

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 UNRECORDED Gregory Yellowstone  
 3 Swanson Beck Resnick Swanson Raney  
 4 Bill Gruber Jazz Schae  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT RATIFYING A RESERVED  
 6 WATER RIGHTS COMPACT BETWEEN THE UNITED STATES NATIONAL PARK  
 7 SERVICE AND THE STATE OF MONTANA; ESTABLISHING A STATUTORY  
 8 APPROPRIATION; AND AMENDING SECTION 17-7-502, MCA."

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 "BHNB" 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

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

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

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

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

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

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

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

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

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

(14) "Glacier National Park" or "GNP" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by the Act of May 11, 1910, 36 Stat. 354; Act of February 27, 1915, 38 Stat. 814; and Act of April 11, 1972, 86 Stat. 120.

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

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

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

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

(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.

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

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

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

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

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

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

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

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

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

## ARTICLE II

### IMPLEMENTATION

#### A. Abstract:

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

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

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

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

1. Allocation to Instream Flow:

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

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

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

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

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

a. Tributary Water: The calculation of total consumptive use on a Category 3 or 4 stream shall include all current and future consumptive use, recognized under 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

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

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

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

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

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

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

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

(iii) Within 60 days of the mailing of notice, the United States shall file an objection to the proposed 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



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

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

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

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

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

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

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

notification accordingly.

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

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

6. Notice of Change:

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

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

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

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

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

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

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

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

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

### ARTICLE III

#### WATER RIGHT

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

#### A. Big Hole National Battlefield

##### 1. Priority Date

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

##### 2. Consumptive Use

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

1 within BHNB boundaries as the boundaries exist on the  
2 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

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

24 a. Instream Flow Quantification for November through  
25 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.

9 b. Instream Flow Quantification for April through  
10 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.

TABLE 2

## 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 Blackfoot Tribe of the Blackfoot 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, Oatso, 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.

25                   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	Middle Fork
5		Flathead River	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

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

D. Grant Kohrs Ranch National Historic Site

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

E. Little Bighorn Battlefield National Monument

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

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

F. Nez Perce National Historical Park

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

G. Yellowstone National Park

1. Priority Date

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

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of YNP as set forth in Table 5. 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 YNP shall include any non-reserved land within YNP as the boundaries exist on the effective date of this Compact.

TABLE 5

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.	0.2	0.1	1.5	0.3
12 Feb.	0.2	0.1	1.6	0.3
13 Mar.	0.3	0.1	1.9	0.4
14 April	1.1	0.2	5.6	1.2
15 May	3.8	1.3	19.8	4.5
16 June	3.4	1.2	22.4	5.3
17 July	1.0	0.3	7.3	1.7
18 Aug.	0.4	0.2	2.9	0.8
19 Sept.	0.4	0.1	2.3	0.6
20 Oct.	0.4	0.1	2.4	0.6
21 Nov.	0.3	0.1	2.1	0.5
22 Dec.	0.2	0.1	1.8	0.4

23 iii. The provisions of Article III, section G.3.c.ii  
24 notwithstanding, in the event of a period of low flow such  
25 that Crevice, Dry Canyon, Slough, or Teepee Creeks fall  
below the critical levels of instream flow shown in Table 7  
at the point the stream enters the reserved land of YNP, the  
United States' water right for instream flow is not

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

TABLE 7

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

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

d. Category 4:

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

i. Soda Butte Creek

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

instream flow on Soda Butte Creek in the amount of the entire flow of the stream, less any United States' consumptive use rights described in this Compact, provided that, the instream flow right is subordinate to: (a) the sum of any 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 set forth in Table 8 is reached; (b) any use considered non-consumptive as defined by this Compact; and (c) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 8

State Law Based

Total Current and Future Consumptive Use Rights (cfs)  
Tributary to the Reserved Portion of Soda Butte Creek

Month	
Jan.	0.3
Feb.	0.3
Mar.	0.2
April	0.1
May	6.2
June	17.5
July	6.4
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

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

	Gallatin	Madison	Yellowstone
Month	River	River	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) any United States' consumptive use rights described in this Compact; and (2) any water right recognized under state law with a priority date before January 1, 1993. The named and unnamed lakes in which the United States has a reserved water right are those set forth more specifically in the Abstract.

H. Emergency Fire Suppression

The use of water for emergency fire suppression benefits 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

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

D. Initial Boundaries of the Yellowstone Controlled Groundwater Area

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

1. Subarea I:

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

2. Subarea II:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Appropriation of Groundwater within the Area with a

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

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

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

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

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

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

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

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

a. General Provisions

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

to the United States and to the Bureau on receipt.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

(b) the proposed appropriation meets all of the

following criteria:

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

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

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

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

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

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

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

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

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

iii. Subarea II:

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

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

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

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

H. Inventory and Sampling of Groundwater

1. Initial Inventory

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

a. Notice of Inventory

Within 120 days after the effective date of this Compact or the receipt of funding from the United States, whichever 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

necessary by this Article.

