

Senate BILL NO. 337

INTRODUCED BY

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A BILL FOR AN ACT ENTITLED: "AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT AMONG THE STATE OF MONTANA, THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S INDIAN RESERVATION, AND THE UNITED STATES OF AMERICA."

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

**NEW SECTION. Section 1. Chippewa Cree Tribe-Montana compact ratified.** The compact entered into by the State of Montana and the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702 on [date of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION

UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Chippewa Cree Tribe of the Rocky Boy's Reservation, and the United States of America for the purpose of settling any and all existing water rights claims of the Chippewa Cree Tribe in the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1979, the United States, on behalf of the Chippewa Cree Tribe of the Rocky Boy's Reservation, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribe's 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 Tribe; see, "the McCarran Amendment", 43 U.S.C. §666 (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

1 of Chapter 697, Laws of Montana 1979, which includes Chippewa Cree tribal water rights; and

2 WHEREAS, the United States has filed claims on behalf of the Chippewa Cree Tribe in the general  
3 stream adjudication initiated by the State of Montana; and

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

7 WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana  
8 State court water adjudication proceedings, see, 721 F.2d 1189; and

9 WHEREAS, the adjudication of Chippewa Cree tribal water rights in the state court proceedings has  
10 been suspended while negotiations are proceeding to conclude a compact resolving all water rights claims  
11 of the Chippewa Cree Tribe within the State of Montana; and

12 WHEREAS, the Chippewa Cree Business Committee, or its duly designated representatives, have  
13 authority to negotiate this Compact pursuant to §1(a), of Article VI of the Tribal Constitution; and

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

17 WHEREAS, the Secretary of the Interior, or a duly designated official of the United States  
18 Department of the Interior, has authority to execute this Compact on behalf of the United States  
19 Department of the Interior pursuant to 43 U.S.C. Section 1457 (1986), inter alia; and

20 WHEREAS, the Chippewa Cree Tribe, the State of Montana, and the United States agree that the  
21 Tribal Water Right described in this Compact shall be in satisfaction of the Tribe's water rights claims within  
22 the State of Montana; and

23 WHEREAS, it is in the best interest of all parties that the water rights claims of the Chippewa Cree  
24 Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United  
25 States;

26 NOW THEREFORE, the parties agree to enter into this Compact for the purpose of settling the water  
27 rights claims of the Chippewa Cree Tribe within the State of Montana.

## 28 ARTICLE II - DEFINITIONS

29 The following definitions shall apply for purposes of this Compact:

30 1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a depth of one

1 foot and is equivalent to 43560 cubic feet.

2 2. "Adverse effect" means an interference with the reasonable exercise of a water right.

3 3. "Acre feet per year" or "AFY" means the quantity of water to which the Tribe has a right each  
4 year measured in acre feet over a period of a year.

5 4. "Ancestral Missouri River Channel Aquifer" means that material deposited by the Missouri River  
6 prior to Pleistocene glaciation, and glacial deposits underlying post-glacial alluvial deposits in the River valley  
7 that are sufficiently permeable to conduct groundwater and to yield water to wells. This aquifer is located  
8 in the valley of Big Sandy Creek at a depth of 150 feet or more beneath the surface of the ground as shown  
9 in Appendix 11 and described in USGS Water Supply Paper 1460-B, Swenson, Frank, "Geology and  
10 Ground-Water Resources of the Lower Marias Irrigation Project Montana," (1957).

11 5. "Beaver Creek Drainage" means Beaver Creek and its tributaries from its headwaters to the  
12 confluence with the Milk River, as shown in Appendices 5 and 6.

13 6. "Big Sandy Creek Basin" means the mainstem of Big Sandy Creek and its tributaries (exclusive  
14 of Sage Creek and Lonesome Lake) in Water Court Basin 40H from the headwaters to the confluence with  
15 the Milk River, as shown in Appendices 5 and 6.

16 7. "Board" means the Chippewa Cree - Montana Compact Board established by Section D. of  
17 Article IV of this Compact.

18 8. "Bonneau Reservoir" means the water impoundment as shown in Appendix 6, including the  
19 existing storage capacity and the proposed expanded storage capacity, and for which a water right is  
20 described in Article III of this Compact.

21 9. "Box Elder Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach  
22 of Box Elder Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

23 10. "Brown's Reservoir" means the proposed water impoundment as shown in Appendix 6,  
24 including the existing storage capacity and the proposed expanded storage capacity, and for which a water  
25 right is described in Article III of this Compact.

26 11. "Bypass" means the designated streamflow around or through a diversion.

27 12. "Camp Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach  
28 of Camp Creek from its headwaters to its confluence with Duck Creek, as shown in Appendix 6.

29 11. "Change in use" means a change in the point of diversion, the place of use, the purpose of  
30 use, or the place or means of storage.

1           14. "Consumptive use" means use of water other than a "non-consumptive use" as defined in this  
2 Article.

3           15. "Continuously store" or "continuous storage" means the right to fill and then continually refill  
4 the active storage capacity of an impoundment from the natural flow of the source on which the  
5 impoundment is located.

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

8           17. "Drainage Stipulation" means an agreement entered into between and among the Tribe, the  
9 United States acting in its capacity as trustee for the Tribe, and one or more signatory non-tribal water  
10 users for entry as a stipulation in Montana Water Court. Drainage stipulations are set forth in Appendix  
11 2.

12           18. "Drainage of Origin" means the drainage in which the water initially arises. See Appendix 6  
13 showing drainage area boundaries.

14           19. "Duck Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of  
15 Duck Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

16           20. "East Fork Reservoir" means the proposed water impoundment as shown in Appendix 6,  
17 including the existing storage capacity and the proposed expanded storage capacity, and for which a water  
18 right is described in Article III of this Compact.

19           21. "Evaporative Loss" means reduction in the quantity of water due to the process of evaporation  
20 and shall be three (3) acre feet per surface acre rounded off as set forth in Article III.

21           22. "Fish and Wildlife Enhancement" means the use of water to improve existing habitat for fish  
22 and wildlife use, protection, conservation or management through physical or operational modifications of  
23 impoundments, within the areas designated in Appendix 4.

24           23. "Gorman Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach  
25 of Gorman Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

26           24. "Gravel Coulee Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach  
27 of Gravel Coulee from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

28           25. "Groundwater" means any water that is beneath the ground surface.

29           26. "Hydrologically Connected" means the interconnection of groundwater and surface water such  
30 that they constitute one water supply and use of either results in an impact to both.

1           27. "Lake Elwell" means the water impounded on the Marias River by Tiber Dam.

2           28. "Lonesome Lake Coulee" means the mainstem of Lonesome Lake Coulee and its tributaries in  
3 Water Court Basin 40H from its headwaters to its confluence with Big Sandy Creek, as shown in  
4 Appendices 5 & 6.

5           29. "Lower Big Sandy Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing  
6 the reach of Big Sandy Creek below its confluence with Box Elder Creek as shown in Appendix 6.

7           30. "Minimum Pool" means the quantity of water in an impoundment, as measured in acre-feet, or  
8 by the water surface elevation in feet above sea level, that is not available for release for designated water  
9 uses.

10          31. "MR&I Water" means water for use for municipal, rural, industrial, domestic, and incidental  
11 drought relief purposes on the Reservation.

12          32. "Municipal/Domestic Uses" means water for domestic, public, commercial and industrial uses.

13          33. "Net Depletion" means the difference between the quantity of water diverted from a source and  
14 the quantity of water returned to the same source at or near the point of diversion.

15          34. "New reserved water rights" means any reserved water rights created with acquisition of land  
16 by the Tribe or the United States to be held in trust by the United States for the Tribe, after the date of  
17 ratification of this Compact by the State and the Tribe, whichever is later.

18          35. "Non-consumptive use" means a use of water that does not cause a reduction in the source  
19 of supply and in which substantially all of the water returns without delay to the source of supply, causing  
20 little or no disruption in stream or groundwater conditions.

21          36. "Non-Irrigation Water Uses" means the use of water for purposes other than the production of  
22 agricultural commodities, such as, but not limited to domestic, livestock, fish and wildlife, and recreational  
23 uses, including development of golf courses.

24          37. "Parties" means the Tribe, the State of Montana, and the United States.

25          38. "Person" means an individual or any other entity, public or private, including the State, the Tribe  
26 and the government of the United States and all officers, agents, and departments thereof.

27          39. "Ratification date" means the date on which the Compact is finally approved by the Business  
28 Committee of the Chippewa Cree Tribe, by the Montana Legislature, and by the Congress of the United  
29 States, whichever date is latest.

30          40. "Recognized under state law" when referring to a water right means a water right arising under

1 state law, but does not include water rights arising under federal law.

2 41. "Release" means (verb) to discharge water from storage, or (noun) the discharge of water from  
3 storage.

4 42. "Reservation" means the Rocky Boy's Reservation and includes all lands and interests in lands  
5 which are held in trust by the United States for the Chippewa Cree Tribe, including future additions to the  
6 Reservation.

7 43. "Sage Creek" means the main stem of Sage Creek and its tributaries in Water Court Basin 40G  
8 from the headwaters to the confluence with Big Sandy Creek, as shown in Appendices 5 and 6.

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

11 45. "Shallow Alluvium Aquifer" means the material deposited by flowing water generally during,  
12 or after Pleistocene glaciation that is sufficiently permeable to conduct groundwater and to yield water to  
13 wells and springs.

14 46. "State" means the state of Montana and all officers, agents, departments, and political  
15 subdivisions thereof.

16 47. "Stockwatering" means the storage and use of water for the purpose of providing water to  
17 domesticated animals and wildlife.

18 48. "Stoneman Farms" means the tribal agricultural projects shown in Appendix 6.

19 49. "Stoneman Reservoir" means the water impoundment, as shown in Appendix 6, including the  
20 existing storage capacity and the proposed expanded storage capacity, and for which a water right is  
21 described in Article III of this Compact.

22 50. "Subordinate" means to rank the priority in which a water right is fulfilled behind other specified  
23 water rights without regard to relative priority dates.

24 51. "Supplemental Irrigation Water" means water used for irrigation, as a secondary supply, once  
25 it becomes apparent that the primary supply will be unable to meet the full annual demand.

26 52. "Surface Acres" means the horizontal area in acres associated with the water surface in an  
27 impoundment when filled to the maximum capacity.

28 53. "Transfer" means (verb) to authorize a person to use all or any part of the Tribal Water Right  
29 through a service contract, lease, or other similar agreement of limited duration; (noun) a service contract,  
30 lease, or other similar agreement of limited duration authorizing the use of all or any part of the Tribal Water

1 Right.

2 54. "Tribal Water Resources Department" or "TWRD" means the Chippewa Cree Tribal Water  
3 Resources Department, or any successor agency.

4 55. "Tribal Water Right" means the right of the Chippewa Cree Tribe of the Rocky Boy's  
5 Reservation to divert, use, or store water as described by Article III of this Compact.

6 56. "Tribe" means the Chippewa Cree Tribe of the Rocky Boy's Reservation and all officers, agents  
7 and departments thereof.

8 57. "United States" means the federal government and all officers, agencies, departments, and  
9 political subdivisions thereof.

10 58. "Upper Big Sandy Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing  
11 the reach of Big Sandy Creek from its headwaters to its confluence with Box Elder Creek, as shown in  
12 Appendix 6.

13 59. "Volcanic Bedrock Aquifer" means those Tertiary igneous rock units that are sufficiently  
14 permeable to conduct groundwater and to yield water to wells and springs as shown in USGS  
15 Miscellaneous Geologic Investigations Map I-234, "Preliminary General Geologic Map of the Laredo  
16 Quadrangle, Bearpaw Mountains, Montana," and Map I-235, "Preliminary Geologic Map of the Centennial  
17 Mountain Quadrangle, Bearpaw Mountains, Montana," and shown as surface outcrop in Appendix 11.

#### 18 ARTICLE III - TRIBAL WATER RIGHT

19 A. Basin 40H: Big Sandy Creek Basin.

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

22 a. Quantification - Source - Volume.

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

1 fish and wildlife purposes, as set forth in Sections A.1.e.(3) and (4) of Article III.

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

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

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

15 (c) Groundwater. Of the 1690 AFY, the Tribe shall have the right to withdraw and use or permit  
16 the withdrawal and use of up to 445 AFY of groundwater in the Gravel Coulee and Lower Big Sandy Creek  
17 drainages in compliance with Section A.6.a. and b. of Article IV. The right to divert 445 AFY from  
18 groundwater to storage is not reduced by the amount of water diverted for irrigation or non-irrigation  
19 purposes from water derived from storage. Groundwater may be diverted to storage prior to application  
20 to any purposes allowed in Section A.1.e. of Article III without reducing the amount that can be applied  
21 to such purposes until such water is re-diverted from storage and applied to such purposes.

