

1
2 **LAW AND ORDER CODE**
3 **OF THE**
4 **CHIPPEWA CREE TRIBE**
5 **OF THE**
6 **ROCKY BOY'S RESERVATION**

7
8
9
10 **CHIPPEWA CREE WATER CODE**

11
12
13
14
15 **APPROVED BY THE**
16 **CHIPPEWA CREE TRIBAL BUSINESS COMMITTEE**
17 **ON THE**
18 **_____ DAY OF _____, 20____**
19 **PURSUANT TO**
20 **TRIBAL RESOLUTION NO: _____**
21
22
23
24
25
26
27
28
29
30
31
32

33 **Chippewa Cree Tribe of the Rocky Boy's Reservation**
34 **Tribal Water Resources Department (TWRD)**
35
36
37
38
39
40

41 **ARTICLE I: GENERAL PROVISIONS**
42

43 **A. Short Title:** This code may be cited as the “Chippewa Cree Water Code” (Water
44 Code).

45
46 **B. Authority:** The Chippewa Cree Water Code is enacted by the Tribal Business
47 Committee, as the governing body of the Rocky Boy’s Reservation pursuant to:

- 48 1. Chippewa Cree Tribe Constitution and Bylaws, Article VI-Powers of the
49 Committee:
50 a. “Section 1. The Business Committee shall exercise the following powers
51 subject to any limitations imposed by the Statutes or the Constitution of
52 the United States and subject further to all express restrictions upon such
53 powers contained in this Constitution and Bylaws.”
54 b. “Section 1 (p), which provides for the powers of the Business Committee
55 to enact ordinances for the Tribe.”
56 2. Title I, Section 102(b)(2), of the Chippewa Cree Tribe of the Rocky Boy’s
57 Reservation Indian Reserved Water Rights Settlement and Water Supply
58 Enhancement Act of 1999, P.L. 106-163, hereinafter referred to as the “Water
59 Settlement Act”; and
60 3. Article IV, Section A (2), of the Water Rights Compact entered into by the State
61 of Montana, the Chippewa Cree Tribe of the Rocky Boy’s Reservation and the
62 United States of America, Montana Statute 85-20-601, hereinafter referred to as
63 the “Water Compact”.
64

65 **C. Findings**

66 The Tribe finds and declares that:

- 67 1. Water resources are vital to a sustainable homeland for the Tribe, to the health
68 and welfare of Reservation residents, and to the vitality of the Reservation
69 economy, culture and environment.
70 2. The management and protection of Tribal water is a central attribute of tribal
71 sovereignty and critical to the health and welfare of Tribal members and to the
72 economic development of the Reservation.
73 3. All underlying waters reserved to the Tribe by the Water Compact and Water
74 Settlement Act are held in trust by the United States for the benefit of the Tribe.
75

76 **D. Purposes**

- 77 1. To implement the provisions of the Water Compact and to manage and administer
78 the use of Tribal water rights through an orderly system;
79 2. To maintain and restore the quantity and quality of Reservation water resources
80 and to administer them through appropriate management approaches for the
81 present and future benefit of the Tribe;
82 3. To protect the Tribal water rights from over-appropriation, degradation,
83 contamination, exploitation, and any acts injurious to the quantity, quality, and
84 integrity of the Reservation water resources; and
85 4. To encourage optimal development and multiple use of the Tribal water rights.
86

87 **E. Construction:** This Water Code shall not be construed in any manner which is
88 inconsistent with the provisions of the Water Compact and Water Settlement Act, and
89 other applicable Tribal and Federal law. Articles III and IV of the Water Compact are
90 incorporated by reference into this Water Code, and are attached to this Water Code
91 in full for easy reference.
92

93 **F. Scope:** This Water Code applies to all waters reserved to the United States of
94 America in trust for the Tribe, as confirmed by the Water Compact and Water
95 Settlement Act. This Water Code applies to all persons desiring to use or using or
96 undertaking activities on Reservation lands affecting Tribal water resources.
97

98 **G. Definitions**

99 The definitions in the Water Compact and Water Settlement Act are incorporated by
100 reference into this Water Code. The following definitions shall apply for purposes of
101 this Water Code; provided, however, that in the event of a conflict, the provision in
102 the Water Settlement Act or Water Compact shall govern.

- 103 1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a
104 depth of one foot and is equivalent to 43,560 cubic feet.
- 105 5. "Acre feet per year" or "AFY" means the quantity of water to which the Tribe has
106 a right each year measured in acre-feet over a period of a year.
- 107 6. "Appendix" means any appendix to this Water Code, which specifically includes
108 Articles III and IV of the Water Compact.
- 109 7. "Beneficial Use" means any use of water for Municipal/Domestic Uses, irrigation,
110 hydropower generation, recreation, stockwatering, fish propagation, Fish and
111 Wildlife Enhancement, as well as any other uses that provide a benefit to the user
112 of the water.
- 113 8. "Board" means the Chippewa Cree - Montana Compact Board established by
114 Section D. of Article IV of the Water Compact.
- 115 9. "Bonneau Release Committee" means the three member panel elected to ensure
116 240 AFY is released from the Bonneau Reservoir.
- 117 10. "Business Council" means the Business Council of the Chippewa Cree Tribe of
118 the Rocky Boy's Reservation.
- 119 11. "Diversion" means the removal of water from its natural course or location by
120 means of a ditch, flume, bypass, pipeline, conduit, well, pump, or other act of
121 man, or the impoundment of water in a reservoir.
- 122 12. "DNRC" means the Montana Department of Natural Resources and Conservation,
123 or any successor agency.
- 124 13. "Fish and Wildlife Enhancement" means the use of water to improve existing
125 habitat for fish and wildlife use, protection, conservation or management through
126 physical or operational modifications of impoundments.
- 127 14. "Municipal/Domestic Uses" means water for domestic, public, commercial and
128 industrial uses.
- 129 15. "Net Depletion" means the difference between the quantities of water diverted
130 from a source and the quantity of water returned to the same source at or near the
131 point of diversion.

- 132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
16. "New reserved water rights" means any reserved water rights created with acquisition of land by the Tribe or the United States to be held in trust by the United States for the Tribe, after the date of ratification of this Compact by the State and the Tribe, whichever is later.
 17. "Non-consumptive use" means a use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream or groundwater conditions.
 18. "Non-Irrigation Water Uses" means the use of water for purposes other than the production of agricultural commodities, such as, but not limited to domestic, livestock, fish and wildlife, and recreational uses, including development of golf courses.
 19. "Person" means an individual or any other entity, public or private, including the State, the Tribe and the government of the United States and all officers, agents, and departments thereof.
 20. "Place of Use" means the location where the water is used.
 21. "Point of Diversion" means any location at which water is diverted from the water system.
 22. "Priority Use" means the use of the Tribal water as determined by the Tribe based on the Tribal needs and historical practices.
 23. "Purpose of Use" means the nature of use of the water right.
 24. "Relinquishment" means the abandonment of a water claim or water right.
 25. "Reservation" means the Rocky Boy's Reservation and includes all lands and interests in lands which are held in trust by the United States for the Chippewa Cree Tribe, including future additions to the Reservation.
 26. "Reservation water resources" means any and all waters underlying, flowing through, or otherwise occurring or contained within the Reservation over which the Tribe has jurisdiction.
 24. "State" means the state of Montana and all officers, agents, departments, and political subdivisions thereof.
 25. "Stock watering" means the storage and use of water for the purpose of providing water to domesticated animals and wildlife.
 26. "Sub Committee" means Tribal Water Resources Department Sub-Committee under this Code.
 27. "Transfer" means (verb) to authorize a person to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration; (noun) a service contract, lease, or other similar agreement of limited duration authorizing the use of all or any part of the Tribal Water Right.
 28. "Tribal Water Resources Department" or "TWRD" means the Chippewa Cree Tribal Water Resources Department.
 29. "Tribal water rights" means those water rights confirmed in the Water Compact and Water Settlement Act as rights held in trust for the Tribe by the United States, and any water hereafter acquired by the Tribe.
 30. "Tribe" means the Chippewa Cree Tribe of the Rocky Boy's Reservation and all officers, agents and departments thereof.

177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219

- 31. "United States" means the federal government and all officers, agencies, departments, and political subdivisions thereof.
- 32. "Water Compact" means the water rights compact entered into by the State of Montana, the Chippewa Cree Tribe of the Rocky Boy's Reservation, and the United States of America; Montana Statute 85-20-601.
- 33. "Water Settlement Act" means the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999; P.L. 106-163.

220
221 **ARTICLE II: THE TRIBAL WATER RESOURCES DEPARTMENT AND SUB**
222 **COMMITTEE**
223

224 **A. Tribal Water Resources Department**

- 225 1. This Water Code recognizes the existing Tribal Water Resources Department as
226 the management and implementation agency for Tribal water rights and
227 Reservation water resources.
228 2. The TWRD shall proceed with existing policies and procedures regarding
229 appointments, staff conduct, and qualifications. The Business Council shall have
230 the authority to amend or clarify any policy or procedural matter for the TWRD.
231 3. The power, duties, and responsibilities of the TWRD are to:
232

233 **Enforcement**

- 234 a. Administer Tribal water rights and ensure compliance with the Water
235 Compact, Water Settlement Act, this Water Code, and with the conditions of
236 all permits, determinations, orders, regulations, plans, policies, guidelines, and
237 other actions taken by the Sub Committee and Business Council;
238 b. Permit water diversions and use on the Reservation;
239 c. Enter upon Reservation lands with reasonable notice to owner or occupant to
240 investigate and inspect methods of diversion, withdrawal, and other activities
241 affecting water quantity or quality, and to install measuring devices on
242 diversions for the purpose of enforcing and administering this Water Code,
243 and to monitor water use, water quality, and water diversions;
244 d. In an emergency, remove, render inoperative, shut down, close, seal, cap,
245 modify, or otherwise control methods of diversion, obstructions to the flow of
246 water, and activities adversely affecting Reservation water resources;
247 e. Initiate, by citation or other means, enforcement proceedings before the Sub
248 Committee and Business Council, or in Tribal Court, for violations of this
249 Water Code, including injunctive relief, provided that the TWRD ensures that
250 such enforcement is consistent with the Water Compact, Water Settlement
251 Act, and any applicable Tribal and Federal law;
252 f. Ensure that the water delivery systems on the Reservation shall divert only the
253 quantity of water to which they are legally permitted;
254 g. Maintain a comprehensive inventory of all water uses on the Reservation,
255 including groundwater wells, and all uses of Tribal water rights. The Tribe
256 shall provide a report of these existing uses to the State of Montana and
257 United States following the adoption of this Water Code and completion of an
258 inventory of water uses by the TWRD.
259

260 **Advisory**

- 261 h. Advise the Sub Committee and Business Council on all water resource related
262 issues, and provide regular updates on the status of water quantity and quality,
263 and provide suggestions and recommendations for water management;
264 i. Declare water supply conditions and prepare alternative water supply
265 scenarios for different conditions, particularly for drought periods;

- 266 j. Recommend, in consultation and coordination with other agencies and
267 departments, the designation of certain land areas, waters, and regions of the
268 Reservation as critical management areas requiring specialized management;
269 k. Work cooperatively with the Montana Department of Fish, Wildlife and Parks
270 to develop a fishery and recreational management plan for the Beaver Creek
271 drainage;
272 l. Recommend to the Sub Committee any proposed changes to this Water code
273 and to its regulations;
274 m. Assist applicants for permits and licenses in assembling and analyzing data
275 and information required to be submitted with the application;
276

