

1 HOUSE BILL NO. 629

2 INTRODUCED BY K. WILLIAMS

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING WATER RIGHTS COMPACTS WITH MONTANA
 5 TRIBAL NATIONS; RATIFYING THE WATER RIGHTS COMPACT ENTERED INTO BY THE CONFEDERATED
 6 SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, THE STATE OF MONTANA, AND THE
 7 UNITED STATES OF AMERICA; CREATING A UNITARY ADMINISTRATION AND MANAGEMENT
 8 ORDINANCE TO GOVERN WATER RIGHTS ON THE FLATHEAD INDIAN RESERVATION; CREATING A
 9 CONFEDERATED SALISH AND KOOTENAI TRIBES WATER RIGHTS COMPACT IMPLEMENTATION
 10 ACCOUNT; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO
 11 ADMINISTER THE ACCOUNT; PROVIDING AN APPROPRIATION; CREATING STATUTORY
 12 APPROPRIATIONS; AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF
 13 GENERAL OBLIGATION BONDS TO IMPLEMENT COMPACTS FOR THE CONFEDERATED SALISH AND
 14 KOOTENAI TRIBES, THE BLACKFEET TRIBE, AND THE FORT BELKNAP INDIAN COMMUNITY OF THE
 15 FORT BELKNAP RESERVATION AND; AMENDING SECTIONS 3-7-211, 17-7-502, 85-2-111, 85-2-114,
 16 85-2-301, 85-2-302, 85-2-306, 85-5-110, 85-20-1007, AND 85-20-1511, MCA; AND PROVIDING EFFECTIVE
 17 DATES."

18
 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20
 21 NEW SECTION. **Section 1. Water rights compact entered into by the Confederated Salish and**
 22 **Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United States**
 23 **ratified.** This Compact is entered into by and among the Confederated Salish and Kootenai Tribes of the
 24 Flathead Reservation, Montana, the State of Montana, and the United States of America to settle all existing
 25 claims to water of or on behalf of the Confederated Salish and Kootenai Tribes within the State of Montana.

26 ARTICLE I - RECITALS

27 WHEREAS, pursuant to the Hellgate Treaty of 1855, 12 Stat. 975, the Confederated Salish and Kootenai
 28 Tribes reserved the Flathead Indian Reservation; and

29 WHEREAS, the Confederated Salish and Kootenai Tribes claim aboriginal water rights and, pursuant to
 30 said Treaty, reserved water rights to fulfill the purposes of the Treaty and the Reservation; and

1 WHEREAS, in 1979, the United States, on its own behalf and on behalf of the Confederated Salish and
2 Kootenai Tribes, their members and Allottees brought suit in the United States District Court for the District of
3 Montana to obtain a final determination of the Tribes' water rights claims, see *United States v. Abell*, No.
4 CIV-79-33-M (filed April 5, 1979); and

5 WHEREAS, as a result of Congressional action and subsequent judicial interpretation, state courts have
6 been found to possess, under certain circumstances, adjudicatory jurisdiction over federal reserved water rights
7 held in trust by the United States for the benefit of Indians; see *McCarran Amendment*, 43 U.S.C. 666; *Colorado*
8 *River Water Conservation District v. United States*, 424 U.S. 800 (1976); *Arizona v. San Carlos Apache Tribe*,
9 463 U.S. 545 (1983); and

10 WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of
11 Chapter 697, Laws of Montana 1979, which includes claims regarding the Confederated Salish and Kootenai
12 Tribes' water rights; and

13 WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is
14 authorized to negotiate settlement of water rights claims filed by Indian tribes or filed on their behalf by the United
15 States claiming reserved waters within the State of Montana; and

16 WHEREAS, the Federal district court litigation was stayed in 1983 pending the outcome of Montana State
17 court water adjudication proceedings, see *Northern Cheyenne Tribe v. Adsit*, 721 F.2d 1187 (9th Cir.1983); and

18 WHEREAS, the adjudication of Confederated Salish and Kootenai Tribes' water rights in the State court
19 proceeding has been stayed while negotiations are proceeding to conclude a compact resolving all water rights
20 claims of the Confederated Salish and Kootenai Tribes; and

21 WHEREAS, the Confederated Salish and Kootenai Tribes, or their duly designated representatives, have
22 authority to negotiate the Compact and the Tribal Council has the authority to execute this Compact pursuant to
23 Article 6, Section 1, subsections (a), (c), and (u) of the Constitution and Bylaws of the Confederated Salish and
24 Kootenai Tribes said Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat.
25 984), as amended; and

26 WHEREAS, the United States Attorney General, or a duly designated official of the United States
27 Department of Justice, has authority to execute the Compact on behalf of the United States pursuant to the
28 authority to settle litigation contained in 28 U.S.C. 516-17 and the Federal legislation identified in Article VIII.B;
29 and

30 WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department

1 of the Interior, has authority to execute the Compact on behalf of the United States Department of the Interior
2 pursuant to 43 U.S.C. 1457, inter alia, and appropriate Federal legislation as identified in Article VIII.B; and

3 WHEREAS, the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States
4 agree that the Tribal Water Right and other water rights described in the Compact, subject to the provisions of
5 the Act of Congress identified in Article VIII.B, is in satisfaction of the water rights claims of the Tribes, their
6 members and Allottees, and of the United States on behalf of the Tribes and their members and Allottees; and

7 WHEREAS, the Parties agree that it is in the best interest of all Parties that the water rights claims of the
8 Confederated Salish and Kootenai Tribes be settled through agreement between and among the Tribes, the State
9 of Montana, and the United States; and

10 WHEREAS, the Parties agree that there is a clear hydrological interrelationship between the surface and
11 groundwater of the Reservation, and each use of water on the Reservation may affect water use by all water
12 users on the Reservation; and

13 WHEREAS, the Parties agree that prudent and knowledgeable conservation, management, and
14 protection of the uses of water resources of the Reservation are essential to the health and welfare of all residents
15 of the Reservation; and

16 WHEREAS, the Parties seek to secure to all residents of the Reservation the quiet enjoyment of the use
17 of waters of the Reservation for beneficial uses; and

18 WHEREAS, the Parties desire to create a unitary administration system that would provide a single
19 system for the appropriation and administration of the waters of the Reservation and for the establishment and
20 maintenance of a single system of central records for all water uses of the Reservation regardless of whether the
21 use is based on State or Federal law; and

22 NOW THEREFORE, the Parties agree to enter into the Compact for the purpose of settling the water
23 rights claims of the Confederated Salish and Kootenai Tribes, their members, and Allottees of the Flathead Indian
24 Reservation, and of the United States on behalf of the Tribes, their members and Allottees, and to provide the
25 necessary foundation for the establishment of a board composed of Tribal and State appointed representatives
26 to provide for the unified administration of all water resources on the Reservation.

27 ARTICLE II - DEFINITIONS

28 The following definitions shall apply for purposes of the Compact:

29 1. "Acre-foot" or "Acre-feet" means the amount of water necessary to cover one acre to a depth of one
30 foot and is equivalent to 43,560 cubic feet of water.

1 2. "Acre-Feet per Year" means an annual quantity of water measured in Acre-feet over a period of a
2 calendar year.

3 3. "Allottee" or "Allottees" means an owner of an interest in a tract of land held in trust by the United
4 States which was allotted pursuant to the Act of April 23, 1904, 33 Stat. 302, as amended, or the Act of February
5 25, 1920, 41 Stat. 452, as amended.

6 4. "Appropriation Right" means a right to appropriate water issued by the Water Management Board
7 pursuant to the terms of this Compact and the Law of Administration.

8 5. "Arising Under State Law" means, as applied to a water right, a water right created under Montana
9 law and does not include water rights created or defined under Federal law.

10 6. "Basin 76D" means the hydrologic Basin 76D, including the Kootenai River and its tributaries, as
11 shown in Appendix 1.

12 7. "Basin 76E" means the hydrologic Basin 76E, including Rock Creek and its tributaries, as shown in
13 Appendix 1.

14 8. "Basin 76F" means the hydrologic Basin 76F, including the Blackfoot River and its tributaries, as
15 shown in Appendix 1.

16 9. "Basin 76G" means the hydrologic Basin 76G, including the Clark Fork River above the Blackfoot
17 River, and its tributaries, as shown in Appendix 1.

18 10. "Basin 76GJ" means the hydrologic Basin 76GJ, including Flint Creek and its tributaries, as shown
19 in Appendix 1.

20 11. "Basin 76H" means the hydrologic Basin 76H, including the Bitterroot River and its tributaries, as
21 shown in Appendix 1.

22 12. "Basin 76I" means the hydrologic Basin 76I, including the Middle Fork of the Flathead River and its
23 tributaries, as shown in Appendix 1.

24 13. "Basin 76J" means the hydrologic Basin 76J, including the South Fork of the Flathead River and its
25 tributaries, as shown in Appendix 1.

26 14. "Basin 76K" means the hydrologic Basin 76K, including the Swan River and its tributaries, as shown
27 in Appendix 1.

28 15. "Basin 76L" means the hydrologic Basin 76L, including the Flathead River below Flathead Lake, and
29 its tributaries, as shown in Appendix 1.

30 16. "Basin 76LJ" means the hydrologic Basin 76LJ, including the Flathead River to and including Flathead

1 Lake, and its tributaries, as shown in Appendix 1.

2 17. "Basin 76M" means the hydrologic Basin 76M, including the Clark Fork River between the Blackfoot
3 River and the Flathead River, and its tributaries, as shown in Appendix 1.

4 18. "Basin 76N" means the hydrologic Basin 76N, including the Clark Fork River below the Flathead
5 River, and its tributaries, as shown in Appendix 1.

6 19. "Call" means the right of the holder of a water right with a senior priority date and an immediate need
7 for a use of water to require a holder of a water right with a junior priority date to refrain from appropriating water
8 otherwise physically available until the senior water right is satisfied.

9 20. "cfs" means cubic feet per second.

10 21. "Change in Use" means an authorized change in the point of diversion, the place of use, the period
11 of use, the purpose of use, or the place of storage of an Appropriation Right issued by the Water Management
12 Board under this Compact and the Law of Administration, or of an Existing Use. A changed water right retains
13 the original priority date of that right.

14 22. "Compact" means this water rights settlement entered into by the Confederated Salish and Kootenai
15 Tribes, the State and the United States.

16 23. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor
17 agency.

18 24. "Effective Date" means the date on which the Compact is finally approved by the Tribes, by the State,
19 and by the United States, and on which the Law of Administration has been enacted and taken effect as the law
20 of the State and the Tribes, whichever date is latest.

21 25. "Existing Use" means a use of water under color of Tribal, State or Federal law in existence as of the
22 Effective Date, including uses in existence on that date that are eligible for either of the registration processes
23 set forth in the Law of Administration; provided that any portion of a Water Right Arising Under State Law within
24 the Reservation that is, at any point after the date the ratification of the Compact by the Montana legislature takes
25 effect under State law, voluntarily relinquished or is legally determined to be abandoned, relinquished, or have
26 otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State
27 Law and be entitled to no further protection as such a right or as an Existing Use.

28 26. "Farm Turnout Allowance" or "FTA" means the volume of water that each acre of land served by the
29 FIIP is entitled to have applied to it in a given irrigation season, as determined by the Project Operator pursuant
30 to the FIIP Water Use Agreement.

1 27. "Flathead Indian Irrigation Project" or "FIIP" means the irrigation project developed by the United
2 States to irrigate lands within the Reservation pursuant to the Act of April 23, 1904, Public Law 58-159, 33 Stat.
3 302 (1904), and the Act of May 29, 1908, Public Law 60-156, 35 Stat. 441 (1908), and includes, but is not limited
4 to, all lands, reservoirs, easements, rights-
5 of-way, canals, ditches, laterals, or any other FIIP facilities, whether situated on or off the Reservation, headgates,
6 pipelines, pumps, buildings, heavy equipment, vehicles, supplies, records or copies of records and all other
7 physical, tangible objects, whether of real or personal property, used in the management and operation of the
8 FIIP.

9 28. "FIIP Influence Area" means the area encompassing the lands served by diversion works that are
10 directly influenced by the operations of the FIIP as identified on the map attached hereto as Appendix 2.

11 29. "FIIP Water Use Agreement" means the agreement entered into by the Tribes, the Flathead Joint
12 Board of Control, and the United States, which specifies the administration of FIIP and FIIP-related instream and
13 irrigation portions of the Tribal Water Right, and which contains ancillary agreements, as attached hereto as
14 Appendix 3.

15 30. "Flathead Indian Reservation" or "Reservation" means all land within the exterior boundaries of the
16 Indian Reservation established under the July 16, 1855 Treaty of Hellgate (12 Stat. 975), notwithstanding the
17 issuance of any patent, and including rights-of-way running through the Reservation.

18 31. "Flathead Joint Board of Control" means the Flathead Joint Board of Control, the operating agent of
19 the Flathead, Mission, and Jocko Valley Irrigation Districts, local governments under Montana law.

20 32. "Flathead Reservation Water Management Board" or "Board" means the entity established by this
21 Compact and the Law of Administration to administer the use of all water rights on the Reservation upon the
22 Effective Date.

23 33. "Flathead System Compact Water" means that portion of the Tribal Water Right consisting of 229,383
24 Acre-feet per year that the Tribes may withdraw from the Flathead River or Flathead Lake, which includes up to
25 90,000 Acre-feet per year stored in Hungry Horse Reservoir, with a maximum total volume consumed of 128,158
26 Acre-feet per year.

27 34. "Groundwater" means any water that is beneath the surface of the earth.

28 35. "High Mountain Lakes" means those lakes shown in Appendix 17.

29 36. "Hungry Horse Dam" means the dam that is a part of the Hungry Horse Project.

30 37. "Hungry Horse Project" means that project authorized by the Act of June 5, 1944 (58 Stat. 270, Public

1 Law 78-329) to be constructed and operated by the US Bureau of Reclamation. The Act of May 29, 1958 (Public
2 Law 85-428) amended the authorizing act to make Hungry Horse a Reclamation project subject to Reclamation
3 laws.

4 38. "Hungry Horse Reservoir" means the reservoir that is a part of the Hungry Horse Project.

5 39. "Individual Indian Owner" means a Tribal member and his or her heirs or an Allottee and his or her
6 heirs who is an owner of trust or restricted lands and who has a documented use of the Tribal Water Right
7 registered pursuant to the terms of this Compact and the Law of Administration.

8 40. "Instream Flow" means a stream flow retained in a watercourse to benefit the aquatic environment.
9 Instream Flow may include natural flow or streamflow modified by regulation, diversion, or other modification.

10 41. "Law of Administration" means the body of laws enacted by both the State and the Tribes to provide
11 for the administration of surface water and Groundwater within the Reservation, as well as those waters that
12 appertain to the operation and maintenance of the FIIP that have been diverted or transported onto the
13 Reservation for FIIP purposes, that are both materially consistent with the substantive provisions of Appendix 4.

14 42. "Lease" means, as applied to the Tribal Water Right, to authorize a Person or Persons to use any
15 part of the Tribal Water Right through a service contract, temporary assignment, or other similar agreement of
16 limited duration.

17 43. "MFWP" means the Montana Department of Fish, Wildlife, and Parks, or any successor agency.

18 44. "New Development" means the development of a use of the Tribal Water Right set forth in the
19 Compact, from any source, commencing after the Effective Date, and encompasses all uses of the Tribal Water
20 Right not included within the definition of Existing Use.

21 45. "Parties" means the Tribes, the State, and the United States.

22 46. "Person" means an individual or any other entity, public or private, including the Tribes, the State, and
23 the United States, and all officers, agents and departments of each sovereign.

24 47. "Project Operator" means that entity with the legal authority and responsibility to operate the Flathead
25 Indian Irrigation Project.

26 48. "Secretary" means the Secretary of the United States Department of the Interior, or the Secretary's
27 duly authorized representative.

28 49. "State" means the State of Montana and all officers, agencies, departments and political subdivisions
29 thereof.

30 50. "Stock Water" means water used for livestock.

1 of this Compact. The language of the abstracts, including all informational remarks, shall control in the event of
2 any inconsistency between the Compact and the abstracts of water right; provided however, that the Parties upon
3 written mutual agreement may make technical corrections to the abstracts prior to the Parties submission to the
4 Montana Water Court of the motion for entry of the Proposed Decree identified in Article VII.B. Such technical
5 corrections are pursuant to, and shall not be deemed a modification or amendment of, this Compact.

6 C. Basins 76L and 76 LJ and Flathead Indian Irrigation Project Irrigation Water Diversions from Basins
7 76F and 76N.

8 1. Quantification.

9 a. Flathead Indian Irrigation Project. The Tribes have the right to water that is supplied to the Flathead
10 Indian Irrigation Project to be used for such purposes in such volumes and flow rates and from such sources of
11 supply as identified in abstracts of water right attached hereto as Appendix 5 to this Compact. The exercise of
12 this portion of the Tribal Water Right is subject to the FIIP Water Use Agreement entered into by the Tribes, the
13 Flathead Joint Board of Control, and the United States. That Agreement is attached to this Compact as Appendix
14 3.

15 The priority date for the portion of the Tribal Water Right used by the FIIP is July 16, 1855.

16 b. Existing Uses by the Tribes, their Members and Allottees.

17 i. The Tribal Water Right includes all existing uses by the Tribes, their members and Allottees that are
18 not Water Rights Arising Under State Law and are not otherwise specifically quantified in other sections of this
19 Article III.

20 ii. Water Rights Arising Under State Law held by the Tribes, their Members and Allottees will be satisfied
21 pursuant to their own terms as finally decreed by the Montana Water Court or permitted by the DNRC.

22 iii. For each existing use identified in this Article III.C.1.b.i to be valid and enforceable, the Tribes, or each
23 Tribal member or Allottee claiming such an existing use shall complete the process for the registration of uses
24 of the Tribal Water Right set forth in the Law of Administration. Such uses include but are not limited to irrigation,
25 Stock Water, domestic, commercial, municipal and industrial, as well as those historically irrigated allotments that
26 are held by individuals in trust by the United States that are not served by the FIIP that are identified on the map
27 and table attached hereto as Appendix 6.

28 iv. Uses of the Tribal Water Right for which abstracts are appended to this Compact, including uses on
29 the FIIP, are exempt from the registration requirement set forth in Article III.C.1.b.iii.

30 v. The priority date for water uses registered pursuant to Article III.C.1.b.iii and the Law of Administration

1 is July 16, 1855.

2 c. Flathead System Compact Water. The Tribes have a direct flow water right from the Flathead River
3 with the following elements:

4 Source of Water: Flathead River, Flathead Lake, and the South Fork of the Flathead River up to Hungry
5 Horse Reservoir

6 Point of Diversion: From Flathead Lake or the Flathead River, either on or off of the Reservation

7 Purpose: Any beneficial use

8 Diversion Volume: 229,383 Acre-feet per year

9 Depletion Volume: 128,158 Acre-feet per year

10 Period of Diversion and Depletion: January 1 through December 31

11 i. As part of the Tribal Water Right quantified in this Article III.C.1.c, the Tribes shall be entitled to an
12 allocation of 90,000 Acre-feet per year, as measured at the Hungry Horse Dam, of storage water in Hungry Horse
13 Reservoir.

14 ii. This water right shall be used in a manner that ensures impacts associated with the exercise of this
15 water right are such that those impacts are no greater than those identified in model run: Natural Q + 90K of the
16 United States Bureau of Reclamation's Final Flathead Basin Depletions Study (USBR, October 2012), appended
17 hereto as Appendix 7. In the event that the impacts exceed those identified in model run: Natural Q + 90K of the
18 United States Bureau of Reclamation's Final Flathead Basin Depletions Study, the use of the water right set forth
19 in this Article III.C.1.c shall be reduced in such amounts as are necessary to immediately achieve impacts that
20 are no greater than those identified in model run: Natural Q + 90K of the United States Bureau of Reclamation's
21 Final Flathead Basin Depletions Study.

22 iii. The releases of the stored water identified in Article III.C.1.c.i shall be limited in accordance with the
23 "Biological Impact Evaluation and Operational Constraints for a proposed 90,000 Acre-foot withdrawal" (State
24 of Montana, September 14, 2011) appended hereto as Appendix 8. The Parties upon mutual written agreement,
25 and in conformance with other applicable provisions of law including but not limited to the Endangered Species
26 Act of 1973, 16 U.S.C. 1531, et seq., may amend the Biological Impact Evaluation Constraints identified in the
27 September 14, 2011 report. Such amendments are pursuant to, and shall not be deemed a modification or
28 amendment of, this Compact.

29 iv. The exercise of this water right shall conform with the minimum instream flow schedules, as measured
30 at the USGS gaging station on the Flathead River at Columbia Falls (12363000) and the USGS gaging station

1 on the Flathead River at Polson (12372000) as identified in Tables 3 through 6 of the United States Bureau of
2 Reclamation's Final Flathead Basin Depletions Study, as well as the minimum flow requirements set forth in Table
3 5 must also be met downstream at USGS gaging station on the Flathead River at Perma (123887000). The
4 exercise of this water right shall also conform to the ramping rates, as measured below Kerr and Hungry Horse
5 Dams, and identified in Tables 3 through 6 of the United States Bureau of Reclamation's Final Flathead Basin
6 Depletions Study. In the event that the minimum instream flow schedules or ramping rates are not met, the use
7 of the water right set forth in this Article III.C.1.c shall be suspended until such time as those minimum instream
8 flow schedules and ramping rates are achieved. The Parties upon mutual written agreement, and in conformance
9 with applicable Endangered Species Act and Federal Energy Regulatory Commission licensing requirements for
10 the three previously identified sites, may amend the limitations for releases from Hungry Horse Reservoir that
11 are required to conform with minimum instream flow and ramping rate schedules at these sites. Such
12 amendments are pursuant to, and shall not be deemed a modification or amendment of, this Compact.

13 v. The exercise of this water right shall also conform with the Flathead Lake filling criteria identified on
14 page 12 of the United States Bureau of Reclamation's Final Flathead Basin Depletions Study.

15 vi. The Tribes may use any amount of the stored water identified in Article III.C.1.c.i that is not necessary
16 to be released each year pursuant to the provisions of Article III.C.1.c.ii-v, for any beneficial purpose, subject to
17 the terms and conditions of this Compact, including the total diversion and depletion volumes associated with the
18 water right set forth in this Article III.C.1.c.

19 vii. Use of the 90,000 Acre-feet of water from Hungry Horse Reservoir is subject to the approval of, and
20 any terms and conditions specified by, Congress.

21 viii. The priority date for Flathead System Compact Water is July 16, 1855.

22 ix. Any development by the Tribes of this Flathead System Compact Water Right outside the boundaries
23 of the Reservation shall be pursuant to Article IV.B.5.c.

24 x. The abstract of water right for this Flathead System Compact Water Right is attached hereto as
25 Appendix 9.

26 d. Instream Flow Rights on Reservation.

27 i. Natural Nodes. The Tribes have Instream Flow rights in the quantities and locations identified in the
28 abstracts of water right attached hereto as Appendix 10.

29 ii. FIIP Nodes. The Tribes have Instream Flow rights in the quantities and locations identified in the
30 abstracts of water right attached hereto as Appendix 11. The exercise of these rights is subject to the provisions

1 of the FIIP Water Use Agreement entered into by the Tribes, the Flathead Joint Board of Control, and the United
2 States.

3 iii. Other Instream Flows. The Tribes have Instream Flow rights in the quantities and locations identified
4 in the abstracts of water right attached hereto as Appendix 12. The Tribes shall defer the enforcement of each
5 of these rights until an enforceable flow schedule for that right has been established pursuant to the process set
6 forth in the Law of Administration for the development of such enforceable schedules.

7 iv. Interim Instream Flows. Until such time as the Instream Flow water rights set forth in Article III.C.1.d.ii
8 become enforceable, the Tribes shall be entitled to enforce those interim instream flows established pursuant to
9 Joint Board of Control v. United States, 832 F.2d 1127, cert. denied, 486 U.S. 1007(1988), in any stream subject
10 to those interim instream flows. These interim instream flows are identified in the document attached hereto as
11 Appendix 13. The Tribes and the United States shall enforce these interim instream flows only pursuant to
12 existing practice as of November 1, 2012, as described in the protocols attached hereto as Appendix 14. If
13 operational or other improvements agreed to by the Tribes and Project Operator lead to greater interim instream
14 flows, then those instream flows will also be enforceable only pursuant to existing practice as of November 1,
15 2012, as described in the protocols attached hereto as Appendix 14. Once the Instream Flow water rights set
16 forth in Article III.C.1.d.ii become enforceable for any stream identified in this Article III.C.1.d.iv, the interim
17 instream flow for that stream shall cease to be effective in the relationship identified in Appendix 13.

18 v. The priority date for the Instream Flow water rights set forth in this Article III.C.1.d is time immemorial.

19 e. Minimum Pool Elevations in Flathead Indian Irrigation Project Reservoirs. The Tribes have the right
20 to water necessary to maintain minimum pool water levels for FIIP reservoirs in the quantities and locations set
21 forth in the table and abstracts of water right appended hereto as Appendix 15. The exercise of these rights is
22 subject to the restrictions of the Bureau of Indian Affairs' annual review of reservoir operations.

23 The priority date for the water rights set forth in this Article III.C.1.e is July 16, 1855.

24 f. Wetland Water Right. The Tribes have the right to all naturally occurring water necessary to maintain
25 the Wetlands identified in the abstracts of water right attached hereto as Appendix 16.

26 The priority date for the Wetlands water rights set forth in this Article III.C.1.f is time immemorial.

27 g. High Mountain Lakes Water Right. The Tribes have the right to all naturally occurring water necessary
28 to maintain the High Mountain Lakes identified in the abstracts of water right attached hereto as Appendix 17.

29 The priority date for the High Mountain Lakes water rights set forth in this Article III.C.1.g is time
30 immemorial.

1 h. Flathead Lake. The Tribes have the right to all naturally occurring water necessary to maintain the
2 level of the entirety of Flathead Lake at an elevation of 2,883 feet above mean sea level as described in the
3 abstract of water right attached hereto as Appendix 18.

4 The priority date for the water right set forth in this Article III.C.1.h is time immemorial.

5 i. Boulder Creek Hydroelectric Project. The Tribes have the right to water necessary to operate the
6 Boulder Creek Hydroelectric Project as identified in the abstracts of water right attached hereto as Appendix 19.

7 The priority date for the Boulder Creek Hydroelectric Project water right set forth in this Article III.C.1.i
8 is July 16, 1855.

9 j. Hellroaring Hydroelectric Project. The Tribes have the water right to water necessary to operate the
10 Hellroaring Hydroelectric Project as identified in the abstracts of water right attached hereto as Appendix 20.

11 The priority date for the Hellroaring Hydroelectric Project water right set forth in this Article III.C.1.j is July
12 16, 1855.

13 k. Wetlands Appurtenant to Lands Owned by Montana Fish Wildlife and Parks.

14 i. The Tribes and MFWP have the right to all naturally occurring water necessary to maintain the
15 Wetlands identified in the abstracts of water right attached hereto as Appendix 21.

16 The priority date for Wetland water rights appurtenant to lands owned by MFWP is time immemorial.

17 ii. Upon the Effective Date, the Tribes shall be added as a co-owner with MFWP of water right number
18 76L 153988-00, the abstract of which is attached hereto as Appendix 22. MFWP shall make reasonable efforts
19 to defend this right in the Montana General Stream Adjudication. The Tribes have the right but not the duty to
20 participate in the defense of this right in the Adjudication.

21 iii. The Tribes shall be added in an expeditious manner as a co-owner to any water right with a fish or fish
22 and wildlife purpose that is appurtenant to land acquired by MFWP on the Reservation after the Effective Date.

23 iv. The Tribes shall be added in an expeditious manner as a co-owner to any Wetlands water right
24 acquired by MFWP pursuant to the Law of Administration.

25 v. MFWP shall be the sole entity entitled to manage the water rights identified in Article III.C.1.k. The
26 recognition of these co-owned water rights does not confer on the Tribes any authority over the management of
27 the MFWP-owned lands to which these water rights are appurtenant. MFWP shall meet and confer with the Tribes
28 on a biennial basis, or on such other timeframe as the Tribes and MFWP may mutually agree, to discuss the
29 exercise of these water rights.

30 I. Wetlands Appurtenant to Lands Owned by Department of Interior Fish and Wildlife Service.

1 i. The Tribes and DOI FWS have the right to all naturally occurring water necessary to maintain the
2 Wetlands identified in the abstracts of water right attached hereto as Appendix 23.

3 The priority date for Wetland water rights appurtenant to lands owned by DOI FWS is time immemorial.

4 ii. Upon the Effective Date, the Tribes shall be added as a co-owner with DOI FWS of water right numbers
5 76L 99338 00, 76L 99339 00, and 76L 99340 00, the abstracts of which are attached hereto as Appendix 24. DOI
6 FWS shall make reasonable efforts to defend this right in the Montana General Stream Adjudication. The Tribes
7 have the right but not the duty to participate in the defense of this right in the Adjudication.

8 iii. The Tribes shall be added in an expeditious manner as a co-owner to any water right with a fish or fish
9 and wildlife purpose that is appurtenant to land acquired by DOI FWS on the Reservation after the Effective Date.

10 iv. The Tribes shall be added in an expeditious manner as a co-owner to any Wetlands water right
11 acquired by DOI FWS pursuant to the Law of Administration.

12 v. DOI FWS shall be the sole entity entitled to manage the water rights identified in this Article III.C.1.I.
13 The recognition of these co-owned water rights does not confer on the Tribes any authority over the management
14 of the DOI FWS-owned lands to which these water rights are appurtenant.

15 vi. DOI FWS shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the
16 Tribes and DOI FWS may mutually agree, to discuss the exercise of these water rights.

17 D. Instream Flow Water Rights Off of the Reservation.

18 1. Mainstem Instream Flow Right in the Kootenai River (Basin 76D). The Tribes have an Instream Flow
19 water right for the mainstem of the Kootenai River for the reach and with the associated flow rates set forth in the
20 abstract of water right attached hereto as Appendix 25. The measurement point for this water right is USGS
21 streamflow gage #12305000 located at Leonia, Idaho.

22 a. The priority date for this water right is time immemorial.

23 b. The period of use of this water right is January 1 to December 31 of each year.

24 c. The purpose of this water right is for the maintenance and enhancement of fish habitat. This right shall
25 not be changed to any other or additional purpose.

26 d. The point of diversion and place of use for this water is instream. This water right shall not be
27 exercised in conjunction with any artificial diversion.

28 e. The ability to enforce this right shall be suspended so long as Libby Dam remains in existence and
29 the Army Corps of Engineers' operations of that dam are conducted consistently with the 2008 Federal Columbia
30 River Power System Biological Opinion, and the 2010 updated Biological Opinion, specifically as described in

1 Reasonable and Prudent Alternative Action (RPA) No. 4 (Storage Project Operations), Table No. 1 (Libby Dam),
2 including the Northwest Power and Conservation Council's 2003 mainstem amendments to the Columbia River
3 Basin Fish and Wildlife Program, or any subsequent Biological Opinion(s) governing the same RPAs and
4 Operations.

5 f. In the event of changes to the U.S. Army Corps of Engineers' (Corps) responsibilities under the
6 Endangered Species Act of 1973, 16 U.S.C. 1531, et seq. (ESA), such as the delisting of resident and
7 anadromous fish species, that no longer require the Corps to operate Libby Dam pursuant to ESA section 7
8 biological opinions or other substantive ESA requirements, the United States, acting through the Corps, the
9 Tribes, and the State shall establish written protocols and understandings on meeting and enforcing the Tribes'
10 mainstem Instream Flow right in the Kootenai River while also ensuring that the Corps' operations of Libby Dam
11 meet all Federal statutory and regulatory requirements and obligations. Provided however, that any such
12 enforcement protocol shall not alter the limitations on Call set forth in Article III.D.1.g.

13 g. Should the suspension on enforcement set forth in Article III.D.1.e be lifted due to the removal of Libby
14 Dam, this water right may be exercised to make a Call only against junior users whose point of diversion is from
15 the mainstem of the Kootenai River and not its tributaries, the purpose of whose rights is irrigation and whose
16 source of supply is surface water, or against junior users the purpose of whose rights is irrigation, whose source
17 of supply is Groundwater that is connected to the mainstem of the Kootenai River, and whose flow rate is greater
18 than 100 gallons per minute.

19 h. Call may be made only when the average daily flow drops below the enforceable level for the previous
20 24-hour period.

21 2. Mainstem Instream Flow Right in the Swan River (Basin 76K). The Tribes have an Instream Flow
22 water right for the reach of the mainstem of the Swan River with the associated flow rates set forth in the abstract
23 of water right attached hereto as Appendix 26. The measurement point for this water right is USGS streamflow
24 gage #12370000 located immediately below Swan Lake near Big Fork, Montana.

25 a. The priority date for this water right is time immemorial.

26 b. The period of use of this water right is January 1 to December 31 of each year.

27 c. The purpose of this water right is for the maintenance and enhancement of fish habitat. This right shall
28 not be changed to any other or additional purpose.

29 d. The point of diversion and place of use for this water right is instream. This water right shall not be
30 exercised in conjunction with any artificial diversion.

1 e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce
2 this water right only against junior users the purpose of whose rights is irrigation and whose source of supply is
3 surface water, or against junior users the purpose of whose rights is irrigation, whose source of supply is
4 Groundwater connected to surface sources in Basin 76K and whose flow rate is greater than 100 gallons per
5 minute.

6 f. Call may be made only when the average daily flow drops below the enforceable level for the previous
7 24-hour period.

8 3. Mainstem Instream Flow Right in the Lower Clark Fork River (Basin 76M and 76N). The Tribes have
9 a 5000 cfs Instream Flow water right for the reach of the mainstem of the Clark Fork River as set forth in the
10 abstract of water right attached hereto as Appendix 27. The measurement point for this water right is USGS
11 streamflow gage #12391950 located immediately below Cabinet Gorge Dam in Idaho.

12 a. The priority date for this water right is time immemorial.

13 b. The period of use of this water right is January 1 to December 31 of each year.

