

## HOUSE BILL NO. 626

INTRODUCED BY M. MCCANN, BECK, GROSFIELD, JERGESON, KITZENBERG, MCGEE, MUSGROVE,  
PATTISON, TESTER, WOLERY

A BILL FOR AN ACT ENTITLED: "AN ACT RATIFYING THE COMPACT ENTERED INTO BY THE STATE OF MONTANA AND THE FORT BELKNAP INDIAN COMMUNITY OF THE FORT BELKNAP RESERVATION; ESTABLISHING A MITIGATION TRUST ACCOUNT; ESTABLISHING THE MILK RIVER WATERSHED IMPROVEMENT TRUSTS FUND ACCOUNTS; PROVIDING A STRUCTURE FOR THE ISSUANCE OF GRANTS AND LOANS; ESTABLISHING THE PEOPLES CREEK MINIMUM FLOW ACCOUNT; PROVIDING FOR THE FACILITATION OF THE DEVELOPMENT OF AN ECONOMIC DEVELOPMENT PLAN; AND APPROPRIATING FUNDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION."

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

NEW SECTION. **Section 1. Fort Belknep-Montana compact ratified.** The Compact entered into by the State of Montana and the Fort Belknep Indian Community of the Fort Belknep Reservation and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702, MCA, on [date of filing] is ratified. The Compact is as follows:

WATER RIGHTS COMPACT ENTERED INTO BY  
THE STATE OF MONTANA,  
THE FORT BELKNAP INDIAN COMMUNITY  
OF THE FORT BELKNAP RESERVATION,  
AND THE UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Fort Belknep Indian Community of the Fort Belknep Reservation, and the United States of America for the purpose of settling all existing water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknep Indian Community of the Fort Belknep Reservation in the State of Montana. The Compact is not effective until approved by the Tribes, the Montana Legislature, and the United States Congress. The participation of the United States in each relevant section of the Compact is not valid until the Compact is ratified by Congress.

ARTICLE I - RECITALS

WHEREAS, pursuant to the Treaty of 1855, 11 Stat. 657 and the Acts of Congress of 1874, 18 Stat. 28,

and 1888, 25 Stat. 113, a Reservation was established in Montana for the Gros Ventre and Assiniboine Tribes; and

WHEREAS, pursuant to said Treaty and Acts of Congress, the Gros Ventre and Assiniboine Tribes claim reserved water rights to fulfill the purposes of the Treaty, the Acts of Congress, and *Winters v. United States*, 207 U.S. 564 (1908); and

WHEREAS, in 1979, the United States, on behalf of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribes' water rights claims, see *United States v. Aageson*, No. CIV-79-21-GF (filed April 5, 1979); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribes; see "the McCarran Amendment," 43 U.S.C. §666(a)(1) (1952); *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976); *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Gros Ventre and Assiniboine tribal water rights; and

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

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

WHEREAS, the adjudication of the Gros Ventre and Assiniboine tribal water rights in the state court proceedings has been suspended pursuant to §85-2-217, MCA, while negotiations are proceeding to conclude a compact resolving all water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation within the State of Montana; and

WHEREAS, the Fort Belknap Community Council, or its duly designated representatives, have authority to negotiate this Compact pursuant to Resolution No. 19-81 of the Fort Belknap Community Council, February 17, 1981, as amended; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§516-17 (1993); and

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

of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. §1457 (1986), inter alia; and

WHEREAS, the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation, the State of Montana, and the United States agree that the Tribal Water Right, water development, and water management described in this Compact are in satisfaction of the water rights claims of the Tribes, Tribal members, and Allottees, and of the United States on behalf of the Tribes and their members and Allottees within the State of Montana; and

WHEREAS, the Parties agree that it is in the best interest of all Parties that the water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation be settled through agreement between and among the Tribes, the State of Montana, and the United States.

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community, Tribal members, and Allottees of the Fort Belknap Reservation within the State of Montana.

#### ARTICLE II - DEFINITIONS

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

1. "Acre-feet per year" or "AFY" means an annual quantity of water measured in acre-feet over a period of a year.
2. "Acre-foot" or "Acre-feet" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.
3. "Adverse Effect" or "Adversely Affect" means an actual interference with the reasonable exercise of a water right resulting in a material injury.
4. "Allottee" or "Allottees" means any individual or individuals who own or hold a trust allotment or interest in a trust allotment on the Fort Belknap Reservation under the authority of the General Allotment Act and subject to the terms and conditions of that Act.
5. "Arising Under Federal Law" means, as applied to a water right, a water right created or defined under federal law.
6. "Arising Under State Law" means, as applied to a water right, a water right created under Montana law and does not include water rights Arising Under Federal Law.
7. "Beaver Creek Basin" means Montana Water Court Basin 40M, consisting of the mainstem of Beaver Creek and its tributaries, including Big Warm Creek and Little Warm Creek, to its confluence with the Milk River, as shown in Appendix 2.

8. "Board" means the Fort Belknap - Montana Compact Board established by Section D. of Article IV of this Compact.
9. "Calculated Undepleted Flow of the Milk River" means the flow available for the Tribal Water Right determined pursuant to Section E.2. of Article IV, and represents the calculated United States' Share of the Natural Flow of the Milk River at the diversion point on the Reservation.
10. "Cfs" means cubic feet per second.
11. "Change in Use" means, as applied to the Tribal Water Right, a change in the point of diversion, the place of use, the purpose of use, or the place or means of storage.
12. "Combined Development" means, in reference to small wells and springs, a use or proposed use of water for the same purpose.
13. "Compact" means the water rights settlement entered into by the State of Montana, the Fort Belknap Indian Community of the Fort Belknap Reservation, and the United States of America.
14. "Depletion" means the amount of water consumptively used, or the difference between the amount of water diverted and returned to the source of supply.
15. "Direct Use" means diversion of water from the source to be used for a designated purpose without intermediate storage.
16. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.
17. "Eastern Crossing" means the most downstream location at which the mainstem of the Milk River crosses the 49th parallel to re-enter the United States from Canada.
18. "Effective Date" means the date on which the Compact is finally approved by a referendum vote by the eligible members of the Fort Belknap Indian Community and ratified by the Fort Belknap Indian Community Council, by the Montana Legislature, and by the Congress of the United States, whichever date is latest.
19. "Exempt New Development" means new development of the Tribal Water Right that is exempt from review pursuant to Section A.4. of Article IV.
20. "Fort Belknap Indian Irrigation Project" means the irrigation projects authorized by federal law for development on the Reservation in the Milk River and Peoples Creek Basins.
21. "Groundwater" means any water that is beneath the ground surface.
22. "Hydrologically Connected" means the interconnection of groundwater and surface water such that they constitute one water supply and use of either results in an impact to both.
23. "Milk River Coordinating Committee" or "MRCC" means the basin organization established pursuant to Section C.1. of Article IV.

24. "Milk River Basin" means the mainstem of the Milk River and its tributaries from its headwaters to the confluence with the Missouri River and consists of: Montana Water Court Basins 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, and 40O; and the portion of the Milk River and its tributaries flowing through the Provinces of Alberta and Saskatchewan in Canada.
25. "Milk River Basin 40J" or "Basin 40J" means the portion of the Milk River Basin, including the tributaries of Threemile Creek, White Bear Creek and Fifteenmile Creek, constituting Water Court Basin 40J, as shown in Appendix 2.
26. "Milk River Project" means the Reclamation project on the Milk and St. Mary Rivers in Montana authorized by the Reclamation Act of 1902, 32 Stat. 388; 43 U.S.C. 391.
27. "Missouri River Basin 40EJ" or "Basin 40EJ" means the portion of the Missouri River Basin including the tributaries of Suction, Rattlesnake, Tin Cup, Little Suction, and Cow Creeks constituting Water Court Basin 40EJ, as shown in Appendix 2.
28. "Non-Exempt New Development" means new development of the Tribal Water Right that is subject to review pursuant to Section A.5. of Article IV.
29. "Parties" means the Fort Belknap Indian Community of the Fort Belknap Reservation, the State of Montana, and the United States of America.
30. "Peoples Creek Basin" means Water Court Basin 40I, consisting of the mainstem of Peoples Creek to its confluence with the Milk River, and its tributaries including: Duck Creek; the South Fork of Peoples Creek; Little Peoples Creek; Jim Brown Creek; Lodge Pole Creek; Lone Tree Coulee; and Mud Creek, as shown in Appendix 2.
31. "Perennial Flowing Stream" means a stream that historically flowed and is currently flowing continuously during all seasons of the year including dry as well as wet years.
32. "Person(s)" means an individual or individuals or any other entity, public or private, including the State, the Tribes, and the government of the United States and all officers, agents, and departments thereof.
33. "Reservation" means the Fort Belknap Reservation and includes all lands and interests in lands which are now and in the future held in trust by the United States for the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation within the boundary established by the Treaty ratified by Congress on May 1, 1888, 25 Stat. 113, as modified by: The Grinnell Agreement of October 9, 1895 and ratified by Congress in 1896, 29 Stat. 350; and the Fort Belknap Allotment Act of March 3, 1921, 41 Stat. 1355.
34. "Same Source" means the same aquifer in reference to wells and developed springs of 35 gallons per minute

or less that do not exceed a use of 10 Acre-feet per year.

35. "Secretary" means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.

36. "Seniority of the Water Rights Set forth FORTH in Sections B.1.a. and d. of this Article III Shall not be Asserted Over" means the senior water rights specified in Sections B.1.a. and d. of Article III shall be administered as subordinate to the junior water rights specified AND REFERENCED in Section B.2.a of Article III.

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

38. "Transfer" means, as applied to the Tribal Water Right, to authorize a Person or Persons to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration.

39. "Tribal Water Resources Department" or "TWRD" means the Fort Belknap Tribal Water Resources Department, or any successor agency.

40. "Tribal Water Right" means the right of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community, Tribal members, and Allottees within the Fort Belknap Reservation, to divert, use, or store water as described by Article III of this Compact.

41. "Tribes" means the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation and all officers, agencies, and departments thereof.

42. "Undepleted Flow" means the stream flow in a watershed without the effects of diminishment by water uses for specific beneficial purposes including, but not limited to, irrigation, municipal, domestic, mining, commercial, industrial, stockwatering, recreational, and environmental concerns.

43. "United States" means the federal government and all officers, agencies, and departments thereof.

44. "United States' Share of the Natural Flow of the Milk River" means the allocation to the United States of water in the Milk River and its tributaries pursuant to Article VI of the "Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States and Canada," January 11, 1909, and ratified by the Senate on May 13, 1910, 36 Stat. 2455, and the Order of the International Joint Commission on October 4, 1921, pertaining to "In the matter of the Measurement and Apportionment of the Waters of the St. Mary and Milk Rivers and their Tributaries in the State of Montana and the Provinces of Alberta and Saskatchewan."

45. "Water Bank" means a water purchasing mechanism whereby willing sellers are paid to forego use of a portion of their supplies in a year of water shortage, and purchased water is either stored or reallocated to meet specified needs.

46. "Western Crossing" means the most upstream location at which the mainstem of the Milk River crosses the

49th parallel to enter Canada from the United States.

### ARTICLE III - TRIBAL WATER RIGHT

The Tribal Water Right set forth in this Article III shall be the water allocation in settlement of the claims including Winters reserved water rights claims of the Tribes, Tribal members, and Allottees, and the United States on behalf of the Tribes, Tribal members, and Allottees within the Fort Belknap Reservation, to water within the State of Montana, as those claims exist on the Effective Date of the Compact, and shall be held in trust by the United States for the benefit of the Tribes, Tribal members, and Allottees within the Fort Belknap Reservation. Non-use of all or any of the Tribal Water Right does not constitute a relinquishment, forfeiture, or abandonment of such rights.

#### A. **Basin 40J: Milk River Basin 40J.**

##### 1. **Quantification.**

a. The Tribes have the right to divert up to 645 cubic feet per second "Cfs" of the United States' Share of the Natural Flow of the Milk River and its tributaries upstream from the diversion point on the Reservation as calculated pursuant to Section E.2. of Article IV. The right to divert 645 Cfs is in addition to allocation to the Tribes of storage in Fresno Reservoir pursuant to the Memorandum of Agreement between the Bureau of Reclamation and the Office of Indian Affairs (BIA) Milk River Project Montana, I-1-Ind. 18725, July 8, 1946.

(1) Of the right to divert 645 Cfs, up to 125 Cfs may be diverted for Direct Use to a maximum of 10,425 irrigated acres within the Fort Belknap Indian Irrigation Project. This water right is intended to preserve the historic water use protected in *Winters v. United States*, 207 U.S. 564 (1908). Irrigation of the Fort Belknap Indian Irrigation Project pursuant to this paragraph may be on land within the external boundaries of the Project on the Effective Date of the Compact or as modified pursuant to applicable federal law.

(2) Of the right to divert 645 Cfs and in addition to the 125 Cfs water right quantified in Section A.1.a.(1) of this Article III, up to 520 Cfs may be diverted for Direct Use or to off-stream storage, or both, for subsequent use for both of the following: use on an additional 19,390 present and future irrigated acres (including land irrigated historically within the Milk River Basin 40J); and up to 4000 AFY of use for non-irrigation purposes. The off-stream storage pursuant to this Section A.1.a.(2) of Article III is limited to a maximum combined capacity of 60,000 Acre-feet. Irrigation by diversion to Direct Use pursuant to this paragraph may be accomplished through expansion or modification of the Fort Belknap Indian Irrigation Project pursuant to applicable federal law.

b. In addition to the water rights set forth in Section A.1.a. of this Article III, the Tribes have the right to divert surface flow from tributaries to the Milk River on the Reservation in Basin 40J to irrigate the acreage identified in Section A.1.a.(1) and (2) of this Article III.

c. In addition to the water rights set forth in Sections A.1.a. and b. of this Article III, the Tribes have the right to develop surface water in the Milk River Basin 40J within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section A.1.c., of Article III following the Effective Date of this Compact may not exceed a storage capacity of fifteen Acre-feet times the number of square miles in Basin 40J on the Reservation. This capacity limit does not apply to the water right quantified in Sections A.1.a., b., and d. of this Article III.

d. In addition to the water rights set forth in Sections A.1.a., b., and c. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Milk River Basin 40J within the Reservation, provided that, any portion of this water right diverted from the mainstem of the Milk River shall be part of the 4000 AFY non-irrigation water right set forth in Section A.1.a.(2) of this Article III. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

## **2. Priority Date/Administrative Priority.**

a. For purposes of this Compact only, the priority date of the water rights set forth in Sections A.1.a., b., and d. of this Article III is October 17, 1855. The Parties agree that the senior water right quantified in Section A.1.a. of this Article III, shall be satisfied in the following manner:

(1) In the event that the water available for use by the Tribes at the diversion point on the Reservation is less than the amount to which the Tribes are entitled to pursuant to Section A.1.a. of this Article III and Section E.1.b.(2) of Article IV, the Tribes shall seek delivery of the difference between what they are entitled to and what is available solely from release or bypass of water from or through Fresno Dam by the Milk River Project. The Milk River Project shall, pursuant to Section E. of Article IV and applicable federal law, release or bypass the additional water necessary to fulfill the water right of the Tribes.