Information & Research

- 278 n. Develop policies and procedures for monitoring water use, water quality,
279 water quantity, water development, and diversions;
280 o. Conduct hydrologic investigations to determine water supply and water
281 quality characteristics, analyze existing water uses, identify water needs and
282 development possibilities, and study means of developing, managing,
283 conserving, and protecting Reservation water resources;
284 p. Collect, maintain, and analyze information regarding Reservation water
285 resources and off-Reservation water resources affecting Tribal water rights
286 and uses;
287 q. Perform research regarding the capacity of the Reservation water systems;
288 r. Establish a minimum pool at all water storage reservoirs located within the
289 exterior boundaries of the Reservation;
290 s. Survey the placement and size of stock water impoundments and Fish and
291 Wildlife Enhancement areas at least once every five years;
292 t. Monitor water quality within the Stoneman Reservoir area;
293 u. Conduct public educational programs and develop educational material
294 regarding Reservation water resources and any water-related issues
295 determined by the Sub Committee or Business Council;
296 v. Identify sources of financial support for water management and development;
297 w. Investigate potential effects on existing water uses from proposed water uses;
298

Administrative

- 300 x. Employ staff to enforce and administer this Water Code, consistent with all
301 Tribal personnel policies and procedures;
302 y. Contract with entities for technical, legal, and other water-related services to
303 enhance the capability to carry out its duties and functions;
304 z. Form a Bonneau Release Committee to ensure the release of 240 AFY from
305 Bonneau Reservoir.
306 aa. Provide an annual report to the State of Montana and United States with a
307 listing of all new development of the Tribal water rights, the net depletion in
308 the Beaver Creek drainage, and the net depletion for irrigation in the Upper
309 Big Sandy Creek drainage, and of all changes in use or transfer of the Tribal
310 water rights since the last report.
311

312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357

B. TWRD Director

1. The TWRD Director shall serve as the manager of the TWRD, and the executive and technical arm of the Sub Committee. The Director has the authority to administer laws of the Tribe, enforce regulations established pursuant to this Water Code, and carry out general instructions of the Business Council.
2. The TWRD Director shall be a qualified water resources manager with a minimum education level of a Bachelor’s degree in civil or agricultural engineering, watershed science, geology, or a water resource related field, and not less than three years’ experience in water management, administration, development and/or engineering; or shall be a trainee who will be selected to undertake training under a water engineering program approved by the Business Council.
3. The TWRD Director shall have the right to delegate responsibilities to staff provided that the ultimate responsibility to carry out the duties and functions of the TWRD shall remain with the Director.
4. The TWRD Director may not serve as a member of the TWRD Sub Committee, but may provide information and recommendations to the Sub Committee and participate in discussions of the Sub Committee.

C. TWRD Sub-Committee

1. This Water Code recognizes the existing Tribal Water Resources Department Sub Committee as the supervisory agency for administering Tribal water rights on the Reservation.
2. The Sub Committee shall proceed with existing policies regarding appointments, service terms, removal, replacements, meeting quorum, procedures, and qualifications. The Business Council shall have the authority to amend or clarify any procedural or policy matters regarding the Sub Committee.
3. No Sub Committee member shall vote on a decision that could have a direct financial effect or other conflict of interest. A member shall disclose to the Sub Committee any such conflict of interest at the time of such vote and may participate in the discussion of the matter without voting upon it.
4. The powers, duties, and responsibilities of the Sub Committee are to:
 - a. Supervise the execution and enforcement of this Water Code and regulations there under;
 - b. Hear disputes regarding the water management decisions and actions of the TWRD Director and/or water management staff in accordance with the procedures adopted pursuant to this Water Code and regulations;
 - c. Serve as the appellate body for all decisions made by the TWRD Director;
 - d. Adopt such rules, regulations, and additional materials, and propose amendments to this Water Code as necessary to interpret and execute its authority and to implement the objectives and purposes of this Water Code;
 - e. Organize and operate in order to discharge its duties and responsibilities effectively;
 - f. Coordinate with other Tribal departments and commissions, and other State and Federal agencies to ensure comprehensive oversight of the

358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403

- Reservation water and other natural resources;
- g. Ensure that the Water Code is administered and enforced in compliance with the provisions of the Water Compact and Water Settlement Act;
 - h. Perform other functions as delegated by the Business Committee or as prescribed in this Water Code and regulations thereof.

404 **ARTICLE III: WATER USE ADMINISTRATION**

405
406 **A. Tribal Water Rights**

- 407 1. Articles III and IV of the Water Compact define the Tribal water rights and shall
408 serve as Appendix I to this Water Code.
409 2. The Tribe may acquire, by contracting or other means, water rights in addition to
410 the rights acquired under the Water Compact, and will administer such new water
411 rights in accordance with this Water Code.
412

413 **B. General Policies**

- 414 1. Existing water uses, established duties of water, and relative priorities of water use
415 are to be protected and preserved, subject to the Tribe's obligations to protect
416 Tribal water rights.
417 2. Water uses may be adjusted for the varying water supply conditions, and overall
418 water use allocation decisions will be guided by such hydrologic conditions, which
419 may require differing water management strategies.
420 3. Water development decisions shall recognize hydrologic variability and will
421 consider alternative sources of water supply and potential impacts to existing water
422 uses.
423 4. All land, water, and other resource strategies, decisions, and regulations shall
424 consider the potential effect on all Reservation natural resources and will safeguard
425 against degradation of Reservation water resources.
426 5. Decisions involving land uses, particularly those affecting water quantity and
427 quality on the Reservation, shall be coordinated with the TWRD.
428

429 **C. Water Allocation Guidelines**

- 430 1. The Tribe, through the Sub Committee and Business Council, shall develop and
431 adopt Water Use Regulations which define the policies and procedures for
432 allocating and prioritizing uses of the Tribal water rights. The Water Use
433 Regulations shall consider the type of use, date of initial use (priority date), water
434 user, historic and customary water use practices, and water supply conditions,
435 among other elements, when defining Tribal water use priorities.
436 2. In drought conditions, which are temporary conditions of water demands
437 exceeding the current available water supply, water will be strictly allocated
438 according to the priority structure defined in the Water Use Regulations, as well as
439 any special agreements between the Tribe and other entities. In the event that
440 water supply is insufficient to satisfy all permitted water uses, allowable diversion
441 rates will be set according to specific demands in relation to the available water
442 supply.
443 3. In critical management areas, which are permanent or long-term conditions of
444 water demands exceeding the average available water supply, water will be strictly
445 allocated according to a critical water management plan developed by the TWRD
446 and the TWRD Sub Committee. The management plan may revoke certain
447 permitted water uses due to a lack of available water supplies or degradation to the
448 Reservation water resources.
449

450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495

D. Change of Use Policies

1. On-Reservation Changes in Use or Transfers. The Tribe may make a change in use or transfer of Tribal water rights on the Reservation, including the use of water salvaged through the application of water saving methods to expand irrigation, provided that any change in use or transfer shall not:
 - a. Result in uses that exceed the water amount quantified for that source;
 - b. Result in an increase in net depletion in the Beaver Creek drainage in excess of the amount specified for that source;
 - c. Have an adverse effect on a water right recognized under state law with a priority date before the date of the change or transfer, provided that for a change in use or transfer of groundwater, the burden as to adverse effect relates to the date of the original water right priority date;
 - d. Change the source of the water involved in any such changes.
2. Off-Reservation Changes in Use or Transfers. The Tribe may make or permit a change in use or transfer of the Tribal water rights for use off of the Reservation, with the following provisions:
 - a. Any change in use or transfer shall be for a term not to exceed 100 years, and may include provisions authorizing renewal for an additional term not to exceed 100 years;
 - b. No water transfer shall be a permanent alienation of the Tribal water rights;
 - c. No water transfer shall be made that constitutes a change in the place of use to a location outside of the watershed that forms the Missouri River drainage;
 - d. Any off-Reservation water use shall not be deemed to convert such Tribal water rights to rights arising under state law.
 - e. Releases or diversions from Lake Elwell for use on the Reservation shall not be considered an off-Reservation use.
 - f. No person may initiate an off-Reservation use, change in use, or transfer of a Tribal water right without first applying for and receiving authorization for the use, change in use, or transfer pursuant to Montana law in effect at the time of application. Approval of an application for a use, change in use, or transfer off of the Reservation by the State of Montana shall be conditioned on a valid Tribal permit and approval of such use, change in use, or transfer by the Tribe.
 - g. With respect to diversion or transportation facilities located off of the Reservation which are to be used in exercise of a Tribal water right, the Tribe or persons using such Tribal water rights shall apply for all permits, certificates, variances and other authorizations required by state laws.
 - h. All off-Reservation uses of Tribal water rights shall comply with the state law approvals set forth in the Water Compact until such time as the statutory or common law of the United States or the State of Montana establish that off-Reservation uses of Indian water rights may occur without regard to state law.
3. The Tribe may not make a change in use or transfer of water for either stockwatering or fish and wildlife enhancement, beyond the specific stockwatering

- 496 or fish and wildlife enhancement allocations and uses defined in the Water
497 Compact; provided that the Tribe may repair or relocate an impoundment for
498 stockwatering or fish and wildlife enhancement within the drainage of origin, and
499 provided further that the new point of diversion or place of use does not change to
500 a place from upstream of to downstream of, or from downstream of to upstream of,
501 the location of the point of diversion of a water right recognized under state law
502 with a priority date before the date the Water Compact was ratified by the State
503 and the Tribe.
- 504 4. The Tribe may make a change in use or transfer of the Tribal water rights
505 identified from the following sources:
- 506 a. Gravel Coulee / Lower Big Sandy Creek Drainages, for water rights
507 identified for irrigation and non-irrigation purposes;
 - 508 b. Box Elder Creek Drainage, for water rights identified for irrigation, non-
509 irrigation, and municipal/domestic purposes;
 - 510 c. Beaver Creek Basin, for non-irrigation purposes.
- 511 5. The Tribe may not make a change in use or transfer that results in a change in the
512 place of use, point of diversion, or place or means of storage to a place outside of
513 the drainage of origin or to a place from upstream of to downstream of, or from
514 downstream of to upstream of, the location of the point of diversion of a water
515 right recognized under state law with a priority date before the date the Compact
516 was ratified by the State and the Tribe, for the Tribal water rights identified from
517 the following sources:
- 518 a. Camp Creek and Duck Creek;
 - 519 b. Gorman Creek Drainage;
 - 520 c. Upper Big Sandy Creek Drainage.
- 521

522 **E. Specific Administration Roles**

- 523 1. Administration of Tribal water rights includes the following specific
524 responsibilities within the broader duties and functions of the TWRD and Sub
525 Committee:
- 526 a. Installation, operation, and maintenance of streamflow gages, groundwater
527 monitoring wells, weather stations, and other equipment to characterize
528 the water supply conditions of Reservation water resources;
 - 529 b. Operation and maintenance of a diversion and bypass structure on Big
530 Sandy Creek;
 - 531 c. Aerial surveys of Fish and Wildlife Enhancement areas and stock water
532 impoundments;
 - 533 d. Development and execution of a water quality monitoring program,
534 including groundwater monitoring wells and surface water sampling;
 - 535 e. Operation and maintenance of a conveyance structure on Box Elder Creek.
- 536 2. The Tribe shall administer a municipal, rural, and industrial water system adequate
537 to meet the present and future Municipal / Domestic water uses of the Reservation.
- 538 3. To the extent authorized and implemented pursuant to Section 103 of the Water
539 Settlement Act and the Water Compact, the Tribe shall plan, design, and construct
540 the following water development projects on the Reservation:
- 541 a. Bonneau Dam and Reservoir Enlargement,