22 (i) Of the 445 AFY, 100 AFY may be appropriated from the shallow alluvium along Gravel Coulee  
23 and Lower Big Sandy Creek.

24 (ii) Of the 445 AFY, 345 AFY may be appropriated from the Ancestral Missouri River Channel  
25 Aquifer in the Gravel Coulee and Lower Big Sandy Creek drainages. Groundwater from the Ancestral  
26 Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation  
27 uses do not result in discharge of untreated water to land or surface water. Groundwater from the  
28 Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

29 b. Priority Date. The water rights to surface flow, groundwater, and storage as set forth in Section  
30 A.1. of Article III, for the Gravel Coulee and Lower Big Sandy drainages shall have a priority date of



1 September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and  
2 the drainage stipulations set forth in Appendix 2.

3 c. Period of Use. The period of use of this water right shall be from January 1 through December  
4 31 of each year.

5 d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the  
6 Tribe may divert or permit the diversion of this water right from any place and by any means on Lower Big  
7 Sandy Creek and Gravel Coulee drainages on the Reservation.

8 e. Purposes. The Tribe's right to 1690 AFY from the Gravel Coulee and Lower Big Sandy drainages  
9 may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the  
10 Tribe may make a change in use or transfer of the water identified for irrigation and non-irrigation purposes.

11 (1) Irrigation.

12 (a) Volume. 1380 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be  
13 used for irrigation.

14 (b) Source. The 1380 AFY for irrigation may come from a combination of direct flow, storage and  
15 groundwater in the Gravel Coulee and Lower Big Sandy drainages.

16 (c) Place of use. The 1380 AFY may be used to irrigate 540 acres at Stoneman Farms on the  
17 Reservation.

18 (2) Non-Irrigation.

19 (a) Volume. 100 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used  
20 for non-irrigation purposes.

21 (b) Source. The 100 AFY for non-irrigation purposes may come from a combination of direct flow,  
22 storage, and groundwater in the Gravel Coulee and Lower Big Sandy drainages.

23 (c) Point of diversion. The 100 AFY for non-irrigation purposes may be diverted on the Reservation  
24 within the Lower Big Sandy and Gravel Coulee drainages.

25 (3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gravel  
26 Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in  
27 use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an  
28 impoundment for stockwatering within the drainage of origin; and provided further that, the new point of  
29 diversion or place of use does not change to a place from upstream of to downstream of, or from  
30 downstream of to upstream of the location of the point of diversion of a water right recognized under state

1 law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date  
2 is later.

3 (a) Volume. 160 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used  
4 for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface  
5 acreage of impoundments shall not exceed 40 surface acres of impoundments on Lower Big Sandy drainage  
6 and 13 surface acres of impoundments on Gravel Coulee drainage. The Tribe shall have the right to  
7 continuously store water in these impoundments.

8 (b) Source.

9 i. Of the 160 AFY, 120 AFY for stockwatering may come from the direct flow of Lower Big Sandy  
10 Creek.

11 ii. Of the 160 AFY, 40 AFY for stockwatering may come from the direct flow of Gravel Coulee.

12 iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other  
13 than for a lined storage facility with a capacity of less than 0.5 AF.

14 (c) Place of use. The Tribal Water Right for stockwatering in the Gravel Coulee and Lower Big  
15 Sandy Creek drainages may be used in the drainage of origin, on the Reservation. The current stockwater  
16 impoundments are shown in Appendix 7.

17 (4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
18 wildlife enhancement in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The  
19 Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement;  
20 provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within  
21 the drainage of origin; and provided further that, the new point of diversion or place of use does not change  
22 to a place from upstream of to downstream of, or from downstream of to upstream of the location of the  
23 point of diversion of a water right recognized under state law with a priority date before the date the  
24 Compact is ratified by the State and the Tribe, whichever date is later.

25 (a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use  
26 measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed  
27 16 surface acres of impoundments in the Gravel Coulee and Lower Big Sandy Creek drainages. The Tribe  
28 shall have the right to continuously store water in these impoundments.

29 (b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gravel  
30 Coulee and Big Sandy Creek.

1 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
2 shown in Appendix 4 in the Gravel Coulee and Big Sandy Creek drainages, in the respective drainages of  
3 origin.

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

5 a. Quantification - Source - Volume.

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

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

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

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

1 (c) Groundwater. Of the 6940 AFY, the Tribe shall have the right to withdraw and use or to permit  
 2 the withdrawal and use of up to 1950 AFY of groundwater in the Box Elder Creek drainage in compliance  
 3 with Section A.6. of Article IV. Groundwater may be diverted to storage prior to application to any  
 4 purposes allowed in Section A.2.e. of Article III without reducing the amount that can be applied to such  
 5 purposes until such water is re-diverted from storage and applied to such purposes.

6 (i) Of the 1950 AFY, 180 AFY may be appropriated from the shallow alluvium in the Box Elder  
 7 Creek drainage.

8 (ii) Of the 1950 AFY, 230 AFY may be appropriated from the volcanic bedrock in the Box Elder  
 9 Creek drainage.

10 (iii) Of the 1950 AFY, 1570 AFY may be appropriated from the Ancestral Missouri River Channel  
 11 Aquifer; provided that, should water be imported to the Reservation, the entire 1950 AFY may be  
 12 appropriated from the Ancestral Missouri River Channel Aquifer. Water from the Ancestral Missouri River  
 13 Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not  
 14 result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri  
 15 River Channel Aquifer is a supplemental source for irrigation uses.

16 b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section  
 17 A.2. of Article III, for the Box Elder Creek drainage, including water supplied by Box Elder Creek for  
 18 off-stream storage, shall have a priority date of September 10, 1888, subject to the subordination  
 19 agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

20 c. Period of use. The period of use of this water right shall be from January 1 through December  
 21 31 of each year.

22 d. Points and Means of diversion. Subject to the terms and conditions set forth in Article IV, the  
 23 Tribe may divert or permit the diversion of this water right from any place and by any means in the Box  
 24 Elder Creek drainage on the Reservation.

25 e. Purposes. The Tribe's right to 6940 AFY in the Box Elder Creek drainage may be used for the  
 26 following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a  
 27 change in use or transfer of the water identified for irrigation, non-irrigation and municipal/domestic  
 28 purposes.

29 (1) Irrigation.

30 (a) Volume. 6280 AFY of water in the Box Elder Creek drainage may be used for irrigation.

1 (b) Source. The 6280 AFY for irrigation may come from a combination of direct flow, storage and  
2 groundwater. Water from the Ancestral Missouri River Channel Aquifer is a primary source for  
3 non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to  
4 land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental  
5 source for irrigation uses.

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

8 (2) Non-Irrigation.

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

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

14 (3) Municipal / Domestic.

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

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

- 18 i. 150 AFY from the shallow alluvium adjacent to Box Elder Creek.  
19 ii. 200 AFY from the volcanic bedrock.

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

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

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

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

7 (5) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
8 wildlife enhancement in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a  
9 change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the  
10 Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin;  
11 and provided further that, the new point of diversion or place of use does not change to a place from  
12 upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion  
13 of a water right recognized under state law with a priority date before the date the Compact is ratified by  
14 the State and the Tribe, whichever date is later.

15 (a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive  
16 use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not  
17 exceed 50 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to  
18 continuously store water in these impoundments.

19 (b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Box  
20 Elder Creek.

21 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
22 shown in Appendix 4 in the Box Elder Creek drainage, in the drainage of origin.

23 3. Camp Creek and Duck Creek Drainages - 280 AFY diversion.

24 a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 280  
25 AFY of water from the following sources where they occur on the Reservation in any combination up to  
26 the limits on each source and the total limit of 280 AFY:

27 (1) Direct Flow. Of the 280 AFY, the Tribe shall have the right to divert or use or permit the  
28 diversion or use of up to 230 AFY from Duck and Camp Creeks and their respective tributaries in the  
29 following proportions:

30 (a) 170 AFY from Duck Creek.

1 (b) 60 AFY from Camp Creek.

2 (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife  
3 enhancement purposes as set forth in Sections A.3.e.(2) and (3) of Article III.

4 (3) Groundwater. Of the 280 AFY, the Tribe shall have the right to withdraw and use or permit  
5 the withdrawal and use of up to 50 AFY of groundwater in the Camp and Duck Creek drainages on the  
6 Reservation, including groundwater that is hydrologically connected to surface water, in compliance with  
7 Sections A.6.a. and b. of Article IV. This right shall be exercised in the following proportions:

8 (a) 40 AFY from Duck Creek.

9 (b) 10 AFY from Camp Creek.

10 b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in  
11 Section A.3. of Article III, for the Camp and Duck Creek drainages shall have a priority date of September  
12 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage  
13 stipulations set forth in Appendix 2.

14 c. Period of Use. The period of use of this water right shall be from January 1 through December  
15 31 of each year.

16 d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the  
17 Tribe may divert or permit the diversion of this water right from any place and by any means in the Camp  
18 Creek and Duck Creek drainages on the Reservation.

19 e. Purposes. The Tribe's right to 280 AFY in the Camp and Duck Creek drainages may be used for  
20 the following purposes; provided that, the Tribe may not make a change in use or transfer that results in  
21 a change in the place of use, point of diversion or place or means of storage to a place outside the drainage  
22 of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the  
23 location of the point of diversion of a water right recognized under state law with a priority date before the  
24 date the Compact is ratified by the State and the Tribe, whichever date is later.

25 (1) Non-irrigation.

26 (a) Volume. 50 AFY of water in the Camp and Duck Creek drainages may be used for non-irrigation  
27 purposes.

28 (b) Source. The 50 AFY for non-irrigation purposes may come from groundwater including  
29 groundwater that is hydrologically connected to surface water in the Camp and Duck Creek drainages.

30 (c) Place of use. The Tribal Water Right for non-irrigation purposes in Camp and Duck Creek

1 drainages may be used in the drainage of origin on the Reservation.

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

9 (a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by  
10 evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 19 surface  
11 acres of impoundments in the Camp Creek drainage and 23 surface acres of impoundments on Duck Creek  
12 drainage. The Tribe shall have the right to continuously store water in these impoundments.

13 (b) Source.

14 i. Of the 130 AFY, 60 AFY for stockwatering may come from the direct flow of Camp Creek.

15 ii. Of the 130 AFY, 70 AFY for stockwatering may come from the direct flow of Duck Creek.

16 iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other  
17 than for a lined storage facility with a capacity of less than 0.5 AF.

18 (c) Place of use. The Tribal Water Right for stockwatering in the Camp and Duck Creek drainages  
19 may be used in the drainage of origin on the Reservation. The current stockwater impoundments are shown  
20 in Appendix 7.

21 (3) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
22 wildlife enhancement in the Camp and Duck Creek drainages is a consumptive use. The Tribe may not  
23 make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that,  
24 the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of  
25 origin; and provided further that, the new point of diversion or place of use does not change to a place from  
26 upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion  
27 of a water right recognized under state law with a priority date before the date the Compact is ratified by  
28 the State and the Tribe, whichever date is later.

29 (a) Volume. 100 AFY of water may be used for fish and wildlife enhancement as a consumptive  
30 use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not



1 exceed 34 surface acres of impoundments in the Camp and Duck Creek drainages. The Tribe shall have  
2 the right to continuously store water in these impoundments.

3 (b) Source. The 100 AFY for fish and wildlife enhancement may come from the direct flow of  
4 Camp and Duck Creeks.

5 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
6 shown in Appendix 4 in the Camp and Duck Creek drainages, in the drainage of origin.

7 4. Gorman Creek Drainage - 60 AFY diversion.

8 a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 60  
9 AFY of water from the following sources where they occur on the Reservation in any combination up to  
10 the limits on each source and the total limit of 60 AFY.

11 (1) Direct Flow. Of the 60 AFY, the Tribe shall have the right to divert or use or permit the  
12 diversion or use of up to 60 AFY from Gorman Creek and its tributaries.

13 (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife  
14 enhancement purposes as set forth in Sections A.4.e.(1) and (2) of Article III.

15 b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in  
16 Section A.4. of Article III, for the Gorman Creek drainage shall have a priority date of September 7, 1916,  
17 subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations  
18 set forth in Appendix 2.

19 c. Period of use. The period of use of this water right shall be from January 1 through December  
20 31 of each year.

21 d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the  
22 Tribe may divert or permit the diversion of this water right from any place and by any means in the Gorman  
23 Creek drainage on the Reservation.

24 e. Purposes. The Tribe's right to 60 AFY in the Gorman Creek drainage may be used for the  
25 following purposes; provided that, the Tribe may not make a change in use or transfer that results in a  
26 change in the place of use, point of diversion or place or means of storage to a place outside the drainage  
27 of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the  
28 location of the point of diversion of a water right recognized under state law with a priority date before the  
29 date the Compact is ratified by the State and the Tribe, whichever date is later.

