8 e. Prior to the actual change, the United States agrees
9 to provide the Department with proof of notice by affidavit.

10 5. Objection to proposed change: Within 60 days
11 following the notice pursuant to Article II, section J.4.b.,
12 the Department or any other person may bring an action
13 against the proposed change in use in a state or federal
14 court of competent jurisdiction, if a property right, water
15 right, or other interest protected under state law would be
16 adversely affected, or if the proposed change is not in
17 compliance with this Compact.

18 6. Notice of Change:

19 a. The United States agrees to notify the state and
20 provide a copy of the final order within 60 days of its
21 entry by a state or federal court of competent jurisdiction
22 resolving any objections to the change in use of a federal
23 reserved water right described in this Compact,

24 b. The United States agrees to provide the state with
25 notice of completion of the change within 60 days after the

1 completion.

2 7. Reporting by the United States: For any action
3 affecting the use of a consumptive right whether or not such
4 action is deemed a change in use, the United States agrees
5 to provide the following information to the Department:

6 a. Well log: For a use that includes the drilling of a
7 well or enlargement of an existing wellbore, the United
8 States agrees to provide a well log to the state within 60
9 days of the completion of the well.

10 b. Emergency Use: Within 60 days after the commencement
11 of a temporary emergency use for fire suppression described
12 in Section III.H. of this Compact, the United States agrees
13 to notify the state of the use to which the water was put,
14 the dates of use, and the estimated amount of water used.

15 c. Annual Report: Between April 1 and May 1 of each
16 year, the United States agrees to provide the Department
17 with a report on (1) actions during the preceding year
18 affecting the use of a consumptive use right described in
19 this Compact, regardless of whether the action is deemed a
20 change in use pursuant to Article II, section J.1.; (2) the
21 initiation of new uses that were completed during the
22 preceding year; and (3) any data and documents generated or
23 received by the National Park Service during the preceding
24 year on measurement of instream flow on a Category 3 or 4
25 stream.

1 8. Reporting by the State: Between December 1 and
2 December 31 of each year, the Department shall provide the
3 United States with a report of: (1) changes in use during
4 the preceding year, as defined by state law, of water rights
5 upstream of or within the boundaries of reserved land for
6 which a reserved water right is described in this Compact;
7 (2) new permits issued during the preceding year according
8 to the records of the Department; and (3) any data and
9 documents generated by the Department during the preceding
10 year on the measurement of streamflows, diversions and well
11 use on or tributary to Category 3 or 4 streams.

12 ARTICLE III

13 WATER RIGHT

14 The parties agree that the following water rights are in
15 settlement of the reserved water rights of the United States
16 for the reservations described. All reserved water rights
17 described in this Article are subject to Article V, section
18 A.

19 A. Big Hole National Battlefield

20 1. Priority Date

21 The United States has a priority date of June 29, 1939
22 for the reserved water rights described in this Compact for
23 BHNB.

24 2. Consumptive Use

25 The United States has a reserved water right for current

and future consumptive use for the purposes of the BHNB as set forth in Table 1. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at BHNB shall include any non-reserved land within BHNB boundaries as the boundaries exist on the effective date of this Compact.

TABLE 1
United States National Park Service
Big Hole National Battlefield Consumptive Use

| Place of Use | Total Volume (ac-ft) | Maximum Flow Rate (gpm) |
|-------------------|----------------------------|-------------------------------|
| Visitor center | | |
| Museum | | |
| Maintenance area | | |
| Residences | | |
| Picnic area | | |
| Irrigation | | |
| Total for all use | 7.14 | 50 |

3. Instream Flow

The North Fork of the Big Hole River is designated a Category 4 stream where it flows over the reserved land of BHNB. The United States has a reserved water right for

instream flow on the North Fork of the Big Hole River where it flows over the reserved land of BHNB. The reserved water right for instream flow is quantified and defined as follows:

a. Instream Flow Quantification for November through March: The United States has a reserved water right for instream flow on the North Fork of the Big Hole River at the point the river enters the reserved land of BHNB in the amount of 10 cfs for November through March. The instream flow water right is subordinate to (1) any use recognized under state law with a priority date before January 1, 1993; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use pursuant to Article II.

b. Instream Flow Quantification for April through October: The United States has a reserved water right for instream flow on the North Fork of the Big Hole River for April through October in the amount of water left in the river after satisfaction of current and future consumptive uses pursuant to state law in the amounts up to but no greater than provided in Table 2, provided, that the limits of Table 2 notwithstanding, the instream flow water right of the United States is subordinate to (1) any water rights recognized under state law with a priority date before January 1, 1993; (2) any use considered non-consumptive as

1 defined by this Compact; and (3) any use of groundwater not
 2 included in the calculation of consumptive use pursuant to
 3 Article II.

4 TABLE 2

5 State Law Based

6 Total Current and Future Consumptive Use Rights (cfs)

7 Tributary to the Reserved Portion of the

8 North Fork of the Big Hole River

| 9 Month | Consumptive Use |
|----------|-----------------|
| 10 April | 4.85 |
| 11 May | 23.85 |
| 12 June | 18.70 |
| 13 July | 4.05 |
| 14 Aug. | 1.75 |
| 15 Sept. | 1.35 |
| 16 Oct. | 1.50 |

17 4. Nothing in this Compact may affect an existing right
 18 to divert water from a point within BHNB and transport it
 19 for use off BHNB.

20 B. Bighorn Canyon National Recreation Area

21 The parties were unable to finalize agreement on
 22 quantification of the water rights for BCNRA prior to the
 23 effective date of this Compact. The parties agree to
 24 continue to pursue, in good faith, quantification of water
 25 rights, and further agree that all other relevant provisions

1 of this Compact apply to a settlement of this water right
 2 through this process. In the event the parties are unable to
 3 agree on quantification, the United States retains its right
 4 to have the quantity of any reserved water right for BCNRA
 5 adjudicated in a state or federal court of competent
 6 jurisdiction.

7 C. Glacier National Park

8 1. Priority Date

9 The United States has a priority date of May 11, 1910
 10 for reserved water rights described in this Compact for GNP.
 11 The United States recognizes that this date is junior to the
 12 priority dates for reserved water rights of the Confederated
 13 Salish and Kootenai Tribes of the Flathead Indian
 14 Reservation, and the Blackfeet Tribe of the Blackfeet Indian
 15 Reservation.

16 2. Consumptive Use

17 The United States has a reserved water right for current
 18 and future consumptive use for the purposes of GNP as set
 19 forth in Table 3. The period of use shall be from January 1
 20 through December 31. The source and place of use shall be as
 21 set forth more specifically in the Abstract. The place of
 22 use or point of diversion of a consumptive use water right
 23 at GNP shall include any non-reserved land within GNP
 24 boundaries as the boundaries exist on the effective date of
 25 this Compact.

TABLE 3

United States National Park Service
Glacier National Park Consumptive Use

| Place of Use | Total Volume (ac-ft) | Maximum Flow Rate (gpm) |
|---|----------------------------|-------------------------------|
| <u>North Fork Flathead River Basin</u> | | |
| Station, campground | 4.7 | 70 |
| Backcountry Use | 1.98 | |
| Backcountry Patrol Cabins | 2.06 | 55 |
| <u>Middle Fork Flathead River Basin</u> | | |
| McDonald Creek areas | 246.00 | 1720 |
| Middle Fork areas | 0.70 | 10 |
| Backcountry Use | 2.42 | |
| Backcountry Patrol Cabins | 2.06 | 55 |
| <u>Saint Mary River Basin</u> | | |
| Northern Border areas | 2.20 | 20 |
| Many Glacier areas | 166.40 | 600 |
| Saint Mary areas | 128.40 | 915 |
| Backcountry Use | 2.02 | |
| Backcountry Patrol Cabins | 1.50 | 40 |
| <u>Two Medicine River Basin</u> | | |
| Two Medicine areas | 6.40 | 70 |

| | | |
|--|--------|---|
| Backcountry Use | 0.38 | |
| Backcountry Patrol Cabins | 0.19 | 5 |
| <u>Cut Bank River Basin</u> | | |
| Backcountry Use | 0.18 | |
| Backcountry Patrol Cabins | 0.19 | |
| <u>Milk River Basin</u> | | |
| Backcountry Use | 0.02 | |
| GNP TOTAL | 567.80 | |
| 3. <u>Instream Flow Right</u> | | |
| a. <u>Category 1:</u> | | |
| i. <u>Identification:</u> | | |
| The following streams are designated as "Category 1:" | | |
| Sage, Spruce, Kishenehn, Starvation, Kintla, Red | | |
| Medicine Bow, Agassiz, Ford, Parke, Long Bow, Akokala, Numa, | | |
| Pocket, Jefferson, Bowman, Rainbow, Cummings, Logging, | | |
| Anaconda, McGee, Camas, Fern, Fish, Howe, Longfellow, | | |
| Trapper, Continental, Flattop, Kipp, Cattle Queen, Ahern, | | |
| Mineral, Alder, Haystack, Logan, Hidden, Avalanche, Snyder, | | |
| Sprague, Walton, Lincoln, Thompson, Pacific, Stimson, Nyack, | | |
| Peril, Pinchot, Elk, Coal, Muir, Park, Debris, Ole, Shields, | | |
| Autumn, Upper Bear, Boundary, Olson, South Fork Valentine, | | |
| Valentine, Kootenai, Pass, Camp, Cleveland, Street, | | |
| Whitecrow, Redgap, Lee, Otatso, Kennedy, Windy, Appekunny, | | |
| Ptarmigan, Iceberg, Wilbur, Cataract, Allen, Swiftcurrent, | | |
| Boulder, Two Dog, Rose, Baring, Siyeh, Reynolds, Virginia, | | |

1 Medicine Owl, Hudson Bay, Red Eagle, Atlantic, North Fork
 2 Cut Bank, Lake, Dry Fork, Aster, Paradise, Appistoki, Two
 3 Medicine, Fortymile, Fortyone Mile, Midvale, Railroad,
 4 Coonsa, Long Knife, Jackson, Grinnell, Kaina, Lunch,
 5 Pyramid, Thunderbird and Upper Summit Creeks and Waterton,
 6 St. Mary, North Fork Belly, Mokowanis and Belly Rivers.

7 ii. Instream Flow

8 The United States has a reserved water right for
 9 instream flow on the Category 1 streams in the amount of the
 10 entire flow of the streams, less any United States'
 11 consumptive use rights described in this Compact. This
 12 reserved water right ends at the point the stream exits the
 13 reserved land of GNP. The relationship between this water
 14 right and a water right to water stored within GNP held by
 15 the United States shall be governed by the rule of priority.

16 b. Category 1a Streams

17 i. Identification:

18 The following streams are designated as "Category 1a:"
 19 Apgar, Canyon, Dutch, Harrison, McDonald, and Quartz
 20 Creeks.

21 ii. Instream Flow:

22 (a) The United States has a reserved water right for
 23 instream flow on the Category 1a streams in the amount of
 24 the entire flow of the streams, less (1) any United States'
 25 consumptive use rights described in this Compact; and (2)

1 all water rights appurtenant to non-federal land within the
 2 boundaries of GNP recognized under state law with a priority
 3 date before January 1, 1993. This reserved water right ends
 4 at the most downstream point that the stream exits the
 5 reserved land of GNP.

6 (b) In the event all non-federal land on a Category 1a
 7 stream is acquired by the United States for the purpose of
 8 addition to GNP, the stream may be reclassified as a
 9 Category 1 stream at the request of the United States.

10 c. Category 4 Streams

11 i. Identification:

12 The following streams are designated as Category 4: the
 13 North Fork of the Flathead River, the Middle Fork of the
 14 Flathead River, Divide, Jule, Rubideau and Wild Creeks.

15 ii. Instream Flow for the North and Middle Forks of the
 16 Flathead River:

17 The United States has a reserved water right for
 18 instream flow on the North and Middle Forks of the Flathead
 19 River in the amount of the entire flow of the rivers, less
 20 any United States' consumptive use rights described in this
 21 Compact provided that, the instream flow water right is
 22 subordinate to 1) all water rights recognized under state
 23 law with a priority date before January 1, 1993, 2) future
 24 consumptive use rights calculated according to Article II up
 25 to the limits set forth in Table 4; (3) any use considered

1 non-consumptive as defined by this Compact; and (4) any use
 2 of groundwater not included in the calculation of
 3 consumptive use according to Article II. This reserved water
 4 right ends at the most downstream point that the River forms
 5 the boundary of the reserved land of GNP.

6 TABLE 4
 7 State Law Based
 8 Future Consumptive Use Rights (cfs)
 9 Tributary to the Reserved Portion of the Flathead River

| 10 Month | 11 North Fork Flathead River | 12 Middle Fork Flathead River |
|----------|---------------------------------|----------------------------------|
| 13 Jan. | 14 7.5 | 15 7.1 |
| 16 Feb. | 17 7.2 | 18 6.9 |
| 19 Mar. | 20 8.9 | 21 8.1 |
| 22 April | 23 # | 24 # |
| 25 May | # | # |
| June | # | # |
| July | 40.5 | # |
| Aug. | 16.2 | 13.7 |
| Sept. | 11.8 | 9.7 |
| Oct. | 11.8 | 10.6 |
| Nov. | 12.0 | 11.6 |
| Dec. | 9.0 | 9.2 |

The amount of water available for future
 consumptive use in these months shall be an amount

1 equivalent to the flow rate for all consumptive
 2 uses recognized under state law on December 31,
 3 1992. The amount shall be adjusted to reflect the
 4 flow rates in a decree issued by a state or federal
 5 court of competent jurisdiction after December 31,
 6 1992. At such time as final decrees are entered in
 7 these basins, the Department shall tabulate these
 8 rights, insert the appropriate amounts into Table
 9 4, and submit the revised Table to the United
 10 States and the state for inclusion in this Compact.
 11 Revision of Table 4 to reflect this agreement shall
 12 not be deemed a modification of this Compact.

13 iii. Instream Flow for Divide, Jule, Rubideau and Wild
 14 Creeks

15 The United States has a reserved water right for
 16 instream flow on Divide, Jule, RUBIDEAU, and Wild Creeks in
 17 the amount of the entire flow of the stream, less any United
 18 States' consumptive use rights described in this Compact.
 19 This water right ends at the most downstream point that the
 20 stream exits or no longer forms the boundary to the reserved
 21 land of GNP. This right is subject to the provisions of
 22 Article V, section A., and (1) on Divide Creek, is
 23 subordinate to any water rights recognized under state law
 24 with a priority date before January 1, 1993; and (2) on
 25 Rubideau Creek, is subordinate to any water rights

1 recognized under state law with a priority date before
 2 January 1, 1993, provided that the use of such right is
 3 consistent with federal law.

4 4. Lakes

5 The United States has a reserved water right for the
 6 maintenance of natural water levels in all naturally
 7 occurring lakes within the boundaries of GNP for the purpose
 8 of preserving unimpaired these Park resources. The water
 9 right for the maintenance of lake levels is subordinate to
 10 (1) any United States' consumptive use rights described in
 11 this Compact; and (2) any water right recognized under state
 12 law with a priority date before January 1, 1993. The named
 13 and unnamed lakes in which the United States has a reserved
 14 water right are those set forth specifically in the
 15 Abstract.

16 D. Grant Kohrs Ranch National Historic Site

17 The Grant Kohrs Ranch National Historic Site in Montana
 18 does not include reserved land. The United States may apply
 19 for a permit to appropriate water or seek recognition of any
 20 existing water rights in accordance with state law.

21 E. Little Bighorn Battlefield National Monument

22 The parties were unable to finalize agreement on
 23 quantification of the water rights for LBBNM prior to the
 24 effective date of this Compact. For the purposes of
 25 settlement of the reserved water rights for land

1 administered by the National Park Service in Montana, the
 2 parties agree that a water right for instream flow is
 3 necessary for the historic purposes of LBBNM. The parties
 4 agree to continue to pursue, in good faith, quantification
 5 of water rights and further agree that all other relevant
 6 provisions of this Compact apply to a settlement of this
 7 water right through this process. In the event the parties
 8 are unable to agree on quantification, the United States
 9 retains its right to have the quantity of any reserved water
 10 right for LBBNM adjudicated in a state or federal court of
 11 competent jurisdiction.

12 F. Nez Perce National Historical Park

13 The Nez Perce National Historical Park in Montana does
 14 not include reserved land. The United States may apply for a
 15 permit to appropriate water or seek recognition of any
 16 existing water rights in accordance with state law.

17 G. Yellowstone National Park

18 1. Priority Date

19 The United States has a priority date of March 1, 1872
 20 for the reserved water rights described in this Compact for
 21 YNP.

22 2. Consumptive Use

23 The United States has a reserved water right for current
 24 and future consumptive use for the purposes of YNP as set
 25 forth in Table 5. The period of use shall be from January 1

1 through December 31. The source and place of use shall be as
 2 set forth more specifically in the Abstract. The place of
 3 use or point of diversion of a consumptive use water right
 4 at YNP shall include any non-reserved land within YNP as the
 5 boundaries exist on the effective date of this Compact.

6 TABLE 5

7 United States National Park Service
 8 Yellowstone National Park Consumptive Use

| 9 Place of Use | Total | Maximum |
|-----------------------------------|---------|-----------|
| 10 | Volume | Flow Rate |
| 11 | (ac-ft) | (gpm) |
| 12 <u>Yellowstone River Basin</u> | | |
| 13 North Entrance | 1.70 | 35 |
| 14 Stephens Creek facilities | 12.00 | 50 |
| 15 TW facilities (Gardiner) | 58.70 | 300 |
| 16 NE Entrance | 15.60 | 50 |
| 17 Backcountry Use | 10.70 | |
| 18 Backcountry Patrol Cabins | 2.00 | 15 |
| 19 Day Use Areas | 2.40 | 6 |
| 20 <u>Gallatin River Basin</u> | | |
| 21 NW Entrance Area | 15.00 | 50 |
| 22 Backcountry Use | 2.80 | |
| 23 Backcountry Patrol Cabins | 0.50 | 10 |
| 24 Day Use Areas | 0.60 | 6 |
| 25 <u>Madison River Basin</u> | | |

| | | |
|---|--------|-----|
| 1 West Entrance | 48.90 | 200 |
| 2 Backcountry Use | 2.80 | |
| 3 Backcountry Patrol Cabins | 0.50 | 10 |
| 4 Day Use Areas | 0.70 | 6 |
| 5 YNP TOTAL | 174.90 | |
| 6 3. <u>Instream Flow Right</u> | | |
| 7 a. <u>Category 1:</u> | | |
| 8 i. <u>Identification:</u> | | |
| 9 The following streams are designated as "Category 1:" | | |
| 10 Black Bear Canyon, Black Butte, Blacktail Deer, Cougar, | | |
| 11 Daly, Duck, Fan, Grayling, Landslide, Mol Heron, Pebble, | | |
| 12 Specimen, Stephens, Upper Reese, and Wickiup Creeks, and the | | |
| 13 Gardner River. | | |
| 14 ii. <u>Instream Flow:</u> | | |
| 15 The United States has a reserved water right for | | |
| 16 instream flow on the Category 1 streams in the amount of the | | |
| 17 entire flow of the streams, less any United States' | | |
| 18 consumptive use rights described in this Compact. This | | |
| 19 reserved water right ends at the most downstream point that | | |
| 20 the stream exits the reserved land of YNP. | | |
| 21 b. <u>Category 2:</u> | | |
| 22 i. <u>Identification:</u> | | |
| 23 The following streams are designated as "Category 2:" | | |
| 24 Bacon Rind, Buffalo, Cottonwood, Coyote, Hellroaring, | | |
| 25 Little Cottonwood, and Snowslide Creeks. | | |

1 Dec. 0.2 0.1 1.8 0.4
 2 iii. The provisions of Article III, section G.3.c.ii
 3 notwithstanding, in the event of a period of low flow such
 4 that Crevice, Dry Canyon, Slough, or Teepee Creeks fall
 5 below the critical levels of instream flow shown in Table 7
 6 at the point the stream enters the reserved land of YNP, the
 7 United States' water right for instream flow is not
 8 subordinate to consumptive use water rights recognized under
 9 state law with a priority date on or after January 1, 1993.

10 TABLE 7

11 Low Stream Flow Levels at which Subordination is Limited (cfs)

| 12 Month | Crevice | Dry Canyon | Slough | Teepee |
|----------|---------|------------|--------|--------|
| 13 Creek | Creek | Creek | Creek | Creek |
| 14 Jan. | 3.8 | 1.1 | 28.9 | 6.5 |
| 15 Feb. | 4.5 | 1.0 | 30.6 | 6.5 |
| 16 Mar. | 5.2 | 1.2 | 35.4 | 7.7 |
| 17 April | 20.2 | 4.7 | 106.4 | 23.7 |
| 18 May | 71.8 | 24.0 | 376.2 | 84.6 |
| 19 June | 63.8 | 22.9 | 425.6 | 100.1 |
| 20 July | 18.7 | 6.6 | 138.7 | 33.2 |
| 21 Aug. | 8.1 | 3.1 | 55.2 | 14.9 |
| 22 Sept. | 7.0 | 2.0 | 44.2 | 10.9 |
| 23 Oct. | 7.1 | 1.9 | 46.0 | 10.8 |
| 24 Nov. | 5.2 | 1.5 | 39.5 | 9.1 |
| 25 Dec. | 3.9 | 1.4 | 34.1 | 8.1 |

1 d. Category 4:
 2 The following streams are designated as Category 4: Soda
 3 Butte Creek within the state, and the Gallatin, Madison and
 4 Yellowstone Rivers where they flow within or form the
 5 boundary to reserved land of YNP within the state.

6 i. Soda Butte Creek

7 (1) The United States has a reserved water right for
 8 instream flow on Soda Butte Creek in the amount of the
 9 entire flow of the stream, less any United States'
 10 consumptive use rights described in this Compact, provided
 11 that, the instream flow right is subordinate to: (a) the sum
 12 of any water rights recognized under state law with a
 13 priority date before January 1, 1993, plus any future
 14 consumptive use rights calculated according to Article II,
 15 until the limit on total current and future consumptive use
 16 set forth in Table 8 is reached; (b) any use considered
 17 non-consumptive as defined by this Compact; and (c) any use
 18 of groundwater not included in the calculation of
 19 consumptive use according to Article II.

20 TABLE 8

21 State Law Based

| 22 Total Current and Future Consumptive Use Rights (cfs) |
|--|
| 23 Tributary to the Reserved Portion of Soda Butte Creek |
| 24 Month |
| 25 Jan. 0.3 |

| | | |
|----|-------|------|
| 1 | Feb. | 0.3 |
| 2 | Mar. | 0.2 |
| 3 | April | 0.1 |
| 4 | May | 6.2 |
| 5 | June | 17.5 |
| 6 | July | 6.4 |
| 7 | Aug. | 2.4 |
| 8 | Sept. | 0.8 |
| 9 | Oct. | 0.7 |
| 10 | Nov. | 0.5 |
| 11 | Dec. | 0.3 |

12 (2) The provisions of Article III, section G.3.d.i.(1)

13 notwithstanding, in the event of a period of low flow such

14 that Soda Butte Creek falls below the critical levels of

15 instream flow shown in Table 9 at the point the stream

16 enters the reserved land of YNP, the United States' water

17 right for instream flow shall be subordinate only to: (a)

18 any water right for domestic use of 35 gpm or less and to

19 any water right held by an incorporated or unincorporated

20 municipality, recognized under state law with a priority

21 date before January 1, 1993; (b) any use considered

22 non-consumptive as defined by this Compact; and (c) any use

23 of groundwater not included in the calculation of

24 consumptive use according to Article II.

25 (3) In the event that the Congress of the United States

1 repeals the Wilderness designation assigned to the land over

2 which Republic and Hayden Creeks and two unnamed tributaries

3 to Soda Butte Creek flow in Wyoming, or otherwise makes

4 water from such tributaries available for appropriation in

5 Wyoming, the state may seek modification of Article III,

6 section G.3.d.i.(2). of this Compact as provided in Article

7 VI, section A.2.

8 TABLE 9

9 Low Stream Flow Levels at which Subordination is Limited (cfs)

10 Soda Butte Creek

| 11 | Month | Flow |
|----|-------|-------|
| 12 | Jan. | 5.4 |
| 13 | Feb. | 5.1 |
| 14 | Mar. | 4.0 |
| 15 | April | 1.7 |
| 16 | May | 116.9 |
| 17 | June | 332.5 |
| 18 | July | 120.7 |
| 19 | Aug. | 46.4 |
| 20 | Sept. | 15.3 |
| 21 | Oct. | 14.2 |
| 22 | Nov. | 9.3 |
| 23 | Dec. | 6.3 |

24 ii. The Gallatin, Madison and Yellowstone Rivers

25 The United States has a water right for instream flow on

1 the Gallatin, Madison and Yellowstone Rivers in the amount
 2 of the entire flow of the streams, less any United States'
 3 consumptive use rights described in this Compact, provided
 4 that, the right is subordinate to: (1) the sum of all water
 5 rights recognized under state law with a priority date
 6 before January 1, 1993, plus any future consumptive use
 7 rights calculated according to Article II, until the limit
 8 on total current and future consumptive use rights set forth
 9 in Table 10 is reached; (2) any use considered
 10 non-consumptive as defined by this Compact; and (3) any use
 11 of groundwater not included in the calculation of
 12 consumptive use according to Article II.

13 TABLE 10

14 State Law Based

15 Total Current and Future Consumptive Use Rights (cfs)

16 Tributary to the Reserved Portion of these Rivers

| 17 | | Gallatin | Madison | Yellowstone |
|----|-------|----------|---------|-------------|
| 18 | Month | River | River | River |
| 19 | Jan. | 3.1 | 19.9 | 41.2 |
| 20 | Feb. | 3.1 | 19.7 | 40.6 |
| 21 | Mar. | 3.5 | 20.0 | 44.5 |
| 22 | April | 9.8 | 24.3 | 73.7 |
| 23 | May | 39.3 | 40.9 | 284.7 |
| 24 | June | 48.0 | 40.2 | 556.7 |
| 25 | July | 15.7 | 24.7 | 335.0 |

| | | | | |
|---|-------|-----|------|-------|
| 1 | Aug. | 5.8 | 21.4 | 156.5 |
| 2 | Sept. | 4.4 | 21.1 | 96.0 |
| 3 | Oct. | 4.6 | 21.4 | 75.0 |
| 4 | Nov. | 4.2 | 21.0 | 58.4 |
| 5 | Dec. | 3.8 | 20.4 | 47.2 |

6 4. Hot Springs tributary to Bear Creek and the
 7 Yellowstone River

8 The hot springs that contribute to Bear Creek outside
 9 the boundaries of YNP are important to maintenance of
 10 biologic values of reserved water in the Yellowstone River
 11 downstream from the confluence with Bear Creek. As part of
 12 the settlement of the reserved water right for YNP, the
 13 state agrees to grant the United States a water right under
 14 state law to all of the natural flow of the Bear Creek hot
 15 springs located at the mouth of Bear Creek in S1/2 S1/2,
 16 sec. 19, T9S, R9E, Montana Principle Meridian. The priority
 17 date is the effective date of this Compact.

18 5. Lakes

19 The United States has a reserved water right for the
 20 maintenance of natural water levels in all naturally
 21 occurring lakes within the boundaries of YNP for the purpose
 22 of preserving unimpaired these Park resources. The water
 23 right for the maintenance of lake levels is subordinate to
 24 (1) any United States' consumptive use rights described in
 25 this Compact; and (2) any water right recognized under state

1 law with a priority date before January 1, 1993. The named
2 and unnamed lakes in which the United States has a reserved
3 water right are those set forth more specifically in the
4 Abstract.

5 H. Emergency Fire Suppression

6 The use of water for emergency fire suppression benefits
7 the public, and is necessary for the purposes of the various
8 Park reservations. The United States, may as part of its
9 reserved water right, divert water for fire suppression at
10 all of the National Park Service Units as needed, and
11 without a definition of the specific elements of a
12 recordable water right. Use of water for fire suppression
13 shall not be deemed an exercise of the United States'
14 reserved water rights for consumptive use or a violation of
15 its reserved water rights for instream flow.

16 ARTICLE IV

17 YELLOWSTONE CONTROLLED GROUNDWATER AREA

18 A. Statement of Intent

19 Yellowstone National Park was reserved for the express
20 purpose of "preservation, from injury or spoliation, of all
21 timber, mineral deposits, natural curiosities, or wonders
22 within said park, and their retention in their natural
23 condition." 17 Stat. 32. The parties agree that Congress
24 reserved water necessary to preserve the hydrothermal
25 features within the reserved land of YNP. These reserved

1 water rights have priorities as of the date on which the
2 land was reserved.

3 The parties understand that knowledge of the
4 interrelationship of hydrothermal features within YNP, the
5 hydrothermal system that supports those features, and
6 groundwater in surrounding areas of Montana will benefit
7 from increased study. The parties agree that the
8 hydrothermal features of YNP are a unique and irreplaceable
9 resource and represent one of the few undisturbed
10 hydrothermal systems in the United States.

11 This Compact does not recognize a reserved water right
12 to groundwater outside the boundaries of the reserved land
13 of YNP. However, the parties agree that restrictions shall
14 be placed on the development of groundwater adjacent to YNP
15 to the extent necessary to prevent adverse effect on the
16 reserved water right to groundwater within YNP. The parties
17 agree that the goal of establishment and administration of
18 the Yellowstone Controlled Groundwater Area shall be to
19 allow no impact to the hydrothermal system within the
20 reserved land of YNP.

21 B. Findings

22 Ratification of this Compact by the Montana legislature
23 constitutes a finding that:

24 1. unrestricted use of groundwater adjacent to
25 Yellowstone National Park is likely to interfere with the

1 water rights reserved by the United States in 1872, 1929,
2 1930, and 1932, for the preservation of hydrothermal
3 features within YNP;

4 2. prevention of adverse effect on the United States'
5 reserved water right to groundwater within the reserved land
6 of YNP is a benefit to the state and to the United States;

7 3. the public interest and welfare requires that a
8 corrective control be adopted to regulate groundwater
9 development adjacent to YNP; and

10 4. the cooperative state-federal management and
11 oversight established by this Article is an effective means
12 to achieve protection of the reserved water right to
13 groundwater necessary to preserve the hydrothermal system
14 within the reserved land of YNP.

15 C. General Provisions

16 1. Establishment: The Yellowstone Controlled
17 Groundwater Area or "Area" is hereby established and shall
18 be defined and administered according to this Compact.

19 2. Funding: The United States agrees that it receives
20 substantial benefit from the establishment and
21 administration of the Yellowstone Controlled Groundwater
22 Area, and that the national and international public benefit
23 extends far beyond the boundaries of the state. Thus, the
24 United States agrees that the relatively small population of
25 the state should not bear the entire cost of protection of

1 the United States' reserved water right. To this end, the
2 Department of the Interior agrees, subject to appropriations
3 by Congress, to reimburse the state for the expense of
4 establishment, administration and enforcement of the
5 Yellowstone Controlled Groundwater Area by the Department;
6 to fund the inventory, sampling, reporting and database
7 management by the Bureau; and, except as provided in Article
8 IV, section J.l.c., to fund the administrative costs and the
9 cost of any study or any other necessary activity pursuant
10 to this Article by the Technical Oversight Committee.

11 3. Implementation Contingent on Funds: Such funding
12 shall be accomplished pursuant to the terms and conditions
13 of a separate agreement which shall incorporate terms and
14 conditions necessary to specify the activities to be funded
15 and appropriate cost and accounting principles consistent
16 with generally applicable guidelines for federal funding in
17 similar circumstances, and consistent with the terms of this
18 Compact, including, but not limited to, the enumeration of
19 state expenses to be reimbursed in Article IV, section C.2.
20 The state is relieved of its obligation to establish,
21 administer, inventory, sample and maintain a database on the
22 Controlled Groundwater Area in the absence of a funding
23 agreement and the provision of the funds specified therein.
24 If the state is relieved of its obligation to implement all
25 or a portion of this Article, all other terms of this

1 Compact shall remain in effect, including all reserved water
2 rights established herein. Such agreement may be amended,
3 extended, renewed or terminated pursuant to its terms.

4 4. Interim Measures:

5 The state agrees that the following interim measures
6 shall apply from the effective date of this Compact until
7 the receipt of funds from the United States or December 31,
8 1995, whichever occurs first. The United States agrees to
9 reimburse the state for the cost of the interim measures,
10 subject to the appropriation of funds by Congress. The
11 parties agree that, even if funding is not received by
12 December 31, 1995 and interim measures are suspended, the
13 state and the Department of the Interior will continue to
14 recommend federal funding.

15 a. The Department shall issue the notice required by
16 Article IV, section F.

17 b. All permits issued within this time period within
18 the Area shall be conditioned on appropriation of water of
19 less than 60F., measured at the wellhead.

20 c. The Department shall require that each applicant for
21 a permit or person filing a notice of completion for
22 issuance of a certificate of water right to appropriate
23 groundwater within the Area report the following information
24 on filing of a well log: (1) well location to the
25 quarter-quarter-quarter-quarter section; (2) ground

1 elevation at the wellhead; (3) well depth; (4) water level;
2 (5) flow rate or maximum pump capacity; and (6) water
3 temperature measured at the wellhead.

4 d. The Department shall not issue a certificate of
5 water right for the appropriation of groundwater with a
6 temperature of 60 F. or more within the Area during this
7 time period. The Department shall order temporary
8 abandonment of any well in the Area for which a conditional
9 permit was issued or notice of completion for issuance of a
10 certificate of water right was filed within this time period
11 that produces groundwater with a temperature of 60F. or
12 more, measured at the wellhead. Temporary abandonment shall
13 be according to the rules of the Montana Board of Water Well
14 Contractors.

15 e. Following receipt of funds from the United States,
16 the Department shall notify the applicant that the
17 appropriation is subject to the terms of this Compact and
18 shall proceed according to the procedures set forth in this
19 Article. If funds are not received by December 31, 1995, the
20 Department may remove the order of temporary abandonment and
21 remove the condition on the permit or issue the certificate
22 of water right pursuant to state law. The Department shall
23 continue to require that each applicant for a permit or
24 certificate of water right to appropriate groundwater within
25 the Area report the following information on filing of a

1 well log: (1) well location to the
 2 quarter-quarter-quarter-quarter section; (2) ground
 3 elevation at the wellhead; (3) well depth; (4) water level;
 4 (5) flow rate or maximum pump capacity; and (6) water
 5 temperature measured at the wellhead.

6 5. Additional Studies: In addition to appropriations
 7 necessary to implement this Article, the state and the
 8 National Park Service agree to recommend federal funding for
 9 a baseline study of hydrothermal features in YNP and within
 10 the Controlled Groundwater Area, for continued monitoring of
 11 these features, and for geologic and geophysical studies
 12 including, but not limited to, geologic mapping, and
 13 monitoring of microearthquakes and subsidence in and
 14 adjacent to YNP. Implementation of this Article is not
 15 contingent on such appropriation.

16 6. Access for Studies: Consistent with the purposes of
 17 YNP, the United States agrees to allow reasonable access to
 18 and across YNP to the extent necessary to accomplish the
 19 data collection authorized by this Article or additional
 20 studies recommended pursuant to Article IV, section C.5. In
 21 seeking access, the Department or Bureau shall comply with
 22 the provisions of Article II, section I.3.

23 7. Effect of Modification of Area: It is the intent of
 24 the parties that the initial boundaries of the Area set
 25 forth in Article IV, section D. and Appendix 2, and initial

1 restrictions set forth in Article IV, section E. may be
 2 modified pursuant to Article IV, section J., or with respect
 3 to a single appropriation pursuant to Article IV, section
 4 G.2.c. and shall not be deemed to be a modification of this
 5 Compact. Any other modification of this Article shall be
 6 considered a modification of this Compact and is subject to
 7 the terms of Article VI, section A.2.

8 8. It is the intention of the Department of the
 9 Interior to protect the hydrothermal resources of
 10 Yellowstone National Park through the system established by
 11 Article IV.

12 a. The National Park Service agrees, consistent with 43
 13 U.S.C. 666, that enforcement will not be sought against the
 14 holder of a water right recognized under state law with a
 15 priority date on or after January 1, 1993, unless the NPS
 16 has, in the first instance, sought enforcement through the
 17 state under the terms of this Compact.

18 b. Notwithstanding the preceding subparagraph, if the
 19 National Park Service, in its judgment, determines that
 20 circumstances warrant, nothing in this Compact prohibits the
 21 United States from petitioning a state or federal court of
 22 competent jurisdiction for injunctive or declarative relief.
 23 Nothing in this Compact shall alter the courts' application
 24 of the test for injunctive relief; neither shall the
 25 administrative determination by the National Park Service to

1 seek relief in said court be deemed to establish or preclude
2 any determination in such judicial proceedings. Prior to
3 such an administrative determination, the National Park
4 Service agrees that it will provide the State written notice
5 and will identify a time frame during which it will await
6 the State's efforts to address the concern.

7 c. As to an action against the holder of a right to
8 withdraw groundwater recognized under state law with a
9 priority date before January 1, 1993, the United States
10 agrees that this Compact shall not be used or relied upon as
11 evidence to show that: (1) a reserved water right of the
12 United States exists appurtenant to any land other than the
13 reserved land of YNP; or (2) the priority date associated
14 with any portion of reserved land of YNP is other than the
15 date on which that portion of land was actually reserved.

16 D. Initial Boundaries of the Yellowstone Controlled
17 Groundwater Area

18 The initial boundaries of the Yellowstone Controlled
19 Groundwater Area and Subareas are defined to include the
20 area in the State of Montana located within the geographic
21 boundaries shown on Appendix 2. Appendix 2 is hereby
22 incorporated in this Compact by this reference as though set
23 forth here in full.

24 1. Subarea I:

25 The initial geographic boundaries of the subarea

1 referred to as Yellowstone Controlled Groundwater Subarea I
2 shall include all of the area in Montana North and West of
3 YNP within the boundary delineated as subarea I on Appendix
4 2.

5 2. Subarea II:

6 The initial geographic boundaries of the subarea
7 referred to as Yellowstone Controlled Groundwater Subarea II
8 shall include all the area in Montana North and West of YNP
9 within the boundary delineated as subarea II on Appendix 2.

10 E. Initial Restrictions on Groundwater Development
11 within the Yellowstone Controlled Groundwater Area

12 Until the initial boundaries or restrictions set forth
13 in this Article are modified pursuant to Article IV, section
14 J., the restrictions set forth in this section shall apply
15 to groundwater appropriations within the Area with a
16 priority date on or after January 1, 1993. Such
17 appropriations shall follow the procedural requirements of
18 Article IV, section G.

19 1. The parties agree that the initial restrictions on
20 development of groundwater and any modification thereof,
21 shall not apply to appropriations with a priority date
22 before January 1, 1993. The sole provisions of this Article
23 applicable to such appropriations shall be those providing
24 for inventory and sampling of current use set forth in
25 Article IV, section H. Groundwater appropriations with a

1 priority date before January 1, 1993 are subject to
 2 applicable state law including, but not limited to, issuance
 3 of a certificate of water right following final adjudication
 4 of existing water rights. Nothing herein waives the right of
 5 the United States to seek protection of its reserved water
 6 right for protection of the hydrothermal features within the
 7 reserved land of YNP from groundwater appropriations with a
 8 priority date before January 1, 1993 in a state or federal
 9 court of competent jurisdiction, provided that the
 10 limitation on use of this Compact in an action by the United
 11 States against any such appropriator set forth in Article
 12 IV, section C.8.c. shall apply.