- 542 b. East Fork of Beaver Creek Dam and Enlargement,
- 543 c. Brown's Dam Enlargement,
- 544 d. Towe Ponds Enlargement,
- 545 e. Such other water development projects as authorized and considered
- 546 appropriate by the Business Council.
- 547

548 **F. Tribal Water Marketing**

- 549 1. The Tribes may market the right to use a portion of the Tribal water rights either
- 550 within or outside of the Reservation, as authorized by the Water Compact and
- 551 Federal law, but may not permanently alienate any part of the Tribal water rights.
- 552 2. Any water rental entered into by the Tribe shall be subject to the priority of uses as
- 553 set forth in the Water Use Regulations adopted pursuant to this Water Code.
- 554 3. Any rental of Tribal water rights shall comply with the provisions for off-
- 555 Reservation water transfers and changes in use defined in this Water Code and the
- 556 Water Compact.
- 557 4. No person other than the Tribe, acting through the Business Council, shall have
- 558 any authority to market any portion of the Tribal water rights. Any water
- 559 marketing action by any person other than the Tribe shall be null and void.
- 560 5. Applications for the rental of any portion of the Tribal water rights shall be made
- 561 in writing to the TWRD, and the TWRD shall send a copy of the application to the
- 562 Sub Committee and Business Council. The Business Council has exclusive
- 563 authority to accept or reject applications to market the Tribal water rights, with
- 564 consideration given to the recommendations of the Sub Committee and TWRD.
- 565 6. If the Tribe receives a good faith rental offer from a third person located outside of
- 566 the Milk River drainage and the Tribe is willing to accept the terms of the rental
- 567 offer, then the Tribe, before accepting such an offer, shall allow the water users in
- 568 the Milk River drainage the opportunity to instead rent the water under the same
- 569 terms, conditions, and price contained in the rental offer.

570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587

588 **ARTICLE IV: PERMIT SYSTEM**

589

590

A. Permit Requirements

591

1. No person shall divert Reservation water resources or Tribal water rights or undertake an activity on the Reservation affecting or involving such water without first obtaining a permit. A permit is required for any of the following activities:

592

593

594

a. Diversion of water from any stream course, spring, or well;

595

b. Drilling of any new well, modification of any existing well used for any purpose,

596

c. Discharging, injecting, or depositing any waste, wastewater, or other contaminant into Reservation water resources;

597

d. Altering any stream course or stream bank for any purpose;

598

e. Developing groundwater recharge projects;

599

f. Generating hydropower;

600

g. Storing or impounding water;

601

h. Dedicating water to instream flows; and

602

i. Other activities not listed herein but determined as necessary by the TWRD Director.

603

604

2. The issuance of a permit allows the activity therein described and constitutes an undertaking by the permittee to comply with the conditions therein stated and all Tribal laws and regulation of general application and applicable Federal laws covering such activity;

605

606

607

608

609

3. Any person proposing to undertake an activity that may affect Reservation water resources may apply to the TWRD Director for an exemption from obtaining a permit. The Director may issue such an exemption if the Director finds the activity will have a minimal impact on Reservation water resources. Consideration of an exemption shall be based on the facts represented by the applicant, and no fee shall be required for such an exemption application.

610

611

612

613

614

615

616

4. All permits issued under this Water Code are provisional and shall not be construed to create an entitlement in the user beyond the provisional period or to allow reliance thereon by any other person.

617

618

619

5. No person shall be authorized to use or otherwise take any action affecting the Reservation water resources administered under this Water Code unless he or she shall consent to reasonable entry upon his or her land by TWRD staff engaged in the administration of this Water Code.

620

621

622

623

6. The TWRD Director shall have authority to make conditions on any permit to ensure adequate quantity and quality of Reservation water resources, and to assist in the effective administration of the Water Compact, this Water Code and regulations thereof.

624

625

626

627

628

B. Permit System

629

1. The TWRD shall issue permits for the following activities:

630

a. Water Use Permit. Grants or confirms the right to use a share of the Tribal water rights, and guides the use of water as set forth in the permit. There shall be one water permit for any use of Reservation water resources or Tribal water rights. Water use permits may be granted for instream flow

631

632

633

634 uses and storage / impoundment of water as a beneficial use. The TWRD
635 shall develop and the Business Council shall adopt Water Use Regulations
636 that define the preference and priority structure for administration of
637 Tribal water use permits. Water use permits may be granted for a period
638 of not less than five (5) years and not more than twenty (20) years, unless
639 special circumstances dictate a different period.

- 640 b. Change of Use Permit. Grants the right to change the location or purpose
641 of water use, method of application, or method or point of diversion for an
642 existing permitted water use. Such permits shall comply with change of
643 use and transfer provisions in this Water Code and the Water Compact.
- 644 c. Stream Alteration Permit. Grants the right to alter the streambed or banks.
645 A permit is required for all persons engaging in any activity that affects
646 the bed or banks of Reservation water resources, including but not limited
647 to construction of diversion structures, roads, bridges, culverts, logging,
648 grazing, and other activities affecting the stability of the stream channel.
- 649 d. Discharge Permit. Grants the right to discharge waste, or wastewater, or
650 other media, into the surface or ground water of the Reservation. This
651 includes the point discharge of any substance, the non-point discharge of
652 landfills, septic tanks, disposal pits, or groundwater injection.
- 653 e. Well Construction Permit. Grants the right to drill or construct a new
654 well, or to deepen or modify an existing well. This permit requires, after
655 completion of the permitted activity, the submission of specific technical
656 data, including construction plans, effects on aquifer water levels and
657 water quality, well pump test data, and lithologic logs. Issuance of this
658 permit is contingent upon the well contractor meeting requirements for
659 technical competence, posting a bond conditioned upon the performance
660 and completion of all permit conditions, and any other requirements
661 established by the TWRD.

- 662 2. The TWRD shall complete an inventory of all current water uses on the
663 Reservation within five years of adoption of this Water Code. At the completion
664 of this water use inventory, the TWRD shall provide a report to the State of
665 Montana and United States that lists the current water uses of Tribal water rights.
666 The TWRD shall publish a public notice via newspaper and internet that the water
667 use inventory has been completed and that such current uses will be granted
668 Tribal water use permits subject to any objections or other revisions. The TWRD
669 will maintain an updated version of this current water use listing at the TWRD
670 office for public review. No water use permit application shall be required for
671 any water use listed on the inventory. Once this initial inventory is completed,
672 any water use not included in the inventory and not granted an associated Tribal
673 water permit, shall require application to the TWRD.

674 **C. Application for Permit**

- 676 1. Applications for any permit described above shall be made on forms developed by
677 the TWRD, including particular information of facts that in the judgment of the
678 TWRD is required for the proper processing of such applications. All water use
679 permit applications filed shall include, at a minimum, the following information:

- 680 a. The name, phone number and mailing address of the applicant;
681 b. Purpose and description of water use;
682 c. Legal description of point of diversion and source from which water will be
683 withdrawn, diverted, used, or affected.
684 d. The quantity of use as a volume and flow rate;
685 e. The period of use within the calendar year;
686 f. A description of the method of diversion or withdrawal;
687 g. The estimated date on which the use or uses will be commenced;
688 h. A reasonable estimate of how much water will be returned to the source or
689 sources, how, when, at what point or points, and with what changes in quality
690 and temperature;
691 i. In case of a pre-existing use, an indication whether problems of water quantity
692 and quality have been encountered in the past;
- 693 2. The TWRD shall establish in regulations, a schedule of application fees for
694 permits, which shall be paid in advance to and collected by the TWRD. The Sub
695 Committee may waive the fee in the case of financial hardship for Tribal
696 members. Such application fees shall be used to defray the cost of reviewing and
697 processing permit applications.
- 698 3. Within sixty (60) days of the receipt of a permit application, the TWRD Director
699 shall perform the following actions:
700 a. Review the application for compliance with this Water Code and to ensure that
701 it is consistent with Tribal policy and interests;
702 b. Provide public notice;
703 c. Review the application and request any additional information from the
704 applicant, if necessary;
705 d. Approve, with or without special conditions, or deny the permit application.
- 706 4. If the TWRD Director approves the permit application, then the TWRD shall
707 issue the appropriate permit within ten (10) days of such decision. If the TWRD
708 Director does not approve the application, or approves it with conditions which
709 are not acceptable to the applicant, then the applicant shall be entitled to a hearing
710 before the Sub Committee.
- 711 5. The TWRD Director shall develop criteria, subject to approval by the Business
712 Council, for approving or denying a permit, or imposing special conditions on a
713 permit. Prior to the adoption of such criteria, the TWRD shall deny those permit
714 applications that indicate:
715 a. A proposed water use or activity that is not in compliance with the Water
716 Compact and/or Water Settlement Act;
717 b. A proposed water use or activity that would injure or interfere with an
718 existing permit, outside of typical priority administration;
719 c. A proposed water use or activity that is not a beneficial use of water
720 authorized by the Water Compact or Water Settlement Act; or
721 d. A lack of complete or accurate information required for the permit
722 application;

D. Permit Provisions

- 723
724
725 1. No permit granted by the TWRD may be transferred, exchanged, sold, or

726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771

otherwise conveyed except as provided by this Water Code and any special conditions on the permit; except that a Tribal water use permit may be transferred from one party to another party only upon the transfer of the associated land on the Reservation, and such transfers shall require approval of the TWRD Director.

2. No person may create a security interest or authorize the creation of a security interest, in a water use permit without the express consent of the TWRD Director. Upon foreclosure of any property, a permit may be transferred to a mortgage lender or an assignee only for the use of water on the land described in the permit, and only for the purposes designated in the permit. Any such transfer shall require approval of the TWRD Director.
3. No right to use or otherwise affect the quantity, level, flow, pressure, or quality of water may be acquired by adverse possession, prescription, estoppels, or acquiescence.
4. The TWRD Director shall modify, suspend, or revoke a permit upon finding that the permit holder has not fulfilled the requirements as prescribed in the permit, or to carry out and implement this Water Code and regulations thereof.
5. A water use permit shall become null and void, in whole or in part, if the permit holder fails to use all or a portion of the water for a period of five consecutive years, without sufficient cause. The TWRD shall serve notice of loss by nonuse on the permit holder, and any objection to such notice shall be issued by the permit holder within thirty (30) days of issuance. Sufficient cause shall include:
 - a. Drought or other unavailability of water;
 - b. Active service in the armed forces of the United States;
 - c. The operation of legal proceedings;
 - d. The application of any laws restricting water use;
 - e. Incarceration in a penal institution;
 - f. Confinement in a mental institution;
 - g. Incompetence by reason of age or mental incapacity; or
 - h. Other causes of nonuse beyond the control of the permit holder.