(2) The allocation between and relative priority of satisfaction of the water rights set forth in Section A.1.a. of this Article III and the water right of the Blackfoot Tribe in the Milk River Basin shall be resolved among the Fort Belknap Indian Community of the Fort Belknap Reservation, the Blackfoot Tribe, and the United States, or in the event an agreement is not reached, as ultimately decreed by the Montana Water Court or other court of competent jurisdiction, and shall not be prejudiced by this Compact including any agreement on priority date. The amount of the United States' Share of the Natural Flow of the Milk River available to the Tribes as calculated pursuant to Section E.2. of Article IV shall be modified to reflect any adjudication of the water rights of the



Blackfeet Tribe or agreement between the Blackfeet Tribe and the Fort Belknap Indian Community of the Fort Belknap Reservation to the extent such agreement or adjudication affects the Calculated Undepleted Flow of the Milk River. The Milk River Project will not be required to provide any exchange water to the Tribes for diversion of the Blackfeet tribal water right.

b. The priority date of the water rights set forth in Section A.1.c. of this Article III for stock impoundments shall be the date of development of the right.

3. **Period of Use.** The period of use of the water rights set forth in Section A.1. of this Article III is:

a. March 1 through October 31 of each year for the 125 Cfs diversion set forth in Section A.1.a.(1) of this Article III.

b. January 1 through December 31 of each year for the 520 Cfs right set forth in Section A.1.a.(2) of this Article III.

c. March 1 through October 31 for water diverted from tributaries set forth in Section A.1.b. of this Article III.

d. January 1 through December 31 of each year for the water rights set forth in Section A.1.c. and d. of this Article III.

4. **Points and Means of Diversion.**

a. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.a. of this Article III may be diverted from the mainstem of the Milk River in the Milk River Basin 40J, or from Groundwater beneath the Reservation that is Hydrologically Connected to the surface water from any place and by any means in the Milk River Basin 40J.

b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.b. of this Article III may be diverted for Direct Use from any place and by any means from tributaries to the Milk River in Basin 40J on the Reservation.

c. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.c. of this Article III may be developed from a surface water source anywhere within the Milk River Basin 40J within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

d. Subject to the terms and conditions set forth in Article IV, the water rights set forth in Section A.1.d. of this Article III may be diverted from any place and by any means in Basin 40J from surface water or Groundwater that is Hydrologically Connected to surface water, within the Reservation in Basin 40J.

5. **Place of Use.**

a. Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of

the water rights set forth in Sections A.1.a. and b. of this Article III any place within the Reservation.

b. Subject to the terms and conditions of Article IV, the Tribes may transfer water developed (pursuant to Section A.1.a. of this Article III) prior to the date of application for a Change in Use or Transfer or stored (pursuant to Section A.1.a.(2) of this Article III) prior to the date of application for a Change in Use or Transfer for use off the Reservation within the Missouri River Basin.

c. The Tribes may use or authorize the use of the water rights set forth in Sections A.1.c. and d. of this Article III any place within the Reservation.

#### **6. Purposes.**

a. The water rights set forth in Sections A.1.a. and b. of this Article III may be used within the Reservation for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, Non-Exempt New Development, Change in Use, or Transfer of any portion of the Tribal Water Right, is subject to the terms and conditions of Section A. of Article IV

b. The water rights set forth in Section A.1.c. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

c. The water rights set forth in Section A.1.d. of this Article III may be used within the Reservation in Basin 40J for any non-irrigation purposes.

#### **B. Basin 40I: Peoples Creek Basin.**

##### **1. Quantification.**

a. The Tribes have the right to the surface water and Groundwater that is Hydrologically Connected to surface water that remains in the Peoples Creek Basin within the Reservation after satisfaction of water rights Arising Under State Law set forth in Appendix 3. The Tribes have the right to store water within the Peoples Creek Basin pursuant to this water right. The reservoir or reservoirs must be entirely within the Reservation unless otherwise agreed to with affected landowners off the Reservation.

b. In addition to the water rights set forth in Section B.1.a. of this Article III, the Tribes' right to use water in the Peoples Creek Basin includes the right to use water conveyed from the Missouri River Basin 40EJ pursuant to Section E.1.b. of this Article III. The Tribes have the right to store water within the Peoples Creek Basin pursuant to this water right. The reservoir or reservoirs must be entirely within the Reservation unless otherwise agreed to with affected landowners off the Reservation.

c. In addition to the water rights set forth in Sections B.1.a. and b. of this Article III, the Tribes have the right to develop surface water in the Peoples Creek Basin within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each

impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section B.1.c., of this Article III following the Effective Date of this Compact may not exceed a storage capacity of fifteen Acre-feet times the number of square miles in Basin 40I on the Reservation. This capacity limit does not apply to the water right quantified in Sections B.1.a., b., and d. of this Article III.

d. In addition to the water rights set forth in Sections B.1.a., b., and c. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Peoples Creek Basin within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

**2. Priority Date/Administrative Priority.**

a. For purposes of this Compact, the priority date of the water rights set forth in Sections B.1.a. and d. of this Article III is October 17, 1855. For the purposes of providing a more reliable water right and simplification of administration, the Parties agree that this senior water right shall be satisfied in the following manner:

(1) Subject to the terms of Section B.2.a.(2) of this Article III, the Seniority of the Water Rights Set Forth in Sections B.1.a. and d. of this Article III Shall Not be Asserted Over non-irrigation water rights Arising Under State Law upstream from the Reservation in the Peoples Creek Basin with a priority date before the Effective Date of the Compact, and irrigation water rights set forth in Appendix 3, provided that water rights numbers W017296, W166075, and C016704 are not protected by this agreement. The Tribes may assert the senior priority of water rights and storage that have been actually developed over water rights Arising Under State Law that are developed after the Effective Date of this Compact, and over any water rights Arising Under State Law not set forth in Appendix 3.

(2) The agreement set forth in Section B.2.a.(1) of this Article III is not effective until completion of construction of a reservoir or reservoirs of a minimum capacity of 3000 AF on the Reservation in upper Peoples Creek for use by the Tribes. Prior to construction of the reservoir, the Tribes may only assert the senior priority of water rights actually developed.

b. The priority date of the water right set forth in Section B.1.b. of this Article III shall be as set forth in Section E.2.b. of this Article III.

c. The priority date of the water rights set forth in Section B.1.c. of this Article III for stock impoundments shall be the date of development of the right.

**3. Period of Use.** The period of use of the water rights set forth in Section B.1. of this Article III is January 1 through December 31 of each year.

**4. Points and Means of Diversion.**

a. The water right set forth in Sections B.1.a. and d. of this Article III may be diverted for Direct Use or storage from surface water or from Groundwater that is Hydrologically Connected to surface water from any place and by any means within the Peoples Creek Basin within the Reservation.

b. The point and means of diversion of the water right set forth in Section B.1.b. of this Article III shall be as set forth in Section E.4.b. of this Article III.

c. The water right set forth in Section B.1.c. of this Article III may be developed on a surface water source anywhere within the Peoples Creek Basin within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

**5. Place of Use.**

a. The Tribes may use or authorize the use of the water rights set forth in Sections B.1.a. and b. of this Article III for use any place within the Reservation within the Peoples Creek Basin. Subject to the terms and conditions set forth in Article IV, the Tribes may Transfer water stored pursuant to Sections B.1.a. and b. of this Article III for use off the Reservation within the Milk River Basin.

b. The Tribes may use or authorize the use of the water rights set forth in Sections B.1.c., and d. of this Article III for use any place within the Reservation.

**6. Purposes.**

a. The water rights set forth in Sections B.1.a. and b. of this Article III may be used for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, any Transfer of the water rights stored pursuant to Sections B.1.a. and b. of this Article III off the Reservation, after the Effective Date of the Compact is subject to the terms and conditions of Section A. of Article IV.

b. The water rights set forth in Section B.1.c. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

c. The water rights set forth in Section B.1.d. of this Article III may be used within the Reservation in Basin 40I for any non-irrigation purposes.

**C. Basin 40M: Beaver Creek Basin.****1. Quantification.**

a. The Tribes have the right to divert 8,024 AFY for irrigation of 2,241 acres from surface flow, or from Groundwater that is Hydrologically Connected to surface flow, within the Reservation in the Beaver Creek Basin. The Tribes agree to use their best efforts to bypass a minimum flow when naturally available.

b. In addition to the water rights set forth in Section C.1.a. of this Article III, the Tribes have the right to

develop surface water in the Beaver Creek Basin within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section C.1.b., of this Article III following the Effective Date of this Compact may not exceed a storage capacity of 15 Acre-feet times the number of square miles in Basin 40M on the Reservation. This capacity limit does not apply to the water right quantified in Sections C.1.a. and c. of this Article III.

c. In addition to the water rights set forth in Sections C.1.a. and b. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Beaver Creek Basin within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

**2. Priority Date/Administrative Priority.**

a. For purposes of this Compact, the priority date of the water rights set forth in Sections C.1.a. and c. of this Article III is October 17, 1855.

b. The priority date of the water rights set forth in Section C.1.b. of this Article III for stock impoundments shall be the date of development of the right.

**3. Period of Use.** The period of use of the water rights set forth in Section C.1. of this Article III is:

a. March 1 through October 31 for the 8,024 AFY water right set forth in Section C.1.a. of this Article III.

b. January 1 through December 31 of each year for the water rights set forth in Sections C.1.b. and c. of this Article III.

**4. Points and Means of Diversion.**

a. Subject to the terms and conditions set forth in Article IV, the Tribes may divert or authorize the diversion of the water rights set forth in Sections C.1.a. and c. of this Article III from any place and by any means from surface water or Groundwater that is Hydrologically Connected to surface water in the Beaver Creek Basin within the Reservation. When constructing diversion facilities, the Tribes agree to use their best efforts to allow bypass of a minimum flow, when naturally available.

b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section C.1.b. of this Article III may be developed on a surface water source anywhere within the Beaver Creek Basin within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

**5. Place of Use.** Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Sections C.1.a., b., and c. of this Article III any place within the

Reservation within the Beaver Creek Basin.

**6. Purposes.**

a. The Tribes may use or authorize the use of the water rights set forth in Section C.1.a. of this Article III within the Reservation for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, use of the water rights set forth in Section C.1.a. of this Article III, for any purpose other than irrigation is subject to the terms and conditions of Section A. of Article IV.

b. The water rights set forth in Section C.1.b. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

c. The water rights set forth in Section C.1.c. of this Article III may be used within the Reservation in the Beaver Creek Basin for any non-irrigation purposes.

**D. Reservation Portion of Missouri River Basin 40EJ.**

**1. Quantification.**

a. The Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in Basin 40EJ within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

b. In addition to the water rights set forth in Section D.1.a. of this Article III, the Tribes have the right to develop surface water in Basin 40EJ within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream.

**2. Priority Date/Administrative Priority.**

a. For purposes of this Compact, the priority date of the water rights set forth in Section D.1.a. of this Article III is October 17, 1855.

b. The priority date of the water rights set forth in Section D.1.b. of this Article III for stock impoundments shall be the date of development of the right.

**3. Period of Use.** The period of use of the water rights set forth in Section D.1. of this Article III is January 1 through December 31 of each year.

**4. Points and Means of Diversion.**

a. Subject to the terms and conditions set forth in Article IV, the Tribes may continue to divert or authorize the diversion of the water rights set forth in Section D.1.a. of this Article III from any place and by any means from surface water or Groundwater that is Hydrologically Connected to surface water, within the Reservation in Basin 40EJ.

b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section D.1.b. of this Article III may be developed on a surface water source anywhere within Basin 40EJ within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

5. **Place of Use.** Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section D.1. of this Article III on any place within the Reservation within Basin 40EJ.

6. **Purposes.**

a. The Tribes may use or authorize the use of the water rights set forth in Section D.1.a. of this Article III for any non-irrigation purposes.

b. The water rights set forth in Section D.1.b. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

**E. Off-Reservation Tribal Fee and Trust Lands - Missouri Basin 40EJ and Peoples Creek Basin 40I.** The Tribes have the following water rights on trust and fee land off the Reservation in Missouri Basin 40EJ and Peoples Creek Basin 40I. Unless Congress acts to modify the Reservation boundary to include the Tribal trust and fee land, the rights shall not be considered part of the Tribal Water Right for purposes of administration pursuant to Article IV. The water rights set forth in this Section E. of Article III shall be administered by the State pursuant to Section B.1.b. of Article IV, except that non-use of all or any of the rights shall not constitute a relinquishment, forfeiture, or abandonment of such rights.

1. **Quantification.**

a. The Tribes have the right to divert up to 1135 AFY for irrigation of:

(1) 297 acres of land historically irrigated in Basin 40EJ; and

(2) 18 acres of land in Basin 40EJ developed after the Effective Date of the Compact.

b. In addition to the water rights set forth in Section E.1.a. of this Article III, the Tribes have the right to divert up to 1290 AFY for conveyance to the Peoples Creek Basin.

c. In addition to the water rights set forth in Sections E.1.a. and b. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact on Tribal fee and trust land off the Reservation in Basin 40EJ and Basin 40I. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

d. In addition to the water rights set forth in Sections E.1.a., b., and c. of this Article III, the Tribes have the right to develop surface and Groundwater in Basin 40EJ and Basin 40I on Tribal fee and trust land off the Reservation pursuant to State law.

e. In addition to the water rights set forth in Sections E.1.a., b., c., and d. of this Article III, the Tribes have the right, pursuant to State law, to develop surface water in Basin 40EJ and Basin 40I on Tribal fee and trust land off the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream.

**2. Priority Date/Administrative Priority.**

a. The priority date of the water rights set forth in Section E.1.a. of this Article III is:

(1) July 24, 1893 for the water right set forth in Section E.1.a.(1) of this Article III.

(2) The date of development for the 18 acres set forth in Section E.1.a.(2) of this Article III.

b. The priority date of the water right set forth in Section E.1.b. of this Article III is January 1, 1935.

c. The priority dates of the water rights set forth in Section E.1.c. of this Article III are the date on which the water was developed for stock and domestic purposes. The priority date of these rights is subject to the reporting requirements of Section A.7. of Article IV.

d. The priority date of the water rights set forth in Sections E.1.d., and e. of this Article III shall be as provided by State law.

**3. Period of Use.** The period of use of the water rights set forth in Section E.1. of this Article III is:

a. March 1 through October 31 of each year for the irrigation water rights set forth in Section E.1.a. of this Article III.

b. January 1 through December 31 of each year for diversion of the water right set forth in Section E.1.b. of this Article III.

c. January 1 through December 31 of each year for the water rights set forth in Section E.1.c. of this Article III.

d. As provided by State law for the water rights set forth in Sections E.1.d., and e. of this Article III.