30 (1) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gorman

1 Creek drainage is a consumptive use. The Tribe may not make a change in use or transfer of the water  
2 right for stockwatering; provided that, the Tribe may repair or relocate an impoundment for stockwatering  
3 within the drainage of origin; and provided further that, the new point of diversion or place of use does not  
4 change to a place from upstream of to downstream of, or from downstream of to upstream of the location  
5 of the point of diversion of a water right recognized under state law with a priority date before the date the  
6 Compact is ratified by the State and the Tribe, whichever date is later.

7 (a) Volume. 10 AFY of water in the Gorman Creek drainage may be used for stockwatering as a  
8 consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments  
9 shall not exceed 3 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the  
10 right to continuously store water in these impoundments.

11 (b) Source. The 10 AFY for stockwatering may come from the direct flow of Gorman Creek.  
12 Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for  
13 a lined storage facility with a capacity of less than 0.5 AF.

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

17 (2) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
18 wildlife enhancement in the Gorman Creek drainage is a consumptive use. The Tribe may not make a  
19 change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the  
20 Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin;  
21 and provided further that, the new point of diversion or place of use does not change to a place from  
22 upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion  
23 of a water right recognized under state law with a priority date before the date the Compact is ratified by  
24 the State and the Tribe, whichever date is later.

25 (a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use  
26 measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed  
27 17 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the right to  
28 continuously store water in these impoundments.

29 (b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of  
30 Gorman Creek.

1 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
2 shown in Appendix 4 in the Gorman Creek drainage, in the drainage of origin.

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

4 a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 290  
5 AFY of water from the following sources where they occur on the Reservation in any combination up to  
6 the limits on each source and the total limit of 290 AFY.

7 (1) Direct Flow. Of the 290 AFY, the Tribe shall have the right to divert or use or permit the  
8 diversion or use of up to 240 AFY from the direct flow of Upper Big Sandy Creek and its tributaries;

9 (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife  
10 enhancement purposes as set forth in Sections A.5.e.(3) and (4) of Article III.

11 (3) Groundwater. Of the 290 AFY, the Tribe shall have the right to withdraw and use or permit  
12 the withdrawal and use of up to 50 AFY of groundwater in the Upper Big Sandy Creek drainage including  
13 groundwater that is hydrologically connected to surface water, in compliance with Section A.6.a. and b.  
14 of Article IV.

15 b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in  
16 Section A.5. of Article III, for the Upper Big Sandy Creek drainage shall have a priority date of September  
17 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage  
18 stipulations set forth in Appendix 2.

19 c. Period of use. The period of use of this water right shall be from January 1 through December  
20 31 of each year.

21 d. Points and means of diversion. The Tribe may divert or permit the diversion of this water right  
22 from any place and by any means in the Upper Big Sandy Creek drainage on the Reservation; provided that,  
23 the Tribe may not construct or permit the construction of a diversion or diversions with a total capacity in  
24 excess of 100 gpm for the irrigation water right with a source on Upper Big Sandy Creek Drainage. This  
25 diversion limit also applies to any change(s) of use of this right.

26 e. Purposes. The Tribe's right to 290 AFY in the Upper Big Sandy Creek drainage may be used  
27 for the following purposes; provided that, the Tribe may not make a change in use or transfer that results  
28 in a change in the place of use, point of diversion or place or means of storage to a place outside the  
29 drainage of origin, or to a place upstream of to downstream of, or from downstream of to upstream of the  
30 location of the point of diversion of a water right recognized under state law with a priority date before the

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

2 (1) Non-Irrigation.

3 (a) Volume. 50 AFY of water in the Upper Big Sandy Creek drainage may be used for non-irrigation  
4 purposes.

5 (b) Source. The 50 AFY for non-irrigation purposes may come from groundwater, including  
6 groundwater that is hydrologically connected to surface water, in the Upper Big Sandy Creek drainage on  
7 the Reservation.

8 (c) Place of use. The 50 AFY for non-irrigation purposes may be used on the Reservation within  
9 the drainage of origin.

10 (2) Irrigation.

11 (a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for irrigation.

12 (b) Source. The 45 AFY for irrigation may come from direct flow of Upper Big Sandy Creek on the  
13 Reservation.

14 (c) Place of use. The 45 AFY may be used to irrigate 10 acres in the drainage of origin, on the  
15 Reservation.

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

23 (a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for  
24 stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage  
25 of impoundments shall not exceed 15 surface acres of impoundments in the Upper Big Sandy Creek  
26 drainage. The Tribe shall have the right to continuously store water in these impoundments.

27 (b) Source. The 45 AFY for stockwatering may come from the direct flow of Upper Big Sandy  
28 Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other  
29 than for a lined storage facility with a capacity of less than 0.5 AF.

30 (c) Place of use. The Tribal Water Right for stockwatering in the Upper Big Sandy Creek drainage

1 may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are  
2 shown in Appendix 7.

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

11 (a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive  
12 use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not  
13 exceed 50 surface acres of impoundments in the Upper Big Sandy drainage. The Tribe shall have the right  
14 to continuously store water in these impoundments.

15 (b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of  
16 Upper Big Sandy Creek.

17 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
18 shown in Appendix 4 in the Upper Big Sandy Creek drainage, in the drainage of origin.

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

21 1. Quantification - Source - Volume.

22 a. Storage. The Tribe shall have the right to continuously store, or permit the continuous storage  
23 in East Fork Reservoir of up to a capacity of 665 AF from the natural flow of the East Fork of Beaver Creek.  
24 Subject to the 665 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 390  
25 AFY from the direct flow of the West Fork of Beaver Creek for storage in East Fork Reservoir as set forth  
26 in Section B.1.b. of Article III. The quantity impounded by continuous storage of the East Fork of Beaver  
27 Creek, shall not decrease the 390 AFY, which the Tribe has a right to divert from storage in East Fork  
28 Reservoir for non-irrigation purposes set forth in Section B.5.a. of Article III; provided that, the limit of 260  
29 AFY on net depletion shall apply. In addition to the storage right set forth in this section, the Tribe shall  
30 have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in

1 Sections B.5.b. and c. of Article III.

2 b. Diversion. The Tribe shall have the right to divert 740 AFY of water in the Beaver Creek  
3 drainage from a combination of direct flow, storage and groundwater where they occur on the Reservation  
4 up to the limits on each source and the total limit of 740 AFY.

5 (1) Direct Flow. Of the 740 AFY, the Tribe shall have the right to divert or permit the diversion  
6 of up to 540 AFY from the direct flow of Beaver Creek and its tributaries on the Reservation. 390 AFY of  
7 the water from direct flow may be diverted to storage prior to application to any purposes allowed in  
8 Section B.5.a. of Article III without reducing the amount that can be applied to those purposes until such  
9 water is re-diverted from storage and applied to such purposes.

10 (2) Storage. The Tribe shall have the right to divert 390 AFY for non-irrigation purposes from water  
11 stored in East Fork Reservoir. The right to divert 390 AFY from the West Fork of Beaver Creek to storage  
12 is not reduced by the amount of water diverted for non-irrigation purposes from water derived from storage.

13 (3) Groundwater.

14 (a) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal  
15 and use of up to 120 AFY of groundwater including groundwater that is hydrologically connected to surface  
16 water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. Groundwater may be  
17 diverted to storage prior to application to any purposes allowed in Section B.5.a. of Article III without  
18 reducing the amount that can be applied to these purposes until such water is re-diverted and applied to  
19 such purposes.

20 (b) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal  
21 and use of an additional 200 AFY of groundwater from the volcanic bedrock aquifer and other aquifers that  
22 are not hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section  
23 A.6.a. of Article IV. The limit of 260 AFY on net depletion set forth in B.1.a.(2) of Article III, shall not  
24 apply to groundwater use pursuant to this section. Groundwater may be diverted to storage prior to  
25 application to any purposes allowed in Section B.5.a. of Article III without reducing the amount that can  
26 be applied to these purposes until such water is re-diverted and applied to such purposes.

27 c. Net Depletion. Of the 740 AFY diverted, the Tribe shall have a right to a net depletion of 260  
28 AFY in the Beaver Creek drainage. The calculation of net depletion shall not include evaporative loss from  
29 fish and wildlife habitat, from stockwatering, or from East Fork Reservoir, and use of groundwater that is  
30 not hydrologically connected to surface water.

1           2. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in  
2 Section B. of Article III, for the Beaver Creek drainage shall have a priority date of September 7, 1916,  
3 subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations  
4 set forth in Appendix 2.

5           3. Period of use. The period of use of this water right shall be from January 1 through December  
6 31 of each year.

7           4. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the  
8 Tribe may divert or permit the diversion of this water right from any place and by any means in the Beaver  
9 Creek drainage on the Reservation.

10          5. Purposes. The Tribe's right to water in the Beaver Creek drainage may be used for the following  
11 purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in  
12 use or transfer of the water identified for non-irrigation purposes.

13           a. Non-Irrigation

14           (1) Volume. 590 AFY of water in the Beaver Creek drainage may be used for non-irrigation  
15 purposes; provided that, the net depletion may not exceed 260 acre-feet per year in accordance with  
16 Section B.1.c. of Article III.

17           (2) Source. The 590 AFY for non-irrigation in the Beaver Creek drainage may come from a  
18 combination of direct flow, storage and groundwater.

19           (3) Place of use. The 590 AFY for non-irrigation may be used in the Beaver Creek drainage on the  
20 Reservation.

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

28           (1) Volume. 40 AFY of water in the Beaver Creek drainage may be used for stockwatering as a  
29 consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments  
30 shall not exceed 13 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the

1 right to continuously store water in these impoundments.

2 (2) Source. The 40 AFY for stockwatering may come from the direct flow of Beaver Creek on the  
3 Reservation. Water for stockwatering may not be diverted from a perennial stream for off-stream storage  
4 other than for a lined storage facility with a capacity of less than 0.5 AF.

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

8 c. Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
9 wildlife enhancement in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change  
10 in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may  
11 repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and  
12 provided further that, the new point of diversion or place of use does not change to a place from upstream  
13 of to downstream of, or from downstream of to upstream of the location of the point of diversion of a  
14 water right recognized under state law with a priority date before the date the Compact is ratified by the  
15 State and the Tribe, whichever date is later.

16 (1) Volume. 110 AFY of water may be used for fish and wildlife enhancement as a consumptive  
17 use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not  
18 exceed 35 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the right to  
19 continuously store water in these impoundments.

20 (2) Source. The 110 AFY for fish and wildlife enhancement may come from the direct flow of  
21 Beaver Creek.

22 (3) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the  
23 areas shown in Appendix 4 in the Beaver Creek drainage, in the drainage of origin.

24 C. Additional Development of Water.

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

27 1. Subject to Section A.6.a. and b. and Section A.7.d. of Article IV, the Tribe may, as part of the  
28 Tribal Water Right, develop or permit the development of groundwater on the Reservation in addition to the  
29 amounts specified in Sections A. and B. of Article III, from new sources or from expanded use of existing  
30 sources. The priority date of such new appropriation shall be the date of development, and notwithstanding



1 any other provision of this Compact, may only be used in priority with other water rights.

2 2. The Tribe may impound or permit the impoundment of surface water for stockwatering purposes  
3 in addition to the amounts set forth in Sections A. and B. of Article III; provided that the priority date of  
4 the new appropriation shall be the date of development and, notwithstanding any other provision of this  
5 Compact, may only be used in priority with other water rights; and further provided that, the maximum  
6 capacity of the impoundment or pit is less than 15 AF and the appropriation is less than 30 AFY and is from  
7 a source other than a perennial flowing stream. The Tribe may not transfer or make a change in use of the  
8 stockwater right obtained pursuant to this section.

9 3. On the acquisition of land after the Compact is ratified by the State and the Tribe, whichever  
10 date is later, the Tribe has the right to the use of any water right acquired as an appurtenance to the land.  
11 Such right shall become part of the Tribal Water Right in addition to the amount set forth in Article III of  
12 this Compact and shall be subject to the terms of this Compact; provided that, the right shall retain the  
13 priority date of the acquired right. The Tribe will notify DNRC of any acquisition of water in the Tribe's  
14 annual report and will identify the water right acquired.

15 4. The Tribe shall be entitled to use any new reserved water rights that may be created with  
16 acquisition of land after the Compact is ratified by the State and the Tribe, whichever date is later; provided  
17 that, in any drainage with a moratorium on new state permits pursuant to Section A.7.a. of Article IV, the  
18 Tribe shall defer exercise of new reserved water rights, if any, until the moratorium is lifted at which time  
19 the Tribe has the first right to use the excess water in accordance with Section A.7.b. of Article IV. The  
20 priority date of the excess water shall be the date of acquisition of the land.