772 **ARTICLE VI: ENFORCEMENT**

773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816

A. Prohibited Acts

It shall be unlawful for any entity or person to:

1. Forcibly, or through bribery, threat, or other corrupt practice, obstruct or impede the due administration of this Water Code;
2. Commit fraud, or knowingly assist another in the commission of fraud, with the intent to evade or defeat the administration of this Water Code;
3. Falsely verify by written declaration any permit, form, application, or other document, or to intentionally withhold data required to be submitted;
4. Violate the conditions or stipulations of a permit, including taking more water than is allowed by a permit;
5. Willfully take, waste, alter, or damage Reservation water resources or Tribal water rights;
6. Knowingly make use or take action affecting the use of Tribal water rights within the Reservation without the authorization required; or
7. Willfully obstruct or interfere with Tribal employees performing their duties under this Water Code.

B. Penalties

Any person that commits any of the prohibited acts, or who violates provisions set forth in this Water Code, shall be subject to civil proceedings under the Law and Order Code of the Tribe.

C. Inspection and Assessment

The TWRD shall have the duty and right to inspect and assess any water uses and activities that may affect water quality, water quantity, and the overall health of Reservation water resources.

D. Injunctions

In the case of an impairment or the eminent threat of an impairment of water quality, water quantity, or contrary to the objectives of this Water Code and regulations promulgated under this Water Code, the TWRD Director shall have the power to issue a temporary order to stop any and all activities under a permit for up to three days.

F. Administrative Appeal

All decisions of the TWRD Director shall be sent via certified mail to the address on file for affected persons, and also posted in a public space at the TWRD office. Any person who is affected by any action or decision of the TWRD and/or Director can file an appeal to the TWRD Sub Committee within fifteen (15) days of the date of action or decision mailing. The Sub Committee shall conduct a hearing within thirty (30) days of the request for an appeal. If an appeal has not been filed as described, the decision or action of the Director shall be final. Decisions of the Sub Committee shall be sent via certified mail to the address on file for affected parties.

817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862

G. Judicial Review

1. Decisions of the TWRD Sub Committee may be appealed to Tribal Court within thirty (30) days of mailing of notice of the decision.
2. No person may seek review by the Tribal Court of a decision or ruling of the TWRD Director or Sub Committee unless such person has first exhausted all administrative appeal rights provided by this Water Code.
3. Appeals to the Tribal Court shall be limited to review of the record of the Sub Committee's administrative decisions or rulings and shall not be trial de novo. The Tribal Court may modify, reverse, or remand a decision or ruling of the Sub Committee only where such decision or ruling is without substantial basis in fact, is contrary to Tribal policy or Tribal law, or is clearly arbitrary or capricious.

863 **ARTICLE VII: MISCELLANEOUS PROVISIONS**

864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898

A. Regulations

The Sub Committee shall adopt and amend such rules, regulations, policy guidelines or procedures, as it deems necessary to implement the objectives and purposes of this Water Code.

B. Records Access

All records required to be maintained by the TWRD are considered Tribal records and may not be disclosed unless authorized by the Business Council. No employee may alter or destroy these records unless authorized by the Business Council. This shall not prohibit sharing data and information with other Tribal departments in the performance of TWRD duties. All permit files and permit applications shall be available for public review at the TWRD office during normal business hours.

C. Amendment

The Business Council may amend this Water Code and the TWRD shall notify Tribal members of any amendments in a manner considered appropriate under Tribal laws.

D. Severability

In the event any provision of this Water Code or the application thereof to any person or circumstance is held invalid, the remainder of this Water Code shall not be affected thereby and to this end the provisions of this Water Code are declared to be severable.

E. Repeal

Any act, ordinance, resolution, rule, regulation, or provision of law of the Tribe in conflict with the provisions of this Water Code are hereby repealed to the extent that they are inconsistent with, conflict with, or are contrary to, the purposes of this Water Code. Those acts, ordinances, resolutions, rules, regulations, or provisions of law that do not conflict shall remain in effect.

F. Effective Date

This Water Code shall be in effect ten (10) days after the Secretary of Interior approves of this Water Code and the Business Council approves this Water Code by ordinance. This ordinance shall remain in effect until repealed or amended.

ATTACHMENT

ARTICLE III OF THE WATER COMPACT - TRIBAL WATER RIGHT

A. Basin 40H: Big Sandy Creek Basin.

1. Gravel Coulee/Lower Big Sandy Creek Drainages: 1690 AFY diversion - 1000 AF continuous storage.

a. Quantification - Source - Volume.

(1) Storage. The Tribe shall have the right to continuously store or permit the continuous storage of up to a capacity of 1000 AF of water in Stoneman Dam and Reservoir from the natural flow of Gravel Coulee. Subject to the 1000 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 1480 AFY from the direct flow of Lower Big Sandy Creek and up to 445 AFY from groundwater for storage in Stoneman Dam and Reservoir as set forth in Section A.1.a.(2) of Article III. The quantity impounded by continuous storage shall not decrease the 1480 AFY which the Tribe may divert for the purposes allowed in Section A.1.e. of Article III. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife purposes, as set forth in Sections A.1.e. (3) and (4) of Article III.

(2) Diversion. The Tribe shall have the right to divert or use or permit the diversion or use of 1690 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 1690 AFY:

(a) Direct Flow. The Tribe shall have the right to divert or use or permit the diversion or use of up to 1690 AFY from the direct flow of Gravel Coulee and Lower Big Sandy Creek and its tributaries. 1480 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section A.1.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(b) Storage. Of the 1690 AFY, the Tribe shall have the right to divert 1480 AFY from storage in Stoneman Reservoir for irrigation and non-irrigation purposes as more specifically provided in Sections A.1.e.(1) and (2) of Article III; provided that, the right to divert 1480 AFY from Lower Big Sandy Creek to storage is not reduced by the amount of water diverted for irrigation or non-irrigation purposes from water derived from storage.

(c) Groundwater. Of the 1690 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 445 AFY of groundwater in the Gravel Coulee and Lower Big Sandy Creek drainages in compliance with Sections A.6.a. and b. of Article IV. Groundwater may be diverted to storage prior to

application to any purposes allowed in Section A.1.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

- (i) Of the 445 AFY, 100 AFY may be appropriated from the shallow alluvium along Gravel Coulee and Lower Big Sandy Creek.
 - (ii) Of the 445 AFY, 345 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer in the Gravel Coulee and Lower Big Sandy Creek drainages. Groundwater from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.
- b. Priority Date. The water rights to surface flow, groundwater, and storage as set forth in Section A.1. of Article III, for the Gravel Coulee and Lower Big Sandy drainages shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.
- c. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.
- d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means on Lower Big Sandy Creek and Gravel Coulee drainages on the Reservation.
- e. Purposes. The Tribe's right to 1690 AFY from the Gravel Coulee and Lower Big Sandy drainages may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for irrigation and non-irrigation purposes.
 - (1) Irrigation.
 - (a) Volume. 1380 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for irrigation.
 - (b) Source. The 1380 AFY for irrigation may come from a combination of direct flow, storage and groundwater in the Gravel Coulee and Lower Big Sandy drainages.
 - (c) Place of use. The 1380 AFY may be used to irrigate 540 acres at Stoneman Farms on the Reservation.
 - (2) Non-Irrigation.
 - (a) Volume. 100 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for non-irrigation purposes.
 - (b) Source. The 100 AFY for non-irrigation purposes may come from a combination of direct flow, storage, and groundwater in the Gravel Coulee and Lower Big Sandy drainages.

- (c) Point of diversion. The 100 AFY for non-irrigation purposes may be diverted on the Reservation within the Lower Big Sandy and Gravel Coulee drainages.
- (3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (a) Volume. 160 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 40 surface acres of impoundments on Lower Big Sandy drainage and 13 surface acres of impoundments on Gravel Coulee drainage. The Tribe shall have the right to continuously store water in these impoundments.
 - (b) Source.
 - i. Of the 160 AFY, 120 AFY for stockwatering may come from the direct flow of Lower Big Sandy Creek.
 - ii. Of the 160 AFY, 40 AFY for stockwatering may come from the direct flow of Gravel Coulee.
 - iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.
 - (c) Place of use. The Tribal Water Right for stockwatering in the Gravel Coulee and Lower Big Sandy Creek drainages may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.
- (4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not

exceed 16 surface acres of impoundments in the Gravel Coulee and Lower Big Sandy Creek drainages. The Tribe shall have the right to continuously store water in these impoundments.

- (b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gravel Coulee and Big Sandy Creek.
- (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Gravel Coulee and Big Sandy Creek drainages, in the respective drainages of origin.

2. Box Elder Creek Drainage - 6940 AFY diversion - 4800 AF continuous storage.

a. Quantification - Source - Volume.

(1) Storage. The Tribe shall have the right to continuously store, or permit the continuous storage in Bonneau Reservoir, Brown's Reservoir, and in any new impoundments, of up to a capacity of 4800 AF from the natural flow of Box Elder Creek, or any natural flow from the source on which the impoundment is located. Subject to the 4800 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 6310 AFY from the direct flow of Box Elder Creek for storage in Brown's Reservoir and in any new impoundments not located on Box Elder Creek and to divert 1950 AFY from groundwater for storage in any new or existing impoundment wherever located, as set forth in Section A.2.a.(2) of Article III. The quantity impounded by continuous storage shall not decrease the 6310 AFY, which the Tribe may divert for the purposes allowed in Section A.2.e. of Article III. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.2.e.(4) and (5) of Article III.

(2) Diversion. The Tribe shall have the right to use or permit the use of 6940 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 6940 AFY:

(a) Direct Flow. Of the 6940 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 6590 AFY from Box Elder Creek and its tributaries. 6310 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section A.2.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

(b) Storage. Of the 6940 AFY, the Tribe shall have the right to divert a total of 6310 AFY from storage in one or more of the following reservoirs: Bonneau Reservoir, Brown's Reservoir, and any new impoundments for irrigation and non-irrigation purposes. The right to divert 6310 AFY from Box Elder Creek to storage is not reduced by the amount of water diverted for irrigation or non-irrigation purposes from water derived from storage.

- (c) Groundwater. Of the 6940 AFY, the Tribe shall have the right to withdraw and use or to permit the withdrawal and use of up to 1950 AFY of groundwater in the Box Elder Creek drainage in compliance with Sections A.6.a. and b. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section A.2.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.
 - (i) Of the 1950 AFY, 180 AFY may be appropriated from the shallow alluvium in the Box Elder Creek drainage.
 - (ii) Of the 1950 AFY, 230 AFY may be appropriated from the volcanic bedrock in the Box Elder Creek drainage.
 - (iii) Of the 1950 AFY, 1570 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer; provided that, should water be imported to the Reservation, the entire 1950 AFY may be appropriated from the Ancestral Missouri River Channel Aquifer. Water from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.
- b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.2. of Article III, for the Box Elder Creek drainage, including water supplied by Box Elder Creek for off-stream storage, shall have a priority date of September 10, 1888, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.
- c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.
- d. Points and Means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Box Elder Creek drainage on the Reservation.
- e. Purposes. The Tribe's right to 6940 AFY in the Box Elder Creek drainage may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for irrigation, non-irrigation and municipal/domestic purposes.
 - (1) Irrigation.
 - (a) Volume. 6280 AFY of water in the Box Elder Creek drainage may be used for irrigation.
 - (b) Source. The 6280 AFY for irrigation may come from a combination of direct flow, storage and groundwater. Water from the Ancestral Missouri River Channel Aquifer is a primary source for non-irrigation

uses; provided that, the non- irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

(c) Place of use. The 6280 AFY may be used to irrigate 1930 acres at the Stoneman Farms on the Reservation.