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

J. Modification of the Yellowstone Controlled Groundwater Area

1. Technical Oversight Committee: Establishment and Authority

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

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

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

(i) Within 5 days each member shall nominate one person 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

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

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

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

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

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

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

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

#### ARTICLE V

##### GENERAL PROVISIONS

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

1. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of an Indian Tribe in Montana, or of a water right of an individual that is derivative of such right, or of the United States on behalf of such tribe or tribal member. The relationship 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

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

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

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

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

#### C. Settlement of Claims

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

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

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

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

FOR THE STATE OF MONTANA

MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION

FOR THE UNITED STATES

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

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

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

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

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

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

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

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

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

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

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

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

(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

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

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

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

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

#### ARTICLE I

#### DEFINITIONS

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Hydrologically connected" for the purposes of Article IV, means groundwater that is considered to be connected to the hydrothermal system within the reserved 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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE II

### IMPLEMENTATION

#### A. Abstract:

Concurrent with this Compact, the parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a 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

shall apply:

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

b. Groundwater:

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

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

groundwater as follows:

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

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

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

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

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

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

(3) Post-Effective Date: An appropriation of

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

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

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

(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.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 6. Notice of Change:

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

b. The United States agrees to provide the state with 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 BHNH.

##### 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	Maximum
	Volume	Flow Rate
	(ac-ft)	(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

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

TABLE 2

## State Law Based

Total Current and Future Consumptive Use Rights (cfs)

Tributary to the Reserved Portion of the

North Fork of the Big Hole River

Month	Consumptive Use
April	4.85
May	23.85
June	18.70
July	4.05
Aug.	1.75
Sept.	1.35
Oct.	1.50

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

B. Bighorn Canyon National Recreation Area

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

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

C. Glacier National Park

1. Priority Date

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

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of GNP as set forth in Table 3. 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 GNP shall include any non-reserved land within GNP boundaries as the boundaries exist on the effective date of 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,		

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

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 point the stream exits the reserved land of GNP. The relationship between this water right and a water right to water stored within GNP held by the United States shall be governed by the rule of priority.

b. Category 1a Streams

i. Identification:

The following streams are designated as "Category 1a:"

Apgar, Canyon, Dutch, Harrison, McDonald, and Quartz Creeks.

ii. Instream Flow:

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

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

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

c. Category 4 Streams

i. Identification:

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

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

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

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

TABLE 4

## State Law Based

## Future Consumptive Use Rights (cfs)

## Tributary to the Reserved Portion of the Flathead River

Month	North Fork Flathead River	Middle Fork Flathead River
Jan.	7.5	7.1
Feb.	7.2	6.9
Mar.	8.9	8.1
April	#	#
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

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

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

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

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 YNP shall include any non-reserved land within YNP as the boundaries exist on the effective date of this Compact.

TABLE 5

## United States National Park Service

## Yellowstone National Park Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (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. Instream Flow Righta. Category 1: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.

1     ii. Instream Flow

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

9     iii. Change in Wilderness Designation

10    In the event that the Congress of the United States  
11 repeals the Wilderness designation assigned to the  
12 headwaters of an above named Category 2 stream, then, to the  
13 extent consistent with the law repealing the Wilderness  
14 designation as it pertains to water use, the stream  
15 headwatered in the former Wilderness may be reclassified in  
16 the appropriate category on request by the state.

17    c. Category 3:

18    i. Identification:

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

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

21    ii. The United States has a reserved water right for  
22 instream flow on Category 3 streams in the amount of the  
23 entire flow of the streams, less any United States'  
24 consumptive use rights described in this Compact, provided  
25 that, the instream flow right is subordinate to (1) the sum

1    of all water rights recognized under state law with a  
2 priority date before January 1, 1993, plus any future  
3 consumptive use rights calculated according to Article II,  
4 until the limit on total current and future consumptive use  
5 set forth in Table 6 is reached; (2) any use considered  
6 non-consumptive as defined by this Compact; and (3) any use  
7 of groundwater not included in the calculation of  
8 consumptive use according to Article II.

9                   TABLE 6

10                   State Law Based

11                   Total Current and Future Consumptive Use Rights (cfs)

12                   Tributary to the Reserved Portion of Category 3 Streams

13   Month	13   Crevice	13   Dry Canyon	13   Slough	13   Teepee
14	14   Creek	14   Creek	14   Creek	14   Creek
15   Jan.	0.2	0.1	1.5	0.3
16   Feb.	0.2	0.1	1.6	0.3
17   Mar.	0.3	0.1	1.9	0.4
18   April	1.1	0.2	5.6	1.2
19   May	3.8	1.3	19.8	4.5
20   June	3.4	1.2	22.4	5.3
21   July	1.0	0.3	7.3	1.7
22   Aug.	0.4	0.2	2.9	0.8
23   Sept.	0.4	0.1	2.3	0.6
24   Oct.	0.4	0.1	2.4	0.6
25   Nov.	0.3	0.1	2.1	0.5

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.

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.

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

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

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

repeals the Wilderness designation assigned to the land over which Republic and Hayden Creeks and two unnamed tributaries to Soda Butte Creek flow in Wyoming, or otherwise makes water from such tributaries available for appropriation in Wyoming, the state may seek modification of Article III, section G.3.d.i.(2). of this Compact as provided in Article VI, section A.2.

TABLE 9

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

Soda Butte Creek	
Month	Flow
Jan.	5.4
Feb.	5.1
Mar.	4.0
April	1.7
May	116.9
June	332.5
July	120.7
Aug.	46.4
Sept.	15.3
Oct.	14.2
Nov.	9.3
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

	Gallatin	Madison	Yellowstone
Month	River	River	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) any United States' consumptive use rights described in 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.1.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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Groundwater of 85F. or more in Subarea I is presumed to be hydrothermal discharge water. The Department shall not process or grant an application for a permit to appropriate water with a temperature of 85F. or more in Subarea I, unless the appropriation is consistent with modification of 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

appropriation does not include hydrothermal discharge water.