13 2. The Department shall not issue a permit to
 14 appropriate groundwater that is hydrothermal discharge water
 15 as defined by this Compact unless either: (1) modification
 16 occurs pursuant to Article IV, section J. altering pertinent
 17 boundaries or restrictions; or (2) an application is
 18 approved pursuant to Article IV, section G.2.c. Unless
 19 modification occurs pursuant to Article IV, section J., the
 20 Department shall not limit an appropriation of groundwater
 21 that is not hydrothermal discharge water unless required to
 22 do so by Article II and III of this Compact or any other
 23 provision of state law.

24 F. General Notice of Establishment of the Yellowstone
 25 Controlled Groundwater Area

1 1. Notice: Within 120 days after the effective date of
 2 this Compact and within 60 days of any decision by the
 3 Department to modify the Area as set forth in Article IV,
 4 section J., the Department shall publish a notice of
 5 establishment or modification of the Area setting forth:

- 6 a. the description by legal subdivisions of all lands
 7 included in the controlled groundwater area;
- 8 b. the purpose of the controlled groundwater area or
 9 modification; and
- 10 c. the permit requirements, restrictions, inventory,
 11 sampling and monitoring applicable within each subarea.

12 2. Publication and Service: Such notice shall be
 13 published in a newspaper of general circulation in the
 14 county or counties in which the Area is located. The
 15 Department shall also serve a copy of the notice by mail on
 16 each well driller licensed in Montana whose address is
 17 within any county in which any part of the Area is located;
 18 on each well driller known by the Department to operate in
 19 the Area; on the Montana State Bureau of Mines and Geology;
 20 on the mayor or chair of the governing body of each county
 21 or incorporated municipality located in whole or in part
 22 within the Area; and on the United States. The Department
 23 may also serve notice on any other person or state or
 24 federal agency that the Department believes may be
 25 interested in or affected by the proposed designation or

1 modification of the Area. A copy of the notice shall be
2 mailed to each person's last known address according to the
3 records of the Department.

4 G. Appropriations of Groundwater within the Yellowstone
5 Controlled Groundwater Area With a Priority Date on or After
6 January 1, 1993

7 1. Appropriation of Groundwater within the Area with a
8 Priority Date on or after January 1, 1993 and before the
9 Effective Date of this Compact:

10 The initial restrictions on groundwater development set
11 forth in Article IV, section E. apply to appropriations of
12 groundwater with a priority date on or after January 1, 1993
13 and before the effective date of this Compact provided that
14 the following procedural requirements are met:

15 a. Within 120 days after the effective date of this
16 Compact or the receipt of adequate funds from Congress,
17 whichever occurs later, the Department shall provide the
18 United States with notice of all groundwater appropriations
19 within the Area that, according to the records of the
20 Department, have a priority date on or after January 1, 1993
21 and before the effective date of this Compact.

22 b. Subsequent to the notice provided for in Article IV,
23 section G.1.a. and up to 120 days following mailing of the
24 report on inventory provided in Article IV, section
25 H.1.b.iii., the United States may provide the Department

1 with credible information on any groundwater appropriation
2 within the Area with a priority date on or after January 1,
3 1993 and before the effective date of this Compact, showing
4 that the appropriation is of water with a temperature of
5 60F. or more.

6 c. If the United States provides the information set
7 forth in Article IV, section G.1.b., the Department shall,
8 within 60 days of receipt of the information, issue an order
9 requiring that the appropriator comply with the applicable
10 restrictions. The order is effective within 60 days of
11 issuance unless the appropriator enters an appearance to
12 contest the order.

13 d. If the appropriator enters an appearance to contest
14 the order, the Department shall: (1) issue an order staying
15 use of the appropriation pending final decision on the
16 matter by the Department; (2) set a date for a hearing; and
17 (3) proceed pursuant to the provisions for a contested case
18 under the Montana Administrative Procedures Act, Title 2,
19 Chapter 4 of the Montana Code Annotated, provided that in
20 such a proceeding the United States has the burden of
21 proving by a preponderance of the evidence that the
22 appropriation is of groundwater of 60F or more. If the
23 United States meets this burden, the appropriator shall
24 comply with procedures and restrictions set forth in Article
25 IV, section G.2.

1 2. Appropriations of Groundwater with a Priority Date
2 after the Effective Date of this Compact

3 a. General Provisions

4 i. All groundwater appropriations within the Area after
5 the effective date of this Compact are subject to this
6 Article. Applications and registration for a permit for the
7 appropriation of groundwater within the Area after the
8 effective date of this Compact shall include a statement of
9 whether the proposed use requires water with temperature of
10 60F. or more. In addition, the Department shall not issue a
11 permit for appropriation of groundwater unless the
12 requirements of Articles II and III are met, if applicable.

13 ii. A permit issued pursuant to this Article shall
14 provide that:

15 (1) The permittee shall install a device to meter total
16 volume of water use in compliance with rules promulgated by
17 the Department pursuant to Article IV, section I.5. The
18 Department shall specify the metering method and location of
19 installation. On or before January 15 of each year, the
20 permittee shall report annual use to the Bureau at: Montana
21 Bureau of Mines and Geology, Main Hall, Montana Tech, Butte
22 MT, 59701. Meters shall be made available to the permittee
23 at the Department of Natural Resources and Conservation
24 Regional Water Rights Office at: 111 North Tracy, Bozeman,
25 Montana, 59715. Meters shall be acquired for distribution by

1 the Department of Natural Resources and Conservation
2 Regional Water Rights Office as part of the inventory and
3 sampling program authorized by Article IV, section I.

4 (2) The Department has the authority to modify or
5 revoke a permit if the provisions listed below are
6 applicable, and all other administrative or judicial
7 enforcement authority provided under Title 85, part 2, of
8 the Montana Code Annotated applies to this part. The
9 Department may exercise its enforcement authority if (1) the
10 appropriator fails to allow access for sampling provided for
11 in Article IV, section H.; (2) the character of the
12 groundwater produced changes such that a restriction applies
13 pursuant to this Article; (3) new restrictions imposed
14 pursuant to Article IV, section J. are applicable; or (4)
15 the appropriator violates any other provision of this part.

16 (3) A permit to appropriate hydrothermal discharge
17 water may include limits and conditions on appropriation
18 including but not limited to (a) limits on total withdrawal
19 by day, month or year; (b) a requirement to adhere to a
20 system of rotation of use within the Area; and (c) a
21 provision adjusting the total withdrawal from two or more
22 wells in the area used by the same appropriator.

23 (4) A permit to appropriate hydrothermal discharge
24 water shall include any applicable monitoring requirement
25 recommended by the Working Group Report or recommendations

1 by the TOC superseding that report unless the applicant
 2 shows by clear and convincing evidence that such monitoring
 3 is inappropriate.

4 iii. If, subsequent to the effective date of this
 5 Compact, modification pursuant to Article IV, section J.
 6 removes the restrictions set forth in Article IV, section
 7 E., the monitoring recommended by the Working Group Report
 8 or as superseded by the TOC shall continue to apply unless
 9 the applicant shows by clear and convincing evidence that
 10 such monitoring is inappropriate, according to the criteria
 11 in the Working Group Report or as superseded by the TOC.

12 b. Appropriations of Groundwater with a Temperature of
 13 less than 60F

14 i. Registration and Application

15 (1) An applicant for an appropriation of groundwater of
 16 35 gpm or less, not to exceed 10 acre-feet per year shall
 17 register for a permit by filing a form prescribed by the
 18 Department that shall include, but not be limited to, a
 19 statement of whether the proposed use requires water with
 20 temperature of 60F. or more, the well location, and intended
 21 use and shall comply with the provisions of Article II and
 22 III, if applicable. The Department shall provide notice of
 23 the registration for a permit to the United States within 30
 24 days of the filing.

25 (2) An applicant for a permit to appropriate

1 groundwater of greater than 35 gpm or 10 acre-feet per year
 2 after the effective date of this Compact, shall comply with
 3 existing state law for permits to appropriate water and the
 4 limits on groundwater appropriations set forth in Articles
 5 II and III, if applicable. The Department may issue an
 6 interim permit for the proposed appropriation to an
 7 applicant seeking an appropriation for a use that does not
 8 require water with a temperature of 60F. or more if the
 9 requirements of this section are met.

10 ii. Drilling

11 (1) On filing a proper registration form, an applicant
 12 for an appropriation of 35 gpm or less, not to exceed 10
 13 acre-feet per year, with a proposed use that does not
 14 require water with a temperature of 60F. or more may
 15 complete the proposed well subject to state law and the
 16 terms of this Compact, but shall not put the water to
 17 beneficial use until issuance of a permit.

18 (2) Upon issuance of an interim permit, an applicant
 19 for an appropriation of greater than 35 gpm or 10 acre-feet
 20 per year may drill the well subject to state law and the
 21 terms of this Compact, but shall not put the water to
 22 beneficial use until issuance of a permit.

23 iii. Within 60 days of drilling of the well, the
 24 applicant or registrant shall provide the Department with a
 25 well log on a form provided by the Department. The well log

1 shall include well location to the
 2 quarter-quarter-quarter-quarter section; ground elevation at
 3 the wellhead; well depth; water level; flow rate or maximum
 4 pump rate; water temperature measured at the wellhead; and
 5 specific conductance of the water produced using a device
 6 provided by the Water Resources Regional Office.

7 iv. The Department shall forward a copy of the well log
 8 to the United States and to the Bureau on receipt.

9 v. Following receipt of the well log, the Department
 10 may inspect the well at a reasonable hour of the day to
 11 verify the information on the well log report. The United
 12 States may request to accompany the inspector as set forth
 13 in Article II, section I.4.

14 vi. The United States has 60 days from the mailing of
 15 the report to file an objection setting forth credible
 16 information that the appropriation is of groundwater with
 17 characteristics to which restrictions established pursuant
 18 to this Article apply.

19 vii. The Department may issue a permit to appropriate
 20 if: (1) the well log and any verification confirm that the
 21 appropriation is of water to which no restrictions pursuant
 22 to this Article apply; and (2) all other requirements of
 23 state law and this Compact have been met, unless the United
 24 States files an objection pursuant to Article IV, section
 25 G.2.b.vi. If the well log or verification indicate

1 appropriation of water to which restrictions pursuant to
 2 this Article apply or if the United States files a proper
 3 objection, the applicant shall be subject to the provisions
 4 of Article IV, section G.2.c.

5 viii. If a permit is issued, the applicant or registrant
 6 may complete the appropriation and apply the water to
 7 beneficial use.

8 ix. Within 60 days of completion of the appropriation,
 9 the permittee shall file a notice of completion with the
 10 Department pursuant to state law.

11 c. Appropriation of Groundwater with a Temperature of
 12 60F. or Greater

13 If an application or registration for a permit within
 14 the Area is for a use requiring groundwater with a
 15 temperature of 60F. or more or the well log or any
 16 verification indicates water of 60F. or more, the following
 17 provisions apply:

18 i. Subarea I - groundwater with a temperature of 85F.
 19 or more:

20 Groundwater of 85F. or more in Subarea I is presumed to
 21 be hydrothermal discharge water. The Department shall not
 22 process or grant an application for a permit to appropriate
 23 water with a temperature of 85F. or more in Subarea I,
 24 unless the appropriation is consistent with modification of
 25 restrictions pursuant to Article IV, section J., or pursuant

1 to the procedures set forth below. An application for an
 2 appropriation that proposes to do no more than divert the
 3 unenhanced natural surface flow of a spring that is not
 4 located in the mainstem of the reserved portion of a stream
 5 to which a reserved water right for instream flow is
 6 described in Article III of this Compact is not subject to
 7 these restrictions.

8 (1) The application shall set forth credible
 9 information that the proposed appropriation does not include
 10 contribution by hydrothermal discharge water;

11 (2) Within 30 days of receipt of the information the
 12 Department shall seek review of the application by the TOC.

13 (3) The TOC shall review the report to determine if the
 14 appropriation can take place without adverse effect on the
 15 hydrothermal system within YNP. In performing the review,
 16 the TOC shall utilize the best available scientific
 17 information. The TOC shall resolve doubt in favor of
 18 protection of the hydrothermal system within YNP.

19 (4) Within 60 days of the request by the Department,
 20 the TOC shall recommend, in a report to the Department, if,
 21 and under what conditions the appropriation could be allowed
 22 without adverse effect on the hydrothermal system within
 23 YNP. The TOC may recommend limits or conditions on the
 24 proposed appropriation that, in the opinion of the TOC,
 25 would allow the development while protecting the

1 hydrothermal system within YNP. The TOC shall also provide
 2 the Department with a dissenting report pursuant to Article
 3 IV, section J.1., if applicable.

4 (5) On receipt of the report or reports, the Department
 5 shall provide a copy to the United States and the applicant
 6 and shall schedule a hearing no less than 60 and no more
 7 than 90 days from mailing of the report.

8 (6) The hearing shall proceed as a contested case under
 9 the Montana Administrative Procedure Act, Title 2, Chapter 4
 10 of the Montana Code Annotated.

11 (7) The report or reports, data and other written
 12 information produced by the TOC shall be admissible in the
 13 hearing without further foundation and not subject to the
 14 hearsay objection, subject to the rights of any party or
 15 claimant to cross-examine the producer or drafter of the
 16 written material and to controvert the same by other
 17 evidence. The hearing officer may request that members of
 18 the TOC appear to provide expert testimony in the case.

19 (8) The report and recommendations provided by the TOC
 20 have a rebuttable presumption of validity for the purposes
 21 of Article IV. The dissenting report, if any, may be used as
 22 rebuttal evidence.

23 (9) If the report recommends denial of the application,
 24 the applicant may overcome the presumption by proving by
 25 clear and convincing evidence that the proposed

1 appropriation does not include hydrothermal discharge water.

2 (10) If the application is denied, the Department shall
3 order that the well be temporarily abandoned; or, if
4 multiple water zones are encountered, the zone of excess
5 temperature be closed to production. Abandonment shall be
6 according to the rules of the Montana Board of Water Well
7 Contractors unless alternative procedures are recommended by
8 the TOC. The abandonment order shall not be lifted until a
9 modification order pursuant to Section IV.J. allows the
10 appropriation or UNTIL THE DEPARTMENT determines that the
11 well should be permanently abandoned.

12 (11) Within 30 days of an order by the Department
13 pursuant to this section, appeal on the record may be made
14 to a state or federal court of competent jurisdiction. For
15 an appeal to state court, venue shall be the First Judicial
16 District in Helena and the review must be conducted
17 according to the procedures for judicial review of a
18 contested case under the Montana Administrative Procedures
19 Act, Title 2, Chapter 4, of the Montana Code Annotated.

20 ii. Subarea I - groundwater with a temperature of 60F.
21 or more, but less than 85F:

22 Appropriation of groundwater with a temperature of 60F.
23 or more, but less than 85F. in subarea I is subject to the
24 following provisions.

25 (1) The applicant shall provide credible information

1 that the water meets the following criteria:

2 (a) the proposed appropriation will do no more than
3 divert the unenhanced natural surface flow of a spring that
4 is not located in the mainstem of the reserved portion of a
5 stream to which a reserved water right for instream flow is
6 described in Article III of this Compact, or

7 (b) the proposed appropriation meets all of the
8 following criteria:

9 (i) The water temperature is the result of the normal
10 thermal gradient of the earth plus the mean annual air
11 temperature at the site plus 14F. Unless modified by the
12 TOC, the Department shall use the following equation to
13 estimate the water temperature expected:

14 $(0.01646 \times \text{the depth of the production zone in feet}) +$
15 $59.3F.$

16 If the temperature measured at the wellhead is equal to
17 or less than the temperature estimated by this equation, the
18 appropriation meets this criteria.

19 (ii) the concentration of soluble chloride is less than
20 ten parts per million; and

21 (iii) the well does not contain a production zone
22 completed within the Madison Group of formations as defined
23 by the Catalog of Stratigraphic Names for Montana, Bureau of
24 Mines and Geology, Special Publication 54, March 1971.

25 (2) The Department may issue a permit to appropriate

1 groundwater with a temperature of 60F or more, but less than
 2 85F. to an applicant that meets the above criteria and is in
 3 compliance with the provisions of Article IV, section G.2.c.
 4 unless (a) restrictions are consistent with modification
 5 pursuant to Article IV, section J.; or (b) the United States
 6 objects and shows by a preponderance of the evidence that
 7 the criteria have not been met or, for another scientific
 8 reason, the temperature is the result of contribution by
 9 hydrothermal discharge water.

10 (3) If the applicant fails to meet the above criteria
 11 or the United States meets its burden, the applicant shall
 12 comply with the provisions of Article IV, section G.2.c.i.
 13 for water or 85F or more.

14 (4) The three criteria set forth in Article IV, section
 15 G.2.c.ii.(1)(b) may be modified on recommendation by the
 16 TOC.

17 iii. Subarea II:

18 (1) Groundwater of 85F. or more in subarea II is
 19 presumed to be hydrothermal discharge water. The applicant
 20 shall follow the procedures of Article IV, section G.2.c.i.
 21 including review by the TOC, provided that, if a permit to
 22 appropriate is issued the monitoring recommended in the
 23 Working Group Report or as superseded by the TOC for subarea
 24 II, not subarea I, shall apply.

25 (2) An applicant who encounters groundwater of 60F. or

1 more but less than 85F. shall comply with the provisions of
 2 Article IV, section G.2.c.ii., provided that, if a permit to
 3 appropriate is issued the monitoring recommended in the
 4 Working Group Report or as superseded by the TOC for subarea
 5 II, not subarea I, shall apply.

6 3. Change in Character of Groundwater: Within 60 days
 7 of the receipt of information indicating a change in the
 8 character of the groundwater appropriated under a permit
 9 issued in the Area on or after January 1, 1993 that
 10 indicates the production of groundwater for which a
 11 restriction applies, the Department shall issue an order
 12 requiring that the appropriator comply with the limitations
 13 on appropriation of hydrothermal groundwater authorized in
 14 this Article. The order shall take effect 60 days following
 15 the date issued unless the appropriator appears to contest
 16 the order. If the appropriator appears to contest the order,
 17 the Department shall set a date for a hearing and proceed
 18 pursuant to the provisions for a contested case under the
 19 Montana Administrative Procedures Act, title 2, Chapter 4,
 20 of the Montana Code Annotated, provided that the
 21 appropriator shall have the burden to prove by a
 22 preponderance of the evidence that the water produced does
 23 not meet the criteria to which restrictions apply.

24 H. Inventory and Sampling of Groundwater

25 1. Initial Inventory

1 All groundwater appropriations in the Area with a
2 priority date before the effective date of this Compact
3 shall be inventoried as set forth below:

4 a. Notice of Inventory

5 Within 120 days after the effective date of this Compact
6 or the receipt of funding from the United States, whichever
7 occurs later, the Department shall serve notice by mail on
8 each person or public agency known from an examination of
9 the records in the Department's office to be an appropriator
10 of groundwater with a priority date before the effective
11 date of this Compact. The notice shall set forth:

12 i. the contents of the notice required in Article IV,
13 section F.; and

14 ii. a statement that within 3 years from the date of
15 notice the Bureau may visit the wellsite to measure
16 temperature; flow rate or maximum pump capacity; water
17 level, or pump level if the well cannot be entered; and may
18 collect a water sample for additional analysis.

19 b. Inventory

20 i. Within 3 years of notice pursuant to Article IV,
21 section H.1.a., a representative of the Bureau shall
22 inventory each well drilled pursuant to an appropriation
23 recognized under state law with a priority date before the
24 effective date of this Compact. The inventory shall be
25 considered complete when the Bureau has inventoried

1 substantially all of the wells that can be located and
2 accessed with reasonable diligence. The inventory shall
3 include, but not be limited to, the following:

4 (1) well location to the
5 quarter-quarter-quarter-quarter section;

6 (2) ground elevation at the wellhead;

7 (3) flow rate or maximum pump capacity;

8 (4) water level, or pump level if the well cannot be
9 entered;

10 (5) water temperature at the wellhead;

11 (6) specific conductance of the water at the wellhead;

12 (7) chloride content of the water at the wellhead;

13 (8) water samples from a representative number of wells

14 selected by the Bureau. The water samples shall be analyzed
15 by the Bureau, or by a qualified lab contracted by the
16 Bureau. Samples shall be analyzed for chemistry, and, if
17 applicable, gas and isotopes. Choice of analyses shall be at
18 the discretion of the Bureau using the Working Group Report
19 or a report by the TOC superseding the Working Group Report
20 as a guideline. The Bureau may consult with the TOC
21 concerning well selection and analysis; and,

22 (9) any additional information deemed necessary for
23 implementation of this Article by the Bureau in consultation
24 with the TOC.

25 ii. The inventory shall be prioritized to complete

1 Subarea I first.

2 iii. Within 6 months of completion of the inventory in
3 each Subarea, the Bureau shall provide a report to the
4 Department, the TOC, and the United States, verifying that
5 the inventory is complete and setting forth the data
6 obtained in the inventory. The report shall be made
7 available to the public by the Department. In addition, the
8 Bureau shall maintain an adequate database pursuant to
9 Article IV, section H.2.

10 2. Sampling Program and Database

11 a. Following the initial inventory of all current
12 groundwater appropriations in the Area provided for in
13 Article VI, section H.1., the Bureau shall sample wells
14 selected in consultation with the TOC and at a frequency
15 determined in consultation with the TOC. The wells may
16 include appropriations made prior to, on or after January 1,
17 1993. The number of wells sampled and the analyses performed
18 shall be as determined by the Bureau in consultation with
19 the TOC. Until superseded due to recommendation by the TOC,
20 the Working Group Report shall be used as a guideline in
21 making this determination. Within 6 months of the completion
22 of each inventory and sampling program, the Bureau shall
23 provide the Department, the TOC and the United States with a
24 report on the results.

25 b. The Bureau shall maintain an adequate database on

1 the Yellowstone Controlled Groundwater Area which shall
2 include, at a minimum, analyses of water chemistry,
3 temperature, well depth, well capacity and well location.

4 c. The United States agrees to provide an annual report
5 to the Bureau for incorporation into the database on the
6 water chemistry, temperature and flow rate of any well in
7 use or spring sampled in the portion of YNP within the
8 state, and may include such information for any well or
9 spring in the portion of YNP outside the state.

10 d. The information in the database shall be available
11 to the public through the Natural Resources Information
12 System, currently located at 1515 E. Sixth Avenue, Helena,
13 Montana 59620-1800.

14 I. Administration of the Yellowstone Controlled
15 Groundwater Area

16 1. The Yellowstone Controlled Groundwater Area
17 established by this Compact shall be administered pursuant
18 to applicable state law and the terms of this Compact.

19 2. In addition to the requirements imposed by state
20 law, the Department shall provide the United States with
21 notice of any application or registration for a permit to
22 appropriate groundwater within the Area in the same manner
23 and time as required by state law for notice to groundwater
24 appropriators in a controlled groundwater area.

25 3. The United States may be an objector to any

1 application or registration for a permit to appropriate
 2 groundwater or in a hearing for modification of a permit to
 3 appropriate groundwater within the Area pursuant to the
 4 provisions of Article IV, section G.

5 4. The Department shall, whenever possible, consolidate
 6 any proceedings on groundwater applications or registration
 7 pursuant to Articles II and III with any proceeding made
 8 necessary by this Article.

9 5. Within 2 years after the effective date of this
 10 Compact or the receipt of the requested funding from the
 11 United States, whichever occurs later, the Department is
 12 directed to promulgate such additional rules necessary to
 13 effectuate this Compact and to establish criteria which may
 14 be necessary to implement this Article. Said rules shall not
 15 alter the rights or obligations of the parties hereto. In
 16 doing so, the Department shall consult with the United
 17 States and the TOC. Until modified by the TOC, the
 18 Department shall adopt the Working Group Report to govern
 19 sampling, reporting and monitoring requirements, except as
 20 modified by Article IV, section G. In reviewing any permit
 21 to appropriate hydrothermal discharge water the Department
 22 shall consider the criteria set forth in the Working Group
 23 Report or a subsequent report by the TOC, including, but not
 24 limited to, the identification of risk associated with
 25 volume of appropriation and distance from the reserved land

1 of YNP.

2 J. Modification of the Yellowstone Controlled
 3 Groundwater Area

4 1. Technical Oversight Committee: Establishment and
 5 Authority

6 a. A joint federal-state Technical Oversight Committee
 7 is hereby established to review scientific evidence related
 8 to the Yellowstone Controlled Groundwater Area; to advise
 9 the Department on administration of the Area, including
 10 review of applications to appropriate water of 60F. or more;
 11 to consult with the Bureau on inventory and sampling; and to
 12 recommend modification of boundaries and restrictions.

13 b. The committee shall consist of five qualified
 14 scientists with experience related to hydrothermal systems.
 15 The committee members shall be appointed within six months
 16 following the effective date of this Compact: one appointed
 17 by the National Park Service; one appointed by the United
 18 States Geological Survey; one appointed by the Department;
 19 one appointed from the Montana University system by the
 20 Montana State Geologist; and one selected by the other four
 21 members. Appointments and selections shall be made, to the
 22 extent possible, to ensure that three of the qualified
 23 scientists with experience related to hydrothermal systems
 24 also have experience in (1) geochemistry; (2) geophysics;
 25 and (3) hydrogeology. Vacancies due to expiration of terms

1 or resignation of a member shall be filled in the same
 2 manner. Should the four members fail to agree on the
 3 selection of additional members within 60 days after
 4 appointment of all four members or within 30 days after a
 5 vacancy occurs, the following procedure shall be utilized:

6 (i) Within 5 days each member shall nominate one person
 7 for each vacancy and submit the nominations to a judge of
 8 the First Judicial District in Helena; and

9 (ii) A judge of the First Judicial District in Helena
 10 shall fill the vacancy by selecting a member from each set
 11 of nominations.

12 c. Each member shall serve a five-year term and shall
 13 be eligible for reappointment. Expenses of the members shall
 14 be born by the entity appointing the member. The per diem or
 15 salary, and travel expenses of the three members-at-large
 16 shall be born equally by the United States and the state,
 17 subject to the availability of funds. All other expenses of
 18 the TOC shall be born by the United States subject to
 19 Congressional appropriation as set forth in Article IV,
 20 section C.

21 d. The recommendation of any of the following by the
 22 TOC shall be based on a supermajority of four to one: (1)
 23 modification of the Area pursuant to Article IV, section J;
 24 (2) review of an application to appropriate groundwater with
 25 a temperature of 60F. or more; and (3) removal of any of the

1 criteria specified in Article IV, section G.c.ii.(1)(b).
 2 Failure to achieve a supermajority shall result in a
 3 recommendation of no modification or no permit approval. In
 4 the absence of a unanimous decision, the TOC shall provide
 5 both a report supporting the recommendation that there be no
 6 modification or no permit approval, and a dissenting report
 7 to the Department. In all other instances in which the TOC
 8 consults with or makes recommendations to the Department or
 9 the Bureau, recommendations shall be made by a simple
 10 majority of the entire committee.

11 e. The TOC shall:

12 i. review the boundaries of the Area and the Subareas;

13 ii. review the initial restrictions on groundwater
 14 development imposed pursuant to this Article, and future
 15 modifications of those restrictions;

16 iii. assess the cumulative impact of all development in
 17 the Area;

18 iv. review changes in the groundwater and hydrothermal
 19 systems revealed by inventory and analyses done by the
 20 Bureau, and any other pertinent scientific evidence;

21 v. review new scientific evidence pertinent to the
 22 Area;

23 vi. consult with the Bureau or the Department on
 24 request;

25 vii. present evidence and make recommendations to the

1 Department in accordance with Article IV, section J.2.

2 viii. review applications for a permit to appropriate
3 groundwater on request by the Department as set forth in
4 Article IV, section G.2.c.; and

5 ix. take any additional action necessary to implement
6 this Article.

7 f. The Department and the Bureau shall provide the TOC
8 with all information in their records regarding
9 appropriations of groundwater within the Area including
10 reports required by this Article.

11 g. The initial review shall take place within 1 year of
12 the receipt of the inventory report done by the Bureau
13 pursuant to Article IV, section H. Subsequent reviews shall
14 take place every 5 years following the initial inventory or
15 following the issuance of 75 permits to appropriate water
16 within the Area by the Department, whichever occurs first.
17 Additional review shall also take place on request by the
18 United States or the state.

19 h. Within 6 months of initiation of a review, the TOC
20 shall provide a report of the review, including any
21 recommendation for modification, and a dissenting report, if
22 any, to the Department and the United States.
23 Recommendations shall be based on a determination by a
24 supermajority of the entire TOC that the modification is
25 necessary to prevent adverse effect to the hydrothermal

1 system within the reserved land of YNP, or that modification
2 may be made without the threat of adverse effect on the
3 hydrothermal system within the reserved land of YNP. The
4 recommendation shall be made in good faith and based on
5 scientific evidence including, but not limited to, the
6 following:

7 i. in the case of extension of boundaries, the criteria
8 set out in the Working Group Report for designation of the
9 boundary of the Area to be enlarged is found to exist within
10 the proposed extension;

11 ii. the cumulative effect of groundwater development
12 within the Area or a portion of the Area has resulted in
13 declining hydraulic head and modification of boundaries or
14 restrictions are necessary to prevent adverse effect on the
15 hydrothermal system within the reserved land of YNP;

16 iii. changes in groundwater revealed by the inventory
17 and sampling program are such that modification is necessary
18 to prevent adverse effect on the hydrothermal system within
19 the reserved land of YNP;

20 iv. scientific evidence indicates that modification is
21 necessary to prevent adverse effect on the hydrothermal
22 system within the reserved land of YNP;

23 v. based on scientific evidence, restrictions can be
24 removed or boundary modifications made without the threat of
25 adverse effect to the hydrothermal system within the

1 reserved land of YNP.

2 2. Modification Pursuant to Review

3 a. Within 60 days of mailing of the report in Article
4 IV, section J.1.h., and if (1) the TOC recommends
5 modification; (2) the United States, state or a person with
6 property or water rights within the Area petitions for a
7 hearing; or (3) a person with an interest that would be
8 adversely affected by the recommendation, petitions for a
9 hearing, the Department shall provide for notice of a
10 hearing pursuant to state law.

11 b. The Department shall follow the rules for a
12 contested case under the Montana Administrative Procedures
13 Act, Title 2, Chapter 4 of the Montana Code Annotated. In
14 addition, the Department shall apply the following
15 provisions:

16 i. The report or reports, data and other written
17 information produced by the TOC shall be admissible in the
18 hearing without further foundation and not subject to the
19 hearsay objection, subject to the rights of any party or
20 claimant to cross-examine the producer or drafter of the
21 written material and to controvert the same by other
22 evidence. The hearing officer may request that members of
23 the TOC appear to provide expert testimony in the case. The
24 hearing officer shall also hear any oral and written
25 scientific evidence presented by the state, the United

1 States, any applicant for a permit to appropriate who has
2 requested review, and any person with property or water
3 rights in the Area, or an interest that would be adversely
4 affected by the recommended modification.

5 ii. The scientific evidence and recommendations
6 presented in the report by the TOC have a rebuttable
7 presumption of validity for the purposes of Article IV. The
8 Department shall adopt the recommendations of the TOC unless
9 the recommendation by the TOC is refuted by clear and
10 convincing scientific evidence. The dissenting report of the
11 TOC, if any, may be used as rebuttal evidence.

12 iii. The Department shall issue an order stating
13 findings of fact and conclusions of law.

14 c. Within 30 days of an order by the Department, a
15 person aggrieved by the order may appeal on the record to a
16 state or federal court of competent jurisdiction. For an
17 appeal to state court, venue shall be the First Judicial
18 District in Helena and the review must be conducted
19 according to the procedures for judicial review of a
20 contested case under the Montana Administrative Procedures
21 Act, Title 2, Chapter 4, of the Montana Code Annotated.

22 ARTICLE V

23 GENERAL PROVISIONS

24 A. No Effect on Tribal Rights or Other Federal Reserved
25 Water Rights:

1 1. Nothing in this Compact may be construed or
 2 interpreted in any manner to establish the nature, extent or
 3 manner of administration of the rights to water of an Indian
 4 Tribe in Montana, or of a water right of an individual that
 5 is derivative of such right, or of the United States on
 6 behalf of such tribe or tribal member. The relationship
 7 between the water rights of the National Park Service
 8 described herein and any rights to water of an Indian Tribe
 9 in Montana, or of a water right of an individual that is
 10 derivative of such right, or of the United States on behalf
 11 of such tribe or tribal member shall be determined by the
 12 rule of priority.

13 2. Nothing in this Compact is otherwise intended to
 14 conflict with or abrogate a right or claim of an Indian
 15 Tribe regarding boundaries or property interests in the
 16 State of Montana.

17 3. Nothing in this Compact may be construed or
 18 interpreted in any manner to establish the nature, extent or
 19 manner of administration of the rights to water of any other
 20 federal agency or federal lands in Montana other than those
 21 of the National Park Service. The exercise of a water right
 22 of the United States, if any, to water for a consumptive use
 23 on land administered by the United States Forest Service
 24 upstream of a water right to instream flow described in this
 25 Compact shall be allocated from the United States' share for

1 instream flow, not the state's share for consumptive use.

2 B. State Water Rights

3 Nothing in this Compact may limit the exclusive
 4 authority of the state, including the authority of a water
 5 commissioner authorized by state law, to administer all
 6 current and future water rights recognized under state law
 7 within and upstream of the reserved land covered by this
 8 Compact, provided that in administration of those water
 9 rights in which the United States has an interest, such
 10 authority is limited to that granted under federal law.

11 C. General Disclaimers

12 Nothing in this Compact may be construed or interpreted:

13 1. as a precedent for the litigation or the
 14 interpretation or administration of future compacts between
 15 the United States and the state; or of the United States and
 16 any other state;

17 2. as a waiver by the United States of its right under
 18 state law to raise objections in state court to individual
 19 water rights claimed pursuant to the state Water Use Act,
 20 Title 85, of the Montana Code Annotated, in the basins
 21 affected by this Compact;

22 3. as a waiver by the United States of its right to
 23 seek relief from a conflicting water use not entitled to
 24 protection under the terms of this Compact;

25 4. to establish a precedent for other agreements

1 between the state and the United States or an Indian tribe;

2 5. to determine the relative rights, inter sese, of

3 persons using water under the authority of state law or to

4 limit the rights of the parties or a person to litigate an

5 issue not resolved by this Compact;

6 6. to create or deny substantive rights through

7 headings or captions used in this Compact;

8 7. to expand or restrict any waiver of sovereign

9 immunity existing pursuant to federal law as of the

10 effective date of this Compact;

11 8. to affect the right of the state to seek fees or

12 reimbursement for costs or the right of the United States to

13 contest the imposition of such fees or costs, pursuant to a

14 ruling by a state or federal court of competent jurisdiction

15 or Act of Congress;

16 9. to affect in any manner the entitlement to or

17 quantification of other federal water rights. This Compact

18 is only binding on the United States with regard to the

19 water rights of the National Park Service, and does not

20 affect the water rights of any other federal agency.

21 D. Use of Water Right

22 Except as otherwise provided in this Compact, the rights

23 of the United States described in this agreement are federal

24 reserved water rights. Non-use of all or a part of the

25 federal reserved water rights described in this Compact

1 shall not constitute abandonment of the right. The federal

2 reserved water rights described in this Compact need not be

3 applied to a use deemed beneficial under state law, but

4 shall be restricted to uses necessary to fulfill the

5 purposes of the associated reserved land.

6 E. Appropriation Pursuant to State Law

7 Nothing in this Compact may prevent the United States

8 from seeking a permit to appropriate water under state law

9 for use outside the boundaries of the federal reservations

10 for which a water right is described in this Compact,

11 provided that, no such use may be included in the

12 calculation of total current or future consumptive use

13 rights allocated to use pursuant to state law by this

14 Compact, and provided further that, a water right obtained

15 in this manner shall be considered a state water right and

16 shall be administered pursuant to general provisions of

17 state law as provided in Article II, section J.2.b.

18 F. Reservation of Rights

19 The parties expressly reserve all rights not granted,

20 described or relinquished in this Compact.

21 G. Severability

22 Except as provided in Article IV, the provisions of this

23 Compact are not severable.

24 H. Multiple Originals

25 This Compact is executed in quintuplicate. Each of the

1 five (5) Compacts bearing original signatures shall be
2 deemed an original.

3 I. Notice

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

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

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

12 ARTICLE VI

13 FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

14 A. Binding Effect

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

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

1 b. except as otherwise provided in Article V, section
2 A., the United States, a person or entity of any nature
3 whatsoever using, claiming, or in any manner asserting a
4 right under the authority of the United States to the use of
5 water.

6 2. Following the effective date, this Compact shall not
7 be modified without the consent of both parties. Either
8 party may seek enforcement of this Compact in a court of
9 competent jurisdiction. Except as provided in Article IV
10 concerning the appropriation of funds, attempt to
11 unilaterally modify this Compact by either party shall
12 render this Compact voidable at the election of the other
13 party.

14 3. On approval of this Compact by a state or federal
15 court of competent jurisdiction and entry of a decree by
16 such court confirming the rights described herein, this
17 Compact and such rights are binding on all persons bound by
18 the final order of the court.

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

22 B. Disposition of Actions

23 Subject to the following stipulations and within one
24 hundred eighty (180) days of the effective date, the parties
25 shall submit this Compact to an appropriate state court or

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

13 1. Dismissal of Filed Claims: At the time the state
 14 courts approve the reserved water rights described in this
 15 Compact and enter a decree or decrees confirming the rights
 16 described herein, such courts shall dismiss, with prejudice,
 17 all of the water right claims specified in Appendix 3 to
 18 this Compact. If this Compact fails approval or a reserved
 19 water right described herein is not confirmed, the specified
 20 claims shall not be dismissed.

21 2. Disposition of Federal Suits: Within ninety (90)
 22 days of the issuance of a final decree or decrees by the
 23 state courts approving this Compact and confirming the
 24 reserved water rights described herein, and the completion
 25 of any direct appeals therefrom or the expiration of the

1 time for filing such appeal, the parties shall execute and
 2 file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to
 3 dismiss with prejudice those claims made by the United
 4 States for Glacier National Park in United States v.
 5 Aageson, No. CV-79-21-GP (D. Mont.); United States v. Abell,
 6 No. CV-79-33M (D. Mont.); and United States v. AMS Ranch,
 7 Inc., No. CV-79-22-GP (D. Mont.). This Compact may be filed
 8 as a consent decree in those federal suits, only if, prior
 9 to the dismissal of the federal suits as provided in this
 10 Article, it is finally determined in a judgement binding on
 11 the State of Montana that the state courts lack jurisdiction
 12 over some or all of the reserved water rights described in
 13 this Compact. Within one year of such judgment the United
 14 States agrees to commence such additional proceedings in the
 15 federal district court for the District of Montana as may be
 16 necessary to judicially confirm the reserved water rights
 17 described herein which are not included within an existing
 18 action.