(2) Non-Irrigation.

(a) Volume. 30 AFY of water in the Box Elder Creek drainage may be used for non-irrigation purposes.

(b) Source. The 30 AFY for non-irrigation purposes may come from direct flow, storage, or groundwater or a combination thereof in the Box Elder Creek drainage. The 30 AFY for non-irrigation use may be developed from either the shallow alluvium or volcanic bedrock aquifers.

(3) Municipal / Domestic.

(a) Volume. 350 AFY of water in the Box Elder Creek drainage may be used for municipal/domestic purposes.

(b) Source. The 350 AFY for municipal/domestic purposes may come from the following sources:

i. 150 AFY from the shallow alluvium adjacent to Box Elder Creek.

ii. 200 AFY from the volcanic bedrock.

(4) Stockwatering - Evaporative Loss. Use of the Tribal Water Right set forth for stockwatering in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 44 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

(b) Source. The 130 AFY for stockwatering may come from the direct flow of Box Elder Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

(c) Place of use. The Tribal Water Right for stockwatering in the Box Elder Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.

(5) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the

Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

- (a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 50 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
 - (b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Box Elder Creek and its tributaries.
 - (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Box Elder Creek drainage, in the drainage of origin.
3. Camp Creek and Duck Creek Drainages - 280 AFY diversion.
- a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 280 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 280 AFY:
 - (1) Direct Flow. Of the 280 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 230 AFY from Duck and Camp Creeks and their respective tributaries in the following proportions:
 - (a) 170 AFY from Duck Creek.
 - (b) 60 AFY from Camp Creek.
 - (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.3.e.(2) and (3) of Article III.
 - (3) Groundwater. Of the 280 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 50 AFY of groundwater in the Camp and Duck Creek drainages on the Reservation, including groundwater that is hydrologically connected to surface water, in compliance with Sections A.6.a. and b. of Article IV. This right shall be exercised in the following proportions:
 - (a) 40 AFY from Duck Creek.
 - (b) 10 AFY from Camp Creek.
 - b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.3. of Article III, for the Camp and Duck Creek drainages shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.
 - c. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

- d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Camp Creek and Duck Creek drainages on the Reservation.
- e. Purposes. The Tribe's right to 280 AFY in the Camp and Duck Creek drainages may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (1) Non-Irrigation.
 - (a) Volume. 50 AFY of water in the Camp and Duck Creek drainages may be used for non-irrigation purposes.
 - (b) Source. The 50 AFY for non-irrigation purposes may come from groundwater including groundwater that is hydrologically connected to surface water in the Camp and Duck Creek drainages.
 - (c) Place of use. The Tribal Water Right for non-irrigation purposes in Camp and Duck Creek drainages may be used in the drainage of origin on the Reservation.
 - (2) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Camp and Duck Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 19 surface acres of impoundments in the Camp Creek drainage and 23 surface acres of impoundments on Duck Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
 - (b) Source.
 - i. Of the 130 AFY, 60 AFY for stockwatering may come from the direct flow of Camp Creek.
 - ii. Of the 130 AFY, 70 AFY for stockwatering may come from the direct flow of Duck Creek.
 - iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.

- (c) Place of use. The Tribal Water Right for stockwatering in the Camp and Duck Creek drainages may be used in the drainage of origin on the Reservation. The current stockwater impoundments are shown in Appendix 7.
 - (3) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Camp and Duck Creek drainages is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (a) Volume. 100 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 34 surface acres of impoundments in the Camp and Duck Creek drainages. The Tribe shall have the right to continuously store water in these impoundments.
 - (b) Source. The 100 AFY for fish and wildlife enhancement may come from the direct flow of Camp and Duck Creeks.
 - (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Camp and Duck Creek drainages, in the drainage of origin.
4. Gorman Creek Drainage - 60 AFY diversion.
- a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 60 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 60 AFY.
 - (1) Direct Flow. Of the 60 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 60 AFY from Gorman Creek and its tributaries.
 - (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.4.e.(1) and (2) of Article III.
 - b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.4. of Article III, for the Gorman Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.
 - c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

- d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Gorman Creek drainage on the Reservation.
- e. Purposes. The Tribe's right to 60 AFY in the Gorman Creek drainage may be used for the following purposes; provided that, the Tribe may not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (1) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gorman Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (a) Volume. 10 AFY of water in the Gorman Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 3 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
 - (b) Source. The 10 AFY for stockwatering may come from the direct flow of Gorman Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.
 - (c) Place of use. The Tribal Water Right for stockwatering in the Gorman Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.
 - (2) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Gorman Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right

recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

- (a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 17 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
- (b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gorman Creek.
- (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Gorman Creek drainage, in the drainage of origin.

5. Upper Big Sandy Creek Drainage - 290 AFY diversion.

- a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 290 AFY of water from the following sources where they occur on the Reservation in any combination up to the limits on each source and the total limit of 290 AFY.
 - (1) Direct Flow. Of the 290 AFY, the Tribe shall have the right to divert or use or permit the diversion or use of up to 240 AFY from the direct flow of Upper Big Sandy Creek and its tributaries;
 - (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.5.e.(3) and (4) of Article III.
 - (3) Groundwater. Of the 290 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 50 AFY of groundwater in the Upper Big Sandy Creek drainage including groundwater that is hydrologically connected to surface water, in compliance with Section A.6.a. and b. of Article IV.
- b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section A.5. of Article III, for the Upper Big Sandy Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.
- c. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.
- d. Points and means of diversion. The Tribe may divert or permit the diversion of this water right from any place and by any means in the Upper Big Sandy Creek drainage on the Reservation; provided that, the Tribe may not construct or permit the construction of a diversion or diversions with a total capacity in excess of 100 gpm for the irrigation water right with a source on Upper Big Sandy Creek Drainage. This diversion limit also applies to any change(s) of use of this right.
- e. Purposes. The Tribe's right to 290 AFY in the Upper Big Sandy Creek drainage may be used for the following purposes; provided that, the Tribe may

not make a change in use or transfer that results in a change in the place of use, point of diversion or place or means of storage to a place outside the drainage of origin, or to a place upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

(1) Non-Irrigation.

- (a) Volume. 50 AFY of water in the Upper Big Sandy Creek drainage may be used for non-irrigation purposes.
- (b) Source. The 50 AFY for non-irrigation purposes may come from groundwater, including groundwater that is hydrologically connected to surface water, in the Upper Big Sandy Creek drainage on the Reservation.
- (c) Place of use. The 50 AFY for non-irrigation purposes may be used on the Reservation within the drainage of origin.

(2) Irrigation.

- (a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for irrigation.
- (b) Source. The 45 AFY for irrigation may come from direct flow of Upper Big Sandy Creek on the Reservation.
- (c) Place of use. The 45 AFY may be used to irrigate 10 acres in the drainage of origin, on the Reservation.

(3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Upper Big Sandy Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

- (a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 15 surface acres of impoundments in the Upper Big Sandy Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
- (b) Source. The 45 AFY for stockwatering may come from the direct flow of Upper Big Sandy Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.
- (c) Place of use. The Tribal Water Right for stockwatering in the Upper Big Sandy Creek drainage may be used in the drainage of origin, on

the Reservation. The current stockwater impoundments are shown in Appendix 7.

- (4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in Upper Big Sandy Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 50 surface acres of impoundments in the Upper Big Sandy drainage. The Tribe shall have the right to continuously store water in these impoundments.
 - (b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Upper Big Sandy Creek.
 - (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Upper Big Sandy Creek drainage, in the drainage of origin.

B. Basin 40J: Beaver Creek Basin - 740 AFY diversion - 260 AFY net depletion - 665 AF continuous storage.

1. Quantification - Source - Volume.

- a. Storage. The Tribe shall have the right to continuously store, or permit the continuous storage in East Fork Reservoir of up to a capacity of 665 AF from the natural flow of the East Fork of Beaver Creek. Subject to the 665 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 390 AFY from the direct flow of the West Fork of Beaver Creek for storage in East Fork Reservoir as set forth in Section B.1.b. of Article III. The quantity impounded by continuous storage of the East Fork of Beaver Creek, shall not decrease the 390 AFY, which the Tribe has a right to divert from storage in East Fork Reservoir for non-irrigation purposes allowed in Section B.5. of Article III; provided that, the limit of 260 AFY on net depletion shall apply. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections B.5.b. and c. of Article III.
- b. Diversion. The Tribe shall have the right to divert 740 AFY of water in the Beaver Creek drainage from a combination of direct flow, storage and groundwater where they occur on the Reservation up to the limits on each source and the total limit of 740 AFY.

- (1) Direct Flow. Of the 740 AFY, the Tribe shall have the right to divert or permit the diversion of up to 540 AFY from the direct flow of Beaver Creek and its tributaries on the Reservation. 390 AFY of the water from direct flow may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to those purposes until such water is re-diverted from storage and applied to such purposes.
- (2) Storage. The Tribe shall have the right to divert 390 AFY for non- irrigation purposes from water stored in East Fork Reservoir. The right to divert 390 AFY from the West Fork of Beaver Creek to storage is not reduced by the amount of water diverted for non-irrigation purposes from water derived from storage.
- (3) Groundwater.
 - (a) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 120 AFY of groundwater including groundwater that is hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to these purposes until such water is re-diverted and applied to such purposes.
 - (b) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of an additional 200 AFY of groundwater from the volcanic bedrock aquifer and other aquifers that are not hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. The limit of 260 AFY on net depletion set forth in Section B.1.a.(2) of Article III, shall not apply to groundwater use pursuant to this section. Groundwater may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to these purposes until such water is re-diverted and applied to such purposes.
- c. Net Depletion. Of the 740 AFY diverted, the Tribe shall have a right to a net depletion of 260 AFY in the Beaver Creek drainage. The calculation of net depletion shall not include evaporative loss from fish and wildlife habitat, from stockwatering, or from East Fork Reservoir, and use of groundwater that is not hydrologically connected to surface water.
2. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section B. of Article III, for the Beaver Creek drainage shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.
3. Period of use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the Tribe may divert or permit the diversion of this water right from any place and by any means in the Beaver Creek drainage on the Reservation.
5. Purposes. The Tribe's right to water in the Beaver Creek drainage may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in use or transfer of the water identified for non-irrigation purposes.
 - a. Non-Irrigation
 - (1) Volume. 590 AFY of water in the Beaver Creek drainage may be used for non-irrigation purposes; provided that, the net depletion may not exceed 260 acre-feet per year in accordance with Section B.1.c. of Article III.
 - (2) Source. The 590 AFY for non-irrigation in the Beaver Creek drainage may come from a combination of direct flow, storage and groundwater.
 - (3) Place of use. The 590 AFY for non-irrigation may be used in the Beaver Creek drainage on the Reservation.
 - b. Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (1) Volume. 40 AFY of water in the Beaver Creek drainage may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 13 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
 - (2) Source. The 40 AFY for stockwatering may come from the direct flow of Beaver Creek on the Reservation. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for a lined storage facility with a capacity of less than 0.5 AF.
 - (3) Place of use. The Tribal Water Right for stockwatering in the Beaver Creek drainage may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are shown in Appendix 7.
 - c. Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and wildlife enhancement in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the

point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

- (1) Volume. 110 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 35 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.
- (2) Source. The 110 AFY for fish and wildlife enhancement may come from the direct flow of Beaver Creek.
- (3) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas shown in Appendix 4 in the Beaver Creek drainage, in the drainage of origin.