21 5. After the ratification date of the Compact, the Tribe shall have the right to acquire  
22 off-Reservation water rights separate from acquisition of the land to which such water rights are  
23 appurtenant; provided that, water from the Tribal Water Right is not available for economic or other  
24 reasons; and provided further that, the rights shall retain the priority date held by the prior owner of the  
25 rights. Such rights shall become part of the Tribal Water Right and shall thereby become subject to  
26 Sections A.4.b.(1) and (2) of Article IV.

27 6. As a part of the Tribal Water Right, the Tribe shall be entitled to an allocation of 10,000 AFY  
28 of stored water in Lake Elwell, measured at the dam, for use or disposition by the Tribe for any beneficial  
29 purpose, either on or off the Reservation, pursuant to the terms of this Compact; provided that, such  
30 allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this

1 Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or  
2 of persons holding such reserved water rights through that tribe or through the United States. Any use or  
3 disposition of water from Lake Elwell off the Reservation by the Tribe is subject to the specific provisions  
4 relating to such use or disposition in any act of Congress ratifying this Compact.

5 D. Proposed Decree.

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

8 ARTICLE IV - IMPLEMENTATION OF TRIBAL WATER RIGHT

9 A. General Provisions.

10 1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United  
11 States for the benefit of the Tribe.

12 2. Tribal Water Right: Administration. Subject to the limitations imposed by this Compact and  
13 other federal law, the use of the Tribal Water Right shall be administered by the Tribe through the TWRD  
14 both on and off of the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth  
15 in D.4. of Article IV, concerning off-Reservation use of the Tribal Water Right which raise issues  
16 concerning the application of state or federal law shall be resolved in a court of competent jurisdiction.  
17 Those disputes concerning off-Reservation use of the Tribal Water Right which do not raise issues  
18 concerning the application of state or federal law will be within the exclusive jurisdiction of the Tribe.  
19 Subject to the limitations imposed by this Compact, the Tribe shall have the final and exclusive jurisdiction  
20 to resolve all disputes concerning the Tribal Water Right between users of the Tribal Water Right. The  
21 TWRD will, among other activities, develop policies and procedures for monitoring water use, diversions,  
22 and maintaining records of water use and development consistent with this Compact. The current and  
23 future water use and diversions will be identified by location and quantity. Final storage capacities will be  
24 based on project as-built plans, and will store no more than the water right set forth in Article III of this  
25 Compact. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water  
26 code, which shall be developed and adopted by the Tribe within two (2) years following the ratification date  
27 of this Compact pursuant to any requirements set forth in the Constitution of the Chippewa Cree Tribe.  
28 Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right  
29 shall be by the Secretary of the Interior.

30 3. Use.

1 a. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe,  
2 or persons authorized by the Tribe.

3 b. Effect of Non-Use of Tribal Water Rights. Except as specifically provided herein, state law  
4 doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture or  
5 abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right  
6 described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.

7 4. Change in Use or Transfer.

8 a. On-Reservation Changes in Use or Transfer of the Tribal Water Right. Unless otherwise stated  
9 in this Compact, the Tribe may make a change in use or transfer of a water right set forth in Article III of  
10 this Compact on the Rocky Boy Reservation, including the use of water salvaged through the application  
11 of water-saving methods to expand irrigation, provided that:

12 (1) for each source quantified in Article III, any change in use or transfer shall not result in uses  
13 that exceed the water amount quantified for that source;

14 (2) any change in use or transfer shall not result in an increase in net depletion in the Beaver Creek  
15 drainage in excess of the amount specified for that source;

16 (3) any change in use or transfer shall not have an adverse effect on a water right recognized under  
17 state law with a priority date before the date of the change or transfer; and

18 (4) any change in use or transfer shall not change the source of the water involved in any such  
19 changes.

20 (5) The Tribe may not make a change in use or transfer of any water rights set forth in Article III  
21 for the purposes of stockwatering or fish and wildlife enhancement; provided that, the Tribe may repair or  
22 relocate an impoundment for stockwatering or fish and wildlife enhancement within the drainage of origin;  
23 and provided further that, the new point of diversion or place of use does not change to a place from  
24 upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion  
25 of a water right recognized under state law with a priority date before the date the Compact is ratified by  
26 the State and the Tribe, whichever date is later.

27 (6) The Tribe may not make a change in use or transfer any of the water rights set forth in Article  
28 III with a source on the drainages of Upper Big Sandy Creek, Camp Creek, Duck Creek and Gorman Creek  
29 that results in a change in the place of use, point of diversion or place or means of storage of the water  
30 outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to

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

3 (7) The Tribe may make a change in use or transfer of the irrigation water right with a source in  
4 Upper Big Sandy Creek set forth in Article III so long as it does so within the diversionary limits set forth  
5 in Section A.5.d of Article III; provided that, the net depletion shall not exceed 30 AFY.

6 b. Off-Reservation Changes in Use or Transfer of the Tribal Water Right. Except as may be  
7 otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or permit a change in  
8 use or a transfer of the Tribal Water Right for use off the Reservation; provided that, any transfer shall be  
9 for a term of not to exceed 100 years, and may include provisions authorizing renewal for an additional  
10 term of not to exceed 100 years; and provided further that, no such transfer shall be a permanent alienation  
11 of the water transferred; and provided further that, no transfer or change in place of use shall be made to  
12 a location outside the watershed that forms the Missouri River drainage; and provided further that, if the  
13 Tribe receives a good faith offer from a third person from outside the Milk River drainage to acquire use of  
14 specified Tribal water rights and the Tribe is willing to accept the terms of the offer, the Tribe, before  
15 accepting the offer, shall allow water users in the Milk River drainage the opportunity to acquire use of such  
16 rights at the same price and on the same terms and conditions as those contained in the offer. Any change  
17 in use or transfer of any such water right involving a point of diversion or place of use located off the  
18 Reservation shall be considered an off-Reservation use; provided that, any off-Reservation use of Tribal  
19 water rights described in this Compact shall not be deemed to convert such rights to rights arising under  
20 state law, and nonuse of such rights off the Reservation shall not constitute a relinquishment, forfeiture,  
21 or abandonment of the rights; and provided further that, releases or diversions from Lake Elwell for use on  
22 the Reservation shall not be considered off-Reservation uses. The Tribe may change the point of diversion  
23 or purpose or place of use of the Tribal Water Right back to the Reservation without reduction in the  
24 amount of water provided in the Compact.

25 (1) Applicable Law. No person may initiate an off-Reservation use, change in use, or transfer of  
26 a Tribal water right set forth in this Compact without first applying for and receiving authorization for the  
27 use, change in use, or transfer pursuant to Montana law in effect at the time of the application. Approval  
28 of an application for a use, change in use or transfer off the Reservation by the State shall be conditioned  
29 on a valid Tribal permit for such use, change in use or transfer by the Tribe. The applicant shall provide  
30 DNRC with proof of a valid Tribal permit prior to initiating the use, change in use, or transfer.

1           (2) Diversion Facilities. With respect to diversion or transportation facilities located off the  
2 Reservation which are to be used in connection with the exercise of a water right set forth in this Compact,  
3 the Tribe or persons using such water rights shall apply for all permits, certificates, variances and other  
4 authorizations required by state laws regulating, conditioning or permitting the siting, construction,  
5 operation, alteration or use of any equipment, device, facility or associated facility proposed to use or  
6 transport water. A diversion or use of water in the exercise of such water rights may be made only after  
7 all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been  
8 obtained.

9           (3) Subsequent Federal or State Law. All off-Reservation uses of Tribal water rights set forth in  
10 this Compact shall comply with the requirements set forth in Section A.4.b.(1) and (2) of Article IV until  
11 such time as the statutory or common law of the United States or the State of Montana establish that  
12 off-Reservation uses of Indian water rights may occur without regard to state law.

13           c. Placement and Size Survey. Placement and size of stockwater impoundments and fish and  
14 wildlife enhancement areas shall be surveyed by the TWRD every five (5) years commencing one (1) year  
15 after the ratification date of this Compact. The initial survey method shall be through use of data obtained  
16 by aerial photography or an acceptable quantitative substitute with accuracy and verification equal to or  
17 greater than photography. The method may be modified by agreement between the TWRD and the DNRC.  
18 Such modification is pursuant to and shall not be deemed a modification of this Compact. The TWRD shall  
19 provide the DNRC with a completed survey for review within six (6) months of initiation of the survey.

20           d. Net Depletion Table. Net depletion for Tribal water uses in Beaver Creek drainage shall be as  
21 set forth in the table attached as Appendix 9 to this Compact. The TWRD and the DNRC may jointly agree  
22 to modify this initial table. Such modification is pursuant to, and will not be deemed a modification of, this  
23 Compact.

24           5. Reporting requirements.

25           a. On an annual basis the DNRC shall provide the Tribe and the United States with a listing of all  
26 new uses of surface and groundwater for which a permit has been issued by the DNRC in the Big Sandy  
27 and Beaver Creek drainages, and of any change in use or transfer of surface water or groundwater  
28 approved by the DNRC in the Big Sandy and Beaver Creek drainages since the last report.

29           b. On an annual basis the TWRD shall provide the State and the United States with a listing of all  
30 new development of the water rights described in this Compact, the net depletion in the Beaver Creek

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

4 c. The TWRD, the DNRC, and the United States may agree to modify the reporting requirements  
5 set forth in subsections a. and b. of this section. Such modification is pursuant to, and will not be deemed  
6 a modification of, this Compact.

7 6. Groundwater.

8 a. New Groundwater Development Without Adverse Effect.

9 (1) Limits on Additional Development of Groundwater from Sources on the Reservation. After the  
10 ratification date of this Compact, the Tribe may develop or permit the development of groundwater;  
11 provided that, such development is without an adverse effect on water rights recognized under state law  
12 with a priority date before the date of development of the new appropriation.

13 (2) Prerequisite Administrative Remedy. The following procedure for determining whether new  
14 development of groundwater will have an adverse effect on existing groundwater rights recognized under  
15 state law shall be followed prior to seeking relief from the Compact Board:

16 (a) Application for development of a groundwater use on the Reservation shall be made to the  
17 TWRD.

18 (b) The TWRD shall review the application and make a determination of whether the new use will  
19 have an adverse effect on existing water rights recognized under state law with a priority date before the  
20 application date. Upon request by the TWRD, the DNRC shall provide information on existing state water  
21 rights as recorded in the DNRC database to the TWRD.

22 (c) If the TWRD determines that the new development will have an adverse effect on a water right  
23 recognized under state law with a priority date before the application date, the TWRD shall deny the  
24 application. If the TWRD determines that the new development will not have an adverse effect on a water  
25 right recognized under state law with a priority date before the application date, the TWRD shall forward  
26 the application with its determination to the DNRC.

27 (d) If, based upon the evidence, DNRC agrees with the TWRD's determination, the application will  
28 be approved. If, however, based upon the evidence, the DNRC cannot agree with the determination of the  
29 TWRD, DNRC shall publish notice, of the application once in a newspaper of general circulation in the area  
30 of the source and shall serve notice by first-class mail on any appropriator of water or holder of a permit

1 who, according to the records of the department, has a water right with a priority date before the  
2 application date, and may be affected by the proposed development.

3 (e) DNRC and the TWRD should attempt to resolve any disagreement on the determination of no  
4 adverse effect by the TWRD on a cooperative basis. If the DNRC or a holder of a water right recognized  
5 under state law with a priority date before the application date disagree with the determination of no  
6 adverse effect, DNRC or the water users may seek relief from the Compact Board.

7 (f) In any proceeding concerning the effect of new groundwater development on the Reservation  
8 either before the TWRD, the DNRC, or before the Compact Board, the following shall apply:

9 (i) 1 - 150 Feet Wells: For new Tribal groundwater wells completed at a depth beneath the surface  
10 of 1 to 150 feet, the Tribe shall bear the burden of showing no adverse effect to groundwater uses  
11 recognized under state law with a priority date before the application date.

12 (ii) 150 Feet or Deeper Wells: For Tribal groundwater wells completed at a depth beneath the  
13 surface of 150 feet or deeper, the owner of a water right recognized under state law with a priority date  
14 before the application date shall bear the burden of showing any adverse effect to the water right.

15 b. Groundwater Development Exempt From The Showing Of No Adverse Effect. The following  
16 wells are exempt from the requirement of showing no adverse effect:

17 (1) Existing Tribal wells are exempt from the burden to show no adverse effect. The Tribe may  
18 develop existing wells, or replacements therefor, to their full capacity. The primary municipal and domestic  
19 wells are listed in Appendix 8. A comprehensive list of existing wells will be kept on file in TWRD offices  
20 as per the requirement to list existing uses in Section A.5. of Article IV.