19 C. Settlement of Claims

20 The parties intend that, with the exceptions noted
 21 herein, the water rights described in this Compact are in
 22 full and final settlement of the water right claims for the
 23 reserved land administered by the National Park Service in
 24 Montana on the effective date of this Compact. Pursuant to
 25 this settlement, by which certain federal reserved water

1 rights are expressly recognized by the state in this Compact
 2 and other water rights claims of the United States are
 3 expressly retained in Article III, sections B., D., E, and
 4 F., the United States hereby and in full settlement of any
 5 and all claims filed by the United States or which could
 6 have been filed by the United States for reserved land
 7 administered by the National Park Service in Montana
 8 relinquishes forever all said claims on the effective date
 9 of this Compact to water within the State of Montana for
 10 reserved land administered by the National Park Service. The
 11 state agrees to recognize the reserved water rights
 12 described and quantified herein, and shall, except as
 13 expressly provided for herein, treat them in the same manner
 14 as a water right recognized by the state.

15 D. The parties agree to seek enactment of legislation
 16 and to recommend appropriation of federal funds necessary to
 17 effectuate the provisions and purposes of this Compact, and
 18 to defend the provisions and purposes of this Compact from
 19 all challenges and attacks.

20 IN WITNESS WHEREOF the representatives of the State of
 21 Montana and the United States have signed this Compact on
 22 the ____ day of _____, 19__.

23 FOR THE STATE OF MONTANA

24 MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION

25 FOR THE UNITED STATES

1 **NEW SECTION. Section 2. Statutory appropriation of**
 2 **federal funds.** (1) There must be created those accounts that
 3 are necessary within the federal special revenue fund
 4 established under 17-2-102 for the purposes of this part.

5 (2) Federal funds deposited in the accounts and
 6 interest and earnings on the accounts are statutorily
 7 appropriated, as provided in 17-7-502, and must be used for
 8 the following purposes or to reimburse the state for
 9 expenditures incurred for the following purposes:

10 (a) establishment, administration, and enforcement of
 11 the Yellowstone controlled ground water area;

12 (b) inventory, sampling, reporting, and data base
 13 management;

14 (c) provision for administrative costs and the cost of
 15 any study or any other necessary activity by the technical
 16 oversight committee; and

17 (d) any other necessary activity pursuant to this part.

18 **Section 3. Section 17-7-502, MCA, is amended to read:**

19 **"17-7-502. Statutory appropriations -- definition --**
 20 **requisites for validity.** (1) A statutory appropriation is an
 21 appropriation made by permanent law that authorizes spending
 22 by a state agency without the need for a biennial
 23 legislative appropriation or budget amendment.

24 (2) Except as provided in subsection (4), to be
 25 effective, a statutory appropriation must comply with both

1 of the following provisions:

2 (a) The law containing the statutory authority must be
3 listed in subsection (3).

4 (b) The law or portion of the law making a statutory
5 appropriation must specifically state that a statutory
6 appropriation is made as provided in this section.

7 (3) The following laws are the only laws containing
8 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
9 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
10 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;
11 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
12 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
13 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;
14 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
15 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;
16 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;
17 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
18 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;
19 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206;
20 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108;
21 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310;
22 82-11-136; 82-11-161; 85-1-220; [section 2]; 90-3-301;
23 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

24 (4) There is a statutory appropriation to pay the
25 principal, interest, premiums, and costs of issuing, paying,

1 and securing all bonds, notes, or other obligations, as due,
2 that have been authorized and issued pursuant to the laws of
3 Montana. Agencies that have entered into agreements
4 authorized by the laws of Montana to pay the state
5 treasurer, for deposit in accordance with 17-2-101 through
6 17-2-107, as determined by the state treasurer, an amount
7 sufficient to pay the principal and interest as due on the
8 bonds or notes have statutory appropriation authority for
9 the payments. (In subsection (3): pursuant to sec. 7, Ch.
10 567, L. 1991, the inclusion of 19-6-709 terminates upon
11 death of last recipient eligible for supplemental benefit;
12 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
13 22-3-811 terminates June 30, 1993.)"

14 NEW SECTION. Section 4. Codification instruction.
15 [Sections 1 and 2] are intended to be codified as an
16 integral part of Title 85, chapter 20, and the provisions of
17 Title 85, chapter 20, apply to [sections 1 and 2].

-End-

HOUSE BILL NO. 692

INTRODUCED BY WANZENRIED, GROSFIELD, YELLOWTAIL,
HARPER, SWYSGOOD, HALLIGAN, BECK, BROOKE, SWANSON,
RANEY, GILBERT, GRINDE, FAGG, SCHYE

A BILL FOR AN ACT ENTITLED: "AN ACT RATIFYING A RESERVED
WATER RIGHTS COMPACT BETWEEN THE UNITED STATES NATIONAL PARK
SERVICE AND THE STATE OF MONTANA; ESTABLISHING A STATUTORY
APPROPRIATION; AND AMENDING SECTION 17-7-502, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. United States National Park

Service -- Montana compact ratified. The compact entered
into by the state of Montana and the United States National
Park Service and filed with the secretary of state of the
state of Montana under the provisions of 85-2-702 on [date
of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

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 water for certain lands administered by the
National Park Service within the State of Montana at the
time of the effective date of this Compact.

RECITALS

WHEREAS, in 1979 the United States filed in the United
States District Court for the District of Montana several
actions to adjudicate, inter alia, its rights to water with
respect to Glacier National Park, see United States v.
Aageson, No. CV-79-21-GF; United States v. Abell, No.
CV-79-33-M; and United States v. AMS Ranch, Inc., No.
CV-79-22-GF.

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, 85-2-703, MCA, provides that the state 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 existing National Park Service units in the
State of Montana, including those reserved water rights
necessary to preserve Glacier National Park and Yellowstone
National Park unimpaired for future generations;

WHEREAS, the United States, in quantifying its reserved
water rights recognizes the need to accommodate the
interests of the state and its citizens by providing for the



1 development and use of water in the vicinity of the Park
 2 units to the extent that it is possible to do so without
 3 materially affecting the rights and interests of the United
 4 States;

5 WHEREAS, the United States Attorney General, or a duly
 6 designated official of the United States Department of
 7 Justice, has authority to execute this Compact on behalf of
 8 the United States pursuant to the authority to settle
 9 litigation contained in 28 U.S.C. 516-17 (1968);

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

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

17 ARTICLE I

18 DEFINITIONS

19 For purposes of this Compact only, the following
 20 definitions shall apply:

21 (1) "Abstract" means the copy of the document entitled
 22 "Abstract of National Park Service Water Rights" referenced
 23 in this Compact as Appendix 1.

24 (2) "Big Hole National Battlefield" or "BHNB" means
 25 those lands located in Montana that were acquired pursuant

1 to, or withdrawn and reserved by Executive Order No. 1216 of
 2 June 23, 1910; Presidential Proclamation No. 2339 of June
 3 29, 1939, 53 Stat. 2544; and Act of May 17, 1963, 77 Stat.
 4 18.

5 (3) "Bighorn Canyon National Recreation Area" or
 6 "BCNRA" means those lands located in Montana that were
 7 acquired pursuant to, or designated as such by Act of
 8 October 15, 1966, 80 Stat. 913.

9 (4) "Bureau" means the Montana Bureau of Mines and
 10 Geology or its successor.

11 (5) "Category 1 stream" means a stream that headwaters
 12 on the reserved land administered by the National Park
 13 Service.

14 (6) "Category 1a stream" means a stream that headwaters
 15 on the reserved land administered by the National Park
 16 Service and which, in part, carries water that drains
 17 non-federal land within the boundaries of the same reserved
 18 land.

19 (7) "Category 2 stream" means a stream that headwaters
 20 in a Wilderness Area in Montana outside the respective Park
 21 unit which flows into the reserved land administered by the
 22 National Park Service, and which is not the source for a
 23 consumptive USE water right recognized under state law on
 24 the effective date of this Compact and drains a hydrologic
 25 basin that contains only federal land.

1 (8) "Category 3 stream" means a stream that headwaters
2 in Montana outside the reserved land administered by the
3 National Park Service that flows into the reserved land and
4 is the source for consumptive use water rights recognized
5 under state law on the effective date of this Compact.

6 (9) "Category 4 stream" means a stream that is treated
7 individually due to special circumstances.

8 (10) "Consumptive use" means use of surface water not
9 considered a non-consumptive use under (24) and use of
10 groundwater which is shown to be hydrologically connected to
11 surface water pursuant to Article II.

12 (a) "Current consumptive use", when referring to water
13 rights recognized under state law only, means all
14 consumptive use water rights recognized under state law with
15 a priority date before January 1, 1993.

16 (b) "Future consumptive use", when referring to a water
17 right recognized under state law only, means a consumptive
18 use water right recognized under state law with a priority
19 date on or after January 1, 1993.

20 (11) "Credible information" means credible evidence
21 sufficient to support a prima facie basis for the theory
22 asserted.

23 (12) "Department" means the Montana Department of
24 Natural Resources and Conservation or its successor.

25 (13) "Effective date of this Compact" means the date of

1 the ratification of the Compact by the Montana legislature,
2 written approval by the United States Department of the
3 Interior, or written approval by the United States
4 Department of Justice, whichever is later.

5 (14) "Glacier National Park" or "GNP" means those lands
6 located in Montana that were acquired pursuant to, or
7 withdrawn and reserved by the Act of May 11, 1910, 36 Stat.
8 354; Act of February 27, 1915, 38 Stat. 814; and Act of
9 April 11, 1972, 86 Stat. 120.

10 (15) "Grant Kohrs Ranch National Historic Site" means
11 those lands acquired by the United States and designated as
12 such pursuant to Public Law 92-406, August 25, 1972.

13 (16) "Groundwater" means water that is beneath the
14 ground surface.

15 (17) (a) "Hydrologically connected", for the purposes
16 of Articles II and III, means groundwater that is connected
17 to surface water such that appropriation at the proposed
18 rate will cause a calculable reduction in surface water
19 flow. A "calculable reduction in surface water flow" means a
20 theoretical reduction based on credible information as
21 opposed to a measured reduction.

22 (b) "Hydrologically connected" for the purposes of
23 Article IV, means groundwater that is considered to be
24 connected to the hydrothermal system within the reserved
25 land of Yellowstone National Park based on scientific

1 evidence according to the procedures in Article IV.

2 (18) "Hydrothermal system" means the groundwater system,
3 including cold water recharge, transmission and warm water
4 discharge that is hydrologically connected to the
5 hydrothermal features within the reserved land of
6 Yellowstone National Park.

7 (19) "Hydrothermal discharge water" means groundwater
8 with a temperature in excess of 59 degrees Fahrenheit that
9 is hydrologically connected to the hydrothermal system
10 within the reserved land of Yellowstone National Park.

11 (20) "Hydrothermal feature" means a surface
12 manifestation of a hydrothermal system, including but not
13 limited to: hot springs, geysers, mud pots, and fumaroles.

14 (21) "Instream flow" means the water that the parties
15 agree shall remain in the stream in satisfaction of the
16 United States' reserved water right for the purposes of the
17 reserved land.

18 (22) "Little Bighorn Battlefield National Monument" or
19 "LBBNM" means those lands located in Montana that were
20 acquired pursuant to or withdrawn and reserved by
21 Presidential Proclamation of December 7, 1886.

22 (23) "Nez Perce National Historical Park" means those
23 lands in Montana acquired and added to the Nez Perce
24 National Historical Park by Congress on October 30, 1992,
25 pursuant to Public Law 102-576.

1 (24) (a) "Non-consumptive use" when applied to a mining
2 or hydropower use for which a water right is recognized
3 under state law with a priority date on or after January 1,
4 1993, means an appropriation that does not cause a net loss
5 in the surface source of supply, and where substantially all
6 of the diverted water becomes return flow with little or no
7 delay between the time of diversion and the time of return,
8 and without adverse effect on the quantity or quality of
9 water necessary to fulfill the purposes of the reserved
10 land.

11 (b) "Non-consumptive use" when applied to a water right
12 recognized under state law other than a mining or hydropower
13 use with a priority date on or after January 1, 1993, or a
14 water right recognized under state law with a priority date
15 before January 1, 1993, means a water right considered to be
16 non-consumptive by the decree, permit or law authorizing the
17 use.

18 (25) "Parties" means the State of Montana and the United
19 States.

20 (26) "Person" means an individual, association,
21 partnership, corporation, state agency, political
22 subdivision, or any other entity, but does not include the
23 United States.

24 (27) "Recognized under state law" when referring to a
25 water right or use means a water right or use protected by

1 state law, but does not include state recognition of a
 2 federal or tribal reserved water right.

3 (28) "Return flow" means the portion of water diverted
 4 from a source that is returned to the same source, at or
 5 near the point of diversion.

6 (29) "Scientific evidence" means geologic, geophysical,
 7 geochemical and hydrologic information.

8 (30) "State" means the State of Montana and all
 9 officers, agents, departments, and political subdivisions
 10 thereof. Unless otherwise indicated, for purposes of
 11 notification or consent, "state" means the Director of the
 12 Montana Department of Natural Resources and Conservation or
 13 his or her designee.

14 (31) "Technical Oversight Committee" or "TOC" means the
 15 scientific committee established by Article IV of this
 16 Compact.

17 (32) "Tributary to" means surface water that originates
 18 in the same hydrologic basin or subbasin as the stream
 19 referred to and which contributes water to the same stream.

20 (33) "UNINCORPORATED MUNICIPALITY" INCLUDES BUT IS NOT
 21 LIMITED TO A RURAL SPECIAL IMPROVEMENT DISTRICT OR ANY OTHER
 22 ENTITY THAT SERVES COMMUNITY WATER NEEDS.

23 ~~(33)~~(34) "United States" means the federal government
 24 and all officers, agencies, departments and political
 25 subdivisions thereof. Unless otherwise indicated, for

1 purposes of notification or consent other than service in
 2 litigation, "United States" means the Secretary of the
 3 Department of the Interior, or his or her designees.

4 ~~(34)~~(35) "Working Group Report" means the Abridged and
 5 Unabridged reports by Custer, S., et. al. dated January 5,
 6 1993, and titled Recommended Boundary for Controlled
 7 Groundwater Area in Montana Near Yellowstone National Park
 8 and accompanying maps.

9 ~~(35)~~(36) "Yellowstone National Park" or "YNP" means
 10 those lands located in Montana that were acquired pursuant
 11 to, or withdrawn and reserved for Yellowstone National Park
 12 by the Act of March 1, 1872, 17 Stat. 32; Act of May 26,
 13 1926, 44 Stat. 655; Act of March 1, 1929, 45 Stat. 1435; Act
 14 of April 19, 1930, 46 Stat. 220; and Proclamation No. 2013
 15 of October 20, 1932, 47 Stat. 2537.

16 ARTICLE II
 17 IMPLEMENTATION

18 A. Abstract:

19 Concurrent with this Compact, the parties have prepared
 20 an Abstract, a copy of which is referenced as Appendix 1,
 21 which is a specific listing of all of the United States'
 22 water rights that are described in this Compact and
 23 quantified in accordance with this Compact. The parties
 24 prepared the Abstract to comply with the requirements for a
 25 final decree as set forth in 85-2-234(4) and (7), MCA, and

1 in an effort to assist the state courts in the process of
 2 entering decrees accurately and comprehensively reflecting
 3 the rights described in this Compact. The rights specified
 4 in the Abstract are subject to the terms of this Compact. In
 5 the event of a discrepancy between a right listed in the
 6 Abstract and that same right as quantified in accordance
 7 with Articles II and III of this Compact, the parties intend
 8 that the quantification in accordance with Articles II and
 9 III of this Compact shall be reflected in a final decree.

10 B. Method of Allocation of Water on Category 3 and 4
 11 Streams:

12 This section explains the method of quantification of
 13 the reserved instream flow water rights of the United States
 14 for Category 3 and 4 streams and the method of calculating
 15 the quantity of consumptive use pursuant to state law within
 16 a basin to which the United States agrees to subordinate its
 17 reserved instream flow water right. The method set forth in
 18 this section shall be used to determine whether the limits
 19 on consumptive use pursuant to state law set forth in
 20 Article III have been reached. Addition to the Abstract of a
 21 reserved instream flow water right on a stream inadvertently
 22 omitted by the parties or reclassification of a stream due
 23 to a water right recognized under state law and
 24 inadvertently omitted by the parties shall be consistent
 25 with this section and shall not be deemed a modification of

1 this Compact.

2 1. Allocation to Instream Flow:

3 The allocation of water to instream flow on Category 3
 4 and 4 streams is arrived at using the following method as
 5 explained in general terms:

6 a. The United States' reserved water right for instream
 7 flow includes the entire flow of that stream within the
 8 State of Montana at the point where the stream flows over or
 9 forms the boundary of the specified reserved land after: (1)
 10 all consumptive use water rights of any agency of the United
 11 States recognized under federal or state law are satisfied;
 12 and (2) subordination of the reserved water right for
 13 instream flow to water rights recognized under state law as
 14 set forth in and limited by Article III and more
 15 specifically in the Abstract.

16 b. Actual use of water in Wyoming or Canada shall not
 17 diminish the quantity of water designated for consumptive
 18 use pursuant to state law as set forth in Article III.

19 2. Method of Calculation of Consumptive Use Rights
 20 Recognized Under State Law:

21 To determine whether water is available for
 22 appropriation for consumptive use pursuant to state law on
 23 Category 3 and 4 streams, and for determining whether the
 24 limit on subordination of the United States' water rights to
 25 consumptive uses has been reached, the following provisions

1 shall apply:

2 a. Tributary Water: The calculation of total
3 consumptive use on a Category 3 or 4 stream shall include
4 all current and future consumptive use, recognized under
5 state law, of surface water tributary to the stream to the
6 point it enters the reserved land. The limits on total
7 consumptive use on a Category 4 stream that forms the
8 boundary of the reserved land shall include all current and
9 future consumptive use recognized under state law, of
10 surface water tributary to the stream to the most downstream
11 point that the stream forms the boundary of the reserved
12 land.

13 b. Groundwater:

14 i. An exemption from state permit requirements for
15 wells or developed springs shall not apply to appropriations
16 within a basin tributary to the reserved portion of a
17 Category 3 or 4 stream after the effective date of this
18 Compact, provided that the registration process set forth in
19 Article II, section B.2.b.ii.(3)(b) shall apply to
20 applications for a permit for a well of 35 gpm or less, not
21 to exceed 10 acre-feet per year. In addition, all
22 groundwater appropriations within the Yellowstone Controlled
23 Groundwater Area shall be subject to Article IV.

24 ii. The calculation of total consumptive use on a
25 Category 3 or 4 stream shall include appropriations of

1 groundwater as follows:

2 (1) Pre-January 1, 1993: An appropriation of
3 groundwater with a priority date before January 1, 1993,
4 shall not be included in the calculation of total
5 consumptive use.

6 (2) January 1, 1993 - Effective Date: An appropriation
7 of groundwater with a priority date on or after January 1,
8 1993, but before the effective date of this Compact shall be
9 included in the calculation of total consumptive use if the
10 following procedural requirements are met and the
11 appropriation is found to be hydrologically connected to
12 surface water tributary to the reserved portion of a
13 Category 3 or 4 stream.

14 (a) Within 120 days after the effective date of this
15 Compact, the Department shall provide the United States with
16 notice of all groundwater appropriations in drainages
17 tributary to the reserved portion of a Category 3 or 4
18 stream that, according to the records of the Department,
19 have a priority date on or after January 1, 1993 and before
20 the effective date of this Compact.

21 (b) Up to 120 days following mailing of such notice the
22 United States shall provide the Department with credible
23 information that a groundwater appropriation included in the
24 notice is hydrologically connected to surface flow tributary
25 to the reserved portion of a Category 3 or 4 stream.

1 (c) Within 60 days of receipt of such information, the
 2 Department shall issue an order stating that (1) the
 3 appropriation is hydrologically connected to surface water
 4 tributary to the Category 3 or 4 stream; and (2) the action
 5 to be taken with respect to the appropriation. The order is
 6 effective within 60 days of issuance unless the appropriator
 7 enters an appearance to contest the order. If credible
 8 information of hydrologic connection has not been provided
 9 by the United States, the Department shall issue an order
 10 stating its determination and reasons therefore.

11 (d) If the appropriator enters an appearance to contest
 12 the order, the Department shall (1) issue an order staying
 13 use of the appropriation pending a final decision on the
 14 matter by the Department only if the limits on total
 15 consumptive use for that drainage have been reached; (2) set
 16 a date for a hearing; and (3) proceed pursuant to the
 17 provisions for a contested case under the Montana
 18 Administrative Procedures Act, Title 2, Chapter 4, of the
 19 Montana Code Annotated, provided that the burden of proving
 20 hydrologic connection shall be as set forth in Article II,
 21 section B.2.b.(3). The Department shall, whenever possible,
 22 consolidate any proceedings on the groundwater application
 23 pursuant to Article IV with any proceeding made necessary by
 24 this Article.

25 (3) Post-Effective Date: An appropriation of

1 groundwater recognized under state law with a priority date
 2 after the effective date of this Compact shall be included
 3 in the calculation of total consumptive use if the following
 4 conditions apply:

5 (a) Wells in excess of 35 gallons per minute or 10
 6 acre-feet per year: The limit on total consumptive use shall
 7 include groundwater appropriation by a well or developed
 8 spring with a permit amount in excess of 35 gpm or any well
 9 with a volume of use greater than 10 acre-feet per year,
 10 including a combined appropriation from the same source from
 11 two or more wells or developed springs that exceeds these
 12 limitations, unless the applicant is able to show by a
 13 preponderance of the evidence that the appropriation is not
 14 hydrologically connected to surface flow tributary to the
 15 reserved portion of a Category 3 or 4 stream.

16 (i) The applicant shall submit credible information,
 17 including a report to the Department prepared by a
 18 professional qualified in the science of groundwater
 19 hydrology verifying that the appropriation is not
 20 hydrologically connected to surface flow tributary to the
 21 reserved portion of a Category 3 or 4 stream. If the
 22 applicant fails to submit the report, the application shall
 23 be considered defective and shall be returned to the
 24 applicant for completion as provided by state law.

25 (ii) The Department shall provide notice of the proposed

1 appropriation and a copy of the report to the United States
2 concurrent with notice pursuant 85-2-307, MCA.

3 (iii) Within 60 days of the mailing of notice, the
4 United States shall file an objection to the proposed
5 appropriation on the basis that it is hydrologically
6 connected to surface water.

7 (iv) The Department shall not exclude the appropriation
8 from the limits on total consumptive use unless the
9 applicant proves by a preponderance of the evidence that the
10 proposed appropriation is not hydrologically connected to
11 surface flows tributary to the reserved portion of the
12 Category 3 or 4 stream. In doing so the Department shall
13 make a specific finding on the adequacy of the report
14 provided by the applicant.

15 (v) If the proposed appropriation is determined not to
16 be hydrologically connected to surface water, or if the
17 limit on consumptive use has not been reached, the
18 Department may issue a permit in accordance with state law
19 and the applicant may complete the appropriation.

20 (b) Wells of 35 gallons per minute or less and 10
21 acre-feet per year or less:

22 (i) An applicant for an appropriation of groundwater of
23 35 gpm or less, not to exceed 10 acre-feet per year shall
24 register for a permit by filing a form prescribed by the
25 department.

1 (ii) The Department shall provide notice of the
2 registration for a permit to the United States within 30
3 days of the filing. Within 30 days of the receipt of notice,
4 the United States may file an objection to the application
5 on the basis that the proposed appropriation is of
6 groundwater that is hydrologically connected to surface flow
7 tributary to the reserved portion of a Category 3 or 4
8 stream.

9 (iii) As long as the limit on consumptive use rights for
10 a Category 3 or 4 stream has not been reached, the
11 calculation of total consumptive use shall not include
12 groundwater appropriations by well or a developed spring of
13 35 gallons per minute or less that do not exceed 10 acre
14 feet per year unless the United States shows by a
15 preponderance of the evidence that the proposed
16 appropriation is hydrologically connected to the reserved
17 portion of a Category 3 or 4 stream. If the United States
18 meets this burden, the Department shall include the
19 appropriation in the calculation of total consumptive use.

20 (iv) After the limit on consumptive use rights has been
21 reached on a particular stream, the necessary showing by the
22 United States' shall be to file an objection and come
23 forward with credible information showing that the proposed
24 appropriation is hydrologically connected to surface flows
25 tributary to the reserved portion of the Category 3 or 4

1 stream. If the United States makes such a showing, the
2 Department shall consider the application under the criteria
3 in Article II, section B.2.b.(3)(b)(v) and (vi).

4 (v) The Department shall not exclude the appropriation
5 from the limits on total consumptive use unless the
6 applicant proves by a preponderance of the evidence that the
7 proposed appropriation is not hydrologically connected to
8 surface flows tributary to the reserved portion of the
9 Category 3 or 4 stream.

10 (vi) If the proposed appropriation is determined not to
11 be hydrologically connected to surface water the Department
12 may issue a permit in accordance with state law and the
13 applicant may complete the appropriation.

14 iii. Within 2 years after the effective date of this
15 Compact, the Department, in consultation with the United
16 States, is directed to promulgate rules as may be necessary
17 to implement Article II, section B.2.b. Said rules shall not
18 alter the rights or obligations of the parties hereto.

19 c. Effect of Decree in Calculation of Consumptive Use:
20 Except as provided in Article II, section G., for the
21 purposes of this Compact, the flow rate of a consumptive use
22 shall be as finally decreed in a general adjudication, or
23 recognized under state law until such final decree. At each
24 stage in an adjudication, the allocation to current use as
25 set forth in Article III and more specifically in the

1 Abstract shall be adjusted to reflect the decreed amount.

2 d. Abandonment: When a consumptive use right recognized
3 under state law on a Category 3 or 4 stream is abandoned and
4 such abandonment causes water to become available for
5 appropriation within the limits of the total amounts of
6 water allocated to consumptive use rights recognized under
7 state law established for that stream by Article III, the
8 increment of water below that limit is available for new
9 appropriation in accordance with state law and this Compact.
10 State law governs the issue of whether an abandonment has
11 occurred.

12 e. Non-Consumptive Use: The limit on total consumptive
13 use rights recognized under state law shall not include
14 non-consumptive uses as defined by this Compact.

15 C. Subordination of Instream Flow Right:

16 1. The United States agrees to subordinate its reserved
17 water right for instream flow to consumptive uses calculated
18 according to this Article in a manner that is specific to
19 each stream on which a reserved water right is described.
20 This subordination is set forth for each stream in Article
21 III. Curtailment of uses to which the reserved water rights
22 described in this Compact have not been subordinated during
23 periods of low flow shall proceed on the basis of priority
24 and may be initiated in a state or federal court of
25 competent jurisdiction pursuant to Article II, section I.

1 2. The reserved water rights described in this Compact
 2 shall not be subordinate to water rights which were
 3 forfeited by ~~85-2-212~~ 85-2-226 as interpreted in In the
 4 Matter of the Adjudication of the Water Rights within the
 5 Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), nor
 6 shall any claimant of such forfeited water right have
 7 standing, based solely on such claimed right, to object to
 8 this Compact or any reserved water right described in this
 9 Compact.

10 D. Location of Instream Flow Rights: The United States'
 11 reserved water rights for instream flow apply to the portion
 12 of the Categories 1 through 4 streams specified in this
 13 Compact that flow over or form the boundary to reserved land
 14 administered by the National Park Service.

15 E. Change in Instream Flow Right: Except as provided in
 16 Article II, section J.2.b., the water rights dedicated to
 17 instream flow by this Compact shall not be changed to any
 18 other use.

19 F. Prohibition on Future Impoundments: With the
 20 exception of the North Fork of the Big Hole River and its
 21 tributaries, no new impoundments may be permitted on the
 22 mainstem of a Category 2, 3, or 4 stream upstream of, or
 23 along, the portion of the stream for which a water right for
 24 instream flow is described in this Compact after the
 25 effective date of this Compact. This prohibition shall

1 include impoundments that are exempt from permit
 2 requirements under state law. Reclamation, repair or
 3 rehabilitation of an existing impoundment shall not be
 4 considered a new impoundment, provided that without the
 5 consent of the United States, reclamation, repair or
 6 rehabilitation shall not cause the impoundment to exceed the
 7 original constructed capacity of the impoundment. This
 8 prohibition shall not apply to impoundments constructed to
 9 store a Tribal water right or to implement settlement of
 10 litigation regarding quantification of a Tribal water right.
 11 On Category 3 and 4 streams for which an instream flow right
 12 is described for periods of low flow as set forth in Article
 13 III, sections G.3.c. and d., such water right has not been
 14 subordinated to a new water right with the method of
 15 diversion as an impoundment on the mainstem of the stream
 16 with a priority date on or after January 1, 1993, but before
 17 the effective date of this Compact.

18 G. Management to Maximize Use by Montana Water Users of
 19 the Water Allocated to Consumptive Use Rights Recognized
 20 Under State Law: If any type of conservation or water
 21 distribution plan which includes measurement of actual water
 22 use, including use pursuant to rights recognized under state
 23 law with a priority date before January 1, 1993, is adopted
 24 pursuant to state law, the limits established for
 25 consumptive use appropriated pursuant to state law shall

1 apply to actual measured use, not permitted and decreed or
 2 claimed rights, provided that records of actual use be made
 3 available to the United States on request and provided
 4 further that, such plan shall not diminish the reserved
 5 water right of the United States as described in this
 6 Compact.

7 H. Basin Closure

8 1. Except as provided in Article II, section B.2.d., in
 9 the following drainage basins upstream of the portion of the
 10 stream for which a reserved water right for instream flow is
 11 described in this Compact, the Department shall not process
 12 or grant an application or registration for a permit to
 13 appropriate or to reserve water for future consumptive use
 14 as defined by this Compact once the limits on consumptive
 15 use tabulated in Article III and set forth more specifically
 16 in the Abstract are reached:

17 Big Hole National Battlefield:

18 North Fork of the Big Hole River

19 Glacier National Park:

20 North Fork of the Flathead River

21 Middle Fork of the Flathead River

22 Yellowstone National Park:

23 Bacon Rind, Buffalo, Cottonwood, Coyote,

24 Hellroaring, Little Cottonwood, Snowslide, Crevice,

25 Dry Canyon, Slough, Tepee, and Soda Butte Creeks,

1 and the Gallatin, Madison, and Yellowstone Rivers

2 2. If a temporary or permanent basin closure is enacted
 3 under state law for a drainage basin or subbasin for which
 4 future consumptive water use is limited under this Compact,
 5 the most restrictive measures applicable to consumptive use
 6 of surface or groundwater shall control.

7 I. Enforcement of Water Right

8 1. The United States, the state, or the holder of a
 9 water right recognized under state law, may petition a state
 10 or federal court of competent jurisdiction for relief when a
 11 controversy arises between the United States' reserved water
 12 right described by this Compact, and a holder of a water
 13 right recognized under state law. Resolution of the
 14 controversy shall be governed by the terms of this Compact
 15 where applicable, or to the extent not applicable, by
 16 applicable state or federal law.

17 2. The United States agrees that a water commissioner
 18 appointed by a state or federal court of competent
 19 jurisdiction, or other official authorized by future changes
 20 in law, may enter a federal reservation for which a water
 21 right is described in this Compact for the purpose of data
 22 collection, including the collection of information
 23 necessary for water distribution on or off the federal
 24 reservation, and to inspect structures for the diversion and
 25 measurement of water described in this Compact for

1 consumptive use and for the measurement of instream flow.
 2 The terms of entry shall be as specified in an order of a
 3 state or federal court of competent jurisdiction.

4 3. The Department or the Bureau may enter a federal
 5 enclave for which a reserved water right is described in
 6 this Compact, at a reasonable hour of the day, for the
 7 purposes of data collection on water diversion and stream
 8 flow or inspection of devices maintained by the United
 9 States pursuant to this Compact. The Department or Bureau
 10 shall notify the United States by certified mail or in
 11 person, at least 24 hours prior to entry.

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

18 5. The United States shall maintain structures,
 19 including wellhead equipment and casing, for the diversion
 20 and measurement of water authorized for consumptive use by
 21 this Compact. The United States shall maintain the devices
 22 it deems necessary for enforcement of its reserved water
 23 right for instream flow described in this Compact.

24 6. A person who violates or refuses or neglects to
 25 comply with the provisions of this Compact, an order of the

1 Department pursuant to this Compact, or an action by the
 2 Bureau pursuant to this Compact is subject to the penalties
 3 provided by state law, including but not limited to,
 4 revocation of a permit issued pursuant to Article IV after
 5 the effective date of this Compact.

6 7. For any appeal to state court of an administrative
 7 decision authorized by this Compact, venue shall be the
 8 First Judicial District in Helena and the review shall be
 9 conducted according to the procedures for judicial review of
 10 contested cases under the Montana Administrative Procedures
 11 Act, Title 2, Chapter 4, of the Montana Code Annotated.

12 8. In any contested case proceeding held under the
 13 Montana Administrative Procedures Act, Title 2, Chapter 4,
 14 of the Montana Code Annotated, pursuant to this Compact, the
 15 common law and statutory rules of evidence shall apply only
 16 upon stipulation of all parties to a proceeding.

17 J. Change in Use

18 1. Change in Use Defined: For the purpose of this
 19 Article, the following actions affecting the use of a
 20 reserved water right for consumptive use described in this
 21 Compact shall be considered a change in use:

22 a. An action that alters type of use, place of use,
 23 point of diversion, place or means of storage, period of use
 24 or point of return flow that will:

25 i. increase the net depletion on a source; or

1 ii. adversely affect water quality at the point the
2 reserved water right ends; or

3 iii. result in a change in point of diversion or point
4 of return flow relative to a holder of a water right
5 recognized under state law; or

6 iv. change the point of diversion from groundwater to
7 surface water, or from surface to groundwater; or

8 v. in any other manner, adversely affects the
9 reasonable exercise of a water right that is recognized
10 under state law.

11 b. The exercise of a reserved water right to future
12 consumptive use as authorized by this Compact shall not be
13 considered a change in use.

14 2. Instream flow: Reserved water rights specified in
15 this Compact for instream flow shall not be subject to
16 change to any other use, provided that:

17 a. the emergency use of water for fire suppression as
18 provided for in Article III.H. shall not be deemed a change
19 or alteration in use, or violation of a reserved water right
20 for instream flow; and

21 b. the United States may seek to appropriate water for
22 a consumptive use on a source for which no consumptive use
23 is described in this Compact by seeking a permit under state
24 law for consumptive use, provided that the water right
25 granted shall not be counted against the limits on

1 allocation for state consumptive use water rights imposed by
2 this Compact. The water right so acquired shall be
3 administered in accordance with Article V, section B.

4 3. Consumptive uses: The United States may take action
5 affecting the use of its consumptive use water rights
6 provided that (1) the action shall be in fulfillment of the
7 purposes of the reservation; (2) the total use shall not
8 exceed the amount described in this Compact; and (3) the
9 action shall not adversely affect a water right that is
10 recognized under state law.

11 4. Notice of intent to change use: At least 180 days
12 prior to a change in use, the United States agrees to
13 provide notice to the Department.

14 a. The notice shall contain the facts pertinent to the
15 proposed change including, where applicable:

16 i. The location of a new point of diversion.

17 ii. The new source of water.

18 iii. The new means of diversion.

19 iv. If a well is involved, the depth and locations of
20 the old and new well.

21 v. The new use and its impact on actual consumption and
22 water quality.

23 vi. If the change includes storage, the location, period
24 and capacity of the storage facility.

25 vii. An estimate of when the change will be effective.

1 viii. A map showing the existing system and the proposed
2 change.

3 b. At least 120 days prior to the proposed change, the
4 United States agrees to publish the notice required by
5 Article II, section J.4.a. with a statement that within 60
6 days following publication or service of notice, relief may
7 be sought in a state or federal court of competent
8 jurisdiction, once in a newspaper of general circulation in
9 the area of the source, and to serve the notice by
10 first-class mail on interested and potentially affected
11 persons as identified by the records of the Department,
12 including:

13 i. an appropriator of water or applicant for or holder
14 of a permit who, according to the records of the Department,
15 may be affected by the proposed appropriation;

16 ii. a purchaser under contract for deed that, according
17 to the records of the Department, may be affected by the
18 proposed appropriation;

19 iii. any public agency that has reserved water in the
20 source recognized under state law; and

21 iv. a federal agency or Tribe that claim a reserved
22 water right or other water rights in the source.

23 c. On request by the United States, the Department
24 shall provide the information contained in its records
25 identifying any person potentially affected by the proposed

1 change. The United States agrees to reimburse the Department
2 for the expense of providing this information.

3 d. In the event that future changes in state law
4 establish a method of notice of a proposed change in use to
5 interested and potentially affected persons other than by
6 first-class mail, the United States may alter the method of
7 notification accordingly.

8 e. Prior to the actual change, the United States agrees
9 to provide the Department with proof of notice by affidavit.

10 5. Objection to proposed change: Within 60 days
11 following the notice pursuant to Article II, section J.4.b.,
12 the Department or any other person may bring an action
13 against the proposed change in use in a state or federal
14 court of competent jurisdiction, if a property right, water
15 right, or other interest protected under state law would be
16 adversely affected, or if the proposed change is not in
17 compliance with this Compact.

18 6. Notice of Change:

19 a. The United States agrees to notify the state and
20 provide a copy of the final order within 60 days of its
21 entry by a state or federal court of competent jurisdiction
22 resolving any objections to the change in use of a federal
23 reserved water right described in this Compact,

24 b. The United States agrees to provide the state with
25 notice of completion of the change within 60 days after the

1 completion.

2 7. Reporting by the United States: For any action
3 affecting the use of a consumptive right whether or not such
4 action is deemed a change in use, the United States agrees
5 to provide the following information to the Department:

6 a. Well log: For a use that includes the drilling of a
7 well or enlargement of an existing wellbore, the United
8 States agrees to provide a well log to the state within 60
9 days of the completion of the well.

10 b. Emergency Use: Within 60 days after the commencement
11 of a temporary emergency use for fire suppression described
12 in Section III.H. of this Compact, the United States agrees
13 to notify the state of the use to which the water was put,
14 the dates of use, and the estimated amount of water used.

15 c. Annual Report: Between April 1 and May 1 of each
16 year, the United States agrees to provide the Department
17 with a report on (1) actions during the preceding year
18 affecting the use of a consumptive use right described in
19 this Compact, regardless of whether the action is deemed a
20 change in use pursuant to Article II, section J.1.; (2) the
21 initiation of new uses that were completed during the
22 preceding year; and (3) any data and documents generated or
23 received by the National Park Service during the preceding
24 year on measurement of instream flow on a Category 3 or 4
25 stream.

1 8. Reporting by the State: Between December 1 and
2 December 31 of each year, the Department shall provide the
3 United States with a report of: (1) changes in use during
4 the preceding year, as defined by state law, of water rights
5 upstream of or within the boundaries of reserved land for
6 which a reserved water right is described in this Compact;
7 (2) new permits issued during the preceding year according
8 to the records of the Department; and (3) any data and
9 documents generated by the Department during the preceding
10 year on the measurement of streamflows, diversions and well
11 use on or tributary to Category 3 or 4 streams.