14 c. The purpose of this water right is for the maintenance and enhancement of fish habitat. This right shall
15 not be changed to any other or additional purpose.

16 d. The point of diversion and place of use for this water right is instream. This water right shall not be
17 exercised in conjunction with any artificial diversion.

18 e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce
19 this water right only against junior users whose point of diversion is from the mainstem of the Clark Fork River
20 and not its tributaries, the purpose of whose rights is irrigation and whose source of supply is surface water, or
21 against junior users the purpose of whose rights is irrigation, whose source of supply is Groundwater connected
22 to the mainstem of the Clark Fork River and whose flow rate is greater than 100 gallons per minute.

23 f. Call may be made only when the average daily flow drops below the enforceable level for the previous
24 24-hour period.

25 g. For so long as the Cabinet Gorge and Noxon Dams remain in existence, the enforceable level of this
26 right is a flow rate equal to the lesser of 5000 cfs or the minimum flow level established by the FERC as a
27 condition on the license for the Cabinet Gorge and Noxon Dams as that license condition may be modified over
28 time.

29 4. Co-ownership of Instream and Public Recreation Water Rights Held by MFWP.

30 a. Upon the Effective Date, the Tribes shall be added as a co-owner with MFWP of the Water Rights

1 Arising Under State Law held by MFWP for Instream Flow and recreation purposes that are identified on the
2 tables attached hereto as Appendix 28 and Appendix 29. Nothing in this co-ownership changes any of the other
3 elements of these Water Rights Arising Under State Law, including their priority dates or flow rates.

4 i. The Water Rights Arising Under State Law identified in Appendix 28 shall be included as part of the
5 proposed decree to be filed with the Montana Water Court pursuant to Article VII.B.1.

6 ii. The Water Rights Arising Under State Law identified in Appendix 29 shall proceed through the Montana
7 General Stream Adjudication as though they were not included in this Compact. MFWP shall make reasonable
8 efforts to defend each of these rights identified in Appendix 29 in the Montana General Stream Adjudication. The
9 Tribes have the right but not the duty to participate in the defense of these rights in the Adjudication.

10 b. As co-owners, the Tribes and MFWP shall meet and confer on a biennial basis, or on such other
11 timeframe as the Tribes and MFWP may mutually agree, to discuss the exercise of the rights identified in Article
12 III.D.4.a, with a goal of establishing a joint plan for the exercise of these rights. Notwithstanding this planning
13 process, the Tribes and MFWP each retain(s) the unilateral right to exercise each water right identified in Article
14 III.D.4.a as each deem(s) appropriate, but neither the Tribes nor MFWP has any affirmative duty to take any
15 particular action in regard to the exercise of any of these rights.

16 5. Co-ownership of Water Right Number 76M 94404-00 (Milltown Dam) in Basin 76G (Upper Clark Fork).

17 a. Upon the date the ratification of this Compact by the Montana legislature becomes effective under
18 State law, Water Right Arising Under State Law number 76M 94404-00 is changed as follows: the right is split
19 into two separate active and enforceable Water Rights Arising Under State Law, 76M 94404-01 and 76M
20 94404-02, and the original water right elements shall be changed to support the maintenance and enhancement
21 of fish habitat and shall take the form of two enforceable hydrographs. The elements of the changed and split
22 water right are set forth in the two water rights abstracts attached hereto as Appendix 30. The measurement
23 point for 76M 94404-01 will move upstream along the Clark Fork River to USGS gage #12334550 at Turah,
24 Montana, and the measurement point for 76M 94404-02 will move upstream along the Blackfoot River to USGS
25 gage #1234000 at Bonner, Montana.

26 i. The period of use of this water right is January 1 to December 31 of each year.

27 ii. The point of diversion and place of use for this water right is instream.

28 iii. This water right shall not be exercised in conjunction with any artificial diversion.

29 iv. MFWP, and the Tribes after they become co-owners, and subject to the limitation on enforcement set
30 forth in Article III.D.5.c, shall be entitled to make a Call to enforce this water right only against junior users the

1 purpose of whose rights is irrigation and whose source of supply is surface water, or against junior users the
2 purpose of whose rights is irrigation, whose source of supply is Groundwater and whose flow rate is greater than
3 100 gallons per minute.

4 v. The enforceable levels of this water right are identified in the table attached hereto as Appendix 31.
5 The minimum enforceable level of this right is 700 cfs at the location of USGS gage #1234000 at Bonner, and
6 500 cfs at the location of USGS gage #12334550 at Turah.

7 vi. Call may be initiated on the day following a five-consecutive-day-period where four out of five average
8 daily river flows fall below their respective daily enforceable hydrographs values; Call may persist until such time
9 as two average daily flows of the previous five-consecutive-day-period are in excess of their respective
10 enforceable hydrograph's values.

11 b. Upon the Effective Date, the Tribes shall be a co-owner with MFWP of this water right. As co-owners,
12 the Tribes and MFWP shall meet and confer on a biennial basis, or on such other timeframe as the Tribes and
13 MFWP may mutually agree to, regarding the exercise of these rights, with a goal of establishing a joint plan for
14 the exercise of this right. Notwithstanding this planning process, the Tribes and MFWP each retains the unilateral
15 right to exercise this water right as each deems appropriate, but neither the Tribes nor MFWP has any affirmative
16 duty to take any particular action in regard to the exercise of this right.

17 c. The ability to enforce this right shall be suspended for a period of 10 years from the date the ratification
18 of this Compact by the Montana legislature becomes effective under State law. During and after this period, the
19 Tribes and MFWP shall engage with other stakeholders in the Upper Clark Fork Basin on water management
20 subjects including, but not limited to, drought planning and the exercise of this water right in conjunction with the
21 other water rights in the Basin.

22 d. For any analysis of the legal availability of water in the Upper Clark Fork Basin, this right shall be
23 considered to have a year-round flow rate of 2000 cfs as measured at the location of USGS gauge #12340500
24 below the confluence of the Blackfoot and Clark Fork Rivers.

25 e. No owner of this water right, acting independently or jointly, shall be entitled to lease, sell or change
26 the purpose of this water right.

27 f. The Water Rights Arising Under State Law identified in this Article III.D.5 shall be finally decreed as
28 part of the decree of this Compact that will be proposed to the Montana Water Court pursuant to Article VII.B.

29 6. Contract Rights to Stored Water Held by MFWP in Basin 76H (Bitterroot).

30 a. MFWP is a party to two contracts for the delivery of stored water from Painted Rocks Reservoir:

1 MFWP Water Purchase Contract Painted Rocks, between MFWP and DNRC, July 12, 2004 (attached hereto as
2 Appendix 32); and Water Purchase Contract, March 5, 1958, as amended on March 5, 1958 (attached hereto
3 as Appendix 33). In the event that MFWP obtains an ownership interest in any water rights pursuant to these
4 contracts or obtains an ownership interest in any water rights pursuant to any future contract for the delivery of
5 water from Painted Rocks Reservoir, MFWP shall take all steps necessary to vest the Tribes as a co-owner of
6 said water rights in an expeditious manner.

7 b. MFWP is a party to a contract for the delivery of stored water from Lake Como: Agreement Between
8 the Bitterroot Irrigation District and the United States Department of the Interior, Bureau of Reclamation for the
9 Operation of the Enlarged Storage Pool at Lake Como, July, 1994 (attached hereto as Appendix 34). In the event
10 that MFWP obtains an ownership interest in any water rights pursuant to this contract, or obtains an ownership
11 interest in any water rights pursuant to any future contract for delivery of water from Lake Como, MFWP shall take
12 all steps necessary to vest the Tribes as a co-owner of said water rights in an expeditious manner.

13 c. MFWP shall manage the Painted Rocks and Como contract rights, in a prudent, biologically based
14 and environmentally sound manner, and within the terms and conditions of these contracts. MFWP will manage
15 in the same manner any future contracts for the delivery of water from Painted Rocks or Lake Como to which
16 MFWP becomes a party. The Tribes are an intended beneficiary of MFWP's management of these contracts, and
17 have the right to challenge MFWP's management decisions in a court of competent jurisdiction.

18 d. MFWP shall meet and confer with the Tribes on a biennial basis, or on such other timeframe as the
19 Tribes and MFWP may mutually agree to, regarding the management of these contract rights. If the Tribes
20 become co-owners of any water right pursuant to this Article III.D.6 of the Compact, the Tribes and MFWP shall
21 each retain the independent right to exercise each water right as each deems appropriate. Neither the Tribes nor
22 MFWP has any affirmative duty to take any particular action in regard to the exercise of any of such rights. The
23 Tribes do not assume any liability arising out of or resulting from any of the contracts identified in this Article
24 III.D.6 pertaining to co-ownership of rights to stored water in Basin 76H.

25 7. Instream Flow Right on the North Fork of Placid Creek (Basin 76F). The Tribes have an Instream Flow
26 water right for the upper reach of the North Fork of Placid Creek with the associated flow rates set forth in the
27 abstract of water right attached hereto as Appendix 35. The measurement point for this water right shall be within
28 the main channel of the North Fork of Placid Creek, below the North Fork Placid Creek FIIP Diversion as located
29 within the SE 1/4 of the NW 1/4 of the SE 1/4 of Section 29 in Township 17 North Range 16 West.

30 a. The priority date for this water right is time immemorial.

- 1 b. The period of use of this water right is January 1 to December 31 of each year.
- 2 c. The purpose of this water right is for the maintenance and enhancement of fish habitat. This right shall
3 not be changed to any other or additional purpose.
- 4 d. The point of diversion and place of use for this water right is instream. This water right shall not be
5 exercised in conjunction with any artificial diversion.
- 6 e. The Tribes, and/or the United States on behalf of the Tribes, shall be entitled to make a Call to enforce
7 this water right only against junior users the purpose of whose rights is irrigation and whose source of supply is
8 surface water of Placid Creek, or against junior users the purpose of whose rights is irrigation, whose source of
9 supply is Groundwater connected to Placid Creek and whose flow rate is greater than 100 gallons per minute.
- 10 f. Call may be made only when the average daily flow drops below the enforceable level for the previous
11 24-hour period.
- 12 g. The exercise of this portion of the Tribal Water Right is subject to the provisions of the FIIP Water Use
13 Agreement entered into by the Tribes, the Flathead Joint Board of Control, and the United States.
- 14 8. Instream Flow Rights on Kootenai River Tributaries (Basin 76D). The Tribes have Instream Flow water
15 rights for the reaches of the Kootenai River tributaries Big Creek, Boulder Creek, Steep Creek and Sutton Creek,
16 with the associated flow rates set forth in the abstracts of water right attached hereto as Appendix 36.
- 17 a. The priority date for this water right is time immemorial.
- 18 b. The period of use of this water right is January 1 to December 31 of each year.
- 19 c. The purpose of this water right is for the maintenance and enhancement of fish habitat. This right shall
20 not be changed to any other or additional purpose, changed to consumptive use, or transferred to different
21 ownership.
- 22 d. The point of diversion and place of use for this water right is instream. This water right shall not be
23 exercised in conjunction with any artificial diversion.
- 24 e. Water rights held by the United States Forest Service pursuant to the United States Forest
25 Service-Montana Water Rights Compact, 85-20-1401, MCA, shall not be subject to Call by the Tribes and/or the
26 United States on behalf of the Tribes.
- 27 f. The recognition of the Instream Flow water rights in this Article III.D.8 does not confer on the Tribes
28 any authority over the management of National Forest System lands within Basin 76D, or any claim to ownership
29 or other rights in that land. With the exception of future diversionary uses by the United States on National Forest
30 System lands in excess of the Forest Service's reserved rights identified in Article III.D.8.e, the Tribes hold the

1 United States harmless for delivery of water or maintenance of flows to meet this instream flow right in Basin 76D.

2 E. Period of Use. The period of use of the Tribal Water Right set forth in this Article III shall be January
3 1 to December 31 of each year, provided however, that any portion of that water right that is dedicated to
4 seasonal use, including irrigation use, shall have a period of use as set forth in the registration of such right
5 pursuant to the Law of Administration, if applicable, or as otherwise provided in the abstract of any such water
6 right, or in the FIIP Water Use Agreement attached hereto as Appendix 3.

7 F. Points and Means of Diversion. The points and means of diversion for use of the Tribal Water Right
8 set forth in this Article III are as set forth in the abstracts of water rights attached to this Compact or as may be
9 provided for under the Law of Administration.

10 G. Call Protection.

11 1. Non-Irrigators. The Tribes, on behalf of themselves and the users of any portion of the Tribal Water
12 Right set forth in this Compact, and the United States agree to relinquish their right to exercise the Tribal Water
13 Right to make a Call against any Water Right Arising Under State Law whose purpose(s) do(es) not include
14 irrigation.

15 2. Groundwater Irrigators with Flow Rates Less Than 100 Gallons Per Minute. The Tribes, on behalf of
16 themselves and the users of any portion of the Tribal Water Right set forth in this Compact and the United States
17 agree to relinquish their right to exercise the Tribal Water Right to make a Call against any Water Right Arising
18 Under State Law whose purpose is irrigation and whose source of supply is Groundwater and whose flow rate
19 is less than or equal to 100 gallons per minute.

20 3. Irrigators Within the FIIP Influence Area.

21 a. The Tribes, the United States, and, pursuant to the FIIP Water Use Agreement, the Project Operator
22 and the Flathead Joint Board of Control, agree to relinquish their right to exercise the Tribal Water Right to make
23 a Call against that portion of any Water Right Arising Under State Law identified in Article III.G.3.b that is equal
24 to the quantity of water established as the Farm Turnout Allowance, or the quantity of that owner's historic
25 beneficial use, whichever is less, whose owner enters into a consensual agreement as described in this Article
26 III.G.3.

27 b. Water Rights Arising Under State Law whose owners are eligible to enter into consensual agreements
28 as described in this Article III.G.3 are those rights:

29 i. whose purpose is irrigation;

30 ii. whose point(s) of diversion or place(s) of use are within the FIIP Influence Area; and

- 1 iii. whose source of supply is surface water; or
- 2 iv. whose source of supply is Groundwater and whose flow rate is greater than 100 gallons per minute.
- 3 c. The Tribes, the United States, and, pursuant to the FIIP Water Use Agreement, the Project Operator
- 4 and the Flathead Joint Board of Control, agree to enter into the consensual agreement described in this Article
- 5 III.G.3 with every owner of a Water Right Arising Under State Law described in Article III.G.3.b who wishes to
- 6 enter into such an agreement with them. The following conditions shall apply to any such consensual agreement:
- 7 i. the owner of the Water Right Arising Under State Law shall measure all diversions, report the
- 8 measured amount of those diversions to the Project Operator, and agree to divert no more water each year than
- 9 the quantity established as the FTA for each irrigation season or the quantity of that owner's historic beneficial
- 10 use as decreed by the Montana Water Court, whichever is less, and shall not expand water use beyond the terms
- 11 of the agreement;
- 12 ii. the owner of a Water Right Arising Under State Law does not acquire any entitlement to any delivery
- 13 or diversion of water from the FIIP, whether the water is stored or run of the river, by entering into a consensual
- 14 agreement as described in this Article III.G.3;
- 15 iii. irrigation use pursuant to any Water Right Arising Under State Law whose owner enters into a
- 16 consensual agreement as set forth in this Article III.G.3 shall be limited to the irrigation season identified annually
- 17 by the FIIP;
- 18 iv. the method and frequency of measurement of the diversion must be identified and be at a reasonable
- 19 level of accuracy and frequency to demonstrate that the diversion does not exceed the FTA for each irrigation
- 20 season or the quantity of that owner's historic beneficial use, whichever is less; and
- 21 v. this agreement is permanent and is binding on the heirs and assigns of the owner of each Water Right
- 22 Arising Under State Law who enters into such agreement.
- 23 d. The entering into a consensual agreement as set forth in this subsection (3) does not relieve the
- 24 owner of any claim to a Water Right Arising Under State Law that is at issue in the Montana General Stream
- 25 Adjudication from the obligation of prosecuting that water right claim through the Montana General Stream
- 26 Adjudication.
- 27 e. If a consensual agreement is entered into among the Tribes, United States, the Project Operator and
- 28 the owner of a Water Right Arising Under State Law described in this Article III.G.3.b prior to the issuance of the
- 29 final decree for Montana Water Court Basin 76L and 76LJ, as applicable, that agreement shall terminate as a
- 30 matter of law if the claimed Water Right is terminated as a result of proceedings conducted in the Montana

1 General Stream Adjudication.

2 f. If a consensual agreement is entered into among the Tribes, the United States, the Project Operator,
3 and the owner of a Water Right Arising Under State Law described in this Article III.G.3.b prior to the issuance
4 of the final decree for Montana Water Court Basin 76L and 76LJ, as applicable, and such owner has a claim in
5 the Montana General Stream Adjudication that is ultimately decreed a quantity of water for that claim less than
6 the quantity established in the agreement, the consensual agreement shall protect only the lesser amount of
7 water.

8 g. If the owner of a Water Right Arising Under State Law described in this Article III.G.3.b ceases to use
9 that portion of that water right above the FTA pursuant to a consensual agreement as set forth in this Article
10 III.G.3.b:

11 i. that nonuse does not represent an intent by the owner of that water right to wholly or partially abandon
12 that water right or to not comply with the terms and conditions of that right; and

13 ii. the period of nonuse may not create or may not be added to any previous period of nonuse to create
14 a presumption of abandonment.

15 h. Any use of a Water Right Arising Under State Law subject to a consensual agreement described in
16 this Article III.G.3 exceeding the volume of water specified in the consensual agreement shall be subject to Call
17 by the Tribes, the United States, or the Project Operator for that amount of water in excess of the terms of the
18 consensual agreement.

19 i. A Person who has both an entitlement to the delivery of water from the FIIP and a Water Right Arising
20 Under State Law to serve the same acreage may only protect from Call, by entering into a consensual agreement
21 pursuant to this Article III.G.3, a total quantity of water equal to the FTA for each irrigation season for each acre
22 served, irrespective of whether the water applied to each acre is pursuant to that Person's FIIP delivery right or
23 that Person's Water Right Arising Under State Law.

24 4. Water Rights Upstream of the Reservation (Basins 76I, 76J, and 76LJ). The Tribes, on behalf of
25 themselves and the users of any portion of the Tribal Water Right set forth in this Compact, and the United States
26 agree to relinquish their right to exercise the Tribal Water Right to make a Call against any water right located
27 upstream of the Flathead Reservation in Basins 76I, 76J, and 76LJ, except for those Water Rights Arising Under
28 State Law:

29 a. whose purpose is irrigation and whose source of supply is surface water, and whose point of diversion
30 is:

1 for the benefit of the Tribes, their members and Allottees.

2 B. Use of Tribal Water Right.

3 1. Persons Entitled to Use Tribal Water Right. The Tribal Water Right may be used by the Tribes, their
4 members, Allottees, or their lessees or assigns.

5 2. Effect of Non-Use of the Tribal Water Right. Non-use of all or any portion of the Tribal Water Right
6 described in Article III shall not constitute a relinquishment, forfeiture, or abandonment of such right.

7 3. Review of Registration of Existing Uses of the Tribal Water Right.

8 a. Within five (5) years after the Effective Date, the Board shall provide the DNRC with a report, in a form
9 materially consistent with that of abstracts of water rights decreed by the Montana Water Court, listing all uses
10 of the Tribal Water Right that were registered pursuant to the Law of Administration as being in existence as of
11 the Effective Date. Provided however, the following categories of registered uses do not need to be included in
12 the report to DNRC: 1) uses that, were they Water Rights Arising Under State Law, would have been exempt,
13 pursuant to 85-2-222, MCA, as that statute read as of December 31, 2012, from the filing requirements of the
14 Montana General Stream Adjudication; or 2) uses that, were they Water Rights Arising Under State law, would
15 qualify as exceptions to the permit requirements of 85-2-306, MCA, as that statute read as of December 31, 2012.

16 b. Within six (6) months after receipt of the report, the DNRC must agree, agree in part, or disagree with
17 the report. If the DNRC takes no action by the end of the six month period after the report is received, the report
18 shall be deemed accepted. If the DNRC agrees in part or disagrees with the report, the State, the Tribes, and the
19 United States shall meet within ninety (90) days of issuance of the DNRC's notice of disagreement in an effort
20 to resolve the issue(s) giving rise to the disagreement. If, after meeting and conferring, the State, the Tribes, and
21 the United States are still unable to come to agreement on the list of existing uses, all disagreements over the
22 contents of the list must be brought to the Water Management Board for resolution of the dispute under Article
23 IV.C.4.c within 180 days of the issuance of the DNRC's notice of disagreement.

24 4. Change in Uses of the Tribal Water Right. Except for those portions of the Tribal Water Right that are
25 not eligible to be changed to another purpose, any user of a portion of the Tribal Water Right who proposes to
26 change such use must seek authorization to change the use of that right. Such applications for authorizations
27 to change use shall be heard and decided by the Board pursuant to Article IV.C.4.b of the Compact and the Law
28 of Administration, provided that the Board may not consider any change application of Flathead System Compact
29 Water unless the applicant has secured the written consent of the Tribal Council to apply for a Change in Use
30 authorization.

- 1 5. New Development of the Tribal Water Right.
- 2 a. The Tribes, or any Person with authorization from the Tribes, may develop a new use of the Tribal
3 Water Right on the Reservation after the Effective Date. Such development may only proceed upon the issuance
4 of an Appropriation Right for the New Development by the Board pursuant to Article IV.C.4.a and the Law of
5 Administration.
- 6 b. The Tribes, or any Person with authorization from the Tribes, may develop a new use of the Flathead
7 System Compact Water Right set forth in Article III.C.1.c off the Reservation after the Effective Date, but only after
8 complying with the provisions of Article IV.B.5.c.
- 9 c. Any new development by the Tribes of a portion of the Tribes' Flathead System Compact Water Right
10 off the Reservation shall be treated as a change in use. The DNRC shall process each change application
11 pursuant to the provisions of 85-2-302, 307-310 and 314, MCA. Prior to developing Flathead System Compact
12 Water for beneficial use off the Reservation, the Tribes must comply with the provisions of subsections (1)-(3)
13 and (8)-(17) of 85-2-402, MCA, as those provisions read on December 31, 2012;
- 14 d. In the event that, after the Effective Date, the Montana legislature substantively amends or repeals
15 any of the sections identified in Article IV.B.5.c, the Tribes and the DNRC shall meet no later than 60 days after
16 the effective date of the State legislative action amending or repealing to determine whether the provisions of
17 State law set forth in Article IV.B.5.c or the new provisions of State law shall govern the process for
18 off-Reservation development of new uses of the Flathead System Compact Water Right set forth in Article
19 III.C.1.c. In the event that the Tribes and the DNRC are unable to agree, the provisions of State law identified in
20 Article IV.B.5.c shall remain in effect. Any modification to the provisions of Article IV.B.5.c agreed to by the Tribes
21 and the DNRC in response to future State legislative action shall be pursuant to and not a modification or
22 amendment to this Compact.
- 23 e. If the Tribes' use of Flathead System Compact Water off the Reservation involves diversion or
24 transportation facilities located off the Reservation, the Tribes shall apply for and obtain all permits, certificates,
25 variances and other authorizations required by State laws regulating, conditioning or permitting the siting,
26 construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use
27 or transport water, prior to exercising a use of the Flathead System Compact Water Right off the Reservation.
- 28 6. Lease of the Tribal Water Right.
- 29 a. Lease of the Tribal Water Right generally.
- 30 i. Pursuant to the terms and conditions of this Compact and the FIIP Water Use Agreement, the Tribes

1 may Lease, for use on or off the Reservation, any portion of the Tribal Water Right set forth in Article III.C.1.a,
2 b, i, and j provided that either the Tribes or its assignee, on behalf of the Tribes, first comply with the procedures
3 for changing the use of water rights set forth in subsections iii and iv of this Article IV.B.6.a, as applicable.

4 ii. The Tribes may make or authorize a Lease of the Tribal Water Right for use within or outside the
5 Reservation; provided that, any Lease shall be for a term not to exceed 99 years, and may include provisions
6 authorizing renewal for an additional term not to exceed 99 years. The off-Reservation use of any portion of the
7 Tribal Water Right is limited to a place of use within the Flathead or Clark Fork River Basins in Montana.

8 iii. A Lease of the Tribal Water Right shall not adversely affect a Water Right Arising Under State Law
9 with a priority date before the date of the Lease or an Appropriation Right issued pursuant to this Compact with
10 a priority date before the date of the Lease. Uses of the Tribal Water Right being exercised prior to the date of
11 the Lease shall not be adversely affected by a Lease of the Tribal Water Right, except that the Tribes may allow
12 uses of the Tribal Water Right on Tribally owned land to be adversely affected by declining to object to the
13 Change in Use application associated with the Lease.

14 1. If the Lease is for use on the Reservation, the determination of adverse effect shall be made by the
15 Water Management Board pursuant to the process set forth regarding applications for Change in Use
16 authorizations under the Law of Administration.

17 2. If the Lease is for use off the Reservation, the Lease shall be treated as a change in use. The DNRC
18 shall process each change application pursuant to the provisions of 85-2-302, 307-310 and 314, MCA. Prior to
19 the lessee putting leased water to beneficial use, the Tribes or their assignee, on behalf of the Tribes, must
20 comply with the following provisions of State law as those provisions read on December 31, 2012:

21 a. Subsections (1)-(3) and (8)-(17) of 85-2-402, MCA;

22 b. Subsections (1)-(8) of 85-2-407, MCA, provided, however, that the term of any such Lease may be
23 for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and

24 c. 85-2-408, MCA, as limited by the provisions of Article IV.B.6.a.iii.2.a.

25 iv. In the event that, after the Effective Date, the Montana legislature substantively amends or repeals
26 any of the sections identified in Article IV.B.6.a.iii.2, the Tribes and the DNRC shall meet, no later than 60 days
27 after the effective date of the State legislative action amending or repealing, to determine whether the provisions
28 set forth in Article IV. B.6.a.iii.2 or the new provisions of State law shall govern the process for off-Reservation
29 Leases under this Compact. In the event that the Tribes and the DNRC are unable to agree, the provisions of
30 Article IV. B.6.a.iii.2 shall remain in effect. Any modification to the provisions of Article IV B.6.a.iii.2 agreed to by

1 the Tribes and the DNRC in response to future State legislative action shall be pursuant to and not a modification
2 or amendment to this Compact. v. The Tribes or any Person using diversion or transportation facilities located
3 off the Reservation in connection with a use of the Tribal Water Right shall apply for and obtain all permits,
4 certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the
5 siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed
6 to use or transport water, prior to exercising a use of the Tribal Water Right off the Reservation.

7 b. Lease of the Tribal Water Right by an Individual Indian Owner.

8 i. An Individual Indian Owner may Lease for use on the Reservation his or her allocated portion of the
9 Tribal Water Right.

10 ii. If the lessee intends to put the water to beneficial use in a manner different than how the Individual
11 Indian Owner had been using the water prior to the date of the Lease, the Individual Indian Owner or his or her
12 lessee must comply with the provisions of the Law of Administration pertaining to securing Change in Use
13 authorizations from the Water Management Board before the use of water may be changed.

14 iii. Any Lease entered into pursuant to subsection b of this section may be for a term not to exceed 25
15 years, and may include provisions authorizing renewal for an additional term not to exceed 25 years.

16 iv. A Lease of the Tribal Water Right by an Individual Indian Owner shall not adversely affect a Water
17 Right Arising Under State Law with a priority date before the date of the Lease or an Appropriation Right issued
18 pursuant to this Compact with a priority date before the date of the Lease. Uses of the Tribal Water Right being
19 exercised prior to the date of the Lease shall not be adversely affected by a Lease of the Tribal Water Right by
20 an Individual Indian Owner, except that the Tribes may allow uses of the Tribal Water Right on Tribally owned
21 land to be adversely affected by declining to object to the Change in Use application associated with the Lease.

22 c. Lease of the Flathead System Compact Water Right.

23 i. Pursuant to the terms and conditions of this Compact, the Tribes may Lease Flathead System Compact
24 Water for use on or off the Reservation, provided that either the Tribes or its lessee, on behalf of the Tribes, first
25 complies with the provisions of the Law of Administration pertaining to usage of the Flathead System Compact
26 Water Right and, if the Lease is for the use of Flathead System Compact Water off the Reservation, the
27 provisions of subsection iii or iv of this section, as applicable.

28 ii. The Tribes may make or authorize a Lease of the Tribal Water Right for use within or outside the
29 Reservation; provided that, any Lease shall be for a term not to exceed 99 years, and may include provisions
30 authorizing renewal for an additional term not to exceed 99 years. The off-Reservation use of any portion of the

1 Tribal Water Right is limited to a place of use within the Flathead or Clark Fork River Basins in Montana.

2 iii. If the Lease is for a portion of the Tribes' Flathead System Compact Water right to be delivered wholly
3 from water stored in Hungry Horse Reservoir, the Tribes shall provide notice to the DNRC and the Water
4 Management Board, in advance of the effective date of the Lease, of the terms of the Lease and any
5 modifications thereto or termination thereof. For Leases lasting one irrigation season or less, notice to the DNRC
6 and the Water Management Board shall be provided as far in advance as
7 practicable. For Leases lasting longer than one year, notice shall be provided to the DNRC and the Water
8 Management Board no later than the later of 120 days prior to the date on which the Lease is to take effect or
9 March 31 of the year in which the Lease is to take effect. The point of delivery for a Lease shall be the outlet
10 works at the Hungry Horse Dam. If disputes arise between or among holders of Water Rights Arising Under State
11 Law as to the reasonable transmission and carriage losses from the point of delivery to the place of use of the
12 Lease, the district court pursuant to its powers and duties under Title 85, Chapter 5, MCA, shall calculate such
13 losses.

14 iv. If the Lease is for the off-Reservation use of a portion of the Tribes' Flathead System Compact Water
15 right to be delivered from a combination of stored water and direct flow water from the Flathead River, or
16 exclusively from direct flow water from the Flathead River, the Lease shall be treated as a change in use as it
17 pertains to the use of the direct flow water. The DNRC shall process each change application pursuant to the
18 provisions of 85-2-302, 307-310 and 314, MCA. Prior to the lessee putting leased water to beneficial use, the
19 Tribes or the lessee must comply with the following provisions of State law as those provisions read on December
20 31, 2012;

21 1. Subsections (1)-(3) and (8)-(17) of 85-2-402, MCA;

22 2. Subsections (1)-(8) of 85-2-407, MCA, provided, however, that the term of any such Lease may be
23 for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and

24 3. 85-2-408, MCA, as limited by the provisions of Article IV.B.6.c.iv.1.

25 v. In the event that, after the Effective Date, the Montana legislature substantively amends or repeals
26 any of the sections identified in Article IV.B.6.c.iv.1-3, the Tribes and the DNRC shall meet no later than 60 days
27 after the effective date of the State legislative action amending or repealing to determine whether the provisions
28 set forth in Article IV. B.6.c.iv.1-3 or the new provisions of State law shall govern the process for off-Reservation
29 Leases under this Compact. In the event that the Tribes and the DNRC are unable to agree, the provisions of
30 Article IV. B.6.c.iv.1-3 shall remain in effect. Any modification to the provisions of Article IV. B.6.c.iv.1-3 agreed

1 to by the Tribes and the DNRC in response to future State legislative action shall be pursuant to and not a
2 modification or amendment to this Compact.

3 vi. The Tribes or any Person using diversion or transportation facilities located off the Reservation in
4 connection with a use of the Flathead System Compact Water Right shall apply for and obtain all permits,
5 certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the
6 siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed
7 to use or transport water, prior to exercising a use of the Flathead System Compact Water Right off the
8 Reservation.

9 7. Lease of 11,000 Acre-Feet per Year of Water From Hungry Horse Reservoir for Off-Reservation
10 Mitigation.

11 a. The Tribes shall make available for Lease off the Reservation 11,000 Acre-feet of the water identified
12 in Article III.C.1.c.i stored in Hungry Horse Reservoir pursuant to the process, and subject to the terms and
13 conditions, set forth in this Article IV.B.7.

14 b. The water identified in this Article IV.B.7.a shall be available for the mitigation of net depletions arising
15 from new or existing domestic, commercial, municipal and/or industrial (DCMI) uses of water at any point in the
16 Flathead or Clark Fork Basins in Montana for which the 11,000 Acre-feet per year of water is capable of providing
17 mitigation.

18 c. The DNRC, under Title 85, MCA, shall retain the responsibility for determining if, when, where, and
19 how much mitigation water is needed for any proposed new development and if the water identified in this Article
20 IV.B.7.a meets the appropriate mitigation criteria for any given proposed mitigation plan.

21 d. The water identified in this Article IV.B.7.a is subject to reduction due to the operation of the "Biological
22 Impacts Evaluation and Operational Constraints for a Proposed 90,000 Acre-foot withdrawal" (State of Montana,
23 September 14, 2011 (Revised Version)) on a pro rata basis along with the rest of the water identified in Article
24 III.C.1.c.i, as set forth in Article III.C.1.c.iii.

25 e. The mechanism for entering into a Lease for any portion of the water set forth in this Article IV.B.7.a
26 shall be as follows:

27 i. Any interested Person may approach the Tribes, through the Tribal Lands Department or successor
28 Tribal department, to negotiate a Lease of a portion of this water;

29 ii. The baseline annual per Acre-foot price for this water shall be set at \$40 as of July 1, 2013. From that
30 date, the baseline price shall be indexed for inflation and consequently adjusted annually on the first day of the

1 month in which the ratification of this Compact by the Montana legislature takes effect under State law (the
2 Adjustment Date) by the percentage change over the previous year in the most recent monthly Consumer Price
3 Index for All Urban Consumers (CPI-U) published by the United States Department of Labor, Bureau of Labor
4 Statistics. The initial price for each Lease of any portion of the 11,000 Acre-feet identified in this Article IV.B.7
5 entered into during that year shall be the adjusted baseline price. During the term of any given Lease, the annual
6 price per Acre-foot shall continue to adjust annually on the Adjustment Date by the percentage change in the
7 CPI-U since the Adjustment Date of the previous year. The foregoing provisions regarding the adjusted baseline
8 price shall constitute the sole and exclusive price term of each Lease;

9 iii. In the event the United States Department of Labor, Bureau of Labor Statistics discontinues publication
10 of the CPI-U, the Tribes and the State shall jointly identify an alternate inflation index for Leases under this Article
11 IV.B.7. The identification of an alternate inflation index is pursuant to, and shall not be deemed a modification or
12 amendment of, this Compact;

13 iv. Each Lease between the Tribes and an end user shall be for a term of 99 years, with the end user
14 holding an option to renew for an additional 99 years, unless the Tribes and the end user affirmatively agree on
15 an alternate duration not to exceed 99 years. Any Lease including a term of alternate duration may also include
16 an option to renew for a term not to exceed 99 years; and

17 v. The Tribes and each interested end user shall negotiate any and all other non-price terms of the Lease
18 arrangement.