21 (2) New Tribal groundwater wells producing from the Volcanic Bedrock Aquifer may be developed  
22 without a showing of no adverse effect.

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

27 7. Moratorium.

28 a. New State Permits. With the exceptions listed in subsection (1) of this section, the DNRC shall  
29 not process or grant an application for a permit to appropriate water from a source in the Big Sandy Creek  
30 Basin (excluding Sage Creek and Lonesome Lake Coulee), and in the Beaver Creek drainage after the date

1 this Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee,  
2 whichever date is later. This moratorium shall remain in effect for a minimum of 10 years and shall only  
3 be lifted pursuant to the procedures set forth in Section A.7.b of Article IV. This moratorium is not  
4 intended to apply to applications for change in appropriation under state law.

5 (1) The moratorium shall not apply to the following appropriations:

6 (a) an appropriation of groundwater by means of a well or developed spring with a maximum  
7 appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year unless the appropriation  
8 is a combined appropriation from the same source from two or more wells or developed springs exceeding  
9 the limitation;

10 (b) an appropriation of water for use by livestock if the maximum capacity of the impoundment or  
11 pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source  
12 other than a perennial flowing stream;

13 (c) an appropriation of groundwater from any deep aquifer not hydrologically connected to surface  
14 water.

15 (2) Within 120 days following the date the moratorium takes effect, the DNRC shall publish notice  
16 of the moratorium once in a newspaper of general circulation in the area of the source and shall serve  
17 notice by first-class mail on all appropriators of water or holders of permits who, according to the records  
18 of the department, have a water right with a source in the affected drainages.

19 (3) The moratorium applies only to new permits issued under state law and is not a limit on new  
20 development of the Tribal Water Right as set forth in this Compact.

21 b. Lifting of Moratorium. After 10 years, the Tribe or an individual seeking to appropriate water  
22 in the affected drainages may petition the DNRC for removal of the moratorium, or the DNRC may initiate  
23 proceedings to lift a moratorium on its own initiative. The DNRC shall comply with the following procedure  
24 in making a determination as to whether water is available in excess of the Tribal Water Right and rights  
25 recognized under state law. The DNRC and TWRD may agree to modify procedures or provide additional  
26 procedures. Such modification is pursuant to and shall not be deemed to be a modification of the Compact.

27 (1) Proceedings initiated by TWRD.

28 (a) The TWRD shall have sixty (60) days following the filing of the petition requesting that the  
29 moratorium be lifted to provide the DNRC with data supporting its petition to lift the moratorium.

30 (b) Within sixty (60) days following the receipt of the data supporting TWRD's petition, the DNRC



1 shall determine whether to lift the moratorium, and shall notify the TWRD of its determination and the  
2 grounds therefor. The TWRD shall be allowed reasonable access to any data relied upon by the DNRC for  
3 its determination.

4 (c) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the  
5 TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The  
6 moratorium shall continue pending Compact Board proceedings and any appeal

7 (2) Proceedings initiated by DNRC.

8 (a) The DNRC may, on request by a water user or on its own initiative, commence proceedings to  
9 determine whether to lift a moratorium.

10 (b) The DNRC shall notify the TWRD of the commencement of proceedings to determine whether  
11 to lift the moratorium and shall submit to the TWRD all data in support of the proceedings at the same time  
12 or as soon after such data becomes available as practical or shall give the TWRD reasonable access to such  
13 data within the same time frame.

14 (c) The TWRD shall be given sixty (60) days following receipt of the data in support of the  
15 proceedings to submit to the DNRC a statement of the Tribe's position concerning the issue along with any  
16 supporting data and argument.

17 (d) The DNRC shall notify the TWRD of its determination and the grounds therefor within sixty (60)  
18 days of receipt of the Tribe's statement.

19 (e) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the  
20 TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The  
21 moratorium shall continue pending Compact Board proceedings and any appeal.

22 c. Excess Water. If the moratorium is lifted pursuant to the procedure described in A.7.b. of Article  
23 IV, the Tribe shall have the first right to use the excess water for the purpose of fulfilling new reserved  
24 water rights, if any, on land acquired after the ratification date of this Compact, but before the date the  
25 moratorium is lifted. The excess water used by the Tribe shall become part of the Tribal Water Right and  
26 may be transferred or stored pursuant to Section A.4.a. of Article IV.

27 d. Limit on New Tribal Groundwater Development. In any drainage with a moratorium, new Tribal  
28 groundwater development pursuant to Section C.1. of Article III, by a well or developed spring from an  
29 aquifer that is hydrologically connected to surface water shall be limited to a maximum appropriation or  
30 combined appropriation from two or more wells or developed springs in a single drainage defined by this

1 Compact to 35 gallons per minute or less, not to exceed 10 acre-feet per year.

2 8. Mutual Subordination. To reduce the need for daily administration of water use on and off the  
3 Reservation, water rights shall not be administered in priority, but shall be satisfied according to the  
4 following agreements.

5 a. Subordination to Non-Tribal Water Rights Upstream of the Reservation. The Tribal Water Right  
6 shall be subordinate to water rights recognized under state law upstream from any point on the Reservation  
7 with a priority date before the ratification date of this Compact. It is the intent of the parties that this  
8 subordination extends only to valid water rights, and not to statements of claim filed pursuant to 85-2-221,  
9 MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA,  
10 and rights exempt from the permit process pursuant to 85-2-306, MCA, a list of rights as currently claimed  
11 is attached as Appendix 3. Appendix 3 will be modified by any final decree resolving claims on the affected  
12 drainages. Appendix 3 may be modified due to clerical error or omission.

13 b. Effect of Mitigation. Because the impact of development of the Tribal Water Right on  
14 downstream water rights recognized under State law has been mitigated by provisions of the Compact and  
15 by special measures set forth in drainage stipulations, any person claiming or holding a water right  
16 recognized under State law, or an interest in such water right, may not assert priority over, or make a call  
17 for, or claim any of the water rights of the Tribe set forth in this Compact, in any court, tribunal, or other  
18 forum.

19 9. Stockwatering Impoundments Limited by Surface Area. Except for new stock ponds developed  
20 under Section C.2. of Article III, the surface acreage limitations on stockwatering impoundments set forth  
21 in Article III shall be the measure of compliance with the quantification of water rights for the purpose of  
22 stockwatering.

23 10. Impoundments for the Purpose of Enhancing Fish and Wildlife Habitat.

24 a. Fish and Wildlife Enhancement Impoundments Limited by Surface Area. The surface acreage  
25 limitations on impoundments for the purpose of fish and wildlife enhancement set forth in Article III shall  
26 be the measure of compliance with the quantification of water rights for the purpose of fish and wildlife  
27 enhancement.

28 b. Limits on Structures. No structure for the purpose of fish and wildlife enhancement may create  
29 a potential high water line beyond the existing wet riparian habitat delineated as fish and wildlife  
30 enhancement zones on the map attached as Appendix 4.

1           11. Structures Mimic Natural Processes. No structure for the purpose of fish and wildlife  
2 enhancement, or new stockwatering impoundments on a perennial stream built after the ratification date  
3 of the Compact, excluding repair or replacement of existing structures, may stop the entire flow of surface  
4 water during filling of the impoundment. To accomplish this the Tribe shall build any structure to mimic  
5 natural processes by allowing water to flow through the structure, or bypass the structure during filling.

6           B. Big Sandy Creek Basin.

7           1. Operation of Bonneau Reservoir.

8           a. Minimum Pool / 240 AFY Stored for Satisfaction of Release. The minimum pool at Bonneau  
9 Reservoir shall be established by the Tribe. The Tribe shall store annually the minimum pool plus 240  
10 acre-feet, if water is available. The next 240 acre-feet above the minimum pool shall be stored to satisfy  
11 the release set forth in this Article and shall not be available to satisfy the Tribal Water Right. Evaporative  
12 loss shall be accounted for in setting the minimum pool and shall not be subtracted from the 240 acre-foot  
13 pool stored for downstream water users. Any change in use of the water stored in Bonneau Reservoir from  
14 irrigation to other purposes shall be without adverse effect on downstream water uses recognized under  
15 state law with a priority date before the date of change, and measures to prevent adverse effect may  
16 include release of additional water from Bonneau Reservoir.

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

30           c. 240 AFY Release. The Tribe shall annually release the first 240 acre-feet of water, as measured

1 near the confluence of Box Elder Creek and Lower Big Sandy Creek, stored in Bonneau Reservoir above the  
2 minimum pool, at the request of the downstream irrigation water users as set forth below, for maintenance  
3 of instream flow and for domestic and stock purposes on Lower Big Sandy Creek. The 240 AF of water,  
4 once released, shall be designated as an instream flow and shall be senior to all Tribal diversions and all  
5 non-domestic and non-stockwater rights recognized under state law from the point of release to the  
6 confluence with the Milk River. The Tribe shall not divert from direct flow on Lower Big Sandy Creek  
7 between its confluence with Box Elder Creek and the Reservation boundary at Stoneman Farms, as that  
8 boundary exists on the effective date of this Compact, during release of the 240 AF of water to  
9 downstream water users in the months of July and August. A structure that will bypass the peak  
10 scheduled release will be constructed for any diversion of the Tribal Water Right upstream of the confluence  
11 of Big Sandy Creek with Gravel Coulee. Under no circumstances shall the Tribe be required to release more  
12 than 240 AFY of water to maintain instream flow and for domestic and stock purposes.

13 d. Schedule for 240 AFY. The method for determining the schedule of releases is as follows:  
14 Water users on Lower Big Sandy Creek with drainage stipulations listed in Appendix 2 shall elect a three  
15 member Bonneau Release Committee to determine the schedule of release for the 240 AFY. The  
16 Committee shall notify the DNRC which shall notify the TWRD by May 1st of each year of the requested  
17 schedule. The schedule shall not exceed the operating standards of Bonneau Reservoir or result in  
18 unreasonable interference of the Tribe's use of water stored in the Reservoir. If the TWRD does not receive  
19 notice by May 1 of any year, the TWRD shall release 2 cfs continuously for July and August in accordance  
20 with Section B.1.c. of Article IV. DNRC shall notify water users which, according to the records of the  
21 Department, have a water right recognized under state law with a source on Box Elder Creek, or on Big  
22 Sandy Creek between the confluence with Box Elder Creek and the confluence with the Milk River, that the  
23 release may not be diverted. After May 1, at the request of the Bonneau Release Committee, the DNRC  
24 shall request the Tribe to alter the rate of release and the Tribe may agree to comply. At the request of the  
25 Tribe, the DNRC shall request the Bonneau Release Committee to agree to forego the release, and if the  
26 Committee believes the purposes for the release as set forth in Section B.1.c. of Article IV are being  
27 satisfied without the release, the Committee may, in any year, agree to forego the release. When  
28 streamflow in lower Big Sandy Creek at the bypass structure referred to in Section B.1.c. of Article IV,  
29 exceeds the peak flow specified in the designated release schedule, such excess flow can be diverted by  
30 the Tribe, subject to the diversion limits designated in Article III.

1 e. Effective Date for Bonneau Reservoir Operational Plan. Notwithstanding ratification of this  
2 Compact by the parties, the operational plan for Bonneau Reservoir set forth in Sections B.1.a. through c.  
3 of Article IV, shall not become effective until completion of the enlargement of Bonneau Dam.

4 2. Water Use on Lower Big Sandy Creek Drainage.

5 a. 2 cfs Bypass at Stoneman Farms. Structures will be constructed at each point of diversion on  
6 Lower Big Sandy Creek which allow a minimum of 2 cfs of water flow from direct and return flow, if  
7 available, to pass year around from the most downstream diversion on the Reservation on Lower Big Sandy  
8 Creek. The 2 cfs shall be designated as an instream flow and shall be senior in priority to Tribal diversions  
9 and all non-domestic and non-stockwatering water rights recognized under state law with a point of  
10 diversion between the bypass and the confluence with the Milk River. When streamflow in Lower Big  
11 Sandy Creek exceeds 2 cfs outside the scheduled 240 AF release period, such excess flow can be diverted  
12 by the Tribe subject to diversion limits designated in Article III.

13 b. Water Quality Issues.

14 (1) Monitoring Wells. Within one year following the effective date of this Compact, a monitoring  
15 well network adequate to detect saline seep shall be installed to depths no greater than 30 feet near the  
16 proposed Enlarged Stoneman Reservoir site shown in Appendix 6. The location of the wells will be  
17 established by TWRD and DNRC (or its representative) and groundwater level and quality shall be measured  
18 on a quarterly basis to establish baseline conditions.