12 ARTICLE III

13 WATER RIGHT

14 The parties agree that the following water rights are in
15 settlement of the reserved water rights of the United States
16 for the reservations described. All reserved water rights
17 described in this Article are subject to Article V, section
18 A.

19 A. Big Hole National Battlefield

20 1. Priority Date

21 The United States has a priority date of June 29, 1939
22 for the reserved water rights described in this Compact for
23 BHNB.

24 2. Consumptive Use

25 The United States has a reserved water right for current

and future consumptive use for the purposes of the BHNH as set forth in Table 1. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at BHNH shall include any non-reserved land within BHNH boundaries as the boundaries exist on the effective date of this Compact.

TABLE 1

United States National Park Service

Big Hole National Battlefield Consumptive Use

| Place of Use | Total Volume (ac-ft) | Maximum Flow Rate (gpm) |
|--------------------------|----------------------------|-------------------------------|
| Visitor center | | |
| Museum | | |
| Maintenance area | | |
| Residences | | |
| Picnic area | | |
| Irrigation | | |
| Total for all use | 7.14 | 50 |

3. Instream Flow

The North Fork of the Big Hole River is designated a Category 4 stream where it flows over the reserved land of BHNH. The United States has a reserved water right for

instream flow on the North Fork of the Big Hole River where it flows over the reserved land of BHNH. The reserved water right for instream flow is quantified and defined as follows:

a. Instream Flow Quantification for November through March: The United States has a reserved water right for instream flow on the North Fork of the Big Hole River at the point the river enters the reserved land of BHNH in the amount of 10 cfs for November through March. The instream flow water right is subordinate to (1) any use recognized under state law with a priority date before January 1, 1993; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use pursuant to Article II.

b. Instream Flow Quantification for April through October: The United States has a reserved water right for instream flow on the North Fork of the Big Hole River for April through October in the amount of water left in the river after satisfaction of current and future consumptive uses pursuant to state law in the amounts up to but no greater than provided in Table 2, provided, that the limits of Table 2 notwithstanding, the instream flow water right of the United States is subordinate to (1) any water rights recognized under state law with a priority date before January 1, 1993; (2) any use considered non-consumptive as

1 defined by this Compact; and (3) any use of groundwater not
 2 included in the calculation of consumptive use pursuant to
 3 Article II.

4 TABLE 2

5 State Law Based

6 Total Current and Future Consumptive Use Rights (cfs)
 7 Tributary to the Reserved Portion of the
 8 North Fork of the Big Hole River

| 9 Month | Consumptive Use |
|----------|-----------------|
| 10 April | 4.85 |
| 11 May | 23.85 |
| 12 June | 18.70 |
| 13 July | 4.05 |
| 14 Aug. | 1.75 |
| 15 Sept. | 1.35 |
| 16 Oct. | 1.50 |

17 4. Nothing in this Compact may affect an existing right
 18 to divert water from a point within BHNB and transport it
 19 for use off BHNB.

20 B. Bighorn Canyon National Recreation Area

21 The parties were unable to finalize agreement on
 22 quantification of the water rights for BCNRA prior to the
 23 effective date of this Compact. The parties agree to
 24 continue to pursue, in good faith, quantification of water
 25 rights, and further agree that all other relevant provisions

1 of this Compact apply to a settlement of this water right
 2 through this process. In the event the parties are unable to
 3 agree on quantification, the United States retains its right
 4 to have the quantity of any reserved water right for BCNRA
 5 adjudicated in a state or federal court of competent
 6 jurisdiction.

7 C. Glacier National Park

8 1. Priority Date

9 The United States has a priority date of May 11, 1910
 10 for reserved water rights described in this Compact for GNP.
 11 The United States recognizes that this date is junior to the
 12 priority dates for reserved water rights of the Confederated
 13 Salish and Kootenai Tribes of the Flathead Indian
 14 Reservation, and the Blackfoot Tribe of the Blackfoot Indian
 15 Reservation.

16 2. Consumptive Use

17 The United States has a reserved water right for current
 18 and future consumptive use for the purposes of GNP as set
 19 forth in Table 3. The period of use shall be from January 1
 20 through December 31. The source and place of use shall be as
 21 set forth more specifically in the Abstract. The place of
 22 use or point of diversion of a consumptive use water right
 23 at GNP shall include any non-reserved land within GNP
 24 boundaries as the boundaries exist on the effective date of
 25 this Compact.

TABLE 3

United States National Park Service
Glacier National Park Consumptive Use

| Place of Use | Total Volume (ac-ft) | Maximum Flow Rate (gpm) |
|---|----------------------------|-------------------------------|
| <u>North Fork Flathead River Basin</u> | | |
| Station, campground | 4.7 | 70 |
| Backcountry Use | 1.98 | |
| Backcountry Patrol Cabins | 2.06 | 55 |
| <u>Middle Fork Flathead River Basin</u> | | |
| McDonald Creek areas | 246.00 | 1720 |
| Middle Fork areas | 0.70 | 10 |
| Backcountry Use | 2.42 | |
| Backcountry Patrol Cabins | 2.06 | 55 |
| <u>Saint Mary River Basin</u> | | |
| Northern Border areas | 2.20 | 20 |
| Many Glacier areas | 166.40 | 600 |
| Saint Mary areas | 128.40 | 915 |
| Backcountry Use | 2.02 | |
| Backcountry Patrol Cabins | 1.50 | 40 |
| <u>Two Medicine River Basin</u> | | |
| Two Medicine areas | 6.40 | 70 |

| | | |
|--|--------|---|
| Backcountry Use | 0.38 | |
| Backcountry Patrol Cabins | 0.19 | 5 |
| <u>Cut Bank River Basin</u> | | |
| Backcountry Use | 0.18 | |
| Backcountry Patrol Cabins | 0.19 | |
| <u>Milk River Basin</u> | | |
| Backcountry Use | 0.02 | |
| GNP TOTAL | 567.80 | |
| 3. <u>Instream Flow Right</u> | | |
| a. <u>Category 1:</u> | | |
| i. <u>Identification:</u> | | |
| The following streams are designated as "Category 1:" | | |
| Sage, Spruce, Kishenehn, Starvation, Kintla, Red | | |
| Medicine Bow, Agassiz, Ford, Parke, Long Bow, Akokala, Numa, | | |
| Pocket, Jefferson, Bowman, Rainbow, Cummings, Logging, | | |
| Anaconda, McGee, Camas, Fern, Fish, Howe, Longfellow, | | |
| Trapper, Continental, Flattop, Kipp, Cattle Queen, Ahern, | | |
| Mineral, Alder, Haystack, Logan, Hidden, Avalanche, Snyder, | | |
| Sprague, Walton, Lincoln, Thompson, Pacific, Stimson, Nyack, | | |
| Peril, Pinchot, Elk, Coal, Muir, Park, Debris, Ole, Shields, | | |
| Autumn, Upper Bear, Boundary, Olson, South Fork Valentine, | | |
| Valentine, Kootenai, Pass, Camp, Cleveland, Street, | | |
| Whitecrow, Redgap, Lee, Otatso, Kennedy, Windy, Appekunny, | | |
| Ptarmigan, Iceberg, Wilbur, Cataract, Allen, Swiftcurrent, | | |
| Boulder, Two Dog, Rose, Baring, Siyeh, Reynolds, Virginia, | | |

1 Medicine Owl, Hudson Bay, Red Eagle, Atlantic, North Fork
 2 Cut Bank, Lake, Dry Fork, Aster, Paradise, Appistoki, Two
 3 Medicine, Fortymile, Fortyone Mile, Midvale, Railroad,
 4 Coonsa, Long Knife, Jackson, Grinnell, Kaina, Lunch,
 5 Pyramid, Thunderbird and Upper Summit Creeks and Waterton,
 6 St. Mary, North Fork Belly, Mokowanis and Belly Rivers.

7 ii. Instream Flow

8 The United States has a reserved water right for
 9 instream flow on the Category 1 streams in the amount of the
 10 entire flow of the streams, less any United States'
 11 consumptive use rights described in this Compact. This
 12 reserved water right ends at the point the stream exits the
 13 reserved land of GNP. The relationship between this water
 14 right and a water right to water stored within GNP held by
 15 the United States shall be governed by the rule of priority.

16 b. Category 1a Streams

17 i. Identification:

18 The following streams are designated as "Category 1a:"
 19 Appgar, Canyon, Dutch, Harrison, McDonald, and Quartz
 20 Creeks.

21 ii. Instream Flow:

22 (a) The United States has a reserved water right for
 23 instream flow on the Category 1a streams in the amount of
 24 the entire flow of the streams, less (1) any United States'
 25 consumptive use rights described in this Compact; and (2)

1 all water rights appurtenant to non-federal land within the
 2 boundaries of GNP recognized under state law with a priority
 3 date before January 1, 1993. This reserved water right ends
 4 at the most downstream point that the stream exits the
 5 reserved land of GNP.

6 (b) In the event all non-federal land on a Category 1a
 7 stream is acquired by the United States for the purpose of
 8 addition to GNP, the stream may be reclassified as a
 9 Category 1 stream at the request of the United States.

10 c. Category 4 Streams

11 i. Identification:

12 The following streams are designated as Category 4: the
 13 North Fork of the Flathead River, the Middle Fork of the
 14 Flathead River, Divide, Jule, Rubideau and Wild Creeks.

15 ii. Instream Flow for the North and Middle Forks of the
 16 Flathead River:

17 The United States has a reserved water right for
 18 instream flow on the North and Middle Forks of the Flathead
 19 River in the amount of the entire flow of the rivers, less
 20 any United States' consumptive use rights described in this
 21 Compact provided that, the instream flow water right is
 22 subordinate to 1) all water rights recognized under state
 23 law with a priority date before January 1, 1993, 2) future
 24 consumptive use rights calculated according to Article II up
 25 to the limits set forth in Table 4; (3) any use considered

1 non-consumptive as defined by this Compact; and (4) any use
 2 of groundwater not included in the calculation of
 3 consumptive use according to Article II. This reserved water
 4 right ends at the most downstream point that the River forms
 5 the boundary of the reserved land of GNP.

6 TABLE 4

7 State Law Based

8 Future Consumptive Use Rights (cfs)

9 Tributary to the Reserved Portion of the Flathead River

| 10 Month | North Fork | Middle Fork |
|----------|--|----------------|
| | Flathead River | Flathead River |
| 12 Jan. | 7.5 | 7.1 |
| 13 Feb. | 7.2 | 6.9 |
| 14 Mar. | 8.9 | 8.1 |
| 15 April | # | # |
| 16 May | # | # |
| 17 June | # | # |
| 18 July | 40.5 | # |
| 19 Aug. | 16.2 | 13.7 |
| 20 Sept. | 11.8 | 9.7 |
| 21 Oct. | 11.8 | 10.6 |
| 22 Nov. | 12.0 | 11.6 |
| 23 Dec. | 9.0 | 9.2 |
| 24 # | The amount of water available for future | |
| 25 | consumptive use in these months shall be an amount | |

1 equivalent to the flow rate for all consumptive
 2 uses recognized under state law on December 31,
 3 1992. The amount shall be adjusted to reflect the
 4 flow rates in a decree issued by a state or federal
 5 court of competent jurisdiction after December 31,
 6 1992. At such time as final decrees are entered in
 7 these basins, the Department shall tabulate these
 8 rights, insert the appropriate amounts into Table
 9 4, and submit the revised Table to the United
 10 States and the state for inclusion in this Compact.
 11 Revision of Table 4 to reflect this agreement shall
 12 not be deemed a modification of this Compact.

13 iii. Instream Flow for Divide, Jule, Rubideau and Wild
 14 Creeks

15 The United States has a reserved water right for
 16 instream flow on Divide, Jule, RUBIDEAU, and Wild Creeks in
 17 the amount of the entire flow of the stream, less any United
 18 States' consumptive use rights described in this Compact.
 19 This water right ends at the most downstream point that the
 20 stream exits or no longer forms the boundary to the reserved
 21 land of GNP. This right is subject to the provisions of
 22 Article V, section A., and (1) on Divide Creek, is
 23 subordinate to any water rights recognized under state law
 24 with a priority date before January 1, 1993; and (2) on
 25 Rubideau Creek, is subordinate to any water rights

1 recognized under state law with a priority date before
2 January 1, 1993, provided that the use of such right is
3 consistent with federal law.

4 4. Lakes

5 The United States has a reserved water right for the
6 maintenance of natural water levels in all naturally
7 occurring lakes within the boundaries of GNP for the purpose
8 of preserving unimpaired these Park resources. The water
9 right for the maintenance of lake levels is subordinate to
10 (1) any United States' consumptive use rights described in
11 this Compact; and (2) any water right recognized under state
12 law with a priority date before January 1, 1993. The named
13 and unnamed lakes in which the United States has a reserved
14 water right are those set forth specifically in the
15 Abstract.

16 D. Grant Kohrs Ranch National Historic Site

17 The Grant Kohrs Ranch National Historic Site in Montana
18 does not include reserved land. The United States may apply
19 for a permit to appropriate water or seek recognition of any
20 existing water rights in accordance with state law.

21 E. Little Bighorn Battlefield National Monument

22 The parties were unable to finalize agreement on
23 quantification of the water rights for LBBNM prior to the
24 effective date of this Compact. For the purposes of
25 settlement of the reserved water rights for land

1 administered by the National Park Service in Montana, the
2 parties agree that a water right for instream flow is
3 necessary for the historic purposes of LBBNM. The parties
4 agree to continue to pursue, in good faith, quantification
5 of water rights and further agree that all other relevant
6 provisions of this Compact apply to a settlement of this
7 water right through this process. In the event the parties
8 are unable to agree on quantification, the United States
9 retains its right to have the quantity of any reserved water
10 right for LBBNM adjudicated in a state or federal court of
11 competent jurisdiction.

12 F. Nez Perce National Historical Park

13 The Nez Perce National Historical Park in Montana does
14 not include reserved land. The United States may apply for a
15 permit to appropriate water or seek recognition of any
16 existing water rights in accordance with state law.

17 G. Yellowstone National Park

18 1. Priority Date

19 The United States has a priority date of March 1, 1872
20 for the reserved water rights described in this Compact for
21 YNP.

22 2. Consumptive Use

23 The United States has a reserved water right for current
24 and future consumptive use for the purposes of YNP as set
25 forth in Table 5. The period of use shall be from January 1

1 through December 31. The source and place of use shall be as
 2 set forth more specifically in the Abstract. The place of
 3 use or point of diversion of a consumptive use water right
 4 at YNP shall include any non-reserved land within YNP as the
 5 boundaries exist on the effective date of this Compact.

6 **TABLE 5**

7 **United States National Park Service**
 8 **Yellowstone National Park Consumptive Use**

| 9 Place of Use | Total | Maximum |
|-----------------------------------|---------|-----------|
| 10 | Volume | Flow Rate |
| 11 | (ac-ft) | (gpm) |
| 12 <u>Yellowstone River Basin</u> | | |
| 13 North Entrance | 1.70 | 35 |
| 14 Stephens Creek facilities | 12.00 | 50 |
| 15 TW facilities (Gardiner) | 58.70 | 300 |
| 16 NE Entrance | 15.60 | 50 |
| 17 Backcountry Use | 10.70 | |
| 18 Backcountry Patrol Cabins | 2.00 | 15 |
| 19 Day Use Areas | 2.40 | 6 |
| 20 <u>Gallatin River Basin</u> | | |
| 21 NW Entrance Area | 15.00 | 50 |
| 22 Backcountry Use | 2.80 | |
| 23 Backcountry Patrol Cabins | 0.50 | 10 |
| 24 Day Use Areas | 0.60 | 6 |
| 25 <u>Madison River Basin</u> | | |

| | | |
|-----------------------------|--------|-----|
| 1 West Entrance | 48.90 | 200 |
| 2 Backcountry Use | 2.80 | |
| 3 Backcountry Patrol Cabins | 0.50 | 10 |
| 4 Day Use Areas | 0.70 | 6 |
| 5 YNP TOTAL | 174.90 | |

6 **3. Instream Flow Right**

7 **a. Category 1:**

8 **i. Identification:**

9 The following streams are designated as "Category 1:"

10 Black Bear Canyon, Black Butte, Blacktail Deer, Cougar,
 11 Daly, Duck, Fan, Grayling, Landslide, Mol Heron, Pebble,
 12 Specimen, Stephens, Upper Reese, and Wickiup Creeks, and the
 13 Gardner River.

14 **ii. Instream Flow:**

15 The United States has a reserved water right for
 16 instream flow on the Category 1 streams in the amount of the
 17 entire flow of the streams, less any United States'
 18 consumptive use rights described in this Compact. This
 19 reserved water right ends at the most downstream point that
 20 the stream exits the reserved land of YNP.

21 **b. Category 2:**

22 **i. Identification:**

23 The following streams are designated as "Category 2:"

24 Bacon Rind, Buffalo, Cottonwood, Coyote, Hellroaring,
 25 Little Cottonwood, and Snowslide Creeks.

1 Dec. 0.2 0.1 1.8 0.4
 2 iii. The provisions of Article III, section G.3.c.ii
 3 notwithstanding, in the event of a period of low flow such
 4 that Crevice, Dry Canyon, Slough, or Teepee Creeks fall
 5 below the critical levels of instream flow shown in Table 7
 6 at the point the stream enters the reserved land of YNP, the
 7 United States' water right for instream flow is not
 8 subordinate to consumptive use water rights recognized under
 9 state law with a priority date on or after January 1, 1993.

10 TABLE 7

11 Low Stream Flow Levels at which Subordination is Limited (cfs)

| 12 Month | 13 Crevice Creek | 13 Dry Canyon Creek | 13 Slough Creek | 13 Teepee Creek |
|----------|---------------------|------------------------|--------------------|--------------------|
| 14 Jan. | 3.8 | 1.1 | 28.9 | 6.5 |
| 15 Feb. | 4.5 | 1.0 | 30.6 | 6.5 |
| 16 Mar. | 5.2 | 1.2 | 35.4 | 7.7 |
| 17 April | 20.2 | 4.7 | 106.4 | 23.7 |
| 18 May | 71.8 | 24.0 | 376.2 | 84.6 |
| 19 June | 63.8 | 22.9 | 425.6 | 100.1 |
| 20 July | 18.7 | 6.6 | 138.7 | 33.2 |
| 21 Aug. | 8.1 | 3.1 | 55.2 | 14.9 |
| 22 Sept. | 7.0 | 2.0 | 44.2 | 10.9 |
| 23 Oct. | 7.1 | 1.9 | 46.0 | 10.8 |
| 24 Nov. | 5.2 | 1.5 | 39.5 | 9.1 |
| 25 Dec. | 3.9 | 1.4 | 34.1 | 8.1 |

1 d. Category 4:

2 The following streams are designated as Category 4: Soda
 3 Butte Creek within the state, and the Gallatin, Madison and
 4 Yellowstone Rivers where they flow within or form the
 5 boundary to reserved land of YNP within the state.

6 i. Soda Butte Creek

7 (1) The United States has a reserved water right for
 8 instream flow on Soda Butte Creek in the amount of the
 9 entire flow of the stream, less any United States'
 10 consumptive use rights described in this Compact, provided
 11 that, the instream flow right is subordinate to: (a) ~~the sum~~
 12 ~~of any water rights recognized under state law with a~~
 13 ~~priority date before January 1, 1993; plus; (B) any future~~
 14 ~~consumptive use rights calculated according to Article II,~~
 15 ~~until AS LONG AS the limit on total current and future~~
 16 ~~consumptive use set forth in Table 8 is--reached HAS NOT~~
 17 ~~ALREADY BEEN REACHED OR EXCEEDED BY THE RIGHTS PROTECTED~~
 18 ~~UNDER SUBSECTION (1)(A); (b)(C) any use considered~~
 19 ~~non-consumptive as defined by this Compact; and (c)(D) any~~
 20 ~~use of groundwater not included in the calculation of~~
 21 ~~consumptive use according to Article II.~~

22 TABLE 8

23 State Law Based

24 Total Current and Future Consumptive Use Rights (cfs)
 25 Tributary to the Reserved Portion of Soda Butte Creek

| | | |
|----|-------|------|
| 1 | Month | |
| 2 | Jan. | 0.3 |
| 3 | Feb. | 0.3 |
| 4 | Mar. | 0.2 |
| 5 | April | 0.1 |
| 6 | May | 6.2 |
| 7 | June | 17.5 |
| 8 | July | 6.4 |
| 9 | Aug. | 2.4 |
| 10 | Sept. | 0.8 |
| 11 | Oct. | 0.7 |
| 12 | Nov. | 0.5 |
| 13 | Dec. | 0.3 |

14 (2) The provisions of Article III, section G.3.d.i.(1)
 15 notwithstanding, in the event of a period of low flow such
 16 that Soda Butte Creek falls below the critical levels of
 17 instream flow shown in Table 9 at the point the stream
 18 enters the reserved land of YNP, the United States' water
 19 right for instream flow shall be subordinate only to: (a)
 20 any water right for domestic use of 35 gpm or less and to
 21 any water right held by an incorporated or unincorporated
 22 municipality, recognized under state law with a priority
 23 date before January 1, 1993; (b) any use considered
 24 non-consumptive as defined by this Compact; and (c) any use
 25 of groundwater not included in the calculation of

1 consumptive use according to Article II.

2 (3) In the event that the Congress of the United States
 3 repeals the Wilderness designation assigned to the land over
 4 which Republic and Hayden Creeks and two unnamed tributaries
 5 to Soda Butte Creek flow in Wyoming, or otherwise makes
 6 water from such tributaries available for appropriation in
 7 Wyoming, the state may seek modification of Article III,
 8 section G.3.d.i.(2). of this Compact as provided in Article
 9 VI, section A.2.

10 **TABLE 9**
 11 **Low Stream Flow Levels at which Subordination is Limited (cfs)**

| 12 Soda Butte Creek | |
|---------------------|---------|
| 13 Month | 13 Flow |
| 14 Jan. | 5.4 |
| 15 Feb. | 5.1 |
| 16 Mar. | 4.0 |
| 17 April | 1.7 |
| 18 May | 116.9 |
| 19 June | 332.5 |
| 20 July | 120.7 |
| 21 Aug. | 46.4 |
| 22 Sept. | 15.3 |
| 23 Oct. | 14.2 |
| 24 Nov. | 9.3 |
| 25 Dec. | 6.3 |

ii. The Gallatin, Madison and Yellowstone Rivers

The United States has a water right for instream flow on the Gallatin, Madison and Yellowstone Rivers in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact, provided that, the right is subordinate to: (1) the sum of all water rights recognized under state law with a priority date before January 1, 1993, plus any future consumptive use rights calculated according to Article II, until the limit on total current and future consumptive use rights set forth in Table 10 is reached; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 10

State Law Based

Total Current and Future Consumptive Use Rights (cfs)
Tributary to the Reserved Portion of these Rivers

| Month | Gallatin River | Madison River | Yellowstone River |
|-------|----------------|---------------|-------------------|
| Jan. | 3.1 | 19.9 | 41.2 |
| Feb. | 3.1 | 19.7 | 40.6 |
| Mar. | 3.5 | 20.0 | 44.5 |
| April | 9.8 | 24.3 | 73.7 |
| May | 39.3 | 40.9 | 284.7 |

| | | | |
|-------|------|------|-------|
| June | 48.0 | 40.2 | 556.7 |
| July | 15.7 | 24.7 | 335.0 |
| Aug. | 5.8 | 21.4 | 156.5 |
| Sept. | 4.4 | 21.1 | 96.0 |
| Oct. | 4.6 | 21.4 | 75.0 |
| Nov. | 4.2 | 21.0 | 58.4 |
| Dec. | 3.8 | 20.4 | 47.2 |

4. Hot Springs tributary to Bear Creek and the Yellowstone River

The hot springs that contribute to Bear Creek outside the boundaries of YNP are important to maintenance of biologic values of reserved water in the Yellowstone River downstream from the confluence with Bear Creek. As part of the settlement of the reserved water right for YNP, the state agrees to grant the United States a water right under state law to all of the natural flow of the Bear Creek hot springs located at the mouth of Bear Creek in S1/2 S1/2, sec. 19, T9S, R9E, Montana Principle Meridian. The priority date is the effective date of this Compact.

5. Lakes

The United States has a reserved water right for the maintenance of natural water levels in all naturally occurring lakes within the boundaries of YNP for the purpose of preserving unimpaired these Park resources. The water right for the maintenance of lake levels is subordinate to

1 (1) any United States' consumptive use rights described in
 2 this Compact; and (2) any water right recognized under state
 3 law with a priority date before January 1, 1993. The named
 4 and unnamed lakes in which the United States has a reserved
 5 water right are those set forth more specifically in the
 6 Abstract.

7 H. Emergency Fire Suppression

8 The use of water for emergency fire suppression benefits
 9 the public, and is necessary for the purposes of the various
 10 Park reservations. The United States, may as part of its
 11 reserved water right, divert water for fire suppression at
 12 all of the National Park Service Units as needed, and
 13 without a definition of the specific elements of a
 14 recordable water right. Use of water for fire suppression
 15 shall not be deemed an exercise of the United States'
 16 reserved water rights for consumptive use or a violation of
 17 its reserved water rights for instream flow.

18 ARTICLE IV

19 YELLOWSTONE CONTROLLED GROUNDWATER AREA

20 A. Statement of Intent

21 Yellowstone National Park was reserved for the express
 22 purpose of "preservation, from injury or spoliation, of all
 23 timber, mineral deposits, natural curiosities, or wonders
 24 within said park, and their retention in their natural
 25 condition." 17 Stat. 32. The parties agree that Congress

1 reserved water necessary to preserve the hydrothermal
 2 features within the reserved land of YNP. These reserved
 3 water rights have priorities as of the date on which the
 4 land was reserved.

5 The parties understand that knowledge of the
 6 interrelationship of hydrothermal features within YNP, the
 7 hydrothermal system that supports those features, and
 8 groundwater in surrounding areas of Montana will benefit
 9 from increased study. The parties agree that the
 10 hydrothermal features of YNP are a unique and irreplaceable
 11 resource and represent one of the few undisturbed
 12 hydrothermal systems in the United States.

13 This Compact does not recognize a reserved water right
 14 to groundwater outside the boundaries of the reserved land
 15 of YNP. However, the parties agree that restrictions shall
 16 be placed on the development of groundwater adjacent to YNP
 17 to the extent necessary to prevent adverse effect on the
 18 reserved water right to groundwater within YNP. The parties
 19 agree that the goal of establishment and administration of
 20 the Yellowstone Controlled Groundwater Area shall be to
 21 allow no impact to the hydrothermal system within the
 22 reserved land of YNP.

23 B. Findings

24 Ratification of this Compact by the Montana legislature
 25 constitutes a finding that:

1 1. unrestricted use of groundwater adjacent to
2 Yellowstone National Park is likely to interfere with the
3 water rights reserved by the United States in 1872, 1929,
4 1930, and 1932, for the preservation of hydrothermal
5 features within YNP;

6 2. prevention of adverse effect on the United States'
7 reserved water right to groundwater within the reserved land
8 of YNP is a benefit to the state and to the United States;

9 3. the public interest and welfare requires that a
10 corrective control be adopted to regulate groundwater
11 development adjacent to YNP; and

12 4. the cooperative state-federal management and
13 oversight established by this Article is an effective means
14 to achieve protection of the reserved water right to
15 groundwater necessary to preserve the hydrothermal system
16 within the reserved land of YNP.

17 C. General Provisions

18 1. Establishment: The Yellowstone Controlled
19 Groundwater Area or "Area" is hereby established and shall
20 be defined and administered according to this Compact.

21 2. Funding: The United States agrees that it receives
22 substantial benefit from the establishment and
23 administration of the Yellowstone Controlled Groundwater
24 Area, and that the national and international public benefit
25 extends far beyond the boundaries of the state. Thus, the

1 United States agrees that the relatively small population of
2 the state should not bear the entire cost of protection of
3 the United States' reserved water right. To this end, the
4 Department of the Interior agrees, subject to appropriations
5 by Congress, to reimburse the state for the expense of
6 establishment, administration and enforcement of the
7 Yellowstone Controlled Groundwater Area by the Department;
8 to fund the inventory, sampling, reporting and database
9 management by the Bureau; and, except as provided in Article
10 IV, section J.1.c., to fund the administrative costs and the
11 cost of any study or any other necessary activity pursuant
12 to this Article by the Technical Oversight Committee.

13 3. Implementation Contingent on Funds: Such funding
14 shall be accomplished pursuant to the terms and conditions
15 of a separate agreement which shall incorporate terms and
16 conditions necessary to specify the activities to be funded
17 and appropriate cost and accounting principles consistent
18 with generally applicable guidelines for federal funding in
19 similar circumstances, and consistent with the terms of this
20 Compact, including, but not limited to, the enumeration of
21 state expenses to be reimbursed in Article IV, section C.2.
22 The state is relieved of its obligation to establish,
23 administer, inventory, sample and maintain a database on the
24 Controlled Groundwater Area in the absence of a funding
25 agreement and the provision of the funds specified therein.

1 If the state is relieved of its obligation to implement all
 2 or a portion of this Article, all other terms of this
 3 Compact shall remain in effect, including all reserved water
 4 rights established herein. Such agreement may be amended,
 5 extended, renewed or terminated pursuant to its terms.

6 4. Interim Measures:

7 The state agrees that the following interim measures
 8 shall apply from the effective date of this Compact until
 9 the receipt of funds from the United States or December 31,
 10 1995, whichever occurs first. The United States agrees to
 11 reimburse the state for the cost of the interim measures,
 12 subject to the appropriation of funds by Congress. The
 13 parties agree that, even if funding is not received by
 14 December 31, 1995 and interim measures are suspended, the
 15 state and the Department of the Interior will continue to
 16 recommend federal funding.

17 a. The Department shall issue the notice required by
 18 Article IV, section F.

19 b. All permits issued within this time period within
 20 the Area shall be conditioned on appropriation of water of
 21 less than 60F., measured at the wellhead.

22 c. The Department shall require that each applicant for
 23 a permit or person filing a notice of completion for
 24 issuance of a certificate of water right to appropriate
 25 groundwater within the Area report the following information

1 on filing of a well log: (1) well location to the
 2 quarter-quarter-quarter-quarter section; (2) ground
 3 elevation at the wellhead; (3) well depth; (4) water level;
 4 (5) flow rate or maximum pump capacity; and (6) water
 5 temperature measured at the wellhead.

6 d. The Department shall not issue a certificate of
 7 water right for the appropriation of groundwater with a
 8 temperature of 60 F. or more within the Area during this
 9 time period. The Department shall order temporary
 10 abandonment of any well in the Area for which a conditional
 11 permit was issued or notice of completion for issuance of a
 12 certificate of water right was filed within this time period
 13 that produces groundwater with a temperature of 60F. or
 14 more, measured at the wellhead. Temporary abandonment shall
 15 be according to the rules of the Montana Board of Water Well
 16 Contractors.

17 e. Following receipt of funds from the United States,
 18 the Department shall notify the applicant that the
 19 appropriation is subject to the terms of this Compact and
 20 shall proceed according to the procedures set forth in this
 21 Article. If funds are not received by December 31, 1995, the
 22 Department may remove the order of temporary abandonment and
 23 remove the condition on the permit or issue the certificate
 24 of water right pursuant to state law. The Department shall
 25 continue to require that each applicant for a permit or

1 certificate of water right to appropriate groundwater within
 2 the Area report the following information on filing of a
 3 well log: (1) well location to the
 4 quarter-quarter-quarter-quarter section; (2) ground
 5 elevation at the wellhead; (3) well depth; (4) water level;
 6 (5) flow rate or maximum pump capacity; and (6) water
 7 temperature measured at the wellhead.

8 5. Additional Studies: In addition to appropriations
 9 necessary to implement this Article, the state and the
 10 National Park Service agree to recommend federal funding for
 11 a baseline study of hydrothermal features in YNP and within
 12 the Controlled Groundwater Area, for continued monitoring of
 13 these features, and for geologic and geophysical studies
 14 including, but not limited to, geologic mapping, and
 15 monitoring of microearthquakes and subsidence in and
 16 adjacent to YNP. Implementation of this Article is not
 17 contingent on such appropriation.

18 6. Access for Studies: Consistent with the purposes of
 19 YNP, the United States agrees to allow reasonable access to
 20 and across YNP to the extent necessary to accomplish the
 21 data collection authorized by this Article or additional
 22 studies recommended pursuant to Article IV, section C.5. In
 23 seeking access, the Department or Bureau shall comply with
 24 the provisions of Article II, section I.3.

25 7. Effect of Modification of Area: It is the intent of

1 the parties that the initial boundaries of the Area set
 2 forth in Article IV, section D. and Appendix 2, and initial
 3 restrictions set forth in Article IV, section E. may be
 4 modified pursuant to Article IV, section J., or with respect
 5 to a single appropriation pursuant to Article IV, section
 6 G.2.c. and shall not be deemed to be a modification of this
 7 Compact. Any other modification of this Article shall be
 8 considered a modification of this Compact and is subject to
 9 the terms of Article VI, section A.2.

10 8. It is the intention of the Department of the
 11 Interior to protect the hydrothermal resources of
 12 Yellowstone National Park through the system established by
 13 Article IV.

14 a. The National Park Service agrees, consistent with 43
 15 U.S.C. 666, that enforcement will not be sought against the
 16 holder of a water right recognized under state law with a
 17 priority date on or after January 1, 1993, unless the NPS
 18 has, in the first instance, sought enforcement through the
 19 state under the terms of this Compact.

20 b. Notwithstanding the preceding subparagraph, if the
 21 National Park Service, in its judgment, determines that
 22 circumstances warrant, nothing in this Compact prohibits the
 23 United States from petitioning a state or federal court of
 24 competent jurisdiction for injunctive or declarative relief.
 25 Nothing in this Compact shall alter the courts' application

1 of the test for injunctive relief; neither shall the
 2 administrative determination by the National Park Service to
 3 seek relief in said court be deemed to establish or preclude
 4 any determination in such judicial proceedings. Prior to
 5 such an administrative determination, the National Park
 6 Service agrees that it will provide the State written notice
 7 and will identify a time frame during which it will await
 8 the State's efforts to address the concern.

9 c. As to an action against the holder of a right to
 10 withdraw groundwater recognized under state law with a
 11 priority date before January 1, 1993, the United States
 12 agrees that this Compact shall not be used or relied upon as
 13 evidence to show that: (1) a reserved water right of the
 14 United States exists appurtenant to any land other than the
 15 reserved land of YNP; or (2) the priority date associated
 16 with any portion of reserved land of YNP is other than the
 17 date on which that portion of land was actually reserved.

18 D. Initial Boundaries of the Yellowstone Controlled
 19 Groundwater Area

20 The initial boundaries of the Yellowstone Controlled
 21 Groundwater Area and Subareas are defined to include the
 22 area in the State of Montana located within the geographic
 23 boundaries shown on Appendix 2. Appendix 2 is hereby
 24 incorporated in this Compact by this reference as though set
 25 forth here in full.

1 1. Subarea I:

2 The initial geographic boundaries of the subarea
 3 referred to as Yellowstone Controlled Groundwater Subarea I
 4 shall include all of the area in Montana North and West of
 5 YNP within the boundary delineated as subarea I on Appendix
 6 2.

7 2. Subarea II:

8 The initial geographic boundaries of the subarea
 9 referred to as Yellowstone Controlled Groundwater Subarea II
 10 shall include all the area in Montana North and West of YNP
 11 within the boundary delineated as subarea II on Appendix 2.

12 E. Initial Restrictions on Groundwater Development
 13 within the Yellowstone Controlled Groundwater Area

14 Until the initial boundaries or restrictions set forth
 15 in this Article are modified pursuant to Article IV, section
 16 J., the restrictions set forth in this section shall apply
 17 to groundwater appropriations within the Area with a
 18 priority date on or after January 1, 1993. Such
 19 appropriations shall follow the procedural requirements of
 20 Article IV, section G.

21 1. The parties agree that the initial restrictions on
 22 development of groundwater and any modification thereof,
 23 shall not apply to appropriations with a priority date
 24 before January 1, 1993. The sole provisions of this Article
 25 applicable to such appropriations shall be those providing

1 for inventory and sampling of current use set forth in
 2 Article IV, section E. Groundwater appropriations with a
 3 priority date before January 1, 1993 are subject to
 4 applicable state law including, but not limited to, issuance
 5 of a certificate of water right following final adjudication
 6 of existing water rights. Nothing herein waives the right of
 7 the United States to seek protection of its reserved water
 8 right for protection of the hydrothermal features within the
 9 reserved land of YNP from groundwater appropriations with a
 10 priority date before January 1, 1993 in a state or federal
 11 court of competent jurisdiction, provided that the
 12 limitation on use of this Compact in an action by the United
 13 States against any such appropriator set forth in Article
 14 IV, section C.8.c. shall apply.

15 2. The Department shall not issue a permit to
 16 appropriate groundwater that is hydrothermal discharge water
 17 as defined by this Compact unless either: (1) modification
 18 occurs pursuant to Article IV, section J. altering pertinent
 19 boundaries or restrictions; or (2) an application is
 20 approved pursuant to Article IV, section G.2.c. Unless
 21 modification occurs pursuant to Article IV, section J., the
 22 Department shall not limit an appropriation of groundwater
 23 that is not hydrothermal discharge water unless required to
 24 do so by Article II and III of this Compact or any other
 25 provision of state law.

1 F. General Notice of Establishment of the Yellowstone
 2 Controlled Groundwater Area

3 1. Notice: Within 120 days after the effective date of
 4 this Compact and within 60 days of any decision by the
 5 Department to modify the Area as set forth in Article IV,
 6 section J., the Department shall publish a notice of
 7 establishment or modification of the Area setting forth:

8 a. the description by legal subdivisions of all lands
 9 included in the controlled groundwater area;

10 b. the purpose of the controlled groundwater area or
 11 modification; and

12 c. the permit requirements, restrictions, inventory,
 13 sampling and monitoring applicable within each subarea.

14 2. Publication and Service: Such notice shall be
 15 published in a newspaper of general circulation in the
 16 county or counties in which the Area is located. The
 17 Department shall also serve a copy of the notice by mail on
 18 each well driller licensed in Montana whose address is
 19 within any county in which any part of the Area is located;
 20 on each well driller known by the Department to operate in
 21 the Area; on the Montana State Bureau of Mines and Geology;
 22 on the mayor or chair of the governing body of each county
 23 or incorporated municipality located in whole or in part
 24 within the Area; and on the United States. The Department
 25 may also serve notice on any other person or state or

1 federal agency that the Department believes may be
 2 interested in or affected by the proposed designation or
 3 modification of the Area. A copy of the notice shall be
 4 mailed to each person's last known address according to the
 5 records of the Department.