**4. Points and Means of Diversion.**

a. The points and means of diversion for the water rights set forth in Section E.1.a. of this Article III are as follows:

(1) The water right set forth in Section E.1.a.(1) of this Article III may be diverted from any point by any means on Tribal trust or fee land within Section 30, T28N, R22E and the SW 1/4 of Section 18, T27N, R22E;

(2) The water right set forth in Section E.1.a.(2) of this Article III may be diverted from any point by any means on Tribal trust or fee land within Section 19, T27N, R22E.

b. The water right set forth in Section E.1.b. of this Article III may be diverted from any point by any



means on Tribal trust or fee land in the SWSESW, Section 9, T26N, R22E.

c. The water rights set forth in Section E.1.c. of this Article III may be diverted from the place and by the means in use prior to the Effective Date of the Compact, on Tribal fee or trust land in Basin 40EJ and Basin 40I. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the point and means of diversion of a water right set forth in Section E.1.c. of this Article III to any place and any means from surface or Groundwater that is Hydrologically Connected to surface water, on Tribal fee or trust land in Basin 40EJ or Basin 40I.

d. The water right set forth in Sections E.1.d. and e. of this Article III may be diverted from any point by any means on Tribal fee or trust land in Basin 40EJ and Basin 40I, pursuant to State law.

#### **5. Place of Use.**

a. The Tribes may use the water rights set forth in Section E.1.a.(1) of this Article III on Tribal trust or fee land in Sections 29, 30, 31, and 32, T28N, R22E, and on the W1/2 of the SE1/2 and the E1/2 of the W 1/2 of Section 19, T27N, R22E. The Tribes may use the water rights set forth in Section E.1.a.(2) of this Article III on Tribal trust or fee land in Sections 19 and 30, T27N, R22E.

b. The water rights set forth in Section E.1.b. of this Article III may be used any place authorized in Section B.5.a. of this Article III, and shall be administered as part of the Tribal Water Right.

c. Subject to the requirements of State law, the water rights set forth in Section E.1.c. of this Article III may be used any place on Tribal fee or trust land in Basin 40EJ and Basin 40I on which the water has been used prior to the Effective Date of the Compact.

d. The water rights set forth in Sections E.1.d. and e. of this Article III may be used on any Tribal fee and trust land in Basin 40EJ and Basin 40I, pursuant to State law.

#### **6. Purposes.**

a. The water rights set forth in Section E.1.a. of this Article III may be used for irrigation. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the use of the water rights set forth in Section E.1.a. of this Article III to any other purpose allowed by State law.

b. The water rights set forth in Section E.1.b. of this Article III may be used for any purpose allowed by federal and Tribal law.

c. The water rights set forth in Section E.1.c. of this Article III may continue to be used for stock and domestic purposes according to their purpose on the Effective Date of the Compact. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the use of the water rights set forth in Section E.1.c. of this Article III to any other purpose allowed by State law.

d. The water rights set forth in Sections E.1.d., and e. of this Article III may be used for any purpose allowed by State law.

**F. Temporary Emergency Appropriations.** The Tribes or the United States on behalf of the Tribes may divert water from sources on the Reservation for use on or off the Reservation for temporary emergency use necessary for public health and safety. Temporary emergency use of water from a source for which a water right is quantified in this Article III of this Compact shall not be considered an exercise of that right.

**G. Groundwater.**

1. **Groundwater that is Hydrologically Connected to Surface Water.** The Tribes have the right to develop Groundwater that is Hydrologically Connected to surface water within the quantification limits for surface water provided in Sections A., B., C., D., and E. of this Article III. The attributes of the water right are as set forth in Sections A., B, C., D., and E. of this Article III.

2. **Existing Groundwater Development.**

a. **Quantification.**

The Tribes have the right to the use of Groundwater developed before the Effective Date of the Compact within the Reservation as provided in Sections A.1.d., B.1.d., C.1.c., and D.1.a. of this Article III. These Groundwater uses are subject to the reporting requirements of Section A.7. of Article IV.

3. **New Development of Small Groundwater Wells and Springs.**

a. **Quantification.**

In addition to the water rights set forth in Sections A., B., C., and D., of this Article III, the Tribes have the right to develop Groundwater within the Reservation by means of wells or developed springs if the maximum flow of each well or developed spring is 35 gallons per minute or less and does not exceed a use of 10 Acre-feet per year. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs.

b. **Priority Date/Administrative Priority.**

The priority date of the water rights set forth in Section G.3.a. of this Article III shall be the date of development of the right.

c. **Period of Use.** The period of use of the water rights set forth in Section G.3.a. of this Article III is January 1 through December 31 of each year.

d. **Points and Means of Diversion.** Subject to the terms and conditions set forth in Article IV, the water right set forth in Section G.3.a. of this Article III may be diverted from Groundwater from any point by any means within the Reservation.

e. **Place of Use.** Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section G.3.a. of this Article III any place within the Reservation.

f. **Purposes.** Subject to the terms and conditions set forth in Article IV, the water rights set forth in Section G.3.a. of this Article III may be used for any purpose authorized by Tribal or federal law.

#### 4. **New Groundwater Development not Hydrologically Connected to Surface Water.**

a. **Quantification.** In addition to the water rights set forth in Sections A., B., C., D., and E. of this Article III, the Tribes have the right to develop or authorize the development of Groundwater within the Reservation that is not Hydrologically Connected to surface water subject to the following conditions:

(1) The development of Groundwater that is not Hydrologically Connected to surface water must comply with the provisions of Sections A.5. and 6. of Article IV for determination of Adverse Effect. Pursuant to Section A.5.a. of Article IV, the Tribal Water Resources Department and the DNRC may jointly agree to exempt certain development of Groundwater from a showing of no Adverse Effect due to location, size, or other agreed upon parameter.

(2) If a conflict arises between use of the water right set forth in this Section G.4. of Article III and a water right Arising Under State Law, DNRC and TWRD shall attempt to resolve the controversy. In attempting to resolve the controversy, DNRC and TWRD may establish controlled Groundwater areas off and on the Reservation and may manage them cooperatively pursuant to Sections A.2.d. and B.2. of Article IV. If DNRC and TWRD are unable to resolve the controversy, the Tribes, State or the Person whose water use is affected may seek relief from the Compact Board. Among the remedies the Compact Board may order is imposition of a controlled Groundwater area that includes Groundwater use both on and off the Reservation pursuant to Sections A.2.d. and B.2. of Article IV. The controlled Groundwater area is to be administered by the TWRD on the Reservation and the DNRC off the Reservation pursuant to Article IV and Tribal and State law.

b. **Priority Date.** The priority date of the water rights set forth in Section G.4.a. of this Article III for new Groundwater development shall be the date of development of the right.

c. **Period of Use.** The period of use of the water rights set forth in Section G.4.a. of this Article III for new Groundwater development is January 1 through December 31 of each year.

d. **Points and Means of Diversion.** Subject to the requirements set forth in Article IV, the water rights set forth in Section G.4.a. of this Article III may be diverted from Groundwater that is not Hydrologically Connected to surface water at any point by any means within the Reservation.

e. **Place of Use.** Subject to the requirements set forth in Article IV, the water rights set forth in Section G.4.a. of this Article III may be used on any place within the Reservation.

f. **Purpose.** Subject to the requirements set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section G.4.a. of this Article III for any purpose allowed by Tribal and federal law.

H. **Additional Water.** As a part of the Tribal Water Right, the Tribes shall be entitled to an allocation of stored water in Lake Elwell as agreed to by the Parties and as provided by Congress, measured at the dam, for use or disposition by the Tribes for any beneficial purpose, either on or off the Reservation, pursuant to the terms of this Compact; provided that, such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or persons holding such reserved water rights through that tribe or through the United States. Any use or disposition of water from Lake Elwell off the Reservation by the Tribes is subject to the specific provisions relating to such use or disposition in any Act of Congress ratifying this Compact. The United States shall have no responsibility or obligation to provide any facility for the transport of the water allocated under this Section H. of Article III. to the Fort Belknap Reservation or to any other location.

I. **Basin Closures.**

1. The following closure does not apply to development of the Tribal Water Right as provided for in this Compact. In the Milk River Basin from the Eastern Crossing to the confluence between the Milk River and the Missouri River comprised of Basins 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, and 40O both above the Western Crossing and below the Eastern Crossing, DNRC shall not process or grant an application for an appropriation pursuant to State law after this Compact has been ratified by the Montana legislature, provided that, after compliance by the applicant with all applicable provisions of State and federal law, DNRC may issue a certificate of water right or permit for:

a. An appropriation for municipal use of surface or Groundwater that is Hydrologically Connected to surface water. In addition to compliance with applicable State law, the application shall be treated as a change in use for the purposes of Section B. of Article IV, if the point of diversion is located upstream from any point on the Reservation. For purposes of compliance with State law other than this Compact, the appropriation shall be treated as a new use.

b. An appropriation of Groundwater that is not Hydrologically Connected to surface water. In addition to compliance with applicable State law, the application shall be treated as a change in use for the purposes of Section B. of Article IV, if the point of diversion is within an aquifer that might extend onto the Reservation. For purposes of compliance with State law other than this Compact, the appropriation shall be treated as a new use.

c. An appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a use of 10 Acre-feet per year. This size

limitation includes a Combined Development from the Same Source from two or more wells or developed springs. This exemption includes development on fee land on the Reservation.

d. An appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 Acre-feet and the appropriation is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. This exemption includes development on fee land on the Reservation. With the exception of Peoples Creek Basin 40I, the cumulative development of stock impoundments pursuant to this exemption following the Effective Date of this Compact may not exceed a storage capacity of 15 Acre-feet times the number of square miles in the Water Court basin in which the new impoundment is located. In the Peoples Creek Basin 40I, development of stock impoundments pursuant to this exemption following the Effective Date of this Compact must be constructed with the ability to bypass inflow.

e. An appropriation for instream use of water by livestock.

f. Temporary emergency appropriations as provided in §85-2-113(3), MCA.

g. An appropriation necessary for the purposes of new storage of imported water or modification and replacement of existing storage as set forth in Section I.4. of this Article III.

h. An appropriation necessary for new storage off the Reservation approved by the Milk River Coordinating Committee pursuant to Section C.3.g. of Article IV.

i. An appropriation for a nonconsumptive use as defined under State law.

j. With the exception of applications for appropriations in Basin 40I upstream from the Reservation, an appropriation of water for an impoundment of any size for use for fish and wildlife purposes if the cumulative development under this provision and Section I.1.d. of this Article III, does not exceed 15 Acre-feet times the number of square miles owned by the applicant in the Water Court basin in which the new impoundment is located.

2. The basin closure is not a limit on change of use or transfer of any water right Arising Under State Law, provided that, applicable provisions of State and federal law and this Compact are followed. For purposes of this Compact, any change in a water right for the purpose of moving instream stockwatering to off-stream stockwatering that does not result in an increase in the historic consumptive use of water shall be considered a change in use, and is not a new use subject to the basin closure.

3. Due to the shortage of water in the Milk River Basin, water salvaged through efficiency measures may not be used to expand irrigation from a water right Arising Under State Law with a point of diversion in the United States' portion of the Milk River Basin under the following circumstances:

a. the efficiency measures are funded in whole or in part by the State, United States, Tribes, or water

users as part of the implementation of this Compact; or

b. the salvaged water may be used to alleviate water shortage in the Milk River Basin. Pursuant to Section B.3. of Article IV, DNRC may promulgate rules to implement this provision.

4. The basin closure is not a limit on: the modification or replacement of existing storage when there is no enlargement of that storage; the modification or development of storage pursuant to this Compact and the federal legislation that ratifies this Compact; or the development of storage to impound water imported to the Milk River Basin from another basin.

5. Within 120 days of the date this Compact is ratified by the Montana Legislature, DNRC shall publish notice of the basin closures set forth in Section I. of this Article III once in newspapers of general circulation in the area of the sources.

#### ARTICLE IV - IMPLEMENTATION OF COMPACT

##### **A. Tribal Administration.**

##### **1. Tribal Authority Over Tribal Water Right.**

a. The Tribes have the right, subject to the limits imposed by this Compact (including Sections C., D., and E. of this Article IV, and Section B.3. of Article VII), and federal law (including 25 U.S.C. §381), to administer the use of the Tribal Water Right.

b. Once the Tribal Water Right is diverted to the facilities of the Fort Belknap Indian Irrigation Project on units held by the United States, distribution shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs or its successor in accordance with applicable federal laws. Operation and maintenance of the Fort Belknap Indian Irrigation Project shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs or its successor in accordance with applicable federal laws.

c. Once the Tribal Water Right is diverted to the facilities of the Ereaux Unit, and any other unit previously part of the Fort Belknap Indian Irrigation Project which has been subsequently quit claimed by the United States to specific irrigation companies, distribution shall be conducted by the irrigation companies. Administration of the Tribal Water Right to the points of diversion of the listed irrigation projects shall be conducted by the Tribes on Peoples Creek and other tributaries to the Milk River on the Reservation, and pursuant to Sections C., D., and E., of this Article IV, and Section B.3. of Article VII on the mainstem of the Milk River.

d. Owners of fee land within the Reservation may apply to the Tribes to continue their historic use of water in the manner and to the extent existing on the Effective Date of the Compact on fee land within the Reservation as determined by the TWRD pursuant to the Tribal water code as part of the Tribal Water Right if no claim was filed by the landowner in the state adjudication, or may continue their use pursuant to state law and

as decreed by state court if a claim was filed.

2. **Tribal Water Code.** Administration of the Tribal Water Right by the Tribes shall be pursuant to a comprehensive Tribal water code governing the Tribal Water Right set forth in this Compact. Pending the adoption of the Tribal water code, the administration of the Tribal Water Right shall be by the Secretary of the Interior. The Tribal water code shall be developed and adopted by the Tribes with approval by the Secretary within two (2) years following the Effective Date of this Compact and shall include:

a. A process by which any Tribal member or Allottee may request and be provided with an equitable distribution of water for use on his or her trust lands.

b. A process for notice and a right to be heard for the consideration and determination of any request by a Tribal member or Allottee for an equitable distribution of water, including a process for formal review of denied or disputed distributions and for resolution of contested administrative decisions.

c. A process by which an owner of fee land within the boundaries of the Reservation may apply for use of a portion of the Tribal Water Right.

d. A process for establishment of a controlled Groundwater area and for management of such Area in cooperation with establishment of a contiguous controlled Groundwater area off the Reservation established pursuant to Section B.2. of this Article IV and State law.

3. **Persons Authorized to Use the Tribal Water Right.** The Tribal Water Right may be used by the Tribes, or Persons authorized by the Tribes (including Tribal members, Allottees, and holders of fee land within the boundaries of the Fort Belknap Reservation).

4. **Authorization for New Development of the Tribal Water Right.** Subject to Article III and the following conditions, the Tribes may use or authorize the use of the Tribal Water Right within the Reservation for any purpose allowed by this Compact and Tribal and federal law:

a. Impact of new development of the Tribal Water Right within the Reservation for the purposes of irrigation and non-irrigation use as expressly identified under the quantification in Article III, and new development for any purpose within the Reservation within the Peoples Creek Basin, have been accounted for in design of mitigation and administration in the Compact. Thus, new development for the purposes expressly identified in Article III within the Reservation and all new development within the Reservation within the Peoples Creek Basin are exempt from any review by DNRC under the process set forth in Sections A.5. and 6. of this Article IV. All such development will be referred to as "Exempt New Development." Specifically, Exempt New-Development is as follows:

(1) Use of the Tribal Water Right for purposes of irrigation with the place of use on the Reservation and

as set forth in Article III.