19 (2) Water Quality Monitoring Before Construction. Within one year following the effective date  
20 of this Compact, a surface water quality network will be established by TWRD and DNRC and quarterly  
21 sampling continued for a sufficient period of time to establish the water quality baseline conditions referred  
22 to above, adjacent to and below the Stoneman Farms project. The results of the baseline analysis will be  
23 used to establish a threshold value for water quality degradation associated with salinity which will trigger  
24 the requirement for more extensive study.

25 (3) Water Quality Monitoring After Construction. After construction of the Stoneman Reservoir  
26 enlargement, monitoring of the wells and surface water quality will be resumed to evaluate changes in  
27 water quality. If salinity measurements result in a trend of increasing salinity on a sustained basis over a  
28 reasonable period of time, the TWRD or DNRC may petition the Compact Board to appoint a technical  
29 expert to conduct an analysis to identify the causes of the increasing salinity and recommend appropriate  
30 remedies. The analysis and recommendations may include sources of salinity off the Reservation.

1           (4) Remedies. The results of the analysis shall be submitted to the DNRC and to the TWRD which  
2 shall make a joint effort to resolve the degradation issue based on the analyses. If the analysis includes  
3 sources of salinity off the Reservation, the DNRC shall assist the TWRD in obtaining reasonable access onto  
4 the land off the Reservation for the purpose of observation. If the DNRC and the TWRD, are unable to  
5 resolve the issue within 30 days through joint effort, the DNRC, the TWRD, or any affected water user,  
6 may petition the Compact Board for relief. The Compact Board shall have jurisdiction over any contribution  
7 to the salinity problem and shall fashion its remedy in a manner proportionate to the causes contributing  
8 to the problem. The remedy fashioned by the Compact Board for salinity problems shall be limited to  
9 issuance of an order to cease and desist the practice or practices leading to the salinity problems. The  
10 remedies set forth in this section shall be in addition to any remedies or water quality standards provided  
11 for under other applicable law.

12           C. Beaver Creek Drainage.

13           1. Moratorium on Tribal Consumptive Uses. For a period of five years following the ratification  
14 date of the Compact, there shall be a moratorium on the development of Tribal consumptive uses from  
15 surface water in the Beaver Creek drainage. During this moratorium, a monitoring network consisting of  
16 three continuous recording stations will be installed and the resulting data analyzed to determine if Beaver  
17 Creek gains or loses flow between the confluence of East and West Fork and the Reservation boundary.  
18 Location of the three gages shall be:

19           (1) the West Fork of Beaver Creek at the location the Tribe intends to divert water to the East Fork;

20           (2) the confluence of the East and West Forks of Beaver Creek; and

21           (3) the Reservation boundary at the most downstream point on Beaver Creek. A staff gage shall  
22 also be installed in East Fork Reservoir following enlargement of the Reservoir.

23           2. Development of Management Plan. Based on the results of the five years of gage data on  
24 Beaver Creek, the Tribe and the Montana Department of Fish, Wildlife and Parks shall work cooperatively  
25 to develop a fishery and recreational management plan. The plan may include modifications in minimum  
26 instream flows set forth in Section C.3. of Article IV. Such modification is pursuant to, and will not be  
27 deemed a modification of, this Compact. The management plan is not binding on any party and shall not  
28 be used to modify minimum instream flows until it is approved by the Tribe and the Montana Department  
29 of Fish, Wildlife and Parks.

30           3. Operation of East Fork Reservoir Following Enlargement and Pending Adoption of a Management

1 Plan. During the moratorium imposed by Section C.1. of Article IV, or pending adoption of the management  
2 plan authorized by Section C.2. of Article IV, East Fork Reservoir may be enlarged; provided that,

3 a. The enlarged Reservoir shall be used only for recreational purposes during the five year  
4 moratorium. However, after the five year moratorium period and pending adoption of the management plan,  
5 the enlarged Reservoir may be utilized for multiple purposes, but remains subject to the limitations set forth  
6 under Sections C.3.b., c., and d. of Article IV.

7 b. Any surface water diversion from the West Fork of Beaver Creek and its tributaries on the  
8 Reservation to the East Fork of Beaver Creek shall include a structure which allows a minimum of 1 cfs of  
9 water flow from direct and return flow, if available, to pass year around; provided that, the storing of water  
10 in East Fork Reservoir from the East Fork of Beaver Creek shall not be considered a diversion for the  
11 purposes of this provision.

12 c. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the  
13 northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the  
14 Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return  
15 flow, if available, to pass year round; provided that, the storing of water in East Fork Reservoir from the  
16 East Fork of Beaver Creek shall not be considered a diversion for the purposes of this provision.

17 d. The Tribe shall release water from East Fork Reservoir to augment streamflow on Beaver Creek  
18 if the flow at the confluence of East and West Fork or below the most downstream diversion on the  
19 Reservation, whichever is the most downstream, falls below 1 cfs; provided that, the Tribe shall not be  
20 required to release water if the level of the enlarged Reservoir reaches or falls below the minimum pool; and  
21 provided further that, the Tribe shall not be required to release water if the flow at the Reservation  
22 boundary at the most downstream point on Beaver Creek exceeds 2 cfs.

23 4. Operation of East Fork Reservoir Prior to Enlargement. Prior to enlargement of East Fork  
24 Reservoir and pending adoption of the management plan authorized by Section C.2. of Article IV, the  
25 following diversionary constraints are in effect.

26 a. Any surface water diversion from the West and East Forks of Beaver Creek and its tributaries  
27 on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and  
28 return flow, if available, to pass the structure year around.

29 b. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the  
30 northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the

1 Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return  
2 flow, if available, to pass year round.

3 D. Enforcement - Chippewa Cree-Montana Compact Board.

4 1. Establishment of Board. There is hereby established the Chippewa Cree-Montana Compact  
5 Board. The Board shall consist of three members: one member selected by the Governor of the State of  
6 Montana from up to six nominees, up to three nominated by the Commissioners of Chouteau County and  
7 up to three nominated by the Commissioners of Hill County; one member appointed by the Chippewa Cree  
8 Business Committee; and one member selected by the other two members. If the Governor fails to select  
9 a board member from the list of nominees, the Commissioners of Chouteau and Hill Counties may select  
10 the member. All members shall be appointed within six months of the ratification date of this Compact and  
11 within thirty days of the date any vacancy occurs. If an appointment is not timely made by the Governor  
12 or County Commissioners, the Director of DNRC or his/her designee shall fill the State's position. If an  
13 appointment is not timely made by the Chippewa Cree Business Committee, the Director of the TWRD or  
14 his/her designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible  
15 for reappointment. The initial term of each member shall be staggered with one member serving a five-year  
16 term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen  
17 by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity  
18 appointing the member. The expenses of the third member and all other expenses shall be borne equally  
19 by the Tribe and the State, subject to the availability of funds.

20 2. Membership. Should the two appointed members fail to agree on the selection of a third  
21 member within sixty days of the date of appointment of the second member, or within thirty days after any  
22 vacancy occurs, the following procedure shall be utilized:

23 a. Within five days thereafter each member shall nominate three persons to serve as a member of  
24 the Board;

25 b. Within fifteen days thereafter each member shall reject two of the persons nominated by the  
26 other member;

27 c. Within five days thereafter, the remaining two nominees shall be submitted to the Dean of the  
28 University of Montana School of Law who shall select the third member from the two nominees.

29 3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable  
30 notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in



1 advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing  
2 and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board,  
3 and on the parties to this Compact.

4 4. Jurisdiction of the Board. The Chippewa Cree-Montana Compact Board shall have jurisdiction  
5 to resolve controversies over the right to the use of water as between users of the Tribal Water Right and  
6 users of water rights recognized under state law including any contributor to a salinity problem. Such  
7 controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.

8 5. Pre-requisite Administrative Remedy.

9 a. Any non-tribal water user concerned that a new development or change in use of water by the  
10 Tribe is inconsistent with the Compact shall first contact the Havre Regional Office of the DNRC. If the  
11 DNRC and the TWRD are unable to resolve the issue in a reasonable time through discussion, DNRC, the  
12 water user, or the Tribe may seek relief through the Compact Board. The Tribe agrees to allow DNRC  
13 reasonable access onto Tribal land to observe the challenged development or change in use.

14 b. The Tribe or any tribal water user concerned that a new development or change in use or  
15 transfer of water by non-tribal water users is inconsistent with the Compact shall first contact the TWRD.  
16 If the TWRD and the DNRC are unable to resolve the issue in a reasonable time through discussion, the  
17 TWRD or the Tribal water user may seek relief through the Compact Board. The DNRC agrees to assist the  
18 TWRD in obtaining reasonable access onto the non-tribal water user's land to observe the challenged  
19 development or change in use or transfer.

20 c. The TWRD and the DNRC may jointly develop supplemental procedures as necessary or  
21 appropriate. Such supplemental procedures are pursuant to, and will not be deemed a modification of, this  
22 Compact.

23 6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall  
24 have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses  
25 or production of documents or other evidence, and to appoint a technical expert for the purposes of Section  
26 B.2.b. of Article IV. The Tribe and the State shall enforce the Board's subpoenas in the same manner as  
27 prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each  
28 respective sovereign in a civil action. The parties to the controversy may present evidence and cross  
29 examine any witnesses. The Board shall determine the controversy and grant any appropriate relief,  
30 including a temporary order; provided that, the Board shall have no power to award money damages, costs,

1 or attorneys fees. All decisions of the Board shall be by majority vote and in writing. The Board shall adopt  
2 necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All  
3 records of the Board shall be open to public inspection, except as otherwise ordered by the Board.

4 7. Review and Enforcement of Board Decisions.

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

10 b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in  
11 Section D.7.a. of Article IV, any decision of the Board shall be recognized and enforced by any court of  
12 competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which  
13 the decision was made.

14 c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Section D.7.a. of  
15 Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, may  
16 order such temporary or permanent relief as it considers just and proper.

17 d. Any appeal may be taken from any decision of the court in which a timely appeal is filed  
18 pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to  
19 Section D.7.b. of Article IV, in the manner and to the same extent as from orders or judgments of the court  
20 in a civil action.

21 e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the  
22 court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.

23 8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit,  
24 including any defense the State shall have under the Eleventh Amendment of the Constitution of the United  
25 States, in order to permit the resolution of disputes under this Compact by the Chippewa Cree-Montana  
26 Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that  
27 such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money  
28 damages, costs, or attorneys' fees. The parties agree that only Congress can waive the immunity of the  
29 United States. The participation of the United States in the proceedings of the Compact Board shall be as  
30 provided by Congress.

## ARTICLE V - DISCLAIMERS AND RESERVATIONS

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

1. The relationship between the water rights of the Chippewa Cree Tribe described herein and any rights to water of any other Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such Tribe or individual shall be determined by the rule of priority.

2. 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 any other Indian tribes and tribal members of other Indian tribes.

3. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe other than the Chippewa Cree Tribe regarding its boundaries or property interests.

4. 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 any other federal agency or federal lands other than those of the Chippewa Cree Tribe.

B. General Disclaimers.

Nothing in this Compact shall be so construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

2. To preclude the acquisition or exercise of a right to the use of water by any member of the Tribe outside the Reservation by purchase of such right or by acquisition of land, or by application to the State.

3. To determine the relative rights inter sese of persons using water under the authority of the State or the Tribe;

4. 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;

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

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

7. To preclude or to discourage the Tribe from acquiring, by contracting or by other means, water rights in addition to the rights acquired under this Compact from any existing or future federal storage facilities off the Reservation.

8. To address or prejudge whether, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State; or



1 water from another drainage, and to have any such augmentation project deliver any entitlement of the  
2 Tribe to water to a point on the Reservation designated by the Tribe.

3 B. Provision Of A Municipal, Rural, And Industrial Water Supply System, And A Tribal Economic  
4 Development Fund.

5 The State and Tribe agree to support federal legislation that will authorize and fund a municipal,  
6 rural and industrial water system adequate to meet the future MR&I water needs of the Tribe, according  
7 to the needs and population projections as set forth in the Municipal, Rural and Industrial (MR&I) Water  
8 Supply System Needs Assessment prepared for the Bureau of Reclamation, U.S. Department of the Interior  
9 (January, 1996), through either a regional system or a system serving the Reservation only. The State and  
10 Tribe further agree to support federal legislation that will establish an economic development fund as agreed  
11 to by the Tribe and the Department of the Interior, or by the Tribe and the Montana Congressional  
12 Delegation. Support by the Department of Interior for the proposed MR&I system will depend on a  
13 demonstration of feasibility and appropriate allocation of costs.

14 C. Implementation Contingencies and Cost Share of Administration and Mitigation.

15 Implementation of this Compact shall be contingent upon the appropriation of necessary funds by  
16 the Congress and by the Montana Legislature. The performance of any obligation by any party under this  
17 Compact shall be contingent upon appropriation of funds therefor. No liability shall accrue to any party in  
18 case necessary funds are not appropriated. The State and the Tribe agree to recommend the following cost  
19 share for administration and mitigation necessary to implement the Compact to the Montana State  
20 Legislature and the Congress for appropriation on a schedule consistent with implementation as  
21 contemplated in this Compact.