19 f. In the event of an impasse between the Tribes and an end user over any non-price term, the end user
20 may file a notice of impasse with the Water Management Board, invoking the Board's authority to resolve any
21 such impasse pursuant to the process set forth in this Article IV.B.7.g. Upon receipt of the notice of impasse, the
22 Board shall date stamp it.

23 g. Process for resolving disputes over Lease terms.

24 i. Within three days of the filing of a notice of impasse, the Board shall provide notice of the filing to the
25 Tribes, with a copy to the end user, identifying a date certain no sooner than 30 and no later than 60 days from
26 the date of receipt of the notice for the Tribes and the end user each to submit a last, best offer concerning all
27 of the non-price terms.

28 ii. No later than the date set by the Board, the Tribes and the end user shall file a last, best offer with the
29 Board in the form of a proposed Lease agreement and shall serve the same on each other. To be filed, the offer
30 must be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail

1 addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed
2 for filing. Immediately upon receipt by the Board, the offers shall be date stamped. If the Tribes fail to timely file
3 an offer, the offer filed by the end user shall become the terms of the Lease. If the end user fails to timely file an
4 offer, no Lease shall be concluded.

5 iii. The Board shall issue a decision selecting one side's proposed Lease or the other's within no less than
6 15 and no more than 45 days after the filing of the offer. At any time prior to the Board's decision, the end user
7 may choose to withdraw his or her proposed Lease and decline to enter into the Lease transaction.

8 iv. The Board shall provide notice of its decision to both the Tribes and the end user. The Lease shall be
9 concluded on the terms selected by the Board, but must include the price term identified in Article IV.B.7.e.ii of
10 this Compact. The effective date of the Lease shall be ten days after the Board's issuance of its decision.

11 v. The Tribes or an end user dissatisfied with a decision of the Board made pursuant to this Article
12 IV.B.7.g may appeal that decision by filing a petition for judicial review with a court of competent jurisdiction within
13 30 days of the issuance of the Board's decision. The reviewing court shall review the Board's decision for abuse
14 of discretion.

15 vi. In the event that a court determines that it lacks subject matter or personal jurisdiction to rule on a
16 petition for judicial review of the Board's decision pursuant to this Article IV.B.7.g, the party filing the petition shall
17 be entitled to petition for judicial review from any other court of competent jurisdiction within thirty days from the
18 date of a final court order finding lack of jurisdiction.

19 C. Administration: Establishment of Flathead Reservation Water Management Board.

20 1. Establishment of Board. There is hereby established the Flathead Reservation Water Management
21 Board. Upon the Effective Date, the Board shall be the exclusive regulatory body on the Reservation for the
22 issuance of Appropriation Rights and authorizations for Changes in Use of Appropriation Rights and Existing Use,
23 and for the administration and enforcement of all Appropriation Rights and Existing Use. The jurisdiction of this
24 Board does not extend to any water rights whose place of use is located outside the exterior boundaries of the
25 Reservation.

26 2. Membership.

27 a. Voting Members. The Board shall consist of five voting members: two members selected by the
28 Governor of the State, after consultation with holders of Water Rights Arising Under State Law located on the
29 Reservation; two members appointed by the Tribal Council; and one member selected by the other four members.
30 All members shall be appointed within six months of the Effective Date. Should the four appointed members fail

1 to agree on the selection of a fifth voting member within sixty days of the date of appointment of the fourth
2 member, or within thirty days after any vacancy in that fifth position occurs, the following procedure shall be
3 utilized:

4 i. Within five days thereafter the two members appointed by the Tribal Council shall nominate three
5 individuals to serve as a member of the Board and the two members appointed by the Governor shall nominate
6 three individuals to serve as a member of the Board;

7 ii. Within fifteen days thereafter the two members appointed by the Tribal Council shall reject two of the
8 individuals nominated by the two members appointed by the Governor, and the two members appointed by the
9 Governor shall reject two of the individuals nominated by the two members appointed by the Tribal Council; and

10 iii. Within five days thereafter, the remaining two nominees shall be submitted to the Chief Judge of the
11 Federal District Court for the District of Montana for selection of the fifth member of the Board.

12 b. Ex Officio Member. The Board shall also have a sixth, non-voting member appointed by the Secretary.

13 c. Term. Initially, three voting members of the Board shall serve for four years, and two shall serve for
14 two years. One member appointed by the Governor, one member appointed by the Tribal Council and the fifth
15 voting member shall serve for four years. One member appointed by the Governor and one member appointed
16 by the Tribal Council shall serve for two years. The

17 member appointed by the Secretary shall be appointed for four years. At the expiration of the initial two-year
18 appointments, all subsequently appointed Board members shall serve four year terms.

19 d. Eligibility. To be eligible to serve on the Board, an individual must be over 18 years of age and be a
20 Reservation resident. For the purposes of filling a position on the Water Management Board, a Reservation
21 resident is an individual who:

22 i. does business within Flathead Indian Reservation boundaries;

23 ii. is domiciled within Flathead Indian Reservation boundaries; or

24 iii. owns and maintains a seasonal residence within Flathead Indian Reservation boundaries.

25 An eligible individual must also have education and experience in one or more of the following fields:
26 natural resources management, public administration, agriculture, engineering, commerce or finance, hydrology,
27 biological sciences, water law or water policy.

28 No elected official of the State of Montana, or any political subdivision thereof, or of the United States,
29 or of the Tribes is eligible for nomination to the Board while holding such elective office. However, a nominee for
30 Board membership shall not be disqualified by reason of the fact that he or she is an employee or contractor of

1 the State of Montana or any political subdivision thereof, or of the Tribes, or of the United States.

2 No Board member may vote on any application or appeal that the member participated in personally and
3 substantially in any non-Board capacity.

4 e. Vacancies. Subject to the provisions of Article IV.C.2.a regarding the filling of a vacancy of the fifth
5 member of the Board, upon the occurrence of any other vacancy in a Board position, the Tribal Council, if the
6 vacancy is in a position appointed by the Tribal Council, or the Governor, if the vacancy is in a position appointed
7 by the Governor, shall name a new Board member within 30 days of the occurrence of the vacancy. Should Board
8 action be required during the period of any such vacancy, the Department Head of the Tribal Natural Resources
9 Department, if the vacancy is in a position appointed by the Tribal Council, or the Director of the DNRC, if the
10 vacancy is in a position appointed by the Governor, shall fill the vacant position on a acting basis until a new
11 appointment is made.

12 f. Compensation and Expenses of the Board. Each Board member shall receive such compensation for
13 services and reimbursement for expenses for attendance at Board meetings as shall be fixed by the State and
14 the Tribal Council for the Board members appointed by the same. The compensation for the fifth Board member
15 shall be set jointly by the State and the Tribal Council. The expenses of any Federal ex officio member shall be
16 covered by the United States.

17 3. Quorum and Vote Required. Four Board members appointed pursuant to Article IV.C.2.a shall
18 constitute a quorum. No Board action may be voted upon in the absence of a quorum. All Board decisions shall
19 be by affirmative vote of a majority of the Board, except as set forth in Article IV.C.5.d for the appointment of water
20 commissioners. If a proposal put to a vote of a quorum of Board members ends in a tie vote, the matter being
21 voted on is deemed disapproved or denied.

22 4. Jurisdiction of the Board.

23 a. Issuance of Appropriation Rights. Upon the Effective Date, the Board shall have exclusive jurisdiction
24 over the issuance of all new Appropriation Rights on the Reservation. The process for the consideration, issuance
25 or denial of all Appropriation Rights is set forth in the Law of Administration.

26 b. Authorizations for Changes in Uses. Upon the Effective Date, the Board shall have exclusive
27 jurisdiction over the issuance of authorizations for Changes in Uses of all water rights on the Reservation. The
28 process for the consideration, issuance or denial of such Change in Use authorizations is set forth in the Law of
29 Administration.

30 c. Enforcement. Upon the Effective Date, the Board shall have exclusive jurisdiction to resolve any

1 controversy over the meaning and interpretation of the Compact, and any controversy over the right to the use
2 of water as between the Parties or between or among holders of Appropriation Rights and Existing Uses on the
3 Reservation. The Board shall also have jurisdiction to resolve any controversy over the meaning and
4 interpretation of the FIIP Water Use Agreement between or among the parties to the FIIP Water Use Agreement
5 after the exhaustion of the procedures set forth in Section 83(a) through (d) of the FIIP Water Use Agreement.
6 All controversies cognizable under this subsection shall be heard and resolved pursuant to the Compact and the
7 Law of Administration.

8 d. Water Right Ownership Updates. The Board shall not have jurisdiction over water right ownership
9 updates on water rights appurtenant to fee lands, which shall remain with the DNRC as set forth in 85-2-421
10 through 85-2-424, 85-2-426, and 85-2-431, MCA.

11 5. Powers and Duties.

12 a. In General. The Board shall have the power to promulgate procedures, prescribe forms, develop
13 additional materials and implement amendments thereto as may be necessary and proper to exercise its
14 jurisdiction and carry out its assigned functions under this Compact and the Law of Administration. A set of forms
15 for initial use by the Board in the implementation of the Law of Administration is attached hereto as Appendix 37.
16 The Board may amend these forms at its discretion.

17 b. Hearings. Pursuant to the procedures set forth in the Law of Administration, the Board shall hold
18 hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and
19 issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to
20 appoint technical experts. The Tribes and the State shall enforce the Board's subpoenas in the same manner as
21 prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each
22 respective sovereign in a civil action. The Persons involved in the controversy may present evidence and cross
23 examine any witnesses. The Board shall cause all hearings to be recorded, and shall determine the controversy
24 and grant any declaratory or injunctive relief allowed by the Law of Administration, including a temporary order.
25 The Board shall not have power to award money damages, attorneys' fees or costs; however it shall have the
26 power to impose fines pursuant to the terms of the Law of Administration and award any kind of equitable relief.
27 All decisions of the Board shall be in writing, and, together with a written justification for the decision and any
28 dissenting opinions, shall be served personally or by certified mail on all Persons involved in the proceeding
29 before the Board. All records of the Board shall be open to public inspection.

30 c. Employment of Water Engineer. The Board shall have the authority to employ a Water Engineer to

1 carry out such functions as assigned by the Board pursuant to the Law of Administration, including the
2 supervision of any water commissioners appointed by the Board. As set forth in the Law of Administration, the
3 Engineer shall hold hearings upon notice in proceedings before the Engineer and shall have the power to
4 administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of
5 documents or other evidence, and to appoint technical experts. The Tribes and the State shall enforce the
6 Engineer's subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing
7 a subpoena issued by the courts of each respective sovereign in a civil action. The Persons involved in the
8 controversy may present evidence and cross examine any witnesses. The Engineer shall cause all hearings to
9 be recorded, and shall determine the controversy and grant any relief allowed by the Law of Administration,
10 including a temporary order. If decisions of the Engineer shall be in writing, and, together with a written
11 justification for the decision, shall be served personally or by certified mail on all Persons involved in the
12 proceeding before the Engineer. All records of the Engineer shall be open to public inspection.

13 d. Appointment of Water Commissioner(s)

14 i. The Board shall have the authority, upon a unanimous vote of all five members of the Board, to appoint
15 one or more commissioners to provide day-to-day administration of water on the Reservation. The compensation
16 for any such commissioner and the identification of the Person(s) responsible for paying costs associated with
17 the appointment of any such commissioner must also be established by a unanimous vote of all five members
18 of the Board as part of the Board action appointing any such commissioner. Any commissioner appointed shall
19 act under the supervision of the Water Engineer.

20 ii. Under the jurisdiction of the Board, and as set forth in the Law of Administration, the commissioner(s)
21 shall have the authority to administer and distribute water only on the Reservation and from the off-Reservation
22 portions of the facilities of the Flathead Indian Irrigation Project for use within the FIIP. The authority of any
23 commissioner(s) appointed pursuant to this subsection, as it pertains to portions of the Tribal Water Right used
24 within the FIIP, extends only to the delivery of water to FIIP diversion facilities and shall not extend to the
25 administration of that water in FIIP facilities or on lands served by the FIIP, which shall remain subject to the
26 authority of the Project Operator.

27 6. Review and Enforcement of Board Decisions.

28 a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Persons involved
29 in the proceedings before the Board may appeal any final decision by the Board to a court of competent
30 jurisdiction within thirty days of such decision. An appeal of a final decision of the Board shall be styled as a

1 petition for judicial review of an agency decision pursuant to the rules of procedure of the court from which review
2 is sought. The petition for judicial review shall be filed with the Board and the court and served upon all Persons
3 involved in the proceeding before the Board, as well as the Tribes, the State and the United States. Service shall
4 be accomplished according to the requirements of the court's rules of procedure.

5 b. Unless a petition is filed within thirty days of a final decision of the Board, as provided in Article
6 IV.C.6.a, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on
7 petition by any Person before the Board in the proceeding in which the decision was made.

8 c. A court of competent jurisdiction in which a timely petition is filed pursuant to Article IV.C.6.a, or in
9 which a petition to confirm or enforce is filed pursuant to Article IV.C.6.b, may order such temporary or permanent
10 relief as it considers just and proper subject to the limited waivers of immunity set forth in Article IV.C.7.

11 d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to
12 Article IV.C.6.a, or in which a petition to confirm or enforce is filed pursuant to Article IV.C.6.b, in the manner and
13 to the same extent as from orders or judgments of the court in a civil action.

14 e. In any petition to confirm or enforce the Board's decision, the Board shall file with the court to which
15 appeal is taken the record of the proceedings before the Board within the time and in the manner provided by the
16 court's rules of procedure.

17 f. The court shall conduct the review on the record made before the Board. In considering the petition,
18 the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion.

19 g. In the event that a court determines that it lacks subject matter or personal jurisdiction to rule on a
20 petition for judicial review of a Board decision, the party filing the petition shall be entitled to petition for judicial
21 review from any other court of competent jurisdiction within thirty days from the date of a final court order finding
22 lack of jurisdiction.

23 7. Public Meetings and Records

24 a. Notwithstanding any other provisions of law, the Board is a public agency for purposes of the
25 applicability of State and Tribal right to know laws.

26 b. All regular and special meetings of the Board, including all hearings conducted by the Office of the
27 Engineer or the Board, shall be open to the observation of the general public pursuant to State and Tribal open
28 meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

29 c. Where no more specific notice provisions are set forth in the Law of Administration, notice of any
30 meeting, including an agenda, shall be provided to the public in a manner and on a timeframe consistent with the

1 criteria set forth in State and Tribal law. Where there is a conflict of laws, the law that provides for earlier notice
2 shall apply.

3 d. The Board shall keep the following records:

4 i. minutes of all meetings;

5 ii. recordings of all hearings conducted by the Board or the Office of the Engineer;

6 iii. all documents filed with or generated by the Board or the Office of the Engineer;

7 iv. any other records required by applicable provisions of Federal, State or Tribal law, provided that if
8 there is a conflict of laws, the law that provides for more expansive record retention shall apply.

9 e. All Board records are public records and shall be made available to the public for inspection under
10 such reasonable terms and conditions as the Board shall establish.

11 8. Waiver of Immunity. The Tribes and the State hereby waive their respective immunities from suit,
12 including any defense the State shall have under the Eleventh Amendment of the Constitution of the United
13 States, in order to permit the resolution of disputes under the Compact by the Board, and the appeal or judicial
14 enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribes
15 or the State shall not extend to any action for money damages, costs, or attorneys' fees. The Parties agree that
16 only Congress can waive the immunity of the United States. The participation of the United States in the
17 proceedings of the Board shall be as provided by Congress. The Parties agree to seek congressional approval
18 of waiver language for the United States that is materially consistent with the terms of the waivers provided by
19 the Tribes and the State in this subsection.

20 D. Amendments to the Law of Administration. The Board may not amend the Law of Administration. No
21 amendment by the Tribes or the State of the Law of Administration shall be effective unless and until the other
22 makes an analogous amendment. Any such amendment is pursuant to, and shall not be deemed a modification
23 of this Compact.

24 E. Water Rights Database. The Board shall cause all Appropriation Rights and Changes in Use
25 authorized by the Board and all uses of water registered pursuant to the Law of Administration to be entered into
26 the DNRC water rights database in a format agreed to by the Board and the DNRC.

27 ARTICLE V - DISCLAIMERS AND RESERVATION OF RIGHTS

28 A. No Effect on Water Rights of Other Tribes or on other Federal Reserved Water Rights.

29 1. Except as otherwise provided herein, the relationship between the Tribal Water Right described herein
30 and any water rights of any other Indian tribe or its members, or of any federally-derived water right of an

1 individual outside the boundaries of the Flathead Indian Reservation, or of the United States in its own right or
2 on behalf of such other tribes or individuals, shall be determined by the rule of priority.

3 2. Nothing in this Compact shall be construed or interpreted as a precedent to establish the nature,
4 extent, or manner of administration of the rights to water of any other Indian tribe, its members or Indian owners
5 of trust land outside of the Flathead Indian Reservation.

6 3. Nothing in this Compact is intended, nor shall it be used, to affect or abrogate a right or claim of an
7 Indian tribe other than the Confederated Salish and Kootenai Tribes.

8 4. Except as provided herein and authorized by Congress, nothing in this Compact shall be construed
9 or interpreted to establish the nature, extent, or manner of administration of rights to water of the United States
10 on Federal lands outside of the Flathead Indian Reservation.

11 B. General Disclaimers.

12 Nothing in this Compact shall be construed or interpreted:

13 1. To preclude the Tribes, Tribal members, and Allottees, or the United States, from applying to the
14 Water Management Board for an Appropriation Right under the Law of Administration on the same basis as any
15 other Person;

16 2. As a precedent for litigation of aboriginal or reserved water rights;

17 3. As precedent for interpretation or administration of future compacts between the United States and
18 the State, or between the United States and any other state, or between the State and any other state;

19 4. As precedent for negotiation, interpretation or administration of any existing or future Compact,
20 negotiated settlement, judicial settlement or other form of accommodation of water rights involving Indian tribes
21 or individual Indians;

22 5. To preclude the possession, acquisition or exercise of Water Rights Arising Under State Law by the
23 Tribes or Allottees or members of the Tribes;

24 6. To limit in any way the right of the Parties or any other Person to litigate any issue or question not
25 resolved by this Compact;

26 7. To authorize the taking of any water right that is vested under State, Tribal or Federal law;

27 8. To create or deny substantive rights through headings or captions used in this Compact;

28 9. To address or prejudge how the Tribal Water Right may be treated or interpreted in any interstate or
29 international water apportionment proceeding;

30 10. To constitute a waiver of sovereign immunity by the Tribes or the State except as expressly set forth

1 in this Compact;

2 11. To constitute a waiver of sovereign immunity by the United States except as expressly set forth in
3 43 U.S.C. 666 or as otherwise provided by Congress;

4 12. Except as expressly provided herein and as may be required by Congress, to modify the obligations
5 of any agency of the United States;

6 13. To limit or prohibit the Tribes, their members or Allottees, or to limit the United States in any capacity,
7 from objecting in any general stream adjudication in the Montana Water Court to any claims to water rights on
8 or off of the Flathead Indian Reservation;

9 14. To prevent the Montana Water Court from adjudicating any properly filed claims or objections to the
10 use of water within the Flathead Indian Reservation;

11 15. To limit or prohibit the Tribes, their members or Allottees, or the United States in any capacity, from
12 filing an action in a court of competent jurisdiction to prevent any Person or Party from interfering with the Tribal
13 Water Right;

14 16. To affect or determine the applicability of any State, Tribal or Federal law not subject to this Compact,
15 including, but not limited to environmental and public safety laws, on activities of the Tribes, their members or
16 Allottees or the United States;

17 17. To prejudice or predetermine any right that Tribal members or Allottees have to obtain the use of a
18 portion of the Tribal Water Right under the provisions of this Compact and the Law of Administration;

19 18. To affect the capacity of any Tribal member or Allottee to lease his or her land;

20 19. Except for the recognition in this Compact of the FIIP Water Use Agreement as an agreement among
21 the Tribes, the Flathead Joint Board of Control and the United States, appended hereto as Appendix 3, to make
22 the State of Montana a party to the FIIP Water Use Agreement or the obligations arising under it other than as
23 specifically identified by this Compact;

24 20. To make any owner of a Water Right Arising Under State Law, except for the Tribes, the Flathead
25 Joint Board of Control and the United States, a party to the FIIP Water Use Agreement.

26 21. To empower the Water Management Board to assess a fee for the use of water.

27 22. To confer any jurisdiction on the Water Management Board over any water right whose place of use
28 is located outside the exterior boundaries of the Reservation.

29 23. To modify in any way, by virtue of the Flathead Joint Board of Control's signatory status on
30 consensual agreements entered into pursuant to Article III.G.3, the legal relationship between the Flathead Joint

1 Board of Control, or any irrigator served by the FIIP, and the Tribes or the United States.

2 C. Other Rights Reserved.

3 1. Nothing in this Compact is intended, nor shall be interpreted or applied, in any manner to alter, limit,
4 or diminish the right of the Tribes to take all steps they deem necessary or prudent before any court or
5 adjudicative forum, any legislature or legislative entity, or any State or Federal administrative agency, including
6 but not limited to the Federal Energy Regulatory Commission, to protect any interests in Water Rights Arising
7 Under State Law that the Tribes may acquire or seek to acquire and which are associated with the Federal
8 Energy Regulatory Commission license for the Kerr Hydroelectric Project, FERC Project No. 5 (32 FERC #
9 61,070, July 17, 1985, as amended) or any other hydroelectric facility located on the Reservation subject to FERC
10 jurisdiction.

11 2. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact,
12 including but not limited to the right to the continued exercise by members of the Tribes of Tribal off-Reservation
13 rights to hunt, fish, trap and gather food and other materials, as reserved in Article III of the Hellgate Treaty of July
14 16, 1855 (12 Stat. 975).

15 D. Obligations of the United States Contingent.

16 1. Notwithstanding any language contained herein and except as authorized under Federal law, the
17 obligations of the United States under this Compact shall be contingent upon ratification and necessary
18 authorization by Congress.

19 2. The expenditure or advance of any money or the performance of any work by the United States or
20 the Tribes pursuant to this Compact which requires appropriation of money by Congress or by the Tribes is
21 contingent on such appropriation being timely made.

22 3. The Tribes and the State recognize that this Compact has not been finally approved by United States
23 as of the date of execution by the Tribes and the State, and that ratification by the Tribes or by the State in no
24 manner limits or restricts the discretion of the United States in the negotiation of all matters related to this
25 Compact.

26 E. Obligations of the State Contingent. The expenditure or advance of any money or the performance
27 of any work by the State pursuant to this Compact which requires appropriation of money by the Montana
28 Legislature or allotment of funds shall be contingent upon such appropriation or allotment.

29 ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

30 A. State Contribution to Settlement. The Parties agree that the State contribution to settlement shall be

1 \$55 million. The agreement to, expenditure, or advance of any State contribution which may require authorization
2 and appropriation of money by the Montana legislature or allotment of funds is contingent on such appropriation
3 or allotment being made pursuant to Article V. Section 11(4) of the Montana Constitution.

4 B. Federal Contribution to Settlement. The Parties agree that the Federal contribution to settlement shall
5 be negotiated by the Tribes, the State, and the United States as part of the negotiations on the Federal legislation
6 to ratify and effectuate the Compact.

7 ARTICLE VII - FINALITY

8 A. Ratification and Effectiveness of Compact.

9 1. The terms of the Compact may not be modified without the consent of all the Parties following the first
10 ratification by any Party.

11 2. Notwithstanding any other provision in the Compact, the Tribes reserve the unilateral right to withdraw
12 as a Party if:

13 a. Congress has not ratified this Compact and authorized appropriations for the Federal contribution to
14 the settlement within four years from the date on which the ratification of the Compact by the Montana legislature
15 takes effect under State law. This is a continuing right until Congress ratifies the Compact;

16 b. Appropriations are not made in the manner contemplated by the Federal legislation ratifying this
17 Compact;

18 c. The Parties do not reach agreement on the State contribution to the settlement;

19 d. The State has not authorized appropriations for the State contribution to the settlement within five
20 years from the date the Compact is ratified by the United States; or

21 e. Appropriations are not made by the State in the manner contemplated by any agreement for
22 contributions to settlement made pursuant to Article VI.A.

23 3. The Tribes may exercise their right to withdraw from the Compact under Article VII.A.2 by sending to
24 the Governor of the State and to the Secretary by certified mail a resolution of the Tribal Council expressing the
25 Tribes' intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one
26 hundred and twenty days from the date of the resolution. On the date designated in the resolution for Tribal
27 withdrawal, the Compact shall become null and void without further action by any Party, and the Parties agree
28 to resume negotiation in good faith for quantification of the water rights of the Tribes and entry of a decree in a
29 court of competent jurisdiction.

30 4. Notwithstanding any other provision in the Compact, the State reserves the unilateral right to withdraw

1 as a Party to the Compact if:

2 a. Congress has not ratified this Compact within four years from the date on which the ratification of the
3 Compact by the Montana legislature takes effect under State law. This is a continuing right until Congress ratifies
4 the Compact;

5 b. The Tribes have not ratified this Compact within five years from the date on which the ratification of
6 the Compact by the Montana legislature takes effect under State law;

7 c. Congress requires a State contribution to settlement that exceeds the contributions described in Article
8 VI.A; or

9 d. Congress does not authorize and appropriate the Federal share of funding agreed to pursuant to
10 Article VI.B.

11 5. The State may exercise its right to withdraw under Article VII.A.4 by sending to the Chair of the Tribal
12 Council and to the Secretary a letter delivered by certified mail from the Governor of the State expressing the
13 State's intent to withdraw and specifying a reason for withdrawal and a withdrawal date not sooner than one
14 hundred and twenty days from the date of the letter. On the date designated in the letter for State withdrawal, the
15 Compact shall become null and void without further action by any Party, and the Parties agree to resume
16 negotiation in good faith for quantification of the water rights of the Tribes and entry of a decree in a court of
17 competent jurisdiction.

18 B. Incorporation into Decrees.

19 1. Within one hundred eighty (180) days of the date the Compact is ratified by the Tribes, the State, and
20 the United States, whichever is latest, the Tribes, the State, and/or the United States shall file, in the general
21 stream adjudication initiated by the State, pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of
22 the proposed decree set forth in Appendix 38 as the decree of the water rights held by the United States in trust
23 for the Tribes, Tribal members, and the Allottees of the Tribes as well as those Water Rights Arising Under State
24 Law set forth in Article III.D.4.a.i and Article III.D.5, of which the Tribes are becoming co-owners pursuant to this
25 Compact, and such other provisions of the Compact as are related to the determination of these water rights and
26 their administration. If the Montana Water Court does not approve the proposed decree submitted with the motion
27 within three years following the filing of the motion, the Compact shall be voidable by agreement of the State and
28 the Tribes. If the Montana Water Court approves the proposed decree within three years, but the decree is
29 subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by agreement
30 of the State and the Tribes. Any effect of the failure of approval or setting aside of the decree on the approval,

1 ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and
2 agree that the submission of the Compact to a State court or courts, as provided for in the Compact, is solely to
3 comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the State court or expand
4 in any manner the waiver of sovereign immunity of either the United States or the Tribes in the McCarran
5 Amendment, 43 U.S.C. 666, or other provision of Federal law.

6 2. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes
7 of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to the contents of Appendix 38, and
8 may extend to other sections of the Compact only to the extent that they relate to the determination of water rights
9 and their administration. The final decree shall consist of the contents of Appendix 38, and such other information
10 as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire
11 Compact must be included in the preliminary decree without alteration for the purpose of notice.

12 C. Disposition of State and Federal Suits.

13 1. On issuance of a final decree by the Montana Water Court or its successor, and the completion of any
14 direct appeals therefrom, or on expiration of the time for filing any such appeal:

15 a. the United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a),
16 Fed.R.Civ.P., to dismiss without prejudice any and all claims of the Tribes, Tribal members, and Allottees and
17 any and all claims made by the United States for the benefit of the Tribes, Tribal members, and Allottees in United
18 States v. Abell, No. CIV-79-33-M (filed April 5, 1979). The case may only be resumed if either the State or the
19 Tribes exercise the rights each holds under Article VII.A;

20 b. the Tribes and the State shall execute and file joint motions to dismiss without prejudice the case
21 entitled Confederated Salish and Kootenai Tribes v. Bud Clinch, Director, Montana Department of Natural
22 Resources and Conservation, and the Montana Department of Natural Resources and Conservation, Montana
23 First Judicial Court, County of Lewis and Clark, Cause No. BDV-2001-253, Montana First Judicial District Court,
24 Lewis and Clark County, Montana; and

25 c. The Decree shall be filed by the Parties as a consent decree in Abell, or in Federal court as a new
26 proceeding after the dismissal of Abell conditional on agreement by the Parties to seek the necessary State,
27 Tribal, and Federal legislation to implement the remaining provisions of the Compact, if it is finally determined in
28 a judgment binding on the State that the State courts lack jurisdiction over, or that the State court proceedings
29 are inadequate to adjudicate some or all of the water rights asserted in Abell.

30 D. Settlement of Water Rights Claims.

1 and any additional Federal legislation necessary to effectuate the Compact.

2 C. Tribal Legislation. The State and the Tribes agree to seek ratification of the Compact by the Tribes
3 and any Tribal legislation necessary to effectuate the Compact.

4 D. Defense of the Compact. The Parties agree to defend the Compact after its Effective Date from all
5 challenges and attacks and in all proceedings pursuant to Article VII.B and C, and agree that no provision of the
6 Compact shall be modified as to substance except as may be provided in the Compact, or by agreement among
7 the Parties.

8 IN WITNESS WHEREOF the representatives of the Confederated Salish and Kootenai Tribes, the State
9 of Montana, and the United States, have signed the Compact on the ____ day of ____, 201__.

10

11 **NEW SECTION. Section 2. Unitary administration and management ordinance.**

12 **PART 1 - GENERAL PROVISIONS**

13 1-1-101. Authority.

14 1. This Ordinance parallels legislation adopted by the Confederated Salish and Kootenai Tribes pursuant
15 to tribal approval of the Confederated Salish and Kootenai Tribes-Montana Compact and the Montana Water Use
16 Act of 1973 to effectuate Unitary Administration and Management on the Flathead Indian Reservation.

17 2. This Ordinance and the parallel tribal legislation are contingently effective; neither operates with the
18 force and effect of law without the other. No modification by the Tribes or the State of Montana of these respective
19 laws shall be effective within the exterior boundaries of the Reservation unless and until the other makes an
20 analogous modification. No amendment of this Ordinance that may affect a use of the Tribal Water Right may
21 be made without Secretarial approval.

22 3. Upon the Effective Date of the Compact, this Ordinance shall govern all water rights, whether derived
23 from tribal, state or federal law, and shall control all aspects of water use, including all permitting of new uses,
24 changes of existing uses, enforcement of water right calls and all aspects of enforcement within the exterior
25 boundaries of the Flathead Indian Reservation. Any provision of Title 85, MCA, that is inconsistent with this Law
26 of Administration is not applicable within the Reservation.

27 1-1-104. Definitions.

28 Unless otherwise defined herein, capitalized terms used in this Ordinance shall have the meaning set
29 forth in the Compact.

30 1. "Allottee" means an owner of an interest in a tract of land held in trust by the United States of America

1 which was allotted pursuant to the Act of April 23, 1904, 33 Stat. 302, as amended, or the Act of February 25,
2 1920, 41 Stat. 452, as amended.

3 2. "Appropriate" means to divert, impound, maintain an instream, inlake, inwetland or impoundment use,
4 or withdraw a quantity of water for a beneficial use on the Flathead Indian Reservation under color of law.

5 3. "Appropriation" means the diversion, impoundment, maintenance of an instream, Wetland, or
6 impoundment use, or the withdrawal of a quantity of water for a Beneficial Use on the Flathead Indian Reservation
7 under color of law.

8 4. "Appropriation Right" means a right to Appropriate water issued by the Water Management Board
9 pursuant to the terms of the Compact and this Ordinance.

10 5. "Appropriator" means a Person who Appropriates water.

11 6. "Aquifer Injection" means the subsurface discharge of fluids into the ground by means of an Injection
12 Well.

13 7. "Authorization to Develop a Domestic Allowance" means preliminary approval or authorization from
14 the Office of the Engineer to Develop a Domestic Allowance. This approval must be obtained before drilling a Well
15 or developing a spring.

16 8. "Beneficial Use" means a consumptive or non-consumptive use of water for the benefit of the
17 Appropriator, other Persons, the Tribes, one or more Tribal members, or the general public, including but not
18 limited to agricultural, stock water, domestic, fish and wildlife, cultural and religious practices, industrial, Instream
19 Flow, irrigation, mining, Mitigation Water, municipal, power, recreational uses, and Wetlands purposes.

20 9. "Business" means a building or site where commercial work is carried on, including but not limited to
21 a factory, store, or office.

22 10. "Change in Use" means an authorized change in the point of diversion, the place of use, the period
23 of use, the purpose of use, or the place of storage of an Appropriation Right issued by the Water Management
24 Board under the Compact and this Ordinance, or of an Existing Use. A changed water right retains the original
25 priority date of that right.