(2) Use of up to 4000 AFY of water diverted from the Milk River pursuant to Section A.1.a.(2) of Article III for non-irrigation purposes on the Reservation.

(3) Use of the Tribal Water Right quantified for the Peoples Creek Basin within the Reservation for any purpose allowed by Tribal or federal law.

(4) Use of the Tribal Water Right for stockwatering on the Reservation if the maximum capacity of the impoundment or pit is less than 15 Acre-feet and the appropriation is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream.

(5) Use of Groundwater on the Reservation that is Hydrologically Connected to surface water by means of a well or developed spring with an appropriation of 35 gallons per minute or less, and a use that does not exceed 10 Acre-feet per year. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs.

b. Any Tribal authorization for the development of Groundwater that is not Hydrologically Connected to surface water by means of a well or developed spring with an appropriation of greater than 35 gallons per minute, or in excess of 10 Acre-feet per year, developed after the Effective Date of this Compact, shall not have an Adverse Effect on water rights Arising Under State Law with a priority date before the date of the application for Groundwater development. The development is considered a Non-Exempt New Development and is subject to the procedures set forth in Sections A.5. and 6. of this Article IV.

**5. Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right.** Subject to the following conditions, the Tribes may make or authorize a Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right.

a. A Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right on or off the Reservation may not Adversely Affect a water right Arising Under State Law with a priority date before the date of the application to the TWRD for the Non-Exempt New Development, Change in Use, or Transfer. Determination of Adverse Effect for the purposes of this Section shall be pursuant to the procedures set forth in Section A.6. of this Article IV and Appendix 5. In addition, the TWRD and DNRC may jointly agree to exempt certain Change in Use, Transfer or Non-Exempt New Development from a showing of no Adverse Effect due to location, size, or other agreed upon parameter.

b. Off Reservation Change in Use or Transfer of the Tribal Water Right is limited as follows:

(1) Off Reservation use of the Tribal Water Right on non-Tribal land shall be limited to the following portion of the Tribal Water Right developed or stored prior to the date of application for Change in Use or



## Transfer:

(a) Water developed by Direct Use prior to the date of the application for Change in Use or Transfer from the Milk River pursuant to Section A.1.a. of Article III; or

(b) Water stored from the Milk River pursuant to Section A.1.a.(2) of Article III.

(c) Water stored from Peoples Creek pursuant to Sections B.1.a., and b. of Article III.

(2) The off-Reservation new development, Change in Use, or Transfer of the transferable portion of the Tribal Water Right set forth in Section A.1.a. of Article III is limited to a place of use within the Missouri River Basin.

(a) If the Tribes receive a good faith offer from a Person for Transfer of a portion of the Tribal Water Right outside the Milk River Basin, the Tribes shall allow water users receiving water from the Milk River Project the first opportunity, and other water users in the Milk River Basin the second opportunity, to acquire use of such rights at a price consistent with the market value of water within the Milk River Basin at the time of the offer.

(b) The Tribes are not required to offer the first or second right to use a portion of the Tribal Water Right to any water user in the Milk River Basin who is currently marketing a portion of their own water right.

(3) The off-Reservation new development, Change in Use, or Transfer of the transferable portion of the Tribal Water Right set forth in Sections B.1.a., and b. of Article III is limited to a place of use within the Milk River Basin.

(4) The off-Reservation new development, Change in Use, or Transfer of the portion of the Tribal Water Right set forth in Section H. of Article III is limited to a place of use in the Missouri River Basin.

(5) Any off-Reservation Change in Use or Transfer of a portion of the Tribal Water Right may not exceed a term of 100 years, but may include provisions authorizing renewal for an additional term not to exceed 100 years.

(6) No off-Reservation Change in Use or Transfer of a portion of the Tribal Water Right may permanently alienate the water right.

(7) The development or use of the Tribal Water Right pursuant to an off-Reservation new development, Change in Use, or Transfer must comply with State law, provided that, approval of an application for a change in water right by DNRC shall be conditioned on a valid Tribal approval for such use, Change in Use or Transfer. Due to this requirement of compliance with State law, the off-Reservation Change in Use or Transfer shall be exempt from the process set forth in Section A.6. of this Article IV. Any diversion of the Tribal Water Right located off the Reservation for use on the Reservation shall not be considered an off-Reservation use for purposes of this provision.

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

**6. Administrative Procedure for Determination of Adverse Effect for Non-Exempt New Development, Change in Use, or Transfer, Within the Reservation.**

a. The procedures set forth in Sections A.6.b. through i. of this Article IV apply to determine whether the following actions will Adversely Affect a water right Arising Under State Law and must be followed before a Person may seek relief from the Compact Board:

- (1) A Change in Use or Transfer of the Tribal Water Right; and
- (2) A Non-Exempt New Development of the Tribal Water Right.

b. The proposal for a Non-Exempt New Development, Change in Use, or Transfer of a portion of the Tribal Water Right after the Effective Date of this Compact shall be made to TWRD.

c. TWRD shall review the proposal and make a determination of whether it will Adversely Affect a water right Arising Under State Law with a priority date before the date of the proposal for the Non-Exempt New Development, Change in Use, or Transfer.

(1) Upon request, DNRC shall provide to TWRD information on water rights Arising Under State Law as recorded in the DNRC database.

(2) For purposes of determining whether a Non-Exempt New Development of surface water Adversely Affects a water right Arising Under State Law, the existing use shall be deemed to be the use for which the water right is quantified explicitly in Article III of this Compact.

(3) If TWRD determines that the Non-Exempt New Development, Change in Use, or Transfer will Adversely Affect a water right Arising Under State Law with a priority date before the date of the proposal for the Non-Exempt New Development, Change in Use, or Transfer, TWRD shall deny the proposal, provided that, the Tribal water code may allow the applicant to modify the proposal to eliminate Adverse Affect.

(4) If TWRD determines that the Non-Exempt New Development, Change in Use, or Transfer will not Adversely Affect a water right Arising Under State Law with a priority date before the date of the proposal for the Non-Exempt New Development, Change in Use, or Transfer, TWRD shall forward the proposal with its determination to DNRC by certified mail with return receipt requested.

d. Upon receipt of notice from the TWRD, DNRC shall publish notice of the proposed Non-Exempt New

Development, Change in Use, or Transfer, once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Arising Under State Law who, according to the records of the DNRC, has a water right with a priority date before the date of the proposal that may be affected by the proposed Non-Exempt New Development, Change in Use, or Transfer. DNRC shall notify TWRD of the date of publication of notice.

e. A holder of a water right Arising Under State Law who objects to the proposed Non-Exempt New Development, Change in Use, or Transfer on the basis that it will Adversely Affect the exercise of their water right may notify DNRC, and must do so within thirty (30) days of the publication of notice.

f. DNRC shall review the proposal and the determination by TWRD of no Adverse Effect and any objections raised pursuant to Section A.6.e. of this Article IV. In its review, DNRC shall apply the same principles used in a determination of adverse effect or adverse affect pursuant to the Water Use Act, Title 85, Chapter 2, MCA, and Appendix 5. Any Non-Exempt New Development, Change in Use, or Transfer of the Tribal Water Right to a place of use and point of diversion within the Reservation that is within the minimum depletions set forth in Appendix 5 shall be presumed by DNRC to have no Adverse Effect. The TWRD may provide information that the Adverse Effect will be less than that predicted by application of Appendix 5 and DNRC may use the new information in its evaluation.

g. DNRC shall notify TWRD of the outcome of its review within thirty (30) days after the end of the time period for objection set forth in Section A.6.e. of this Article IV. If TWRD is not notified by DNRC within sixty (60) days of publication of notice by DNRC, TWRD may authorize the proposal pursuant to Tribal law.

h. DNRC and TWRD shall attempt to resolve objections or disagreement on TWRD's determination of no Adverse Effect on a cooperative basis. Measures to resolve objections may include agreement to release water from storage.

i. If resolution of an objection or disagreement is not achieved, DNRC or an objector may seek relief from the Compact Board established in Section D. of this Article IV.

#### **7. Reporting Requirements.**

a. Upon request by DNRC, on no more than an annual basis, the TWRD shall provide the MRCC, State and the United States with a listing of: all Non-Exempt New Development and Exempt New Development of the Tribal Water Right and any temporary emergency use or diversion of water on the Reservation.

b. The Tribes or the United States on behalf of the Tribes shall inventory the use of water rights for water developed before the Effective Date of the Compact set forth in Sections A.1.d., B.1.d. C.1.c., D.1.a., E.1.c., and G.2.a. of Article III, and shall report the inventory to DNRC within one year of the decree of the Tribal Water

Right. Developments of Groundwater by means of a well or developed spring if the maximum flow of each well or developed spring is 35 gallons per minute or less and does not exceed a use of 10 Acre-feet per year are not required to be included in the inventory. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs.

**B. State Administration.**

**1. State Authority.**

a. Except as provided in Section C., D., and E., of this Article IV and Section B.3. of Article VII, the State shall administer and enforce all water rights Arising Under State Law to the use of surface water and Groundwater.

b. The State shall administer and enforce water rights set forth in Section E. of Article III on Tribal trust and fee land for use in the portion of the Missouri Basin 40EJ and Peoples Creek Basin 40I off the Reservation unless Congress acts to modify the Reservation boundary to include the Tribal trust and fee land. In administering the Tribal water rights on trust and fee land off the Reservation in Basins 40EJ and 40I, the State shall treat the Tribal rights as water rights Arising Under State Law except that non-use of all or any of the Tribal water rights off the Reservation in Basins 40EJ and 40I shall not constitute a relinquishment, forfeiture, or abandonment of such rights.

**2. Cooperative Management of a Controlled Groundwater Area.**

a. DNRC may designate or modify a controlled Groundwater area adjacent to the Reservation under the following circumstances:

(1) Pursuant to the requirements of §85-2-506, MCA; or

(2) In cooperation with designation or modification by TWRD of a similar area on contiguous land within the Reservation; or

(3) Under order of the Compact Board as set forth in Section G.4.a.(2) of Article III.

b. The following procedures apply to designation or modification of a controlled Groundwater area pursuant to Section B.2.a. of this Article IV:

(1) Designation or modification of a controlled Groundwater area pursuant to Section B.2.a.(1) of this Article IV, or in the portion of an area off the Reservation pursuant to Section B.2.a.(2) of this Article IV, shall be governed by procedures set forth in §85-2-506, MCA.

(2) Designation or modification of a portion of a controlled Groundwater area off the Reservation pursuant to Section B.2.a.(3) of this Article IV shall be with substitution of the following procedures for those set forth in §§85-2-506(3) and (4), MCA:

(a) DNRC shall hold a meeting to inform the public of the designation or modification of a controlled Groundwater area as ordered by the Compact Board.

(b) The DNRC shall publish notice of the time and place of the meeting to inform the public of the designation or modification of a controlled Groundwater area. The notice shall include the description by legal subdivision of all lands included in the area, and shall be published at least once in each week for 3 successive weeks not less than 30 days before the date of the meeting in a newspaper of general circulation in the county or counties in which the controlled Groundwater area is located.

c. Management within the portion of a controlled Groundwater area adjacent to the Reservation shall be as follows:

(1) Management within a controlled Groundwater area established pursuant to Section B.2.a.(1) of this Article IV shall be pursuant to §§85-2-501 to 520, MCA.

(2) Management within the portion of a controlled Groundwater area off the Reservation established pursuant to Sections B.2.a.(2) and (3) of this Article IV shall be pursuant to §§85-2-501 to 520, MCA, and in cooperation with the TWRD.

### **3. New Development and Change in a Water Right Arising Under State Law.**

a. Any Person making a new development or change in a water right or portion of a water right Arising Under State Law, including a change in water right for the Milk River Project, must comply with State law, provided that, DNRC may not approve a change in water right for expansion of irrigation through use of salvaged water pursuant to §85-2-402(2)(e), MCA, within the Milk River Basin under the following circumstances:

(1) the efficiency measures are funded in whole or in part by the State, United States, Tribes, or water users as part of the implementation of this Compact; or

(2) the salvaged water may be used to alleviate water shortage in the Milk River Basin. DNRC may promulgate rules to implement this provision.

b. Change in a water right Arising Under State Law upstream from any point on the Reservation, new development of water due to new storage approved by the Milk River Coordinating Committee, new development of water for municipal purposes upstream from any point on the Reservation, and new development of Groundwater that is not Hydrologically Connected to surface water within the Milk River Basin may not Adversely Affect a use of the Tribal Water Right developed before the date of the change. Determination of Adverse Effect for the purposes of this Section shall be pursuant to the procedures set forth in Section B.4. of this Article IV. The TWRD and DNRC may jointly agree to exempt certain changes in water rights from a showing of no Adverse Effect to the Tribal Water Right due to location, size, or other agreed upon parameter.

**4. Administrative Procedure for Preventing Adverse Effect Resulting from New Development or Change in a Water Right Arising Under State Law.** Except for changes exempt by agreement pursuant to Section B.3.b. of this Article IV and new development of stock impoundments or small wells exempt from the basin closure pursuant to Sections I.1.c. and d. of Article III, the following procedure for determining whether a new development or change in a water right Arising Under State Law within the Milk River Basin (including all tributary basins) upstream from the Reservation and below the Eastern Crossing, must be followed in addition to procedures set forth under state law, prior to a Person seeking relief from the Compact Board:

a. Application for a permit for new development or for a change in a water right Arising Under State Law shall be made to DNRC pursuant to State law.

b. DNRC shall review any application for a permit for new development or for a change in a water right and make a determination of whether it will Adversely Affect any use of the Tribal Water Right developed before the date of the application. In its review, DNRC shall apply the same principles used in a determination of adverse effect or adverse affect pursuant to the Water Use Act, Title 85, Chapter 2, MCA.

(1) Upon request, TWRD shall provide to DNRC information on uses of the Tribal Water Right.

(2) If DNRC determines that the new development or change will Adversely Affect a use of the Tribal Water Right developed before the date of the change, DNRC shall deny the application.

(3) If DNRC determines that the new development or change will not Adversely Affect a use of the Tribal Water Right developed before the date of the change, DNRC shall forward the application with its determination to TWRD by certified mail with return receipt requested.

c. Upon receipt of notice from DNRC, TWRD shall follow any requirements set forth in the Tribal Water Code for notification and objection of Persons authorized to use the Tribal Water Right. TWRD shall notify DNRC of the date of any notice to Persons authorized to use the Tribal Water Right.

d. TWRD may allow up to thirty (30) days after notification to Persons authorized to use the Tribal Water Right for objection by Persons authorized to use the Tribal Water Right. Any objection shall be made to TWRD.

e. TWRD shall review the application and the determination by DNRC of no Adverse Effect and any objections raised pursuant to Section B.4.d. of this Article IV.

f. TWRD shall notify DNRC of the outcome of its review within thirty (30) days of the end of the time period for objections set forth in Section B.4.d. of this Article IV. If DNRC is not notified by TWRD within sixty (60) days of notice by TWRD to Persons authorized to use the Tribal Water Right, DNRC may proceed with the application process.

g. DNRC and TWRD shall attempt to resolve objections or disagreement on DNRC's determination of

no Adverse Effect on a cooperative basis.

h. If resolution of an objection or disagreement is not achieved, TWRD or an objector may seek relief from the Compact Board established in Section D. of this Article IV.