(10) If the application is denied, the Department shall order that the well be temporarily abandoned; or, if multiple water zones are encountered, the zone of excess temperature be closed to production. Abandonment shall be according to the rules of the Montana Board of Water Well Contractors unless alternative procedures are recommended by the TOC. The abandonment order shall not be lifted until a modification order pursuant to Section IV.J. allows the appropriation or UNTIL THE DEPARTMENT determines that the well should be permanently abandoned.

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

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

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

(1) The applicant shall provide credible information

that the water meets the following criteria:

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

(b) the proposed appropriation meets all of the following criteria:

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

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

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

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

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

(2) The Department may issue a permit to appropriate

groundwater with a temperature of 60F or more, but less than 85F, to an applicant that meets the above criteria and is in compliance with the provisions of Article IV, section G.2.c. unless (a) restrictions are consistent with modification pursuant to Article IV, section J.; or (b) the United States objects and shows by a preponderance of the evidence that the criteria have not been met or, for another scientific reason, the temperature is the result of contribution by hydrothermal discharge water.

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

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

iii. Subarea II:

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

(2) An applicant who encounters groundwater of 60F. or

more but less than 85F. shall comply with the provisions of Article IV, section G.2.c.ii., provided that, if a permit to appropriate is issued the monitoring recommended in the Working Group Report or as superseded by the TOC for subarea II, not subarea I, shall apply.

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

H. Inventory and Sampling of Groundwater

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 60°F. 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

Department in accordance with Article IV, section J.2.

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

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

f. The Department and the Bureau shall provide the TOC with all information in their records regarding appropriations of groundwater within the Area including reports required by this Article.

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

h. Within 6 months of initiation of a review, the TOC shall provide a report of the review, including any recommendation for modification, and a dissenting report, if any, to the Department and the United States. Recommendations shall be based on a determination by a supermajority of the entire TOC that the modification is necessary to prevent adverse effect to the hydrothermal

system within the reserved land of YNP, or that modification may be made without the threat of adverse effect on the hydrothermal system within the reserved land of YNP. The recommendation shall be made in good faith and based on scientific evidence including, but not limited to, the following:

i. in the case of extension of boundaries, the criteria set out in the Working Group Report for designation of the boundary of the Area to be enlarged is found to exist within the proposed extension;

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

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

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

v. based on scientific evidence, restrictions can be removed or boundary modifications made without the threat of 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

five (5) Compacts bearing original signatures shall be deemed an original.

I. Notice

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

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

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

ARTICLE VI

FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

A. Binding Effect

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

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

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

2. Following the effective date, this Compact shall not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Except as provided in Article IV concerning the appropriation of funds, attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

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

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

B. Disposition of Actions

Subject to the following stipulations and within one hundred eighty (180) days of the effective date, the parties 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 expeand [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

of the following provisions:

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

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

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

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying,

and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

NEW SECTION. **Section 4.** Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 20, and the provisions of 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

evidence according to the procedures in Article IV.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE II

### IMPLEMENTATION

#### A. Abstract:

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

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

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

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

this Compact.

1. Allocation to Instream Flow:

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

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

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

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

To determine whether water is available for appropriation for consumptive use pursuant to state law on Category 3 and 4 streams, and for determining whether the limit on subordination of the United States' water rights to 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.

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

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

(3) Post-Effective Date: An appropriation of

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

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

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

(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

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

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

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

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

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

Abstract shall be adjusted to reflect the decreed amount.

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

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

#### C. Subordination of Instream Flow Right:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

#### 6. Notice of Change:

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

b. The United States agrees to provide the state with 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.

TABLE 2

## State Law Based

Total Current and Future Consumptive Use Rights (cfs)	
Tributary to the Reserved Portion of the	
North Fork of the Big Hole River	
Month	Consumptive Use
April	4.85
May	23.85
June	18.70
July	4.05
Aug.	1.75
Sept.	1.35
Oct.	1.50

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

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</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,		

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

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 point the stream exits the reserved land of GNP. The relationship between this water right and a water right to water stored within GNP held by the United States shall be governed by the rule of priority.

b. Category 1a Streams

i. Identification:

The following streams are designated as "Category 1a:"

Apgar, Canyon, Dutch, Harrison, McDonald, and Quartz Creeks.

ii. Instream Flow:

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

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

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

c. Category 4 Streams

i. Identification:

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

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

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

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

TABLE 4

## State Law Based

## Future Consumptive Use Rights (cfs)

## Tributary to the Reserved Portion of the Flathead River

Month	North Fork Flathead River	Middle Fork Flathead River
Jan.	7.5	7.1
Feb.	7.2	6.9
Mar.	8.9	8.1
April	#	#
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	

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

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

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



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 YNP shall include any non-reserved land within YNP as the boundaries exist on the effective date of this Compact.

TABLE 5

United States National Park Service  
Yellowstone National Park Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (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. Instream Flow Righta. Category 1: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.

1       ii. Instream Flow

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

9       iii. Change in Wilderness Designation

10       In the event that the Congress of the United States  
11 repeals the Wilderness designation assigned to the  
12 headwaters of an above named Category 2 stream, then, to the  
13 extent consistent with the law repealing the Wilderness  
14 designation as it pertains to water use, the stream  
15 headwatered in the former Wilderness may be reclassified in  
16 the appropriate category on request by the state.

17       c. Category 3:

18       i. Identification:

19       The following streams are designated as "Category 3:"  
20       Crevice, Dry Canyon, Slough, and Teepee Creeks.