22 1. The State and the Tribe agree to support federal legislation to appropriate \$3,070,000 for the  
23 administration of the Tribal Water Right by the Tribal Water Resources Department as set forth in Articles  
24 III and IV of the Compact, including but not limited to: stream flow gages; diversion/bypass structures on  
25 Big Sandy Creek; aerial survey of impoundments on the Reservation; and development of a Tribal Water  
26 Code.

27 2. The State and the Tribe agree to support state legislation to appropriate \$150,000 for the  
28 following purposes as set forth in Articles III and IV of the Compact: water quality discharge monitoring  
29 wells and monitoring program; diversion structure on Big Sandy Creek; conveyance structure on Box Elder  
30 Creek; and purchase of contract water from Lower Beaver Creek Reservoir.

1           3. The state agrees to provide services, subject to the availability of funds, valued at \$400,000  
2 for administration required by the Compact and for water quality sampling required by this Compact.

3                                   ARTICLE VII - FINALITY, SETTLEMENT OF CLAIMS,  
4                                   AND EFFECTIVENESS OF COMPACT

5           A. Ratification and Effectiveness of Compact .

6           1. This Compact shall become effective on the date it is ratified by the Tribe, by the State, and by  
7 the Congress of the United States, whichever date is latest; provided that, notwithstanding the provisions  
8 of Section 85-2-702(2), MCA, those aspects of the Compact specifically designated in Section A.2. of  
9 Article VII, shall become effective as stated therein. Upon ratification of this Compact by the Tribe and by  
10 the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any  
11 respect without the consent of both the Tribe and the State. Once ratified by Congress, the Tribe, and the  
12 State, the Compact may not be modified without the consent of the Tribe, the State, and the United States.

13           2. As between the State and the Tribe, the moratorium on state permits in the Big Sandy Creek  
14 Basin set forth in Section A.7. of Article IV, shall become effective upon the date the Compact is ratified  
15 by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. The  
16 reservoir operational plan for Bonneau Reservoir set forth in Section B.1 of Article IV shall not become  
17 effective until the Reservoir is enlarged.

18           3. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw  
19 as a party to this Compact -

20           a. if Congress has not ratified this Compact within four (4) years from the date the Compact is  
21 ratified by the Tribe and by the State, whichever date is later, or

22           b. if the municipal, rural, and industrial water supply system which the feasibility study identifies  
23 as the preferred alternative to serve the Rocky Boy's Reservation, or an equivalent system as determined  
24 by the Tribe, is not authorized within four (4) years of the date the Compact is ratified by the Tribe and by  
25 the State, whichever date is later, or

26           c. if appropriations are not authorized by Congress, including appropriations for planning, design,  
27 and other pre-construction work on the municipal, rural, and industrial water supply system authorized by  
28 Congress to serve the Rocky Boy's Reservation, within five (5) years of the date the Compact is ratified  
29 by the Tribe and by the State, whichever date is later, or

30           d. if appropriations are not made in the manner contemplated by the federal legislation authorizing

1 the Tribal municipal, rural, and industrial water supply system, or

2 e. if construction of the Tribal municipal, rural, and industrial water supply system authorized by  
3 Congress to serve the Rocky Boy's Reservation, has not commenced within seven (7) years from the date  
4 the Compact is ratified by the Tribe and by the State, whichever date is later, or

5 f. if construction of the Tribal municipal, rural, and industrial water supply system authorized by  
6 Congress to serve the Rocky Boy's Reservation, has not been completed within fourteen (14) years from  
7 the date the Compact is ratified by the Tribe and by the State, whichever date is later.

8 The Tribe may exercise its right to withdraw by sending to the Governor of the State of Montana  
9 and to the Secretary of the Interior by certified mail a resolution of the Chippewa Cree Business Committee  
10 stating the Tribe's intent to withdraw and specifying a withdrawal date not sooner than 30 days from the  
11 date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall  
12 become null and void without further action by any party, and the parties agree to resume negotiation in  
13 good faith for quantification of the water rights of the Chippewa Cree Tribe and entry of a decree in a court  
14 of competent jurisdiction. If the Tribe fails to take action to withdraw within five (5) years following the  
15 fourteen (14) year deadline for completion of the water system, all provisions of the Compact shall remain  
16 in effect.

17 4. Notwithstanding any other provision in this Compact, the Department of the Interior reserves  
18 the right to refuse support for federal legislation ratifying this Compact.

19 B. Incorporation Into Decrees and Disposition of Federal Suits.

20 1. The Tribe and the State agree to defend the provisions and purposes of this Compact including  
21 the quantification set forth in III, from all challenges and attacks in all proceedings pursuant to this Section  
22 B of Article VII.

23 2. Within 180 days of the date this Compact is ratified by the Chippewa Cree Business Committee,  
24 the State of Montana, and Congress, whichever is latest, the Tribe, the State, or the United States shall  
25 file, in the general stream adjudication filed by the State of Montana pursuant to the provisions of  
26 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the  
27 water rights held by the United States in trust for the Chippewa Cree Tribe of the Rocky Boy's Reservation.  
28 If the court does not approve the proposed decree submitted with the motion within three years following  
29 the filing of the motion, the Compact shall be voidable by agreement of the parties. If the court approves  
30 the proposed decree within three years, but the decree is subsequently set aside by the court or on appeal,

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

6 3. Consistent with section 3-7-224, MCA, setting forth the jurisdiction of the chief water judge,  
7 for the purposes of section 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to  
8 Article III, Section A.8. of Article IV, and Appendix 1, and may extend to other sections of the Compact  
9 only to the extent that they relate to the determination of existing water rights. The final decree shall  
10 consist of Article III and Section A.8. of Article IV as displayed in Appendix 1 and such other information  
11 as may be required by 85-2-234, MCA. Nevertheless, pursuant to section 85-2-702(3), MCA, the terms  
12 of the entire Compact must be included in the preliminary decree without alteration for the purpose of  
13 notice.

14 4. Upon the issuance of a final decree by the Montana Water Court, or its successor, and the  
15 completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal,  
16 the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.  
17 R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe,  
18 in United States v. Aageson, No. CIV-79-21-GF (D. Mont. 1979) (hereinafter referred to as "Aageson") and  
19 such claims may only be refiled if the Tribe exercises its option to withdraw as a party to the Compact  
20 pursuant to Section A.3. of Article VII. This Compact shall be filed as a consent decree in Aageson only  
21 if, prior to the dismissal of Aageson as provided in this Article, it is finally determined in a judgment binding  
22 upon the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings  
23 are inadequate to adjudicate, some or all of the water rights asserted in Aageson.

24 C. Tribal Settlement of Water Claims.

25 The parties intend that the water rights and other rights confirmed to the Tribe in this Compact are  
26 in full satisfaction of the Tribe's water rights claims, including federal reserved water rights claims based  
27 on Winters v. United States, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe  
28 in this Compact, including rights to the future development of water pursuant to Section C. of Article III,  
29 and of performance by the State of Montana and the United States of all actions required by this Compact,  
30 including entry of a final order issuing the decree of the reserved water rights of the Tribe held in trust by



1 the United States as quantified in the Compact and displayed in Appendix 1, the Tribe and the United  
 2 States as trustee for the Tribe hereby relinquish any and all claims to water rights of the Chippewa Cree  
 3 Tribe within the State of Montana existing on the date this Compact is ratified by the State and the Tribe,  
 4 whichever date is later.

5 **D. Binding Effect.**

6 Upon the effectiveness of any provision of this Compact, the terms of that provision will be binding:

7 1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any  
 8 manner asserting any right under the authority of the State to the use of water in the State of Montana;  
 9 provided that, the validity of consent, ratification, or authorization by the State is to be determined by  
 10 Montana law;

11 2. Upon the Tribe and any person or entity of any nature whatsoever using, claiming or in any  
 12 manner asserting any right to the use of the Tribe's water right, or any right arising under any doctrine of  
 13 reserved or aboriginal water rights for the Tribe, or any right arising under tribal law; provided that, the  
 14 validity of consent, ratification or authorization by the Tribe is to be determined by tribal law; and

15 3. Upon the United States and any person or entity of any nature whatsoever using, claiming or  
 16 in any manner asserting any right under the authority of the United States to the use of water in the State  
 17 of Montana; provided that, the validity of consent, ratification or authorization by the United States is to  
 18 be determined by federal law; and further provided that, nothing contained in this Compact affects any  
 19 claim of any Indian tribe other than the Chippewa Cree Tribe, or of persons claiming water through any  
 20 such other Indian tribe, or the right of any Indian tribe other than the Chippewa Cree Tribe, or persons  
 21 claiming water through any such other Indian tribe, to pursue a claim to any water from any source based  
 22 on any theory of right or entitlement.

23 **ARTICLE VIII - LEGISLATION**

24 The State and Tribe agree to seek enactment of any legislation necessary to effectuate the  
 25 provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from  
 26 all challenges and attacks; provided that, no provision of the Compact shall be modified as to substance  
 27 except as may be provided herein.

28 IN WITNESS WHEREOF the representatives of the State of Montana, the Chippewa Cree Tribe of  
 29 the Rocky Boy's Reservation, and the United States have signed this Compact on the \_\_\_\_\_ day of  
 30 \_\_\_\_\_, 19\_\_\_\_.

1           **NEW SECTION.** **Section 2. Provision exception.** Notwithstanding the provisions of 7-6-204, Hill  
2 County may apply the interest accrued on the \$50,000 water purchase contract with the state of Montana  
3 toward operation, maintenance, and future repairs to the Lower Beaver Creek reservoir.

4

5           **NEW SECTION.** **Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
6 integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

7

-END-

## 1 SENATE BILL NO. 337

2 INTRODUCED BY GROSFIELD, STORY, SWYSGOOD, SWANSON, HALLIGAN, JERGESON, JENKINS,  
3 MCCANN, HAGENER, DEBRUYCKER, PECK

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT AMONG  
6 THE STATE OF MONTANA, THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S INDIAN RESERVATION,  
7 AND THE UNITED STATES OF AMERICA."

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

10  
11 NEW SECTION. **Section 1. Chippewa Cree Tribe-Montana compact ratified.** The compact entered  
12 into by the State of Montana and the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation and filed  
13 with the Secretary of State of the State of Montana under the provisions of 85-2-702 on [date of filing] is  
14 ratified. The compact is as follows:

## 15 WATER RIGHTS COMPACT

16 STATE OF MONTANA

17 CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION

18 UNITED STATES OF AMERICA

19 This Compact is entered into by and among the State of Montana, the Chippewa Cree Tribe of the  
20 Rocky Boy's Reservation, and the United States of America for the purpose of settling any and all existing  
21 water rights claims of the Chippewa Cree Tribe in the State of Montana.

## 22 ARTICLE I - RECITALS

23 WHEREAS, in 1979, the United States, on behalf of the Chippewa Cree Tribe of the Rocky Boy's  
24 Reservation, brought suit in the United States District Court for the District of Montana to obtain a final  
25 determination of the Tribe's water rights claims, see, United States v. Aageson, No. CIV-79-21-GF (filed  
26 April 5, 1979); and

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

1 WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions  
2 of Chapter 697, Laws of Montana 1979, which includes Chippewa Cree tribal water rights; and

3 WHEREAS, the United States has filed claims on behalf of the Chippewa Cree Tribe in the general  
4 stream adjudication initiated by the State of Montana; and

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

8 WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana  
9 State court water adjudication proceedings, see, 721 F.2d 1189; and

10 WHEREAS, the adjudication of Chippewa Cree tribal water rights in the state court proceedings has  
11 been suspended while negotiations are proceeding to conclude a compact resolving all water rights claims  
12 of the Chippewa Cree Tribe within the State of Montana; and

13 WHEREAS, the Chippewa Cree Business Committee, or its duly designated representatives, have  
14 authority to negotiate this Compact pursuant to §1(a), of Article VI of the Tribal Constitution; and

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

18 WHEREAS, the Secretary of the Interior, or a duly designated official of the United States  
19 Department of the Interior, has authority to execute this Compact on behalf of the United States  
20 Department of the Interior pursuant to 43 U.S.C. Section 1457 (1986), inter alia; and

21 WHEREAS, the Chippewa Cree Tribe, the State of Montana, and the United States agree that the  
22 Tribal Water Right described in this Compact shall be in satisfaction of the Tribe's water rights claims within  
23 the State of Montana; and

24 WHEREAS, it is in the best interest of all parties that the water rights claims of the Chippewa Cree  
25 Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United  
26 States;

27 NOW THEREFORE, the parties agree to enter into this Compact for the purpose of settling the water  
28 rights claims of the Chippewa Cree Tribe within the State of Montana.