5. **Reporting Requirements.** Upon request by TWRD on no more than an annual basis, the DNRC shall provide the MRCC, Tribes, and the United States with a listing of all new development of water rights Arising Under State Law and any temporary emergency use or diversion of water, for the off-Reservation portion of the Milk River Basin upstream from any point of diversion or place of use of the Tribal Water Right.

6. **Peoples Creek Administration**

a. The DNRC shall develop a database covering water use upstream from the Reservation in Peoples Creek Basin 40I. The database shall include, at a minimum: identification of acreage irrigated on an annual basis; and any change in the use of a water right or storage facility.

b. If the Tribes or a Person authorized to use a portion of the Tribal Water Right within the Peoples Creek Basin 40I disputes a use or uses of water upstream from the Reservation in Basin 40I because the use or uses are in excess of a water right Arising Under State Law, or if the Tribes or Person authorized to use a portion of the Tribal Water Right believes that depletions in excess of water rights Arising Under State Law are occurring upstream from the Reservation but cannot identify the illegal use, the Tribes or Person shall contact the TWRD. The TWRD shall contact the DNRC concerning the dispute or excess depletion. If requested, the DNRC shall, within a reasonable time, investigate the disputed water use, or uses, or excess depletion and a representative of the TWRD may accompany DNRC on the investigation. If DNRC finds that the disputed water use or uses or excess depletion is in excess of a water right Arising Under State Law, DNRC may order any owner or operator of the diversion or storage facilities to curtail the use to within the water right. If any owner or operator does not comply with the order by DNRC or repeats the infraction, DNRC may: impose penalties pursuant to §85-2-122, MCA; and may require any owner or operator of the appropriation facility to install and maintain suitable controlling and measuring devices to allow the DNRC to track compliance with the water right. Disputes unresolved by the process set forth in this Section may be brought before the Compact Board established pursuant to Section D. of this Article IV.

C. **Milk River Coordinating Committee.** A basin-wide coordinating committee is necessary to improve the coordination of storage operations and to provide for the coordination of releases of water from storage within or for the diversion to the Milk River Basin. A coordinating committee is also necessary to improve the management of diversions from the Milk River and to establish priorities for a grant and loan program to improve water supply conditions in the basin.

1. **Establishment of Milk River Coordinating Committee.** There is hereby established the Milk River Coordinating Committee ("MRCC.").

2. **Membership.**

a. The MRCC consists of the following nine (9) voting members and four advisory members. Six (6) voting members of the MRCC constitutes a quorum and decisions shall be by a majority of the membership of the MRCC present, except as provided in Sections C.3.a. and C.5.c. of this Article IV. On the addition of members pursuant to Section C.3.a. of this Article IV, the quorum shall increase by one (1) for every two (2) members added to the original nine (9).

- (1) Two (2) representatives of the Tribes;
- (2) Three (3) representatives of the Joint Board of Control of the Milk River irrigation districts;
- (3) One (1) representative of DNRC;
- (4) One (1) representative of the Bureau of Reclamation;
- (5) One (1) representative of the Bureau of Indian Affairs;
- (6) One (1) representative selected at large by the other 8 members;
- (7) One (1) advisory, non-voting, member from the United States Geological Survey;
- (8) One (1) advisory, non-voting, member from the United States Fish and Wildlife Service;
- (9) One (1) advisory, non-voting, member from the United States Bureau of Land Management; and
- (10) One (1) advisory, non-voting, member from the Montana Department of Fish, Wildlife, and Parks.

b. All members shall be appointed by their respective agencies within six (6) months of the Effective Date of this Compact and within thirty (30) days of the date any vacancy occurs. Should the eight appointed members fail to agree, by a majority of a quorum as provided in Section C.2. of this Article IV, on the selection of a ninth member within sixty (60) days of the date of appointment of the eighth member, or within thirty (30) days after a vacancy in the ninth position occurs, the following procedure shall be utilized:

(1) Within five (5) days thereafter, each member shall nominate one person to serve as a member of the MRCC;

(2) Within five (5) days thereafter, the eight nominees shall be submitted to the chief judge of the United States District Court for the District of Montana for selection of the ninth member of the MRCC. If the chief judge declines for any reason to select the ninth member, the chief justice of the Montana Supreme Court shall make the selection from the eight nominees.

c. Each member shall serve a five-year term and shall be eligible for reappointment. The initial terms of each voting member shall be staggered with three members serving a five-year term, three members a



four-year term, and three members a three-year term. The initial term of each voting member shall be chosen by lot. The initial term of the advisory members shall be five years. A member seeking to resign prior to expiration of a term must provide written notice to the remaining MRCC members thirty (30) days prior to withdrawal.

d. The MRCC shall select a chair from the voting members within six (6) months of the initial selection of the ninth member and shall rotate the chairmanship on a yearly basis among the ~~non-voting~~ VOTING members.

e. The MRCC shall provide published notice of the time, place, and purpose of its meetings, or other proceedings, and shall hold such proceedings in a forum open to the public unless compelled to close certain portions of a proceeding to protect an individual right to privacy.

f. The MRCC shall adopt necessary rules, pursuant to the Montana Administrative Procedure Act §§ 2-4-101 et. seq. (MCA), to carry out its responsibilities within six (6) months of the initial selection of the ninth member. The MRCC may amend and repeal rules as necessary to carry out the purposes of this Article IV.

g. Costs and compensation for State, federal, and Tribal members of the MRCC shall be covered by their respective entities.

h. Subject to the availability of funds, the MRCC may compensate any MRCC member not compensated by the entity they represent for time and travel devoted to MRCC business. Compensation shall be based on the average hourly compensation of the other MRCC members.

**3. Authority and Duties of the MRCC.** Notwithstanding any other provision of State, Tribal, and, if this Compact is approved by Congress, federal law, the MRCC shall have the following authority and duties:

a. The initial authority of the MRCC is restricted to the mainstem of the Milk River downstream from the Eastern Crossing. The MRCC has the authority to expand the boundaries of its area by a unanimous vote of the MRCC, including the area within which it may levy a tax, to include tributaries to the Milk River or the portion of the Milk River Basin upstream from the Western Crossing. Such expansion shall require the agreement of Persons holding a majority of the water rights by amount on the source added pursuant to the following procedure:

(1) Any Person or Persons owning 10% or more of the water rights by rate or volume on any tributary to the Milk River within the United States or on the mainstem of the Milk River upstream from the Western Crossing may petition the MRCC for addition to the area covered by the MRCC and for representation on the MRCC.

(2) On receipt of a petition, the MRCC shall notify DNRC and provide a copy of the petition.

(3) Within 60 days of receipt of the petition, DNRC shall hold a hearing in or near the area proposed for

addition. DNRC shall publish notice of the hearing once in a newspaper of general circulation in the proposed area and serve notice by first-class mail on any holder of a water right Arising Under State Law and any holder of an adjudicated federal or Indian water right who, according to the records of the DNRC, has a water right within the area proposed for addition with a priority date before the date of the petition.

(4) The MRCC shall preside over the hearing. If the MRCC determines, based on the facts presented at the hearing and other relevant facts and information as may be available, and in the interest of improving water supply or allocation, that there is a need for addition of the area, the MRCC will notify the DNRC.

(5) On receipt of notice for the addition of an area to the MRCC, the DNRC shall send a ballot by first-class mail, with a 30-day deadline for its return, providing for a vote on the proposed addition, to any holder of a water right Arising Under State Law and any holder of an adjudicated federal or Indian water right who, according to the records of the DNRC, has a water right with a priority date before the date of the petition.

(6) Following expiration of the 30 day deadline for receipt of ballots, the DNRC shall count the votes and notify the MRCC of the results.

(7) The area proposed for inclusion in the MRCC shall be added to the MRCC with a representative if a majority of those voting are in favor of the addition.

b. Members of the MRCC may seek technical support from their respective agencies to facilitate the activities of the MRCC. To this end, the Parties agree to seek any necessary authorization to provide technical support to the MRCC. In addition, the MRCC shall have the following authority:

(1) The MRCC may employ a secretary and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation.

(2) The MRCC shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

(3) The MRCC may call upon the county attorney of any county in which the MRCC has authority or the attorney general of the state for any legal services it may require, or it may employ their own counsel and legal staff.

c. The MRCC shall hold a meeting on an annual basis with, at a minimum, the Bureau of Reclamation, the Bureau of Indian Affairs, the Tribes, the Milk River Joint Board of Control, DNRC, and Hill County to coordinate reservoir storage.

d. The MRCC shall coordinate the establishment and yearly update of a common database and

associated maps on actual water use of water diverted from the mainstem of the Milk River downstream from the Eastern Crossing between: DNRC; the Bureau of Reclamation; the Bureau of Indian Affairs; the irrigation districts within the Milk River Project; and the Tribes. At a minimum, each entity will maintain a database and share information on daily diversions, yearly number of acres irrigated, and yearly changes in use. The MRCC role is one of coordination. The BOR, BIA, TWRD and irrigation districts will continue to maintain the portion of the database covering their own water distribution. The DNRC will continue to maintain its database covering water rights and diversions from the water sources.

(1) The MRCC shall make the database and associated maps available to any water commissioner appointed by a court to enforce water rights in the Milk River Basin.

(2) The DNRC and TWRD shall offer assistance as may be appropriate to the MRCC to update, maintain, and provide training for use of the database.

e. The MRCC shall consult with the Bureau of Reclamation in the Bureau's development of operating criteria pursuant to Section C.11. of this Article IV, for coordination of storage and release of water from storage facilities within the portion of the Milk River Basin in the United States and contributing to the water supply of the Milk River Basin, provided that, except as explicitly provided for in this Compact or by Congress, allocations in the federal and future Tribal reservoirs within the Milk River Basin or contributing to the water supply of the Milk River Basin shall remain unchanged and the right of the owner of a storage facility to exercise discretion in the daily operation and use of its facilities shall not be preempted.

f. Notwithstanding the rights to the use of water existing on the date of a determination by the BOR of excess water flow pursuant to Section C.11.f. of this Article IV, the MRCC may permit the owner of storage in the Milk River Basin to store water regardless of priority if capacity exists and the water would otherwise be lost to the Milk River Basin. Water stored pursuant to this provision may be used to satisfy water rights served by the entity storing the excess flow.

g. The MRCC shall review applications for new storage in the Milk River Basin below the Eastern Crossing.

(1) Any Person or Persons, including the Tribes, seeking to develop or enlarge storage in the United States' portion of the Milk River Basin below the Eastern Crossing, other than new or enlarged storage agreed to in the Compact or pursuant to the federal Act ratifying this Compact, must comply with each of the following criteria:

(a) Application describing the project shall be made to the MRCC; and

(b) The applicant must prove by a preponderance of the evidence that the project will result in a net

increase in available water supply within the Milk River Basin below the Eastern Crossing.

(2) The MRCC shall issue a report on its findings and determination.

(3) If the MRCC determines that the application for new storage does not meet the criteria in Section C.3.g.(1)(b) of this Article IV, the determination is final, subject to the right of appeal under the following subsection (4).

(4) Appeal of decisions by the MRCC concerning new storage may be sought in a court of competent jurisdiction. Any appeal heard by a court of competent jurisdiction shall be a trial de novo.

(5) Any applicant that the MRCC determines meets the criteria in Section C.3.g.(1)(b) of this Article IV must further comply with all other applicable State, federal, and Tribal law. The determination of the MRCC or any final appeal is binding on the Tribes, the State, and the United States in consideration of any application for development of new storage.

h. The MRCC does not have the authority to coordinate storage or storage releases in a manner that is inconsistent with any applicable provisions of State, Tribal, and federal law, and the decrees of the Water Court. The responsibility for storage and storage releases in the Milk River Project facilities rests solely with the Bureau of Reclamation, its successors or assigns; provided that, if approved by Congress, the BOR shall participate in efforts at coordination as a member of the MRCC.

i. The MRCC shall have the authority to review applications for grants and loans from the Milk River Watershed Improvement Trusts and to determine prioritization for receipt of grants and loans pursuant to this Compact and [section 6] and C. 6., 7., 8., 9., and 10. of this Article IV. The DNRC shall offer assistance as may be appropriate to the MRCC for review of applications for grants and loans. The Milk River Watershed Improvement Trusts are permanent accounts established by this Compact and [section 5] to provide interest for grants for purchase of water for a Water Bank in times of significant short term water shortage, and for loans for long term improvements within the Milk River Basin.

#### **4. Legal Status of MRCC - Immunity.**

a. The MRCC may make and execute agreements necessary to perform its responsibilities as provided in this Compact.

b. The MRCC may apply for State and federal grants and loans available to governmental entities or watershed organizations.

c. The MRCC may sue and be sued to enforce agreements entered into pursuant to this Section C.4. of Article IV in the name of the MRCC. The MRCC, an MRCC member, or MRCC employee is immune from suit for any liability that might otherwise be incurred or imposed for an act or omission committed while engaging in

MRCC activities pursuant to this Article IV, unless the act or omission constitutes criminal behavior, gross negligence, was committed in bad faith, or was committed with malicious purposes. Nothing in this provision is intended to waive immunity that is applicable to the United States or any federal employee, to the State or any State employee, or to the Tribes or any Tribal employee.

**5. MRCC Finance.**

a. The MRCC may request up to 15% per year of the interest on the Milk River Watershed Improvement Trusts to cover administrative costs, including but not limited to: the cost of review of applications for grants and loans; and the cost of compensation for MRCC members pursuant to Section C.2.h. of this Article IV.

b. The MRCC may apply for grants and loans from applicable State, Federal, and Tribal programs.

c. Subject to §15-10-420, MCA, the MRCC may, on unanimous vote of all voting members, levy taxes on water use pursuant to a water right Arising Under State Law from the mainstem of the Milk River, including, water use under contract with the Bureau of Reclamation, to pay any obligation of the MRCC and to fulfill its duties established by this Compact.

(1) The assessment shall be limited to land irrigated by water from the Milk River, and other non-irrigation water use from the Milk River Project.

(2) The assessment in any one year may not exceed: 0.5% of the assessed value of irrigated land; 0.5% of the taxable portion of the assessed value of a household, and 0.5% of the taxable portion of the assessed value of industrial or commercial land where water is used, with such assessments as determined by the Montana Department of Revenue, without the consent of the majority of the water users subject to the assessment.

(3) Subject to §15-10-420, MCA, the board of county commissioners of each county in which the MRCC imposes an assessment may, annually at the time of levying county taxes, levy an assessment on the applicable water use. The levy must be known as the "Milk River Coordinating Committee regular assessment." The assessment must be certified to the Department of Revenue and entered on the property tax record of each county.