6 G. Appropriations of Groundwater within the Yellowstone
 7 Controlled Groundwater Area With a Priority Date on or After
 8 January 1, 1993

9 1. Appropriation of Groundwater within the Area with a
 10 Priority Date on or after January 1, 1993 and before the
 11 Effective Date of this Compact:

12 The initial restrictions on groundwater development set
 13 forth in Article IV, section E. apply to appropriations of
 14 groundwater with a priority date on or after January 1, 1993
 15 and before the effective date of this Compact provided that
 16 the following procedural requirements are met:

17 a. Within 120 days after the effective date of this
 18 Compact or the receipt of adequate funds from Congress,
 19 whichever occurs later, the Department shall provide the
 20 United States with notice of all groundwater appropriations
 21 within the Area that, according to the records of the
 22 Department, have a priority date on or after January 1, 1993
 23 and before the effective date of this Compact.

24 b. Subsequent to the notice provided for in Article IV,
 25 section G.1.a. and up to 120 days following mailing of the

1 report on inventory provided in Article IV, section
 2 H.1.b.iii., the United States may provide the Department
 3 with credible information on any groundwater appropriation
 4 within the Area with a priority date on or after January 1,
 5 1993 and before the effective date of this Compact, showing
 6 that the appropriation is of water with a temperature of
 7 60F. or more.

8 c. If the United States provides the information set
 9 forth in Article IV, section G.1.b., the Department shall,
 10 within 60 days of receipt of the information, issue an order
 11 requiring that the appropriator comply with the applicable
 12 restrictions. The order is effective within 60 days of
 13 issuance unless the appropriator enters an appearance to
 14 contest the order.

15 d. If the appropriator enters an appearance to contest
 16 the order, the Department shall: (1) issue an order staying
 17 use of the appropriation pending final decision on the
 18 matter by the Department; (2) set a date for a hearing; and
 19 (3) proceed pursuant to the provisions for a contested case
 20 under the Montana Administrative Procedures Act, Title 2,
 21 Chapter 4 of the Montana Code Annotated, provided that in
 22 such a proceeding the United States has the burden of
 23 proving by a preponderance of the evidence that the
 24 appropriation is of groundwater of 60F or more. If the
 25 United States meets this burden, the appropriator shall

1 comply with procedures and restrictions set forth in Article
2 IV, section G.2.

3 2. Appropriations of Groundwater with a Priority Date
4 after the Effective Date of this Compact

5 a. General Provisions

6 i. All groundwater appropriations within the Area after
7 the effective date of this Compact are subject to this
8 Article. Applications and registration for a permit for the
9 appropriation of groundwater within the Area after the
10 effective date of this Compact shall include a statement of
11 whether the proposed use requires water with temperature of
12 60F. or more. In addition, the Department shall not issue a
13 permit for appropriation of groundwater unless the
14 requirements of Articles II and III are met, if applicable.

15 ii. A permit issued pursuant to this Article shall
16 provide that:

17 (1) The permittee shall install a device to meter total
18 volume of water use in compliance with rules promulgated by
19 the Department pursuant to Article IV, section I.5. The
20 Department shall specify the metering method and location of
21 installation. On or before January 15 of each year, the
22 permittee shall report annual use to the Bureau at: Montana
23 Bureau of Mines and Geology, Main Hall, Montana Tech, Butte
24 MT, 59701. Meters shall be made available to the permittee
25 at the Department of Natural Resources and Conservation

1 Regional Water Rights Office at: 111 North Tracy, Bozeman,
2 Montana, 59715. Meters shall be acquired for distribution by
3 the Department of Natural Resources and Conservation
4 Regional Water Rights Office as part of the inventory and
5 sampling program authorized by Article IV, section I.

6 (2) The Department has the authority to modify or
7 revoke a permit if the provisions listed below are
8 applicable, and all other administrative or judicial
9 enforcement authority provided under Title 85, part 2, of
10 the Montana Code Annotated applies to this part. The
11 Department may exercise its enforcement authority if (1) the
12 appropriator fails to allow access for sampling provided for
13 in Article IV, section H.; (2) the character of the
14 groundwater produced changes such that a restriction applies
15 pursuant to this Article; (3) new restrictions imposed
16 pursuant to Article IV, section J. are applicable; or (4)
17 the appropriator violates any other provision of this part.

18 (3) A permit to appropriate hydrothermal discharge
19 water may include limits and conditions on appropriation
20 including but not limited to (a) limits on total withdrawal
21 by day, month or year; (b) a requirement to adhere to a
22 system of rotation of use within the Area; and (c) a
23 provision adjusting the total withdrawal from two or more
24 wells in the area used by the same appropriator.

25 (4) A permit to appropriate hydrothermal discharge

1 water shall include any applicable monitoring requirement
 2 recommended by the Working Group Report or recommendations
 3 by the TOC superseding that report unless the applicant
 4 shows by clear and convincing evidence that such monitoring
 5 is inappropriate.

6 iii. If, subsequent to the effective date of this
 7 Compact, modification pursuant to Article IV, section J.
 8 removes the restrictions set forth in Article IV, section
 9 E., the monitoring recommended by the Working Group Report
 10 or as superseded by the TOC shall continue to apply unless
 11 the applicant shows by clear and convincing evidence that
 12 such monitoring is inappropriate, according to the criteria
 13 in the Working Group Report or as superseded by the TOC.

14 b. Appropriations of Groundwater with a Temperature of
 15 less than 60F

16 i. Registration and Application

17 (1) An applicant for an appropriation of groundwater of
 18 35 gpm or less, not to exceed 10 acre-feet per year shall
 19 register for a permit by filing a form prescribed by the
 20 Department that shall include, but not be limited to, a
 21 statement of whether the proposed use requires water with
 22 temperature of 60F. or more, the well location, and intended
 23 use and shall comply with the provisions of Article II and
 24 III, if applicable. The Department shall provide notice of
 25 the registration for a permit to the United States within 30

1 days of the filing.

2 (2) An applicant for a permit to appropriate
 3 groundwater of greater than 35 gpm or 10 acre-feet per year
 4 after the effective date of this Compact, shall comply with
 5 existing state law for permits to appropriate water and the
 6 limits on groundwater appropriations set forth in Articles
 7 II and III, if applicable. The Department may issue an
 8 interim permit for the proposed appropriation to an
 9 applicant seeking an appropriation for a use that does not
 10 require water with a temperature of 60F. or more if the
 11 requirements of this section are met.

12 ii. Drilling

13 (1) On filing a proper registration form, an applicant
 14 for an appropriation of 35 gpm or less, not to exceed 10
 15 acre-feet per year, with a proposed use that does not
 16 require water with a temperature of 60F. or more may
 17 complete the proposed well subject to state law and the
 18 terms of this Compact, but shall not put the water to
 19 beneficial use until issuance of a permit.

20 (2) Upon issuance of an interim permit, an applicant
 21 for an appropriation of greater than 35 gpm or 10 acre-feet
 22 per year may drill the well subject to state law and the
 23 terms of this Compact, but shall not put the water to
 24 beneficial use until issuance of a permit.

25 iii. Within 60 days of drilling of the well, the

1 applicant or registrant shall provide the Department with a
 2 well log on a form provided by the Department. The well log
 3 shall include well location to the
 4 quarter-quarter-quarter-quarter section; ground elevation at
 5 the wellhead; well depth; water level; flow rate or maximum
 6 pump rate; water temperature measured at the wellhead; and
 7 specific conductance of the water produced using a device
 8 provided by the Water Resources Regional Office.

9 iv. The Department shall forward a copy of the well log
 10 to the United States and to the Bureau on receipt.

11 v. Following receipt of the well log, the Department
 12 may inspect the well at a reasonable hour of the day to
 13 verify the information on the well log report. The United
 14 States may request to accompany the inspector as set forth
 15 in Article II, section I.4.

16 vi. The United States has 60 days from the mailing of
 17 the report to file an objection setting forth credible
 18 information that the appropriation is of groundwater with
 19 characteristics to which restrictions established pursuant
 20 to this Article apply.

21 vii. The Department may issue a permit to appropriate
 22 if: (1) the well log and any verification confirm that the
 23 appropriation is of water to which no restrictions pursuant
 24 to this Article apply; and (2) all other requirements of
 25 state law and this Compact have been met, unless the United

1 States files an objection pursuant to Article IV, section
 2 G.2.b.vi. If the well log or verification indicate
 3 appropriation of water to which restrictions pursuant to
 4 this Article apply or if the United States files a proper
 5 objection, the applicant shall be subject to the provisions
 6 of Article IV, section G.2.c.

7 viii. If a permit is issued, the applicant or registrant
 8 may complete the appropriation and apply the water to
 9 beneficial use.

10 ix. Within 60 days of completion of the appropriation,
 11 the permittee shall file a notice of completion with the
 12 Department pursuant to state law.

13 c. Appropriation of Groundwater with a Temperature of
 14 60F. or Greater

15 If an application or registration for a permit within
 16 the Area is for a use requiring groundwater with a
 17 temperature of 60F. or more or the well log or any
 18 verification indicates water of 60F. or more, the following
 19 provisions apply:

20 i. Subarea I - groundwater with a temperature of 85F.
 21 or more:

22 Groundwater of 85F. or more in Subarea I is presumed to
 23 be hydrothermal discharge water. The Department shall not
 24 process or grant an application for a permit to appropriate
 25 water with a temperature of 85F. or more in Subarea I,

1 unless the appropriation is consistent with modification of
 2 restrictions pursuant to Article IV, section J., or pursuant
 3 to the procedures set forth below. An application for an
 4 appropriation that proposes to do no more than divert the
 5 unenhanced natural surface flow of a spring that is not
 6 located in the mainstem of the reserved portion of a stream
 7 to which a reserved water right for instream flow is
 8 described in Article III of this Compact is not subject to
 9 these restrictions.

10 (1) The application shall set forth credible
 11 information that the proposed appropriation does not include
 12 contribution by hydrothermal discharge water;

13 (2) Within 30 days of receipt of the information the
 14 Department shall seek review of the application by the TOC.

15 (3) The TOC shall review the report to determine if the
 16 appropriation can take place without adverse effect on the
 17 hydrothermal system within YNP. In performing the review,
 18 the TOC shall utilize the best available scientific
 19 information. The TOC shall resolve doubt in favor of
 20 protection of the hydrothermal system within YNP.

21 (4) Within 60 days of the request by the Department,
 22 the TOC shall recommend, in a report to the Department, if,
 23 and under what conditions the appropriation could be allowed
 24 without adverse effect on the hydrothermal system within
 25 YNP. The TOC may recommend limits or conditions on the

1 proposed appropriation that, in the opinion of the TOC,
 2 would allow the development while protecting the
 3 hydrothermal system within YNP. The TOC shall also provide
 4 the Department with a dissenting report pursuant to Article
 5 IV, section J.1., if applicable.

6 (5) On receipt of the report or reports, the Department
 7 shall provide a copy to the United States and the applicant
 8 and shall schedule a hearing no less than 60 and no more
 9 than 90 days from mailing of the report.

10 (6) The hearing shall proceed as a contested case under
 11 the Montana Administrative Procedure Act, Title 2, Chapter 4
 12 of the Montana Code Annotated.

13 (7) The report or reports, data and other written
 14 information produced by the TOC shall be admissible in the
 15 hearing without further foundation and not subject to the
 16 hearsay objection, subject to the rights of any party or
 17 claimant to cross-examine the producer or drafter of the
 18 written material and to controvert the same by other
 19 evidence. The hearing officer may request that members of
 20 the TOC appear to provide expert testimony in the case.

21 (8) The report and recommendations provided by the TOC
 22 have a rebuttable presumption of validity for the purposes
 23 of Article IV. The dissenting report, if any, may be used as
 24 rebuttal evidence.

25 (9) If the report recommends denial of the application,

1 the applicant may overcome the presumption by proving by
2 clear and convincing evidence that the proposed
3 appropriation does not include hydrothermal discharge water.

4 (10) If the application is denied, the Department shall
5 order that the well be temporarily abandoned; or, if
6 multiple water zones are encountered, the zone of excess
7 temperature be closed to production. Abandonment shall be
8 according to the rules of the Montana Board of Water Well
9 Contractors unless alternative procedures are recommended by
10 the TOC. The abandonment order shall not be lifted until a
11 modification order pursuant to Section IV.J. allows the
12 appropriation or UNTIL THE DEPARTMENT determines that the
13 well should be permanently abandoned.

14 (11) Within 30 days of an order by the Department
15 pursuant to this section, appeal on the record may be made
16 to a state or federal court of competent jurisdiction. For
17 an appeal to state court, venue shall be the First Judicial
18 District in Helena and the review must be conducted
19 according to the procedures for judicial review of a
20 contested case under the Montana Administrative Procedures
21 Act, Title 2, Chapter 4, of the Montana Code Annotated.

22 ii. Subarea I - groundwater with a temperature of 60F.
23 or more, but less than 85F:

24 Appropriation of groundwater with a temperature of 60F.
25 or more, but less than 85F. in subarea I is subject to the

1 following provisions.

2 (1) The applicant shall provide credible information
3 that the water meets the following criteria:

4 (a) the proposed appropriation will do no more than
5 divert the unenhanced natural surface flow of a spring that
6 is not located in the mainstem of the reserved portion of a
7 stream to which a reserved water right for instream flow is
8 described in Article III of this Compact, or

9 (b) the proposed appropriation meets all of the
10 following criteria:

11 (i) The water temperature is the result of the normal
12 thermal gradient of the earth plus the mean annual air
13 temperature at the site plus 14F. Unless modified by the
14 TOC, the Department shall use the following equation to
15 estimate the water temperature expected:

16 $(0.01646 \times \text{the depth of the production zone in feet}) +$
17 $59.3F.$

18 If the temperature measured at the wellhead is equal to
19 or less than the temperature estimated by this equation, the
20 appropriation meets this criteria.

21 (ii) the concentration of soluble chloride is less than
22 ten parts per million; and

23 (iii) the well does not contain a production zone
24 completed within the Madison Group of formations as defined
25 by the Catalog of Stratigraphic Names for Montana, Bureau of

1 Mines and Geology, Special Publication 54, March 1971.

2 (2) The Department may issue a permit to appropriate
3 groundwater with a temperature of 60F or more, but less than
4 85F. to an applicant that meets the above criteria and is in
5 compliance with the provisions of Article IV, section G.2.c.
6 unless (a) restrictions are consistent with modification
7 pursuant to Article IV, section J.; or (b) the United States
8 objects and shows by a preponderance of the evidence that
9 the criteria have not been met or, for another scientific
10 reason, the temperature is the result of contribution by
11 hydrothermal discharge water.

12 (3) If the applicant fails to meet the above criteria
13 or the United States meets its burden, the applicant shall
14 comply with the provisions of Article IV, section G.2.c.i.
15 for water or 85F or more.

16 (4) The three criteria set forth in Article IV, section
17 G.2.c.ii.(1)(b) may be modified on recommendation by the
18 TOC.

19 iii. Subarea II:

20 (1) Groundwater of 85F. or more in subarea II is
21 presumed to be hydrothermal discharge water. The applicant
22 shall follow the procedures of Article IV, section G.2.c.i.
23 including review by the TOC, provided that, if a permit to
24 appropriate is issued the monitoring recommended in the
25 Working Group Report or as superseded by the TOC for subarea

1 II, not subarea I, shall apply.

2 (2) An applicant who encounters groundwater of 60F. or
3 more but less than 85F. shall comply with the provisions of
4 Article IV, section G.2.c.ii., provided that, if a permit to
5 appropriate is issued the monitoring recommended in the
6 Working Group Report or as superseded by the TOC for subarea
7 II, not subarea I, shall apply.

8 3. Change in Character of Groundwater: Within 60 days
9 of the receipt of information indicating a change in the
10 character of the groundwater appropriated under a permit
11 issued in the Area on or after January 1, 1993 that
12 indicates the production of groundwater for which a
13 restriction applies, the Department shall issue an order
14 requiring that the appropriator comply with the limitations
15 on appropriation of hydrothermal groundwater authorized in
16 this Article. The order shall take affect 60 days following
17 the date issued unless the appropriator appears to contest
18 the order. If the appropriator appears to contest the order,
19 the Department shall set a date for a hearing and proceed
20 pursuant to the provisions for a contested case under the
21 Montana Administrative Procedures Act, title 2, Chapter 4,
22 of the Montana Code Annotated, provided that the
23 appropriator shall have the burden to prove by a
24 preponderance of the evidence that the water produced does
25 not meet the criteria to which restrictions apply.

1 H. Inventory and Sampling of Groundwater

2 1. Initial Inventory

3 All groundwater appropriations in the Area with a
4 priority date before the effective date of this Compact
5 shall be inventoried as set forth below:

6 a. Notice of Inventory

7 Within 120 days after the effective date of this Compact
8 or the receipt of funding from the United States, whichever
9 occurs later, the Department shall serve notice by mail on
10 each person or public agency known from an examination of
11 the records in the Department's office to be an appropriator
12 of groundwater with a priority date before the effective
13 date of this Compact. The notice shall set forth:

14 i. the contents of the notice required in Article IV,
15 section F.; and

16 ii. a statement that within 3 years from the date of
17 notice the Bureau may visit the wellsite to measure
18 temperature; flow rate or maximum pump capacity; water
19 level, or pump level if the well cannot be entered; and may
20 collect a water sample for additional analysis.

21 b. Inventory

22 i. Within 3 years of notice pursuant to Article IV,
23 section H.1.a., a representative of the Bureau shall
24 inventory each well drilled pursuant to an appropriation
25 recognized under state law with a priority date before the

1 effective date of this Compact. The inventory shall be
2 considered complete when the Bureau has inventoried
3 substantially all of the wells that can be located and
4 accessed with reasonable diligence. The inventory shall
5 include, but not be limited to, the following:

6 (1) well location to the
7 quarter-quarter-quarter-quarter section;

8 (2) ground elevation at the wellhead;

9 (3) flow rate or maximum pump capacity;

10 (4) water level, or pump level if the well cannot be
11 entered;

12 (5) water temperature at the wellhead;

13 (6) specific conductance of the water at the wellhead;

14 (7) chloride content of the water at the wellhead;

15 (8) water samples from a representative number of wells
16 selected by the Bureau. The water samples shall be analyzed

17 by the Bureau, or by a qualified lab contracted by the

18 Bureau. Samples shall be analyzed for chemistry, and, if

19 applicable, gas and isotopes. Choice of analyses shall be at

20 the discretion of the Bureau using the Working Group Report

21 or a report by the TOC superseding the Working Group Report

22 as a guideline. The Bureau may consult with the TOC

23 concerning well selection and analysis; and,

24 (9) any additional information deemed necessary for
25 implementation of this Article by the Bureau in consultation

1 with the TOC.

2 ii. The inventory shall be prioritized to complete
3 Subarea I first.

4 iii. Within 6 months of completion of the inventory in
5 each Subarea, the Bureau shall provide a report to the
6 Department, the TOC, and the United States, verifying that
7 the inventory is complete and setting forth the data
8 obtained in the inventory. The report shall be made
9 available to the public by the Department. In addition, the
10 Bureau shall maintain an adequate database pursuant to
11 Article IV, section H.2.

12 2. Sampling Program and Database

13 a. Following the initial inventory of all current
14 groundwater appropriations in the Area provided for in
15 Article VI, section H.1., the Bureau shall sample wells
16 selected in consultation with the TOC and at a frequency
17 determined in consultation with the TOC. The wells may
18 include appropriations made prior to, on or after January 1,
19 1993. The number of wells sampled and the analyses performed
20 shall be as determined by the Bureau in consultation with
21 the TOC. Until superseded due to recommendation by the TOC,
22 the Working Group Report shall be used as a guideline in
23 making this determination. Within 6 months of the completion
24 of each inventory and sampling program, the Bureau shall
25 provide the Department, the TOC and the United States with a

1 report on the results.

2 b. The Bureau shall maintain an adequate database on
3 the Yellowstone Controlled Groundwater Area which shall
4 include, at a minimum, analyses of water chemistry,
5 temperature, well depth, well capacity and well location.

6 c. The United States agrees to provide an annual report
7 to the Bureau for incorporation into the database on the
8 water chemistry, temperature and flow rate of any well in
9 use or spring sampled in the portion of YNP within the
10 state, and may include such information for any well or
11 spring in the portion of YNP outside the state.

12 d. The information in the database shall be available
13 to the public through the Natural Resources Information
14 System, currently located at 1515 E. Sixth Avenue, Helena,
15 Montana 59620-1800.

16 I. Administration of the Yellowstone Controlled
17 Groundwater Area

18 1. The Yellowstone Controlled Groundwater Area
19 established by this Compact shall be administered pursuant
20 to applicable state law and the terms of this Compact.

21 2. In addition to the requirements imposed by state
22 law, the Department shall provide the United States with
23 notice of any application or registration for a permit to
24 appropriate groundwater within the Area in the same manner
25 and time as required by state law for notice to groundwater

1 appropriators in a controlled groundwater area.

2 3. The United States may be an objector to any
3 application or registration for a permit to appropriate
4 groundwater or in a hearing for modification of a permit to
5 appropriate groundwater within the Area pursuant to the
6 provisions of Article IV, section G.

7 4. The Department shall, whenever possible, consolidate
8 any proceedings on groundwater applications or registration
9 pursuant to Articles II and III with any proceeding made
10 necessary by this Article.

11 5. Within 2 years after the effective date of this
12 Compact or the receipt of the requested funding from the
13 United States, whichever occurs later, the Department is
14 directed to promulgate such additional rules necessary to
15 effectuate this Compact and to establish criteria which may
16 be necessary to implement this Article. Said rules shall not
17 alter the rights or obligations of the parties hereto. In
18 doing so, the Department shall consult with the United
19 States and the TOC. Until modified by the TOC, the
20 Department shall adopt the Working Group Report to govern
21 sampling, reporting and monitoring requirements, except as
22 modified by Article IV, section G. In reviewing any permit
23 to appropriate hydrothermal discharge water the Department
24 shall consider the criteria set forth in the Working Group
25 Report or a subsequent report by the TOC, including, but not

1 limited to, the identification of risk associated with
2 volume of appropriation and distance from the reserved land
3 of YNP.

4 J. Modification of the Yellowstone Controlled
5 Groundwater Area

6 1. Technical Oversight Committee: Establishment and
7 Authority

8 a. A joint federal-state Technical Oversight Committee
9 is hereby established to review scientific evidence related
10 to the Yellowstone Controlled Groundwater Area; to advise
11 the Department on administration of the Area, including
12 review of applications to appropriate water of 60F. or more;
13 to consult with the Bureau on inventory and sampling; and to
14 recommend modification of boundaries and restrictions.

15 b. The committee shall consist of five qualified
16 scientists with experience related to hydrothermal systems.
17 The committee members shall be appointed within six months
18 following the effective date of this Compact; one appointed
19 by the National Park Service; one appointed by the United
20 States Geological Survey; one appointed by the Department;
21 one appointed from the Montana University system by the
22 Montana State Geologist; and one selected by the other four
23 members. Appointments and selections shall be made, to the
24 extent possible, to ensure that three of the qualified
25 scientists with experience related to hydrothermal systems

1 also have experience in (1) geochemistry; (2) geophysics;
 2 and (3) hydrogeology. Vacancies due to expiration of terms
 3 or resignation of a member shall be filled in the same
 4 manner. Should the four members fail to agree on the
 5 selection of additional members within 60 days after
 6 appointment of all four members or within 30 days after a
 7 vacancy occurs, the following procedure shall be utilized:

8 (i) Within 5 days each member shall nominate one person
 9 for each vacancy and submit the nominations to a judge of
 10 the First Judicial District in Helena; and

11 (ii) A judge of the First Judicial District in Helena
 12 shall fill the vacancy by selecting a member from each set
 13 of nominations.

14 c. Each member shall serve a five-year term and shall
 15 be eligible for reappointment. Expenses of the members shall
 16 be born by the entity appointing the member. The per diem or
 17 salary, and travel expenses of the three members-at-large
 18 shall be born equally by the United States and the state,
 19 subject to the availability of funds. All other expenses of
 20 the TOC shall be born by the United States subject to
 21 Congressional appropriation as set forth in Article IV,
 22 section C.

23 d. The recommendation of any of the following by the
 24 TOC shall be based on a supermajority of four to one: (1)
 25 modification of the Area pursuant to Article IV, section J;

1 (2) review of an application to appropriate groundwater with
 2 a temperature of 60F. or more; and (3) removal of any of the
 3 criteria specified in Article IV, section G.c.ii.(1)(b).
 4 Failure to achieve a supermajority shall result in a
 5 recommendation of no modification or no permit approval. In
 6 the absence of a unanimous decision, the TOC shall provide
 7 both a report supporting the recommendation that there be no
 8 modification or no permit approval, and a dissenting report
 9 to the Department. In all other instances in which the TOC
 10 consults with or makes recommendations to the Department or
 11 the Bureau, recommendations shall be made by a simple
 12 majority of the entire committee.

13 e. The TOC shall:

14 i. review the boundaries of the Area and the Subareas;

15 ii. review the initial restrictions on groundwater
 16 development imposed pursuant to this Article, and future
 17 modifications of those restrictions;

18 iii. assess the cumulative impact of all development in
 19 the Area;

20 iv. review changes in the groundwater and hydrothermal
 21 systems revealed by inventory and analyses done by the
 22 Bureau, and any other pertinent scientific evidence;

23 v. review new scientific evidence pertinent to the
 24 Area;

25 vi. consult with the Bureau or the Department on

1 request;

2 vii. present evidence and make recommendations to the
3 Department in accordance with Article IV, section J.2.

4 viii. review applications for a permit to appropriate
5 groundwater on request by the Department as set forth in
6 Article IV, section G.2.c.; and

7 ix. take any additional action necessary to implement
8 this Article.

9 f. The Department and the Bureau shall provide the TOC
10 with all information in their records regarding
11 appropriations of groundwater within the Area including
12 reports required by this Article.

13 g. The initial review shall take place within 1 year of
14 the receipt of the inventory report done by the Bureau
15 pursuant to Article IV, section H. Subsequent reviews shall
16 take place every 5 years following the initial inventory or
17 following the issuance of 75 permits to appropriate water
18 within the Area by the Department, whichever occurs first.
19 Additional review shall also take place on request by the
20 United States or the state.

21 h. Within 6 months of initiation of a review, the TOC
22 shall provide a report of the review, including any
23 recommendation for modification, and a dissenting report, if
24 any, to the Department and the United States.
25 Recommendations shall be based on a determination by a

1 supermajority of the entire TOC that the modification is
2 necessary to prevent adverse effect to the hydrothermal
3 system within the reserved land of YNP, or that modification
4 may be made without the threat of adverse effect on the
5 hydrothermal system within the reserved land of YNP. The
6 recommendation shall be made in good faith and based on
7 scientific evidence including, but not limited to, the
8 following:

9 i. in the case of extension of boundaries, the criteria
10 set out in the Working Group Report for designation of the
11 boundary of the Area to be enlarged is found to exist within
12 the proposed extension;

13 ii. the cumulative effect of groundwater development
14 within the Area or a portion of the Area has resulted in
15 declining hydraulic head and modification of boundaries or
16 restrictions are necessary to prevent adverse effect on the
17 hydrothermal system within the reserved land of YNP;

18 iii. changes in groundwater revealed by the inventory
19 and sampling program are such that modification is necessary
20 to prevent adverse effect on the hydrothermal system within
21 the reserved land of YNP;

22 iv. scientific evidence indicates that modification is
23 necessary to prevent adverse effect on the hydrothermal
24 system within the reserved land of YNP;

25 v. based on scientific evidence, restrictions can be

1 removed or boundary modifications made without the threat of
 2 adverse effect to the hydrothermal system within the
 3 reserved land of YNP.

4 2. Modification Pursuant to Review

5 a. Within 60 days of mailing of the report in Article
 6 IV, section J.l.h., and if (1) the TOC recommends
 7 modification; (2) the United States, state or a person with
 8 property or water rights within the Area petitions for a
 9 hearing; or (3) a person with an interest that would be
 10 adversely affected by the recommendation, petitions for a
 11 hearing, the Department shall provide for notice of a
 12 hearing pursuant to state law.

13 b. The Department shall follow the rules for a
 14 contested case under the Montana Administrative Procedures
 15 Act, Title 2, Chapter 4 of the Montana Code Annotated. In
 16 addition, the Department shall apply the following
 17 provisions:

18 1. The report or reports, data and other written
 19 information produced by the TOC shall be admissible in the
 20 hearing without further foundation and not subject to the
 21 hearsay objection, subject to the rights of any party or
 22 claimant to cross-examine the producer or drafter of the
 23 written material and to controvert the same by other
 24 evidence. The hearing officer may request that members of
 25 the TOC appear to provide expert testimony in the case. The

1 hearing officer shall also hear any oral and written
 2 scientific evidence presented by the state, the United
 3 States, any applicant for a permit to appropriate who has
 4 requested review, and any person with property or water
 5 rights in the Area, or an interest that would be adversely
 6 affected by the recommended modification.

7 ii. The scientific evidence and recommendations
 8 presented in the report by the TOC have a rebuttable
 9 presumption of validity for the purposes of Article IV. The
 10 Department shall adopt the recommendations of the TOC unless
 11 the recommendation by the TOC is refuted by clear and
 12 convincing scientific evidence. The dissenting report of the
 13 TOC, if any, may be used as rebuttal evidence.

14 iii. The Department shall issue an order stating
 15 findings of fact and conclusions of law.

16 c. Within 30 days of an order by the Department, a
 17 person aggrieved by the order may appeal on the record to a
 18 state or federal court of competent jurisdiction. For an
 19 appeal to state court, venue shall be the First Judicial
 20 District in Helena and the review must be conducted
 21 according to the procedures for judicial review of a
 22 contested case under the Montana Administrative Procedures
 23 Act, Title 2, Chapter 4, of the Montana Code Annotated.

24 ARTICLE V
 25 GENERAL PROVISIONS

1 A. No Effect on Tribal Rights or Other Federal Reserved
2 Water Rights:

3 1. Nothing in this Compact may be construed or
4 interpreted in any manner to establish the nature, extent or
5 manner of administration of the rights to water of an Indian
6 Tribe in Montana, or of a water right of an individual that
7 is derivative of such right, or of the United States on
8 behalf of such tribe or tribal member. The relationship
9 between the water rights of the National Park Service
10 described herein and any rights to water of an Indian Tribe
11 in Montana, or of a water right of an individual that is
12 derivative of such right, or of the United States on behalf
13 of such tribe or tribal member shall be determined by the
14 rule of priority.

15 2. Nothing in this Compact is otherwise intended to
16 conflict with or abrogate a right or claim of an Indian
17 Tribe regarding boundaries or property interests in the
18 State of Montana.

19 3. Nothing in this Compact may be construed or
20 interpreted in any manner to establish the nature, extent or
21 manner of administration of the rights to water of any other
22 federal agency or federal lands in Montana other than those
23 of the National Park Service. The exercise of a water right
24 of the United States, if any, to water for a consumptive use
25 on land administered by the United States Forest Service

1 upstream of a water right to instream flow described in this
2 Compact shall be allocated from the United States' share for
3 instream flow, not the state's share for consumptive use.

4 B. State Water Rights

5 Nothing in this Compact may limit the exclusive
6 authority of the state, including the authority of a water
7 commissioner authorized by state law, to administer all
8 current and future water rights recognized under state law
9 within and upstream of the reserved land covered by this
10 Compact, provided that in administration of those water
11 rights in which the United States has an interest, such
12 authority is limited to that granted under federal law.

13 C. General Disclaimers

14 Nothing in this Compact may be construed or interpreted:

15 1. as a precedent for the litigation or the
16 interpretation or administration of future compacts between
17 the United States and the state; or of the United States and
18 any other state;

19 2. as a waiver by the United States of its right under
20 state law to raise objections in state court to individual
21 water rights claimed pursuant to the state Water Use Act,
22 Title 85, of the Montana Code Annotated, in the basins
23 affected by this Compact;

24 3. as a waiver by the United States of its right to
25 seek relief from a conflicting water use not entitled to

1 protection under the terms of this Compact;

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

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

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

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

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

18 9. to affect in any manner the entitlement to or
19 quantification of other federal water rights. This Compact
20 is only binding on the United States with regard to the
21 water rights of the National Park Service, and does not
22 affect the water rights of any other federal agency.

23 D. Use of Water Right

24 Except as otherwise provided in this Compact, the rights
25 of the United States described in this agreement are federal

1 reserved water rights. Non-use of all or a part of the
2 federal reserved water rights described in this Compact
3 shall not constitute abandonment of the right. The federal
4 reserved water rights described in this Compact need not be
5 applied to a use deemed beneficial under state law, but
6 shall be restricted to uses necessary to fulfill the
7 purposes of the associated reserved land.

8 E. Appropriation Pursuant to State Law

9 Nothing in this Compact may prevent the United States
10 from seeking a permit to appropriate water under state law
11 for use outside the boundaries of the federal reservations
12 for which a water right is described in this Compact,
13 provided that, no such use may be included in the
14 calculation of total current or future consumptive use
15 rights allocated to use pursuant to state law by this
16 Compact, and provided further that, a water right obtained
17 in this manner shall be considered a state water right and
18 shall be administered pursuant to general provisions of
19 state law as provided in Article II, section J.2.b.

20 F. Reservation of Rights

21 The parties expressly reserve all rights not granted,
22 described or relinquished in this Compact.

23 G. Severability

24 Except as provided in Article IV, the provisions of this
25 Compact are not severable.

1 H. Multiple Originals

2 This Compact is executed in quintuplicate. Each of the
3 five (5) Compacts bearing original signatures shall be
4 deemed an original.

5 I. Notice

6 Unless otherwise specifically provided for in this
7 Compact, service of notice required hereunder, except
8 service in litigation, shall be:

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

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

14 ARTICLE VI

15 FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

16 A. Binding Effect

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

24 a. The state and a person or entity of any nature
25 whatsoever using, claiming or in any manner asserting a

1 right under the authority of the state to the use of water;
2 and

3 b. except as otherwise provided in Article V, section
4 A., the United States, a person or entity of any nature
5 whatsoever using, claiming, or in any manner asserting a
6 right under the authority of the United States to the use of
7 water.

8 2. Following the effective date, this Compact shall not
9 be modified without the consent of both parties. Either
10 party may seek enforcement of this Compact in a court of
11 competent jurisdiction. Except as provided in Article IV
12 concerning the appropriation of funds, attempt to
13 unilaterally modify this Compact by either party shall
14 render this Compact voidable at the election of the other
15 party.

16 3. On approval of this Compact by a state or federal
17 court of competent jurisdiction and entry of a decree by
18 such court confirming the rights described herein, this
19 Compact and such rights are binding on all persons bound by
20 the final order of the court.

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

24 B. Disposition of Actions

25 Subject to the following stipulations and within one

1 hundred eighty (180) days of the effective date, the parties
 2 shall submit this Compact to an appropriate state court or
 3 courts having jurisdiction over this matter in an action
 4 commenced pursuant to 43 U.S.C. 666, for approval in
 5 accordance with state law and for the incorporation of the
 6 reserved water rights described in this Compact into a
 7 decree or decrees entered therein. The parties understand
 8 and agree that the submission of this Compact to a state
 9 court or courts, as provided for in this Compact, is solely
 10 to comply with the provisions of 85-2-702(3), MCA, and does
 11 not expand [sic] the jurisdiction of the state court or
 12 expand in any manner the limited waiver or sovereign
 13 immunity of the United States in the McCarran Amendment, 43
 14 U.S.C. 666 or other provision of federal law.

15 1. Dismissal of Filed Claims: At the time the state
 16 courts approve the reserved water rights described in this
 17 Compact and enter a decree or decrees confirming the rights
 18 described herein, such courts shall dismiss, with prejudice,
 19 all of the water right claims specified in Appendix 3 to
 20 this Compact. If this Compact fails approval or a reserved
 21 water right described herein is not confirmed, the specified
 22 claims shall not be dismissed.

23 2. Disposition of Federal Suits: Within ninety (90)
 24 days of the issuance of a final decree or decrees by the
 25 state courts approving this Compact and confirming the

1 reserved water rights described herein, and the completion
 2 of any direct appeals therefrom or the expiration of the
 3 time for filing such appeal, the parties shall execute and
 4 file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to
 5 dismiss with prejudice those claims made by the United
 6 States for Glacier National Park in United States v.
 7 Aageson, No. CV-79-21-GF (D. Mont.); United States v. Abell,
 8 No. CV-79-33M (D. Mont.); and United States v. AMS Ranch,
 9 Inc., No. CV-79-22-GF (D. Mont.). This Compact may be filed
 10 as a consent decree in those federal suits, only if, prior
 11 to the dismissal of the federal suits as provided in this
 12 Article, it is finally determined in a judgement binding on
 13 the State of Montana that the state courts lack jurisdiction
 14 over some or all of the reserved water rights described in
 15 this Compact. Within one year of such judgment the United
 16 States agrees to commence such additional proceedings in the
 17 federal district court for the District of Montana as may be
 18 necessary to judicially confirm the reserved water rights
 19 described herein which are not included within an existing
 20 action.

21 C. Settlement of Claims

22 The parties intend that, with the exceptions noted
 23 herein, the water rights described in this Compact are in
 24 full and final settlement of the water right claims for the
 25 reserved land administered by the National Park Service in

1 Montana on the effective date of this Compact. Pursuant to
 2 this settlement, by which certain federal reserved water
 3 rights are expressly recognized by the state in this Compact
 4 and other water rights claims of the United States are
 5 expressly retained in Article III, sections B., D., E, and
 6 F., the United States hereby and in full settlement of any
 7 and all claims filed by the United States or which could
 8 have been filed by the United States for reserved land
 9 administered by the National Park Service in Montana
 10 relinquishes forever all said claims on the effective date
 11 of this Compact to water within the State of Montana for
 12 reserved land administered by the National Park Service. The
 13 state agrees to recognize the reserved water rights
 14 described and quantified herein, and shall, except as
 15 expressly provided for herein, treat them in the same manner
 16 as a water right recognized by the state.

17 D. The parties agree to seek enactment of legislation
 18 and to recommend appropriation of federal funds necessary to
 19 effectuate the provisions and purposes of this Compact, and
 20 to defend the provisions and purposes of this Compact from
 21 all challenges and attacks.

22 IN WITNESS WHEREOF the representatives of the State of
 23 Montana and the United States have signed this Compact on
 24 the ____ day of _____, 19__.

25 FOR THE STATE OF MONTANA

1 MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION
 2 FOR THE UNITED STATES

3 NEW SECTION. Section 2. Statutory appropriation of
 4 federal funds. (1) There must be created those accounts that
 5 are necessary within the federal special revenue fund
 6 established under 17-2-102 for the purposes of this part.

7 (2) Federal funds deposited in the accounts and
 8 interest and earnings on the accounts are statutorily
 9 appropriated, as provided in 17-7-502, and must be used for
 10 the following purposes or to reimburse the state for
 11 expenditures incurred for the following purposes:

12 (a) establishment, administration, and enforcement of
 13 the Yellowstone controlled ground water area;

14 (b) inventory, sampling, reporting, and data base
 15 management;

16 (c) provision for administrative costs and the cost of
 17 any study or any other necessary activity by the technical
 18 oversight committee; and

19 (d) any other necessary activity pursuant to this part.

20 Section 3. Section 17-7-502, MCA, is amended to read:

21 "17-7-502. Statutory appropriations -- definition --
 22 requisites for validity. (1) A statutory appropriation is an
 23 appropriation made by permanent law that authorizes spending
 24 by a state agency without the need for a biennial
 25 legislative appropriation or budget amendment.