21       ii. The United States has a reserved water right for  
22 instream flow on Category 3 streams in the amount of the  
23 entire flow of the streams, less any United States'  
24 consumptive use rights described in this Compact, provided  
25 that, the instream flow right is subordinate to (1) the sum

1 of all water rights recognized under state law with a  
2 priority date before January 1, 1993, plus any future  
3 consumptive use rights calculated according to Article II,  
4 until the limit on total current and future consumptive use  
5 set forth in Table 6 is reached; (2) any use considered  
6 non-consumptive as defined by this Compact; and (3) any use  
7 of groundwater not included in the calculation of  
8 consumptive use according to Article II.

9                   TABLE 6

10                   State Law Based

11                   Total Current and Future Consumptive Use Rights (cfs)  
12                   Tributary to the Reserved Portion of Category 3 Streams

13 Month	14 Crevice Creek	14 Dry Canyon Creek	14 Slough Creek	14 Teepee Creek
15 Jan.	0.2	0.1	1.5	0.3
16 Feb.	0.2	0.1	1.6	0.3
17 Mar.	0.3	0.1	1.9	0.4
18 April	1.1	0.2	5.6	1.2
19 May	3.8	1.3	19.8	4.5
20 June	3.4	1.2	22.4	5.3
21 July	1.0	0.3	7.3	1.7
22 Aug.	0.4	0.2	2.9	0.8
23 Sept.	0.4	0.1	2.3	0.6
24 Oct.	0.4	0.1	2.4	0.6
25 Nov.	0.3	0.1	2.1	0.5

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.

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 1. 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.

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 <u>only</u> 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

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

	Gallatin	Madison	Yellowstone
Month	River	River	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) any United States' consumptive use rights described in this Compact; and (2) any water right recognized under state law with a priority date before January 1, 1993. The named and unnamed lakes in which the United States has a reserved water right are those set forth more specifically in the Abstract.

#### H. Emergency Fire Suppression

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

### ARTICLE IV

#### YELLOWSTONE CONTROLLED GROUNDWATER AREA

##### A. Statement of Intent

Yellowstone National Park was reserved for the express purpose of "preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition." 17 Stat. 32. The parties agree that Congress

reserved water necessary to preserve the hydrothermal features within the reserved land of YNP. These reserved water rights have priorities as of the date on which the land was reserved.

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

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

##### B. Findings

Ratification of this Compact by the Montana legislature 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



certificate of water right to appropriate groundwater within the Area report the following information on filing of a well log: (1) well location to the quarter-quarter-quarter-quarter section; (2) ground elevation at the wellhead; (3) well depth; (4) water level; (5) flow rate or maximum pump capacity; and (6) water temperature measured at the wellhead.

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

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

7. Effect of Modification of Area: It is the intent of

the parties that the initial boundaries of the Area set forth in Article IV, section D. and Appendix 2, and initial restrictions set forth in Article IV, section E. may be modified pursuant to Article IV, section J., or with respect to a single appropriation pursuant to Article IV, section G.2.c. and shall not be deemed to be a modification of this Compact. Any other modification of this Article shall be considered a modification of this Compact and is subject to the terms of Article VI, section A.2.

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

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

b. Notwithstanding the preceding subparagraph, if the National Park Service, in its judgment, determines that circumstances warrant, nothing in this Compact prohibits the United States from petitioning a state or federal court of competent jurisdiction for injunctive or declarative relief. Nothing in this Compact shall alter the courts' application

of the test for injunctive relief; neither shall the administrative determination by the National Park Service to seek relief in said court be deemed to establish or preclude any determination in such judicial proceedings. Prior to such an administrative determination, the National Park Service agrees that it will provide the State written notice and will identify a time frame during which it will await the State's efforts to address the concern.

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

D. Initial Boundaries of the Yellowstone Controlled Groundwater Area

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

1. Subarea I:

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

2. Subarea II:

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

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

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

1. The parties agree that the initial restrictions on development of groundwater and any modification thereof, shall not apply to appropriations with a priority date before January 1, 1993. The sole provisions of this Article applicable to such appropriations shall be those providing

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

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

#### F. General Notice of Establishment of the Yellowstone Controlled Groundwater Area

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

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

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

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

2. Publication and Service: Such notice shall be published in a newspaper of general circulation in the county or counties in which the Area is located. The Department shall also serve a copy of the notice by mail on each well driller licensed in Montana whose address is within any county in which any part of the Area is located; on each well driller known by the Department to operate in the Area; on the Montana State Bureau of Mines and Geology; on the mayor or chair of the governing body of each county or incorporated municipality located in whole or in part within the Area; and on the United States. The Department 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,



the applicant may overcome the presumption by proving by clear and convincing evidence that the proposed appropriation does not include hydrothermal discharge water.

(10) If the application is denied, the Department shall order that the well be temporarily abandoned; or, if multiple water zones are encountered, the zone of excess temperature be closed to production. Abandonment shall be according to the rules of the Montana Board of Water Well Contractors unless alternative procedures are recommended by the TOC. The abandonment order shall not be lifted until a modification order pursuant to Section IV.J. allows the appropriation or UNTIL THE DEPARTMENT determines that the well should be permanently abandoned.

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

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

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

following provisions.

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

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

(b) the proposed appropriation meets all of the following criteria:

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

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

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

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

(iii) the well does not contain a production zone completed within the Madison Group of formations as defined by the Catalog of Stratigraphic Names for Montana, Bureau of

Mines and Geology, Special Publication 54, March 1971.