(4) Any special assessment levied pursuant to this Section shall constitute a lien against the property upon which such assessment is levied from the date of such levy. This lien can only be extinguished by payment of such assessment with all penalties, costs, and interest.

d. The Parties agree to seek funding to cover a Tribal contribution to the MRCC. Any Tribal participation in contribution shall be equivalent to assessments associated with lands and uses off the Reservation.

e. On an annual basis, the MRCC shall make a report of its expenditures available to the public.

**6. Milk River Watershed Improvement Trusts.**

a. The Milk River Watershed Improvement Trusts established pursuant to this Compact and [section 5] are permanent trusts for the generation of interest on the Trusts' principal for the allocation of grants and loans to improve conditions of water supply, water quality, and habitat in the Milk River basin.

b. The MRCC shall review and rank in order of priority, pursuant to the criteria in Sections C. 6., 7., 8., 9., and 10. of this Article IV, applications for grants and loans from the Milk River Watershed Improvement Trusts. The MRCC may seek technical assistance from the Department of Natural Resources and Conservation, the TWRD, and the United States Bureau of Reclamation for review of applications for grants and loans.

c. Allocation of funds from the Milk River Watershed Improvement Trusts shall be managed by the Department of Natural Resources and Conservation. Disbursement of grants and loans from interest on the Milk River Watershed Improvement Trusts by DNRC must be pursuant to prioritization provided by the MRCC.

d. The DNRC shall adopt rules:

(1) prescribing the form and content of applications for grants and loans from the Milk River Watershed Improvement Trusts;

(2) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;

(3) providing for the confidentiality of financial statements submitted;

(4) prescribing the conditions for making grants and loans;

(5) establishing the interest rate for the loans; and

(6) determining the type and amount of security interest in real estate that will be accepted and any conditions to be made upon the security interest.

e. At the request of the MRCC, the DNRC may allocate up to 15% of the annual interest from the Milk River Watershed Improvement Trusts to cover capital and administrative costs of the MRCC.

**7. Milk River Watershed Improvement Trusts - Applications for Grants and Loans for Watershed Improvements.**

a. An application for a grant or loan from the Milk River Watershed Improvement Trusts established by this Compact and [section 5] must be in the form prescribed by the DNRC and contain or be accompanied by any information necessary to adequately describe the proposed project and provide for evaluation under Sections C.8., and 9., and 10. of this Article IV.

b. Application for a grant or loan from the Milk River Watershed Improvement Trusts may be made by Persons, including but not limited to:

(1) individuals holding water rights Arising Under State Law;

- (2) tribes;
- (3) persons authorized to use water by a tribe;
- (4) municipalities;
- (5) irrigation districts; and
- (6) conservation districts.

8. **Milk River Watershed Improvement Trusts - Establishment of Water Bank.** The purpose of this Section is to establish a water bank for implementation in years of significant short term water shortage. The bank is not intended to alleviate normal water shortage within the Milk River Basin.

a. By March 1 of each year and on a monthly basis through October 31, the BOR shall notify the MRCC, DNRC, the Tribes, the U.S. and the Milk River irrigation districts, if it expects, based on current information, water deliveries to be restricted during the current irrigation season due to a critical water shortage. Water shortage may be caused by factors which include, but are not limited to:

- (1) low precipitation;
- (2) requirements for fish and wildlife species of special concern; or
- (3) temporary delivery system outage caused by an unexpected failure or a natural disaster.

b. Following notice by the BOR of expected restrictions in water delivery, the MRCC shall publish notice in newspapers of general circulation within the Milk River Basin of the availability of grants to purchase water for the purpose of alleviating shortage.

c. The MRCC may offer the grants at a fixed price per Acre-foot or may seek bids. For any applicant banking water received from the Milk River Project, the grant must be sufficient to cover payments to the Project, including any assessments or fees paid to an irrigation district.

d. The MRCC may allocate banked water to storage, or may market or allocate banked water to alleviate shortage. Any fees obtained by the MRCC through marketing of banked water must be returned to the Trust as part of the expendable interest. Banked water may be marketed or allocated: on a pro rata basis; to alleviate critical shortages; to meet critical environmental or water quality needs; for irrigation needs; or may be allocated to storage.

e. Grants obtained for the temporary retirement of Milk River Project water must first be used by the applicant to cover payments to the Milk River Project, including any assessments or fees paid to an irrigation district.

f. Nothing within this Section C.8. of Article IV is intended to preclude a more comprehensive water marketing system within the Milk River Basin.

**9. Milk River Watershed Improvement Trusts - Eligibility for Grants for Water Banking or Water Transfers.**

a. The Milk River Coordinating Committee shall apply the following criteria in ranking applications for grants:

(1) the need for temporary retirement of irrigation or conversion to low water-use crops for the purpose of banking water to alleviate a critical shortage of water in a particular year;

(2) the extent to which the proposed water banking will alleviate significant short term water shortage in the Milk River Basin as set forth in Section C.8. of this Article IV;

(3) the proposed retirement of irrigation involves lands irrigated the year prior to the declaration of a critical water shortage in the Milk River Basin and involves a valid water right;

(4) the feasibility and practicality of the proposed irrigation retirement or conversion;

(5) the number of related resources that will benefit, including but not limited to: water quality, fisheries habitat, wildlife habitat, and recreation;

(6) preference for an applicant in an area identified by the MRCC as beneficial for temporary irrigation retirement, or if no specific area has been identified for preference, the MRCC shall attempt to rank applicants in a manner that distributes temporary irrigation retirement equally among the counties in the Milk River Basin; and

(7) any additional factor that, in the judgment of the MRCC, is important to the evaluation of land retirement in light of the purposes of the Milk River Watershed Improvement Trusts.

b. The MRCC shall not recommend grants for acreage in excess of that necessary to save sufficient water to alleviate the temporary water shortage. The MRCC shall not recommend grants in excess of the interest available from the Milk River Watershed Improvement Trusts.

c. The DNRC may award a grant to an applicant ranked by the MRCC for the purpose of water banking only if the DNRC finds, based on the application, the investigation and evaluation of the proposal by members of the MRCC, and the technical review by DNRC, TWRD, and BOR, that the primary purpose of the application is:

(1) the temporary retirement of the right to irrigate land irrigated in the year prior to the declaration of a critical water shortage in the Milk River Basin; or

(2) the irrigation proposed for temporary retirement or crop conversion is subject to a valid water right pursuant to State, federal, or Tribal law, and the applicant has the legal right to transfer the water.

(3) the criteria set forth in Sections C.9.a. and b. of this Article IV have been met.



**10. Milk River Watershed Improvement Trusts - Eligibility for a Loan.**

a. The Milk River Coordinating Committee shall apply the following criteria in ranking applications for loans:

- (1) the extent to which the project will alleviate water shortage in the Milk River Basin;
- (2) the engineering feasibility and practicality of the project;
- (3) the number of related benefits, including but not limited to improvements in: water quality; fish habitat; wildlife habitat; conservation; recreation; water use efficiency; water management; and water right measurement;
- (4) any additional factor that, in the judgment of the MRCC, is relevant to the purposes of the Milk River Watershed Improvement Trusts, including reducing the ranking due to the fact that the application is for a project in a portion of the Milk River Basin that is not a part of the Milk River Coordinating Committee regular assessment.

b. The DNRC may award a loan to an applicant ranked by the MRCC, if the DNRC finds, based on the application, the investigation and evaluation of the proposal by members of the MRCC, and the technical review by DNRC, TWRD, and BOR, that:

- (1) the criteria in Section C.10.a. of this Article IV have been met;
- (2) the proposal will be economically feasible;
- (3) the proposal will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;
- (4) the applicant has adequate financial resources to construct, operate, develop, and maintain the project; and
- (5) the applicant is credit-worthy and is able and willing to enter into a contract with the DNRC for loan repayment and for construction, operation, development, and maintenance of the proposed project.

**11. Coordination of Storage and Release Within the Portion of the Milk River Basin in the United States and New Storage.** Subject to the applicable provisions of State, Tribal, and federal law, the MRCC shall, within five (5) years of the Effective Date of the Compact, consult with the Bureau of Reclamation on development of operating criteria for coordination of storage and release of water from storage facilities within the portion of the Milk River Basin in the United States. Except as explicitly provided for in this Compact or by Congress, allocations in the federal and future Tribal reservoirs within the Milk River Basin or contributing to the water supply of the Milk River Basin, shall be unchanged. The operating criteria may be modified as necessary and such modification shall not be considered a modification of the Compact.

a. At a minimum, the operating criteria shall include coordination of storage among: Sherburne, Fresno, and Nelson Reservoirs and Hill County Reservoir near Havre, any new storage on the Reservation filled by

diversion from the Milk River or Peoples Creek, and any new storage developed pursuant to Section C.3.g. of Article IV.

b. The Bureau of Reclamation shall take comment on development of the operating criteria from, at a minimum, any entity or individual owning, benefiting from, or operating storage within the Milk River Project, or operating storage within the Milk River Basin below the Eastern Crossing. The process for such comment may be pursuant to existing federal and State law.

c. In developing the operating criteria, the Bureau of Reclamation shall make all reasonable efforts to maximize the amount of water stored through coordination of storage and release within the Milk River Basin as a whole without regard to the priority date of water rights associated with a particular storage facility. The purpose of coordination shall be to provide the maximum use of storage possible for the Milk River Basin, including providing flexibility on a temporary basis.

d. The coordination of storage and release to maximize the amount of water stored shall not modify the storage right of any Person in any storage facility or alter the obligations of any Person to pay construction, operation, maintenance and replacement costs for a facility, or alter the right and discretion of the owner of a storage facility to use or release water to satisfy water rights under its jurisdiction.

e. The operating criteria shall include, at a minimum: a method for accounting for water stored in various storage facilities in the Milk River Basin; a method for coordination of fill and release from storage facilities in the Milk River Basin on a yearly basis; and a method for notification of Persons with the right to divert water from the mainstem of the Milk River below the Eastern Crossing of the predictions for water availability on a yearly basis.

f. As part of the process to develop operating criteria, the BOR will establish criteria for determining the existence of a critical shortage or excess water flows.

g. The Bureau of Reclamation in consultation with the MRCC shall modify the operating criteria as necessary to address changes in the Milk River Basin including the addition, modification, or reduction of storage. The operating criteria is required by, but is not in substance, a part of or enforceable under the Compact. Its modification is not a modification of the Compact.

**D. Compact Enforcement: Fort Belknap - Montana Compact Board**

1. **Establishment of Board.** There is hereby established the Fort Belknap - Montana Compact Board.

2. **Membership.**

a. The Board consists of three members: a member selected by the Governor of the State of Montana from up to four nominees, one nominated by the Commissioners of each of the following counties: Hill, Blaine, Phillips, and Valley; a Tribal member selected by the Fort Belknap Community Council Tribal Chair; and one

member selected by the other two members.

b. All members shall be appointed within six (6) months of the Effective Date of this Compact and within thirty (30) days of the date any vacancy occurs. If an appointment is not timely made by the Governor, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Tribes, the Director of the TWRD or his/her designee shall fill the Tribes' position.

c. Should the two appointed members fail to agree on the selection of a third member within sixty (60) days of the date of appointment of the second member, or within thirty (30) days after a vacancy in the third position occurs, the following procedure shall be utilized:

(1) Within five (5) days thereafter, each member shall nominate two persons to serve as a member of the Board;

(2) Within fifteen (15) days thereafter, each member shall reject one of the persons nominated by the other member;

(3) Within five (5) days thereafter, the remaining two nominees shall be submitted to the chief judge of the United States District Court for the District of Montana for selection of the third member of the Board. If the chief judge declines for any reason to select the third member, the chief justice of the Montana Supreme Court shall make the selection from the remaining two nominees.

d. Each member shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. A member seeking to resign prior to expiration of a term must provide written notice to the remaining Board members thirty (30) days prior to withdrawal.

e. The Board shall provide reasonable notice of the time, place, and purpose of any meeting, hearing, or other proceeding to each of its members. Two members of the Board shall constitute a quorum.

f. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six (6) months after its first meeting.

3. **Jurisdiction of the Board.** The Fort Belknap-Montana Compact Board shall have the jurisdiction to resolve controversies over the right to the use of water between Persons authorized to use any portion of the Tribal Water Right and Persons holding any water rights Arising Under State Law. Controversies under the jurisdiction of the Compact Board may include disputes concerning the meaning of this Compact. The jurisdiction of the Compact Board does not extend to controversies within the scope of the order appointing a water commissioner or commissioners to distribute water from the mainstem of the Milk River pursuant to Section B.3.

of Article VII. Such controversies shall be resolved by the court appointing the water commissioner or commissioners.

**4. Administrative Remedy Prior to Board Action.**

a. **Change in Use, Transfer, or Non-Exempt New Development of the Tribal Water Right:** Any Person with a water right Arising Under State Law objecting to a Change in Use, Transfer, or Non-Exempt New Development of the Tribal Water Right, shall comply with the administrative procedures set forth in Section A.6. of this Article IV for review of applications for Change in Use, Transfer, or Non-Exempt New Development prior to seeking relief from the Compact Board.

b. **Change in water rights Arising Under State Law:** The Tribes or any Person authorized to use a portion of the Tribal Water Right objecting to a change in water right, or new development of a water right Arising Under State Law, shall comply with the administrative procedures set forth in Section B.3. of this Article IV for review of applications for change in appropriative right, prior to seeking relief from the Compact Board.

5. **Funding of the Board.** Expenses of the members of the Board appointed by the State and the Tribe shall be the responsibility of the entity appointing the member, subject to the availability of funds. The expenses of the third member and all other expenses, including the cost of notice, shall be shared equally by the Tribe and the State, subject to the availability of funds.

**6. Hearings Before the Board.**

a. In proceedings before it, the Board shall issue notice and hold hearings. The Board may seek the assistance of DNRC and TWRD in issuing notice.

b. In proceedings before it, the Board shall have the power to administer oaths, take evidence, and issue subpoenas to compel attendance of witnesses or production of documents or other evidence. The Board may apply to a state or federal district court, or Tribal court to compel compliance with subpoenas or the giving of testimony. The Tribes and the State shall enforce the subpoenas in the same manner as prescribed by the laws of the Tribes and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action.

c. The Board may appoint technical experts.

d. The parties to the controversy may present evidence and cross examine any witnesses.

e. The Board shall determine the controversy and order any appropriate relief, including the installation of measuring devices and temporary relief, provided that, the Board shall have no power to award money damages or attorneys fees. The Board may assess costs, provided that, the Board may not assess costs against the Tribes or the State, or against the United States.

f. All Board decisions shall be by a majority of the Board, shall be in writing, and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board and on the Parties to this Compact.

g. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board to protect matters of individual privacy.

h. **Waiver of Immunity.** The Tribes and the State waive their respective immunities from suit, including for the appeal or judicial enforcement of Board decisions, to permit the resolution of disputes by the Fort Belknap - Montana Compact Board. Such waiver of immunity by the Tribes or the State shall not extend to any action for money damages, costs, or attorneys' fees.

i. **Review and Enforcement of Board Decisions.**

(1) Decisions by the Board are effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only parties to the proceedings before the Board or the United States may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of service of such decision. The hearing on appeal by any party except the United States (unless otherwise provided by Congress) shall be on the record. The United States may seek a trial de novo on appeal. The notice of appeal shall be filed with the Board and served personally or by registered mail on all parties to the proceeding before the Board.