1 (2) Except as provided in subsection (4), to be
2 effective, a statutory appropriation must comply with both
3 of the following provisions:

4 (a) The law containing the statutory authority must be
5 listed in subsection (3).

6 (b) The law or portion of the law making a statutory
7 appropriation must specifically state that a statutory
8 appropriation is made as provided in this section.

9 (3) The following laws are the only laws containing
10 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
11 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
12 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;
13 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
14 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
15 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;
16 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
17 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;
18 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;
19 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
20 23-7-301; 23-7-402; 27-12-286; 37-43-204; 37-51-501;
21 39-71-2504; 44-12-286; 44-13-102; 53-6-150; 53-24-206;
22 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108;
23 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310;
24 82-11-136; 82-11-161; 85-1-220; section 2; 90-3-301;
25 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

1 (4) There is a statutory appropriation to pay the
2 principal, interest, premiums, and costs of issuing, paying,
3 and securing all bonds, notes, or other obligations, as due,
4 that have been authorized and issued pursuant to the laws of
5 Montana. Agencies that have entered into agreements
6 authorized by the laws of Montana to pay the state
7 treasurer, for deposit in accordance with 17-2-101 through
8 17-2-107, as determined by the state treasurer, an amount
9 sufficient to pay the principal and interest as due on the
10 bonds or notes have statutory appropriation authority for
11 the payments. (In subsection (3): pursuant to sec. 7, Ch.
12 567, L. 1991, the inclusion of 19-6-709 terminates upon
13 death of last recipient eligible for supplemental benefit;
14 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
15 22-3-811 terminates June 30, 1993.)"

16 NEW SECTION. Section 4. Codification instruction.
17 [Sections 1 and 2] are intended to be codified as an
18 integral part of Title 85, chapter 20, and the provisions of
19 Title 85, chapter 20, apply to [sections 1 and 2].

-End-

HOUSE BILL NO. 692

INTRODUCED BY WANZENRIED, GROSFIELD, YELLOWTAIL,
HARPER, SWYSGOOD, HALLIGAN, BECK, BROOKE, SWANSON,
RANEY, GILBERT, GRINDE, FAGG, SCHYE

A BILL FOR AN ACT ENTITLED: "AN ACT RATIFYING A RESERVED
WATER RIGHTS COMPACT BETWEEN THE UNITED STATES NATIONAL PARK
SERVICE AND THE STATE OF MONTANA; ESTABLISHING A STATUTORY
APPROPRIATION; AND AMENDING SECTION 17-7-502, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. United States National Park
Service -- Montana compact ratified. The compact entered
into by the state of Montana and the United States National
Park Service and filed with the secretary of state of the
state of Montana under the provisions of 85-2-702 on [date
of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

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 water for certain lands administered by the
National Park Service within the State of Montana at the
time of the effective date of this Compact.

RECITALS

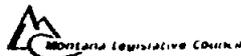
WHEREAS, in 1979 the United States filed in the United
States District Court for the District of Montana several
actions to adjudicate, inter alia, its rights to water with
respect to Glacier National Park, see United States v.
Aageson, No. CV-79-21-GF; United States v. Abell, No.
CV-79-33-M; and United States v. AMS Ranch, Inc., No.
CV-79-22-GF.

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, 85-2-703, MCA, provides that the state 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 existing National Park Service units in the
State of Montana, including those reserved water rights
necessary to preserve Glacier National Park and Yellowstone
National Park unimpaired for future generations;

WHEREAS, the United States, in quantifying its reserved
water rights recognizes the need to accommodate the
interests of the state and its citizens by providing for the



1 development and use of water in the vicinity of the Park
2 units to the extent that it is possible to do so without
3 materially affecting the rights and interests of the United
4 States;

5 WHEREAS, the United States Attorney General, or a duly
6 designated official of the United States Department of
7 Justice, has authority to execute this Compact on behalf of
8 the United States pursuant to the authority to settle
9 litigation contained in 28 U.S.C. 516-17 (1968);

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

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

17 ARTICLE I
18 DEFINITIONS

19 For purposes of this Compact only, the following
20 definitions shall apply:

21 (1) "Abstract" means the copy of the document entitled
22 "Abstract of National Park Service Water Rights" referenced
23 in this Compact as Appendix 1.

24 (2) "Big Hole National Battlefield" or "BHNB" means
25 those lands located in Montana that were acquired pursuant

1 to, or withdrawn and reserved by Executive Order No. 1216 of
2 June 23, 1910; Presidential Proclamation No. 2339 of June
3 29, 1939, 53 Stat. 2544; and Act of May 17, 1963, 77 Stat.
4 18.

5 (3) "Bighorn Canyon National Recreation Area" or
6 "BCNRA" means those lands located in Montana that were
7 acquired pursuant to, or designated as such by Act of
8 October 15, 1966, 80 Stat. 913.

9 (4) "Bureau" means the Montana Bureau of Mines and
10 Geology or its successor.

11 (5) "Category 1 stream" means a stream that headwaters
12 on the reserved land administered by the National Park
13 Service.

14 (6) "Category 1a stream" means a stream that headwaters
15 on the reserved land administered by the National Park
16 Service and which, in part, carries water that drains
17 non-federal land within the boundaries of the same reserved
18 land.

19 (7) "Category 2 stream" means a stream that headwaters
20 in a Wilderness Area in Montana outside the respective Park
21 unit which flows into the reserved land administered by the
22 National Park Service, and which is not the source for a
23 consumptive USE water right recognized under state law on
24 the effective date of this Compact and drains a hydrologic
25 basin that contains only federal land.

1 (8) "Category 3 stream" means a stream that headwaters
2 in Montana outside the reserved land administered by the
3 National Park Service that flows into the reserved land and
4 is the source for consumptive use water rights recognized
5 under state law on the effective date of this Compact.

6 (9) "Category 4 stream" means a stream that is treated
7 individually due to special circumstances.

8 (10) "Consumptive use" means use of surface water not
9 considered a non-consumptive use under (24) and use of
10 groundwater which is shown to be hydrologically connected to
11 surface water pursuant to Article II.

12 (a) "Current consumptive use", when referring to water
13 rights recognized under state law only, means all
14 consumptive use water rights recognized under state law with
15 a priority date before January 1, 1993.

16 (b) "Future consumptive use", when referring to a water
17 right recognized under state law only, means a consumptive
18 use water right recognized under state law with a priority
19 date on or after January 1, 1993.

20 (11) "Credible information" means credible evidence
21 sufficient to support a prima facie basis for the theory
22 asserted.

23 (12) "Department" means the Montana Department of
24 Natural Resources and Conservation or its successor.

25 (13) "Effective date of this Compact" means the date of

1 the ratification of the Compact by the Montana legislature,
2 written approval by the United States Department of the
3 Interior, or written approval by the United States
4 Department of Justice, whichever is later.

5 (14) "Glacier National Park" or "GNP" means those lands
6 located in Montana that were acquired pursuant to, or
7 withdrawn and reserved by the Act of May 11, 1910, 36 Stat.
8 354; Act of February 27, 1915, 38 Stat. 814; and Act of
9 April 11, 1972, 86 Stat. 120.

10 (15) "Grant Kohrs Ranch National Historic Site" means
11 those lands acquired by the United States and designated as
12 such pursuant to Public Law 92-406, August 25, 1972.

13 (16) "Groundwater" means water that is beneath the
14 ground surface.

15 (17) (a) "Hydrologically connected", for the purposes
16 of Articles II and III, means groundwater that is connected
17 to surface water such that appropriation at the proposed
18 rate will cause a calculable reduction in surface water
19 flow. A "calculable reduction in surface water flow" means a
20 theoretical reduction based on credible information as
21 opposed to a measured reduction.

22 (b) "Hydrologically connected" for the purposes of
23 Article IV, means groundwater that is considered to be
24 connected to the hydrothermal system within the reserved
25 land of Yellowstone National Park based on scientific

1 evidence according to the procedures in Article IV.

2 (18) "Hydrothermal system" means the groundwater system,
3 including cold water recharge, transmission and warm water
4 discharge that is hydrologically connected to the
5 hydrothermal features within the reserved land of
6 Yellowstone National Park.

7 (19) "Hydrothermal discharge water" means groundwater
8 with a temperature in excess of 59 degrees Fahrenheit that
9 is hydrologically connected to the hydrothermal system
10 within the reserved land of Yellowstone National Park.

11 (20) "Hydrothermal feature" means a surface
12 manifestation of a hydrothermal system, including but not
13 limited to: hot springs, geysers, mud pots, and fumaroles.

14 (21) "Instream flow" means the water that the parties
15 agree shall remain in the stream in satisfaction of the
16 United States' reserved water right for the purposes of the
17 reserved land.

18 (22) "Little Bighorn Battlefield National Monument" or
19 "LBBNM" means those lands located in Montana that were
20 acquired pursuant to or withdrawn and reserved by
21 Presidential Proclamation of December 7, 1886.

22 (23) "Nez Perce National Historical Park" means those
23 lands in Montana acquired and added to the Nez Perce
24 National Historical Park by Congress on October 30, 1992,
25 pursuant to Public Law 102-576.

1 (24) (a) "Non-consumptive use" when applied to a mining
2 or hydropower use for which a water right is recognized
3 under state law with a priority date on or after January 1,
4 1993, means an appropriation that does not cause a net loss
5 in the surface source of supply, and where substantially all
6 of the diverted water becomes return flow with little or no
7 delay between the time of diversion and the time of return,
8 and without adverse effect on the quantity or quality of
9 water necessary to fulfill the purposes of the reserved
10 land.

11 (b) "Non-consumptive use" when applied to a water right
12 recognized under state law other than a mining or hydropower
13 use with a priority date on or after January 1, 1993, or a
14 water right recognized under state law with a priority date
15 before January 1, 1993, means a water right considered to be
16 non-consumptive by the decree, permit or law authorizing the
17 use.

18 (25) "Parties" means the State of Montana and the United
19 States.

20 (26) "Person" means an individual, association,
21 partnership, corporation, state agency, political
22 subdivision, or any other entity, but does not include the
23 United States.

24 (27) "Recognized under state law" when referring to a
25 water right or use means a water right or use protected by

1 state law, but does not include state recognition of a
2 federal or tribal reserved water right.

3 (28) "Return flow" means the portion of water diverted
4 from a source that is returned to the same source, at or
5 near the point of diversion.

6 (29) "Scientific evidence" means geologic, geophysical,
7 geochemical and hydrologic information.

8 (30) "State" means the State of Montana and all
9 officers, agents, departments, and political subdivisions
10 thereof. Unless otherwise indicated, for purposes of
11 notification or consent, "state" means the Director of the
12 Montana Department of Natural Resources and Conservation or
13 his or her designee.

14 (31) "Technical Oversight Committee" or "TOC" means the
15 scientific committee established by Article IV of this
16 Compact.

17 (32) "Tributary to" means surface water that originates
18 in the same hydrologic basin or subbasin as the stream
19 referred to and which contributes water to the same stream.

20 (33) "UNINCORPORATED MUNICIPALITY" INCLUDES BUT IS NOT
21 LIMITED TO A RURAL SPECIAL IMPROVEMENT DISTRICT OR ANY OTHER
22 ENTITY THAT SERVES COMMUNITY WATER NEEDS.

23 (34) "United States" means the federal government
24 and all officers, agencies, departments and political
25 subdivisions thereof. Unless otherwise indicated, for

1 purposes of notification or consent other than service in
2 litigation, "United States" means the Secretary of the
3 Department of the Interior, or his or her designees.

4 (35) "Working Group Report" means the Abridged and
5 Unabridged reports by Custer, S., et. al. dated January 5,
6 1993, and titled Recommended Boundary for Controlled
7 Groundwater Area in Montana Near Yellowstone National Park
8 and accompanying maps.

9 (36) "Yellowstone National Park" or "YNP" means
10 those lands located in Montana that were acquired pursuant
11 to, or withdrawn and reserved for Yellowstone National Park
12 by the Act of March 1, 1872, 17 Stat. 32; Act of May 26,
13 1926, 44 Stat. 655; Act of March 1, 1929, 45 Stat. 1435; Act
14 of April 19, 1930, 46 Stat. 220; and Proclamation No. 2013
15 of October 20, 1932, 47 Stat. 2537.

16 ARTICLE II

17 IMPLEMENTATION

18 A. Abstract:

19 Concurrent with this Compact, the parties have prepared
20 an Abstract, a copy of which is referenced as Appendix 1,
21 which is a specific listing of all of the United States'
22 water rights that are described in this Compact and
23 quantified in accordance with this Compact. The parties
24 prepared the Abstract to comply with the requirements for a
25 final decree as set forth in 85-2-234(4) and (7), MCA, and

1 in an effort to assist the state courts in the process of
 2 entering decrees accurately and comprehensively reflecting
 3 the rights described in this Compact. The rights specified
 4 in the Abstract are subject to the terms of this Compact. In
 5 the event of a discrepancy between a right listed in the
 6 Abstract and that same right as quantified in accordance
 7 with Articles II and III of this Compact, the parties intend
 8 that the quantification in accordance with Articles II and
 9 III of this Compact shall be reflected in a final decree.

10 B. Method of Allocation of Water on Category 3 and 4
 11 Streams:

12 This section explains the method of quantification of
 13 the reserved instream flow water rights of the United States
 14 for Category 3 and 4 streams and the method of calculating
 15 the quantity of consumptive use pursuant to state law within
 16 a basin to which the United States agrees to subordinate its
 17 reserved instream flow water right. The method set forth in
 18 this section shall be used to determine whether the limits
 19 on consumptive use pursuant to state law set forth in
 20 Article III have been reached. Addition to the Abstract of a
 21 reserved instream flow water right on a stream inadvertently
 22 omitted by the parties or reclassification of a stream due
 23 to a water right recognized under state law and
 24 inadvertently omitted by the parties shall be consistent
 25 with this section and shall not be deemed a modification of

1 this Compact.

2 1. Allocation to Instream Flow:

3 The allocation of water to instream flow on Category 3
 4 and 4 streams is arrived at using the following method as
 5 explained in general terms:

6 a. The United States' reserved water right for instream
 7 flow includes the entire flow of that stream within the
 8 State of Montana at the point where the stream flows over or
 9 forms the boundary of the specified reserved land after: (1)
 10 all consumptive use water rights of any agency of the United
 11 States recognized under federal or state law are satisfied;
 12 and (2) subordination of the reserved water right for
 13 instream flow to water rights recognized under state law as
 14 set forth in and limited by Article III and more
 15 specifically in the Abstract.

16 b. Actual use of water in Wyoming or Canada shall not
 17 diminish the quantity of water designated for consumptive
 18 use pursuant to state law as set forth in Article III.

19 2. Method of Calculation of Consumptive Use Rights
 20 Recognized Under State Law:

21 To determine whether water is available for
 22 appropriation for consumptive use pursuant to state law on
 23 Category 3 and 4 streams, and for determining whether the
 24 limit on subordination of the United States' water rights to
 25 consumptive uses has been reached, the following provisions

1 shall apply:

2 a. Tributary Water: The calculation of total
3 consumptive use on a Category 3 or 4 stream shall include
4 all current and future consumptive use, recognized under
5 state law, of surface water tributary to the stream to the
6 point it enters the reserved land. The limits on total
7 consumptive use on a Category 4 stream that forms the
8 boundary of the reserved land shall include all current and
9 future consumptive use recognized under state law, of
10 surface water tributary to the stream to the most downstream
11 point that the stream forms the boundary of the reserved
12 land.

13 b. Groundwater:

14 i. An exemption from state permit requirements for
15 wells or developed springs shall not apply to appropriations
16 within a basin tributary to the reserved portion of a
17 Category 3 or 4 stream after the effective date of this
18 Compact, provided that the registration process set forth in
19 Article II, section B.2.b.ii.(3)(b) shall apply to
20 applications for a permit for a well of 35 gpm or less, not
21 to exceed 10 acre-feet per year. In addition, all
22 groundwater appropriations within the Yellowstone Controlled
23 Groundwater Area shall be subject to Article IV.

24 ii. The calculation of total consumptive use on a
25 Category 3 or 4 stream shall include appropriations of

1 groundwater as follows:

2 (1) Pre-January 1, 1993: An appropriation of
3 groundwater with a priority date before January 1, 1993,
4 shall not be included in the calculation of total
5 consumptive use.

6 (2) January 1, 1993 - Effective Date: An appropriation
7 of groundwater with a priority date on or after January 1,
8 1993, but before the effective date of this Compact shall be
9 included in the calculation of total consumptive use if the
10 following procedural requirements are met and the
11 appropriation is found to be hydrologically connected to
12 surface water tributary to the reserved portion of a
13 Category 3 or 4 stream.

14 (a) Within 120 days after the effective date of this
15 Compact, the Department shall provide the United States with
16 notice of all groundwater appropriations in drainages
17 tributary to the reserved portion of a Category 3 or 4
18 stream that, according to the records of the Department,
19 have a priority date on or after January 1, 1993 and before
20 the effective date of this Compact.

21 (b) Up to 120 days following mailing of such notice the
22 United States shall provide the Department with credible
23 information that a groundwater appropriation included in the
24 notice is hydrologically connected to surface flow tributary
25 to the reserved portion of a Category 3 or 4 stream.

1 (c) Within 60 days of receipt of such information, the
 2 Department shall issue an order stating that (1) the
 3 appropriation is hydrologically connected to surface water
 4 tributary to the Category 3 or 4 stream; and (2) the action
 5 to be taken with respect to the appropriation. The order is
 6 effective within 60 days of issuance unless the appropriator
 7 enters an appearance to contest the order. If credible
 8 information of hydrologic connection has not been provided
 9 by the United States, the Department shall issue an order
 10 stating its determination and reasons therefore.

11 (d) If the appropriator enters an appearance to contest
 12 the order, the Department shall (1) issue an order staying
 13 use of the appropriation pending a final decision on the
 14 matter by the Department only if the limits on total
 15 consumptive use for that drainage have been reached; (2) set
 16 a date for a hearing; and (3) proceed pursuant to the
 17 provisions for a contested case under the Montana
 18 Administrative Procedures Act, Title 2, Chapter 4, of the
 19 Montana Code Annotated, provided that the burden of proving
 20 hydrologic connection shall be as set forth in Article II,
 21 section B.2.b.(3). The Department shall, whenever possible,
 22 consolidate any proceedings on the groundwater application
 23 pursuant to Article IV with any proceeding made necessary by
 24 this Article.

25 (3) Post-Effective Date: An appropriation of

1 groundwater recognized under state law with a priority date
 2 after the effective date of this Compact shall be included
 3 in the calculation of total consumptive use if the following
 4 conditions apply:

5 (a) Wells in excess of 35 gallons per minute or 10
 6 acre-feet per year: The limit on total consumptive use shall
 7 include groundwater appropriation by a well or developed
 8 spring with a permit amount in excess of 35 gpm or any well
 9 with a volume of use greater than 10 acre-feet per year,
 10 including a combined appropriation from the same source from
 11 two or more wells or developed springs that exceeds these
 12 limitations, unless the applicant is able to show by a
 13 preponderance of the evidence that the appropriation is not
 14 hydrologically connected to surface flow tributary to the
 15 reserved portion of a Category 3 or 4 stream.

16 (i) The applicant shall submit credible information,
 17 including a report to the Department prepared by a
 18 professional qualified in the science of groundwater
 19 hydrology verifying that the appropriation is not
 20 hydrologically connected to surface flow tributary to the
 21 reserved portion of a Category 3 or 4 stream. If the
 22 applicant fails to submit the report, the application shall
 23 be considered defective and shall be returned to the
 24 applicant for completion as provided by state law.

25 (ii) The Department shall provide notice of the proposed

1 appropriation and a copy of the report to the United States
2 concurrent with notice pursuant 85-2-307, MCA.

3 (iii) Within 60 days of the mailing of notice, the
4 United States shall file an objection to the proposed
5 appropriation on the basis that it is hydrologically
6 connected to surface water.

7 (iv) The Department shall not exclude the appropriation
8 from the limits on total consumptive use unless the
9 applicant proves by a preponderance of the evidence that the
10 proposed appropriation is not hydrologically connected to
11 surface flows tributary to the reserved portion of the
12 Category 3 or 4 stream. In doing so the Department shall
13 make a specific finding on the adequacy of the report
14 provided by the applicant.

15 (v) If the proposed appropriation is determined not to
16 be hydrologically connected to surface water, or if the
17 limit on consumptive use has not been reached, the
18 Department may issue a permit in accordance with state law
19 and the applicant may complete the appropriation.

20 (b) Wells of 35 gallons per minute or less and 10
21 acre-feet per year or less:

22 (i) An applicant for an appropriation of groundwater of
23 35 gpm or less, not to exceed 10 acre-feet per year shall
24 register for a permit by filing a form prescribed by the
25 department.

1 (ii) The Department shall provide notice of the
2 registration for a permit to the United States within 30
3 days of the filing. Within 30 days of the receipt of notice,
4 the United States may file an objection to the application
5 on the basis that the proposed appropriation is of
6 groundwater that is hydrologically connected to surface flow
7 tributary to the reserved portion of a Category 3 or 4
8 stream.

9 (iii) As long as the limit on consumptive use rights for
10 a Category 3 or 4 stream has not been reached, the
11 calculation of total consumptive use shall not include
12 groundwater appropriations by well or a developed spring of
13 35 gallons per minute or less that do not exceed 10 acre
14 feet per year unless the United States shows by a
15 preponderance of the evidence that the proposed
16 appropriation is hydrologically connected to the reserved
17 portion of a Category 3 or 4 stream. If the United States
18 meets this burden, the Department shall include the
19 appropriation in the calculation of total consumptive use.

20 (iv) After the limit on consumptive use rights has been
21 reached on a particular stream, the necessary showing by the
22 United States' shall be to file an objection and come
23 forward with credible information showing that the proposed
24 appropriation is hydrologically connected to surface flows
25 tributary to the reserved portion of the Category 3 or 4

1 stream. If the United States makes such a showing, the
 2 Department shall consider the application under the criteria
 3 in Article II, section B.2.b.(3)(b)(v) and (vi).

4 (v) The Department shall not exclude the appropriation
 5 from the limits on total consumptive use unless the
 6 applicant proves by a preponderance of the evidence that the
 7 proposed appropriation is not hydrologically connected to
 8 surface flows tributary to the reserved portion of the
 9 Category 3 or 4 stream.

10 (vi) If the proposed appropriation is determined not to
 11 be hydrologically connected to surface water the Department
 12 may issue a permit in accordance with state law and the
 13 applicant may complete the appropriation.

14 iii. Within 2 years after the effective date of this
 15 Compact, the Department, in consultation with the United
 16 States, is directed to promulgate rules as may be necessary
 17 to implement Article II, section B.2.b. Said rules shall not
 18 alter the rights or obligations of the parties hereto.

19 c. Effect of Decree in Calculation of Consumptive Use:
 20 Except as provided in Article II, section G., for the
 21 purposes of this Compact, the flow rate of a consumptive use
 22 shall be as finally decreed in a general adjudication, or
 23 recognized under state law until such final decree. At each
 24 stage in an adjudication, the allocation to current use as
 25 set forth in Article III and more specifically in the

1 Abstract shall be adjusted to reflect the decreed amount.

2 d. Abandonment: When a consumptive use right recognized
 3 under state law on a Category 3 or 4 stream is abandoned and
 4 such abandonment causes water to become available for
 5 appropriation within the limits of the total amounts of
 6 water allocated to consumptive use rights recognized under
 7 state law established for that stream by Article III, the
 8 increment of water below that limit is available for new
 9 appropriation in accordance with state law and this Compact.
 10 State law governs the issue of whether an abandonment has
 11 occurred.

12 e. Non-Consumptive Use: The limit on total consumptive
 13 use rights recognized under state law shall not include
 14 non-consumptive uses as defined by this Compact.

15 C. Subordination of Instream Flow Right:

16 1. The United States agrees to subordinate its reserved
 17 water right for instream flow to consumptive uses calculated
 18 according to this Article in a manner that is specific to
 19 each stream on which a reserved water right is described.
 20 This subordination is set forth for each stream in Article
 21 III. Curtailment of uses to which the reserved water rights
 22 described in this Compact have not been subordinated during
 23 periods of low flow shall proceed on the basis of priority
 24 and may be initiated in a state or federal court of
 25 competent jurisdiction pursuant to Article II, section I.

1 2. The reserved water rights described in this Compact
2 shall not be subordinate to water rights which were
3 forfeited by 85-2-212 85-2-226 as interpreted in In the
4 Matter of the Adjudication of the Water Rights within the
5 Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), nor
6 shall any claimant of such forfeited water right have
7 standing, based solely on such claimed right, to object to
8 this Compact or any reserved water right described in this
9 Compact.

10 D. Location of Instream Flow Rights: The United States'
11 reserved water rights for instream flow apply to the portion
12 of the Categories 1 through 4 streams specified in this
13 Compact that flow over or form the boundary to reserved land
14 administered by the National Park Service.

15 E. Change in Instream Flow Right: Except as provided in
16 Article II, section J.2.b., the water rights dedicated to
17 instream flow by this Compact shall not be changed to any
18 other use.

19 F. Prohibition on Future Impoundments: With the
20 exception of the North Fork of the Big Hole River and its
21 tributaries, no new impoundments may be permitted on the
22 mainstem of a Category 2, 3, or 4 stream upstream of, or
23 along, the portion of the stream for which a water right for
24 instream flow is described in this Compact after the
25 effective date of this Compact. This prohibition shall

1 include impoundments that are exempt from permit
2 requirements under state law. Reclamation, repair or
3 rehabilitation of an existing impoundment shall not be
4 considered a new impoundment, provided that without the
5 consent of the United States, reclamation, repair or
6 rehabilitation shall not cause the impoundment to exceed the
7 original constructed capacity of the impoundment. This
8 prohibition shall not apply to impoundments constructed to
9 store a Tribal water right or to implement settlement of
10 litigation regarding quantification of a Tribal water right.
11 On Category 3 and 4 streams for which an instream flow right
12 is described for periods of low flow as set forth in Article
13 III, sections G.3.c. and d., such water right has not been
14 subordinated to a new water right with the method of
15 diversion as an impoundment on the mainstem of the stream
16 with a priority date on or after January 1, 1993, but before
17 the effective date of this Compact.

18 G. Management to Maximize Use by Montana Water Users of
19 the Water Allocated to Consumptive Use Rights Recognized
20 Under State Law: If any type of conservation or water
21 distribution plan which includes measurement of actual water
22 use, including use pursuant to rights recognized under state
23 law with a priority date before January 1, 1993, is adopted
24 pursuant to state law, the limits established for
25 consumptive use appropriated pursuant to state law shall

1 apply to actual measured use, not permitted and decreed or
 2 claimed rights, provided that records of actual use be made
 3 available to the United States on request and provided
 4 further that, such plan shall not diminish the reserved
 5 water right of the United States as described in this
 6 Compact.

7 H. Basin Closure

8 1. Except as provided in Article II, section B.2.d., in
 9 the following drainage basins upstream of the portion of the
 10 stream for which a reserved water right for instream flow is
 11 described in this Compact, the Department shall not process
 12 or grant an application or registration for a permit to
 13 appropriate or to reserve water for future consumptive use
 14 as defined by this Compact once the limits on consumptive
 15 use tabulated in Article III and set forth more specifically
 16 in the Abstract are reached:

17 Big Hole National Battlefield:

18 North Fork of the Big Hole River

19 Glacier National Park:

20 North Fork of the Flathead River

21 Middle Fork of the Flathead River

22 Yellowstone National Park:

23 Bacon Bend, Buffalo, Cottonwood, Coyote,

24 Hellroaring, Little Cottonwood, Snowslide, Crevice,

25 Dry Canyon, Slough, Tepee, and Soda Butte Creeks,

1 and the Gallatin, Madison, and Yellowstone Rivers
 2 2. If a temporary or permanent basin closure is enacted
 3 under state law for a drainage basin or subbasin for which
 4 future consumptive water use is limited under this Compact,
 5 the most restrictive measures applicable to consumptive use
 6 of surface or groundwater shall control.

7 I. Enforcement of Water Right

8 1. The United States, the state, or the holder of a
 9 water right recognized under state law, may petition a state
 10 or federal court of competent jurisdiction for relief when a
 11 controversy arises between the United States' reserved water
 12 right described by this Compact, and a holder of a water
 13 right recognized under state law. Resolution of the
 14 controversy shall be governed by the terms of this Compact
 15 where applicable, or to the extent not applicable, by
 16 applicable state or federal law.

17 2. The United States agrees that a water commissioner
 18 appointed by a state or federal court of competent
 19 jurisdiction, or other official authorized by future changes
 20 in law, may enter a federal reservation for which a water
 21 right is described in this Compact for the purpose of data
 22 collection, including the collection of information
 23 necessary for water distribution on or off the federal
 24 reservation, and to inspect structures for the diversion and
 25 measurement of water described in this Compact for

1 consumptive use and for the measurement of instream flow.
 2 The terms of entry shall be as specified in an order of a
 3 state or federal court of competent jurisdiction.

4 3. The Department or the Bureau may enter a federal
 5 enclave for which a reserved water right is described in
 6 this Compact, at a reasonable hour of the day, for the
 7 purposes of data collection on water diversion and stream
 8 flow or inspection of devices maintained by the United
 9 States pursuant to this Compact. The Department or Bureau
 10 shall notify the United States by certified mail or in
 11 person, at least 24 hours prior to entry.

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

18 5. The United States shall maintain structures,
 19 including wellhead equipment and casing, for the diversion
 20 and measurement of water authorized for consumptive use by
 21 this Compact. The United States shall maintain the devices
 22 it deems necessary for enforcement of its reserved water
 23 right for instream flow described in this Compact.

24 6. A person who violates or refuses or neglects to
 25 comply with the provisions of this Compact, an order of the

1 Department pursuant to this Compact, or an action by the
 2 Bureau pursuant to this Compact is subject to the penalties
 3 provided by state law, including but not limited to,
 4 revocation of a permit issued pursuant to Article IV after
 5 the effective date of this Compact.

6 7. For any appeal to state court of an administrative
 7 decision authorized by this Compact, venue shall be the
 8 First Judicial District in Helena and the review shall be
 9 conducted according to the procedures for judicial review of
 10 contested cases under the Montana Administrative Procedures
 11 Act, Title 2, Chapter 4, of the Montana Code Annotated.

12 8. In any contested case proceeding held under the
 13 Montana Administrative Procedures Act, Title 2, Chapter 4,
 14 of the Montana Code Annotated, pursuant to this Compact, the
 15 common law and statutory rules of evidence shall apply only
 16 upon stipulation of all parties to a proceeding.

17 J. Change in Use

18 1. Change in Use Defined: For the purpose of this
 19 Article, the following actions affecting the use of a
 20 reserved water right for consumptive use described in this
 21 Compact shall be considered a change in use:

22 a. An action that alters type of use, place of use,
 23 point of diversion, place or means of storage, period of use
 24 or point of return flow that will:

25 1. increase the net depletion on a source; or

1 ii. adversely affect water quality at the point the
2 reserved water right ends; or

3 iii. result in a change in point of diversion or point
4 of return flow relative to a holder of a water right
5 recognized under state law; or

6 iv. change the point of diversion from groundwater to
7 surface water, or from surface to groundwater; or

8 v. in any other manner, adversely affects the
9 reasonable exercise of a water right that is recognized
10 under state law.

11 b. The exercise of a reserved water right to future
12 consumptive use as authorized by this Compact shall not be
13 considered a change in use.

14 2. Instream flow: Reserved water rights specified in
15 this Compact for instream flow shall not be subject to
16 change to any other use, provided that:

17 a. the emergency use of water for fire suppression as
18 provided for in Article III.H. shall not be deemed a change
19 or alteration in use, or violation of a reserved water right
20 for instream flow; and

21 b. the United States may seek to appropriate water for
22 a consumptive use on a source for which no consumptive use
23 is described in this Compact by seeking a permit under state
24 law for consumptive use, provided that the water right
25 granted shall not be counted against the limits on

1 allocation for state consumptive use water rights imposed by
2 this Compact. The water right so acquired shall be
3 administered in accordance with Article V, section B.

4 3. Consumptive uses: The United States may take action
5 affecting the use of its consumptive use water rights
6 provided that (1) the action shall be in fulfillment of the
7 purposes of the reservation; (2) the total use shall not
8 exceed the amount described in this Compact; and (3) the
9 action shall not adversely affect a water right that is
10 recognized under state law.

11 4. Notice of intent to change use: At least 180 days
12 prior to a change in use, the United States agrees to
13 provide notice to the Department.

14 a. The notice shall contain the facts pertinent to the
15 proposed change including, where applicable:

- 16 i. The location of a new point of diversion.
- 17 ii. The new source of water.
- 18 iii. The new means of diversion.
- 19 iv. If a well is involved, the depth and locations of
20 the old and new well.
- 21 v. The new use and its impact on actual consumption and
22 water quality.
- 23 vi. If the change includes storage, the location, period
24 and capacity of the storage facility.
- 25 vii. An estimate of when the change will be effective.

1 viii. A map showing the existing system and the proposed
2 change.

3 b. At least 120 days prior to the proposed change, the
4 United States agrees to publish the notice required by
5 Article II, section J.4.a. with a statement that within 60
6 days following publication or service of notice, relief may
7 be sought in a state or federal court of competent
8 jurisdiction, once in a newspaper of general circulation in
9 the area of the source, and to serve the notice by
10 first-class mail on interested and potentially affected
11 persons as identified by the records of the Department,
12 including:

13 i. an appropriator of water or applicant for or holder
14 of a permit who, according to the records of the Department,
15 may be affected by the proposed appropriation;

16 ii. a purchaser under contract for deed that, according
17 to the records of the Department, may be affected by the
18 proposed appropriation;

19 iii. any public agency that has reserved water in the
20 source recognized under state law; and

21 iv. a federal agency or Tribe that claim a reserved
22 water right or other water rights in the source.

23 c. On request by the United States, the Department
24 shall provide the information contained in its records
25 identifying any person potentially affected by the proposed

1 change. The United States agrees to reimburse the Department
2 for the expense of providing this information.

3 d. In the event that future changes in state law
4 establish a method of notice of a proposed change in use to
5 interested and potentially affected persons other than by
6 first-class mail, the United States may alter the method of
7 notification accordingly.

8 e. Prior to the actual change, the United States agrees
9 to provide the Department with proof of notice by affidavit.

10 5. Objection to proposed change: Within 60 days
11 following the notice pursuant to Article II, section J.4.b.,
12 the Department or any other person may bring an action
13 against the proposed change in use in a state or federal
14 court of competent jurisdiction, if a property right, water
15 right, or other interest protected under state law would be
16 adversely affected, or if the proposed change is not in
17 compliance with this Compact.

18 6. Notice of Change:

19 a. The United States agrees to notify the state and
20 provide a copy of the final order within 60 days of its
21 entry by a state or federal court of competent jurisdiction
22 resolving any objections to the change in use of a federal
23 reserved water right described in this Compact.

24 b. The United States agrees to provide the state with
25 notice of completion of the change within 60 days after the

1 completion.

2 7. Reporting by the United States: For any action
3 affecting the use of a consumptive right whether or not such
4 action is deemed a change in use, the United States agrees
5 to provide the following information to the Department:

6 a. Well log: For a use that includes the drilling of a
7 well or enlargement of an existing wellbore, the United
8 States agrees to provide a well log to the state within 60
9 days of the completion of the well.

10 b. Emergency Use: Within 60 days after the commencement
11 of a temporary emergency use for fire suppression described
12 in Section III.H. of this Compact, the United States agrees
13 to notify the state of the use to which the water was put,
14 the dates of use, and the estimated amount of water used.

15 c. Annual Report: Between April 1 and May 1 of each
16 year, the United States agrees to provide the Department
17 with a report on (1) actions during the preceding year
18 affecting the use of a consumptive use right described in
19 this Compact, regardless of whether the action is deemed a
20 change in use pursuant to Article II, section J.1.; (2) the
21 initiation of new uses that were completed during the
22 preceding year; and (3) any data and documents generated or
23 received by the National Park Service during the preceding
24 year on measurement of instream flow on a Category 3 or 4
25 stream.

1 8. Reporting by the State: Between December 1 and
2 December 31 of each year, the Department shall provide the
3 United States with a report of: (1) changes in use during
4 the preceding year, as defined by state law, of water rights
5 upstream of or within the boundaries of reserved land for
6 which a reserved water right is described in this Compact;
7 (2) new permits issued during the preceding year according
8 to the records of the Department; and (3) any data and
9 documents generated by the Department during the preceding
10 year on the measurement of streamflows, diversions and well
11 use on or tributary to Category 3 or 4 streams.

12 ARTICLE III

13 WATER RIGHT

14 The parties agree that the following water rights are in
15 settlement of the reserved water rights of the United States
16 for the reservations described. All reserved water rights
17 described in this Article are subject to Article V, section
18 A.

19 A. Big Hole National Battlefield

20 1. Priority Date

21 The United States has a priority date of June 29, 1939
22 for the reserved water rights described in this Compact for
23 BNSB.

24 2. Consumptive Use

25 The United States has a reserved water right for current

1 and future consumptive use for the purposes of the BHNH as
 2 set forth in Table 1. The period of use shall be from
 3 January 1 through December 31. The source and place of use
 4 shall be as set forth more specifically in the Abstract. The
 5 place of use or point of diversion of a consumptive use
 6 water right at BHNH shall include any non-reserved land
 7 within BHNH boundaries as the boundaries exist on the
 8 effective date of this Compact.

9 TABLE 1

10 United States National Park Service

11 Big Hole National Battlefield Consumptive Use

| 12 Place of Use | Total | Maximum |
|----------------------|---------|-----------|
| 13 | Volume | Flow Rate |
| 14 | (ac-ft) | (gpm) |
| 15 Visitor center | | |
| 16 Museum | | |
| 17 Maintenance area | | |
| 18 Residences | | |
| 19 Picnic area | | |
| 20 Irrigation | | |
| 21 Total for all use | 7.14 | 50 |

22 3. Instream Flow

23 The North Fork of the Big Hole River is designated a
 24 Category 4 stream where it flows over the reserved land of
 25 BHNH. The United States has a reserved water right for

1 instream flow on the North Fork of the Big Hole River where
 2 it flows over the reserved land of BHNH. The reserved water
 3 right for instream flow is quantified and defined as
 4 follows:

5 a. Instream Flow Quantification for November through

6 March: The United States has a reserved water right for
 7 instream flow on the North Fork of the Big Hole River at the
 8 point the river enters the reserved land of BHNH in the
 9 amount of 10 cfs for November through March. The instream
 10 flow water right is subordinate to (1) any use recognized
 11 under state law with a priority date before January 1, 1993;
 12 (2) any use considered non-consumptive as defined by this
 13 Compact; and (3) any use of groundwater not included in the
 14 calculation of consumptive use pursuant to Article II.