26 11. "Compact" means that water rights settlement entered into by the Confederated Salish and Kootenai
27 Tribes, the State of Montana, and the United States.

28 12. "Complainant" means one who files a Complaint.

29 13. "Complaint" means a written assertion of injury submitted to the Engineer pursuant to Section 3-1-102
30 of this Ordinance.

1 14. "Consumptive Use" means the amount of water used for a beneficial purpose, such as water
2 transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products, that
3 does not return to the Groundwater or surface water source.

4 15. "Designee" means an individual selected by the Engineer to exercise, in regard to a particular
5 application or objection, those powers assigned to the Engineer under Chapter II of this Ordinance. Any Staff is
6 eligible to be selected as a Designee provided that he or she has not previously worked on the particular
7 application or objection at issue.

8 16. "Developed Spring" means any artificial opening or excavation in the ground, however made,
9 including any physical alteration at the point of discharge regardless of whether it results in any increase in the
10 yield of Groundwater, from which Groundwater is sought or can be obtained or through which it flows under
11 natural pressures or is artificially withdrawn.

12 17. "Development" means contiguous or closely grouped parcels of land under the same or affiliated
13 ownership, including, but not limited to, housing subdivisions or any combination of business and residential units.

14 18. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor
15 agency.

16 19. "Domestic Allowance" means an entitlement to use water issued to households and small businesses
17 pursuant to the provisions of Section 2-2-117 of this Ordinance; Domestic Allowances include Individual Domestic
18 Allowances, Shared Domestic Allowances, and Development Domestic Allowances.

19 20. "Domestic Use" means those water uses common to a household, including washing, drinking,
20 bathing, waste disposal, cooling and heating, domestic animals, and garden and landscape irrigation. Domestic
21 Use does not include the filling of ponds, pits, pit-dams or reservoirs.

22 21. "Effective Date" means the date on which the Compact is finally approved by the Tribes, by the State,
23 and by the United States, and on which the Law of Administration has been enacted and taken effect as the law
24 of the State and the Tribes, whichever date is latest.

25 22. "Emergency" means a situation that demands unusual or immediate action to prevent imminent injury
26 to life, property, or the environment.

27 23. "Enclosed Storage" means a storage container fully enclosed to include a cistern or tank.

28 24. "Existing Use" means a right to the use of water pursuant to a Water Right Arising Under State Law
29 or under color of Tribal or Federal law in existence as of the Effective Date, including uses in existence on that
30 date that are eligible for the registration processes set forth in Sections 2-1-101 through 2-1-108 of this

1 Ordinance; provided that any portion of a Water Right Arising Under State Law within the Reservation that is, at
2 any point after the date the ratification of the Compact by the Montana legislature takes effect under State law,
3 voluntarily relinquished or is legally determined to be abandoned, relinquished, or have otherwise ceased to exist,
4 shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and shall be entitled
5 to no further protection as such a right or as an Existing Use.

6 25. "Flathead Indian Irrigation Project" or "FIIP" means the irrigation project developed by the United
7 States to irrigate lands within the Reservation pursuant to the Act of April 23, 1904, Public Law 58-159, 33 Stat.
8 302 (1904), and the Act of May 29, 1908, Public Law 60-156, 35 Stat. 441 (1908), and includes, but is not limited
9 to, all lands, reservoirs, whether situated on or off the Reservation, easements, rights-of-way, canals, ditches,
10 laterals, or any other FIIP facilities, head gates, pipelines, pumps, buildings, heavy equipment, vehicles, supplies,
11 records or copies of records and all other physical, tangible objects, whether of real or personal property, used
12 in the management and operation of the FIIP.

13 26. "FIIP Influence Area" means the areal extent of irrigated lands served by diversion works that are
14 directly influenced by the operations of the FIIP as identified in the map attached hereto as Appendix 1.

15 27. "Flathead Indian Reservation" or "Reservation" means all land within the exterior boundaries of the
16 Indian Reservation established under the July 16, 1855 Treaty of Hellgate (12 Stat. 975), notwithstanding the
17 issuance of any patent, and including rights-of-way running through the Reservation.

18 28. "Flathead System Compact Water" means that portion of the Tribal Water Right consisting of 229,383
19 acre feet per year that the Tribes may withdraw from the Flathead River or Flathead Lake, which includes up to
20 90,000 acre feet per year stored in Hungry Horse Reservoir, with a maximum total volume consumed of 128,158
21 acre feet per year.

22 29. "Groundwater" means any water that is below the surface of the earth.

23 30. "Groundwater Management Area" means an area designated and managed under Section 1-1-109.

24 31. "Heating/Cooling Exchange Well" means a Well for the purpose and with the attributes set forth in
25 Section 2-2-119(1) of this Ordinance.

26 32. "Home" means a house, apartment, or other shelter that is a permanent or temporary residence of
27 a Person, family, or household.

28 33. "Illegal" or "Illegally" means, as it pertains to the use of water, to Appropriate water not pursuant to
29 an Appropriation Right or Existing Use.

30 34. "Injection Well" means a Well utilized for injecting fluids or gases into geologic materials. Open pits,

1 ponds, or excavations are not considered injection wells.

2 35. "Instream Flow" means a stream flow retained in a watercourse to benefit the aquatic environment.
3 Instream Flow may include natural Flow or streamflow modified by regulation, diversion, or other modification.

4 36. "Livestock" means cattle, bison, sheep, swine, horses, mules, goats, or other animals specifically
5 raised and used for food or fiber or as a beast of burden.

6 37. "Mitigation" means the reallocation of surface water or Groundwater through a Change in Use or other
7 means to offset adverse effect resulting from Net Depletion by any proposed new Appropriation.

8 38. "Mitigation Plan" means a plan as developed by an applicant to provide Mitigation.

9 39. "NRD" means the Confederated Salish and Kootenai Tribes' Natural Resources Department.

10 40. "Natural Wetland" means a Wetland area that is maintained with a natural surface water source,
11 natural Groundwater source or a combination of natural surface water and natural Groundwater without any
12 artificial means of diversion, impoundment, withdrawal, excavation, or other artificial means of control.

13 41. "Net Depletion" means the calculated volume, rate, timing, and location of reductions to a water
14 source resulting from a proposed new Appropriation that are not offset by the corresponding accretions to that
15 source caused by the proposed new Appropriation.

16 42. "Non-consumptive Use" means any beneficial use of water that does not meet the definition of
17 consumptive use.

18 43. "Other Instream Flows" means the Tribal instream flow water rights for stream reaches described in
19 Article III.C.1.d.iii of the Compact.

20 44. "Office of the Engineer" means the Engineer and Staff, acting in their official capacities.

21 45. "Person" means an individual or any other entity, public or private, including the Tribes, the State and
22 the United States, and all officers, agents and departments of each sovereign.

23 46. "Pits, Pit-dams, Constructed Ponds, or Reservoirs" refer to bodies of water that are created by
24 man-made means and which store water for beneficial use.

25 47. "Project Manager" means the person or team of persons hired by the Project Operator to operate and
26 manage the FIIP in accordance with its direction, this and other applicable agreements, and applicable law,
27 including the Compact.

28 48. "Project Operator" means that entity with the legal authority and responsibility to operate the Flathead
29 Indian Irrigation Project.

30 49. "Public Water Supply System" means a system for the provision of water for human consumption that

1 has at least 15 service connections or that regularly serves at least 25 Persons daily for any 60 or more days in
2 a calendar year.

3 50. "Publish" or "Publication" means, unless otherwise designated, the printing of an announcement of
4 document availability, or the text of the document itself, in a newspaper of general circulation on the Reservation
5 and in the Tribal newspaper and posting on the Water Management Board's website.

6 51. "Redundant Well" means a Well to provide a backup source of water for a Public Water Supply
7 System.

8 52. "Restored Natural Wetland" means a Wetland area that, upon restoration, shall be maintained with
9 a natural surface water source, natural Groundwater source, or a combination of natural surface water and natural
10 Groundwater without any artificial means of diversion, impoundment, withdrawal, excavation, or other artificial
11 means of control.

12 53. "Secretary" means the Secretary of the United States Department of the Interior or the Secretary's
13 assigned representative.

14 54. "Shall" means a mandatory and not a discretionary act.

15 55. "Shared Well" means a single Well that is physically manifold to multiple homes and/or businesses
16 and is cooperatively used pursuant to a Shared Well Agreement.

17 56. "Shared Well Agreement" means a legally binding document that stipulates the manner in which a
18 Shared Well is jointly used between or among all Homes or Businesses connected to the well; to be valid, it must
19 be signed by representatives for each Person having a possessory interest in each individual Home or Business
20 connected to a Shared Well.

21 57. "Spring" means a perennial hydrologic occurrence of water involving the natural flow of water
22 originating from beneath the land surface and arising to the surface of the ground.

23 58. "Staff" means the employees, contractors and others assigned to or engaged by the Board or the
24 Engineer to assist or facilitate the Engineer in carrying out the duties assigned to the Engineer by the Compact
25 and this Ordinance, and by the Board pursuant to the same.

26 59. "Stock Tank" means a 30 to 1500 gallon tank used to provide drinking water for Livestock that is
27 equipped with a water level regulator that shuts off supply to keep the Stock Tank from overflowing.

28 60. "Substitute Well" means a Well that replaces an existing Well which is to be abandoned.

29 61. "Temporary Emergency Appropriation" means the temporary beneficial use of water necessary to
30 protect lives, property, or the environment, by reason of fire, storm, earthquake or other disaster, or unforeseen

1 combination of circumstances which call for immediate action. An appropriation made necessary due to drought
2 conditions is not a temporary emergency appropriation.

3 62. "Temporary Groundwater Management Area" means an area established pursuant to Section
4 1-1-109(10).

5 63. "Tribal Member" means a Person who is lawfully enrolled by and whose name appears on the official
6 enrollment list of the Confederated Salish and Kootenai Tribes.

7 64. "Tribal Water Right" means the water rights of the Confederated Salish and Kootenai Tribes, including
8 any Tribal member or Allottee, described in Article III of the Compact.

9 65. "Tribes" means the Confederated Salish and Kootenai Tribes of the Flathead Reservation, and all
10 officers, agencies, and departments thereof.

11 66. "Waste or Wasting" means the unreasonable loss of water resulting from the design, construction,
12 operation or maintenance of a water diversion, storage or distribution facility, Well, Developed Spring, or the
13 application of water to anything but a beneficial use.

14 67. "Water Engineer" or "Engineer" means the Person satisfying the criteria in Section 1-2-109 employed
15 by the Water Management Board pursuant to Article IV.C.5.c of the Compact to exercise the powers and duties
16 of the Water Engineer as set forth in the Compact and this Ordinance.

17 68. "Water Management Board" or "Board" means the board created by Article IV.C of the Compact and
18 vested with the responsibilities set forth in the Compact and in Tribal and State law for the administration of water
19 within the Reservation.

20 69. "Water Rights Arising Under State Law" means those water rights Arising Under State Law existing
21 as of the Effective Date and not subsequently relinquished or abandoned, as those rights are: finally adjudicated
22 by a court of competent jurisdiction; permitted by the DNRC prior to the date the ratification of the Compact by
23 the Montana legislature takes effect under State law; exempted from filing in the State adjudication pursuant to
24 85-2-222, MCA; or excepted from the permitting process pursuant to 85-2-306, MCA.

25 70. "Well" means any artificial opening or excavation in the ground, however made, by which
26 Groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially
27 withdrawn.

28 71. "Well Log Report" means DNRC Form No. 603 (see ARM 36.12.102), or any successor reporting form
29 and requirement promulgated in State law.

30 72. "Well Shaft Casing" means an impervious durable pipe placed in a well or Developed Spring to

1 prevent the walls from caving, to seal off surface drainage, or undesirable water, gas, or other fluids to prevent
2 their entering the well, and to prevent the Waste of Groundwater.

3 73. "Wetland" means an area that is inundated or saturated by surface water or Groundwater at a
4 frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of
5 vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes,
6 bogs and similar areas.

7 74. "Wetland Quantified Appropriation Right" means an Appropriation Right issued for a Wetlands
8 purpose that utilizes any man-made diversions, impoundment, withdrawals, excavations, or other artificial means
9 for the purposes of appropriation for either all or a portion of a Wetland.

10 75. "Wetland Protective Appropriation Right" means an Appropriation Right issued for either a Natural
11 Wetland or Restored Natural Wetland.

12 76. "Works" means all property, real or personal, necessary or convenient to the appropriation,
13 conservation, storage, diversion, distribution, development, screening and utilization of water.

14 1-1-105. Measurement of Water.

15 Upon the effective date of this Ordinance, legal standards of measurement of water within the Flathead
16 Reservation shall be as follows:

17 1. Flow rates shall be measured in cubic feet per second, unless otherwise provide herein. Where
18 documentary evidence of an existing use is expressed in gallons per minute, 448.8 gallons per minute shall be
19 considered equivalent to a flow of one cubic foot per second. Where documentary evidence of an existing use
20 is expressed in statutory or miner's inches, 40 statutory or miner's inches shall be considered equivalent to a flow
21 of one cubic foot per second.

22 2. Volumes of water shall be measured in acre-feet, unless otherwise provided herein. One acre-foot
23 shall be considered equivalent to a volume of 43,560 cubic feet. One cubic foot shall be considered equivalent
24 to a volume of 7.48 gallons.

25 1-1-106. Measurement of Time.

26 Whenever in this Ordinance an action is required to be performed within a certain number of days, the
27 time for completion of the act shall be measured in calendar days unless the last day falls on a Friday, Saturday,
28 Sunday, or Tribal, State or Federal legal holiday, in which case the time for performance is extended to the next
29 subsequent business weekday.

30 1-1-107. Appropriation Rights Allowed.

- 1 1. The following Appropriation Rights or Changes in Use may be authorized by the Board pursuant to
2 the Compact and this Ordinance:
- 3 a. Appropriation Rights for Groundwater appropriations for Redundant or Substitute Wells as set forth
4 in Section 2-2-115 of this Ordinance;
- 5 b. Appropriation Rights for Stock Water Allowances as set forth in Section 2-2-116 of this Ordinance;
- 6 c. Appropriation Rights for Domestic Allowances as set forth in Section 2-2-117 of this Ordinance;
- 7 d. Appropriation Rights for uses of Flathead System Compact Water as set forth in Section 2-2-118 of
8 this Ordinance;
- 9 e. Appropriation Rights for non-consumptive geothermal heating or cooling exchange Wells as set forth
10 in Section 2-2-119 of this Ordinance;
- 11 f. Appropriation Rights for Temporary Emergency Appropriations as set forth in Section 2-2-120 of this
12 Ordinance;
- 13 g. Appropriation Rights or Change in Use authorizations for Wetlands as set forth in Sections 2-2-123
14 and 2-2-124 of this Ordinance.
- 15 h. Appropriation Rights for non-consumptive uses, including, but not limited to, hydropower generation
16 and not including flow-through ponds;
- 17 i. Appropriation Rights for which adverse effects to existing Appropriators are offset by Mitigation.
- 18 j. Changes in Use of all Appropriation Rights or Existing Uses except for those Appropriation Rights
19 authorized under subsections (1)(a), (1)(b), (1)(c), (1)(e), (1)(f), (1)(k), or (1)(l) of this Section or those for Existing
20 Uses exempt from the permitting requirements of 85-2-306, MCA, or from the claim filing requirements of
21 85-2-221, MCA, as set forth in 85-2-222, MCA; provided that a use authorized under subsection (1)(h) may not
22 be changed from a non-consumptive use to a consumptive use.
- 23 k. Appropriation Rights for to appropriate surface water to conduct response actions related to natural
24 resource restoration required for:
- 25 i. remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation,
26 and Liability Act of 1980, 42 U.S.C. 9601, et seq.;
- 27 ii. aquatic resource activities carried out in compliance with and as required by the federal Clean Water
28 Act of 1977, 33 U.S.C. 1251 through 1387; or
- 29 iii. remedial actions taken pursuant to the Remedial Action Upon Release of Hazardous Substance Act,
30 Title 75, chapter 10, part 7, MCA.

1 No Appropriation Rights issued pursuant to this subsection may be used for dilution.

2 I. Appropriation Rights for uses of surface water for or by a municipality or regional distribution system.

3 m. Appropriation Rights for new uses of the Tribal Water Right by the Tribes, Tribal Members, or
4 Allottees, provided that any such new uses be sourced from:

5 i. Flathead System Compact Water; or

6 ii. another source, provided that any adverse effects to existing Appropriators caused by the Net
7 Depletion of the new Appropriation Right must be offset by Mitigation pursuant to Section 1-1-112 of this
8 Ordinance.

9 2. Other than those Appropriation Rights set forth in subsection (1) of this Section, the Board may not
10 grant an Appropriation Right or other authorization to appropriate surface water or Groundwater within the
11 exterior boundaries of the Flathead Indian Reservation.

12 1-1-108. Reservation Water Rights Database.

13 The Board shall cause all Appropriation Rights and Changes in Use authorized by the Board, including
14 those uses registered pursuant to the provisions of Sections 2-1-101 through 2-1-107 of this Ordinance, to be
15 entered into the DNRC water rights database in a format agreed to by the Board and the DNRC.

16 1-1-109. Groundwater Management Areas.

17 The Board may designate, modify, or repeal either permanent or temporary Groundwater Management
18 Areas as provided in this part.

19 1. Each designation of a Groundwater Management Area shall identify the need for the special
20 management, the boundaries of the area, the water resources targeted for special management, and the specific
21 restrictions that will apply in the Groundwater Management Area.

22 2. The designation, modification, or repeal of a Groundwater Management Area may be initiated by
23 submission of a correct and complete petition by:

24 a. the Tribes, the State, or the United States;

25 b. a local public health agency;

26 c. a municipality, county, or conservation district; or

27 d. at least one-third of the water rights holders in a proposed Groundwater Management Area.

28 3. A correct and complete petition shall: a. be in a form prescribed by the Board;

29 b. contain facts and analysis prepared by a hydrologist, hydrogeologist, qualified scientist, or a qualified
30 licensed professional engineer demonstrating the existence of one or more of the criteria set forth in subsection

1 (8) are met; and

2 c. describe proposed measures, if any, needed to mitigate effects of the criteria identified in subsection
3 (8) of this Section; and that are alleged in the petition or describe rationale as to why a Groundwater Management
4 Area should be repealed or modified.

5 4. Upon receipt of a completed petition complying with subsection (3) of this Section, the Office of the
6 Engineer shall date stamp the petition.

7 5. Office of the Engineer review:

8 a. within 180 days of the date of receipt of the petition pursuant to subsection (4) of this Section, the
9 Office of the Engineer shall:

10 i. determine in writing that the petition is correct and complete; or

11 ii. notify the petitioner of any defects in a petition, with an explanation in writing of the defect(s).

12 b. any petition that is returned pursuant to subsection (5)(a)(ii) of this Section and not corrected within
13 90 days from the date of return shall be deemed terminated.

14 c. if the Office of the Engineer does not notify the petitioner pursuant to subsection (5)(a) of this Section,
15 the petition shall be treated as correct and complete.

16 6. Board review:

17 a. within 60 days after a petition is determined to be correct and complete, the Board shall:

18 i. deny the petition in writing in whole or part, stating the reasons for denial;

19 ii. inform the petitioner in writing that the Board will study the information presented in the petition for a
20 period not to exceed 90 days before denying or proceeding with the petition; or

21 iii. publish notice of the Board's consideration of action concerning a permanent or temporary
22 Groundwater Management Area pursuant to subsection (8) of this Section.

23 b. failure of the Board to act under subsection (6)(a) of this Section shall be deemed a denial of the
24 petition.

25 7. If the Board determines that a correct and complete petition contains sufficient information to warrant
26 the Board granting the petition, the Board shall proceed to hear the petition. The Board shall provide public notice
27 of the hearing by:

28 a. publishing a notice at least once each week for 3 successive weeks, with the first notice not less than
29 30 days before the date of the hearing in a newspaper of general circulation on the Reservation;

30 b. serving by mail a copy of the notice, not less than 30 days before the hearing, upon each Person or

1 public agency known from an examination of the records of the Board to be a water right holder within the
2 proposed or existing Groundwater Management Area;

3 c. serving by mail a copy of the notice upon any other Person, including Tribal, State or federal agencies,
4 that the Board knows to be interested in or affected by the proposed designation, modification, or repeal of a
5 Groundwater Management Area.

6 d. the notice under subsections (7)(a) through (7)(c) must include a summary of the basis for the
7 proposed action. Publication and mailing of the notice as prescribed in this Section, when completed, is
8 considered to be sufficient notice of the hearing to all interested parties.

9 e. the Board shall make available to the public on its website a complete copy of the petition or request
10 to designate, modify, or repeal either permanent or temporary Groundwater Management Areas.

11 8. The Board may designate a permanent Groundwater Management Area if it finds by a preponderance
12 of the evidence that any of the following criteria have been met:

13 a. current or projected reductions of recharge to the aquifer or aquifers within the boundaries of the
14 proposed permanent Groundwater Management Area will cause Groundwater levels to decline to the extent that
15 water rights holders cannot reasonably exercise their water rights;

16 b. current or projected Groundwater withdrawals from the aquifer or aquifers in the boundaries of the
17 permanent Groundwater Management Area have reduced or will reduce Groundwater levels or surface water
18 availability necessary for water rights holders to reasonably exercise their water rights;

19 c. current or projected Groundwater withdrawals from the aquifer or aquifers in the proposed permanent
20 Groundwater Management Area have impaired or will impair Groundwater quality necessary for water right
21 holders to reasonably exercise their water rights based on relevant water quality standards;

22 d. Groundwater within the proposed permanent Groundwater Management Area is not suitable for any
23 beneficial use; or

24 e. public health, safety, or welfare is or will become at risk.

25 9. Monitoring and studies:

26 a. if the Board finds that sufficient facts, including monitoring information, are not available to designate
27 a permanent Groundwater Management Area, the Board may designate temporary Groundwater Management
28 Area to allow studies to obtain the facts needed to:

29 i. correct deficiencies that the Board identifies in a petition for a permanent Groundwater Management
30 Area;

- 1 ii. determine the extent that the criteria identified in subsection (8) are met or not met;
- 2 iii. determine appropriate control measures to implement to designate a permanent Groundwater
3 Management Area.
- 4 b. the Board shall set the length of time that the temporary Groundwater Management Area shall be in
5 effect. The term of a temporary Groundwater Management Area may be extended by the Board, but may not
6 exceed a total of 6 years.
- 7 c. the Board shall determine the responsibility for funding the costs associated with subsection (9)(a).
8 Any person on whom a funding responsibility is placed by the Board pursuant to this subsection may appeal that
9 determination to a court of competent jurisdiction, which shall review the determination for an abuse of discretion.
- 10 d. prior to designating a temporary Groundwater Management Area, the Board shall provide notice and
11 the opportunity for public hearing pursuant to the notice provisions of subsection (7) of this Section.
- 12 e. a temporary Groundwater Management Area designation is for the purpose of monitoring and study
13 and shall not include the control provisions set forth in subsection (10) of this Section, other than measurement,
14 water quality testing, and reporting.
- 15 f. prior to expiration of a temporary Groundwater Management Area, and subject to the limitations of
16 subsection (9)(b) of this Section, the Board may amend or repeal the establishment of the temporary
17 Groundwater Management Area, or may designate a permanent Groundwater Management Area under this
18 Section.
- 19 10. A permanent Groundwater Management Area may include, but is not limited to, one or more of the
20 following provisions:
- 21 a. closing the permanent Groundwater Management Area to further appropriation of surface water and/or
22 Groundwater;
- 23 b. restricting the development of future surface water and/or Groundwater appropriations within the
24 permanent Groundwater Management Area;
- 25 c. prohibiting or restricting the issuance of Stock Water Allowances pursuant to Section 2-2-116 of this
26 Ordinance;
- 27 d. prohibiting or restricting the issuance of Domestic Allowances pursuant to Section 2-2-117 of this
28 Ordinance;
- 29 e. requiring measurement and reporting of future surface water or Groundwater appropriations within
30 the permanent Groundwater Management Area;

- 1 f. requiring water conservation measures within the permanent Groundwater Management Area;
2 g. requiring mitigation of Groundwater withdrawals within the permanent Groundwater Management
3 Area;
4 h. reporting data to the Board within the permanent Groundwater Management Area; and
5 i. other provisions that the Board determines are appropriate and adopts.

6 11. The Board, upon petition, may modify or repeal a Groundwater Management Area. Any petition
7 seeking the modification or repeal of a permanent Groundwater Management Area must demonstrate by a
8 preponderance of the evidence that current or projected recharge to the aquifer or aquifers or changes to current
9 or projected Groundwater withdrawals from the aquifer or aquifers in the boundaries of an existing Groundwater
10 Management Area justify modification or repeal of that Groundwater Management Area.

11 12. Appeal from any final decision of the Board concerning the designation, modification or repeal of any
12 permanent Groundwater Management Area pursuant to this Section shall be as set forth in Section 2-2-112 of
13 this Ordinance.

14 13. If the Board determines that it is appropriate for a Groundwater Management Area identified pursuant
15 to this section to extend to an area adjacent to but outside the boundaries of the Reservation, the Board, through
16 the Office of the Engineer, may petition the DNRC, pursuant to 85-2-506(2)(c)(i), MCA, to designate a Controlled
17 Groundwater Area in that adjacent area. Designation or modification by the DNRC of a Controlled Groundwater
18 Area in any such adjacent area shall be governed by the procedures set forth in 85-2-506, MCA.

19 1-1-110. Standards for Applications for Appropriation Rights and Changes in Use.

20 For any application for an Appropriation Right or Change in Use that is not one of the categories of
21 Appropriation Right identified in Sections 1-1-112(1) or 2-2-118 of this Ordinance, in addition to whatever
22 information is required by specific provisions of the Ordinance, all applications for Appropriation Rights and
23 Changes in Use must include:

- 24 1. An identification of the proposed beneficial use.
25 2. An identification of the source of water supply.
26 3. A project description, including an identification of any water right(s) to be changed to a new use, if
27 applicable.
28 4. A legal description of the point of diversion and the place of use.
29 5. The monthly volume(s) and flow rate(s) of the water supply to be diverted, withdrawn, or impounded,
30 and the monthly volume(s) to be consumed; however the Office of the Engineer may require a more frequent

1 quantification time step.

2 6. The monthly historic diverted, withdrawn, or impounded volume(s) and flow rate(s) and the historically
3 consumed volume(s) of the water right(s) to be changed to a new use, if applicable; however, the Office of the
4 Engineer may require a more frequent quantification time step.

5 7. The calculations, references and methodologies used to determine the volume(s) and flow rate(s) in
6 subsections (5) and (6) above.

7 8. Identification of physical water availability and existing legal demands on the source of supply of water.

8 9. Evidence that the proposed means of diversion, construction, and operation of the appropriation works
9 are adequate.

10 10. Evidence of possessory interest or the written consent of the person with the possessory interest in
11 the property where the water is to be put to beneficial use, diverted, conveyed, impounded, stored, transported,
12 withdrawn, used, and distributed.

13 11. Information showing that the water quantity or quality of an Appropriator will not be adversely affected,
14 if applicable.

15 12. A United States Geological Survey (USGS) quadrangle map or United States Department of
16 Agriculture (USDA) aerial photo must be included with the application.

17 a. The following items shall be clearly identified on the map:

18 (1) North arrow;

19 (2) Scale bar;

20 (3) Section corners and numbers;

21 (4) Township and range numbers;

22 (5) Property lines and ownership;

23 (6) Source(s);

24 (7) Point(s) of diversion;

25 (8) Means of conveyance;

26 (9) Place(s) of use;

27 (10) Place(s) of storage, if applicable;

28 (11) Surface water features;

29 (12) Measurement and instrument locations associated with the application; and

30 (13) The place(s) of use of all associated and supplemental water rights.

1 b. If the application is for a Change in Use then the site map shall also show the historic point(s) of
2 diversion, place(s) of use, and place(s) of storage, as applicable.

3 c. Additional maps shall be submitted if the information on one map cannot convey the required
4 information clearly and shall be of the same scale so the maps can be overlain.

5 1-1-111. Groundwater Diversion Standards

6 1. Wells:

7 a. Persons that drill, make, or construct Wells, including monitoring Wells, on the Reservation shall
8 comply with Title 37 Chapter 43, MCA, and ARM 36 Chapter 21 licensing, conduct, and regulatory requirements,
9 or any successor provisions promulgated in State law.

10 b. all Well construction on the Reservation shall meet the standards set forth in ARM 36 Chapter 21, or
11 any successor provisions promulgated in State law.

12 c. construction and operations of all Wells must comply with all applicable federal, State, Tribal, and local
13 environmental regulations.

14 2. Developed Springs:

15 a. all Developed Spring collection components, including but not limited to infiltration galleries, infiltration
16 basins, and French drains, shall be installed and buried under the surface of the ground.

17 b. all means of storage and conveyance, including but not limited to supply pipes, cisterns, and pump
18 housings, shall be sealed and made impervious to water and designed in a manner that protects the source from
19 backflow and surface contamination.

20 c. open pits, ponds, or excavations shall not be used as a means of diversion for Developed Springs.

21 d. construction and operation of all Developed Springs must comply with all applicable federal, State,
22 Tribal, and local environmental regulations.

23 3. Aquifer Injection and Injection Wells are not allowed except when used exclusively for Heating/Cooling
24 Exchange Wells.

25 1-1-112. Mitigation

26 1. Unless any provision of a Groundwater Management Area established pursuant to 1-1-109 specifically
27 requires Mitigation for any of the following categories of Appropriation Rights, Mitigation is not required for
28 Appropriation of:

29 a. Redundant or Substitute Wells pursuant to Section 2-2-115 of this Ordinance;

30 b. Stock Water Allowances pursuant to Section 2-2-116 of this Ordinance;

- 1 c. Domestic Allowances pursuant to Section 2-2-117 of this Ordinance;
- 2 d. Heating/Cooling Exchange Wells pursuant Section to 2-2-119 of this Ordinance;
- 3 e. Temporary Emergency Appropriations pursuant to Section 2-2-120 of this Ordinance; or
- 4 f. Short-term uses of an Appropriation Right pursuant to Sections 2-2-121 and 2-2-122 of this Ordinance.
- 5 2. Mitigation is not required for Appropriation of Flathead System Compact Water Pursuant to 2-2-118
- 6 of this Ordinance.
- 7 3. Any Appropriation Right that results in a Net Depletion of either surface water or Groundwater shall
- 8 offset the entire Net Depletion that results in adverse effect to any Appropriator through the use of Mitigation
- 9 pursuant to a Mitigation Plan.
- 10 4. An adverse effect to a Wetland Protective Appropriation Right recognized in Article III.C.1.f of the
- 11 Compact or a Wetland Protective Appropriation Right issued pursuant to Section 2-2-123 of this Ordinance that
- 12 requires Mitigation shall include, but is not limited to, a water supply alteration that would cause:
- 13 a. reductions of the Wetland boundary in excess of the normal range of variability in water; or
- 14 b. unnatural Wetland plant community change.
- 15 5. A Mitigation Plan must include:
- 16 a. a plan of use for the proposed Appropriation Right for which the Mitigation Plan is required;
- 17 b. an identification of the location, volume, and timing (by monthly or more frequent time step as
- 18 determined by the Engineer) of the adverse effect to be mitigated;
- 19 c. if necessary, evidence that an application for a Change in Use has been submitted;
- 20 d. the amount of water reallocated through exchange or substitution that is required to mitigate the
- 21 adverse effect;
- 22 e. evidence that the water for Mitigation is legally and physically available;
- 23 f. evidence of how the Mitigation Plan will offset the Net Depletion in a manner that will offset any
- 24 adverse effect to any Appropriator; and
- 25 g. evidence that the necessary water quality permits, if any, have been applied for pursuant to the Tribal
- 26 Water Quality Management Ordinance.
- 27 6. No applicant for an Appropriation Right shall be required to provide more Mitigation than the quantity
- 28 needed to offset the adverse effects of that proposed new Appropriation Right on any Appropriator.
- 29 7. Compliance with a Mitigation Plan and proof of any water quality permit(s) issued pursuant to the
- 30 Tribal Water Quality Management Ordinance, if applicable, must be included as a written condition on any

1 Appropriation Right or Change in Use authorization issued conditioned on Mitigation.

2 8. If compliance with a Mitigation Plan or any applicable water quality permit(s) issued pursuant to the
3 Tribal Water Quality Management Ordinance ceases or terminates, the holder of the Appropriation Right
4 conditioned on compliance with the Mitigation Plan shall immediately notify the Office of the Engineer, and use
5 of the Appropriation Right shall be suspended immediately until a new Mitigation Plan is approved and
6 implemented pursuant to this Ordinance.

7 1-1-113. Codification, Severability and Defense.

8 1. The provisions of this Ordinance are severable, and a finding of invalidity of one or more provisions
9 hereof shall not affect the validity of the remaining provisions.

10 2. This Ordinance is intended to function in conjunction with those portions of Title 85 of the Montana
11 Code Annotated codified at _____. Should those portions of the Mont. Code Ann. be amended by
12 subsequent legislation without contemporaneous and materially identical Tribal amendment to this Ordinance,
13 this Ordinance shall govern the use of waters within the Reservation, irrespective of the amended provisions of
14 State law, until such time as the laws of the Tribes and the State are rendered mutually consistent. Similarly,
15 should this Ordinance be amended without contemporaneous and materially identical amendment of the
16 provisions adopted into State law, those pre-existing provisions of Montana law shall govern the use of waters
17 within the Reservation, irrespective of the amended provisions, until such time as the laws of the Tribes and the
18 State are rendered mutually consistent.

19 3. This Ordinance and subsequent amendments thereto are subject to the approval of the Secretary.

20 4. Any amendment to this Ordinance that is approved by the Tribes, the State and the Secretary is
21 pursuant to, and shall not be deemed a modification of, the Compact.