(2) Unless appeal is filed within thirty (30) days of a final decision of the Board, the decision shall be recognized and enforced by any court of competent jurisdiction on petition of: the Board; any party before the Board in the proceeding in which the decision was made; the State; the Tribes, or the United States.

(3) A court of competent jurisdiction in which a timely appeal is filed or in which a petition to confirm or enforce a decision by the Board is filed, may order such temporary or permanent relief as it determines to be appropriate.

(4) Any appeal may be taken from a decision of the court in which an appeal from a Board decision is filed or in which a petition to confirm or enforce a decision of the Board is filed, in the manner and to the same extent as from orders of judgments of the court in a civil action.

(5) In any appeal from a Board decision or petition to confirm or enforce a Board decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of the filing of the appeal or petition.

**E. Administration of the Milk River to Satisfy the Tribal Water Right.**

**1. Operation of the Milk River to Satisfy the Tribal Water Right.**

a. Delivery of water on the mainstem of the Milk River shall include measures necessary to assure

satisfaction of the Tribal Water Right.

b. To SATISFY THE TRIBAL WATER RIGHT, INCLUDING TO replace water depleted on tributaries to the Milk River excluding Peoples Creek, and water depleted on the mainstem of the Milk River upstream from the Western Crossing through exercise of water rights Arising Under State Law, the Milk River Project storage facilities shall be operated to release ORBYPASS the water necessary to assure satisfaction of the water right set forth in Section A.1.a. of Article III, subject to the following conditions:

(1) The Tribes shall notify the Bureau of Reclamation or its successor as operator of the Milk River Project and any water commissioner appointed following petition by the Parties pursuant to Section B.3. of Article VII, or any other person or entity, when the Tribes seek release or bypass of water to satisfy the water right set forth in Section A.1.a. of Article III. The obligation of the Bureau of Reclamation ends with the release or bypass. Enforcement necessary to deliver the water to the Reservation shall be pursuant to this Compact.

(2) The amount of water released or bypassed to satisfy the water right set forth in Section A.1.a. of Article III shall not exceed the lesser of:

i. 645 Cfs; or

ii. the Calculated Undepleted Flow of the Milk River calculated pursuant to Section E.2. of this Article IV, modified to reflect any agreement or adjudication between the Blackfoot Tribe and the Fort Belknap Indian Community of the Fort Belknap Reservation on allocation of water from the Milk River to the Blackfoot Tribe, to the extent such agreement or adjudication affects the Calculated Undepleted Flow of the Milk River; or

iii. the amount and flow rate of water the Tribes can actually divert for use, storage, or diversion under an agreement for Transfer at the time of their notice to the Bureau of Reclamation and any water commissioner.

(3) In assuring satisfaction of the Tribal Water Right, the operators of the Milk River Project storage facilities shall use their best efforts to operate those facilities consistent with the criteria developed pursuant to Section C.11. of this Article IV. Provided, however, that any effort to maximize the amount of storage within the Milk River Basin or to comply with the operating criteria developed pursuant to Section C.11. of this Article IV shall not diminish or alter the obligations contained in Sections E.1.a. and b. of this Article IV to assure satisfaction of the Tribal Water Right.

## **2. Calculated Undepleted Flow of the Milk River.**

a. The determination of the Calculated Undepleted Flow of the Milk River at the point where the Milk River intersects the diversion point on the Reservation shall be done by the United States Bureau of Reclamation, in consultation with DNRC and TWRD, with review by the U.S.G.S. pursuant to the formula set forth in Appendix 4.

b. The amount of the United States' Share of the Natural Flow of the Milk River available for the Tribes shall be modified as necessary to reflect any agreement between the Blackfeet Tribe and the Fort Belknap Indian Community of the Fort Belknap Reservation on allocation of water from the Milk River, or adjudication of the Blackfeet Tribe's reserved water rights.

c. The Calculated Undepleted Flow of the Milk River may be modified pursuant to Appendix 4. and such modification shall not be considered a modification of the Compact.

#### ARTICLE V - DISCLAIMERS AND RESERVATION OF RIGHTS

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

1. Except as provided in Sections A.2.a. of Article III, the relationship between the Tribal Water Rights of the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community, Tribal members, and Allottees on the Fort Belknap Reservation described in this Compact and any rights to water of any other Indian tribe, tribal member, or Indian owner of trust lands claiming water under federal or tribal law, or of the United States on behalf of such tribe, tribal member, or Indian owner of trust lands, shall be determined by the rule of priority unless otherwise agreed to by such tribe, tribal member, or Indian owner of trust lands, or the United States on behalf of such tribe, tribal member, or Indian owner of trust lands.

2. Nothing in this Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of the rights to water of any other Indian tribes, tribal members, or Indian owner of trust land of other Indian tribes outside of the Fort Belknap Reservation.

3. Except as provided in Sections C., D., and E. of Article IV and Section B.3. of Article VII pertaining to administration in the Milk River Basin, nothing in this Compact is otherwise intended to affect a right or claim of an Indian Tribe other than the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation.

4. Except as provided in Sections C., D. and E, of Article IV and Section B.3. of Article VII pertaining to administration in the Milk River Basin, nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent, or manner of administration of the rights to water of the United States on federal lands outside the Fort Belknap Reservation.

##### B. **General Disclaimers.** Nothing in this Compact may be construed or interpreted:

1. As a precedent for the litigation of reserved water rights;
2. As a precedent for the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;
3. Except as provided in Section I. of Article III closing certain basins to new appropriations under State

law, to preclude the acquisition or exercise of a right Arising Under State Law to the use of water by any Allottee or member of the Tribes outside the Reservation by purchase of such right or by application to the State in accordance with state law;

4. To determine the relative rights inter sese of Persons using water under the authority of the State or the Tribes;

5. To limit in any way the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Compact;

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

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

8. To prejudge how, in any interstate apportionment, the Tribal Water Right shall be counted;

9. To constitute a waiver of sovereign immunity by the Tribes or State except as is expressly set forth in this Compact;

10. To constitute a waiver of sovereign immunity by the United States except as expressly set forth in 43 U.S.C. §666 (1952);

11. To prohibit the Tribes, Tribal members, or Allottees, or the United States on behalf of the Tribes, Tribal members, or Allottees except as agreed to in Appendix 3, or the United States in any other capacity from objecting in any general stream adjudication in Montana Water Court to any claims to water rights;

12. Except as provided by Congress, to prevent the Tribes, or the United States on behalf of the Tribes, from filing an action in a court of competent jurisdiction to prevent any Person or Party from interfering with the Tribes in the enjoyment of the Tribal Water Right;

13. To affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the Tribe, Tribal members, or Allottees, or the State or state water right holders, or the United States or the United States Bureau of Reclamation;

14. To modify any portion of Article VI of the "Treaty Between the United States and Great Britain Relating to Boundary Waters, and Questions Arising Between the United States and Canada," January 11 1909, and ratified by the Senate on May 13, 1910, 36 Stat. 2455, and the Order of the International Joint Commission on October 4, 1921 pertaining to "In the matter of the Measurement and Apportionment of the Waters of the St. Mary and Milk Rivers and their Tributaries in the State of Montana and the Provinces of Alberta and Saskatchewan;"

15. To prevent the Tribes from participating in any project to import water to, or improve storage in the Milk River Basin; or

16. To modify or prevent modification of the Memorandum of Agreement between the Bureau of



Reclamation and the Office of Indian Affairs Milk River Project Montana, I-1-Ind. 18725, July 8, 1946.

17. To prevent the water court from adjudicating claims to water rights Arising Under State Law on fee land within the Reservation.

18. Except as expressly provided herein, to modify the obligation of any agency of the United States pursuant to federal law.

19. To limit the ability of the State, the Tribes, or the United States to enforce any state, tribal, or federal laws or any common law rights relating to the protection of the environment.

20. To limit any existing, present, or future claims of the Tribes or the United States on behalf of the Tribes concerning water quality.

**C. Obligations of the United States Contingent.**

1. Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on ratification and necessary authorization by Congress.

2. The expenditure or advance of any money or the performance of any work by the United States or the Tribes pursuant to this Compact which may require appropriation of money by Congress or allotment of funds is contingent on such appropriation or allotment being made.

3. The State and the Tribes recognize that this Compact has not been approved by the United States or any agency thereof and ratification by the Montana legislature or ratification by the Tribal Council in no manner binds or restricts the discretion of the United States in the negotiation of all related matters.

**D. Obligations of the State Contingent.** The expenditure or advance of any money or the performance of any work by the State pursuant to this Compact which may require appropriation of money by the Montana Legislature or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

**A. St. Mary Diversion Facilities.** The Parties agree that the delivery of water through the facilities of the Milk River Project at least at its existing or design capacities, and especially the St. Mary Diversion Facilities for diversion of water to the Milk River and use downstream from the Eastern Crossing, is essential to the permanent success of the Compact and the finality of the reserved water rights settlement and to the continued irrigation of lands in the Milk River Project. The Parties further understand and agree that the facilities of the Milk River Project, especially the St. Mary Diversion Facilities, are old and are in need of repair, rehabilitation, and to the extent feasible, restoration to their original design capacities. In recognition of the essential nature of the Milk River Project facilities, especially the St. Mary Diversion Facilities, the Parties agree to work with the United

States, the Blackfeet Tribe, and the Milk River Project water users to obtain the necessary authorization and funding for the repair, rehabilitation, and restoration of the St. Mary Diversion facilities. The Parties agree that this Compact and its federal legislation may or may not be the appropriate means to fund this project. The Parties further agree that any discussion of the repair, rehabilitation, and restoration of the St. Mary Diversion facilities as part of the negotiation of the federal legislation ratifying this Compact shall be preceded by an invitation to the Blackfeet Tribe to participate as a party in such discussions.

**B. Mitigation of Impacts on the Milk River Project.**

1. The Parties agree that, as a result of development and use of the Tribal Water Right and protection of water use on tributaries, the Milk River Project and its water users will, at times, be adversely affected if no change is made to the Milk River System. The Parties agree that hydrologic and engineering analyses have identified the impacts and have demonstrated that such impacts can be mitigated through a number of alternatives. The Parties agree that such alternatives, together with such other alternatives as may be identified by the Parties or any other person or entity and by the Bureau of Reclamation, are currently included or will be included in the Bureau of Reclamation's Milk River Basin Regional Feasibility Study, authorized by Congress in Public Law 106-163, and will receive appropriate environmental analyses in that Study. The Parties further agree that funding for water efficiency improvements (Watershed Improvements) and water banking will be included in the total funding for the Compact. In addition to funding for voluntary efficiency improvements and for water banking, mitigation measures authorized and funded as a part of the Compact must mitigate at least to the level of 35,000 Acre-feet Per Year, or a larger amount on agreement by the Parties if information or improved modeling available at the time of completion of the Milk River Basin Regional Feasibility Study indicates that more is necessary for mitigation based on full development of the Tribal Water Right on the Milk River and tributary protection as contemplated in Section A.1. of Article III. The Parties agree to seek establishment of a fund and a schedule for incremental development of mitigation measures to assure that such measures are in place when needed to prevent impact from development of the Tribal Water Right. Mitigation measures identified by the Parties to be studied in the Feasibility Study include the following:

- a. Pumped storage from the Milk River to Nelson Reservoir;
- b. Enlargement of the storage capacity of Nelson Reservoir through the construction of a secondary dam or dike dividing the Reservoir into two separate controllable storage facilities;
- c. Rehabilitation and restoration of the St. Mary Diversion Facilities;
- d. Enlargement of Fresno Dam and Reservoir to restore storage capacity lost by siltation and obtain additional storage capacity;

e. Construction of a dam and reservoir on lower Peoples Creek on the Reservation and on other tributaries to the Milk River, including Thirtymile Creek;

f. Construction of new facilities to import water to the Milk River Basin, including but not limited to: the Virgelle diversion, direct importation from Lake Elwell; and importation from the Missouri River or Fort Peck Reservoir to Vandalia via Duck Creek;

g. Construction of facilities to improve the water quality of the Fish and Wildlife Service's Bowdoin National Wildlife Refuge and to allow the use of Bowdoin as a storage facility for mitigation of impacts of the Compact;

h. Such other mitigation alternatives which the Parties may identify to be included in the Bureau of Reclamation's Milk River Basin Regional Feasibility Study, or additional studies agreed to by the Parties.

2. On completion of the Milk River Basin Regional Feasibility Study, the Bureau of Reclamation, in consultation with the irrigation districts and the Parties, shall select the appropriate mitigation measures.

**C. Upper Peoples Creek Dam and Reservoir.** The Parties agree that, as a result of the protections provided to the Upper Peoples Creek water users in the Compact and the variable natural water supply in the Peoples Creek Basin, the water supply available for development of the Tribal Water Right in Peoples Creek may be limited. The Parties agree that such impacts can and shall be mitigated, in whole or in part, through the construction of a dam and reservoir for the benefit of the Tribes in the upper Peoples Creek Basin, if a dam and reservoir is determined to be feasible from an engineering, geologic, and environmental analysis. Accordingly, the Parties agree to seek authorization of appropriations, appropriations, and a schedule for development of a dam and reservoir on Peoples Creek for the benefit of the Tribes.

**D. State Contribution to Settlement.** The Parties agree that the State contribution to settlement shall be negotiated by the State, the Tribes, and the United States as part of the negotiations on the Federal legislation. The agreement to, expenditure, or advance of any State contribution which may require authorization and appropriation of money by the Montana Legislature or allotment of funds is contingent on such appropriation or allotment being made. Any local contribution to cost share shall be allocated to all Persons that benefit from the protections provided by the Compact.

**E. Federal Contribution to Settlement.** The Parties agree that the federal contribution to settlement shall be negotiated by the State, the Tribes, and the United States as part of the negotiations on the Federal legislation.

**F. State Lands on the Reservation.** The Parties agree to work together in the future to obtain the authorization necessary to exchange State lands on the Reservation for federal lands off the Reservation, and

that any State lands acquired by the United States in an exchange shall be held in trust for the Tribes.

**G. Project Lands.** The Parties agree to work together to facilitate land classification and reclassification in the Milk River Project.

#### ARTICLE VII - FINALITY

##### **A. Ratification and Effectiveness of Compact.**

1. This Compact becomes Effective on the latest of the dates it is ratified by the Tribes, the State and by Congress. Following the first ratification by any party, the terms of this Compact may not be modified without the consent of the Parties. In the event of permanent or long term loss of the continued operation of the St. Mary Diversion facilities for diversion of water to the Milk River and use downstream from the Eastern Crossing, either due to loss, or to reallocation of water on agreement by the Parties, the Parties agree to enter negotiations on alternative remedies to supply water to portions of the Reservation served from the Milk River and to water rights Arising Under State Law within the Milk River Project. Minor loss or reallocation of water from the St. Mary Diversion facilities shall not be considered a permanent or long term loss. Until satisfactory completion of the above referenced negotiation or litigation and construction of water supply facilities to remedy the long term loss of the continued operation of the St. Mary Diversion facilities, the Tribes' diversion right from the Milk River shall be the amount developed for diversion at the time of the failure. All other provisions of the Compact shall remain in place. Should the Parties fail to reach agreement on alternative remedies within five (5) years of the permanent or long term loss of the continued operation of the St. Mary Diversion facilities, the Parties may seek a remedy in court for opening of the decree and adjudication of the portion of the Tribal Water Right in the Milk River Basin 40J. In opening the decree, there shall be no question of the validity of the Tribes' right to water currently developed.