15 b. Instream Flow Quantification for April through

16 October: The United States has a reserved water right for
 17 instream flow on the North Fork of the Big Hole River for
 18 April through October in the amount of water left in the
 19 river after satisfaction of current and future consumptive
 20 uses pursuant to state law in the amounts up to but no
 21 greater than provided in Table 2, provided, that the limits
 22 of Table 2 notwithstanding, the instream flow water right of
 23 the United States is subordinate to (1) any water rights
 24 recognized under state law with a priority date before
 25 January 1, 1993; (2) any use considered non-consumptive as

1 defined by this Compact; and (3) any use of groundwater not
 2 included in the calculation of consumptive use pursuant to
 3 Article II.

4 **TABLE 2**

5 **State Law Based**

6 **Total Current and Future Consumptive Use Rights (cfs)**

7 **Tributary to the Reserved Portion of the**
 8 **North Fork of the Big Hole River**

| 9 Month | Consumptive Use |
|----------|-----------------|
| 10 April | 4.85 |
| 11 May | 23.85 |
| 12 June | 18.70 |
| 13 July | 4.05 |
| 14 Aug. | 1.75 |
| 15 Sept. | 1.35 |
| 16 Oct. | 1.50 |

17 4. Nothing in this Compact may affect an existing right
 18 to divert water from a point within BHNB and transport it
 19 for use off BHNB.

20 **B. Bighorn Canyon National Recreation Area**

21 The parties were unable to finalize agreement on
 22 quantification of the water rights for BCNRA prior to the
 23 effective date of this Compact. The parties agree to
 24 continue to pursue, in good faith, quantification of water
 25 rights, and further agree that all other relevant provisions

1 of this Compact apply to a settlement of this water right
 2 through this process. In the event the parties are unable to
 3 agree on quantification, the United States retains its right
 4 to have the quantity of any reserved water right for BCNRA
 5 adjudicated in a state or federal court of competent
 6 jurisdiction.

7 **C. Glacier National Park**

8 **1. Priority Date**

9 The United States has a priority date of May 11, 1910
 10 for reserved water rights described in this Compact for GNP.
 11 The United States recognizes that this date is junior to the
 12 priority dates for reserved water rights of the Confederated
 13 Salish and Kootenai Tribes of the Flathead Indian
 14 Reservation, and the Blackfeet Tribe of the Blackfeet Indian
 15 Reservation.

16 **2. Consumptive Use**

17 The United States has a reserved water right for current
 18 and future consumptive use for the purposes of GNP as set
 19 forth in Table 3. The period of use shall be from January 1
 20 through December 31. The source and place of use shall be as
 21 set forth more specifically in the Abstract. The place of
 22 use or point of diversion of a consumptive use water right
 23 at GNP shall include any non-reserved land within GNP
 24 boundaries as the boundaries exist on the effective date of
 25 this Compact.

TABLE 3

United States National Park Service
 Glacier National Park Consumptive Use

| Place of Use | Total Volume (ac-ft) | Maximum Flow Rate (gpm) |
|-----------------------------------|----------------------------|-------------------------------|
| <u>North Fork Flathead River</u> | | |
| <u>Basin</u> | | |
| Station, campground | 4.7 | 70 |
| Backcountry Use | 1.98 | |
| Backcountry Patrol Cabins | 2.06 | 55 |
| <u>Middle Fork Flathead River</u> | | |
| <u>Basin</u> | | |
| McDonald Creek areas | 246.00 | 1720 |
| Middle Fork areas | 0.70 | 10 |
| Backcountry Use | 2.42 | |
| Backcountry Patrol Cabins | 2.06 | 55 |
| <u>Saint Mary River Basin</u> | | |
| Northern Border areas | 2.20 | 20 |
| Many Glacier areas | 166.40 | 600 |
| Saint Mary areas | 128.40 | 915 |
| Backcountry Use | 2.02 | |
| Backcountry Patrol Cabins | 1.50 | 40 |
| <u>Two Medicine River Basin</u> | | |
| Two Medicine areas | 6.40 | 70 |

| | | |
|--|--------|---|
| Backcountry Use | 0.38 | |
| Backcountry Patrol Cabins | 0.19 | 5 |
| <u>Cut Bank River Basin</u> | | |
| Backcountry Use | 0.18 | |
| Backcountry Patrol Cabins | 0.19 | |
| <u>Milk River Basin</u> | | |
| Backcountry Use | 0.02 | |
| GNP TOTAL | 567.80 | |
| 3. <u>Instream Flow Right</u> | | |
| a. <u>Category 1:</u> | | |
| i. <u>Identification:</u> | | |
| The following streams are designated as "Category 1:" | | |
| Sage, Spruce, Kishenehn, Starvation, Kintla, Red | | |
| Medicine Bow, Agassiz, Ford, Parke, Long Bow, Akokala, Numa, | | |
| Pocket, Jefferson, Bowman, Rainbow, Cummings, Logging, | | |
| Anaconda, McGee, Camas, Fern, Fish, Howe, Longfellow, | | |
| Trapper, Continental, Flattop, Kipp, Cattle Queen, Ahern, | | |
| Mineral, Alder, Haystack, Logan, Hidden, Avalanche, Snyder, | | |
| Sprague, Walton, Lincoln, Thompson, Pacific, Stimson, Nyack, | | |
| Peril, Pinchot, Elk, Coal, Muir, Park, Debris, Ole, Shields, | | |
| Autumn, Upper Bear, Boundary, Olson, South Fork Valentine, | | |
| Valentine, Kootenai, Pass, Camp, Cleveland, Street, | | |
| Whitecrow, Redgap, Lee, Otatso, Kennedy, Windy, Appekunny, | | |
| Ptarmigan, Iceberg, Wilbur, Cataract, Allen, Swiftcurrent, | | |
| Boulder, Two Dog, Rose, Baring, Siyeh, Reynolds, Virginia, | | |

1 Medicine Owl, Hudson Bay, Red Eagle, Atlantic, North Fork
 2 Cut Bank, Lake, Dry Fork, Aster, Paradise, Appistoki, Two
 3 Medicine, Fortymile, Fortyone Mile, Midvale, Railroad,
 4 Coonsa, Long Knife, Jackson, Grinnell, Kaina, Lunch,
 5 Pyramid, Thunderbird and Upper Summit Creeks and Waterton,
 6 St. Mary, North Fork Belly, Mokowanis and Belly Rivers.

7 ii. Instream Flow

8 The United States has a reserved water right for
 9 instream flow on the Category 1 streams in the amount of the
 10 entire flow of the streams, less any United States'
 11 consumptive use rights described in this Compact. This
 12 reserved water right ends at the point the stream exits the
 13 reserved land of GNP. The relationship between this water
 14 right and a water right to water stored within GNP held by
 15 the United States shall be governed by the rule of priority.

16 b. Category 1a Streams

17 i. Identification:

18 The following streams are designated as "Category 1a:"
 19 Appgar, Canyon, Dutch, Harrison, McDonald, and Quartz
 20 Creeks.

21 ii. Instream Flow:

22 (a) The United States has a reserved water right for
 23 instream flow on the Category 1a streams in the amount of
 24 the entire flow of the streams, less (1) any United States'
 25 consumptive use rights described in this Compact; and (2)

1 all water rights appurtenant to non-federal land within the
 2 boundaries of GNP recognized under state law with a priority
 3 date before January 1, 1993. This reserved water right ends
 4 at the most downstream point that the stream exits the
 5 reserved land of GNP.

6 (b) In the event all non-federal land on a Category 1a
 7 stream is acquired by the United States for the purpose of
 8 addition to GNP, the stream may be reclassified as a
 9 Category 1 stream at the request of the United States.

10 c. Category 4 Streams

11 i. Identification:

12 The following streams are designated as Category 4: the
 13 North Fork of the Flathead River, the Middle Fork of the
 14 Flathead River, Divide, Jule, Rubideau and Wild Creeks.

15 ii. Instream Flow for the North and Middle Forks of the
 16 Flathead River:

17 The United States has a reserved water right for
 18 instream flow on the North and Middle Forks of the Flathead
 19 River in the amount of the entire flow of the rivers, less
 20 any United States' consumptive use rights described in this
 21 Compact provided that, the instream flow water right is
 22 subordinate to 1) all water rights recognized under state
 23 law with a priority date before January 1, 1993, 2) future
 24 consumptive use rights calculated according to Article II up
 25 to the limits set forth in Table 4; (3) any use considered

1 non-consumptive as defined by this Compact; and (4) any use
 2 of groundwater not included in the calculation of
 3 consumptive use according to Article II. This reserved water
 4 right ends at the most downstream point that the River forms
 5 the boundary of the reserved land of GNP.

6 TABLE 4

7 State Law Based

8 Future Consumptive Use Rights (cfs)

9 Tributary to the Reserved Portion of the Flathead River

| 10 Month | North Fork 11 Flathead River | Middle Fork Flathead River |
|----------|---------------------------------|-------------------------------|
| 12 Jan. | 7.5 | 7.1 |
| 13 Feb. | 7.2 | 6.9 |
| 14 Mar. | 8.9 | 8.1 |
| 15 April | # | # |
| 16 May | # | # |
| 17 June | # | # |
| 18 July | 40.5 | # |
| 19 Aug. | 16.2 | 13.7 |
| 20 Sept. | 11.8 | 9.7 |
| 21 Oct. | 11.8 | 10.6 |
| 22 Nov. | 12.0 | 11.6 |
| 23 Dec. | 9.0 | 9.2 |

24 # The amount of water available for future
 25 consumptive use in these months shall be an amount

1 equivalent to the flow rate for all consumptive
 2 uses recognized under state law on December 31,
 3 1992. The amount shall be adjusted to reflect the
 4 flow rates in a decree issued by a state or federal
 5 court of competent jurisdiction after December 31,
 6 1992. At such time as final decrees are entered in
 7 these basins, the Department shall tabulate these
 8 rights, insert the appropriate amounts into Table
 9 4, and submit the revised Table to the United
 10 States and the state for inclusion in this Compact.
 11 Revision of Table 4 to reflect this agreement shall
 12 not be deemed a modification of this Compact.

13 iii. Instream Flow for Divide, Jule, Rubideau and Wild
 14 Creeks

15 The United States has a reserved water right for
 16 instream flow on Divide, Jule, RUBIDEAU, and Wild Creeks in
 17 the amount of the entire flow of the stream, less any United
 18 States' consumptive use rights described in this Compact.
 19 This water right ends at the most downstream point that the
 20 stream exits or no longer forms the boundary to the reserved
 21 land of GNP. This right is subject to the provisions of
 22 Article V, section A., and (1) on Divide Creek, is
 23 subordinate to any water rights recognized under state law
 24 with a priority date before January 1, 1993; and (2) on
 25 Rubideau Creek, is subordinate to any water rights

1 recognized under state law with a priority date before
 2 January 1, 1993, provided that the use of such right is
 3 consistent with federal law.

4 4. Lakes

5 The United States has a reserved water right for the
 6 maintenance of natural water levels in all naturally
 7 occurring lakes within the boundaries of GNP for the purpose
 8 of preserving unimpaired these Park resources. The water
 9 right for the maintenance of lake levels is subordinate to
 10 (1) any United States' consumptive use rights described in
 11 this Compact; and (2) any water right recognized under state
 12 law with a priority date before January 1, 1993. The named
 13 and unnamed lakes in which the United States has a reserved
 14 water right are those set forth specifically in the
 15 Abstract.

16 D. Grant Kohrs Ranch National Historic Site

17 The Grant Kohrs Ranch National Historic Site in Montana
 18 does not include reserved land. The United States may apply
 19 for a permit to appropriate water or seek recognition of any
 20 existing water rights in accordance with state law.

21 E. Little Bighorn Battlefield National Monument

22 The parties were unable to finalize agreement on
 23 quantification of the water rights for LBBNM prior to the
 24 effective date of this Compact. For the purposes of
 25 settlement of the reserved water rights for land

1 administered by the National Park Service in Montana, the
 2 parties agree that a water right for instream flow is
 3 necessary for the historic purposes of LBBNM. The parties
 4 agree to continue to pursue, in good faith, quantification
 5 of water rights and further agree that all other relevant
 6 provisions of this Compact apply to a settlement of this
 7 water right through this process. In the event the parties
 8 are unable to agree on quantification, the United States
 9 retains its right to have the quantity of any reserved water
 10 right for LBBNM adjudicated in a state or federal court of
 11 competent jurisdiction.

12 F. Nez Perce National Historical Park

13 The Nez Perce National Historical Park in Montana does
 14 not include reserved land. The United States may apply for a
 15 permit to appropriate water or seek recognition of any
 16 existing water rights in accordance with state law.

17 G. Yellowstone National Park

18 1. Priority Date

19 The United States has a priority date of March 1, 1872
 20 for the reserved water rights described in this Compact for
 21 YNP.

22 2. Consumptive Use

23 The United States has a reserved water right for current
 24 and future consumptive use for the purposes of YNP as set
 25 forth in Table 5. The period of use shall be from January 1

1 through December 31. The source and place of use shall be as
 2 set forth more specifically in the Abstract. The place of
 3 use or point of diversion of a consumptive use water right
 4 at YNP shall include any non-reserved land within YNP as the
 5 boundaries exist on the effective date of this Compact.

6 **TABLE 5**

7 **United States National Park Service**
 8 **Yellowstone National Park Consumptive Use**

| 9 Place of Use | Total | Maximum |
|-----------------------------------|---------|-----------|
| | Volume | Flow Rate |
| | (ac-ft) | (gpm) |
| 12 <u>Yellowstone River Basin</u> | | |
| 13 North Entrance | 1.70 | 35 |
| 14 Stephens Creek facilities | 12.00 | 50 |
| 15 TW facilities (Gardiner) | 58.70 | 300 |
| 16 NE Entrance | 15.60 | 50 |
| 17 Backcountry Use | 10.70 | |
| 18 Backcountry Patrol Cabins | 2.00 | 15 |
| 19 Day Use Areas | 2.40 | 6 |
| 20 <u>Gallatin River Basin</u> | | |
| 21 NW Entrance Area | 15.00 | 50 |
| 22 Backcountry Use | 2.80 | |
| 23 Backcountry Patrol Cabins | 0.50 | 10 |
| 24 Day Use Areas | 0.60 | 6 |
| 25 <u>Madison River Basin</u> | | |

| | | |
|-----------------------------|--------|-----|
| 1 West Entrance | 48.90 | 200 |
| 2 Backcountry Use | 2.80 | |
| 3 Backcountry Patrol Cabins | 0.50 | 10 |
| 4 Day Use Areas | 0.70 | 6 |
| 5 YNP TOTAL | 174.90 | |

6 **3. Instream Flow Right**

7 **a. Category 1:**

8 **i. Identification:**

9 The following streams are designated as "Category 1:"

10 Black Bear Canyon, Black Butte, Blacktail Deer, Cougar,
 11 Daly, Duck, Fan, Grayling, Landslide, Mol Heron, Pebble,
 12 Specimen, Stephens, Upper Reese, and Wickiup Creeks, and the
 13 Gardner River.

14 **ii. Instream Flow:**

15 The United States has a reserved water right for
 16 instream flow on the Category 1 streams in the amount of the
 17 entire flow of the streams, less any United States'
 18 consumptive use rights described in this Compact. This
 19 reserved water right ends at the most downstream point that
 20 the stream exits the reserved land of YNP.

21 **b. Category 2:**

22 **i. Identification:**

23 The following streams are designated as "Category 2:"

24 Bacon Rind, Buffalo, Cottonwood, Coyote, Hellroaring,
 25 Little Cottonwood, and Snowslide Creeks.

1 Dec. 0.2 0.1 1.8 0.4
 2 iii. The provisions of Article III, section G.3.c.ii
 3 notwithstanding, in the event of a period of low flow such
 4 that Crevice, Dry Canyon, Slough, or Teepee Creeks fall
 5 below the critical levels of instream flow shown in Table 7
 6 at the point the stream enters the reserved land of YNP, the
 7 United States' water right for instream flow is not
 8 subordinate to consumptive use water rights recognized under
 9 state law with a priority date on or after January 1, 1993.

10 TABLE 7

11 Low Stream Flow Levels at which Subordination is Limited (cfs)

| 12 Month | Crevice | Dry Canyon | Slough | Teepee |
|----------|---------|------------|--------|--------|
| 13 Creek | Creek | Creek | Creek | Creek |
| 14 Jan. | 3.8 | 1.1 | 28.9 | 6.5 |
| 15 Feb. | 4.5 | 1.0 | 30.6 | 6.5 |
| 16 Mar. | 5.2 | 1.2 | 35.4 | 7.7 |
| 17 April | 20.2 | 4.7 | 106.4 | 23.7 |
| 18 May | 71.8 | 24.0 | 376.2 | 84.6 |
| 19 June | 63.8 | 22.9 | 425.6 | 100.1 |
| 20 July | 18.7 | 6.6 | 138.7 | 33.2 |
| 21 Aug. | 8.1 | 3.1 | 55.2 | 14.9 |
| 22 Sept. | 7.0 | 2.0 | 44.2 | 10.9 |
| 23 Oct. | 7.1 | 1.9 | 46.0 | 10.8 |
| 24 Nov. | 5.2 | 1.5 | 39.5 | 9.1 |
| 25 Dec. | 3.9 | 1.4 | 34.1 | 8.1 |

1 d. Category 4:

2 The following streams are designated as Category 4: Soda
 3 Butte Creek within the state, and the Gallatin, Madison and
 4 Yellowstone Rivers where they flow within or form the
 5 boundary to reserved land of YNP within the state.

6 i. Soda Butte Creek

7 (1) The United States has a reserved water right for
 8 instream flow on Soda Butte Creek in the amount of the
 9 entire flow of the stream, less any United States'
 10 consumptive use rights described in this Compact, provided
 11 that, the instream flow right is subordinate to: (a) ~~the sum~~
 12 ~~of any water rights recognized under state law with a~~
 13 ~~priority date before January 1, 1993; plus; (B) any future~~
 14 ~~consumptive use rights calculated according to Article II,~~
 15 ~~until AS LONG AS the limit on total current and future~~
 16 ~~consumptive use set forth in Table 8 is--reached HAS NOT~~
 17 ~~ALREADY BEEN REACHED OR EXCEEDED BY THE RIGHTS PROTECTED~~
 18 ~~UNDER SUBSECTION (1)(A); (b)(C) any use considered~~
 19 ~~non-consumptive as defined by this Compact; and (c)(D) any~~
 20 ~~use of groundwater not included in the calculation of~~
 21 ~~consumptive use according to Article II.~~

22 TABLE 8

23 State Law Based

24 Total Current and Future Consumptive Use Rights (cfs)
 25 Tributary to the Reserved Portion of Soda Butte Creek

| | | |
|----|-------|------|
| 1 | Month | |
| 2 | Jan. | 0.3 |
| 3 | Feb. | 0.3 |
| 4 | Mar. | 0.2 |
| 5 | April | 0.1 |
| 6 | May | 6.2 |
| 7 | June | 17.5 |
| 8 | July | 6.4 |
| 9 | Aug. | 2.4 |
| 10 | Sept. | 0.8 |
| 11 | Oct. | 0.7 |
| 12 | Nov. | 0.5 |
| 13 | Dec. | 0.3 |

14 (2) The provisions of Article III, section G.3.d.i.(1)
 15 notwithstanding, in the event of a period of low flow such
 16 that Soda Butte Creek falls below the critical levels of
 17 instream flow shown in Table 9 at the point the stream
 18 enters the reserved land of YNP, the United States' water
 19 right for instream flow shall be subordinate only to: (a)
 20 any water right for domestic use of 35 gpm or less and to
 21 any water right held by an incorporated or unincorporated
 22 municipality, recognized under state law with a priority
 23 date before January 1, 1993; (b) any use considered
 24 non-consumptive as defined by this Compact; and (c) any use
 25 of groundwater not included in the calculation of

1 consumptive use according to Article II.
 2 (3) In the event that the Congress of the United States
 3 repeals the Wilderness designation assigned to the land over
 4 which Republic and Hayden Creeks and two unnamed tributaries
 5 to Soda Butte Creek flow in Wyoming, or otherwise makes
 6 water from such tributaries available for appropriation in
 7 Wyoming, the state may seek modification of Article III,
 8 section G.3.d.i.(2). of this Compact as provided in Article
 9 VI, section A.2.

10 **TABLE 9**
 11 **Low Stream Flow Levels at which Subordination is Limited (cfs)**
 12 **Soda Butte Creek**

| 13 | Month | Flow |
|----|-------|-------|
| 14 | Jan. | 5.4 |
| 15 | Feb. | 5.1 |
| 16 | Mar. | 4.0 |
| 17 | April | 1.7 |
| 18 | May | 116.9 |
| 19 | June | 332.5 |
| 20 | July | 120.7 |
| 21 | Aug. | 46.4 |
| 22 | Sept. | 15.3 |
| 23 | Oct. | 14.2 |
| 24 | Nov. | 9.3 |
| 25 | Dec. | 6.3 |

11. The Gallatin, Madison and Yellowstone Rivers

The United States has a water right for instream flow on the Gallatin, Madison and Yellowstone Rivers in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact, provided that, the right is subordinate to: (1) the sum of all water rights recognized under state law with a priority date before January 1, 1993, plus any future consumptive use rights calculated according to Article II, until the limit on total current and future consumptive use rights set forth in Table 10 is reached; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 10

State Law Based

Total Current and Future Consumptive Use Rights (cfs)

Tributary to the Reserved Portion of these Rivers

| Month | Gallatin River | Madison River | Yellowstone River |
|-------|----------------|---------------|-------------------|
| Jan. | 3.1 | 19.9 | 41.2 |
| Feb. | 3.1 | 19.7 | 40.6 |
| Mar. | 3.5 | 20.0 | 44.5 |
| April | 9.8 | 24.3 | 73.7 |
| May | 39.3 | 40.9 | 284.7 |

| | | | |
|-------|------|------|-------|
| June | 48.0 | 40.2 | 556.7 |
| July | 15.7 | 24.7 | 335.0 |
| Aug. | 5.8 | 21.4 | 156.5 |
| Sept. | 4.4 | 21.1 | 96.0 |
| Oct. | 4.6 | 21.4 | 75.0 |
| Nov. | 4.2 | 21.0 | 58.4 |
| Dec. | 3.8 | 20.4 | 47.2 |

4. Hot Springs tributary to Bear Creek and the Yellowstone River

The hot springs that contribute to Bear Creek outside the boundaries of YNP are important to maintenance of biologic values of reserved water in the Yellowstone River downstream from the confluence with Bear Creek. As part of the settlement of the reserved water right for YNP, the state agrees to grant the United States a water right under state law to all of the natural flow of the Bear Creek hot springs located at the mouth of Bear Creek in S1/2 S1/2, sec. 19, T9S, R9E, Montana Principle Meridian. The priority date is the effective date of this Compact.

5. Lakes

The United States has a reserved water right for the maintenance of natural water levels in all naturally occurring lakes within the boundaries of YNP for the purpose of preserving unimpaired these Park resources. The water right for the maintenance of lake levels is subordinate to

1 (1) any United States' consumptive use rights described in
 2 this Compact; and (2) any water right recognized under state
 3 law with a priority date before January 1, 1993. The named
 4 and unnamed lakes in which the United States has a reserved
 5 water right are those set forth more specifically in the
 6 Abstract.

7 H. Emergency Fire Suppression

8 The use of water for emergency fire suppression benefits
 9 the public, and is necessary for the purposes of the various
 10 Park reservations. The United States, may as part of its
 11 reserved water right, divert water for fire suppression at
 12 all of the National Park Service Units as needed, and
 13 without a definition of the specific elements of a
 14 recordable water right. Use of water for fire suppression
 15 shall not be deemed an exercise of the United States'
 16 reserved water rights for consumptive use or a violation of
 17 its reserved water rights for instream flow.

18 **ARTICLE IV**

19 **YELLOWSTONE CONTROLLED GROUNDWATER AREA**

20 A. Statement of Intent

21 Yellowstone National Park was reserved for the express
 22 purpose of "preservation, from injury or spoliation, of all
 23 timber, mineral deposits, natural curiosities, or wonders
 24 within said park, and their retention in their natural
 25 condition." 17 Stat. 32. The parties agree that Congress

1 reserved water necessary to preserve the hydrothermal
 2 features within the reserved land of YNP. These reserved
 3 water rights have priorities as of the date on which the
 4 land was reserved.

5 The parties understand that knowledge of the
 6 interrelationship of hydrothermal features within YNP, the
 7 hydrothermal system that supports those features, and
 8 groundwater in surrounding areas of Montana will benefit
 9 from increased study. The parties agree that the
 10 hydrothermal features of YNP are a unique and irreplaceable
 11 resource and represent one of the few undisturbed
 12 hydrothermal systems in the United States.

13 This Compact does not recognize a reserved water right
 14 to groundwater outside the boundaries of the reserved land
 15 of YNP. However, the parties agree that restrictions shall
 16 be placed on the development of groundwater adjacent to YNP
 17 to the extent necessary to prevent adverse effect on the
 18 reserved water right to groundwater within YNP. The parties
 19 agree that the goal of establishment and administration of
 20 the Yellowstone Controlled Groundwater Area shall be to
 21 allow no impact to the hydrothermal system within the
 22 reserved land of YNP.

23 B. Findings

24 Ratification of this Compact by the Montana legislature
 25 constitutes a finding that:

1 1. unrestricted use of groundwater adjacent to
2 Yellowstone National Park is likely to interfere with the
3 water rights reserved by the United States in 1872, 1929,
4 1930, and 1932, for the preservation of hydrothermal
5 features within YNP;

6 2. prevention of adverse effect on the United States'
7 reserved water right to groundwater within the reserved land
8 of YNP is a benefit to the state and to the United States;

9 3. the public interest and welfare requires that a
10 corrective control be adopted to regulate groundwater
11 development adjacent to YNP; and

12 4. the cooperative state-federal management and
13 oversight established by this Article is an effective means
14 to achieve protection of the reserved water right to
15 groundwater necessary to preserve the hydrothermal system
16 within the reserved land of YNP.

17 C. General Provisions

18 1. Establishment: The Yellowstone Controlled
19 Groundwater Area or "Area" is hereby established and shall
20 be defined and administered according to this Compact.

21 2. Funding: The United States agrees that it receives
22 substantial benefit from the establishment and
23 administration of the Yellowstone Controlled Groundwater
24 Area, and that the national and international public benefit
25 extends far beyond the boundaries of the state. Thus, the

1 United States agrees that the relatively small population of
2 the state should not bear the entire cost of protection of
3 the United States' reserved water right. To this end, the
4 Department of the Interior agrees, subject to appropriations
5 by Congress, to reimburse the state for the expense of
6 establishment, administration and enforcement of the
7 Yellowstone Controlled Groundwater Area by the Department;
8 to fund the inventory, sampling, reporting and database
9 management by the Bureau; and, except as provided in Article
10 IV, section J.1.c., to fund the administrative costs and the
11 cost of any study or any other necessary activity pursuant
12 to this Article by the Technical Oversight Committee.

13 3. Implementation Contingent on Funds: Such funding
14 shall be accomplished pursuant to the terms and conditions
15 of a separate agreement which shall incorporate terms and
16 conditions necessary to specify the activities to be funded
17 and appropriate cost and accounting principles consistent
18 with generally applicable guidelines for federal funding in
19 similar circumstances, and consistent with the terms of this
20 Compact, including, but not limited to, the enumeration of
21 state expenses to be reimbursed in Article IV, section C.2.
22 The state is relieved of its obligation to establish,
23 administer, inventory, sample and maintain a database on the
24 Controlled Groundwater Area in the absence of a funding
25 agreement and the provision of the funds specified therein.

1 If the state is relieved of its obligation to implement all
 2 or a portion of this Article, all other terms of this
 3 Compact shall remain in effect, including all reserved water
 4 rights established herein. Such agreement may be amended,
 5 extended, renewed or terminated pursuant to its terms.

6 4. Interim Measures:

7 The state agrees that the following interim measures
 8 shall apply from the effective date of this Compact until
 9 the receipt of funds from the United States or December 31,
 10 1995, whichever occurs first. The United States agrees to
 11 reimburse the state for the cost of the interim measures,
 12 subject to the appropriation of funds by Congress. The
 13 parties agree that, even if funding is not received by
 14 December 31, 1995 and interim measures are suspended, the
 15 state and the Department of the Interior will continue to
 16 recommend federal funding.

17 a. The Department shall issue the notice required by
 18 Article IV, section F.

19 b. All permits issued within this time period within
 20 the Area shall be conditioned on appropriation of water of
 21 less than 60F., measured at the wellhead.

22 c. The Department shall require that each applicant for
 23 a permit or person filing a notice of completion for
 24 issuance of a certificate of water right to appropriate
 25 groundwater within the Area report the following information

1 on filing of a well log: (1) well location to the
 2 quarter-quarter-quarter-quarter section; (2) ground
 3 elevation at the wellhead; (3) well depth; (4) water level;
 4 (5) flow rate or maximum pump capacity; and (6) water
 5 temperature measured at the wellhead.

6 d. The Department shall not issue a certificate of
 7 water right for the appropriation of groundwater with a
 8 temperature of 60 F. or more within the Area during this
 9 time period. The Department shall order temporary
 10 abandonment of any well in the Area for which a conditional
 11 permit was issued or notice of completion for issuance of a
 12 certificate of water right was filed within this time period
 13 that produces groundwater with a temperature of 60F. or
 14 more, measured at the wellhead. Temporary abandonment shall
 15 be according to the rules of the Montana Board of Water Well
 16 Contractors.

17 e. Following receipt of funds from the United States,
 18 the Department shall notify the applicant that the
 19 appropriation is subject to the terms of this Compact and
 20 shall proceed according to the procedures set forth in this
 21 Article. If funds are not received by December 31, 1995, the
 22 Department may remove the order of temporary abandonment and
 23 remove the condition on the permit or issue the certificate
 24 of water right pursuant to state law. The Department shall
 25 continue to require that each applicant for a permit or

1 certificate of water right to appropriate groundwater within
 2 the Area report the following information on filing of a
 3 well log: (1) well location to the
 4 quarter-quarter-quarter-quarter section; (2) ground
 5 elevation at the wellhead; (3) well depth; (4) water level;
 6 (5) flow rate or maximum pump capacity; and (6) water
 7 temperature measured at the wellhead.

8 5. Additional Studies: In addition to appropriations
 9 necessary to implement this Article, the state and the
 10 National Park Service agree to recommend federal funding for
 11 a baseline study of hydrothermal features in YNP and within
 12 the Controlled Groundwater Area, for continued monitoring of
 13 these features, and for geologic and geophysical studies
 14 including, but not limited to, geologic mapping, and
 15 monitoring of microearthquakes and subsidence in and
 16 adjacent to YNP. Implementation of this Article is not
 17 contingent on such appropriation.

18 6. Access for Studies: Consistent with the purposes of
 19 YNP, the United States agrees to allow reasonable access to
 20 and across YNP to the extent necessary to accomplish the
 21 data collection authorized by this Article or additional
 22 studies recommended pursuant to Article IV, section C.5. In
 23 seeking access, the Department or Bureau shall comply with
 24 the provisions of Article II, section I.3.

25 7. Effect of Modification of Area: It is the intent of

1 the parties that the initial boundaries of the Area set
 2 forth in Article IV, section D. and Appendix 2, and initial
 3 restrictions set forth in Article IV, section E. may be
 4 modified pursuant to Article IV, section J., or with respect
 5 to a single appropriation pursuant to Article IV, section
 6 G.2.c. and shall not be deemed to be a modification of this
 7 Compact. Any other modification of this Article shall be
 8 considered a modification of this Compact and is subject to
 9 the terms of Article VI, section A.2.

10 8. It is the intention of the Department of the
 11 Interior to protect the hydrothermal resources of
 12 Yellowstone National Park through the system established by
 13 Article IV.

14 a. The National Park Service agrees, consistent with 43
 15 U.S.C. 666, that enforcement will not be sought against the
 16 holder of a water right recognized under state law with a
 17 priority date on or after January 1, 1993, unless the NPS
 18 has, in the first instance, sought enforcement through the
 19 state under the terms of this Compact.

20 b. Notwithstanding the preceding subparagraph, if the
 21 National Park Service, in its judgment, determines that
 22 circumstances warrant, nothing in this Compact prohibits the
 23 United States from petitioning a state or federal court of
 24 competent jurisdiction for injunctive or declarative relief.
 25 Nothing in this Compact shall alter the courts' application

1 of the test for injunctive relief; neither shall the
 2 administrative determination by the National Park Service to
 3 seek relief in said court be deemed to establish or preclude
 4 any determination in such judicial proceedings. Prior to
 5 such an administrative determination, the National Park
 6 Service agrees that it will provide the State written notice
 7 and will identify a time frame during which it will await
 8 the State's efforts to address the concern.

9 c. As to an action against the holder of a right to
 10 withdraw groundwater recognized under state law with a
 11 priority date before January 1, 1993, the United States
 12 agrees that this Compact shall not be used or relied upon as
 13 evidence to show that: (1) a reserved water right of the
 14 United States exists appurtenant to any land other than the
 15 reserved land of YNP; or (2) the priority date associated
 16 with any portion of reserved land of YNP is other than the
 17 date on which that portion of land was actually reserved.

18 D. Initial Boundaries of the Yellowstone Controlled
 19 Groundwater Area

20 The initial boundaries of the Yellowstone Controlled
 21 Groundwater Area and Subareas are defined to include the
 22 area in the State of Montana located within the geographic
 23 boundaries shown on Appendix 2. Appendix 2 is hereby
 24 incorporated in this Compact by this reference as though set
 25 forth here in full.

1 1. Subarea I:

2 The initial geographic boundaries of the subarea
 3 referred to as Yellowstone Controlled Groundwater Subarea I
 4 shall include all of the area in Montana North and West of
 5 YNP within the boundary delineated as subarea I on Appendix
 6 2.

7 2. Subarea II:

8 The initial geographic boundaries of the subarea
 9 referred to as Yellowstone Controlled Groundwater Subarea II
 10 shall include all the area in Montana North and West of YNP
 11 within the boundary delineated as subarea II on Appendix 2.

12 E. Initial Restrictions on Groundwater Development
 13 within the Yellowstone Controlled Groundwater Area

14 Until the initial boundaries or restrictions set forth
 15 in this Article are modified pursuant to Article IV, section
 16 J., the restrictions set forth in this section shall apply
 17 to groundwater appropriations within the Area with a
 18 priority date on or after January 1, 1993. Such
 19 appropriations shall follow the procedural requirements of
 20 Article IV, section G.

21 1. The parties agree that the initial restrictions on
 22 development of groundwater and any modification thereof,
 23 shall not apply to appropriations with a priority date
 24 before January 1, 1993. The sole provisions of this Article
 25 applicable to such appropriations shall be those providing

1 for inventory and sampling of current use set forth in
 2 Article IV, section H. Groundwater appropriations with a
 3 priority date before January 1, 1993 are subject to
 4 applicable state law including, but not limited to, issuance
 5 of a certificate of water right following final adjudication
 6 of existing water rights. Nothing herein waives the right of
 7 the United States to seek protection of its reserved water
 8 right for protection of the hydrothermal features within the
 9 reserved land of YNP from groundwater appropriations with a
 10 priority date before January 1, 1993 in a state or federal
 11 court of competent jurisdiction, provided that the
 12 limitation on use of this Compact in an action by the United
 13 States against any such appropriator set forth in Article
 14 IV, section C.8.c. shall apply.

15 2. The Department shall not issue a permit to
 16 appropriate groundwater that is hydrothermal discharge water
 17 as defined by this Compact unless either: (1) modification
 18 occurs pursuant to Article IV, section J. altering pertinent
 19 boundaries or restrictions; or (2) an application is
 20 approved pursuant to Article IV, section G.2.c. Unless
 21 modification occurs pursuant to Article IV, section J., the
 22 Department shall not limit an appropriation of groundwater
 23 that is not hydrothermal discharge water unless required to
 24 do so by Article II and III of this Compact or any other
 25 provision of state law.

1 F. General Notice of Establishment of the Yellowstone
 2 Controlled Groundwater Area

3 1. Notice: Within 120 days after the effective date of
 4 this Compact and within 60 days of any decision by the
 5 Department to modify the Area as set forth in Article IV,
 6 section J., the Department shall publish a notice of
 7 establishment or modification of the Area setting forth:

8 a. the description by legal subdivisions of all lands
 9 included in the controlled groundwater area;

10 b. the purpose of the controlled groundwater area or
 11 modification; and

12 c. the permit requirements, restrictions, inventory,
 13 sampling and monitoring applicable within each subarea.

14 2. Publication and Service: Such notice shall be
 15 published in a newspaper of general circulation in the
 16 county or counties in which the Area is located. The
 17 Department shall also serve a copy of the notice by mail on
 18 each well driller licensed in Montana whose address is
 19 within any county in which any part of the Area is located;
 20 on each well driller known by the Department to operate in
 21 the Area; on the Montana State Bureau of Mines and Geology;
 22 on the mayor or chair of the governing body of each county
 23 or incorporated municipality located in whole or in part
 24 within the Area; and on the United States. The Department
 25 may also serve notice on any other person or state or

1 federal agency that the Department believes may be
 2 interested in or affected by the proposed designation or
 3 modification of the Area. A copy of the notice shall be
 4 mailed to each person's last known address according to the
 5 records of the Department.

6 G. Appropriations of Groundwater within the Yellowstone
 7 Controlled Groundwater Area With a Priority Date on or After
 8 January 1, 1993

9 1. Appropriation of Groundwater within the Area with a
 10 Priority Date on or after January 1, 1993 and before the
 11 Effective Date of this Compact:

12 The initial restrictions on groundwater development set
 13 forth in Article IV, section E. apply to appropriations of
 14 groundwater with a priority date on or after January 1, 1993
 15 and before the effective date of this Compact provided that
 16 the following procedural requirements are met:

17 a. Within 120 days after the effective date of this
 18 Compact or the receipt of adequate funds from Congress,
 19 whichever occurs later, the Department shall provide the
 20 United States with notice of all groundwater appropriations
 21 within the Area that, according to the records of the
 22 Department, have a priority date on or after January 1, 1993
 23 and before the effective date of this Compact.

24 b. Subsequent to the notice provided for in Article IV,
 25 section G.1.a. and up to 120 days following mailing of the

1 report on inventory provided in Article IV, section
 2 H.1.b.iii., the United States may provide the Department
 3 with credible information on any groundwater appropriation
 4 within the Area with a priority date on or after January 1,
 5 1993 and before the effective date of this Compact, showing
 6 that the appropriation is of water with a temperature of
 7 60F. or more.

8 c. If the United States provides the information set
 9 forth in Article IV, section G.1.b., the Department shall,
 10 within 60 days of receipt of the information, issue an order
 11 requiring that the appropriator comply with the applicable
 12 restrictions. The order is effective within 60 days of
 13 issuance unless the appropriator enters an appearance to
 14 contest the order.

15 d. If the appropriator enters an appearance to contest
 16 the order, the Department shall: (1) issue an order staying
 17 use of the appropriation pending final decision on the
 18 matter by the Department; (2) set a date for a hearing; and
 19 (3) proceed pursuant to the provisions for a contested case
 20 under the Montana Administrative Procedures Act, Title 2,
 21 Chapter 4 of the Montana Code Annotated, provided that in
 22 such a proceeding the United States has the burden of
 23 proving by a preponderance of the evidence that the
 24 appropriation is of groundwater of 60F or more. If the
 25 United States meets this burden, the appropriator shall

1 comply with procedures and restrictions set forth in Article
2 IV, section G.2.