22 5. The Tribes adopt this code and the State adopts its parallel legislation only after concluding its
23 provisions are lawful. Should the legality of the Ordinance, or parallel State legislation, or any provision thereof
24 be challenged in any court, the parties shall use their best effort jointly to defend the enforceability of the
25 Ordinance, the parallel State legislation and each of the respective provisions.

26 1-1-114. Effective Date.

27 This Ordinance and each provision hereof according to its terms shall take effect _____ from
28 the date of its adoption.

29 PART 2 - UNITARY ADMINISTRATION AND MANAGEMENT

30 1-2-101. Purpose.

1 The purpose of this Part is to establish the processes applicable to all surface and Groundwater use
2 within the exterior boundaries of the Flathead Indian Reservation.

3 1-2-102. Establishment and Composition of the Water Management Board.

4 Pursuant to Article IV.C of the Compact, the Water Management Board is established.

5 1-2-103. Qualifications of Board Members.

6 As set forth in Article IV.C.2.c of the Compact:

7 1. A Board member shall be over 18 years of age.

8 2. A Board member shall be a Reservation resident, which means, for the purposes of filling a position
9 on the Board, an individual who:

10 a. does business within Flathead Indian Reservation boundaries,

11 b. is domiciled within Flathead Indian Reservation boundaries, or

12 c. owns and maintains a seasonal residence within Flathead Indian Reservation boundaries.

13 3. No elected official of the State of Montana, or any political subdivision thereof, or of the United States,
14 or of the Tribes is eligible for nomination to the Board while holding such elective office. However, a nominee for
15 Board membership shall not be disqualified by reason of the fact that he or she is an employee or contractor of
16 the State of Montana or any political subdivision thereof, or of the Tribes, or of the United States.

17 4. A Board member shall have education and experience in one or more of the following fields: natural
18 resources management, public administration, agriculture, engineering, commerce or finance, hydrology,
19 biological sciences, water law or water policy.

20 5. No Board member may vote on any application or appeal that the member participated in personally
21 and substantially in any non-Board capacity.

22 1-2-104. Public Meetings and Records.

23 As set forth in Article IV.C.7 of the Compact:

24 1. Notwithstanding any other provisions of law, the Board is a public agency for purposes of the
25 applicability of State and Tribal right to know laws.

26 2. All regular and special meetings of the Board, including all hearings conducted by the Office of the
27 Engineer or the Board pursuant to the provisions of Chapter 2 Part 2, and Chapter 3 of this Ordinance, shall be
28 open to the observation of the general public pursuant to State and Tribal open meeting laws. Where there is a
29 conflict of laws, the law that provides for greater openness to the public applies.

30 3. Where no more specific notice provisions are set forth in this Ordinance, notice of any meeting,

1 including a draft agenda, shall be provided to the public in a manner and on a timeframe consistent with the
2 criteria set forth in State and Tribal law. Where there is a conflict of laws, the law that provides for earlier notice
3 shall apply.

4 4. The Board shall keep the following records:

5 a. minutes of all meetings;

6 b. recordings of all hearings conducted by the Board or the Office of the Engineer pursuant to the
7 provisions of Chapter 2 Part 2, and Chapter 3 of this Ordinance;

8 c. all documents filed with or generated by the Board or the Office of the Engineer pursuant to this
9 Ordinance;

10 d. any other records required by applicable provisions of State or Tribal law, provided that if there is a
11 conflict of laws, the law that provides for more expansive record retention shall apply.

12 5. All Board records are public records and shall be made available to the public for inspection under
13 such reasonable terms and conditions as the Board shall establish.

14 1-2-105. Compensation and Expenses of the Board.

15 As set forth in Article IV.C.2.e of the Compact, each Board member shall receive such compensation for
16 services and reimbursement for expenses for attendance at Board meetings as shall be fixed by the State and
17 the Tribal Council for the Board members appointed by the same. The compensation for the fifth Board member
18 shall set jointly by the State and the Tribal Council. The compensation and expenses of the Federal ex officio
19 member shall be paid for by the United States.

20 1-2-106. Quorum and Voting of the Board.

21 As set forth in Article IV.C.3 of the Compact, four voting members of the Board shall constitute a quorum.
22 No Board action may be voted upon in the absence of a quorum. All Board decisions shall be by affirmative vote
23 of a majority of the Board. If a proposal put to a vote of a quorum of Board members ends in a tie vote, the
24 proposal, or matter under consideration is deemed disapproved or denied.

25 1-2-107. Powers and Duties of the Board.

26 1. The Board shall have those powers and duties set forth in Article IV.C.4 and 5 of the Compact and
27 in this Ordinance, including those powers necessary and proper to carry out all Board responsibilities as set forth
28 in the Compact and this Ordinance.

29 2. As set forth in the Compact, the Board shall have exclusive jurisdiction to resolve any controversy as
30 between the Parties or between or among holders of Appropriation Rights and Existing Uses on the Reservation

1 over the meaning and interpretation of the Compact and this Ordinance.

2 3. As set forth in the Compact, the Board shall also have jurisdiction to resolve any controversy over the
3 meaning and interpretation of the Stipulation between or among the parties to the Stipulation, after the exhaustion
4 of the procedures set forth in Section 70 of the FIIP Water Use Agreement

5 4. As set forth in the Compact, the Board shall also have exclusive jurisdiction, subject to the right of
6 appeal set forth in Section 1-2-108 of this Ordinance, to resolve any controversy over the meaning and
7 interpretation of the Stipulation between or among the parties to the Stipulation on the one hand and the holder
8 or holders of Appropriation Rights and Existing Uses on the Reservation on the other.

9 1-2-108. Resolution of Disputes Arising from the FIIP Water Use Agreement.

10 1. Any party to the Stipulation, or any holder of an Appropriation Right or Existing Use with an irrigation
11 purpose on the Reservation who alleges injury from the use of water made pursuant to the terms of the
12 Stipulation, or from the implementation of any particular provision of the Stipulation, may petition the Board for
13 relief. Such petition shall identify with specificity the nature of the alleged injury and the relief requested. Such
14 a petition shall be treated as an appeal and shall be processed and resolved pursuant to the provisions of Section
15 3-1-104(1)-(6) of this Ordinance.

16 2. Any party to the FIIP Water Use Agreement may obtain review of a final decision of the Board
17 pursuant to Section 1-2-108(1) of this Ordinance by filing a petition for judicial review with the United States
18 District Court for the District of Montana, Missoula Division, within 30 days of the issuance of the final Board
19 decision. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its
20 factual findings for abuse of discretion.

21 3. Any non-party to the Stipulation aggrieved by a final decision by the Board pursuant to Section
22 1-2-108(1) of this Ordinance who is a party to the decision may obtain review of that decision by filing a petition
23 for judicial review with a court of competent jurisdiction within 30 days of the issuance of the final Board decision.
24 In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings
25 for abuse of discretion.

26 1-2-109. Technical Assistance to the Board and the Engineer.

27 The NRD and the DNRC shall, within the limits of their respective expertise and resources, and when
28 so requested by the Board or the Office of the Engineer, collect, compile, and analyze information related to
29 waters of the Reservation, their use, and the works associated with their use, and produce reports and provide
30 technical assistance and advice to the Board or the Office of the Engineer.

1 1-2-110. Qualifications of the Water Engineer.

2 1. The Water Engineer shall be a professional in one or more of the following water resources or
3 management related fields:

- 4 a. water resources management;
- 5 b. hydrology;
- 6 c. hydrogeology;
- 7 d. environmental science;
- 8 e. business or public administration;
- 9 f. biological science;
- 10 g. civil engineering;
- 11 h. environmental engineering; or
- 12 i. law.

13 2. The Water Engineer shall have a minimum of a bachelor's degree with 10 years of increasingly
14 responsible experience, including three years of management experience, or a master's degree with seven years
15 of increasingly responsible experience, including three years of management experience, or an appropriate
16 combination of education and experience.

17 3. The Water Engineer shall have the skill to deal with a diverse and sometimes contentious public.

18 4. The Water Engineer shall have the ability to:

- 19 a. successfully manage the water resources staff;
- 20 b. provide technical assistance to the Board; and
- 21 c. act as a hearings officer and document decisions and orders in writing.

22 1-2-111. Duties of the Engineer.

23 The Engineer shall be an employee of the Board and shall exercise the duties set forth in the Compact
24 and this Ordinance, and as assigned by the Board pursuant to the Compact and this Ordinance. These duties
25 include, but are not limited to:

- 26 1. The administration of water rights on the Reservation, and the enforcement of the terms of this
27 Ordinance and the conditions of all Appropriation Rights, determinations, orders, regulations, plans, policies,
28 guidelines, and other actions taken by the Engineer or the Board, pursuant to the Compact and this Ordinance;
- 29 2. Coordination with the Project Manager, as far as practicable, of the operations of the FIIP with the
30 administration and enforcement of water rights outside of the FIIP;

1 2-1-102. Process for Registration of Existing Use of the Tribal Water Right.

2 1. The Tribes, Tribal Members, and Allottees claiming a use of water that falls under the terms of Section
3 2-1-101 shall, within three years of the Effective Date of this Ordinance, file a Registration Form with the Board
4 documenting the registration of Existing Use of the Tribal Water Right and identifying:

- 5 a. the rate and volume of water used;
- 6 b. the source of supply for the use;
- 7 c. the point of diversion by legal land description;
- 8 d. the place of use by legal land description;
- 9 e. the period of use
- 10 f. the period of diversion;
- 11 g. place of storage (if applicable);
- 12 h. capacity of storage (if applicable);
- 13 i. purpose; and
- 14 j. means of diversion.

15 2. Upon receipt, the Board shall transmit the Registration Form to the Office of the Engineer.

16 3. Upon receipt of the Registration Form, the Office of the Engineer shall review the Registration Form
17 within 180 days and may either issue a Registration Certificate or return a defective Registration Form to the filer,
18 together with the reasons for returning it. Upon receiving a corrected Registration Form, the Office of the Engineer
19 has 90 days from the certified receipt of the corrected Registration Form to issue a Registration Certificate or
20 reject the registration. If the Office of the Engineer neither issues a Registration Certificate nor rejects the
21 registration within the initial 180 day review period, the Registration Form shall be deemed approved and the
22 Board shall issue a Registration Certificate. If the Office of the Engineer neither issues a Registration Certificate
23 nor rejects the registration within 30 days of certified receipt of a corrected Registration Form, the Registration
24 Form shall be deemed approved and the Board shall issue a Registration Certificate.

25 4. Any Person filing a Registration Form or a corrected Registration Form with the Office of the Engineer
26 pursuant to subsections (1) and (3) of this Section who is dissatisfied with the rejection of that corrected
27 Registration Form by the Office of the Engineer pursuant to subsection (3) of this Section may appeal that
28 rejection to the Board by filing a notice of appeal to the Board within 30 days of the rejection of the corrected
29 Registration Form. To be filed, a notice must be placed in the custody of the Board within the time fixed for filing.
30 Filing may be accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are

1 actually received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall
2 be date stamped.

3 5. Any appeal to the Board filed pursuant to subsection (4) of this Section shall be conducted pursuant
4 to the provisions of Section 3-1-104 of this Ordinance.

5 2-1-103. Fee for Filing Registration of Existing Use of the Tribal Water Right.

6 The Board shall charge no fee for the processing of registrations or corrected registrations of Existing
7 Uses of the Tribal Water Right.

8 2-1-104. Tribal Member and Allottee Entitlements Pursuant to 25 U.S.C. Section 381.

9 All Tribal Members' and Allottees' entitlements pursuant to 25 U.S.C. Section 381 are hereby recognized
10 and confirmed. The attributes of these entitlements shall be defined through either:

11 1. the process set forth in Section 2-1-101 et seq. of this Ordinance, if the Tribal Member or Allottee with
12 an entitlement pursuant to 25 U.S.C. Section 381 also has a use of water eligible for the registration process set
13 forth in those sections of this Ordinance; or

14 2. by applying for a New Appropriation as provided in Section 2-2-101 et. seq. of this Ordinance or by
15 applying to develop a use of Flathead System Compact Water as provided in Section 2-2-118 of this Ordinance,
16 if the Tribal Member or Allottee with an entitlement pursuant to 25 U.S.C. Section 381 does not have a use of
17 water eligible for the registration process set forth in Section 2-1-101 et seq. of this Ordinance.

18 2-1-105. Tribal, Tribal Member and Allottee Challenge of a Registration Certificate Issued by the Office of the
19 Engineer.

20 The Tribes, Tribal Members, and Allottees may seek judicial review of any final decision by the Board
21 pursuant to Section 2-1-102(4) of this Ordinance by filing a petition for judicial review with the Tribal Court of the
22 Tribes within 30 days of the issuance of the final Board decision. In considering the petition, the Board's legal
23 conclusions shall be reviewed for correctness and its factual findings for abuse of discretion.

24 2-1-106. Registration of Certain Other Previously Unrecorded Existing Uses.

25 Persons who have Existing Uses on the Reservation as of the effective date of this Ordinance shall
26 register such Existing Uses with the Board if those uses:

27 1. Were not required to be filed, pursuant to 85-2-222, MCA, and in fact were not filed as claims in the
28 Montana General Stream Adjudication for a pre-1973 use of water arising under State law; or

29 2. Were developed on or after July 1, 1973, at a volume and flow rate that would qualify as an exception
30 to the permit requirements of 85-2-306, MCA, and for which a notice of completion of Groundwater development

1 (DNRC Form 602) or an application for provisional permit for completed Stock Water pit or reservoir (DNRC Form
2 605) was filed with the DNRC but not processed by the DNRC.

3 3. Were developed after July 1, 1973, at a volume and flow rate that would qualify as an exception to
4 the permit requirements of 85-2-306, MCA, and for which a notice of completion of Groundwater development
5 (DNRC Form 602) or an application for provisional permit for completed Stock Water pit or reservoir (DNRC Form
6 605) was not filed with the DNRC.

7 2-1-107. Process for Registration of Certain Other Previously Unrecorded Existing Uses.

8 1. Each Person claiming an Existing Use of water that falls under the terms of Section 2-1-106 shall,
9 within 180 days of the effective date of this Ordinance, file a Registration Form with the Board documenting that
10 the Existing Use is for a purpose and with a flow rate and volume that falls within the terms of Section 2-1-106,
11 and identifying:

- 12 a. the date of first use of the water;
- 13 b. the source of supply for the use;
- 14 c. the point of diversion by legal land description;
- 15 d. the place of use by legal land description; and
- 16 e. the period of use.

17 2. Within 30 days of the Effective Date, the DNRC shall transmit to the Board all filed but not processed
18 completion notices (DNRC Form 602 or 605) it has received for water uses excepted from the permitting
19 requirements of State law developed within the boundaries of the Reservation after August 22, 1996. The
20 transmission of these notices shall constitute compliance with Section 2-1-107(1) of this Ordinance for those uses
21 eligible for registration pursuant to Section 2-1-106(2) of this Ordinance. No additional fee shall be required for
22 the processing of the forms transmitted by the DNRC.

23 3. Upon receipt, the Board shall transmit the Registration Form to the Office of the Engineer.

24 4. Upon receipt of the Registration Form, the Office of the Engineer shall review the Registration Form
25 within 180 days and may either issue a Registration Certificate or return a defective Registration Form to the filer,
26 together with the reasons for returning it. If a corrected Registration Form is submitted within 30 days of its return
27 by the Engineer, no new filing fee shall be required. Upon receiving a corrected Registration Form, the Office of
28 the Engineer has 90 days from the certified receipt of the corrected Registration Form to issue a Registration
29 Certificate or reject the registration. If the Office of the Engineer neither issue a Registration Certificate nor rejects
30 the registration within the initial 180 day review period, the Registration Form shall be deemed approved and the

1 Board shall issue a Registration Certificate. If the Office of the Engineer neither issues a Registration Certificate
2 nor rejects the registration within 90 days of certified receipt of a corrected Registration Form, the Registration
3 Form shall be deemed approved and the Board shall issue a Registration Certificate.

4 5. For any use registered under Section 2-1-106(1) of this Ordinance, the priority date of the use shall
5 be the date of first beneficial use, and such a date shall be reflected on the Registration Certificate.

6 6. For any use under Section 2-1-106(2) of this Ordinance, the priority date for the use shall be the date
7 of filing of the appropriate form, and such a date shall be reflected on the Registration Certificate.

8 7. For any use under Section 2-1-106(3) of this Ordinance, the priority date for the use shall be the
9 Effective Date of the Compact, and that date shall be reflected on the Registration Certificate.

10 8. Any Person filing a corrected Registration Form with the Office of the Engineer pursuant to subsection
11 (2) of this Section who is dissatisfied with the rejection of that corrected Registration Form by the Office of the
12 Engineer pursuant to subsection (2) of this Section may appeal that rejection to the Board by filing a notice of
13 appeal to the Board within 30 days of the rejection of the corrected Registration Form. To be filed, a notice must
14 be placed in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail
15 addressed to the Board, but filing shall not be timely unless the papers are actually received within the time fixed
16 for filing. Immediately upon receipt by the Board, the notice of appeal shall be date stamped.

17 9. Any appeal to the Board filed pursuant to subsection (6) of this Section shall be conducted pursuant
18 to the provisions of Section 3-1-104 of this Ordinance.

19 2-1-108. Failure to Register an Existing Use of Water.

20 Failure to register an Existing Use that is subject to registration as provided for under Sections 2-1-101,
21 2-1-102, and 2-1-106(2) and (3) of this Ordinance, shall divest the holder of the Existing Use of any legal
22 protections otherwise afforded under the Compact and this Ordinance, to the extent not inconsistent with federal
23 law.

24 2-1-109. Limitation to Beneficial Use.

25 Beneficial use shall be the basis, measure and limit to Appropriation Rights issued pursuant to this
26 Ordinance.

27 2-1-110. No Adverse Possession.

28 No right to use water within the Reservation may be acquired by prescription or by adverse possession
29 of use.

30 2-1-111. Abandonment of Appropriation Right.

- 1 1. No part of the Tribal Water Right is subject to abandonment by nonuse.
- 2 2. If an Appropriator, other than a user of any portion of the Tribal Water Right, ceases to use all or a
3 part of an Appropriation Right, or any Existing Use, with the intention of wholly or partially abandoning the right,
4 or if the appropriator ceases using the right according to its terms and conditions with the intention of not
5 complying with those terms and conditions, the Appropriation Right or Existing Use is, to the extent of the nonuse,
6 considered abandoned and must immediately expire.
- 7 3. If an Appropriator, other than a user of any portion of the Tribal Water Right, ceases to use all or part
8 of an Appropriation Right or Existing Use, or ceases using the Appropriation Right or Existing Use according to
9 its terms and conditions for a period of 10 successive years and there was water available for use, there is a
10 prima facie presumption that the Appropriator has abandoned the right for the part not used.
- 11 4. If an Appropriator ceases to use all or part of an Appropriation Right or Existing Use in compliance
12 with a candidate conservation agreement initiated pursuant to 50 CFR 17.32 or because the land to which the
13 water is applied to a beneficial use is contracted under a state, tribal, or federal conservation, mitigation, or
14 set-aside program:
- 15 a. the land set-aside and resulting reduction in use of the Appropriation Right or Existing Use from the
16 conservation, mitigation, or set-aside program shall not be construed as an intent by the appropriator to wholly
17 or partially abandon the Appropriation Right or Existing Use or to not comply with the terms and conditions
18 attached to the right; and
- 19 b. the period of nonuse that occurs for part or all of the Appropriation Right or Existing Use as a result
20 of the conservation, mitigation, or set-aside program shall not create and shall not be added to any previous
21 period of nonuse to create a prima facie presumption of abandonment.
- 22 2-1-112. Procedure for Declaring Abandonment.
- 23 1. An Appropriator who claims to have been or alleges will be injured by the resumption of use of an
24 Appropriation Right or Existing Use alleged to have been abandoned may file a petition with the Office of the
25 Engineer to declare the Appropriation Right or Existing Use abandoned in whole or in part. Upon receipt of the
26 petition, the Office of the Engineer shall date stamp it.
- 27 2. If the Engineer or Designee finds that the petition provides enough information to give rise to a
28 question of abandonment, the petition shall be posted on the Board's website within 10 working days of the
29 determination of validity. If the Engineer or Designee finds that the petition fails to provide enough information
30 to give rise to a question of abandonment, the petition shall be rejected.

1 3. Upon a finding of validity pursuant to subsection (2) of this Section, a hearing shall be set within 180
2 days of the determination of validity, or any extended period of time, not to exceed 90 days, granted by the
3 Engineer, for the Engineer or Designee to determine whether the Appropriation Right or Existing Use has been
4 abandoned. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence
5 following the notice of the hearing.

6 4. The owner of the right alleged to have been abandoned shall be personally served notice of the
7 hearing by the Office of the Engineer and the hearing shall be publicly noticed by the Office of the Engineer once
8 via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the
9 Board's website for a period of 10 days commencing not less than 30 days from the date of the hearing.

10 5. At the hearing on the petition, the burden of proof shall be on the petitioner who must prove
11 abandonment by a preponderance of the evidence that the Appropriation Right or Existing Use has been
12 abandoned pursuant to Section 2-1-111 of this Ordinance, unless a prima facie presumption of abandonment has
13 arisen pursuant to Section 2-1-111(3). In such circumstances, the burden of proof is shifted pursuant to the owner
14 of the right alleged to have been abandoned, who must prove by a preponderance of the evidence a lack of intent
15 to abandon the right in question.

16 6. The hearing shall be recorded electronically and an official record maintained. All evidence that, in
17 the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is
18 the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal
19 business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant,
20 immaterial, or unduly repetitious shall be excluded.

21 7. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing,
22 disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of
23 its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a
24 decision may be prepared by an individual who has read the record only if the demeanor of witnesses is
25 considered immaterial by all parties; if any party considers the demeanor of any witness to be material to the
26 resolution of the appeal, a new hearing must be held.

27 8. Any party to the abandonment hearing dissatisfied with the decision of the Engineer or Designee may
28 appeal to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A
29 notice of appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision.
30 To be filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be

1 accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually
2 received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date
3 stamped.

4 9. Appeal to the Board pursuant to subsection (8) of this Section, shall be made and resolved pursuant
5 to the provisions of Section 2-2-111.

6 10. Any petitioner whose petition is rejected by the Engineer or Designee as failing to provide enough
7 information to give rise to a question of abandonment may appeal the Engineer's decision to the Board pursuant
8 to the provisions of Section 3-1-104 of this Ordinance.

9 2-1-113. Prevention of Waste and Interference with Lawful Use.

10 1. Waters within the Reservation may not be wasted, nor may water be used unlawfully, nor may a lawful
11 use of water be interfered with.

12 2. All facilities, works and equipment associated with the withdrawal, impoundment, pumping, diversion,
13 drainage, or transmission of waters on the Reservation shall be so constructed, installed, and maintained as to
14 prevent the Waste, contamination, or pollution of surface and Groundwater and to avoid injury to the lands and
15 property of others. All wells, producing and non-producing, which may contaminate other surface or Groundwater
16 must be properly abandoned or upgraded with a sanitary seal, in accordance with the water well criteria
17 incorporated by reference in Section 1-1-111 of this Ordinance. All flowing wells shall be capped or equipped with
18 valves so that the flow of water can be stopped when the water is not being put to beneficial use.

19 3. The Board, on its own initiative or through the Office of the Engineer, may require the recipient of any
20 Appropriation Right issued pursuant to this Ordinance to construct or install a weir, head gate, valve, meter,
21 gauge, or other reasonable and appropriate device for the control and measurement of water and for the
22 prevention of Waste.

23 2-1-114. Issuance of Appropriation Right Does Not Constitute Permission to Trespass.

24 The issuance of an Appropriation Right pursuant to this Ordinance does not constitute a license or
25 permission to trespass on land which the holder of the Appropriation Right does not otherwise have a legal right
26 to access, not does it constitute a ditch right.

27 2-1-115. Development of Enforceable Schedule for the Tribes' Other Instream Flow Rights.

28 1. As set forth in the Compact, each of the Tribes' instream flow rights identified in Article III.C.1.d. iii of
29 the Compact shall not be enforceable until after an enforceable schedule for that stream reach is promulgated
30 pursuant to the process set forth in this Section. This process shall not commence for any stream reach until the

1 Compact has been finally approved by the Montana Water Court, and until the Montana Water Court has issued
2 a final decree for the water court basin (76L or 76LJ) in which that stream reach lies, including the expiration of
3 all time for appeals, or the resolution of any such appeal, whichever date is latest (the "Eligibility Date").

4 2. At any time after the Eligibility Date, the Tribes may initiate the enforceable schedule process for any
5 given stream reach included in the rights identified in Article III.C.1.d.iii of the Compact by:

6 a. providing notice to water rights holders in the reach of the Tribes' initiation of the process to finalize
7 and implement the enforceable schedule;

8 b. developing a full summary of all Water Rights Arising Under State Law in the reach, including a
9 monthly time-step pattern of water use;

10 c. developing a summary of streamflow conditions, at or near each enforceable schedule compliance
11 point within the reach area, utilizing:

12 i. streamflow gaging information; or

13 ii. an accepted hydrologic analysis procedure to estimate streamflow conditions. The method to develop
14 streamflow information will be based on the professional judgment of the Tribes' hydrologist responsible for
15 coordinating the enforceable schedule process; and

16 d. preparing a report on the availability of water to fulfill the Tribes' instream flow water right for that reach
17 area.

18 3. The Tribes shall prepare each proposed enforceable schedule based on a water budget that allows
19 valid water rights to be exercised.

20 4. The Tribes shall hold one or more public meetings, and provide timely advanced notice to affected
21 water users of each such meeting, to report on the completion of the water availability study and the proposed
22 enforceable schedule for that reach area.

23 5. The Tribes shall consider the public comment received either at the public meeting(s) or within 30 days
24 thereafter, and shall finalize the proposed enforceable schedule no fewer than 45 days after the day of the last
25 public meeting for a given reach area.

26 6. The Tribes shall provide written notice to the Engineer of the finalized proposed enforceable schedule,
27 including an explanation of the technical basis therefor. Upon receipt, the Engineer shall forward the proposed
28 enforceable schedule to Staff for review.

29 7. Staff, using information from the written notice, as well as their own compilation of independent
30 resources and analysis, if available, shall issue a recommended decision as to whether to adopt the enforceable

1 schedule within 90 days of the date of the written notice provided by the Tribes pursuant to subsection (6) of this
2 Section.

3 8. If the recommended decision is to adopt the enforceable schedule, a summary of the proposed
4 enforceable schedule and the recommended decision shall be publicly noticed by the Office of the Engineer once
5 via a legal notice in a local newspaper of general circulation and posted by the Office of the Engineer on the
6 Board's website for a period not less than 45 days from the date the recommendation is issued. A summary of
7 the proposed enforceable schedule and the recommended decision shall also be distributed electronically to
8 individuals or entities who have registered with the Board to receive electronic notice. If no objections are filed
9 within 45 days of the initial publication of the recommended decision by the Office of the Engineer, or if all filed
10 objections are unconditionally withdrawn prior to being ruled upon, the application shall be granted by the
11 Engineer or Designee within 10 days after expiration of the time for filing objections or after the unconditional
12 withdrawal of the last objection, whichever date is later.

13 9. Objections to a proposed enforceable schedule may be filed only by holders of water rights in the
14 particular stream reach for which the enforceable schedule is proposed. The only cognizable ground for objection
15 is that the proposed enforceable schedule will have an adverse effect on the objector's water right. An objection
16 must describe the alleged adverse effect on the objector's water right. The burden of proof shall be on the
17 objector.

18 10. An objector or the Tribes may elect to have any valid objection decided on the record or after hearing.
19 If the objector elects to have a hearing, that request must be made at the same time as the filing of the objection
20 or the objector's right to a hearing is waived. The Tribes must invoke the right to a hearing within 10 days of
21 receiving notice of the objection or the Tribes' right to a hearing is waived.

22 11. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence
23 following the receipt of a valid objection.

24 12. The Engineer or Designee, after issuance of notice of hearing, may not communicate with any party
25 to that case or any party's representative(s) in connection with any issue of fact or law in the case except upon
26 notice and opportunity for all parties to participate.

27 13. The hearing shall be recorded electronically and an official record maintained.

28 14. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be
29 admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons
30 in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect.

1 Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

2 15. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing,
3 disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of
4 its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a
5 decision may be prepared by an individual who has read the record only if the demeanor of witnesses is
6 considered immaterial by all parties to the case. If any party considers the demeanor of any witness to be material
7 to the resolution of the appeal, a new hearing must be held.

8 16. The Tribes or any objector dissatisfied with the final decision of the Engineer or Designee may appeal
9 to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of
10 appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be
11 filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be
12 accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually
13 received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date
14 stamped. Appeal to the Board shall be resolved pursuant to the provisions of Section 2-2-111 of this Ordinance.

15 17. If the recommended decision is to reject the proposed enforceable schedule, the Tribes may withdraw
16 the proposed enforceable schedule within 10 days of the issuance of the recommended decision or appeal the
17 recommended decision to the Engineer by filing a notice of appeal within 30 days of issuance of the
18 recommended decision. The Tribes may elect to have the appeal decided on the record, after submission of
19 additional evidence and argument, or after hearing. If the Tribes elect to have a hearing, that request must be
20 made at the same time as the filing of the notice of appeal or the right to a hearing is waived. The notice of appeal
21 must specify those parts of the recommended decision claimed to be in error.

22 18. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed
23 60 days, granted by the Engineer or Designee, the Tribes may submit additional factual evidence and legal
24 argument in support of the proposed enforceable schedule. Staff who issued the recommended decision shall
25 have 45 days from the Tribes' submission to revise, amend, or affirm the recommended decision in a second
26 recommended decision that explains in writing the rationale for the second recommended decision.

27 19. If the recommended decision or second recommended decision is to reject the proposed enforceable
28 schedule and no notice of appeal is filed pursuant to this Section, the proposed enforceable schedule shall be
29 deemed rejected the day after expiration of the time for filing a notice of appeal. The rejection of a proposed
30 enforceable schedule does not preclude the Tribes from filing another proposed enforceable schedule for the

1 same or any other stream reach identified in the rights set forth in Article III.C.1.d. iii of the Compact.

2 20. The Tribes bear the burden of demonstrating to the Engineer or Designee by a preponderance of the
3 evidence, whether a hearing is held or not, that the recommended decision or second recommended decision
4 is in error.

5 21. If the Tribes request a hearing before the Engineer or Designee, a hearing shall be held no later than
6 the latest of the following:

7 a. 90 days after the filing of the notice of appeal; or

8 b. 30 days after the issuance of a second recommended decision pursuant to subsection (2) of this
9 Section, whichever is later.

10 22. The hearing shall be recorded electronically and an official record maintained. All evidence that, in
11 the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is
12 the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal
13 business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant,
14 immaterial, or unduly repetitious shall be excluded.

15 23. A decision by the Engineer or Designee to reverse, modify, or affirm the recommended decision or
16 the second recommended decision shall be made in writing within 60 days after the later of:

17 a. the filing of a notice of appeal pursuant to subsection (1) of this Section;

18 b. the submission of additional evidence or legal argument pursuant to subsection (2) of this Section;

19 c. issuance of Staff's second recommended decision; or

20 d. the completion of the hearing.

21 24. If the Engineer or Designee reverses the recommended decision or the second recommended
22 decision, and determines that the enforceable schedule should not have been rejected, the proposed enforceable
23 schedule shall be publicly noticed to the public and processed pursuant to the provisions of subsections (8)-(16)
24 of this Section.

25 25. If the Engineer or Designee affirms the recommended decision or the second recommended decision,
26 resulting in the rejection of the proposed enforceable schedule, the Tribes may either accept that decision by
27 withdrawing the proposed enforceable schedule or taking no further action, or may appeal that decision to the
28 Board pursuant to Section 2-2-111 of this Ordinance. If no timely notice of appeal is filed, the proposed
29 enforceable schedule shall be deemed rejected on the day after the expiration of the time to file the notice of
30 appeal.

1 regulations promulgated under the Confederated Salish and Kootenai Tribes' Water Quality Management
2 Ordinance, Tribal Ordinance 89B.

3 2-2-103. Pre-Application Meeting with Office of the Engineer.

4 Prior to applying to the Board for a new Appropriation Right or Change in Use authorization, within the
5 exterior boundaries of the Flathead Reservation, applicants may meet informally with Staff regarding the
6 application process and information requirements.

7 2-2-104. Application to Board.

8 1. An applicant for a new Appropriation Right or Change in Use authorization must:

9 a. pay the appropriate application fee in the amount set by the Board;

10 b. fill out completely:

11 i. the Flathead Reservation Appropriation Right Application; or

12 ii. the Flathead Reservation Application for a Change in Use Authorization; and

13 iii. all applicable addenda;

14 c. attach to each application all required maps; and

15 d. sign, date, and notarize or otherwise swear under appropriate oath to the accuracy of the contents
16 of each application.

17 2. Upon the day of the receipt of an application, or amendment to an application, for a new Appropriation
18 Right or Change in Use authorization, the Office of the Engineer must stamp it received.

19 3. If an application for a new Appropriation Right is ultimately granted, the priority date of the application
20 is the date the application is stamped received by the Office of the Engineer.

21 4. All application forms may, upon recommendation by the Engineer, be modified by a unanimous vote
22 of the Board. Any such modification is pursuant to and does not constitute a modification of this Ordinance or the
23 Compact.

24 2-2-105. Adequate to Process Review.