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

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

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

iii. Subarea II:

(1) Groundwater of 85F. or more in subarea II is presumed to be hydrothermal discharge water. The applicant shall follow the procedures of Article IV, section G.2.c.i. including review by the TOC, provided that, if a permit to appropriate is issued the monitoring recommended in the Working Group Report or as superseded by the TOC for subarea

II, not subarea I, shall apply.

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

3. Change in Character of Groundwater: Within 60 days of the receipt of information indicating a change in the character of the groundwater appropriated under a permit issued in the Area on or after January 1, 1993 that indicates the production of groundwater for which a restriction applies, the Department shall issue an order requiring that the appropriator comply with the limitations on appropriation of hydrothermal groundwater authorized in this Article. The order shall take affect 60 days following the date issued unless the appropriator appears to contest the order. If the appropriator appears to contest the order, the Department shall set a date for a hearing and proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, title 2, Chapter 4, of the Montana Code Annotated, provided that the appropriator shall have the burden to prove by a preponderance of the evidence that the water produced does 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

appropriators in a controlled groundwater area.

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

4. The Department shall, whenever possible, consolidate any proceedings on groundwater applications or registration pursuant to Articles II and III with any proceeding made necessary by this Article.

5. Within 2 years after the effective date of this Compact or the receipt of the requested funding from the United States, whichever occurs later, the Department is directed to promulgate such additional rules necessary to effectuate this Compact and to establish criteria which may be necessary to implement this Article. Said rules shall not alter the rights or obligations of the parties hereto. In doing so, the Department shall consult with the United States and the TOC. Until modified by the TOC, the Department shall adopt the Working Group Report to govern sampling, reporting and monitoring requirements, except as modified by Article IV, section G. In reviewing any permit to appropriate hydrothermal discharge water the Department shall consider the criteria set forth in the Working Group Report or a subsequent report by the TOC, including, but not

limited to, the identification of risk associated with volume of appropriation and distance from the reserved land of YNP.

#### J. Modification of the Yellowstone Controlled Groundwater Area

##### 1. Technical Oversight Committee: Establishment and Authority

a. A joint federal-state Technical Oversight Committee is hereby established to review scientific evidence related to the Yellowstone Controlled Groundwater Area; to advise the Department on administration of the Area, including review of applications to appropriate water of 60F. or more; to consult with the Bureau on inventory and sampling; and to recommend modification of boundaries and restrictions.

b. The committee shall consist of five qualified scientists with experience related to hydrothermal systems. The committee members shall be appointed within six months following the effective date of this Compact: one appointed by the National Park Service; one appointed by the United States Geological Survey; one appointed by the Department; one appointed from the Montana University system by the Montana State Geologist; and one selected by the other four members. Appointments and selections shall be made, to the extent possible, to ensure that three of the qualified scientists with experience related to hydrothermal systems

also have experience in (1) geochemistry; (2) geophysics; and (3) hydrogeology. Vacancies due to expiration of terms or resignation of a member shall be filled in the same manner. Should the four members fail to agree on the selection of additional members within 60 days after appointment of all four members or within 30 days after a vacancy occurs, the following procedure shall be utilized:

(i) Within 5 days each member shall nominate one person for each vacancy and submit the nominations to a judge of the First Judicial District in Helena; and

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

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

d. The recommendation of any of the following by the TOC shall be based on a supermajority of four to one: (1) modification of the Area pursuant to Article IV, section J;

(2) review of an application to appropriate groundwater with a temperature of 60F. or more; and (3) removal of any of the criteria specified in Article IV, section G.c.ii.(1)(b). Failure to achieve a supermajority shall result in a recommendation of no modification or no permit approval. In the absence of a unanimous decision, the TOC shall provide both a report supporting the recommendation that there be no modification or no permit approval, and a dissenting report to the Department. In all other instances in which the TOC consults with or makes recommendations to the Department or the Bureau, recommendations shall be made by a simple majority of the entire committee.

e. The TOC shall:

i. review the boundaries of the Area and the Subareas;

ii. review the initial restrictions on groundwater development imposed pursuant to this Article, and future modifications of those restrictions;

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

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

v. review new scientific evidence pertinent to the Area;

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

hundred eighty (180) days of the effective date, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand [sic] the jurisdiction of the state court or expand in any manner the limited waiver or sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666 or other provision of federal law.

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

2. Disposition of Federal Suits: Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the

reserved water rights described herein, and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the parties shall execute and file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to dismiss with prejudice those claims made by the United States for Glacier National Park in United States v. Aageson, No. CV-79-21-GF (D. Mont.); United States v. Abell, No. CV-79-33M (D. Mont.); and United States v. AMS Ranch, Inc., No. CV-79-22-GF (D. Mont.). This Compact may be filed as a consent decree in those federal suits, only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgement binding on the State of Montana that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

### C. Settlement of Claims

The parties intend that, with the exceptions noted herein, the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land administered by the National Park Service in

Montana on the effective date of this Compact. Pursuant to this settlement, by which certain federal reserved water rights are expressly recognized by the state in this Compact and other water rights claims of the United States are expressly retained in Article III, sections B., D., E, and F., the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for reserved land administered by the National Park Service in Montana relinquishes forever all said claims on the effective date of this Compact to water within the State of Montana for reserved land administered by the National Park Service. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

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

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

FOR THE STATE OF MONTANA

MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION  
FOR THE UNITED STATES

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

(2) Federal funds deposited in the accounts and interest and earnings on the accounts are statutorily appropriated, as provided in 17-7-502, and must be used for the following purposes or to reimburse the state for expenditures incurred for the following purposes:

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

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

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

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

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

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

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

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

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

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

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

NEW SECTION. **Section 4.** Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [sections 1 and 2].