3 2. Appropriations of Groundwater with a Priority Date
4 after the Effective Date of this Compact

5 a. General Provisions

6 i. All groundwater appropriations within the Area after
7 the effective date of this Compact are subject to this
8 Article. Applications and registration for a permit for the
9 appropriation of groundwater within the Area after the
10 effective date of this Compact shall include a statement of
11 whether the proposed use requires water with temperature of
12 60F. or more. In addition, the Department shall not issue a
13 permit for appropriation of groundwater unless the
14 requirements of Articles II and III are met, if applicable.

15 ii. A permit issued pursuant to this Article shall
16 provide that:

17 (1) The permittee shall install a device to meter total
18 volume of water use in compliance with rules promulgated by
19 the Department pursuant to Article IV, section I.5. The
20 Department shall specify the metering method and location of
21 installation. On or before January 15 of each year, the
22 permittee shall report annual use to the Bureau at: Montana
23 Bureau of Mines and Geology, Main Hall, Montana Tech, Butte
24 MT, 59701. Meters shall be made available to the permittee
25 at the Department of Natural Resources and Conservation

1 Regional Water Rights Office at: 111 North Tracy, Bozeman,
2 Montana, 59715. Meters shall be acquired for distribution by
3 the Department of Natural Resources and Conservation
4 Regional Water Rights Office as part of the inventory and
5 sampling program authorized by Article IV, section I.

6 (2) The Department has the authority to modify or
7 revoke a permit if the provisions listed below are
8 applicable, and all other administrative or judicial
9 enforcement authority provided under Title 85, part 2, of
10 the Montana Code Annotated applies to this part. The
11 Department may exercise its enforcement authority if (1) the
12 appropriator fails to allow access for sampling provided for
13 in Article IV, section H.; (2) the character of the
14 groundwater produced changes such that a restriction applies
15 pursuant to this Article; (3) new restrictions imposed
16 pursuant to Article IV, section J. are applicable; or (4)
17 the appropriator violates any other provision of this part.

18 (3) A permit to appropriate hydrothermal discharge
19 water may include limits and conditions on appropriation
20 including but not limited to (a) limits on total withdrawal
21 by day, month or year; (b) a requirement to adhere to a
22 system of rotation of use within the Area; and (c) a
23 provision adjusting the total withdrawal from two or more
24 wells in the area used by the same appropriator.

25 (4) A permit to appropriate hydrothermal discharge

1 water shall include any applicable monitoring requirement
 2 recommended by the Working Group Report or recommendations
 3 by the TOC superseding that report unless the applicant
 4 shows by clear and convincing evidence that such monitoring
 5 is inappropriate.

6 iii. If, subsequent to the effective date of this
 7 Compact, modification pursuant to Article IV, section J.
 8 removes the restrictions set forth in Article IV, section
 9 E., the monitoring recommended by the Working Group Report
 10 or as superseded by the TOC shall continue to apply unless
 11 the applicant shows by clear and convincing evidence that
 12 such monitoring is inappropriate, according to the criteria
 13 in the Working Group Report or as superseded by the TOC.

14 b. Appropriations of Groundwater with a Temperature of
 15 less than 60F

16 i. Registration and Application

17 (1) An applicant for an appropriation of groundwater of
 18 35 gpm or less, not to exceed 10 acre-feet per year shall
 19 register for a permit by filing a form prescribed by the
 20 Department that shall include, but not be limited to, a
 21 statement of whether the proposed use requires water with
 22 temperature of 60F. or more, the well location, and intended
 23 use and shall comply with the provisions of Article II and
 24 III, if applicable. The Department shall provide notice of
 25 the registration for a permit to the United States within 30

1 days of the filing.

2 (2) An applicant for a permit to appropriate
 3 groundwater of greater than 35 gpm or 10 acre-feet per year
 4 after the effective date of this Compact, shall comply with
 5 existing state law for permits to appropriate water and the
 6 limits on groundwater appropriations set forth in Articles
 7 II and III, if applicable. The Department may issue an
 8 interim permit for the proposed appropriation to an
 9 applicant seeking an appropriation for a use that does not
 10 require water with a temperature of 60F. or more if the
 11 requirements of this section are met.

12 ii. Drilling

13 (1) On filing a proper registration form, an applicant
 14 for an appropriation of 35 gpm or less, not to exceed 10
 15 acre-feet per year, with a proposed use that does not
 16 require water with a temperature of 60F. or more may
 17 complete the proposed well subject to state law and the
 18 terms of this Compact, but shall not put the water to
 19 beneficial use until issuance of a permit.

20 (2) Upon issuance of an interim permit, an applicant
 21 for an appropriation of greater than 35 gpm or 10 acre-feet
 22 per year may drill the well subject to state law and the
 23 terms of this Compact, but shall not put the water to
 24 beneficial use until issuance of a permit.

25 iii. Within 60 days of drilling of the well, the

1 applicant or registrant shall provide the Department with a
 2 well log on a form provided by the Department. The well log
 3 shall include well location to the
 4 quarter-quarter-quarter-quarter section; ground elevation at
 5 the wellhead; well depth; water level; flow rate or maximum
 6 pump rate; water temperature measured at the wellhead; and
 7 specific conductance of the water produced using a device
 8 provided by the Water Resources Regional Office.

9 iv. The Department shall forward a copy of the well log
 10 to the United States and to the Bureau on receipt.

11 v. Following receipt of the well log, the Department
 12 may inspect the well at a reasonable hour of the day to
 13 verify the information on the well log report. The United
 14 States may request to accompany the inspector as set forth
 15 in Article II, section I.4.

16 vi. The United States has 60 days from the mailing of
 17 the report to file an objection setting forth credible
 18 information that the appropriation is of groundwater with
 19 characteristics to which restrictions established pursuant
 20 to this Article apply.

21 vii. The Department may issue a permit to appropriate
 22 if: (1) the well log and any verification confirm that the
 23 appropriation is of water to which no restrictions pursuant
 24 to this Article apply; and (2) all other requirements of
 25 state law and this Compact have been met, unless the United

1 States files an objection pursuant to Article IV, section
 2 G.2.b.vi. If the well log or verification indicate
 3 appropriation of water to which restrictions pursuant to
 4 this Article apply or if the United States files a proper
 5 objection, the applicant shall be subject to the provisions
 6 of Article IV, section G.2.c.

7 viii. If a permit is issued, the applicant or registrant
 8 may complete the appropriation and apply the water to
 9 beneficial use.

10 ix. Within 60 days of completion of the appropriation,
 11 the permittee shall file a notice of completion with the
 12 Department pursuant to state law.

13 c. Appropriation of Groundwater with a Temperature of
 14 60F. or Greater

15 If an application or registration for a permit within
 16 the Area is for a use requiring groundwater with a
 17 temperature of 60F. or more or the well log or any
 18 verification indicates water of 60F. or more, the following
 19 provisions apply:

20 i. Subarea I - groundwater with a temperature of 85F.
 21 or more:

22 Groundwater of 85F. or more in Subarea I is presumed to
 23 be hydrothermal discharge water. The Department shall not
 24 process or grant an application for a permit to appropriate
 25 water with a temperature of 85F. or more in Subarea I,

1 unless the appropriation is consistent with modification of
 2 restrictions pursuant to Article IV, section J., or pursuant
 3 to the procedures set forth below. An application for an
 4 appropriation that proposes to do no more than divert the
 5 unenhanced natural surface flow of a spring that is not
 6 located in the mainstem of the reserved portion of a stream
 7 to which a reserved water right for instream flow is
 8 described in Article III of this Compact is not subject to
 9 these restrictions.

10 (1) The application shall set forth credible
 11 information that the proposed appropriation does not include
 12 contribution by hydrothermal discharge water;

13 (2) Within 30 days of receipt of the information the
 14 Department shall seek review of the application by the TOC.

15 (3) The TOC shall review the report to determine if the
 16 appropriation can take place without adverse effect on the
 17 hydrothermal system within YNP. In performing the review,
 18 the TOC shall utilize the best available scientific
 19 information. The TOC shall resolve doubt in favor of
 20 protection of the hydrothermal system within YNP.

21 (4) Within 60 days of the request by the Department,
 22 the TOC shall recommend, in a report to the Department, if,
 23 and under what conditions the appropriation could be allowed
 24 without adverse effect on the hydrothermal system within
 25 YNP. The TOC may recommend limits or conditions on the

1 proposed appropriation that, in the opinion of the TOC,
 2 would allow the development while protecting the
 3 hydrothermal system within YNP. The TOC shall also provide
 4 the Department with a dissenting report pursuant to Article
 5 IV, section J.1., if applicable.

6 (5) On receipt of the report or reports, the Department
 7 shall provide a copy to the United States and the applicant
 8 and shall schedule a hearing no less than 60 and no more
 9 than 90 days from mailing of the report.

10 (6) The hearing shall proceed as a contested case under
 11 the Montana Administrative Procedure Act, Title 2, Chapter 4
 12 of the Montana Code Annotated.

13 (7) The report or reports, data and other written
 14 information produced by the TOC shall be admissible in the
 15 hearing without further foundation and not subject to the
 16 hearsay objection, subject to the rights of any party or
 17 claimant to cross-examine the producer or drafter of the
 18 written material and to controvert the same by other
 19 evidence. The hearing officer may request that members of
 20 the TOC appear to provide expert testimony in the case.

21 (8) The report and recommendations provided by the TOC
 22 have a rebuttable presumption of validity for the purposes
 23 of Article IV. The dissenting report, if any, may be used as
 24 rebuttal evidence.

25 (9) If the report recommends denial of the application,

1 the applicant may overcome the presumption by proving by
2 clear and convincing evidence that the proposed
3 appropriation does not include hydrothermal discharge water.

4 (10) If the application is denied, the Department shall
5 order that the well be temporarily abandoned; or, if
6 multiple water zones are encountered, the zone of excess
7 temperature be closed to production. Abandonment shall be
8 according to the rules of the Montana Board of Water Well
9 Contractors unless alternative procedures are recommended by
10 the TOC. The abandonment order shall not be lifted until a
11 modification order pursuant to Section IV.J. allows the
12 appropriation or UNTIL THE DEPARTMENT determines that the
13 well should be permanently abandoned.

14 (11) Within 30 days of an order by the Department
15 pursuant to this section, appeal on the record may be made
16 to a state or federal court of competent jurisdiction. For
17 an appeal to state court, venue shall be the First Judicial
18 District in Helena and the review must be conducted
19 according to the procedures for judicial review of a
20 contested case under the Montana Administrative Procedures
21 Act, Title 2, Chapter 4, of the Montana Code Annotated.

22 ii. Subarea I - groundwater with a temperature of 60F.
23 or more, but less than 85F:

24 Appropriation of groundwater with a temperature of 60F.
25 or more, but less than 85F. in subarea I is subject to the

1 following provisions.

2 (1) The applicant shall provide credible information
3 that the water meets the following criteria:

4 (a) the proposed appropriation will do no more than
5 divert the unenhanced natural surface flow of a spring that
6 is not located in the mainstem of the reserved portion of a
7 stream to which a reserved water right for instream flow is
8 described in Article III of this Compact, or

9 (b) the proposed appropriation meets all of the
10 following criteria:

11 (i) The water temperature is the result of the normal
12 thermal gradient of the earth plus the mean annual air
13 temperature at the site plus 14F. Unless modified by the
14 TOC, the Department shall use the following equation to
15 estimate the water temperature expected:

16 $(0.01646 \times \text{the depth of the production zone in feet}) +$
17 $59.3F.$

18 If the temperature measured at the wellhead is equal to
19 or less than the temperature estimated by this equation, the
20 appropriation meets this criteria.

21 (ii) the concentration of soluble chloride is less than
22 ten parts per million; and

23 (iii) the well does not contain a production zone
24 completed within the Madison Group of formations as defined
25 by the Catalog of Stratigraphic Names for Montana, Bureau of

1 Mines and Geology, Special Publication 54, March 1971.

2 (2) The Department may issue a permit to appropriate
3 groundwater with a temperature of 60F or more, but less than
4 85F. to an applicant that meets the above criteria and is in
5 compliance with the provisions of Article IV, section G.2.c.
6 unless (a) restrictions are consistent with modification
7 pursuant to Article IV, section J.; or (b) the United States
8 objects and shows by a preponderance of the evidence that
9 the criteria have not been met or, for another scientific
10 reason, the temperature is the result of contribution by
11 hydrothermal discharge water.

12 (3) If the applicant fails to meet the above criteria
13 or the United States meets its burden, the applicant shall
14 comply with the provisions of Article IV, section G.2.c.i.
15 for water or 85F or more.

16 (4) The three criteria set forth in Article IV, section
17 G.2.c.ii.(1)(b) may be modified on recommendation by the
18 TOC.

19 iii. Subarea II:

20 (1) Groundwater of 85F. or more in subarea II is
21 presumed to be hydrothermal discharge water. The applicant
22 shall follow the procedures of Article IV, section G.2.c.i.
23 including review by the TOC, provided that, if a permit to
24 appropriate is issued the monitoring recommended in the
25 Working Group Report or as superseded by the TOC for subarea

1 II, not subarea I, shall apply.

2 (2) An applicant who encounters groundwater of 60F. or
3 more but less than 85F. shall comply with the provisions of
4 Article IV, section G.2.c.ii., provided that, if a permit to
5 appropriate is issued the monitoring recommended in the
6 Working Group Report or as superseded by the TOC for subarea
7 II, not subarea I, shall apply.

8 3. Change in Character of Groundwater: Within 60 days
9 of the receipt of information indicating a change in the
10 character of the groundwater appropriated under a permit
11 issued in the Area on or after January 1, 1993 that
12 indicates the production of groundwater for which a
13 restriction applies, the Department shall issue an order
14 requiring that the appropriator comply with the limitations
15 on appropriation of hydrothermal groundwater authorized in
16 this Article. The order shall take affect 60 days following
17 the date issued unless the appropriator appears to contest
18 the order. If the appropriator appears to contest the order,
19 the Department shall set a date for a hearing and proceed
20 pursuant to the provisions for a contested case under the
21 Montana Administrative Procedures Act, title 2, Chapter 4,
22 of the Montana Code Annotated, provided that the
23 appropriator shall have the burden to prove by a
24 preponderance of the evidence that the water produced does
25 not meet the criteria to which restrictions apply.

1 H. Inventory and Sampling of Groundwater

2 1. Initial Inventory

3 All groundwater appropriations in the Area with a
4 priority date before the effective date of this Compact
5 shall be inventoried as set forth below:

6 a. Notice of Inventory

7 Within 120 days after the effective date of this Compact
8 or the receipt of funding from the United States, whichever
9 occurs later, the Department shall serve notice by mail on
10 each person or public agency known from an examination of
11 the records in the Department's office to be an appropriator
12 of groundwater with a priority date before the effective
13 date of this Compact. The notice shall set forth:

14 i. the contents of the notice required in Article IV,
15 section F.; and

16 ii. a statement that within 3 years from the date of
17 notice the Bureau may visit the wellsite to measure
18 temperature; flow rate or maximum pump capacity; water
19 level, or pump level if the well cannot be entered; and may
20 collect a water sample for additional analysis.

21 b. Inventory

22 i. Within 3 years of notice pursuant to Article IV,
23 section H.l.a., a representative of the Bureau shall
24 inventory each well drilled pursuant to an appropriation
25 recognized under state law with a priority date before the

1 effective date of this Compact. The inventory shall be
2 considered complete when the Bureau has inventoried
3 substantially all of the wells that can be located and
4 accessed with reasonable diligence. The inventory shall
5 include, but not be limited to, the following:

6 (1) well location to the
7 quarter-quarter-quarter-quarter section;

8 (2) ground elevation at the wellhead;

9 (3) flow rate or maximum pump capacity;

10 (4) water level, or pump level if the well cannot be
11 entered;

12 (5) water temperature at the wellhead;

13 (6) specific conductance of the water at the wellhead;

14 (7) chloride content of the water at the wellhead;

15 (8) water samples from a representative number of wells
16 selected by the Bureau. The water samples shall be analyzed

17 by the Bureau, or by a qualified lab contracted by the
18 Bureau. Samples shall be analyzed for chemistry, and, if

19 applicable, gas and isotopes. Choice of analyses shall be at
20 the discretion of the Bureau using the Working Group Report

21 or a report by the TOC superseding the Working Group Report
22 as a guideline. The Bureau may consult with the TOC

23 concerning well selection and analysis; and,

24 (9) any additional information deemed necessary for
25 implementation of this Article by the Bureau in consultation

1 with the TOC.

2 ii. The inventory shall be prioritized to complete
3 Subarea I first.

4 iii. Within 6 months of completion of the inventory in
5 each Subarea, the Bureau shall provide a report to the
6 Department, the TOC, and the United States, verifying that
7 the inventory is complete and setting forth the data
8 obtained in the inventory. The report shall be made
9 available to the public by the Department. In addition, the
10 Bureau shall maintain an adequate database pursuant to
11 Article IV, section H.2.

12 2. Sampling Program and Database

13 a. Following the initial inventory of all current
14 groundwater appropriations in the Area provided for in
15 Article VI, section H.1., the Bureau shall sample wells
16 selected in consultation with the TOC and at a frequency
17 determined in consultation with the TOC. The wells may
18 include appropriations made prior to, on or after January 1,
19 1993. The number of wells sampled and the analyses performed
20 shall be as determined by the Bureau in consultation with
21 the TOC. Until superseded due to recommendation by the TOC,
22 the Working Group Report shall be used as a guideline in
23 making this determination. Within 6 months of the completion
24 of each inventory and sampling program, the Bureau shall
25 provide the Department, the TOC and the United States with a

1 report on the results.

2 b. The Bureau shall maintain an adequate database on
3 the Yellowstone Controlled Groundwater Area which shall
4 include, at a minimum, analyses of water chemistry,
5 temperature, well depth, well capacity and well location.

6 c. The United States agrees to provide an annual report
7 to the Bureau for incorporation into the database on the
8 water chemistry, temperature and flow rate of any well in
9 use or spring sampled in the portion of YNP within the
10 state, and may include such information for any well or
11 spring in the portion of YNP outside the state.

12 d. The information in the database shall be available
13 to the public through the Natural Resources Information
14 System, currently located at 1515 E. Sixth Avenue, Helena,
15 Montana 59620-1800.

16 1. Administration of the Yellowstone Controlled
17 Groundwater Area

18 1. The Yellowstone Controlled Groundwater Area
19 established by this Compact shall be administered pursuant
20 to applicable state law and the terms of this Compact.

21 2. In addition to the requirements imposed by state
22 law, the Department shall provide the United States with
23 notice of any application or registration for a permit to
24 appropriate groundwater within the Area in the same manner
25 and time as required by state law for notice to groundwater

1 appropriators in a controlled groundwater area.

2 3. The United States may be an objector to any
3 application or registration for a permit to appropriate
4 groundwater or in a hearing for modification of a permit to
5 appropriate groundwater within the Area pursuant to the
6 provisions of Article IV, section G.

7 4. The Department shall, whenever possible, consolidate
8 any proceedings on groundwater applications or registration
9 pursuant to Articles II and III with any proceeding made
10 necessary by this Article.

11 5. Within 2 years after the effective date of this
12 Compact or the receipt of the requested funding from the
13 United States, whichever occurs later, the Department is
14 directed to promulgate such additional rules necessary to
15 effectuate this Compact and to establish criteria which may
16 be necessary to implement this Article. Said rules shall not
17 alter the rights or obligations of the parties hereto. In
18 doing so, the Department shall consult with the United
19 States and the TOC. Until modified by the TOC, the
20 Department shall adopt the Working Group Report to govern
21 sampling, reporting and monitoring requirements, except as
22 modified by Article IV, section G. In reviewing any permit
23 to appropriate hydrothermal discharge water the Department
24 shall consider the criteria set forth in the Working Group
25 Report or a subsequent report by the TOC, including, but not

1 limited to, the identification of risk associated with
2 volume of appropriation and distance from the reserved land
3 of YNP.

4 J. Modification of the Yellowstone Controlled
5 Groundwater Area

6 1. Technical Oversight Committee: Establishment and
7 Authority

8 a. A joint federal-state Technical Oversight Committee
9 is hereby established to review scientific evidence related
10 to the Yellowstone Controlled Groundwater Area; to advise
11 the Department on administration of the Area, including
12 review of applications to appropriate water of 60F. or more;
13 to consult with the Bureau on inventory and sampling; and to
14 recommend modification of boundaries and restrictions.

15 b. The committee shall consist of five qualified
16 scientists with experience related to hydrothermal systems.
17 The committee members shall be appointed within six months
18 following the effective date of this Compact: one appointed
19 by the National Park Service; one appointed by the United
20 States Geological Survey; one appointed by the Department;
21 one appointed from the Montana University system by the
22 Montana State Geologist; and one selected by the other four
23 members. Appointments and selections shall be made, to the
24 extent possible, to ensure that three of the qualified
25 scientists with experience related to hydrothermal systems

1 also have experience in (1) geochemistry; (2) geophysics;
 2 and (3) hydrogeology. Vacancies due to expiration of terms
 3 or resignation of a member shall be filled in the same
 4 manner. Should the four members fail to agree on the
 5 selection of additional members within 60 days after
 6 appointment of all four members or within 30 days after a
 7 vacancy occurs, the following procedure shall be utilized:

8 (i) Within 5 days each member shall nominate one person
 9 for each vacancy and submit the nominations to a judge of
 10 the First Judicial District in Helena; and

11 (ii) A judge of the First Judicial District in Helena
 12 shall fill the vacancy by selecting a member from each set
 13 of nominations.

14 c. Each member shall serve a five-year term and shall
 15 be eligible for reappointment. Expenses of the members shall
 16 be born by the entity appointing the member. The per diem or
 17 salary, and travel expenses of the three members-at-large
 18 shall be born equally by the United States and the state,
 19 subject to the availability of funds. All other expenses of
 20 the TOC shall be born by the United States subject to
 21 Congressional appropriation as set forth in Article IV,
 22 section C.

23 d. The recommendation of any of the following by the
 24 TOC shall be based on a supermajority of four to one: (1)
 25 modification of the Area pursuant to Article IV, section J;

1 (2) review of an application to appropriate groundwater with
 2 a temperature of 60F. or more; and (3) removal of any of the
 3 criteria specified in Article IV, section G.c.ii.(1)(b).
 4 Failure to achieve a supermajority shall result in a
 5 recommendation of no modification or no permit approval. In
 6 the absence of a unanimous decision, the TOC shall provide
 7 both a report supporting the recommendation that there be no
 8 modification or no permit approval, and a dissenting report
 9 to the Department. In all other instances in which the TOC
 10 consults with or makes recommendations to the Department or
 11 the Bureau, recommendations shall be made by a simple
 12 majority of the entire committee.

13 e. The TOC shall:

14 i. review the boundaries of the Area and the Subareas;

15 ii. review the initial restrictions on groundwater
 16 development imposed pursuant to this Article, and future
 17 modifications of those restrictions;

18 iii. assess the cumulative impact of all development in
 19 the Area;

20 iv. review changes in the groundwater and hydrothermal
 21 systems revealed by inventory and analyses done by the
 22 Bureau, and any other pertinent scientific evidence;

23 v. review new scientific evidence pertinent to the
 24 Area;

25 vi. consult with the Bureau or the Department on

1 request;

2 vii. present evidence and make recommendations to the
3 Department in accordance with Article IV, section J.2.

4 viii. review applications for a permit to appropriate
5 groundwater on request by the Department as set forth in
6 Article IV, section G.2.c.; and

7 ix. take any additional action necessary to implement
8 this Article.

9 f. The Department and the Bureau shall provide the TOC
10 with all information in their records regarding
11 appropriations of groundwater within the Area including
12 reports required by this Article.

13 g. The initial review shall take place within 1 year of
14 the receipt of the inventory report done by the Bureau
15 pursuant to Article IV, section H. Subsequent reviews shall
16 take place every 5 years following the initial inventory or
17 following the issuance of 75 permits to appropriate water
18 within the Area by the Department, whichever occurs first.
19 Additional review shall also take place on request by the
20 United States or the state.

21 h. Within 6 months of initiation of a review, the TOC
22 shall provide a report of the review, including any
23 recommendation for modification, and a dissenting report, if
24 any, to the Department and the United States.
25 Recommendations shall be based on a determination by a

1 supermajority of the entire TOC that the modification is
2 necessary to prevent adverse effect to the hydrothermal
3 system within the reserved land of YNP, or that modification
4 may be made without the threat of adverse effect on the
5 hydrothermal system within the reserved land of YNP. The
6 recommendation shall be made in good faith and based on
7 scientific evidence including, but not limited to, the
8 following:

9 i. in the case of extension of boundaries, the criteria
10 set out in the Working Group Report for designation of the
11 boundary of the Area to be enlarged is found to exist within
12 the proposed extension;

13 ii. the cumulative effect of groundwater development
14 within the Area or a portion of the Area has resulted in
15 declining hydraulic head and modification of boundaries or
16 restrictions are necessary to prevent adverse effect on the
17 hydrothermal system within the reserved land of YNP;

18 iii. changes in groundwater revealed by the inventory
19 and sampling program are such that modification is necessary
20 to prevent adverse effect on the hydrothermal system within
21 the reserved land of YNP;

22 iv. scientific evidence indicates that modification is
23 necessary to prevent adverse effect on the hydrothermal
24 system within the reserved land of YNP;

25 v. based on scientific evidence, restrictions can be

1 removed or boundary modifications made without the threat of
2 adverse effect to the hydrothermal system within the
3 reserved land of YNP.

4 2. Modification Pursuant to Review

5 a. Within 60 days of mailing of the report in Article
6 IV, section J.1.h., and if (1) the TOC recommends
7 modification; (2) the United States, state or a person with
8 property or water rights within the Area petitions for a
9 hearing; or (3) a person with an interest that would be
10 adversely affected by the recommendation, petitions for a
11 hearing, the Department shall provide for notice of a
12 hearing pursuant to state law.

13 b. The Department shall follow the rules for a
14 contested case under the Montana Administrative Procedures
15 Act, Title 2, Chapter 4 of the Montana Code Annotated. In
16 addition, the Department shall apply the following
17 provisions:

18 i. The report or reports, data and other written
19 information produced by the TOC shall be admissible in the
20 hearing without further foundation and not subject to the
21 hearsay objection, subject to the rights of any party or
22 claimant to cross-examine the producer or drafter of the
23 written material and to controvert the same by other
24 evidence. The hearing officer may request that members of
25 the TOC appear to provide expert testimony in the case. The

1 hearing officer shall also hear any oral and written
2 scientific evidence presented by the state, the United
3 States, any applicant for a permit to appropriate who has
4 requested review, and any person with property or water
5 rights in the Area, or an interest that would be adversely
6 affected by the recommended modification.

7 ii. The scientific evidence and recommendations
8 presented in the report by the TOC have a rebuttable
9 presumption of validity for the purposes of Article IV. The
10 Department shall adopt the recommendations of the TOC unless
11 the recommendation by the TOC is refuted by clear and
12 convincing scientific evidence. The dissenting report of the
13 TOC, if any, may be used as rebuttal evidence.

14 iii. The Department shall issue an order stating
15 findings of fact and conclusions of law.

16 c. Within 30 days of an order by the Department, a
17 person aggrieved by the order may appeal on the record to a
18 state or federal court of competent jurisdiction. For an
19 appeal to state court, venue shall be the First Judicial
20 District in Helena and the review must be conducted
21 according to the procedures for judicial review of a
22 contested case under the Montana Administrative Procedures
23 Act, Title 2, Chapter 4, of the Montana Code Annotated.

24 ARTICLE V

25 GENERAL PROVISIONS

1 A. No Effect on Tribal Rights or Other Federal Reserved
 2 Water Rights:

3 1. Nothing in this Compact may be construed or
 4 interpreted in any manner to establish the nature, extent or
 5 manner of administration of the rights to water of an Indian
 6 Tribe in Montana, or of a water right of an individual that
 7 is derivative of such right, or of the United States on
 8 behalf of such tribe or tribal member. The relationship
 9 between the water rights of the National Park Service
 10 described herein and any rights to water of an Indian Tribe
 11 in Montana, or of a water right of an individual that is
 12 derivative of such right, or of the United States on behalf
 13 of such tribe or tribal member shall be determined by the
 14 rule of priority.

15 2. Nothing in this Compact is otherwise intended to
 16 conflict with or abrogate a right or claim of an Indian
 17 Tribe regarding boundaries or property interests in the
 18 State of Montana.

19 3. Nothing in this Compact may be construed or
 20 interpreted in any manner to establish the nature, extent or
 21 manner of administration of the rights to water of any other
 22 federal agency or federal lands in Montana other than those
 23 of the National Park Service. The exercise of a water right
 24 of the United States, if any, to water for a consumptive use
 25 on land administered by the United States Forest Service

1 upstream of a water right to instream flow described in this
 2 Compact shall be allocated from the United States' share for
 3 instream flow, not the state's share for consumptive use.

4 B. State Water Rights

5 Nothing in this Compact may limit the exclusive
 6 authority of the state, including the authority of a water
 7 commissioner authorized by state law, to administer all
 8 current and future water rights recognized under state law
 9 within and upstream of the reserved land covered by this
 10 Compact, provided that in administration of those water
 11 rights in which the United States has an interest, such
 12 authority is limited to that granted under federal law.

13 C. General Disclaimers

14 Nothing in this Compact may be construed or interpreted;

15 1. as a precedent for the litigation or the
 16 interpretation or administration of future compacts between
 17 the United States and the state; or of the United States and
 18 any other state;

19 2. as a waiver by the United States of its right under
 20 state law to raise objections in state court to individual
 21 water rights claimed pursuant to the state Water Use Act,
 22 Title 85, of the Montana Code Annotated, in the basins
 23 affected by this Compact;

24 3. as a waiver by the United States of its right to
 25 seek relief from a conflicting water use not entitled to

1 protection under the terms of this Compact;

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

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

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

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

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

18 9. to affect in any manner the entitlement to or
19 quantification of other federal water rights. This Compact
20 is only binding on the United States with regard to the
21 water rights of the National Park Service, and does not
22 affect the water rights of any other federal agency.

23 D. Use of Water Right

24 Except as otherwise provided in this Compact, the rights
25 of the United States described in this agreement are federal

1 reserved water rights. Non-use of all or a part of the
2 federal reserved water rights described in this Compact
3 shall not constitute abandonment of the right. The federal
4 reserved water rights described in this Compact need not be
5 applied to a use deemed beneficial under state law, but
6 shall be restricted to uses necessary to fulfill the
7 purposes of the associated reserved land.

8 E. Appropriation Pursuant to State Law

9 Nothing in this Compact may prevent the United States
10 from seeking a permit to appropriate water under state law
11 for use outside the boundaries of the federal reservations
12 for which a water right is described in this Compact,
13 provided that, no such use may be included in the
14 calculation of total current or future consumptive use
15 rights allocated to use pursuant to state law by this
16 Compact, and provided further that, a water right obtained
17 in this manner shall be considered a state water right and
18 shall be administered pursuant to general provisions of
19 state law as provided in Article II, section J.2.b.

20 F. Reservation of Rights

21 The parties expressly reserve all rights not granted,
22 described or relinquished in this Compact.

23 G. Severability

24 Except as provided in Article IV, the provisions of this
25 Compact are not severable.

1 H. Multiple Originals

2 This Compact is executed in quintuplicate. Each of the
3 five (5) Compacts bearing original signatures shall be
4 deemed an original.

5 I. Notice

6 Unless otherwise specifically provided for in this
7 Compact, service of notice required hereunder, except
8 service in litigation, shall be:

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

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

14 ARTICLE VI

15 FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

16 A. Binding Effect

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

24 a. The state and a person or entity of any nature
25 whatsoever using, claiming or in any manner asserting a

1 right under the authority of the state to the use of water;
2 and

3 b. except as otherwise provided in Article V, section
4 A., the United States, a person or entity of any nature
5 whatsoever using, claiming, or in any manner asserting a
6 right under the authority of the United States to the use of
7 water.

8 2. Following the effective date, this Compact shall not
9 be modified without the consent of both parties. Either
10 party may seek enforcement of this Compact in a court of
11 competent jurisdiction. Except as provided in Article IV
12 concerning the appropriation of funds, attempt to
13 unilaterally modify this Compact by either party shall
14 render this Compact voidable at the election of the other
15 party.

16 3. On approval of this Compact by a state or federal
17 court of competent jurisdiction and entry of a decree by
18 such court confirming the rights described herein, this
19 Compact and such rights are binding on all persons bound by
20 the final order of the court.

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

24 B. Disposition of Actions

25 Subject to the following stipulations and within one

1 hundred eighty (180) days of the effective date, the parties
 2 shall submit this Compact to an appropriate state court or
 3 courts having jurisdiction over this matter in an action
 4 commenced pursuant to 43 U.S.C. 666, for approval in
 5 accordance with state law and for the incorporation of the
 6 reserved water rights described in this Compact into a
 7 decree or decrees entered therein. The parties understand
 8 and agree that the submission of this Compact to a state
 9 court or courts, as provided for in this Compact, is solely
 10 to comply with the provisions of 85-2-702(3), MCA, and does
 11 not expand [sic] the jurisdiction of the state court or
 12 expand in any manner the limited waiver or sovereign
 13 immunity of the United States in the McCarran Amendment, 43
 14 U.S.C. 666 or other provision of federal law.

15 1. Dismissal of Filed Claims: At the time the state
 16 courts approve the reserved water rights described in this
 17 Compact and enter a decree or decrees confirming the rights
 18 described herein, such courts shall dismiss, with prejudice,
 19 all of the water right claims specified in Appendix 3 to
 20 this Compact. If this Compact fails approval or a reserved
 21 water right described herein is not confirmed, the specified
 22 claims shall not be dismissed.

23 2. Disposition of Federal Suits: Within ninety (90)
 24 days of the issuance of a final decree or decrees by the
 25 state courts approving this Compact and confirming the

1 reserved water rights described herein, and the completion
 2 of any direct appeals therefrom or the expiration of the
 3 time for filing such appeal, the parties shall execute and
 4 file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to
 5 dismiss with prejudice those claims made by the United
 6 States for Glacier National Park in United States v.
 7 Aageson, No. CV-79-21-GF (D. Mont.); United States v. Abell,
 8 No. CV-79-33M (D. Mont.); and United States v. AMS Ranch,
 9 Inc., No. CV-79-22-GF (D. Mont.). This Compact may be filed
 10 as a consent decree in those federal suits, only if, prior
 11 to the dismissal of the federal suits as provided in this
 12 Article, it is finally determined in a judgement binding on
 13 the State of Montana that the state courts lack jurisdiction
 14 over some or all of the reserved water rights described in
 15 this Compact. Within one year of such judgment the United
 16 States agrees to commence such additional proceedings in the
 17 federal district court for the District of Montana as may be
 18 necessary to judicially confirm the reserved water rights
 19 described herein which are not included within an existing
 20 action.

21 C. Settlement of Claims

22 The parties intend that, with the exceptions noted
 23 herein, the water rights described in this Compact are in
 24 full and final settlement of the water right claims for the
 25 reserved land administered by the National Park Service in

1 Montana on the effective date of this Compact. Pursuant to
 2 this settlement, by which certain federal reserved water
 3 rights are expressly recognized by the state in this Compact
 4 and other water rights claims of the United States are
 5 expressly retained in Article III, sections B., D., E, and
 6 F., the United States hereby and in full settlement of any
 7 and all claims filed by the United States or which could
 8 have been filed by the United States for reserved land
 9 administered by the National Park Service in Montana
 10 relinquishes forever all said claims on the effective date
 11 of this Compact to water within the State of Montana for
 12 reserved land administered by the National Park Service. The
 13 state agrees to recognize the reserved water rights
 14 described and quantified herein, and shall, except as
 15 expressly provided for herein, treat them in the same manner
 16 as a water right recognized by the state.

17 D. The parties agree to seek enactment of legislation
 18 and to recommend appropriation of federal funds necessary to
 19 effectuate the provisions and purposes of this Compact, and
 20 to defend the provisions and purposes of this Compact from
 21 all challenges and attacks.

22 IN WITNESS WHEREOF the representatives of the State of
 23 Montana and the United States have signed this Compact on
 24 the ____ day of _____, 19__.

25 FOR THE STATE OF MONTANA

1 MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION
 2 FOR THE UNITED STATES

3 NEW SECTION. Section 2. Statutory appropriation of
 4 federal funds. (1) There must be created those accounts that
 5 are necessary within the federal special revenue fund
 6 established under 17-2-102 for the purposes of this part.

7 (2) Federal funds deposited in the accounts and
 8 interest and earnings on the accounts are statutorily
 9 appropriated, as provided in 17-7-502, and must be used for
 10 the following purposes or to reimburse the state for
 11 expenditures incurred for the following purposes:

12 (a) establishment, administration, and enforcement of
 13 the Yellowstone controlled ground water area;

14 (b) inventory, sampling, reporting, and data base
 15 management;

16 (c) provision for administrative costs and the cost of
 17 any study or any other necessary activity by the technical
 18 oversight committee; and

19 (d) any other necessary activity pursuant to this part.

20 Section 3. Section 17-7-502, MCA, is amended to read:

21 "17-7-502. Statutory appropriations -- definition --
 22 requisites for validity. (1) A statutory appropriation is an
 23 appropriation made by permanent law that authorizes spending
 24 by a state agency without the need for a biennial
 25 legislative appropriation or budget amendment.

1 (2) Except as provided in subsection (4), to be
2 effective, a statutory appropriation must comply with both
3 of the following provisions:

4 (a) The law containing the statutory authority must be
5 listed in subsection (3).

6 (b) The law or portion of the law making a statutory
7 appropriation must specifically state that a statutory
8 appropriation is made as provided in this section.

9 (3) The following laws are the only laws containing
10 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
11 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
12 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;
13 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
14 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
15 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;
16 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
17 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109;
18 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;
19 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
20 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;
21 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206;
22 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108;
23 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310;
24 82-11-136; 82-11-161; 85-1-220; section 2; 90-3-301;
25 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

1 (4) There is a statutory appropriation to pay the
2 principal, interest, premiums, and costs of issuing, paying,
3 and securing all bonds, notes, or other obligations, as due,
4 that have been authorized and issued pursuant to the laws of
5 Montana. Agencies that have entered into agreements
6 authorized by the laws of Montana to pay the state
7 treasurer, for deposit in accordance with 17-2-101 through
8 17-2-107, as determined by the state treasurer, an amount
9 sufficient to pay the principal and interest as due on the
10 bonds or notes have statutory appropriation authority for
11 the payments. (In subsection (3): pursuant to sec. 7, Ch.
12 567, L. 1991, the inclusion of 19-6-709 terminates upon
13 death of last recipient eligible for supplemental benefit;
14 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
15 22-3-811 terminates June 30, 1993.)"

16 NEW SECTION. Section 4. Codification instruction.
17 [Sections 1 and 2] are intended to be codified as an
18 integral part of Title 85, chapter 20, and the provisions of
19 Title 85, chapter 20, apply to [sections 1 and 2].

-End-