C. Additional Development of Water.

In addition to the water rights specifically set forth in Sections A. and B. of Article III, the Tribe may develop water from the following sources:

1. Subject to Sections A.6.a. and b. and Section A.7.d. of Article IV, the Tribe may, as part of the Tribal Water Right, develop or permit the development of groundwater on the Reservation in addition to the amounts specified in Sections A. and B. of Article III, from new sources or from expanded use of existing sources. The priority date of such new appropriation shall be the date of development, and notwithstanding any other provision of this Compact, may only be used in priority with other water rights.
2. The Tribe may impound or permit the impoundment of surface water for stockwatering purposes in addition to the amounts set forth in Sections A. and B. of Article III; provided that the priority date of the new appropriation shall be the date of development and, notwithstanding any other provision of this Compact, may only be used in priority with other water rights; and further provided that, the maximum capacity of the impoundment or pit is less than 15 AF and the appropriation is less than 30 AFY and is from a source other than a perennial flowing stream. The Tribe may not transfer or make a change in use of the stockwater right obtained pursuant to this section.
3. On the acquisition of land after the Compact is ratified by the State and the Tribe, whichever date is later, the Tribe has the right to the use of any water right acquired as an appurtenance to the land. Such right shall become part of the Tribal Water Right in addition to the amount set forth in Article III of this Compact and shall be subject to the terms of this Compact; provided that, the right shall retain the priority date of the acquired right. The Tribe will notify DNRC of any acquisition of water in the Tribe's annual report and will identify the water right acquired.
4. The Tribe shall be entitled to use any new reserved water rights that may be created with acquisition of land after the Compact is ratified by the State and the Tribe, whichever date is later; provided that, in any drainage with a moratorium on new state permits pursuant to Section A.7.a. of Article IV, the Tribe shall defer

exercise of new reserved water rights, if any, until the moratorium is lifted at which time the Tribe has the first right to use the excess water in accordance with Section A.7.b. of Article IV. The priority date of the excess water shall be the date of acquisition of the land.

5. After the ratification date of the Compact, the Tribe shall have the right to acquire off-Reservation water rights separate from acquisition of the land to which such water rights are appurtenant; provided that, water from the Tribal Water Right is not available for economic or other reasons; and provided further that, the rights shall retain the priority date held by the prior owner of the rights. Such rights shall become part of the Tribal Water Right and shall thereby become subject to Sections A.4.b.(1) and (2) of Article IV.
6. As a part of the Tribal Water Right, the Tribe shall be entitled to an allocation of 10,000 AFY of stored water in Lake Elwell, measured at the dam, for use or disposition by the Tribe for any beneficial purpose, either on or off the Reservation, pursuant to the terms of this Compact; provided that, such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or of persons holding such reserved water rights through that tribe or through the United States. Any use or disposition of water from Lake Elwell off the Reservation by the Tribe is subject to the specific provisions relating to such use or disposition in any act of Congress ratifying this Compact.

D. Proposed Decree

For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III and Section A.8. of Article IV is attached as Appendix 1.

ARTICLE IV OF THE WATER COMPACT - IMPLEMENTATION OF TRIBAL WATER RIGHT

A. General Provisions

1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States for the benefit of the Tribe.
2. Tribal Water Right: Administration. Subject to the limitations imposed by this Compact and other federal law, the use of the Tribal Water Right shall be administered by the Tribe through the TWRD both on and off of the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth in D.4. of Article IV, concerning off-Reservation use of the Tribal Water Right which raise issues concerning the application of state or federal law shall be resolved in a court of competent jurisdiction. Those disputes concerning off- Reservation use of the Tribal Water Right which do not raise issues concerning the application of state or federal law will be within the exclusive jurisdiction of the Tribe. Subject to the limitations imposed by this Compact, the Tribe shall have the final and exclusive jurisdiction to resolve all disputes concerning the Tribal Water Right between users of the Tribal Water Right. The TWRD will, among other activities,

develop policies and procedures for monitoring water use, diversions, and maintaining records of water use and development consistent with this Compact. The current and future water use and diversions will be identified by location and quantity. Final storage capacities will be based on project as-built plans, and will store no more than the water right set forth in Article III of this Compact. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water code, which shall be developed and adopted by the Tribe within two (2) years following the ratification date of this Compact pursuant to any requirements set forth in the Constitution of the Chippewa Cree Tribe. Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior.

3. Use.
 - a. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe, or persons authorized by the Tribe.
 - b. Effect of Non-Use of Tribal Water Rights. Except as specifically provided herein, state law doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture or abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.
4. Change in Use or Transfer.
 - a. On-Reservation Changes in Use or Transfer of the Tribal Water Right. Unless otherwise stated in this Compact, the Tribe may make a change in use or transfer of a water right set forth in Article III of this Compact on the Rocky Boy Reservation, including the use of water salvaged through the application of water-saving methods to expand irrigation, provided that:
 - (1) for each source quantified in Article III, any change in use or transfer shall not result in uses that exceed the water amount quantified for that source;
 - (2) any change in use or transfer shall not result in an increase in net depletion in the Beaver Creek drainage in excess of the amount specified for that source;
 - (3) any change in use or transfer shall not have an adverse effect on a water right recognized under state law with a priority date before the date of the change or transfer provided that for change in use or transfer of groundwater, the burden as to adverse effect shall be as set forth in Section A.6. of Article IV; and
 - (4) any change in use or transfer shall not change the source of the water involved in any such changes.
 - (5) The Tribe may not make a change in use or transfer of any water rights set forth in Article III for the purposes of stockwatering or fish and wildlife enhancement; provided that, the Tribe may repair or relocate an impoundment for stockwatering or fish and wildlife enhancement within the drainage of origin; and provided further that, the new point of diversion or place of use does not change to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a

priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

- (6) The Tribe may not make a change in use or transfer any of the water rights set forth in Article III with a source on the drainages of Upper Big Sandy Creek, Camp Creek, Duck Creek and Gorman Creek that results in a change in the place of use, point of diversion or place or means of storage of the water outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion of a water right recognized under state law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date is later.
 - (7) The Tribe may make a change in use or transfer of the irrigation water right with a source in Upper Big Sandy Creek drainage as set forth in Section A.5.e. of Article III so long as it does so within the diversionary limits set forth in Section A.5.d. of Article III; provided that, the net depletion shall not exceed 30 AFY.
- b. Off-Reservation Changes in Use or Transfer of the Tribal Water Right. Except as may be otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or permit a change in use or a transfer of the Tribal Water Right for use off the Reservation; provided that, any transfer shall be for a term of not to exceed 100 years, and may include provisions authorizing renewal for an additional term of not to exceed 100 years; and provided further that, no such transfer shall be a permanent alienation of the water transferred; and provided further that, no transfer or change in place of use shall be made to a location outside the watershed that forms the Missouri River drainage; and provided further that, if the Tribe receives a good faith offer from a third person from outside the Milk River drainage to acquire use of specified Tribal water rights and the Tribe is willing to accept the terms of the offer, the Tribe, before accepting the offer, shall allow water users in the Milk River drainage the opportunity to acquire use of such rights at the same price and on the same terms and conditions as those contained in the offer. Any change in use or transfer of any such water right involving a point of diversion or place of use located off the Reservation shall be considered an off-Reservation use; provided that, any off-Reservation use of Tribal water rights described in this Compact shall not be deemed to convert such rights to rights arising under state law, and nonuse of such rights off the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the rights; and provided further that, releases or diversions from Lake Elwell for use on the Reservation shall not be considered off-Reservation uses. The Tribe may change the point of diversion or purpose or place of use of the Tribal Water Right back to the Reservation without reduction in the amount of water provided in the Compact.
- (1) Applicable Law. No person may initiate an off-Reservation use, change in use, or transfer of a Tribal water right set forth in this Compact without first applying for and receiving authorization for the use, change in use, or transfer pursuant to Montana law in effect at the time of the application.

Approval of an application for a use, change in use or transfer off the Reservation by the State shall be conditioned on a valid Tribal permit for such use, change in use or transfer by the Tribe. The applicant shall provide DNRC with proof of a valid Tribal permit prior to initiating the use, change in use, or transfer.

- (2) Diversion Facilities. With respect to diversion or transportation facilities located off the Reservation which are to be used in connection with the exercise of a water right set forth in this Compact, the Tribe or persons using such water rights shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of such water rights may be made only after all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been obtained.
 - (3) Subsequent Federal or State Law. All off-Reservation uses of Tribal water rights set forth in this Compact shall comply with the requirements set forth in Section A.4.b.(1) and (2) of Article IV until such time as the statutory or common law of the United States or the State of Montana establish that off- Reservation uses of Indian water rights may occur without regard to state law.
- c. Placement and Size Survey. Placement and size of stockwater impoundments and fish and wildlife enhancement areas shall be surveyed by the TWRD every five (5) years commencing one (1) year after the ratification date of this Compact. The initial survey method shall be through use of data obtained by aerial photography or an acceptable quantitative substitute with accuracy and verification equal to or greater than photography. The method may be modified by agreement between the TWRD and the DNRC. Such modification is pursuant to and shall not be deemed a modification of this Compact. The TWRD shall provide the DNRC with a completed survey for review within six (6) months of initiation of the survey.
 - d. Net Depletion Table. Net depletion for Tribal water uses in the Beaver Creek drainage and for irrigation uses in the Upper Big Sandy Creek drainage shall be as set forth in the table attached as Appendix 9 to this Compact. The TWRD and the DNRC may jointly agree to modify this initial table. Such modification is pursuant to, and will not be deemed a modification of, this Compact.
5. Reporting requirements.
- a. On an annual basis the DNRC shall provide the Tribe and the United States with a listing of all new uses of surface and groundwater for which a permit has been issued by the DNRC in the Big Sandy and Beaver Creek drainages, and of any change in use or transfer of surface water or groundwater approved by the DNRC in the Big Sandy and Beaver Creek drainages since the last report.
 - b. On an annual basis the TWRD shall provide the State and the United States with a listing of all new development of the water rights described in this

Compact, the net depletion in the Beaver Creek drainage, and the net depletion for irrigation in the Upper Big Sandy Creek drainage, and of all changes in use or transfers of the water rights described in this Compact since the last report. The first report by the TWRD following adoption of a Tribal Water Code shall include a listing of existing uses.