-End-

## HOUSE BILL NO. 692

INTRODUCED BY WANZENRIED, GROSFIELD, YELLOWTAIL,  
HARPER, SWISGOOD, 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

evidence according to the procedures in Article IV.

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

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

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

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

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

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

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

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

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

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

(27) "Recognized under state law" when referring to a 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

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

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

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

this Compact.

1. Allocation to Instream Flow:

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

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

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

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

To determine whether water is available for appropriation for consumptive use pursuant to state law on Category 3 and 4 streams, and for determining whether the limit on subordination of the United States' water rights to 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.

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

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

(3) Post-Effective Date: An appropriation of

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

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

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

(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

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

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

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

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

c. Effect of Decree in Calculation of Consumptive Use:

Except as provided in Article II, section G., for the purposes of this Compact, the flow rate of a consumptive use shall be as finally decreed in a general adjudication, or recognized under state law until such final decree. At each stage in an adjudication, the allocation to current use as set forth in Article III and more specifically in the

Abstract shall be adjusted to reflect the decreed amount.

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

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

C. Subordination of Instream Flow Right:

1. The United States agrees to subordinate its reserved water right for instream flow to consumptive uses calculated according to this Article in a manner that is specific to each stream on which a reserved water right is described. This subordination is set forth for each stream in Article III. Curtailment of uses to which the reserved water rights described in this Compact have not been subordinated during periods of low flow shall proceed on the basis of priority and may be initiated in a state or federal court of 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

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

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

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

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

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

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

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

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

#### J. Change in Use

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

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

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.

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

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

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

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

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

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

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

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

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

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

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

#### 6. Notice of Change:

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

b. The United States agrees to provide the state with 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 BHM.

##### 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	Maximum
	Volume	Flow Rate
	(ac-ft)	(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

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

TABLE 2

## State Law Based

Total Current and Future Consumptive Use Rights (cfs)

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

Month	Consumptive Use
April	4.85
May	23.85
June	18.70
July	4.05
Aug.	1.75
Sept.	1.35
Oct.	1.50

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

B. Bighorn Canyon National Recreation Area

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

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

C. Glacier National Park1. Priority Date

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

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of GNP as set forth in Table 3. 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 GNP shall include any non-reserved land within GNP boundaries as the boundaries exist on the effective date of 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,		

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

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 point the stream exits the reserved land of GNP. The relationship between this water right and a water right to water stored within GNP held by the United States shall be governed by the rule of priority.

b. Category 1a Streams

i. Identification:

The following streams are designated as "Category 1a:"

Appar, Canyon, Dutch, Harrison, McDonald, and Quartz Creeks.

ii. Instream Flow:

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

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

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

c. Category 4 Streams

i. Identification:

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

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

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

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

TABLE 4

## State Law Based

## Future Consumptive Use Rights (cfs)

## Tributary to the Reserved Portion of the Flathead River

Month	North Fork Flathead River	Middle Fork Flathead River
Jan.	7.5	7.1
Feb.	7.2	6.9
Mar.	8.9	8.1
April	#	#
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

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

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

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

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 YNP shall include any non-reserved land within YNP as the boundaries exist on the effective date of this Compact.

TABLE 5

United States National Park Service  
Yellowstone National Park Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (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. Instream Flow Righta. Category 1: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.

1       ii. Instream Flow

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

9       iii. Change in Wilderness Designation

10       In the event that the Congress of the United States  
11 repeals the Wilderness designation assigned to the  
12 headwaters of an above named Category 2 stream, then, to the  
13 extent consistent with the law repealing the Wilderness  
14 designation as it pertains to water use, the stream  
15 headwatered in the former Wilderness may be reclassified in  
16 the appropriate category on request by the state.

17       c. Category 3:

18       i. Identification:

19       The following streams are designated as "Category 3:"  
20       Crevice, Dry Canyon, Slough, and Teepee Creeks.

21       ii. The United States has a reserved water right for  
22 instream flow on Category 3 streams in the amount of the  
23 entire flow of the streams, less any United States'  
24 consumptive use rights described in this Compact, provided  
25 that, the instream flow right is subordinate to (1) the sum

1       of all water rights recognized under state law with a  
2 priority date before January 1, 1993, plus any future  
3 consumptive use rights calculated according to Article II,  
4 until the limit on total current and future consumptive use  
5 set forth in Table 6 is reached; (2) any use considered  
6 non-consumptive as defined by this Compact; and (3) any use  
7 of groundwater not included in the calculation of  
8 consumptive use according to Article II.

9                               TABLE 6

10                              State Law Based

11                              Total Current and Future Consumptive Use Rights (cfs)  
12                              Tributary to the Reserved Portion of Category 3 Streams

13   Month	13   Crevice	13   Dry Canyon	13   Slough	13   Teepee
14	14   Creek	14   Creek	14   Creek	14   Creek
15   Jan.	0.2	0.1	1.5	0.3
16   Feb.	0.2	0.1	1.6	0.3
17   Mar.	0.3	0.1	1.9	0.4
18   April	1.1	0.2	5.6	1.2
19   May	3.8	1.3	19.8	4.5
20   June	3.4	1.2	22.4	5.3
21   July	1.0	0.3	7.3	1.7
22   Aug.	0.4	0.2	2.9	0.8
23   Sept.	0.4	0.1	2.3	0.6
24   Oct.	0.4	0.1	2.4	0.6
25   Nov.	0.3	0.1	2.1	0.5

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.

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.