25 1. Within 30 days of receipt by the Office of the Engineer of an application for a new Appropriation Right
26 or Change in Use authorization, Staff shall review the application and make a determination whether the
27 application is adequate to process. An application is adequate to process if it:

28 a. clearly identifies the proposed project; and

29 b. contains the information required by the following forms:

30 i. Flathead Reservation Appropriation Right Application", including for Groundwater applications

- 1 "Addendum B - Flathead Reservation Groundwater Minimum Aquifer Testing Requirements"; or
2 ii. Flathead Reservation Application for a Change in Use Authorization.
- 3 2. Staff may waive aquifer testing requirements if sufficient hydrogeologic information already exists on
4 the source and in the location of the proposed development.
- 5 3. An application determined to be adequate to process shall be posted on the Board's website within
6 10 working days of the determination of adequacy.
- 7 2-2-106. Not Adequate to Process Determination.
- 8 1. If Staff determines an application for a new Appropriation Right or Change in Use authorization, is not
9 adequate to process, the Office of the Engineer shall send a letter to the applicant notifying the applicant of the
10 defects in the application.
- 11 2. An applicant has 90 days from the date of mailing of the notice of inadequacy pursuant to subsection
12 (1) of this Section to make the application adequate to process. An application for a new Appropriation Right
13 whose defects are timely corrected and which is ultimately granted retains its priority of the date of the initial
14 application.
- 15 3. Upon receipt of the information from the applicant to correct deficiencies, Staff must review the
16 updated application and make a determination within 30 days whether the application is adequate to process.
- 17 4. An application that is not timely made adequate to process, either through the applicant's failure to
18 respond to the notice of inadequacy issued pursuant to subsection (1) of this Section within the timeframe set
19 forth in subsection (2) of this Section, or by the applicant's failure to provide sufficient information in response to
20 a notice of inadequacy issued pursuant to subsection (1) of this Section within the timeframe set forth in
21 subsection (2) of this Section, shall be deemed denied.
- 22 5. An applicant who disagrees with the decision to deny may appeal that decision to the Board pursuant
23 to Section 3-1-104 of this Ordinance. If such an appeal is filed, the Engineer shall be the appellee.
- 24 2-2-107. Application Analysis and Recommended Decision.
- 25 1. Prior to the expiration of the time periods set forth in Sections 2-2-105(1), 2-2-106(2), 2-2-106(3), or
26 2-2-108(2) of this Ordinance, Staff may meet informally with an applicant to discuss an application, including any
27 proposed Mitigation Plan. The results of such meetings shall be documented by a summary memo prepared by
28 Staff and included in the application file. An applicant may also submit a memo documenting the meeting, which
29 becomes part of the application file. If an application submitted pursuant to Section 2-2-104 or a Mitigation Plan
30 submitted pursuant to Section 2-2-108(2) of this Ordinance is amended during this informal process, the amended

1 application shall be reviewed by an individual on Staff who was not involved in the informal process to determine
2 whether the amendments are so substantial that they constitute a new application. If it is determined that the
3 amended application constitutes a new application, that application must be reviewed in its entirety pursuant to
4 Sections 2-2-105 and 2-2-106 of this Ordinance. A new application fee must be submitted. A determination that
5 an application amendment is so substantial as to constitute a new application may be appealed to the Engineer
6 pursuant to Section 2-2-109 of this Ordinance.

7 2. Staff shall analyze an application determined to be adequate to process pursuant to Section 2-2-105
8 of this Ordinance within 180 days of the determination of adequacy using tools or techniques that may include:

9 a. independent resources compiled by Staff (including, but not limited to, Water Resources Surveys and
10 field notes, aerial photographs, water rights decrees, stream gauging records, well logs, and water rights records);

11 b. water use records (water measurement, ranch logs, etc.) submitted by the applicant;

12 c. field inspection by Staff;

13 d. hydrologic or geohydrologic evaluation completed by Staff, provided that all model results, if any, shall
14 be documented.

15 3. All information relied on by Staff in analyzing an application pursuant to this Section shall be
16 documented in the application file.

17 4. Staff, using information from the application as well as their own compilation of independent resources
18 and analysis, shall draft a recommended decision with findings of fact and conclusions of law determining:

19 a. whether the proposed Appropriation Right or Change in Use authorization will cause adverse effect
20 to any Appropriator; and

21 b. whether and, if so, what amount of Mitigation is required before the proposed Appropriation Right or
22 Change in Use authorization may be issued.

23 5. If the recommended decision is to grant the application, a summary of the application and the
24 recommended decision shall be publicly noticed by the Office of the Engineer once via a legal notice in a local
25 newspaper of general circulation and posted by the Office of the Engineer on the Board's website for a period
26 not less than 45 days from the date the recommendation is issued. A summary of the application and the
27 recommended decision shall also be distributed electronically to individuals or entities who have registered with
28 the Board to receive electronic notice. If no objections are filed within 45 days of the initial publication of the
29 recommended decision by the Office of the Engineer, or if all filed objections are unconditionally withdrawn prior
30 to being ruled upon, the application shall be granted by the Engineer or Designee within 10 days after expiration

1 of the time for filing objections or after the unconditional withdrawal of the last objection, whichever date is later.

2 6. If the recommended decision is to deny the application, the applicant may withdraw the application
3 within 10 days of the issuance of the recommended decision or appeal the recommended decision to the
4 Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon
5 withdrawal. Failure to withdraw the application or file an appeal within the applicable timeframes shall result in
6 the application being deemed denied on the day after the expiration of the time to appeal.

7 7. If the recommended decision is to grant the application with conditions other than Mitigation, the
8 application shall be noticed to the public and processed pursuant to the procedures set forth in Sections
9 2-2-107(5) and 2-2-110 of this Ordinance unless the applicant withdraws the application within 30 days of the
10 issuance of the recommended decision or appeals the recommended decision to the Engineer pursuant to
11 Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon withdrawal.

12 8. Amendments to applications are not allowed after the issuance of a recommended decision on that
13 application, except as provided in Section 2-2-108(2) of this Ordinance.

14 2-2-108. Process if Mitigation Required.

15 1. If Staff analysis of an application concludes that Mitigation is necessary to approve an application, a
16 recommended decision shall be issued to that effect. Upon issuance of a recommended decision finding that
17 Mitigation is required, the applicant may:

- 18 a. withdraw the application (with no refund of the application filing fee);
19 b. appeal the recommended decision to the Engineer pursuant to Section 2-2-109 of this Ordinance; or
20 c. prepare a Mitigation Plan.

21 2. If the applicant chooses to prepare a Mitigation Plan, the running of the time set forth in Section
22 2-2-107(2) of this Ordinance for processing that application is suspended until a timely Mitigation Plan is received
23 from the applicant. The Mitigation Plan must be submitted within 180 days of issuance of the recommended
24 decision requiring Mitigation, or of the decision of the Engineer or Designee as set forth in Section 2-2-109(11)
25 of this Ordinance, whichever date is later, and must include either or both of:

26 a. an application for a Change in Use authorization for another water right so as to provide for the
27 required Mitigation; and/or

28 b. amendments describing the source, volume, flow rate, point of diversion, place of use, period of use,
29 and place of storage of mitigation water that comes from other than a change authorization.

30 3. The running of the time set forth in Section 2-2-107(2) of this Ordinance for analyzing the application

1 and issuing a recommended decision resumes upon the timely receipt by the Office of the Engineer of the
2 material(s) required by subsection (2) of this Section.

3 4. If a Mitigation Plan is timely submitted by an applicant following a decision of the Engineer or Designee
4 as set forth in Section 2-2-109(11) of this Ordinance, Staff shall issue a new recommended decision concerning
5 the application within 180 days of the timely submission of the Mitigation Plan.

6 5. If the recommended decision is to grant the application conditioned on the Mitigation Plan submitted
7 by the applicant pursuant to subsection (2) of this Section, the application shall be noticed to the public and
8 processed pursuant to the procedures set forth in Sections 2-2-107(5) and 2-2-110 of this Ordinance.

9 6. If the recommended decision is to deny the application, the applicant may withdraw the application
10 within 10 days of the issuance of the recommended decision or appeal the recommended decision to the
11 Engineer pursuant to Section 2-2-109 of this Ordinance. The application filing fee shall not be refunded upon
12 withdrawal. Failure to withdraw the application or file an appeal within the applicable timeframes shall result in
13 the application being deemed denied on the day after the expiration of the time to appeal.

14 7. If the Mitigation Plan is not submitted within 180 days of issuance of the recommended decision
15 requiring Mitigation the application shall be deemed denied.

16 2-2-109. Appeal to Engineer From Recommended Decision.

17 1. If a recommended decision issued pursuant to Sections 2-2-107 or 2-2-108 of this Ordinance is to
18 deny an application, or grant it with a requirement of Mitigation or other conditions, the applicant may appeal to
19 the Engineer by filing a notice of appeal within 30 days of issuance of the recommended decision. An applicant
20 may elect to have the appeal decided on the record, after submission of additional evidence and argument, or
21 after hearing. If the applicant elects to have a hearing, that request must be made at the same time as the filing
22 of the notice of appeal or the right to a hearing is waived. The notice of appeal must specify those parts of the
23 recommended decision claimed to be in error.

24 2. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed
25 60 days, granted by the Engineer or Designee, the applicant may submit additional factual evidence and legal
26 argument in support of the application. Staff who issued the recommended decision shall have 45 days from the
27 applicant's submission to revise, amend, or affirm the recommended decision in a second recommended decision
28 that explains in writing the rationale for the second recommended decision.

29 3. If the recommended decision or second recommended decision is to deny an application and no
30 notice of appeal is filed pursuant to this Section, the application shall be deemed denied the day after expiration

1 of the time for filing a notice of appeal.

2 4. The applicant bears the burden of demonstrating to the Engineer or Designee by a preponderance
3 of the evidence, whether a hearing is held or not, that the recommended decision or second recommended
4 decision is in error.

5 5. If the applicant requests a hearing before the Engineer or Designee, a hearing shall be held no later
6 than the latest of the following:

7 a. 90 days after the filing of the notice of appeal; or

8 b. 30 days after the issuance of a second recommended decision pursuant to subsection (2) of this
9 Section, whichever is later.

10 6. The hearing shall be recorded electronically and an official record maintained. All evidence that, in
11 the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is
12 the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal
13 business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant,
14 immaterial, or unduly repetitious shall be excluded.

15 7. A decision by the Engineer or Designee to reverse, modify, or affirm the recommended decision or
16 the second recommended decision shall be made in writing within 60 days after the later of:

17 a. the filing of a notice of appeal pursuant to subsection (1) of this Section;

18 b. the submission of additional evidence or legal argument pursuant to subsection (2) of this Section;

19 c. issuance of Staff's second recommended decision; or

20 d. the completion of the hearing.

21 8. If the Engineer or Designee reverses the recommended decision or the second recommended
22 decision, and determines that the application should be granted, the application shall be publicly noticed to the
23 public and processed pursuant to the provisions of Section 2-2-107(5) and Section 2-2-110 of this Ordinance.

24 9. If the Engineer or Designee affirms the recommended decision or the second recommended decision,
25 resulting in the denial of an application, the applicant may either accept that decision by withdrawing the
26 application or taking no further action, or may appeal that decision to the Board pursuant to Section 2-2-111 of
27 this Ordinance. The application filing fee shall not be refunded upon withdrawal. If no timely notice of appeal is
28 filed, the application shall be deemed denied on the day after the expiration of the time to file the notice of appeal.

29 10. If the Engineer or Designee affirms the recommended decision or the second recommended decision,
30 resulting in the granting of an application with a requirement of conditions other than Mitigation, the applicant may

1 withdraw the application; file with the Office of the Engineer written acceptance of the conditions within 30 days
2 of the Engineer's or Designee's decision, in which case the application will be noticed to the public and processed
3 pursuant to the provisions of Sections 2-2-107(5) and 2-2-110 of this Ordinance; or appeal the decision to the
4 Board pursuant to Section 2-2-111 of this Ordinance. The application filing fee shall not be refunded upon
5 withdrawal. Failure to withdraw the application, file written acceptance of the condition, or file an appeal within
6 the applicable timeframes shall result in the application being deemed denied on the day after the expiration of
7 the time to appeal.

8 11. If an applicant has appealed to the Engineer a Staff determination that Mitigation is necessary
9 pursuant to Section 2-2-108(1)(b) of this Ordinance, and the Engineer or Designee affirms the recommended
10 decision resulting in a determination that Mitigation is required before the application may be granted, the
11 applicant may withdraw the application; appeal the decision to the Board pursuant to Section 2-2-111 of this
12 Ordinance; or prepare a Mitigation Plan pursuant to Section 2-2-108(2) of this Ordinance. The application filing
13 fee shall not be refunded upon withdrawal. Failure to withdraw the application, file a Mitigation Plan, or file an
14 appeal within the applicable timeframes shall result in the application being deemed denied on the day after the
15 expiration of the time to file a Mitigation Plan.

16 12. If the Engineer or Designee affirms a recommended decision or second recommended decision that
17 found a Mitigation Plan inadequate to justify the issuance of the proposed Appropriation Right or Change in Use
18 authorization, the applicant may either accept that decision by withdrawing the application or taking no further
19 action, or may appeal that decision to the Board pursuant to Section 2-2-111 of this Ordinance. The application
20 filing fee shall not be refunded upon withdrawal. If no timely notice of appeal is filed, the application shall be
21 deemed denied on the day after the expiration of the time to file the notice of appeal.

22 13. Any applicant wishing to appeal a decision of the Engineer or Designee pursuant to this Section must
23 file a notice of appeal with the Board. Any such notice of appeal must be filed with the Board within 30 days of
24 the Engineer's or Designee's decision. To be filed, a notice must be placed in the custody of the Board within the
25 time fixed for filing. Filing may be accomplished by mail addressed to the Board, but filing shall not be timely
26 unless the papers are actually received within the time fixed for filing. Immediately upon receipt by the Board, the
27 notice of appeal shall be date stamped.

28 2-2-110. Notice and Hearing on Recommended Decision to Grant.

29 1. Any Person alleging that they will suffer adverse effect from the grant of an application for proposed
30 Appropriation Right or Change in Use authorization may file an objection to a recommended decision to grant

1 an application. To be valid, an objection must describe the alleged adverse effect on the objector's water right.

2 2. An objector or an applicant may elect to have any valid objection decided on the record or after
3 hearing. If the objector elects to have a hearing, that request must be made at the same time as the filing of the
4 objection or the objector's right to a hearing is waived. The applicant must invoke the right to a hearing within 10
5 days of receiving notice of the objection or the applicant's right to a hearing is waived.

6 3. Discovery prior to hearing will be as provided by the Engineer or Designee, and may commence
7 following the receipt of a valid objection.

8 4. If, prior to the hearing, valid objections are withdrawn pursuant to an agreement between or among
9 the applicant and objector(s) setting forth various conditions on the application, the Engineer or Designee shall
10 grant the application subject to those conditions necessary to satisfy the criteria set forth in Section 2-2-102(1)
11 of this Ordinance, but the Engineer or Designee has the discretion to accept or reject other conditions of the
12 agreement between or among the applicant and objector(s).

13 5. The Engineer or Designee, after issuance of notice of hearing, may not communicate with any party
14 to that case or any party's representative(s) in connection with any issue of fact or law in the case except upon
15 notice and opportunity for all parties to participate.

16 6. The hearing shall be recorded electronically and an official record maintained.

17 7. All evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be
18 admitted, including hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons
19 in the conduct of their normal business affairs. Rules of privilege recognized by law shall be given effect.
20 Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.

21 8. The burden of proof is on the applicant to prove the applicable criteria of Section 2-2-102(1) of this
22 Ordinance by a preponderance of evidence.

23 9. A written decision by the Engineer or Designee shall be rendered within 60 days of the hearing,
24 disseminated to the parties, and posted by the Office of the Engineer on the Board's website within 10 days of
25 its issuance. If the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a
26 decision may be prepared by an individual who has read the record only if the demeanor of witnesses is
27 considered immaterial by all parties to the case. If any party considers the demeanor of any witness to be material
28 to the resolution of the appeal, a new hearing must be held.

29 10. Any applicant or objector dissatisfied with the final decision of the Engineer or Designee may appeal
30 to the Board (and become an appellant) and obtain review of the Engineer's or Designee's decision. A notice of

1 appeal to the Board must be filed with the Board within 30 days of the Engineer's or Designee's decision. To be
2 filed, a notice must be placed in the custody of the Board within the time fixed for filing. Filing may be
3 accomplished by mail addressed to the Board, but filing shall not be timely unless the papers are actually
4 received within the time fixed for filing. Immediately upon receipt by the Board, the notice of appeal shall be date
5 stamped.

6 2-2-111. Appeal to the Board.

7 1. Any question not raised before the Engineer or Designee may not be raised in the appeal to the Board
8 unless it is shown to the satisfaction of the Board that there was good cause for failure to raise the question
9 before the Engineer or Designee.

10 2. Appeal to the Board of decisions of the Engineer or Designee shall be confined to the record. If, before
11 the date set for hearing the appeal, application is made to the Board for leave to present additional evidence and
12 it is shown to the satisfaction of the Board that the additional evidence is material and that there were good
13 reasons for failing to present it in the proceeding before the Engineer or Designee, the Board may order that the
14 additional evidence be taken before the Engineer or Designee upon conditions determined by the Board,
15 including the deadline for submission of additional evidence to the Engineer or Designee and for the conclusion
16 of the Engineer's or Designee's review of any such additional evidence. The Engineer or Designee may modify
17 the findings and decision by reason of the additional evidence or may affirm the prior decision and shall file a
18 modified decision or notice of affirming the decision with the Board pursuant to a reasonable deadline set by the
19 Board.

20 3. If the appellant requests an oral argument, the Board must hold oral argument on the appeal. If the
21 appellant does not request an oral argument, the Board may, in its discretion, order oral argument or may resolve
22 the appeal without one.

23 4. Review by the Board:

24 a. the review by the Board must be confined to the record. In cases of alleged irregularities in procedure
25 before the Engineer or Designee not shown in the record, proof of the irregularities may be taken by the Board.
26 The Board, upon request, shall hear oral argument and receive written briefs.

27 b. the Board may not substitute its judgment for that of the Engineer or Designee as to the weight of the
28 evidence on questions of fact.

29 c. the Board may affirm the decision of the Engineer or Designee or remand the case for further
30 proceedings.

1 d. the Board may reverse or modify the decision if substantial rights of an appellant have been prejudiced
2 because:

3 i. the Engineer's or Designee's findings, inferences, conclusions, or decisions are:

4 (1) in violation of constitutional or statutory provisions;

5 (2) in excess of the authority of the Engineer or Designee;

6 (3) made upon unlawful procedure;

7 (4) affected by other error of law;

8 (5) clearly erroneous in view of the record as a whole;

9 (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of
10 discretion; or

11 ii. findings of fact, upon issues essential to the decision, were not made although requested.

12 2-2-112. Appeal to Court of Competent Jurisdiction.

13 Pursuant to Article IV.C.6 of the Compact, an aggrieved party may obtain review of a final decision of the
14 Board by filing a petition for judicial review with a court of competent jurisdiction within 30 days of the issuance
15 of the final Board decision. In considering the petition, the Board's legal conclusions shall be reviewed for
16 correctness and its factual findings for abuse of discretion. In the event that a court determines that it lacks
17 subject matter or personal jurisdiction to rule on a petition for judicial review of a Board decision, the party filing
18 the petition shall be entitled to petition for judicial review from any other court of competent jurisdiction within thirty
19 days from the date of a final court order finding lack of jurisdiction.

20 2-2-113. Completion.

21 1. Whenever an Appropriation Right or Change in Use Authorization is issued under this Chapter, the
22 Engineer or Designee shall specify in writing as part of the Appropriation Right or Change in Use authorization
23 issued, or in any authorized extension of time provided pursuant to subsection (2) of this Section, the time limits
24 for commencement of the appropriation works, completion of construction, and actual application of water to the
25 proposed beneficial use. In fixing those time limits, the Engineer or Designee shall consider the cost and
26 magnitude of the project, the engineering and physical features to be encountered, and, on projects designed
27 for gradual development and gradually increased use of water, the time reasonably necessary for that gradual
28 development and increased use. The Engineer or Designee shall issue the Appropriation Right or Change in Use
29 authorization, or the authorized extension of time, subject to the terms, conditions, restrictions and limitations the
30 Engineer or Designee considers necessary to ensure that work on the Appropriation is commenced, conducted,

1 and completed and that the water is actually applied in a timely manner to the beneficial use specified in the
2 Appropriation Right or Change in Use authorization.

3 2. The Engineer or Designee, for good cause shown, may extend the time limits specified in the
4 Appropriation Right or Change in Use authorization for commencement of the appropriation works, completion
5 of construction, and actual application of water to the proposed beneficial use. If commencement of the
6 appropriation works, completion of construction, or actual application of water to the proposed beneficial use is
7 not completed within the time limit set forth in the Appropriation Right or Change in Use authorization, or by any
8 extension granted pursuant to this subsection, the Appropriation Right or Change in Use authorization is void
9 upon lapse of the time limit.

10 3. Any owner of an Appropriation Right or Change in Use authorization who disagrees with the time limit
11 specified by the Engineer or Designee pursuant to subsections (1) and (2) of this Section may appeal the
12 Engineer's decision to the Board pursuant to Section 2-2-111 of this Ordinance. A notice of appeal must be filed
13 with the Board within 30 days of the Engineer's or Designee's decision. To be filed, a notice must be placed in
14 the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the
15 Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

16 2-2-114. Compliance with Completion Deadline.

17 Upon actual application of water to the proposed beneficial use within the time allowed by the Engineer
18 or Designee pursuant to Section 2-2-113 of this Ordinance, the owner of the Appropriation Right or Change in
19 Use authorization shall notify the Office of the Engineer that the Appropriation has been completed. The
20 notification must contain a certified statement by an individual with experience in the design, construction, or
21 operation of appropriation works describing how the Appropriation was completed. The Office of the Engineer
22 shall review the certified statement and may then inspect the Appropriation, and if it determines that the
23 Appropriation has been completed in substantial accordance with the Appropriation Right or Change in Use
24 authorization, it shall issue the owner of the Appropriation Right or Change in Use authorization a Flathead
25 Reservation Appropriation Right Document. The original of the document shall be sent to the owner of the
26 Appropriation Right or Change in Use authorization, and a duplicate shall be kept in the Office of the Engineer.

27 2-2-115 Redundant and Substitute Wells.

28 1. An Appropriator may change an Appropriation Right or Existing Use without first applying for a Change
29 in Use authorization pursuant to Sections 2-2-101 et seq. of this Ordinance for the purpose of constructing a
30 Substitute Well if:

- 1 a. the rate and volume of the appropriation from the Substitute Well are equal to or less than that of the
2 Well being replaced;
- 3 b. the water from the Substitute Well is appropriated from the same Groundwater source as the water
4 appropriated from the Well being replaced; and
- 5 c. a timely, correct and complete Notice of Substitute Well is submitted to the Engineer as provided in
6 subsection 2 of this Section.
- 7 2. Review.
- 8 a. Within 60 days after a Substitute Well is completed and delivering water, the Appropriator shall file
9 a Notice of Substitute Well with the Office of the Engineer on a form provided by the Board. Upon receipt of the
10 Notice, the Office of the Engineer shall date stamp it.
- 11 b. The Engineer or Designee shall review the Notice of Substitute Well within 90 days of the date
12 stamped on it pursuant to subsection (2)(a) of this Section, and shall issue a Change in Use authorization if all
13 of the criteria identified in subsection (1) of this Section have been met and the Notice of Substitute Well is correct
14 and complete.
- 15 c. The Engineer or Designee may not issue a Change in Use authorization until a correct and complete
16 Notice of Substitute Well has been filed with the Office of the Engineer. The Office of the Engineer shall return
17 to the Appropriator a Notice that is determined by Staff to be defective, along with a description of defects in the
18 Notice. The Appropriator shall refile a corrected and completed Notice of Substitute Well within 30 days of
19 notification of defects or within a further time as the Engineer or Designee may allow, not to exceed 180 days.
20 If the Appropriator does not refile within that timeframe, the Appropriation Right will be deemed denied and the
21 Appropriator must then comply with the provisions of subsection (d) of this Section.
- 22 d. If a Notice of Substitute Well is not completed within the time allowed, the Appropriator shall:
- 23 i. cease appropriation of water from the Substitute Well pending approval by the Engineer or Designee;
24 and
- 25 ii. submit an application for a Change in Use authorization pursuant to Section 2-2-104 of this Ordinance;
26 or
- 27 iii. comply with the well abandonment procedures, standards and rules adopted by the board of water
28 well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are
29 promulgated in State law.
- 30 3. Wells that have been determined to be abandoned pursuant to Sections 2-1-111 and 2-1-112 of this

1 Ordinance are not eligible to be replaced by Substitute Wells under this Section.

2 4. For each well that is replaced under this subsection (1), the appropriator shall follow the well
3 abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to
4 37-43-202, MCA, or any successor procedures, standards and rules that are promulgated in State law.

5 5. An Appropriator may change an Appropriation Right or Existing Use without first applying for a Change
6 in Use authorization pursuant to Section 2-2-101, et seq. of this Ordinance for the purpose of constructing a
7 Redundant Well in a Public Water Supply System if the Redundant Well:

8 a. withdraws water from the same Groundwater source as the original well; and

9 b. is required by a State, federal, or Tribal agency.

10 6. The priority date of the Redundant Well is the same as the priority date of the original well. Only one
11 well may be used at one time.

12 7. Within 60 days of completion of a Redundant Well, the Appropriator shall file a Notice of Construction
13 of Redundant Well with the Office of the Engineer on a form provided by the Board. The Engineer or Designee
14 shall review and process the Notice pursuant to the procedures set forth in subsection (2) of this Section.

15 8. If a Notice of Construction of Redundant Well is not completed within the time allowed, the
16 Appropriator shall:

17 a. cease appropriation of water from the Redundant Well pending approval by the Engineer or Designee;

18 and

19 b. submit an application for a Change in Use authorization pursuant to Section 2-2-104 of this Ordinance;

20 or

21 c. comply with the well abandonment procedures, standards and rules adopted by the board of water
22 well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and rules that are
23 promulgated in State law.

24 9. Any Appropriator aggrieved by a determination that a corrected Notice required by subsection (2) or
25 (7) of this Section, as applicable, is defective may appeal that determination to the Board by filing a notice of
26 appeal to the Board within 30 days of the rejection of the corrected Notice. To be filed, a notice must be placed
27 in the custody of the Board within the time fixed for filing. Filing may be accomplished by mail addressed to the
28 Board, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

29 10. Any appeal to the Board filed pursuant to subsection (9) of this Section shall be conducted pursuant
30 to the provisions of Section 3-1-104 of this Ordinance. If such an appeal is filed, the Engineer shall be the

1 appellee.

2 2-2-116. Appropriation Rights for Stock Water Allowances.

3 1. Appropriation Rights for Stock Water Allowances include Stock Water Well Allowances, Stock Water
4 Pit Allowances, and Stock Water Tank Served by Surface Water Allowances.

5 2. A Stock Water Well Allowance may be sourced from either Wells or Developed Springs.

6 3. A Stock Water Pit Allowance may be sourced by Groundwater seepage or a non-perennial stream.

7 4. A Stock Water Tank Served by Surface Water Allowance may be sourced by a perennial or
8 non-perennial stream.

9 5. Before appropriating water for a Stock Water Well, approval from the Engineer is required. The
10 Engineer can approve a Stock Water Well Allowance if:

11 a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;

12 b. the maximum flow rate is 35 gallons per minute or less;

13 c. the maximum annual diverted volume is 2.4 acre-feet or less;

14 d. the means of diversion is a single Well or Developed Spring;

15 e. the well is not physically connected to a Home or Business;

16 f. the means of diversion includes Well Shaft Casing; and

17 g. Stock Water use associated with the Appropriation is dispensed using Stock Tanks.

18 6. Before appropriating water for a Stock Water Pit Allowance, approval from the Engineer is required.

19 The Engineer can approve a Stock Water Pit allowance if:

20 a. the capacity of the Stock Water Pit is 5 acre feet or less;

21 b. the maximum annual appropriated volume is 10 acre feet or less;

22 c. the Stock Water Pit Allowance is sourced by Groundwater seepage, a non-perennial stream, or both,
23 provided that a ditch or pipeline is not used;

24 d. the Stock Water Pit Allowance is constructed on and accessible to a parcel of land 40 acres or larger
25 and owned or under control of the applicant; and

26 e. the construction of the means of diversion complies with Tribal Ordinance 87(A) (Aquatic Lands
27 Conservation Ordinance).

28 7. Before appropriating water for a Stock Water Tank Served by Surface Water Allowance, approval from
29 the Engineer is required. The Engineer can approve a Stock Water Tank Served by Surface Water Allowance
30 if:

- 1 a. the maximum flow rate is 10 gallons per minute or less;
- 2 b. the combined maximum annual diverted volume is 2.4 acre-feet or less;
- 3 c. the means of conveyance is a fully contained pipe or hose. Open ditch conveyance is not allowed;
- 4 d. the construction of the means of diversion complies with Tribal Ordinance 87(A) (Aquatic Lands
5 Conservation Ordinance); and
- 6 e. Stock Water associated with the appropriation is dispensed using one or more Stock Tanks.
- 7 8. An applicant must file a completed Application for a Stock Water Allowance with the Office of the
8 Engineer and obtain approval from the Engineer before developing and appropriating water for Stock Water use
9 pursuant to this Section. A complete application shall also include:
 - 10 a. proof that the applicant has the possessory interest or the written consent of the Person(s) with
11 possessory interest in the property where the point of diversion is located and where the water is to be put to
12 beneficial use, and property rights in the diversion works; and
 - 13 b. a site-map that shows, in addition to the requirements of Section 1-1-110(12), the location of all
14 proposed Stock Water Allowance development(s) including latitude and longitude in decimal degrees. The map
15 must include the entire property boundaries where the Stock Water Allowance development is proposed, or a
16 minimum radius of 500 feet from any proposed Stock Water Allowance development, whichever is greater, and
17 include any of the following that are in existence or are proposed by the:
 - 18 i. Well(s), Pits and Stock Tanks including purpose of each;
 - 19 ii. buildings on the site, including identification of Well connections;
 - 20 iii. property lines and ownerships; and
 - 21 iv. means of conveyance, water right points of diversions, and surface water features.
- 22 9. Upon receipt of a completed application form complying with subsection (8) of this Section, the Office
23 of the Engineer shall date stamp the application form.
- 24 10. The Engineer or Designee shall review the application within 30 days of the date stamped on the
25 application pursuant to subsection (9) of this Section, and within that timeframe may either approve the
26 application or return a defective application to the applicant with a written explanation of the defects. If a corrected
27 application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee shall be
28 required. Upon receiving a corrected application, which shall be date stamped by the Office of the Engineer upon
29 receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application pursuant to
30 this subsection (10) to approve or deny the application.

1 11. If the Engineer or Designee does not approve or return an application within 30 days of the date
2 stamped on the application pursuant to subsection (9) of this Section, the application shall be deemed approved.
3 If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped
4 on the application pursuant to subsection (10) of this Section, the application shall be deemed approved.

5 12. Once an applicant meets the requirements of subsections (5) through (9) of this Section, as
6 applicable, and an application is approved by the Engineer or Designee under subsection (10) or (11) of this
7 Section, the Office of the Engineer shall issue an authorization to develop a Stock Water Allowance. The
8 authorization to develop a Stock Water Allowance entitles an Appropriator to construct the authorized type of
9 Stock Water Allowance within, but not to exceed, one year of the date of approval.

10 13. An Appropriation Right for a Stock Water Allowance becomes valid and final when, within 120 days
11 of completing the diversion works and putting the water to beneficial use, an Appropriator files a Stock Water
12 Allowance completion form accurately and completely. The completion form for a Stock Water Well Allowance
13 must include a copy of the companion Well Log Report(s), and must identify the as-built attributes of any Well,
14 Pit or Stock Tank constructed. If the as-built attributes are less than or equal to the size of the Allowance for which
15 the applicant originally applied, a Certificate of Stock Water Allowance shall be issued for the as-built attributes.
16 No Certificate of Stock Water Allowance may be issued if the as-built system exceeds the volumes or flow rates
17 set forth in subsections (5), (6) or (7) of this Section, as applicable.

18 14. If an Appropriation Right for a Stock Water Allowance is revoked by the Board pursuant to the
19 provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions
20 of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180
21 days of the revocation or voluntary abandonment, fill in and rehabilitate any Pits, Pit-dams, Constructed Ponds,
22 or Reservoirs associated with the revoked or abandoned Appropriation Right for a Stock Water Allowance, and
23 shall, within 180 days of the revocation or voluntary abandonment, seal any tanks or supply lines associated with
24 the revoked or abandoned Appropriation Right for a Stock Water Allowance.

25 2-2-117. Appropriation Rights for Domestic Allowances for Homes and Businesses; process for application,
26 review, and issuance.