- c. The TWRD, the DNRC, and the United States may agree to modify the reporting requirements set forth in subsections a. and b. of this section. Such modification is pursuant to, and will not be deemed a modification of, this Compact.
6. Groundwater.
- a. New Groundwater Development Without Adverse Effect.
 - (1) Limits on Additional Development of Groundwater from Sources on the Reservation. After the ratification date of this Compact, the Tribe may develop or permit the development of groundwater; provided that, such development is without an adverse effect on water rights recognized under state law with a priority date before the date of development of the new appropriation.
 - (2) Prerequisite Administrative Remedy. The following procedure for determining whether new development of groundwater will have an adverse effect on existing groundwater rights recognized under state law shall be followed prior to seeking relief from the Compact Board:
 - (a) Application for development of a groundwater use on the Reservation shall be made to the TWRD.
 - (b) The TWRD shall review the application and make a determination of whether the new use will have an adverse effect on existing water rights recognized under state law with a priority date before the application date. Upon request by the TWRD, the DNRC shall provide information on existing state water rights as recorded in the DNRC database to the TWRD.
 - (c) If the TWRD determines that the new development will have an adverse effect on a water right recognized under state law with a priority date before the application date, the TWRD shall deny the application. If the TWRD determines that the new development will not have an adverse effect on a water right recognized under state law with a priority date before the application date, the TWRD shall forward the application with its determination to the DNRC.
 - (d) If, based upon the evidence, DNRC agrees with the TWRD's determination, the application will be approved. If, however, based upon the evidence, the DNRC cannot agree with the determination of the TWRD, DNRC shall publish notice, of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any appropriator of water or holder of a permit who, according to the records of the department, has a water right with a priority date before the application date, and may be affected by the proposed development.

- (e) DNRC and the TWRD shall attempt to resolve any disagreement on the determination of no adverse effect by the TWRD on a cooperative basis. If the DNRC or a holder of a water right recognized under state law with a priority date before the application date disagree with the determination of no adverse effect, DNRC or the water users may seek relief from the Compact Board.
 - (f) In any proceeding concerning the effect of new groundwater development on the Reservation either before the TWRD, the DNRC, or before the Compact Board, the following shall apply:
 - (i) 1 - 150 Feet Wells: For new Tribal groundwater wells completed at a depth beneath the surface of 1 to 150 feet, the Tribe shall bear the burden of showing no adverse effect to groundwater uses recognized under state law with a priority date before the application date.
 - (ii) 150 Feet or Deeper Wells: For Tribal groundwater wells completed at a depth beneath the surface of 150 feet or deeper, the owner of a water right recognized under state law with a priority date before the application date shall bear the burden of showing any adverse effect to the water right.
 - b. Groundwater Development Exempt From The Showing Of No Adverse Effect. The following wells are exempt from the requirement of showing no adverse effect:
 - (1) Existing Tribal wells are exempt from the burden to show no adverse effect. The Tribe may develop existing wells, or replacements therefor, to their full capacity. The primary municipal and domestic wells are listed in Appendix 8. A comprehensive list of existing wells will be kept on file in TWRD offices as per the requirement to list existing uses in Section A.5. of Article IV.
 - (2) New Tribal groundwater wells producing from the Volcanic Bedrock Aquifer may be developed without a showing of no adverse effect.
 - c. Ancestral Missouri River Channel Aquifer. Groundwater from the Ancestral Missouri River Channel Aquifer shall be a primary source for non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.
- 7. Moratorium.
 - a. New State Permits. With the exceptions listed in subsection (1) of this section, the DNRC shall not process or grant an application for a permit to appropriate water from a source in the Big Sandy Creek Basin (excluding Sage Creek and Lonesome Lake Coulee), and in the Beaver Creek drainage after the date this Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. This moratorium shall remain in effect for a minimum of 10 years and shall only be lifted pursuant to the procedures set forth in Section A.7.b of Article IV. This moratorium is not intended to apply to applications for change in appropriation under state law.
 - (1) The moratorium shall not apply to the following appropriations:

- (a) an appropriation of groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation;
 - (b) an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream;
 - (c) an appropriation of groundwater from any deep aquifer not hydrologically connected to surface water.
- (2) Within 120 days following the date the moratorium takes effect, the DNRC shall publish notice of the moratorium once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on all appropriators of water or holders of permits who, according to the records of the department, have a water right with a source in the affected drainages.
- (3) The moratorium applies only to new permits issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.
- b. **Lifting of Moratorium.** After 10 years, the Tribe or an individual seeking to appropriate water in the affected drainages may petition the DNRC for removal of the moratorium, or the DNRC may initiate proceedings to lift a moratorium on its own initiative. The DNRC shall comply with the following procedure in making a determination as to whether water is available in excess of the Tribal Water Right and rights recognized under state law. The DNRC and TWRD may agree to modify procedures or provide additional procedures. Such modification is pursuant to and shall not be deemed to be a modification of the Compact.
- (1) **Proceedings initiated by TWRD.**
- (a) The TWRD shall have sixty (60) days following the filing of the petition requesting that the moratorium be lifted to provide the DNRC with data supporting its petition to lift the moratorium.
 - (b) Within sixty (60) days following the receipt of the data supporting TWRD's petition, the DNRC shall determine whether to lift the moratorium, and shall notify the TWRD of its determination and the grounds therefor. The TWRD shall be allowed reasonable access to any data relied upon by the DNRC for its determination.
 - (c) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The moratorium shall continue pending Compact Board proceedings and any appeal
- (2) **Proceedings initiated by DNRC.**
- (a) The DNRC may, on request by a water user or on its own initiative, commence proceedings to determine whether to lift a moratorium.

- (b) The DNRC shall notify the TWRD of the commencement of proceedings to determine whether to lift the moratorium and shall submit to the TWRD all data in support of the proceedings at the same time or as soon after such data becomes available as practical or shall give the TWRD reasonable access to such data within the same time frame.
 - (c) The TWRD shall be given sixty (60) days following receipt of the data in support of the proceedings to submit to the DNRC a statement of the Tribe's position concerning the issue along with any supporting data and argument.
 - (d) The DNRC shall notify the TWRD of its determination and the grounds therefor within sixty (60) days of receipt of the Tribe's statement.
 - (e) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The moratorium shall continue pending Compact Board proceedings and any appeal.
 - c. Excess Water. If the moratorium is lifted pursuant to the procedure described in A.7.b. of Article IV, the Tribe shall have the first right to use the excess water for the purpose of fulfilling new reserved water rights, if any, on land acquired after the ratification date of this Compact, but before the date the moratorium is lifted. The excess water used by the Tribe shall become part of the Tribal Water Right and the tribe may make a change in use of, or transfer, including storage, of such water pursuant to Section A.4.a. of Article IV.
 - d. Limit on New Tribal Groundwater Development. In any drainage with a moratorium, new Tribal groundwater development pursuant to Section C.1. of Article III, by a well or developed spring from an aquifer that is hydrologically connected to surface water shall be limited to a maximum appropriation or combined appropriation from two or more wells or developed springs in a single drainage defined by this Compact to 35 gallons per minute or less, not to exceed 10 acre-feet per year.
- 8. Mutual Subordination. To reduce the need for daily administration of water use on and off the Reservation, water rights shall not be administered in priority, but shall be satisfied according to the following agreements.
 - a. Subordination to Non-Tribal Water Rights Upstream of the Reservation. The Tribal Water Right shall be subordinate to water rights recognized under state law upstream from any point on the Reservation with a priority date before the ratification date of this Compact. It is the intent of the parties that this subordination extends only to valid water rights, and not to statements of claim filed pursuant to 85-2-221, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights exempt from the permit process pursuant to 85-2-306, MCA, a list of rights as currently claimed is attached as Appendix 3. Appendix 3 will be modified by any final decree resolving claims on the affected drainages. Appendix 3 may be modified due to clerical error or omission.

- b. Effect of Mitigation. Because the impact of development of the Tribal Water Right on downstream water rights recognized under State law has been mitigated by provisions of the Compact and by special measures set forth in drainage stipulations, any person claiming or holding a water right recognized under State law, or an interest in such water right, may not assert priority over, or make a call for, or claim any of the water rights of the Tribe set forth in this Compact, in any court, tribunal, or other forum.
- 9. Stockwatering Impoundments Limited by Surface Area. Except for new stock ponds developed under Section C.2. of Article III, the surface acreage limitations on stockwatering impoundments set forth in Article III shall be the measure of compliance with the quantification of water rights for the purpose of stockwatering.
- 10. Impoundments for the Purpose of Enhancing Fish and Wildlife Habitat.
 - a. Fish and Wildlife Enhancement Impoundments Limited by Surface Area. The surface acreage limitations on impoundments for the purpose of fish and wildlife enhancement set forth in Article III shall be the measure of compliance with the quantification of water rights for the purpose of fish and wildlife enhancement.
 - b. Limits on Structures. No structure for the purpose of fish and wildlife enhancement may create a potential high water line beyond the existing wet riparian habitat delineated as fish and wildlife enhancement zones on the map attached as Appendix 4.
- 11. Structures Mimic Natural Processes. No structure for the purpose of fish and wildlife enhancement, or new stockwatering impoundments on a perennial stream built after the ratification date of the Compact, excluding repair or replacement of existing structures, may stop the entire flow of surface water during filling of the impoundment. To accomplish this the Tribe shall build any structure to mimic natural processes by allowing water to flow through the structure, or bypass the structure during filling.

B. Big Sandy Creek Basin

- 1. Operation of Bonneau Reservoir.
 - a. Minimum Pool / 240 AFY Stored for Satisfaction of Release. The minimum pool at Bonneau Reservoir shall be established by the Tribe. The Tribe shall store annually the minimum pool plus 240 acre-feet, if water is available. The 240 acre-feet above the minimum pool shall be stored to satisfy the release set forth in this Article and shall not be available to satisfy the Tribal Water Right. Evaporative loss shall be accounted for in setting the minimum pool and shall not be subtracted from the 240 acre-foot pool stored for downstream water users. Any change in use of the water stored in Bonneau Reservoir from irrigation to other purposes shall be without adverse effect on downstream water uses recognized under state law with a priority date before the date of change, and measures to prevent adverse effect may include release of additional water from Bonneau Reservoir.
 - b. Release for Off-Reservation Irrigation Use. The Tribe shall release no more than 104 AFY from Bonneau Reservoir or from direct flow of Box Elder

Creek to satisfy the claims for irrigation water rights currently held by Bert Corcoran, and the Tribe shall deliver this water to a point of diversion specified in the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2; provided that, the Tribe shall have no responsibility to upgrade or to increase the capacity of the existing delivery system; and further provided that, the Tribe shall not be required to release water from Bonneau Reservoir below the minimum pool established by the Tribe plus 240 acre-feet prior to satisfaction of the 240 acre-feet per year release set forth in Section B.1.c. of Article IV, and the minimum pool at all other times. The 104 AFY release shall be in accordance with a delivery schedule agreed to by Mr. Corcoran, or his successors in interest, and the TWRD. Mr. Corcoran's claims for irrigation water rights shall be specified in the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2. Nothing in the drainage stipulation or in this Compact shall affect any existing right that Mr. Corcoran may have to the use of on-Reservation conveyance and distribution systems to deliver this water.