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) any United States' consumptive use rights described in this Compact; and (2) any water right recognized under state law with a priority date before January 1, 1993. The named and unnamed lakes in which the United States has a reserved water right are those set forth more specifically in the Abstract.

#### H. Emergency Fire Suppression

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

### ARTICLE IV

#### YELLOWSTONE CONTROLLED GROUNDWATER AREA

##### A. Statement of Intent

Yellowstone National Park was reserved for the express purpose of "preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition." 17 Stat. 32. The parties agree that Congress

reserved water necessary to preserve the hydrothermal features within the reserved land of YNP. These reserved water rights have priorities as of the date on which the land was reserved.

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

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

##### B. Findings

Ratification of this Compact by the Montana legislature 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

of the test for injunctive relief; neither shall the administrative determination by the National Park Service to seek relief in said court be deemed to establish or preclude any determination in such judicial proceedings. Prior to such an administrative determination, the National Park Service agrees that it will provide the State written notice and will identify a time frame during which it will await the State's efforts to address the concern.

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

D. Initial Boundaries of the Yellowstone Controlled Groundwater Area

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

1. Subarea I:

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

2. Subarea II:

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

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

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

1. The parties agree that the initial restrictions on development of groundwater and any modification thereof, shall not apply to appropriations with a priority date before January 1, 1993. The sole provisions of this Article 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 P. 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



comply with procedures and restrictions set forth in Article IV, section G.2.

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

a. General Provisions

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

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

(1) The permittee shall install a device to meter total volume of water use in compliance with rules promulgated by the Department pursuant to Article IV, section I.5. The Department shall specify the metering method and location of installation. On or before January 15 of each year, the permittee shall report annual use to the Bureau at: Montana Bureau of Mines and Geology, Main Hall, Montana Tech, Butte MT, 59701. Meters shall be made available to the permittee at the Department of Natural Resources and Conservation

Regional Water Rights Office at: 111 North Tracy, Bozeman, Montana, 59715. Meters shall be acquired for distribution by the Department of Natural Resources and Conservation Regional Water Rights Office as part of the inventory and sampling program authorized by Article IV, section I.

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

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

(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

applicant or registrant shall provide the Department with a well log on a form provided by the Department. The well log shall include well location to the quarter-quarter-quarter-quarter section; ground elevation at the wellhead; well depth; water level; flow rate or maximum pump rate; water temperature measured at the wellhead; and specific conductance of the water produced using a device provided by the Water Resources Regional Office.

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

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

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

vii. The Department may issue a permit to appropriate if: (1) the well log and any verification confirm that the appropriation is of water to which no restrictions pursuant to this Article apply; and (2) all other requirements of state law and this Compact have been met, unless the United

States files an objection pursuant to Article IV, section G.2.b.vi. If the well log or verification indicate appropriation of water to which restrictions pursuant to this Article apply or if the United States files a proper objection, the applicant shall be subject to the provisions of Article IV, section G.2.c.

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

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

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

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

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

Groundwater of 85F. or more in Subarea I is presumed to be hydrothermal discharge water. The Department shall not process or grant an application for a permit to appropriate 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,

the applicant may overcome the presumption by proving by clear and convincing evidence that the proposed appropriation does not include hydrothermal discharge water.

(10) If the application is denied, the Department shall order that the well be temporarily abandoned; or, if multiple water zones are encountered, the zone of excess temperature be closed to production. Abandonment shall be according to the rules of the Montana Board of Water Well Contractors unless alternative procedures are recommended by the TOC. The abandonment order shall not be lifted until a modification order pursuant to Section IV.J. allows the appropriation or UNTIL THE DEPARTMENT determines that the well should be permanently abandoned.

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

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

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

following provisions.

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

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

(b) the proposed appropriation meets all of the following criteria:

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

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

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

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

(iii) the well does not contain a production zone completed within the Madison Group of formations as defined by the Catalog of Stratigraphic Names for Montana, Bureau of

Mines and Geology, Special Publication 54, March 1971.

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

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

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

### iii. Subarea II:

(1) Groundwater of 85F. or more in subarea II is presumed to be hydrothermal discharge water. The applicant shall follow the procedures of Article IV, section G.2.c.i. including review by the TOC, provided that, if a permit to appropriate is issued the monitoring recommended in the Working Group Report or as superseded by the TOC for subarea

II, not subarea I, shall apply.

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

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

H. Inventory and Sampling of Groundwater

1. Initial Inventory

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

a. Notice of Inventory

Within 120 days after the effective date of this Compact or the receipt of funding from the United States, whichever occurs later, the Department shall serve notice by mail on each person or public agency known from an examination of the records in the Department's office to be an appropriator of groundwater with a priority date before the effective date of this Compact. The notice shall set forth:

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

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

b. Inventory

i. Within 3 years of notice pursuant to Article IV, section H.1.a., a representative of the Bureau shall inventory each well drilled pursuant to an appropriation recognized under state law with a priority date before the

effective date of this Compact. The inventory shall be considered complete when the Bureau has inventoried substantially all of the wells that can be located and accessed with reasonable diligence. The inventory shall include, but not be limited to, the following:

(1) well location to the quarter-quarter-quarter-quarter section;

(2) ground elevation at the wellhead;

(3) flow rate or maximum pump capacity;

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

(5) water temperature at the wellhead;

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

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

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

(9) any additional information deemed necessary for 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



appropriators in a controlled groundwater area.

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

4. The Department shall, whenever possible, consolidate any proceedings on groundwater applications or registration pursuant to Articles II and III with any proceeding made necessary by this Article.