2. Notwithstanding any other provision in this Compact, the Tribes reserve the right to withdraw as a party if:

a. Congress has not ratified this Compact and authorized appropriations within five (5) years from the date the Compact is ratified by the State;

b. The Tribes and United States do not reach agreement on the federal contribution to settlement; or

c. Appropriations are not made in the manner contemplated by the federal legislation ratifying this Compact.

d. The Parties do not reach agreement on the State contribution to settlement.

e. The State has not authorized appropriations within three (3) years from the date the Compact is ratified by the United States.

f. Appropriations are not made by the State in the manner contemplated by any agreement for contributions to settlement made pursuant to Section D. of Article VI of this Compact.

3. The Tribes may exercise their right to withdraw from the Compact under Section A.2. of Article VII of the Compact by sending to the Governor of Montana and to the Secretary of the Interior by certified mail a resolution of the Fort Belknap Community Council stating the Tribes' intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any party.

4. Improvements to the Milk River Project to mitigate the impact of potential development of the Tribal Water Right and of tributary protection is essential to the agreement of the State to this Compact. Thus, notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a party if:

a. The Tribes and Congress have not ratified this Compact within five (5) years from the date the Compact is ratified by the State;

b. Congress requires a State contribution to settlement that exceeds the contribution authorized by the Montana Legislature or the contribution agreed to by the Parties if Congressional authorization precedes authorization by the Montana Legislature without the agreement of the State; or

c. Congress does not authorize and appropriate the federal share of funding for the modifications to the Milk River Project or other alternatives necessary to mitigate the impact of development of the Tribal Water Right as outlined generally in Section B. of Article VI, as enacted in the federal legislation ratifying this Compact and such modifications or other alternatives are not constructed

5. The State may exercise its right to withdraw from the Compact under Section A.4. of this Article VII of the Compact by sending to the Fort Belknap Tribal Chair and to the Secretary of the Interior by certified mail a letter from the Governor of Montana stating the intent of the State to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the letter. In considering exercise of the right to withdraw, the Governor shall consult with Persons affected by this Compact including the Milk River Joint Board of Control. On the date designated in the letter for State withdrawal, this Compact shall become null and void without further action by any party.

**B. Incorporation into Decrees.**

1. Within one hundred eighty (180) days of the date this Compact is ratified by the Tribes, the State, and Congress, whichever is latest, the Tribes, and/or the State, and/or the United States shall file, in the general stream adjudication initiated by the State pursuant to the provisions of §85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust

for the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community and Tribal members of the Fort Belknap Reservation. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of §85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666 or other provisions of federal law.

2. Consistent with §3-7-224, MCA, and for the purposes of §85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, and Appendix 1, and may extend to other Sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III as displayed in Appendix 1, and such other information as may be required by §85-2-234, MCA. Nevertheless, pursuant to §85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

3. Concurrent with filing of the motion for entry of the proposed decree, the Parties shall seek appointment of a water commissioner or commissioners pursuant to Title 85, Chapter 2, Parts 1-3 of the Montana Code Annotated in the appropriate state district court pursuant to §85-2-406, MCA, and as set forth in Appendix 1, to enforce water use pursuant to decrees of the Water Court, permits issued by DNRC, contracts issued by the BOR, and use pursuant to Tribal law, from the mainstem of the Milk River downstream from the Eastern Crossing pursuant to this Compact, federal, Tribal, and State law, and the final decrees. The Parties shall ask the district court to stay the appointment pending issuance of preliminary decrees on the Milk River Basin downstream from the Eastern Crossing. The request for appointment of a water commissioner by the Parties shall be sufficient to meet the requirements of §85-5-101, MCA pertaining to the persons who may request appointment of a water commissioner. Notwithstanding the requirement of yearly appointment of a water commissioner under state law, the Parties shall seek, and the district court may appoint, a permanent water commissioner or commissioners. The petition by the Parties does not preclude the right of any Person to seek appointment of a water commissioner or enforcement of water rights pursuant to applicable law.

4. The Parties agree to seek a mechanism for funding the Tribal share of the cost of the water commissioner or commissioners in the federal legislation ratifying the Compact.

5. Water users with rights to divert water from the mainstem of the Milk River downstream from the Eastern Crossing under authority of State, federal or Tribal law, shall notify the water commissioner within a reasonable period in advance of a need to divert water.

6. Any Person authorized to use water from the mainstem of the Milk River Basin downstream from the

Eastern Crossing objecting to the distribution of water by the water commissioner, or to a use of water by another Person, may use the remedies provided by § 85-5-301, MCA.

7. In the distribution of water, the water commissioner or commissioners shall be bound by the decrees of the water court, however, the commissioner or commissioners may use the databases developed pursuant to Section C.3.d. of Article IV to facilitate understanding of the distribution of water within a particular water right.

8. Nothing in this Compact shall prevent the holders of water rights Arising Under State Law or Tribal Water Rights with a source on the mainstem of the Milk River below the Eastern Crossing from agreeing to an alternative water distribution plan that allows sharing of shortages, distribution of shortage, operation of storage, or exchange of storage in a manner other than priority. Such agreement shall be enforced by the court appointing the water commissioner.

#### **C. Disposition of Federal Suit.**

1. On issuance of a final decree by the Montana Water Court or its successor, and the completion of any direct appeals therefrom, or on expiration of the time for filing any such appeal, the United States, the Tribes, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.R.Civ.P., to dismiss without prejudice the claims of the Tribes, Tribal members, and Allottees and any claims made by the United States for benefit of the Tribes, Tribal members, and Allottees in *United States v. Aageson*, No. CIV-79-21-GF (filed April 5, 1979). The case may only be resumed if the State or Tribes exercise their rights under Section A. of this Article VII.

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

#### **D. Settlement of Tribal Water Right Claims.**

1. The water rights and other benefits confirmed to the Tribes in this Compact are in full and final satisfaction of and are intended to be in replacement of and substitution for all claims to water or to the use of water by the Tribes, Tribal members, and Allottees and the United States on behalf of the Tribes, Tribal members, and Allottees existing on the Effective Date of this Compact, including federal reserved water rights claims based on or recognized in *Winters v. United States*, 207 U.S. 564 (1908), within the State of Montana.

2. In consideration of the rights confirmed to the Tribes, Tribal members, and Allottees in this Compact, and of performance by the State and the United States of all actions required by this Compact, and on entry of a final order issuing the decree of the Tribal Water Right held in trust by the United States as quantified in this

Compact and displayed in Appendix 1, and except for water rights, benefits and uses confirmed in this Compact, the Tribes and the United States as trustee for the Tribes, Tribal members, and Allottees hereby waive, release, and relinquish any and all claims to water rights or to the use of water within the State existing on the Effective Date of this Compact.

3. Any claim to water by the Tribes, Tribal members, or Allottees within the Reservation shall be satisfied out of the Tribal Water Right confirmed by this Compact.

**E. Settlement of Tribal Claims Against the United States.** Waiver of claims against the United States, by the Tribes and Tribal members shall be as provided by Congress.

**F. Binding Effect.** After the Effective Date of this Compact and entry of a final decree, its terms shall be binding on:

1. The State and any Person or entity using, claiming or in any manner asserting any right under the authority of the State to the use of water in Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. The Tribes and any Person or entity using, claiming or in any manner asserting any right to the use of the Tribal Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribes or Tribal members, or any rights arising under tribal law; provided that, the validity of consent, ratification or authorization by the Tribes is to be determined by Tribal law; and

3. The United States and any Person or entity using, claiming or in any manner asserting any right under the authority of the United States to the use of water in Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law;

#### ARTICLE VIII - LEGISLATION/DEFENSE OF COMPACT

**A. State Legislation.** The State and Tribes agree to seek ratification of the Compact by the Montana Legislature and any additional state legislation necessary to effectuate the Compact.

**B. Federal Legislation.** The State and Tribes agree to seek ratification of the Compact by Congress and any additional federal legislation necessary to effectuate the Compact.

**C. Tribal Legislation.** The State and Tribes agree to seek ratification of the Compact by the Fort Belknap Community Council and any Tribal legislation necessary to effectuate the Compact.

**D. Defense of the Compact.** The Parties agree to defend the Compact from all challenges and attacks and in all proceedings pursuant to Sections B. and C. of Article VII, and agree that no provision of the Compact shall be modified as to substance except as may be provided in the Compact, or by agreement among the Parties.



IN WITNESS WHEREOF the representatives of the State of Montana, the Fort Belknap Indian Community of the Fort Belknap Reservation, and the United States, have signed this Compact on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**NEW SECTION. Section 2. Findings and purpose.** (1) It is the policy of the state to seek negotiated settlements of federal and Indian reserved water rights claims in Montana under Title 85, chapter 2, part 7.

(2) Pursuant to this policy, the reserved water rights compact commission commenced negotiations with the Gros Ventre and Assiniboine Tribes which compose the Fort Belknap Indian Community of the Fort Belknap Reservation and the United States.

(3) A compact, [section 1], has been agreed to between the state of Montana and the Fort Belknap Indian Community of the Fort Belknap Reservation that, among other things, provides an allocation of water to the tribes in settlement of their water right claims and provides protection for certain water rights arising under state law. Approval of the compact by the United States requires ratification by congress.

(4) (a) For purposes of implementing the compact, [sections 2 through 8]:

(i) establish accounts necessary to meet certain obligations agreed to in the compact;

(ii) provide a structure for the issuance of grants and loans; and

(iii) provide for the facilitation of the development of an economic development plan.

(b) Funding for the accounts established under [sections 4, 5, and 7] is subject to state and federal cost-share negotiations, approval of state cost-share by the legislature, and approval of federal cost-share by the United States congress.

(5) The state's obligation to provide funding to implement the compact and to satisfy the state's cost-share, once approved by the legislature, must be conditioned on:

(a) final court approval of a decree of the water rights of the tribes as set forth in Article VII, sections B. through D., of the compact; and

(b) validity of the compact under Article VII, section A., of the compact.

(6) Funds appropriated to accounts established under [sections 4, 5, and 7] and interest on appropriated funds are not available for expenditure unless the conditions, provided in subsection (5), are met.

(7) If a court does not approve a final decree, if the compact becomes null and void, or if one of the parties withdraws from the compact, the funds appropriated by the state to accounts established in [sections 4, 5, and 7] must revert to the general fund and any federal funds must be returned to the United States treasury. If a portion of the funding or interest on funding provided in [sections 4, 5, and 7] has been expended prior to the

return of funds to the general fund, any claim against the state by the tribes or by the United States on behalf of the tribes for adjudication of the water rights of the tribes must be offset by the amount of the expenditures of state funds or interest on state funds.

NEW SECTION. Section 3. Definitions. The definitions provided for in [section 1] apply to [sections 2 through 8]. THE ABSENCE OF CAPITALIZATION OF DEFINED TERMS IN [SECTIONS 2 THROUGH 8] DOES NOT AFFECT THE MEANING OR APPLICATION OF A DEFINED TERM.

NEW SECTION. Section 4. Mitigation account. (1) An expendable trust account, called the mitigation account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds appropriated by the state for mitigation measures required by Article VI of the compact.

(2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the mitigation account must be made available to the United States bureau of reclamation to cover the state's cost-share for construction of mitigation measures chosen on completion of a feasibility study and appropriate state and federal environmental review by the bureau of reclamation and on consideration of the economic development plan authorized by [section 8].

NEW SECTION. Section 5. Watershed improvement trusts. (1) A nonexpendable trust fund account, called the state Milk River watershed improvement trust, is established, as provided for in 17-2-102, for deposit of funds appropriated pursuant to the compact for a permanent trust. Interest income may be used by the Milk River coordinating committee established pursuant to the compact for the purpose of allocating grants and loans.

(2) A nonexpendable trust fund account, called the federal Milk River watershed improvement trust, is established, as provided for in 17-2-102, for receipt of federal funds appropriated for a permanent trust. Interest income may be used by the Milk River coordinating committee established pursuant to the compact for the purpose of allocating grants and loans.

(3) The state and federal Milk River watershed improvement trusts must be collectively referred to as the Milk River watershed improvement trusts.

NEW SECTION. Section 6. Terms and conditions of loan. A Milk River watershed improvement trusts loan is subject to the following terms and conditions:

(1) Except for loan agreements with an Indian tribe, the DNRC shall obtain a security interest in real

estate that would be obtained by a reasonable, careful, and prudent lender.

(2) A current appraisal of real estate offered as security and a commitment for title insurance on that land must be secured by the borrower at the borrower's expense. All costs incident to the loan and loan closing must be paid by the borrower.

(3) For a loan agreement with an Indian tribe, security must be pursuant to the appropriate federal authority to secure a loan on trust land, and with an allottee, security must be pursuant to 25 U.S.C. 483A.

(4) The term of the loan may not be greater than the life of the project and may not exceed 30 years.

**NEW SECTION. Section 7. Peoples Creek minimum flow account.** (1) An expendable trust account, called the Peoples Creek minimum flow account, is established, as provided for in 17-2-102, for deposit of funds and interest on funds appropriated by the state for efficiency improvements and bypass structures for irrigation upstream from the Fort Belknap Reservation in the Peoples Creek Basin 40I and for a reservoir on the Reservation for the purpose of improving minimum stream flow.

(2) On approval of a final decree pursuant to Article VII of the compact, the funds and interest on funds in the Peoples Creek minimum flow account must be made available to the water users and the tribes to cover the cost of construction of improvements as agreed to in the state and federal cost-share negotiations.

**NEW SECTION. Section 8. Economic development plan.** (1) The DNRC is directed to facilitate development of an economic development plan focused on future use of water and currently irrigated land, including but not limited to use of water and irrigated land for irrigation, industrial, recreational, fisheries, and habitat purposes in the Milk River basin.

(2) The Milk River regional feasibility study examines alternative measures for mitigation of impacts of development of the tribal water right for the purpose of determining feasibility and environmental impact. The purpose of the economic development plan is to supplement the federal studies and provide information to assist in choosing mitigation measures by examining the long-term economic potential of water use in the Milk River basin.

(3) At a minimum, the DNRC shall include irrigation districts, individual irrigators, conservation districts, county governments, and municipalities in the development of the economic development plan.

**NEW SECTION. Section 9. Appropriation of funds for economic development plan.** There is appropriated to the department of natural resources and conservation from the general fund \$50,000 in the 2003

biennium for the purpose of facilitating the development of the economic development plan provided for in [section 8].

NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [sections 1 through 9].

- END -