27 1. Appropriation Rights for Domestic Allowances include Individual Domestic Allowances, Shared
28 Domestic Allowances and Development Domestic Allowances. An Individual Domestic Allowance may be used
29 only to serve an individual Home or Business. A Shared Domestic Allowance may be used only to serve no less
30 than two and no more than three Homes and/or Businesses. A Development Domestic Allowance may be used

- 1 only to serve a Development.
- 2 2. A Domestic Allowance may be sourced from either Wells or Developed Springs.
- 3 3. A Domestic Allowance may not be used to fill or maintain Pits, Pit-Dams, Constructed Ponds, or
- 4 Reservoirs.
- 5 4. Before appropriating water for Domestic Use for an Individual Domestic Allowance, approval from the
- 6 Engineer is required. The Engineer can approve an Individual Domestic Allowance if:
- 7 a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;
- 8 b. the maximum flow rate is 35 gallons per minute or less;
- 9 c. the maximum annual diverted volume is 2.4 acre-feet or less;
- 10 d. the means of diversion is a single Well or Developed Spring;
- 11 e. the Well is physically connected to and serves one and only one Home or Business;
- 12 f. the means of diversion includes Well Shaft Casing;
- 13 g. Stock Water use associated with the allowance is dispensed using Stock Tanks; and
- 14 h. the amount of land to be irrigated by the allowance is 0.7 acres or less.
- 15 5. Before appropriating water for a Shared Domestic Allowance, approval from the Engineer is required.
- 16 The Engineer can approve a Shared Domestic Allowance if:
- 17 a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;
- 18 b. the maximum flow rate is 35 gallons per minute or less;
- 19 c. the maximum annual diverted volume is 2.4 acre-feet or less;
- 20 d. the means of diversion is a single Well or Developed Spring;
- 21 e. the Well is physically connected to not less than two and not more than three Homes and/or
- 22 Businesses that are not a Development;
- 23 f. the means of diversion includes Well Shaft Casing;
- 24 g. Stock Water use associated with the allowance is dispensed using Stock Tanks;
- 25 h. if the Well is connected to two homes and/or businesses, the amount of land to be irrigated with the
- 26 allowances is 0.5 acres or less. If the well is connected to three Homes and/or Businesses, the amount of land
- 27 to be irrigated by the allowance is 0.75 acres or less; and
- 28 i. the application includes a copy of the Shared Well Agreement signed by all parties.
- 29 6. Before appropriating water for a Development Domestic Allowance, approval from the Engineer is
- 30 required. The Engineer can approve a Development Domestic Allowance if:

- 1 a. the Well construction complies with the requirements of Section 1-1-111 of this Ordinance;
- 2 b. the maximum flow rate from each Well or Developed Spring is 35 gallons per minute or less;
- 3 c. the combined maximum annual diverted volume from all wells and Developed Springs is 10 acre-feet
- 4 or less;
- 5 d. Measurement devices approved by the Engineer and capable of recording cumulative volumes are
- 6 installed on each Well or Developed Spring;
- 7 e. the means of diversion is one or more Wells and/or Developed Springs not to exceed one Well or
- 8 Developed Spring per Home or Business within the Development;
- 9 f. the means of diversion includes Well Shaft Casing;
- 10 g. the allowance is physically connected to multiple Homes and/or Businesses that together constitute
- 11 a Development;
- 12 h. Stock Water use associated with the allowance is dispensed using Stock Tanks;
- 13 i. the amount of land to be irrigated with the allowances is limited to 0.25 acres or less for each Home
- 14 or Business within the Development;
- 15 j. the application includes a copy of any Shared Well Agreement(s) signed by all parties, if applicable;
- 16 k. the water supply requirements for all Homes and Businesses within the Development are satisfied by
- 17 the allowance; and
- 18 l. the applicant includes a copy of the development plan, plat, or equivalent as required by the associated
- 19 county government.
- 20 7. The owner(s) or operator(s) of a Development Domestic Allowance must submit a Development
- 21 Domestic Allowance Water Measurement Report by March 31st of the year following the year covered by the
- 22 report.
- 23 8. An applicant must file a completed Application for a Domestic Allowance and obtain approval from
- 24 the Engineer before drilling any Well(s) or developing any spring(s) and putting water to use pursuant to this
- 25 Section. A completed application shall also include:
- 26 a. proof that the applicant has a possessory interest or the written consent of the Person(s) with
- 27 possessory interest in the property where the point of diversion is located and where the water is to be put to
- 28 beneficial use, and property rights in the diversion works; and
- 29 b. a site-map that shows, in addition to the requirements of Section 1-1-110(12), the location of all
- 30 proposed Wells and Developed Springs including latitude and longitude in decimal degrees. The map must

1 include the entire property boundaries where the Well associated with the Domestic Allowance is proposed, or
2 a minimum of 500 feet in radius around the proposed Well(s) or Developed Spring(s), whichever is greater, and
3 include any existing or proposed by the applicant:

- 4 i. Well(s) and Stock Tanks, including purpose of each well;
- 5 ii. sewage facilities including septic tanks and drainfields;
- 6 iii. buildings on the site, including identification of Well connections;
- 7 iv. property lines and ownerships;
- 8 v. irrigated acres per lot or unit Well(s); and
- 9 vi. means of conveyance, water right points of diversions, and surface water features.

10 9. Upon receipt of a completed application form complying with subsection (8) of this Section, the Office
11 of the Engineer shall date stamp the application form.

12 10. The Engineer or Designee shall review the application within 30 days of the date stamped on the
13 application pursuant to subsection (9) of this Section, and within that timeframe may either approve the
14 application or return a defective application to the applicant, together with a written explanation of the defects.
15 If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee
16 shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the
17 Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application
18 pursuant to this subsection (10) to approve or deny the application.

19 11. If the Engineer or Designee does not approve or return an application within 30 days of the date
20 stamped on the application pursuant to subsection (9) of this Section, the application shall be deemed approved.
21 If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped
22 on it pursuant to subsection (10) of this Section, the application shall be deemed approved.

23 12. Once an applicant meets the requirements of subsections (4), (5), or (6) of this Section, as applicable,
24 as well as the requirements of subsection (8) of this Section, and an application is approved by the Engineer or
25 Designee under subsection (10) or (11) of this Section, the Office of the Engineer shall issue an Authorization
26 to Develop a Domestic Allowance. The Authorization to Develop a Domestic Allowance entitles an Appropriator
27 to construct the authorized type of Domestic Allowance within, but not to exceed, one year of the date of approval.

28 13. An Appropriation Right for a Domestic Allowance becomes valid and final when, within 120 days of
29 completing the Well(s) or Developed Spring(s) and putting the water to beneficial use, an Appropriator files a
30 Domestic Allowance completion form accurately and completely. The completion form must also include a copy

1 of the companion Well Log Report(s), and must identify the as-built attributes of any Well or Stock Tank
2 constructed. If the as-built attributes are less than or equal to the size of the allowance for which the applicant
3 originally applied, a Certificate of Domestic Allowance shall be issued for the as-built attributes. No Certificate
4 of Domestic Allowance may be issued if the as-built system exceeds the volumes or flow rates set forth in
5 subsections (4), (5) or (6) of this Section, as applicable.

6 14. If an Appropriation Right for a Domestic Allowance is revoked by the Board pursuant to the provisions
7 of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the provisions of Sections
8 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall, within 180 days of the
9 revocation or voluntary abandonment, follow the well abandonment procedures, standards, and rules adopted
10 by the board of water well contractors pursuant to 37-43-202, MCA, or any successor procedures, standards and
11 rules that are promulgated in State law, for any Well associated with the revoked or abandoned Appropriation
12 Right for a Domestic Allowance.

13 2-2-118. Process for development of new uses from Flathead System Compact Water.

14 1. Subject to the terms and conditions of the Compact, the Tribal Council or its delegate, or any Person
15 with the written consent of the Tribal Council or its delegate, may apply to utilize Flathead System Compact Water
16 for any beneficial use within the Reservation by submitting a correct and complete application to the Office of the
17 Engineer.

18 2. A correct and complete application for a use of Flathead System Compact Water shall contain the
19 following information:

- 20 a. the name of the applicant;
- 21 b. a description of the proposed purpose of use;
- 22 c. the point of diversion
- 23 d. the means of diversion
- 24 e. the place of use;
- 25 f. the flow rate, volume diverted, and volume consumed;
- 26 g. the means of conveyance;
- 27 h. the period of use;
- 28 i. the duration or term of the proposed use;
- 29 j. a project plan, including a proposed completion period and, if applicable, a list of water rights to be
30 used in conjunction with or to be replaced by the proposed use of Flathead System Compact Water for which the

1 application is being filed;

2 k. a map depicting all the features described in this subsection (2); and

3 l. if the applicant is not the Tribal Council or its delegate, written authorization from the Tribal Council or
4 its delegate to submit the application.

5 3. Upon receipt of a completed application for the use of a Flathead System Compact Water, the Office
6 of the Engineer shall date stamp it.

7 4. Staff shall analyze the application for the use of Flathead System Compact Water within 180 days of
8 the date stamped on the application pursuant to subsection (3) of this Section using the tools and techniques
9 identified in Section 2-2-107(2) to determine compliance with the criteria identified in Section 2-2-102(2)(b)
10 through (f) of this Ordinance.

11 5. All information relied upon by Staff in analyzing an application pursuant to this Section shall be
12 documented in the application file.

13 6. Staff, using information from the application as well as their own compilation of independent resources
14 and analysis, shall draft a recommended decision with findings of fact and conclusions of law determining whether
15 the application satisfies the criteria set forth in Section 2-2-102(2)(b) through (f).

16 7. If the recommended decision is to grant the application, a summary of the application and the
17 recommended decision shall be publicly noticed by the Office of the Engineer once via legal notice in a
18 newspaper of general circulation on the Reservation and shall be posted on the Board's website for a period of
19 45 days from the date the recommended decision is issued, during which time objections may be filed with the
20 Engineer. If no objections are filed, or if all filed objections are withdrawn prior to being ruled upon, the application
21 shall be granted by the Engineer within 10 days after expiration of the time for filing objections has expired, or
22 after the unconditional withdrawal of the last objection, whichever date is later.

23 8. If the recommended decision is to deny the application, the applicant may appeal the recommended
24 decision to the Engineer pursuant to the provisions of Section 2-2-109 of this Ordinance.

25 9. If the recommended decision is to grant the application with conditions, the application shall be noticed
26 to the public pursuant to the provisions of subsection (7) of this Section unless the applicant withdraws the
27 application within 30 days of the issuance of the recommended decision or appeals the recommended decision
28 to the Engineer pursuant to the provisions of Section 2-2-109 of this Ordinance. The application filing fee shall
29 not be refunded upon withdrawal.

30 10. To be valid for processing, an objection to an application for the use of Flathead System Compact

1 Water must assert that and describe how the proposed development of Flathead System Compact Water fails
2 to comply with one or more of the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance. Any such
3 valid objection shall be resolved pursuant to the procedures set forth in Sections 2-2-110 through 2-2-112 of this
4 Ordinance, provided however, that the burden of proof in the hearing before the Engineer or Designee shall be
5 on the objector to prove by a preponderance of the evidence that the application fails to comply with one or more
6 of the criteria set forth in Section 2-2-102(2)(b) through (f) of this Ordinance.

7 11. Unless an objection to the application is sustained, the application shall be granted within 10 days
8 of expiration of the time to appeal the decision relating to any objection or after the exhaustion of the objector's
9 last appeal, whichever date is later.

10 12. The priority date of any use of Flathead System Compact Water is the date of the Tribes' Flathead
11 System Compact Water right as set forth in Article III.C.1.c of the Compact.

12 2-2-119. Appropriation Rights for Non-consumptive Geothermal Heating or Cooling Exchange Wells.

13 1. Appropriation Rights may be issued for non-consumptive geothermal heating or cooling exchange
14 Wells with a maximum appropriation of 350 gallons a minute or less if all of the water extracted is returned without
15 delay to the same source aquifer if the distance between the extraction well and both the nearest existing well
16 and the hydraulically connected surface waters is more than twice the distance between the extraction well and
17 the injection well, and if all Well construction complies with the requirements of Section 1-1-111 of this Ordinance.
18 Before appropriating water for a use described in this subsection (1), approval of the Engineer is required.

19 2. An applicant must file a completed application form and obtain approval from the Engineer before
20 drilling any Well(s) or developing any spring(s) and putting water to use pursuant to this Section. A completed
21 application shall also include:

22 a. proof that the applicant has the possessory interest or the written consent of the Person(s) with
23 possessory interest in the property where the point of diversion is located and where the water is to be put to
24 beneficial use, and property rights in the diversion works; and

25 b. a site-map showing the location of all proposed wells including latitude and longitude in decimal
26 degrees. The map must also include the entire property boundaries where the Well associated with the Domestic
27 Allowance is proposed, or a minimum of 500 feet in radius around the proposed Well(s) or spring(s), whichever
28 is greater, and include any of the following that exist or are proposed by the applicant:

29 i. Well(s) including purpose of each well;

30 ii. sewage facilities including septic tanks and drainfields;

1 iii. buildings on the site, including identification of Well connections;

2 iv. property lines and ownerships;

3 v. irrigated acres per lot or unit well(s); and

4 vi. means of conveyance, water right points of diversions, and surface water features.

5 3. Upon receipt of a completed application form complying with subsection (2) of this Section, the Office
6 of the Engineer shall date stamp the application form.

7 4. The Engineer or Designee shall review the application within 45 days of the date stamped on the
8 application pursuant to subsection (3) of this Section, and within that timeframe may either approve the
9 application or return a defective application to the applicant, together with a written explanation of the defects.
10 If a corrected application is submitted within 30 days of its return by the Office of the Engineer, no new filing fee
11 shall be required. Upon receiving a corrected application, which shall be date stamped by the Office of the
12 Engineer upon receipt, the Engineer or Designee has 30 days from the date stamped on the corrected application
13 pursuant to this subsection (4) to approve or deny the application.

14 5. If the Engineer or Designee does not approve or return an application within 45 days of the date
15 stamped on the application pursuant to subsection (3) of this Section, the application shall be deemed approved.
16 If the Engineer or Designee does not approve or deny a corrected application within 30 days of the date stamped
17 on this application pursuant to subsection (4) of this Section, the application shall be deemed approved.

18 6. Once an applicant meets the requirements of subsection (1) of this Section and the application is
19 approved pursuant to subsection (4) or (5) of this Section, as applicable, the Engineer shall issue an authorization
20 to develop the Appropriation Right for a Heating/Cooling Exchange Well.

21 7. An Appropriation Right for a Heating/Cooling Exchange Well becomes valid and final when, within 120
22 days of completing the Well(s) or Developed Spring(s) and putting the water to beneficial use, an Appropriator
23 files a Heating/Cooling Exchange completion form accurately and completely. The completion form must also
24 include a copy of the companion Well Log Report(s) for the extraction Well and the injection Well.

25 8. If an Appropriation Right for a Heating/Cooling Exchange Well is revoked by the Board pursuant to
26 the provisions of Section 3-1-112(3) of this Ordinance, or is determined to be abandoned pursuant to the
27 provisions of Sections 2-1-111 and 2-1-112 of this Ordinance, or is voluntarily abandoned, the Appropriator shall,
28 within 180 days of the revocation or voluntary abandonment, follow the well abandonment procedures, standards,
29 and rules adopted by the board of water well contractors pursuant to 37-43-202, MCA, or any successor
30 procedures, standards and rules that are promulgated in State law, for any Well associated with the revoked or

1 abandoned Appropriation Right for a Heating/Cooling Exchange Well.

2 2-2-120. Temporary Emergency Appropriations.

3 1. A Temporary Emergency Appropriation may be made without prior approval from the Board, but the
4 use must cease immediately when the water is no longer required to meet the emergency.

5 2. A Temporary Emergency Appropriation does not include the use of water for the ordinary operation
6 and maintenance of any trade or business, including but not limited to agricultural production.

7 3. Within 60 days after the cessation of a Temporary Emergency Appropriation, the Appropriator shall
8 notify the Board of the use to which the water was put, the dates of use, and the estimated amount of water used.

9 4. Except as set forth in subsection (5) of this Section, a Temporary Emergency Appropriation may not
10 include the use of Enclosed Storage.

11 5. When the Temporary Emergency Appropriation is made by a local governmental fire agency organized
12 under Title 7, chapter 33, MCA, or applicable Tribal law, and the Temporary Emergency Appropriation is used
13 only for emergency fire protection, the Temporary Emergency Appropriation may include enclosed storage.

14 2-2-121. Short-term use of a portion of the Tribal Water Right for road construction or dust abatement.

15 The Tribes, or a Person with the written consent of the Tribes, may use a portion of the Tribal Water Right
16 for road construction or dust abatement purposes subject to the following provisions:

17 1. For uses of 20,000 gallons or less per day from a single source of supply, no notice is required;

18 2. For uses greater than 20,000 gallons per day and less than 60,000 gallons per day from a single
19 source of supply, a notice must be posted at the site of the diversion or withdrawal for the entire period during
20 which water is being diverted or withdrawn. The notice posted shall be clearly legible and visible and provide the
21 following information:

22 a. source of water;

23 b. purpose of use;

24 c. starting and ending date of diversion;

25 d. place of use;

26 e. diversion flow rate;

27 f. maximum volume of water to be diverted or withdrawn per day; and

28 g. name and contact information for the user of the water and for the Board.

29 3. For uses greater than 60,000 gallons per day from a single source of supply, the Board must be
30 notified at least 10 days but not more than 45 days in advance of the initial use of the water. Notice must be

1 posted at the site of the diversion or withdrawal, as provided in subsection (2) of this Section. Notification to the
2 Board must provide the following information:

- 3 a. source of water;
- 4 b. legal description of the point of diversion or withdrawal;
- 5 c. place of use;
- 6 d. map showing preceding three items;
- 7 e. purpose of use;
- 8 f. starting and ending date of use;
- 9 g. diversion flow rate;
- 10 h. maximum volume of water to be diverted or withdrawn per day; and
- 11 i. name and contact information for the user.

12 4. The diversion or withdrawal of water pursuant to this Section shall not adversely affect any legal use
13 of water in existence as of the date of the diversion or withdrawal; and

14 5. If notified that the diversion or withdrawal of water pursuant to this Section is adversely affecting any
15 legal use of water in existence as of the date of the diversion or withdrawal, the user will immediately cease
16 diversion or withdrawal from that source of supply. To resume the diversion or withdrawal, the user can move the
17 diversion or withdrawal to another source of supply or satisfy the holder(s) of the affected legal use(s) of water
18 in existence as of the date of the diversion or withdrawal and the Board that use will not cause adverse effects.

19 2-2-122. Short-term use of an appropriation right that is not part of the Tribal Water Right for road construction
20 or dust abatement.

21 1. An Appropriator may lease for a term not to exceed 90 days all or part of an Appropriation Right or
22 Existing Use that is not part of the Tribal Water Right for road construction or dust abatement without the prior
23 approval of the Board, subject to the requirements of this Section. The lease agreement must include the
24 following information:

- 25 a. the name and address of the lessee;
- 26 b. the name of the owner of the Appropriation Right or Existing Use;
- 27 c. the number of the Appropriation Right or Existing Use;
- 28 d. the purpose of use of water for which the lease is being made;
- 29 e. the source of water to be appropriated;
- 30 f. the starting and ending date of the proposed use of water;

- 1 g. the proposed point of diversion;
- 2 h. the proposed place of use;
- 3 i. the diversion flow rate and volume of water to be used during the period of use; and
- 4 j. a description of how the prior use of water will be reduced to accommodate the temporary change of
- 5 use of the Appropriation Right or Existing Use, including the number and location of acres to be removed from
- 6 irrigation, if applicable.

7 2. A short-term lease of an Appropriation Right or Existing Use under this Section may not exceed

8 60,000 gallons a day or the amount of the Appropriation Right or Existing Use, whichever is less. Any combination

9 of short-term leases cannot exceed 120,000 gallons a day for one project.

10 3. Except as provided in subsection (7) of this Section, the following information must be submitted to

11 the Board at least 2 days prior to the use of water by a lessee under this Section:

- 12 a. a copy of the publication notice or copies of the individual notice required under subsection (4) of this
- 13 Section;
- 14 b. a copy of the lease agreement; and
- 15 c. for a combination of short-term leases greater than 60,000 gallons a day for one project, an analysis
- 16 by the lessee of any potential adverse effects and a description of planned actions to mitigate any potential
- 17 adverse effects to Appropriators in the area of the proposed point of diversion.

18 4. Except as provided in subsection (7) of this Section, the lessee of an Appropriation Right or Existing

19 Use under this section shall, 30 days prior to the use of the water, publish a notice of the proposed use of water

20 once in a newspaper of general circulation in the area of the diversion or mail individual notice to potentially

21 affected Appropriators in the area of the proposed point of diversion. The published notice or the individual notice

22 must contain the information listed in subsections (1)(a) through (1)(j) and (3)(c) of this Section.

23 5. Complaints regarding temporary use.

24 a. An Appropriator, whether the water right is prior or subsequent in priority to the short-term lease

25 acquired by a Person under this Section, who cannot satisfy in full the Appropriator's right during the time that

26 the short-term lessee is diverting water may make a complaint to the Engineer pursuant to Section 3-1-102 of

27 this Ordinance and cause the short-term lessee's diversion to be discontinued.

28 b. The diversion is discontinued until the complaining Appropriator's water right is satisfied or until the

29 lessee establishes to the Engineer that the discontinuance has had no effect on the complaining Appropriator's

30 water right. Upon establishment that discontinuance has not had an effect, the Engineer shall enter an order

1 allowing the diversion to continue.

2 6. This Section does not limit the remedies available to an Appropriator to enjoin or to seek damages
3 from a Person appropriating water under this Section.

4 7.a. a consolidated city-county or a county or an incorporated city or town is not subject to the
5 requirements of subsections (3)(a) and (4) of this Section when conducting dust abatement that was not
6 scheduled or contracted for 30 days or more prior to the use of the water.

7 b. a consolidated city-county or a county or an incorporated city or town that does not publish notice as
8 provided in subsection (4) of this Section shall post a copy of the lease agreement at the point of diversion at least
9 24 hours prior to and during the time that water is diverted.

10 2-2-123. Wetland Protective Appropriation Rights.

11 1. Pursuant to the provisions of Sections 2-2-101 et seq., a Wetland Protective Appropriation Right for
12 a Natural Wetland or Restored Natural Wetland may be issued, subject to the following limitations:

13 a. except as authorized by Appropriation Rights issued pursuant to Section 1-1-107(1)(k), irrigation return
14 flows may not be used as a source for an Appropriation Right issued pursuant to this Section.

15 b. No Wetland Protective Appropriation Right shall be issued for any Wetland using Pits, Pit-dams, or
16 Constructed Ponds.

17 c. No Wetland Protective Appropriation Right shall be issued for any Wetland occurring solely as a result
18 of seepage from irrigation reservoirs, canals, laterals or ditches.

19 d. No Wetland Protective Appropriation Right shall be used for any other purpose and shall not be
20 changed to another purpose.

21 2. Wetlands eligible for Wetlands Protective Appropriation Rights are:

22 a. Those Wetlands identified on the Map attached to the Compact as Appendix 16 (available from the
23 Office of the Engineer); or

24 b. Those Wetlands not identified on the Map if:

25 i. the proposed use is a Restored Natural Wetland;

26 ii. the applicant provides a site-specific Wetlands delineation, using any delineation method approved by
27 the Engineer, that includes:

28 (1) the total number of acres and a detailed map showing the proposed boundary of the Wetland for
29 which the Wetland Protective Appropriation Right is being applied; and

30 (2) an identification of the Wetlands delineation method used, along with supporting field data.

1 2-2-124. Wetland Quantified Appropriation Rights.

2 1. Pursuant to the provisions of Sections 2-2-101 et seq., an Appropriations Right or Change in Use
3 Authorization to divert, impound, or withdraw surface water or Groundwater for a Wetland purpose may be issued.

4 2. All Wetlands that utilize man-made diversions, impoundments, withdrawals, excavations, or other
5 artificial means for the purposes of Appropriation for either all or a portion of a Wetland water supply in excess
6 of a Natural Wetland water supply or Restored Natural Wetland water supply shall obtain, in advance of
7 Appropriation, an Appropriation Right or Change in Use authorization for that Wetland purpose.

8 3. In addition to the information required by Sections 1-1-110 and 2-2-104 of this Ordinance, an
9 application for an Appropriation Right or Change in Use authorization pursuant to this section shall include the
10 following information:

11 a. A delineation of pre-project existing Wetlands and post-project Wetlands using a Wetland delineation
12 method approved by the Engineer. The delineation shall describe the following pre-project and post-project
13 Wetland attributes:

- 14 i. the outer Wetland boundary and area in acres;
- 15 ii. the boundaries of permanently inundated areas, depth in feet, and area in acres;
- 16 iii. the boundaries of seasonally inundated areas, period of inundation, depth in feet, and area in acres;
- 17 iv. the boundaries of permanently saturated areas and area in acres;
- 18 v. the boundaries of seasonally saturated areas, period of saturation, and area in acres; and
- 19 vi. Wetland vegetation boundaries and area in acres.

20 b. The location and description of the manmade diversions, impoundments; withdrawals, excavations,
21 or other artificial means for the purposes of Appropriation;

22 c. The flow rate and volume of water to be appropriated in monthly time steps; however, the Office of
23 the Engineer may require a more frequent quantification time step;

24 d. The consumptive volume for each Wetland attribute delineated pursuant to Section 2-2-124(a) in
25 monthly time steps; however, the Office of the Engineer may require a more frequent quantification time step;

26 e. non-consumed water, including flow rate and volume estimates, and a description of return flows and
27 their eventual destination and timing; and

28 f. the volume of Natural Wetland water supply, if applicable, in monthly time steps.

29 2-2-125. Notice of Trust Status Conversion for Lands with Appurtenant Water Rights Arising Under State Law
30 Acquired by the Tribes.

1 As provided for by the Compact, Article III.J, the following process shall be used to notify the Water
2 Management Board of the transfer of Tribally-owned fee land to trust status:

3 1. Starting upon the Effective Date of the Compact, the Tribes may file a Trust Transfer form with the
4 Board for any lands acquired by the Tribes with appurtenant Water Rights Arising Under State Law that have
5 been taken into trust by the United States on behalf of the Tribes.

6 2. A copy of the deed transferring the fee land to trust status shall be attached to the form.

7 2-2-126. Water Management Board Adjustment of Priority Date Pursuant to Compact.

8 Upon submission of a Trust Transfer form by the Tribes, the priority date of any Water Rights Arising
9 Under State Law appurtenant to land identified on the Trust Transfer form shall be adjusted by the Water
10 Management Board to July 16, 1855. The Board shall cause the adjusted priority date to be entered into the
11 Reservation water rights database identified in Section 1-1-108 of this Ordinance.

12 2-2-127. Tribal Utilization of Water Right with Adjusted Priority Date.

13 Any water right whose priority date is adjusted pursuant to Section 2-2-126 shall be subject to the
14 following use conditions:

15 1. The water right must be used as historically used; or

16 2. Changes to the water right must be made pursuant to the provisions set for the in Article IV.B.4 of the
17 Compact and Section 2-2-101 et seq. of this Law of Administration.

18 2-2-128. Public Water Supply Reporting Requirements

19 1. The following shall comply with the reporting requirements set forth in subsection (2) of this Section:

20 a. any new Public Water Supply System approved pursuant to this Ordinance;

21 b. any Public Water Supply System in existence prior to the effective date of this Ordinance whose
22 authorized use is expanded pursuant to this Ordinance.

23 2. On an annual basis, any entity responsible for the operation of a Public Water Supply System
24 identified in subsection (1) of this Section shall report to the Office of the Engineer the total volume by month of
25 pumping or diversion of the Public Water Supply System.

26 Chapter III Enforcement

27 3-1-101. Scope

28 1. The enforcement powers set forth in this Chapter apply to the resolution of disputes between
29 Appropriators who are not served by the Flathead Indian Irrigation Project, or between any Appropriators who
30 are not served by the FIIP and any water user(s) or holders of Existing Rights, if any, whose use of water is

1 served by the FIIP. Disputes exclusively between or among users whose water is delivered by the FIIP shall
2 remain subject to the oversight of the Cooperative Management Entity (CME) and the Enforcement provisions
3 of this Ordinance shall not apply. The powers and duties set forth in this Chapter, as they extend to uses of the
4 Tribal Water Right within the FIIP, extend only to the resolution of disputes concerning the delivery of water to
5 FIIP diversion facilities and shall not extend to the administration of that water in FIIP facilities or on lands served
6 by the FIIP, which shall remain subject to the oversight of the CME.

7 2. Nothing in this Chapter, or in the Ordinance, is intended to preclude a water user from working
8 informally with other water users, any Water Commissioner appointed pursuant to Section 3-1-114 of this
9 Ordinance, or the Engineer, to resolve disputes or real-time water operation issues without recourse to the
10 provisions of this Chapter. A synopsis of all such resolutions between a water user and any Water Commissioner
11 or the Engineer shall be reduced to writing, and dated, a copy of which shall be kept in the Office of the Engineer
12 and available for public inspection. A synopsis of any such resolution between or among water users may be
13 reduced to writing. Provided, however, that any water user not party to any such informal resolution who believes
14 himself or herself to be injured by the informal resolution may seek redress by invoking the provisions of this
15 Chapter, subject to the limitation concerning FIIP water use set forth in subsection (1) of this Section, to challenge
16 the informal resolution.

17 3. Any of the timeframes set forth in Sections 3-1-102 through 3-1-107 of this Ordinance may be
18 extended upon mutual agreement of the parties to any dispute.

19 3-1-102. Complaint to the Engineer Regarding Actions or Inactions Between Appropriators.

20 1. Subject to the limitation concerning FIIP water use set forth in Section 3-1-101(1) of this Ordinance,
21 any Appropriator aggrieved by the action or inaction of any other Appropriator, or by any Person the Complainant
22 believes is Wasting water to the detriment of a right to use water the Complainant possesses, may file a
23 Complaint with the Engineer. Such Complaint must be submitted in writing and describe specifically the action
24 or inaction being complained of and the justification for the Complaint.

25 2. Upon receipt of a Complaint, the Office of the Engineer shall date stamp it and return a copy to the
26 Complainant along with a written statement indicating that informal resolution of the dispute between the
27 Appropriators, or between an Appropriator and a Person accused of Wasting water, may provide a more timely
28 and cost-effective remedy than having the Complaint adjudicated by the Engineer.

29 3. Within 3 days of the receipt of the Complaint, the Office of the Engineer shall serve a copy of it on the
30 Appropriator or other Person whose action or inaction is being complained of (the "Respondent"), and shall post

1 notice of the Complaint on the Board's website. The notice to the Respondent shall include a written statement
2 indicating that informal resolution of the dispute between the Complainant and the Respondent may provide a
3 more timely and cost-effective remedy than having the petition adjudicated by the Engineer.

4 3-1-103. Resolution of Complaint.

5 1. No later than 15 days after the provision of notice of the Complaint to the Respondent, pursuant to
6 Section 3-1-102(3) of this Ordinance, the Engineer or Designee shall hold a hearing on the Complaint, provided,
7 however that the Engineer or Designee may take an additional 10 days before holding the hearing to perform
8 such independent investigation into the Complaint as the Engineer or Designee deems appropriate. At such time,
9 both the Complainant and the Respondent shall explain their positions concerning the matter complained of. All
10 evidence that, in the opinion of the Engineer or Designee, possesses probative value shall be admitted, including
11 hearsay, if it is the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their
12 normal business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant,
13 immaterial, or unduly repetitious shall be excluded.

14 2. A decision by the Engineer or Designee on the Complaint shall be made in writing within 7 days after
15 the completion of the hearing.

16 3. The decision of the Engineer or Designee may include an award of declaratory relief, and/or the
17 imposition of conditions on the use or exercise of a water right. Such conditions may include, but are not limited
18 to, instructions regarding the proper delivery of water, the installation of measuring devices, the construction of
19 suitable ditches to carry the return waters from any ditch or lands to the main stream or proper waste way, or the
20 mandate of structural changes to diversion structures.

21 4. Any Complainant or Respondent dissatisfied with the final decision of the Engineer or Designee may
22 appeal to the Board (and become an Appellant) and obtain review of the Engineer's or Designee's decision. A
23 notice of appeal to the Board must be received by the Board within 30 days of the issuance of the Engineer's or
24 Designee's written decision. The decision of the Engineer or Designee shall not be stayed during the pendency
25 of the appeal unless the Board expressly orders such a stay upon motion of the Complainant or Respondent.

26 3-1-104. Appeal to the Board.

27 1. Upon receipt of a notice of appeal pursuant to Section 3-1-103(4) of this Ordinance, or any other
28 Section of this Ordinance that provides for appeal to the Board pursuant to the provisions of this Section, the
29 Board, acting through the Office of the Engineer, shall date stamp the notice and return a copy to the Appellant.
30 Within three days of receipt of the notice of appeal, the Board, acting through the Office of the Engineer, shall

1 serve a copy of the notice of appeal on the other party to the dispute (who becomes the Appellee).

2 2. Either party to the appeal may elect to have oral argument prior to the resolution of the appeal. The
3 Appellant must request oral argument at the time of the filing of the notice of appeal or the Appellant's right to oral
4 argument is waived. The Appellee must request oral argument within 10 days of the Appellee's receipt of the
5 notice of appeal pursuant to subsection (1) of this Section, or the Appellee's right to oral argument is waived. If
6 either party to the appeal requests oral argument, such argument must be held within 60 days of the filing of the
7 notice of appeal, or within 30 days of the receipt of evidence or argument pursuant to subsection (3) or (4) of this
8 Section, whichever date is later.

9 3. Within 60 days from the filing of the notice of appeal, or any extended period of time, not to exceed
10 60 days, granted by the Board, the Appellant and Appellee may each submit additional factual evidence and legal
11 argument concerning the appeal to the Board and shall serve copies of the same on the other party to the
12 dispute.

13 4. Either party to the appeal shall have 60 days from the date of receipt of the evidence or argument
14 served pursuant to subsection (3) of this Section, or any extended period of time granted by the Board, not to
15 exceed 60 days, to respond in writing to the evidence and argument submitted by the other party to the dispute
16 pursuant to subsection (3) of this Section.

17 5. If oral argument is held, the argument shall be recorded electronically and an official record
18 maintained.

19 6. A decision by the Board on the appeal shall be made in writing within 60 days after the completion
20 of oral argument or, if the right to oral argument is waived, within 60 days after the deadline for the submission
21 of evidence and argument pursuant to subsections (3) and (4) of this Section, whichever is later. The written
22 decision shall set forth the ruling of the Board along with a statement of the reasons therefor.

23 7. In ruling on the appeal, the Board may sustain the decision of the Engineer or Designee, may overturn
24 that decision and set aside any relief ordered by the Engineer or Designee, or may remand the matter to the
25 Engineer or Designee for such further proceedings as may be specified in the Board's written decision.

26 3-1-105. Petition to the Engineer by Any Appropriator Aggrieved by Actions or Inactions of a Water
27 Commissioner.

28 1. Any Appropriator aggrieved by the action or inaction or written directive from any Water Commissioner
29 appointed pursuant Section 3-1-114 of this Ordinance, may petition the Engineer for relief (and become a
30 Petitioner). Such petition must be submitted in writing and describe with particularity the action, inaction or

1 directive giving rise to the petition and the justification for the petition.

2 2. Upon receipt of a petition, the Office of the Engineer shall date stamp it and return a copy to the
3 Petitioner along with a written statement indicating that informal resolution of the dispute between the Petitioner
4 and the Water Commissioner may provide a surer and more cost-effective remedy than having the petition
5 adjudicated by the Engineer.