- c. 240 AFY Release. The Tribe shall annually release the first 240 acre-feet of water, as measured near the confluence of Box Elder Creek and Lower Big Sandy Creek, stored in Bonneau Reservoir above the minimum pool, at the request of the downstream irrigation water users as set forth below, for maintenance of instream flow and for domestic and stock purposes on Lower Big Sandy Creek. The 240 AF of water, once released, shall be designated as an instream flow and shall be senior to all Tribal diversions and all non-domestic and non-stockwater rights recognized under state law from the point of release to the confluence with the Milk River. The Tribe shall not divert from direct flow on Lower Big Sandy Creek between its confluence with Box Elder Creek and the Reservation boundary at Stoneman Farms, as that boundary exists on the effective date of this Compact, during release of the 240 AF of water to downstream water users in the months of July and August. A structure that will bypass the peak scheduled release will be constructed for any diversion of the Tribal Water Right upstream of the confluence of Big Sandy Creek with Gravel Coulee. Under no circumstances shall the Tribe be required to release more than 240 AFY of water to maintain instream flow and for domestic and stock purposes.
- d. Schedule for 240 AFY. The method for determining the schedule of releases is as follows: Water users on Lower Big Sandy Creek with drainage stipulations listed in Appendix 2 shall elect a three member Bonneau Release Committee to determine the schedule of release for the 240 AFY. The Committee shall notify the DNRC which shall notify the TWRD by May 1st of each year of the requested schedule. The schedule shall not exceed the operating standards of Bonneau Reservoir or result in unreasonable interference of the Tribe's use of water stored in the Reservoir. If the TWRD does not receive notice by May 1 of any year, the TWRD shall release 2 cfs continuously for July and August in accordance with Section B.1.c. of Article IV. DNRC shall notify water users which, according to the records of the Department, have a water right recognized under state law with a source on

Box Elder Creek, or on Big Sandy Creek between the confluence with Box Elder Creek and the confluence with the Milk River, that the release may not be diverted. After May 1, at the request of the Bonneau Release Committee, the DNRC shall request the Tribe to alter the rate of release and the Tribe may agree to comply. At the request of the Tribe, the DNRC shall request the Bonneau Release Committee to agree to forego the release, and if the Committee believes the purposes for the release as set forth in Section B.1.c. of Article IV are being satisfied without the release, the Committee may, in any year, agree to forego the release. When streamflow in lower Big Sandy Creek at the bypass structure referred to in Section B.1.c. of Article IV, exceeds the peak flow specified in the designated release schedule, such excess flow can be diverted by the Tribe, subject to the diversion limits designated in Article III.

- e. Effective Date for Bonneau Reservoir Operational Plan. Notwithstanding ratification of this Compact by the parties, the operational plan for Bonneau Reservoir set forth in Sections B.1.a. through c. of Article IV, shall not become effective until completion of the enlargement of Bonneau Dam.
2. Water Use on Lower Big Sandy Creek Drainage.
- a. 2 cfs Bypass at Stoneman Farms. Structures will be constructed at each point of diversion on Lower Big Sandy Creek which allow a minimum of 2 cfs of water flow from direct and return flow, if available, to pass year around from the most downstream diversion on the Reservation on Lower Big Sandy Creek. The 2 cfs shall be designated as an instream flow and shall be senior in priority to Tribal diversions and all non-domestic and non-stockwatering water rights recognized under state law with a point of diversion between the bypass and the confluence with the Milk River. When streamflow in Lower Big Sandy Creek exceeds 2 cfs outside the scheduled 240 AF release period, such excess flow can be diverted by the Tribe subject to diversion limits designated in Article III.
 - b. Water Quality Issues.
 - (1) Monitoring Wells. Within one year following the effective date of this Compact, a monitoring well network adequate to detect saline seep shall be installed to depths no greater than 30 feet near the proposed Enlarged Stoneman Reservoir site shown in Appendix 6. The location of the wells will be established by TWRD and DNRC (or its representative) and groundwater level and quality shall be measured on a quarterly basis to establish baseline conditions.
 - (2) Water Quality Monitoring Before Construction. Within one year following the effective date of this Compact, a surface water quality network will be established by TWRD and DNRC and quarterly sampling continued for a sufficient period of time to establish the water quality baseline conditions referred to above, adjacent to and below the Stoneman Farms project. The results of the baseline analysis will be used to establish a threshold value for water quality degradation associated with salinity which will trigger the requirement for more extensive study.

- (3) **Water Quality Monitoring After Construction.** After construction of the Stoneman Reservoir enlargement, monitoring of the wells and surface water quality will be resumed to evaluate changes in water quality. If salinity measurements result in a trend of increasing salinity on a sustained basis over a reasonable period of time, the TWRD or DNRC may petition the Compact Board to appoint a technical expert to conduct an analysis to identify the causes of the increasing salinity and recommend appropriate remedies. The analysis and recommendations may include sources of salinity off the Reservation.
- (4) **Remedies.** The results of the analysis shall be submitted to the DNRC and to the TWRD which shall make a joint effort to resolve the degradation issue based on the analyses. If the analysis includes sources of salinity off the Reservation, the DNRC shall assist the TWRD in obtaining reasonable access onto the land off the Reservation for the purpose of observation. If the DNRC and the TWRD, are unable to resolve the issue within 30 days through joint effort, the DNRC, the TWRD, or any affected water user, may petition the Compact Board for relief. The Compact Board shall have jurisdiction over any contributor to the salinity problem and shall fashion its remedy in a manner proportionate to the causes contributing to the problem. The remedy fashioned by the Compact Board for salinity problems shall be limited to issuance of an order to cease and desist the practice or practices leading to the salinity problems. The remedies set forth in this section shall be in addition to any remedies or water quality standards provided for under other applicable law.

C. Beaver Creek Drainage

1. **Moratorium on Tribal Consumptive Uses.** For a period of five years following the ratification date of the Compact, there shall be a moratorium on the development of Tribal consumptive uses from surface water in the Beaver Creek drainage. During this moratorium, a monitoring network consisting of three continuous recording stations will be installed and the resulting data analyzed to determine if Beaver Creek gains or loses flow between the confluence of East and West Fork and the Reservation boundary. Location of the three gages shall be:
 - (1) the West Fork of Beaver Creek at the location the Tribe intends to divert water to the East Fork;
 - (2) the confluence of the East and West Forks of Beaver Creek; and
 - (3) the Reservation boundary at the most downstream point on Beaver Creek.A staff gage shall also be installed in East Fork Reservoir following enlargement of the Reservoir.
2. **Development of Management Plan.** Based on the results of the five years of gage data on Beaver Creek, the Tribe and the Montana Department of Fish, Wildlife and Parks shall work cooperatively to develop a fishery and recreational management plan. The plan may include modifications in minimum instream flows set forth in Section C.3. of Article IV. Such modification is pursuant to, and will not be deemed a modification of, this Compact. The management plan is not binding on any party and shall not be used to modify minimum instream flows

until it is approved by the Tribe and the Montana Department of Fish, Wildlife and Parks.

3. Operation of East Fork Reservoir Following Enlargement and Pending Adoption of a Management Plan. During the moratorium imposed by Section C.1. of Article IV, or pending adoption of the management plan authorized by Section C.2. of Article IV, East Fork Reservoir may be enlarged; provided that,
 - a. The enlarged Reservoir shall be used only for recreational purposes during the five year moratorium. However, after the five year moratorium period and pending adoption of the management plan, the enlarged Reservoir may be utilized for multiple purposes, but remains subject to the limitations set forth under Sections C.3.b., c., and d. of Article IV.
 - b. Any surface water diversion from the West Fork of Beaver Creek and its tributaries on the Reservation to the East Fork of Beaver Creek shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year around; provided that, the storing of water in East Fork Reservoir from the East Fork of Beaver Creek shall not be considered a diversion for the purposes of this provision.
 - c. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year around; provided that, the storing of water in East Fork Reservoir from the East Fork of Beaver Creek shall not be considered a diversion for the purposes of this provision.
 - d. The Tribe shall release water from East Fork Reservoir to augment streamflow on Beaver Creek if the flow at the confluence of East and West Fork or below the most downstream diversion on the Reservation, whichever is the most downstream, falls below 1 cfs; provided that, the Tribe shall not be required to release water if the level of the enlarged Reservoir reaches or falls below the minimum pool; and provided further that, the Tribe shall not be required to release water if the flow at the Reservation boundary at the most downstream point on Beaver Creek exceeds 2 cfs.
4. Operation of East Fork Reservoir Prior to Enlargement. Prior to enlargement of East Fork Reservoir and pending adoption of the management plan authorized by Section C.2. of Article IV, the following diversionary constraints are in effect.
 - a. Any surface water diversion from the West and East Forks of Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass the structure year around.
 - b. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return flow, if available, to pass year round.

D. Enforcement - Chippewa Cree-Montana Compact Board

1. Establishment of Board. There is hereby established the Chippewa Cree- Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana from up to six nominees, up to three nominated by the Commissioners of Chouteau County and up to three nominated by the Commissioners of Hill County; one member appointed by the Chippewa Cree Business Committee; and one member selected by the other two members. If the Governor fails to select a board member from the list of nominees, the Commissioners of Chouteau and Hill Counties may select the member. All members shall be appointed within six months of the ratification date of this Compact and within thirty days of the date any vacancy occurs. If an appointment is not timely made by the Governor or County Commissioners, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Chippewa Cree Business Committee, the Director of the TWRD or his/her designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity appointing the member. The expenses of the third member and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.
2. Membership. Should the two appointed members fail to agree on the selection of a third member within sixty days of the date of appointment of the second member, or within thirty days after any vacancy occurs, the following procedure shall be utilized:
 - a. Within five days thereafter each member shall nominate three persons to serve as a member of the Board;
 - b. Within fifteen days thereafter each member shall reject two of the persons nominated by the other member;
 - c. Within five days thereafter, the remaining two nominees shall be submitted to the Dean of the University of Montana School of Law who shall select the third member from the two nominees.
3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the parties to this Compact.
4. Jurisdiction of the Board. The Chippewa Cree-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between users of the Tribal Water Right and users of water rights recognized under state law including any contributor to a salinity problem. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.
5. Pre-requisite Administrative Remedy.

- a. Any non-tribal water user concerned that a new development or change in use of water by the Tribe is inconsistent with the Compact shall first contact the Havre Regional Office of the DNRC. If the DNRC and the TWRD are unable to resolve the issue in a reasonable time through discussion, DNRC, the water user, or the Tribe may seek relief through the Compact Board. The Tribe agrees to allow DNRC reasonable access onto Tribal land to observe the challenged development or change in use.
 - b. The Tribe or any tribal water user concerned that a new development or change in use or transfer of water by non-tribal water users is inconsistent with the Compact shall first contact the TWRD. If the TWRD and the DNRC are unable to resolve the issue in a reasonable time through discussion, the TWRD or the Tribal water user may seek relief through the Compact Board. The DNRC agrees to assist the TWRD in obtaining reasonable access onto the non-tribal water user's land to observe the challenged development or change in use or transfer.
 - c. The TWRD and the DNRC may jointly develop supplemental procedures as necessary or appropriate. Such supplemental procedures are pursuant to, and will not be deemed a modification of, this Compact.
6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint a technical expert for the purposes of Section B.2.b. of Article IV. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs, or attorneys fees. All decisions of the Board shall be by majority vote and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board.
7. Review and Enforcement of Board Decisions.
 - a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only the United States and parties to the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of such decision. The hearing on appeal shall be a trial de novo. The notice of appeal shall be filed with the Board and served personally or by registered mail upon all parties to the proceeding before the Board.
 - b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in Section D.7.a. of Article IV, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which the decision was made.

- c. court of competent jurisdiction in which a timely appeal is filed pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, may order such temporary or permanent relief as it considers just and proper.
 - d. Any appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, in the manner and to the same extent as from orders or judgments of the court in a civil action.
 - e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.
8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of the Constitution of the United States, in order to permit the resolution of disputes under this Compact by the Chippewa Cree-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall be as provided by Congress.