5. Within 2 years after the effective date of this Compact or the receipt of the requested funding from the United States, whichever occurs later, the Department is directed to promulgate such additional rules necessary to effectuate this Compact and to establish criteria which may be necessary to implement this Article. Said rules shall not alter the rights or obligations of the parties hereto. In doing so, the Department shall consult with the United States and the TOC. Until modified by the TOC, the Department shall adopt the Working Group Report to govern sampling, reporting and monitoring requirements, except as modified by Article IV, section G. In reviewing any permit to appropriate hydrothermal discharge water the Department shall consider the criteria set forth in the Working Group Report or a subsequent report by the TOC, including, but not

limited to, the identification of risk associated with volume of appropriation and distance from the reserved land of YNP.

#### J. Modification of the Yellowstone Controlled Groundwater Area

##### 1. Technical Oversight Committee: Establishment and Authority

a. A joint federal-state Technical Oversight Committee is hereby established to review scientific evidence related to the Yellowstone Controlled Groundwater Area; to advise the Department on administration of the Area, including review of applications to appropriate water of 60F. or more; to consult with the Bureau on inventory and sampling; and to recommend modification of boundaries and restrictions.

b. The committee shall consist of five qualified scientists with experience related to hydrothermal systems. The committee members shall be appointed within six months following the effective date of this Compact: one appointed by the National Park Service; one appointed by the United States Geological Survey; one appointed by the Department; one appointed from the Montana University system by the Montana State Geologist; and one selected by the other four members. Appointments and selections shall be made, to the extent possible, to ensure that three of the qualified scientists with experience related to hydrothermal systems

also have experience in (1) geochemistry; (2) geophysics; and (3) hydrogeology. Vacancies due to expiration of terms or resignation of a member shall be filled in the same manner. Should the four members fail to agree on the selection of additional members within 60 days after appointment of all four members or within 30 days after a vacancy occurs, the following procedure shall be utilized:

(i) Within 5 days each member shall nominate one person for each vacancy and submit the nominations to a judge of the First Judicial District in Helena; and

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

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

d. The recommendation of any of the following by the TOC shall be based on a supermajority of four to one: (1) modification of the Area pursuant to Article IV, section J;

(2) review of an application to appropriate groundwater with a temperature of 60F. or more; and (3) removal of any of the criteria specified in Article IV, section G.c.ii.(1)(b). Failure to achieve a supermajority shall result in a recommendation of no modification or no permit approval. In the absence of a unanimous decision, the TOC shall provide both a report supporting the recommendation that there be no modification or no permit approval, and a dissenting report to the Department. In all other instances in which the TOC consults with or makes recommendations to the Department or the Bureau, recommendations shall be made by a simple majority of the entire committee.

e. The TOC shall:

i. review the boundaries of the Area and the Subareas;

ii. review the initial restrictions on groundwater development imposed pursuant to this Article, and future modifications of those restrictions;

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

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

v. review new scientific evidence pertinent to the Area;

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

removed or boundary modifications made without the threat of adverse effect to the hydrothermal system within the reserved land of YNP.

## 2. Modification Pursuant to Review

a. Within 60 days of mailing of the report in Article IV, section J.1.h., and if (1) the TOC recommends modification; (2) the United States, state or a person with property or water rights within the Area petitions for a hearing; or (3) a person with an interest that would be adversely affected by the recommendation, petitions for a hearing, the Department shall provide for notice of a hearing pursuant to state law.

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

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

hearing officer shall also hear any oral and written scientific evidence presented by the state, the United States, any applicant for a permit to appropriate who has requested review, and any person with property or water rights in the Area, or an interest that would be adversely affected by the recommended modification.

ii. The scientific evidence and recommendations presented in the report by the TOC have a rebuttable presumption of validity for the purposes of Article IV. The Department shall adopt the recommendations of the TOC unless the recommendation by the TOC is refuted by clear and convincing scientific evidence. The dissenting report of the TOC, if any, may be used as rebuttal evidence.

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

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

## ARTICLE V

### 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

hundred eighty (180) days of the effective date, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand [sic] the jurisdiction of the state court or expand in any manner the limited waiver or sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666 or other provision of federal law.

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

2. Disposition of Federal Suits: Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the

reserved water rights described herein, and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the parties shall execute and file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to dismiss with prejudice those claims made by the United States for Glacier National Park in United States v. Aageson, No. CV-79-21-GF (D. Mont.); United States v. Abell, No. CV-79-33M (D. Mont.); and United States v. AMS Ranch, Inc., No. CV-79-22-GF (D. Mont.). This Compact may be filed as a consent decree in those federal suits, only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgement binding on the State of Montana that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

#### C. Settlement of Claims

The parties intend that, with the exceptions noted herein, the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land administered by the National Park Service in



Montana on the effective date of this Compact. Pursuant to this settlement, by which certain federal reserved water rights are expressly recognized by the state in this Compact and other water rights claims of the United States are expressly retained in Article III, sections B., D., E, and F., the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for reserved land administered by the National Park Service in Montana relinquishes forever all said claims on the effective date of this Compact to water within the State of Montana for reserved land administered by the National Park Service. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

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

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

FOR THE STATE OF MONTANA

MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION  
FOR THE UNITED STATES

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

(2) Federal funds deposited in the accounts and interest and earnings on the accounts are statutorily appropriated, as provided in 17-7-502, and must be used for the following purposes or to reimburse the state for expenditures incurred for the following purposes:

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

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

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

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

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

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

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

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

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

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

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

NEW SECTION. Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [sections 1 and 2].

-End-