6 3. Within 3 days of the date stamped on the petition pursuant to subsection (2) of this Section, the Office
7 of the Engineer shall serve a copy of it on the Water Commissioner whose action, inaction or written directive is
8 being petitioned against, and shall post notice of the Petition of the Board's website.

9 3-1-106. Resolution of Petition.

10 1. A Petitioner may elect to have the Petition decided on the record after submission of additional
11 evidence and argument, or after hearing. If a Petitioner elects to have a hearing, that request must be made at
12 the same time as the filing of the Petition or the right to a hearing is waived.

13 2. The Water Commissioner may elect to have the Petition decided after a hearing. The request for a
14 hearing must be made within 5 days of the Water Commissioner's receipt of notice of the Petition pursuant to
15 Section 3-1-105(3) of this Ordinance or the Water Commissioner's right to a hearing is waived.

16 3. If either the Petitioner or the Water Commissioner elects to have the Petition resolved after a hearing,
17 the Engineer or Designee shall hold a hearing on the Petition no later than 14 days after the filing of the Petition,
18 or within 14 days of the expiration of the time for the submission of evidence or argument pursuant to subsection
19 (5) of this Section, whichever date is later, provided, however that the Engineer or Designee may take an
20 additional 10 days before holding the hearing to perform such independent investigation into the petition as the
21 Engineer or Designee deems appropriate.

22 4. Within 5 days from the filing of the Petition, or any extended period of time, not to exceed 5 days,
23 granted by the Engineer, the Petitioner and Commissioner may each submit additional factual evidence and legal
24 argument concerning the Petition to the Engineer or Designee and shall serve copies of the same on the other
25 party to the dispute.

26 5. Either party to the dispute shall have 5 days from the date of receipt of the evidence or argument
27 served pursuant to subsection (4) of this Section, or any extended period of time granted by the Engineer or
28 Designee, not to exceed 5 days, to respond in writing to the evidence and argument submitted by the other party
29 to the dispute pursuant to subsection (4) of this Section.

30 6. The Petitioner shall bear the burden of proof before the Engineer or Designee.

1 7. The hearing shall be recorded electronically and an official record maintained. All evidence that, in
2 the opinion of the Engineer or Designee, possesses probative value shall be admitted, including hearsay, if it is
3 the type of evidence commonly relied upon by reasonably prudent Persons in the conduct of their normal
4 business affairs. Rules of privilege recognized by law shall be given effect. Evidence which is irrelevant,
5 immaterial, or unduly repetitious shall be excluded.

6 8. A decision by the Engineer or Designee on the Petition shall be made in writing within 7 days after
7 the completion of the hearing or, if the right to a hearing is waived, within 7 days after the deadline for the
8 submission of evidence and argument pursuant to subsections (4) and (5) of this Section, whichever is later. If
9 the individual who conducted the hearing becomes unavailable to the Office of the Engineer, a decision may be
10 prepared by an individual who has read the record only if the demeanor of witnesses is considered immaterial
11 by all parties; if any party considers the demeanor of any witness to be material to the resolution of the petition,
12 a new hearing must be held.

13 9. The decision of the Engineer or Designee may include an award of declaratory relief, and/or the
14 imposition of conditions on the use or exercise of an Appropriation Right or Existing Use. Such conditions may
15 include, but are not limited to, the installation of measuring devices, the construction of suitable ditches to carry
16 the return waters from any ditch or lands to the main stream or proper waste way, or the mandate of structural
17 changes to diversion structures.

18 10. Any Petitioner or Commissioner dissatisfied with the final decision of the Engineer or Designee may
19 appeal to the Board (and become an Appellant) and obtain review of the Engineer's or Designee's decision. A
20 notice of appeal to the Board must be received by the Board within 30 days of the issuance of the Engineer's or
21 Designee's written decision.

22 3-1-107. Appeal to the Board from a Decision on a Petition.

23 The process for appeal to the Board of the Engineer's or Designee's decision on a Petition shall be as
24 set forth in Section 3-1-104 of this Ordinance.

25 3-1-108. Appeal from a Decision of the Board.

26 The process for appeal from a decision of the Board issued pursuant to Section 3-1-104 of this Ordinance
27 shall be as set forth in Section 2-2-112 of this Ordinance.

28 3-1-109. Emergency Enforcement Powers of the Engineer.

29 In an Emergency, the Engineer, or any Staff who is so directed by the Engineer, or any Water
30 Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, shall have the authority to lock, remove,

1 render inoperative, shut down, close, seal, cap, modify, or otherwise control methods of diversions and
2 withdrawals, and obstructions to the flow of water, subject to expedited appeal to the Board by the affected
3 Person, as provided in Section 3-1-110 of this Ordinance.

4 3-1-110. Additional Enforcement Powers of the Engineer.

5 1. The Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed
6 pursuant to Section 3-1-114 of this Ordinance, may enter upon lands on the Reservation with reasonable notice
7 to the owner or occupant, to investigate and inspect methods of diversion, withdrawal, and other activities
8 affecting water quantity, to install measuring devices at the expense of the water user on surface and
9 Groundwater diversions for the purpose of enforcing and administering this Ordinance, to monitor water use,
10 water quality, and diversion structures.

11 2. The Engineer, or any Staff who is so directed by the Engineer, or any Water Commissioner appointed
12 pursuant to Section 3-1-114 of this Ordinance, may take action to prevent the Illegal use of water, including, but
13 not limited to the temporary decommissioning of head gates or other diversion works.

14 3. The Engineer may issue written notices of violation to Appropriators and to Illegal users of water for
15 violations of this Ordinance or of the terms and conditions of any Appropriation Right or Existing Use or of any
16 lawful order of the Engineer or the Board or any action or directive of any Water Commissioner appointed
17 pursuant to Section 3-1-114 of this Ordinance.

18 4. Any notice issued pursuant to subsection (3) of this Section shall specify the particular violation or
19 violations, the step(s) to be taken to come into compliance, and identify a reasonable time frame within which
20 such steps are to be taken.

21 5. In the event of non-compliance with any written notice issued pursuant to subsection (3) of this Section
22 within the specified time frame, the Engineer may move the Board to exercise its powers pursuant to Sections
23 3-1-112 and 3-1-113 of this Ordinance.

24 6. Upon receipt of any written recommendation, pursuant to Section 3-1-115(3) of this Ordinance, from
25 any Water Commissioner, the Engineer or Designee may reject the recommendation or may issue notice of intent
26 to hold a hearing to determine whether the imposition of such conditions identified in the recommendation is
27 warranted. The process for the consideration and resolution of any such matter shall be as set forth in Sections
28 3-1-105 through 3-1-108 of this Ordinance, with the recommendation being treated as a petition, the Water
29 Commissioner as the Petitioner and the affected water user(s) as Respondent(s).

30 3-1-111. Expedited Appeal to the Board in the Event of Certain Actions by the Engineer.

1 1. Any Appropriator whose use of water is affected by an action taken pursuant to Section 3-1-109 or
2 3-1-110(2) of this Ordinance may file a written notice of appeal with the Board (and become an Appellant). The
3 notice of appeal must describe with particularity the action being appealed and the justification for the appeal.

4 2. The Board must immediately notify the Engineer of the filing of a notice of appeal pursuant to
5 subsection (1) of this Section, and must hear the appeal within 10 days of the notice of appeal being filed.

6 3. If the Board finds in favor of the Appellant, it may award appropriate relief, including declaratory relief,
7 but not monetary penalties against the Office of the Engineer or any employee thereof, including any Water
8 Commissioner appointed pursuant to Section 3-1-114 of this Ordinance, acting in either their professional or
9 personal capacities.

10 3-1-112. Additional Enforcement Powers of the Board.

11 Upon motion by the Engineer, and after notice to any affected Appropriator and the opportunity for all
12 parties to be heard, the Board may:

13 1. Impose fines, as set forth in Section 3-1-113 of this Ordinance;

14 2. Impose conditions on the future use of any Appropriation Right to prevent further violation, but only
15 upon a finding that the holder of any such Appropriation Right is violating or has violated any provision of that
16 Appropriation Right, or is violating or has violated any order issued by the Engineer or any directive of any Water
17 Commissioner appointed pursuant to Section 3-1-114 of this Ordinance concerning the use of that permit. The
18 process for appeal from any Board decision imposing conditions thereon, shall be as set forth in Section 2-2-112
19 of this Ordinance.

20 3. Revoke or suspend any Appropriation Right, but only upon a finding that the holder of any such
21 Appropriation Right is willfully violating or has willfully violated any provision of that Appropriation Right, or is
22 willfully violating or has willfully violated any order issued by the Engineer concerning the use of that Appropriation
23 Right. The process for appeal from any Board decision revoking or suspending a permit shall be as set forth in
24 Section 2-2-112 of this Ordinance.

25 3-1-113. Fines.

26 1. The Board, pursuant to the provisions of this Section, may impose a fine not to exceed \$1,000 per
27 violation on any Person who fails to comply with the provisions of this Ordinance, including any written order of
28 the Board or Engineer or written directive of any Water Commissioner.

29 2. If a Person is using water under the color of law, fines may only be imposed commencing on the day
30 after the resolution of any appeal from the written order of the Board or Engineer or action or written directive of

1 any Water Commissioner whose violation gives rise to the proposed imposition of fines, or the deadline for filing
2 an appeal if no appeal is filed, after receipt of a written notice of violation pursuant to Section 3-1-111(2) of this
3 Ordinance.

4 3. If a Person is using water Illegally, the Board may impose fines on that Person at any time
5 commencing from the date of that Person's receipt of the notice of violation from the Engineer pursuant to section
6 3-1-111(3)(a), if the Illegal use is not ceased immediately upon receipt of the notice of violation.

7 4. Each day of violation constitutes a separate violation.

8 5. The process for appeal from any Board decision imposing fines pursuant to this Section shall be as
9 set forth in Section 2-2-112 of this Ordinance.

10 3-1-114. Appointment of Water Commissioners.

11 Pursuant to Article IV.C.5.d. of the Compact, the Board may appoint one or more Water Commissioners
12 to provide day-to-day administration of water on the Reservation. The appointment shall specify the geographic
13 area for which the commissioner shall have responsibility.

14 3-1-115. Powers and Duties of Water Commissioners.

15 Subject to the jurisdictional limitation set forth in Article IV.C.5.d.ii of the Compact and Section 3-1-101(1)
16 of this Ordinance, any Water Commissioner appointed pursuant to Section 3-1-114 of this Ordinance:

17 1. Shall, consistent with the terms and conditions of the Compact, the federal legislation ratifying the
18 Compact, this Ordinance, and the terms of all applicable Appropriation Rights and Existing Uses, distribute water
19 in the proper priority;

20 2. Shall, as near as may be practicable, divide, regulate and control the use of the water of all streams,
21 springs, lakes or other sources of water within that Water Commissioner's district as will prevent the Waste of
22 water or its use in excess of the volume to which any Appropriator is lawfully entitled, including through the
23 opening and closing of headgates. Whenever a Water Commissioner regulates a headgate to a ditch or the
24 controlling works of reservoirs, it shall be that Water Commissioner's duty to attach to such headgate or
25 controlling works a written notice, properly dated and signed, setting forth the fact that such headgate or
26 controlling works has been properly regulated and is wholly under the Water Commissioner's control and such
27 notice shall be a legal notice to all parties interested in the division and distribution of the water of such ditch or
28 reservoir;

29 3. Shall notify the Engineer in writing of the non-compliance of any water user with a prior order of the
30 Engineer or the Board or any prior written directive of that Water Commissioner issued pursuant to subsection

1 (4) of this Section;

2 4. May issue written directives to any Appropriator, or any Illegal user of water, concerning day-to-day
3 actions that must be taken to facilitate the execution of the duties of that Water Commissioner as set forth in
4 subsections (1) and (2) of this Section; and

5 5. May recommend to the Engineer, in writing, conditions to be placed on the exercise of any
6 Appropriation Right or Existing Use on the Reservation, including the requirement of measuring devices and the
7 necessity of structural changes to diversion or other structures. The Water Commissioner shall serve copies of
8 any such written recommendation on the Appropriator(s) whose Appropriation Right(s) or Existing Use(s) are
9 referenced in the recommendation.

10 3-1-116. Recourse from Water Commissioner Decisions.

11 Any Person who may be injured by the action or inaction of the Water Commissioner has the right to
12 petition the Engineer pursuant to the provisions of Section 3-1-105 of this Ordinance.

13 3-1-117. Removal of Water Commissioners.

14 Water Commissioners shall serve at the pleasure of the Board and may be removed by unanimous vote
15 of the Board at any time.

16

17 **NEW SECTION. Section 3. Confederated Salish and Kootenai Tribes water rights compact**
18 **implementation account -- statutory appropriation -- use.** (1) There is an account within the state special
19 revenue fund provided for in 17-2-102 called the Confederated Salish and Kootenai Tribes water rights compact
20 implementation account. The department of natural resources and conservation shall administer the account.

21 (2) The Confederated Salish and Kootenai Tribes water rights compact implementation account may be
22 used only for the implementation of the water rights compact among the Confederated Salish and Kootenai
23 Tribes, the state, the United States, and any associated agreements as may be specified in the compact or
24 agreements.

25 (3) A bond proceeds subaccount is established in the Confederated Salish and Kootenai Tribes water
26 rights compact implementation account. The proceeds of the bonds authorized under [section 4] to be deposited
27 as directed in [section 5], except proceeds to pay costs of issuance or as provided in [section 4(3)], must be
28 deposited in the bond proceeds subaccount. The proceeds and any interest are statutorily appropriated, as
29 provided in 17-7-502, to the department of natural resources and conservation as follows:

30 (a) \$30 million for a pumping mitigation fund to offset pumping costs incurred by the Flathead Indian

1 Irrigation Project in implementing the terms and conditions of the Flathead Indian Irrigation Project Water Use
2 Agreement and for ancillary purposes identified in Paragraph 39(e) of the Flathead Indian Irrigation Project Water
3 Use Agreement identified in [section 1];

4 (b) \$4 million to cost-share on-farm projects to mitigate impacts on stock water users served by the
5 Flathead Indian Irrigation Project as a result of changes in stock water delivery patterns owing to the Flathead
6 Indian Irrigation Project Water Use Agreement;

7 (c) \$13 million to the Confederated Salish and Kootenai Tribes for the enhancement of aquatic and
8 terrestrial habitat;

9 (d) \$4 million to the Confederated Salish and Kootenai Tribes for water measurement; and

10 (e) \$4 million to cost-share on-farm efficiency improvements on lands served by the Flathead Indian
11 Irrigation Project as identified in Article X of the Flathead Indian Irrigation Project Water Use Agreement.

12 (4) Funds and interest from this account may not be disbursed unless the Flathead Joint Board of Control
13 and the Confederated Salish and Kootenai Tribes have entered into a Flathead Indian Irrigation Project Water
14 Use Agreement as described in [section 1].

15 (5) Subject to subsection (4), funds and interest in the account are statutorily appropriated, as provided
16 in 17-7-502, to the department of natural resources and conservation for implementation of the Confederated
17 Salish and Kootenai Tribes-Montana water rights compact.

18
19 **NEW SECTION. Section 4. Authorization of bonds -- condition.** (1) Subject to subsection (3) and
20 upon the request of the department of natural resources and conservation, the board of examiners is authorized,
21 in addition to the amount of general obligation bonds outstanding on January 1, 2013, to issue and sell general
22 obligation bonds in one or more series in an aggregate principal amount not exceeding \$55 million for the water
23 compact implementation projects or purposes described in [section 3]; and

24 (2) Subject to subsection (3) and upon the request of the department of natural resources and
25 conservation, the board of examiners is authorized, in addition to the amount of general obligation bonds
26 outstanding on January 1, 2013, to issue and sell general obligation bonds in one or more series in an aggregate
27 principal amount not exceeding \$3 million for the water compact implementation projects or purposes described
28 in [section 6].

29 (3) The bonds in this section and any bond anticipation notes issued in anticipation of the bonds must
30 be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority

1 granted to the board of examiners by this section is in addition to any other authorization to the board of
2 examiners to issue and sell general obligation bonds.

3 (4) Original issue premium on bonds issued under this section will be applied to pay costs of issuance,
4 and any remaining premium must be deposited in the debt service account.

5

6 **NEW SECTION. Section 5. Issuance of bonds for implementation of Confederated Salish and**
7 **Kootenai Tribes water rights compact -- conditions.** (1) Of the proceeds of the bonds sold under [section 3],
8 \$55 million must be deposited in the bond proceeds subaccount in the Confederated Salish and Kootenai Tribes
9 water rights compact implementation account established in [section 3] for implementation of the Confederated
10 Salish and Kootenai Tribes-Montana water rights compact.

11 (2) The bonds authorized under [section 4] the proceeds of which are to be deposited into the bond
12 proceeds subaccount in the Confederated Salish Kootenai Tribes water rights compact implementation account
13 may not be sold or issued unless:

14 (a) the water rights compact set forth in [section 1] among the Confederated Salish and Kootenai Tribes,
15 the state, and the United States has been ratified by the legislature; and

16 (b) the Flathead Joint Board of Control and the Confederated Salish and Kootenai Tribes have executed
17 a Flathead Indian Irrigation Water Use Agreement as described in and consistent with the terms of [section 1]
18 and that agreement has become effective.

19 (3) In addition, the bonds authorized under [section 4] the proceeds of which will be applied to the
20 purpose described in [section 3(3)(a) and (3)(c)] may not be sold or issued unless a water rights compact among
21 the Confederated Salish and Kootenai Tribes, the state, and the United States has been finally ratified by the
22 Confederated Salish and Kootenai Tribes, the legislature of the state, and the Congress of the United States; the
23 Montana water court has approved the compact for inclusion in the final decree in each affected basin; and the
24 order of approval has been affirmed on appeal or the time for appeal from the water court's approval has expired.

25

26 **NEW SECTION. Section 6. Bonds for Peoples Creek minimum flow account.** Of the proceeds of
27 the bonds sold and issued under [section 4], \$3 million must be deposited in the Peoples Creek minimum flow
28 account provided for in 85-20-1007.

29

30 **NEW SECTION. Section 7. Rulemaking authority.** (1) The department shall adopt reasonable rules

1 for implementing and administering [sections 3 and 5].

2 (2) In proposing rules, the department shall consult with affected stakeholders, including the
3 Confederated Salish and Kootenai Tribes, the Flathead Joint Board of Control, and the project operator.

4

5 **Section 8.** Section 3-7-211, MCA, is amended to read:

6 **"3-7-211. Appointment of water commissioners.** ~~The~~ Except as provided in [section 2], the district
7 court having jurisdiction over the hydrologically interrelated portion of a water division, as described in
8 85-2-231(3), in which the controversy arises may appoint and supervise a water commissioner as provided for
9 in Title 85, chapter 5."

10

11 **Section 9.** Section 17-7-502, MCA, is amended to read:

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

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

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

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

20 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;
21 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;
22 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;
23 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101;
24 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;
25 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306;
26 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105;
27 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415;
28 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416;
29 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [section 3]; 87-1-230; 87-1-603;
30 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

1 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
2 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
3 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
4 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
5 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
6 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
7 of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is
8 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch.
9 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and
10 sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L.
11 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the
12 supplemental benefit provided by 19-6-709; pursuant to sec. 8, Ch. 330, L. 2009, the inclusion of 87-1-621
13 terminates June 30, 2013; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30,
14 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; pursuant to sec.
15 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 47, Ch. 19, L. 2011,
16 the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of
17 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates
18 June 30, 2019; and pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates
19 June 30, 2017.)"

20

21 **Section 10.** Section 17-7-502, MCA, is amended to read:

22 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
23 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
24 need for a biennial legislative appropriation or budget amendment.

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

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

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

30 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;

1 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;
2 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;
3 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101;
4 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;
5 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-5-306;
6 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105;
7 44-4-1101; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415;
8 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416;
9 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1007; 85-20-1504; 85-20-1505; 87-1-230; 87-1-603;
10 87-1-621; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

11 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
12 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
13 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
14 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
15 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
16 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
17 of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is
18 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch.
19 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 17, Ch. 593, L. 2005, and
20 sec. 1, Ch. 186, L. 2009, the inclusion of 15-31-906 terminates January 1, 2015; pursuant to sec. 73, Ch. 44, L.
21 2007, the inclusion of 19-6-410 terminates upon the death of the last recipient eligible under 19-6-709(2) for the
22 supplemental benefit provided by 19-6-709; pursuant to sec. 8, Ch. 330, L. 2009, the inclusion of 87-1-621
23 terminates June 30, 2013; pursuant to sec. 14, Ch. 374, L. 2009, the inclusion of 53-9-113 terminates June 30,
24 2015; pursuant to sec. 8, Ch. 427, L. 2009, the inclusion of 87-1-230 terminates June 30, 2013; pursuant to sec.
25 5, Ch. 442, L. 2009, the inclusion of 90-6-331 terminates June 30, 2019; pursuant to sec. 47, Ch. 19, L. 2011,
26 the inclusion of 87-1-621 terminates June 30, 2013; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of
27 30-10-1004 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates
28 June 30, 2019; and pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates
29 June 30, 2017.)"

30

1 **Section 11.** Section 85-2-111, MCA, is amended to read:

2 **"85-2-111. Department powers.** (1) The department may:

3 ~~(1)~~(a) enter into agreements with federal, state, or local agencies necessary to carry out this chapter;

4 ~~(2)~~(b) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal
5 government or any other public or private source for the purposes of this chapter.

6 (2) The department shall, pursuant to [sections 1 and 2], recognize the jurisdiction of the Flathead
7 Reservation Water Management Board over water rights, including permitting of new uses, changes of existing
8 uses, enforcement of water right calls, and all aspects of enforcement within the exterior boundaries of the
9 Flathead Indian reservation."

10

11 **Section 12.** Section 85-2-114, MCA, is amended to read:

12 **"85-2-114. Judicial enforcement -- exception for Flathead Indian reservation.** (1) If the department
13 ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water
14 unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a
15 provision of this chapter, it may petition the district court supervising the distribution of water among appropriators
16 from the source to:

17 (a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or
18 unlawful use of water or to secure water to a person having a prior right to its use;

19 (b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to
20 cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or
21 interference; or

22 (c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter.
23 Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if
24 it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this
25 chapter is being violated.

26 (2) Upon the issuance of an order or injunction, the department may attach to the controlling works a
27 written notice, properly dated and signed, setting forth the fact that the controlling works have been properly
28 regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of
29 the water.

30 (3) The department may also direct its own attorney or request the attorney general or county attorney

1 to bring suit to enjoin the waste, unlawful use, interference, or violation.

2 (4) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use,
3 interference, or violation or bring an action under 85-2-122(1) without being requested to do so by the department.

4 (5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from
5 the attorney general.

6 (6) When enforcing the provisions of this section, the department, the county attorney, and the attorney
7 general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a
8 certificate, a permit, or a state water reservation.

9 (7) After considering the provisions of subsection (6), the department may attempt to obtain voluntary
10 compliance through warning, conference, or any other appropriate means before petitioning the district court
11 under subsection (1). An attempt to obtain voluntary compliance under this subsection must extend over a period
12 of at least 7 days and may not exceed 30 working days.

13 (8) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of
14 the Flathead Indian reservation."

15

16 **Section 13.** Section 85-2-301, MCA, is amended to read:

17 **"85-2-301. Right to appropriate -- recognition and confirmation of permits issued after July 1,**
18 **1973.** (1) After July 1, 1973, a person may not appropriate water except as provided in this chapter and [section
19 2]. A person may appropriate water only for a beneficial use.

20 (2) (a) Only the department may appropriate water by permit for transport outside the following river
21 basins:

22 (i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

23 (ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

24 (iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

25 (iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

26 (v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

27 (vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

28 (b) The department may lease water subject to this subsection (2) under the provisions of 85-2-141.

29 (3) A right to appropriate water may not be acquired by any other method, including by adverse use,
30 adverse possession, prescription, or estoppel. The method prescribed by this chapter is exclusive.

1 (4) All permit actions of the department after July 1, 1973, are recognized and confirmed subject to this
2 part and any terms, conditions, and limitations placed on a permit by the department."

3

4 **Section 14.** Section 85-2-302, MCA, is amended to read:

5 **"85-2-302. Application for permit -- definition.** (1) Except as provided in 85-2-306, ~~and 85-2-369, and~~
6 [section 2], a person may not appropriate water or commence construction of diversion, impoundment,
7 withdrawal, or related distribution works except by applying for and receiving a permit from the department.

8 (2) The department shall adopt rules that are necessary to determine whether or not an application is
9 correct and complete, based on the provisions applicable to issuance of a permit under this part. The rules must
10 be adopted in compliance with Title 2, chapter 4.

11 (3) The application must be made on a form prescribed by the department. The department shall make
12 the forms available through its offices.

13 (4) (a) Subject to subsection (4)(b), the applicant shall submit a correct and complete application. The
14 determination of whether an application is correct and complete must be based on rules adopted under
15 subsection (2) that are in effect at the time the application is submitted.

16 (b) If an application is for a permit to appropriate water with a point of diversion, conveyance, or place
17 of use on national forest system lands, the application is not correct and complete under this section until the
18 applicant has submitted proof of any written special use authorization required by federal law to occupy, use, or
19 traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation,
20 withdrawal, use, or distribution of water under the permit.

21 (c) As used in this part, "national forest system lands" has the same meaning as that provided in
22 85-20-1401, Article I.

23 (5) The department shall notify the applicant of any defects in an application within 180 days. The defects
24 must be identified by reference to the rules adopted under subsection (2). If the department does not notify the
25 applicant of any defects within 180 days, the application must be treated as a correct and complete application.

26 (6) An application does not lose priority of filing because of defects if the application is corrected or
27 completed within 30 days of the date of notification of the defects or within a further time as the department may
28 allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after
29 the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the
30 application is the date the application is made correct and complete.

1 (7) An application not corrected or completed within 90 days from the date of notification of the defects
2 is terminated."

3

4 **Section 15.** Section 85-2-306, MCA, is amended to read:

5 **"85-2-306. Exceptions to permit requirements -- exclusion.** (1) (a) Except as provided in subsection
6 (1)(b), ground water may be appropriated only by a person who has a possessory interest in the property where
7 the water is to be put to beneficial use and exclusive property rights in the ground water development works.

8 (b) If another person has rights in the ground water development works, water may be appropriated with
9 the written consent of the person with those property rights or, if the ground water development works are on
10 national forest system lands, with any prior written special use authorization required by federal law to occupy,
11 use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation,
12 withdrawal, use, or distribution of water under the certificate.

13 (c) If the person does not have a possessory interest in the real property from which the ground water
14 may be appropriated, the person shall provide to the owner of the real property written notification of the works
15 and the person's intent to appropriate ground water from the works. The written notification must be provided to
16 the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are
17 proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice
18 requirement only and does not create an easement in or over the real property where the ground water
19 development works are located.

20 (2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

21 (a) according to a permit received pursuant to 85-2-508; or

22 (b) according to the requirements of a rule promulgated pursuant to 85-2-506.

23 (3) (a) (i) Except as provided in subsection (3)(a)(ii), outside the boundaries of a controlled ground water
24 area, a permit is not required before appropriating ground water by means of a well or developed spring:

25 (A) with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year,
26 except that a combined appropriation from the same source from two or more wells or developed springs
27 exceeding this limitation requires a permit; or

28 (B) when the appropriation is made by a local governmental fire agency organized under Title 7, chapter
29 33, and the appropriation is used only for emergency fire protection, which may include enclosed storage.

30 (ii) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating

1 ground water by means of a well or developed spring with a maximum appropriation of 350 gallons a minute or
2 less for use in nonconsumptive geothermal heating or cooling exchange applications if all of the water extracted
3 is returned without delay to the same source aquifer and if the distance between the extraction well and both the
4 nearest existing well and the hydraulically connected surface waters is more than twice the distance between the
5 extraction well and the injection well.

6 (b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water
7 for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the
8 department through its offices.

9 (ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate
10 of water right, return a defective notice for correction or completion, together with the reasons for returning it. A
11 notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the
12 department within 30 days of notification of defects or within a further time as the department may allow, not to
13 exceed 6 months.

14 (iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation
15 is the date of refiled a correct and complete notice with the department.

16 (c) A certificate of water right may not be issued until a correct and complete notice has been filed with
17 the department, including proof of landowner notification or a written federal special use authorization as
18 necessary under subsection (1). The original of the certificate must be sent to the appropriator. The department
19 shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date
20 of priority of the right.

21 (4) An appropriator of ground water by means of a well or developed spring first put to beneficial use
22 between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force
23 prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in
24 subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is
25 sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing
26 of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

27 (5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the
28 department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that
29 for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue
30 a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the

1 adjudication proceedings provided for in 85-2-236.

2 (6) A permit is not required before constructing an impoundment or pit and appropriating water for use
3 by livestock if:

4 (a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;

5 (b) the appropriation is less than 30 acre-feet a year;

6 (c) the appropriation is from a source other than a perennial flowing stream; and

7 (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned
8 or under the control of the applicant and that is 40 acres or larger.

9 (7) (a) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit
10 as prescribed by this part. Subject to subsection (7)(b), upon receipt of a correct and complete application for a
11 stock water provisional permit, the department shall automatically issue a provisional permit. If the department
12 determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may
13 revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit
14 subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other
15 appropriators.

16 (b) If the impoundment or pit is on national forest system lands, an application is not correct and
17 complete under this section until the applicant has submitted proof of any written special use authorization
18 required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion,
19 impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

20 (8) A person may also appropriate water without applying for or prior to receiving a permit under rules
21 adopted by the department under 85-2-113.

22 (9) Pursuant to [section 2], the provisions of this section do not apply within the exterior boundaries of
23 the Flathead Indian reservation."

24

25 **Section 16.** Section 85-5-110, MCA, is amended to read:

26 **"85-5-110. Appointment of water mediators -- duties.** (1) The Except as provided in [section 2], the
27 judge of the district court may appoint a water mediator to mediate a water controversy in a decreed or
28 nondecreed basin under the following circumstances:

29 (a) upon request of the governor;

30 (b) upon petition by at least 15% of the owners of water rights in a decreed or nondecreed basin; or

- 1 (c) in the discretion of the district court having jurisdiction.
- 2 (2) A water mediator appointed under this section may:
- 3 (a) discuss proposed solutions to a water controversy with affected water right holders;
- 4 (b) review options related to scheduling and coordinating water use with affected water right holders;
- 5 (c) discuss water use and water needs with persons and entities affected by the existing water use;
- 6 (d) meet with principal parties to mediate differences over the use of water; and
- 7 (e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies
- 8 over use of water.
- 9 (3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall
- 10 pay all or a majority of the costs of the water mediator as determined equitable by the district court having
- 11 jurisdiction.
- 12 (4) The governor may use funds appropriated under 75-1-1101 to pay the costs of a water mediator.
- 13 (5) This section does not allow a water mediator to require any valid water right holder to compromise
- 14 or reduce any of the holder's existing water rights.
- 15 (6) If an appropriator voluntarily ceases to use all or part of an appropriation right or voluntarily ceases
- 16 to use an appropriation right according to its terms and conditions as a result of the efforts of a mediator
- 17 appointed under this section, the appropriator may not be considered to have abandoned all or any portion of the
- 18 appropriation right."

19

20 **Section 17.** Section 85-20-1007, MCA, is amended to read:

21 **"85-20-1007. Peoples Creek minimum flow account -- statutory appropriation.** (1) A state special

22 revenue account, called the Peoples Creek minimum flow account, is established, as provided for in 17-2-102,

23 for deposit of funds and interest on funds for efficiency improvements and bypass structures for irrigation

24 upstream from the Fort Belknap Reservation in the Peoples Creek Basin 40I and for a reservoir on the

25 Reservation for the purpose of improving minimum stream flow.

26 (2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds

27 in the Peoples Creek minimum flow account must be made available to the water users and the tribes to cover

28 the cost of construction of improvements as agreed to in the state and federal cost-share negotiations.

29 (3) Subject to subsection (2), funds and interest in the account are statutorily appropriated, as provided

30 in 17-7-502, to the department of natural resources and conservation for implementation of the Fort Belknap

1 Indian Community-Montana water rights compact."

2

3 **Section 18.** Section 85-20-1511, MCA, is amended to read:

4 **"85-20-1511. Authorization of bonds -- condition.** (1) Subject to subsection (3) and upon request of
5 the director of the department of natural resources and conservation, the board of examiners may issue and sell
6 general obligation bonds in a principal amount not exceeding ~~\$46.45~~ \$30.15 million, of which ~~\$46~~ \$30 million is
7 to pay the state's costs for water-related infrastructure projects within the exterior boundaries of the Blackfeet
8 Indian reservation as provided for in 85-20-1505 and no more than \$150,000 is to pay bond issuance costs.

9 (2) (a) Except as provided in subsection (2)(b), the proceeds from the bonds authorized under this
10 section must be deposited in a bond proceeds subaccount created in the Blackfeet Tribe water rights compact
11 infrastructure account provided for in 85-20-1505.

12 (b) The proceeds to pay bond issuance costs must be deposited into a state special revenue account.

13 (3) The bonds must be sold and issued pursuant to the provisions of Title 17, chapter 5, part 8.

14 (4) The bonds may not be issued or sold unless a water rights compact among the Blackfeet Tribe, the
15 state, and the United States has been finally ratified by the Blackfeet Tribe, the legislature, and the Congress of
16 the United States."

17

18 NEW SECTION. **Section 19. Appropriation.** There is appropriated \$50,000 from the general fund to
19 the department of natural resources and conservation for the biennium beginning July 1, 2013, for the purpose
20 of ensuring the interoperability of the water rights database maintained by the department of natural resources
21 and conservation with the database of water rights maintained by the water management board created by
22 [section 1].

23

24 NEW SECTION. **Section 20. Notification to tribal governments.** The secretary of state shall send
25 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
26 Chippewa tribe.

27

28 NEW SECTION. **Section 21. Codification instruction.** [Sections 1 through 7] are intended to be
29 codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [sections
30 1 through 7].