#### 29 ARTICLE II - DEFINITIONS

30 The following definitions shall apply for purposes of this Compact:

- 1           1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a depth of one  
2 foot and is equivalent to 43560 cubic feet.
- 3           2. "Adverse effect" means an interference with the reasonable exercise of a water right.
- 4           3. "Acre feet per year" or "AFY" means the quantity of water to which the Tribe has a right each  
5 year measured in acre feet over a period of a year.
- 6           4. "Ancestral Missouri River Channel Aquifer" means that material deposited by the Missouri River  
7 prior to Pleistocene glaciation, and glacial deposits underlying post-glacial alluvial deposits in the River valley  
8 that are sufficiently permeable to conduct groundwater and to yield water to wells. This aquifer is located  
9 in the valley of Big Sandy Creek at a depth of 150 feet or more beneath the surface of the ground as shown  
10 in Appendix 11 and described in USGS Water Supply Paper 1460-B, Swenson, Frank, "Geology and  
11 Ground-Water Resources of the Lower Marias Irrigation Project Montana," (1957).
- 12           5. "Beaver Creek Drainage" means Beaver Creek and its tributaries from its headwaters to the  
13 confluence with the Milk River, as shown in Appendices 5 and 6.
- 14           6. "Big Sandy Creek Basin" means the mainstem of Big Sandy Creek and its tributaries (exclusive  
15 of Sage Creek and Lonesome Lake) in Water Court Basin 40H from the headwaters to the confluence with  
16 the Milk River, as shown in Appendices 5 and 6.
- 17           7. "Board" means the Chippewa Cree - Montana Compact Board established by Section D. of  
18 Article IV of this Compact.
- 19           8. "Bonneau Reservoir" means the water impoundment as shown in Appendix 6, including the  
20 existing storage capacity and the proposed expanded storage capacity, and for which a water right is  
21 described in Article III of this Compact.
- 22           9. "Box Elder Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach  
23 of Box Elder Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.
- 24           10. "Brown's Reservoir" means the proposed water impoundment as shown in Appendix 6,  
25 including the existing storage capacity and the proposed expanded storage capacity, and for which a water  
26 right is described in Article III of this Compact.
- 27           11. "Bypass" means the designated streamflow around or through a diversion.
- 28           12. "Camp Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach  
29 of Camp Creek from its headwaters to its confluence with Duck Creek, as shown in Appendix 6.
- 30           ~~13.~~ 13. "Change in use" means a change in the point of diversion, the place of use, the purpose

1 of use, or the place or means of storage.

2 14. "Consumptive use" means use of water other than a "non-consumptive use" as defined in this  
3 Article.

4 15. "Continuously store" or "continuous storage" means the right to fill and then continually refill  
5 the active storage capacity of an impoundment from the natural flow of the source on which the  
6 impoundment is located.

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

9 17. "Drainage Stipulation" means an agreement entered into between and among the Tribe, the  
10 United States acting in its capacity as trustee for the Tribe, and one or more signatory non-tribal water  
11 users for entry as a stipulation in Montana Water Court. Drainage stipulations are set forth in Appendix  
12 2.

13 18. "Drainage of Origin" means the drainage in which the water initially arises. See Appendix 6  
14 showing drainage area boundaries.

15 19. "Duck Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of  
16 Duck Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

17 20. "East Fork Reservoir" means the proposed water impoundment as shown in Appendix 6,  
18 including the existing storage capacity and the proposed expanded storage capacity, and for which a water  
19 right is described in Article III of this Compact.

20 21. "Evaporative Loss" means reduction in the quantity of water due to the process of evaporation  
21 and shall be three (3) acre feet per surface acre rounded off as set forth in Article III.

22 22. "Fish and Wildlife Enhancement" means the use of water to improve existing habitat for fish  
23 and wildlife use, protection, conservation or management through physical or operational modifications of  
24 impoundments, within the areas designated in Appendix 4.

25 23. "Gorman Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach  
26 of Gorman Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

27 24. "Gravel Coulee Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach  
28 of Gravel Coulee from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

29 25. "Groundwater" means any water that is beneath the ground surface.

30 26. "Hydrologically Connected" means the interconnection of groundwater and surface water such

- 1 that they constitute one water supply and use of either results in an impact to both.
- 2 27. "Lake Elwell" means the water impounded on the Marias River by Tiber Dam.
- 3 28. "Lonesome Lake Coulee" means the mainstem of Lonesome Lake Coulee and its tributaries in  
4 Water Court Basin 40H from its headwaters to its confluence with Big Sandy Creek, as shown in  
5 Appendices 5 & 6.
- 6 29. "Lower Big Sandy Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing  
7 the reach of Big Sandy Creek below its confluence with Box Elder Creek as shown in Appendix 6.
- 8 30. "Minimum Pool" means the quantity of water in an impoundment, as measured in acre-feet, or  
9 by the water surface elevation in feet above sea level, that is not available for release for designated water  
10 uses.
- 11 31. "MR&I Water" means water for use for municipal, rural, industrial, domestic, and incidental  
12 drought relief purposes on the Reservation.
- 13 32. "Municipal/Domestic Uses" means water for domestic, public, commercial and industrial uses.
- 14 33. "Net Depletion" means the difference between the quantity of water diverted from a source and  
15 the quantity of water returned to the same source at or near the point of diversion.
- 16 34. "New reserved water rights" means any reserved water rights created with acquisition of land  
17 by the Tribe or the United States to be held in trust by the United States for the Tribe, after the date of  
18 ratification of this Compact by the State and the Tribe, whichever is later.
- 19 35. "Non-consumptive use" means a use of water that does not cause a reduction in the source  
20 of supply and in which substantially all of the water returns without delay to the source of supply, causing  
21 little or no disruption in stream or groundwater conditions.
- 22 36. "Non-Irrigation Water Uses" means the use of water for purposes other than the production of  
23 agricultural commodities, such as, but not limited to domestic, livestock, fish and wildlife, and recreational  
24 uses, including development of golf courses.
- 25 37. "Parties" means the Tribe, the State of Montana, and the United States.
- 26 38. "Person" means an individual or any other entity, public or private, including the State, the Tribe  
27 and the government of the United States and all officers, agents, and departments thereof.
- 28 39. "Ratification date" means the date on which the Compact is finally approved by the Business  
29 Committee of the Chippewa Cree Tribe, by the Montana Legislature, and by the Congress of the United  
30 States, whichever date is latest.

1           40. "Recognized under state law" when referring to a water right means a water right arising under  
2 state law, but does not include water rights arising under federal law.

3           41. "Release" means (verb) to discharge water from storage, or (noun) the discharge of water from  
4 storage.

5           42. "Reservation" means the Rocky Boy's Reservation and includes all lands and interests in lands  
6 which are held in trust by the United States for the Chippewa Cree Tribe, including future additions to the  
7 Reservation.

8           43. "Sage Creek" means the main stem of Sage Creek and its tributaries in Water Court Basin 40G  
9 from the headwaters to the confluence with Big Sandy Creek, as shown in Appendices 5 and 6.

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

12          45. "Shallow Alluvium Aquifer" means the material deposited by flowing water generally during,  
13 or after Pleistocene glaciation that is sufficiently permeable to conduct groundwater and to yield water to  
14 wells and springs.

15          46. "State" means the state of Montana and all officers, agents, departments, and political  
16 subdivisions thereof.

17          47. "Stockwatering" means the storage and use of water for the purpose of providing water to  
18 domesticated animals and wildlife.

19          48. "Stoneman Farms" means the tribal agricultural projects shown in Appendix 6.

20          49. "Stoneman Reservoir" means the water impoundment, as shown in Appendix 6, including the  
21 existing storage capacity and the proposed expanded storage capacity, and for which a water right is  
22 described in Article III of this Compact.

23          50. "Subordinate" means to rank the priority in which a water right is fulfilled behind other specified  
24 water rights without regard to relative priority dates.

25          51. "Supplemental Irrigation Water" means water used for irrigation, as a secondary supply, once  
26 it becomes apparent that the primary supply will be unable to meet the full annual demand.

27          52. "Surface Acres" means the horizontal area in acres associated with the water surface in an  
28 impoundment when filled to the maximum capacity.

29          53. "Transfer" means (verb) to authorize a person to use all or any part of the Tribal Water Right  
30 through a service contract, lease, or other similar agreement of limited duration; (noun) a service contract,



1 lease, or other similar agreement of limited duration authorizing the use of all or any part of the Tribal Water  
2 Right.

3 54. "Tribal Water Resources Department" or "TWRD" means the Chippewa Cree Tribal Water  
4 Resources Department, or any successor agency.

5 55. "Tribal Water Right" means the right of the Chippewa Cree Tribe of the Rocky Boy's  
6 Reservation to divert, use, or store water as described by Article III of this Compact.

7 56. "Tribe" means the Chippewa Cree Tribe of the Rocky Boy's Reservation and all officers, agents  
8 and departments thereof.

9 57. "United States" means the federal government and all officers, agencies, departments, and  
10 political subdivisions thereof.

11 58. "Upper Big Sandy Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing  
12 the reach of Big Sandy Creek from its headwaters to its confluence with Box Elder Creek, as shown in  
13 Appendix 6.

14 59. "Volcanic Bedrock Aquifer" means those Tertiary igneous rock units that are sufficiently  
15 permeable to conduct groundwater and to yield water to wells and springs as shown in USGS  
16 Miscellaneous Geologic Investigations Map I-234, "Preliminary General Geologic Map of the Laredo  
17 Quadrangle, Bearpaw Mountains, Montana," and Map I-235, "Preliminary Geologic Map of the Centennial  
18 Mountain Quadrangle, Bearpaw Mountains, Montana," and shown as surface outcrop in Appendix 11.

### 19 ARTICLE III - TRIBAL WATER RIGHT

20 A. Basin 40H: Big Sandy Creek Basin.

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

23 a. Quantification - Source - Volume.

24 (1) Storage. The Tribe shall have the right to continuously store or permit the continuous storage  
25 of up to a capacity of 1000 AF of water in Stoneman Dam and Reservoir from the natural flow of Gravel  
26 Coulee. Subject to the 1000 AF limit on storage capacity, the Tribe shall have the additional right to divert  
27 up to 1480 AFY from the direct flow of Lower Big Sandy Creek and up to 445 AFY from groundwater for  
28 storage in Stoneman Dam and Reservoir as set forth in Section A.1.a.(2) of Article III. The quantity  
29 impounded by continuous storage shall not decrease the 1480 AFY which the Tribe may divert for ~~irrigation~~  
30 ~~THE and non-irrigation purposes as set forth~~ ALLOWED in Sections SECTION A.1.e. (1) and (2) of Article

1 III. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for  
2 stockwatering and fish and wildlife purposes, as set forth in Sections A.1.e.(3) and (4) of Article III.

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

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

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

16 (c) Groundwater. Of the 1690 AFY, the Tribe shall have the right to withdraw and use or permit  
17 the withdrawal and use of up to 445 AFY of groundwater in the Gravel Coulee and Lower Big Sandy Creek  
18 drainages in compliance with ~~Section~~ SECTIONS A.6.a. and b. of Article IV. ~~The right to divert 445 AFY~~  
19 ~~from groundwater to storage is not reduced by the amount of water diverted for irrigation or non-irrigation~~  
20 ~~purposes from water derived from storage.~~ Groundwater may be diverted to storage prior to application  
21 to any purposes allowed in Section A.1.e. of Article III without reducing the amount that can be applied  
22 to such purposes until such water is re-diverted from storage and applied to such purposes.

23 (i) Of the 445 AFY, 100 AFY may be appropriated from the shallow alluvium along Gravel Coulee  
24 and Lower Big Sandy Creek.

25 (ii) Of the 445 AFY, 345 AFY may be appropriated from the Ancestral Missouri River Channel  
26 Aquifer in the Gravel Coulee and Lower Big Sandy Creek drainages. Groundwater from the Ancestral  
27 Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation  
28 uses do not result in discharge of untreated water to land or surface water. Groundwater from the  
29 Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

30 b. Priority Date. The water rights to surface flow, groundwater, and storage as set forth in Section

1 A.1. of Article III, for the Gravel Coulee and Lower Big Sandy drainages shall have a priority date of  
2 September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and  
3 the drainage stipulations set forth in Appendix 2.

4 c. Period of Use. The period of use of this water right shall be from January 1 through December  
5 31 of each year.

6 d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the  
7 Tribe may divert or permit the diversion of this water right from any place and by any means on Lower Big  
8 Sandy Creek and Gravel Coulee drainages on the Reservation.

9 e. Purposes. The Tribe's right to 1690 AFY from the Gravel Coulee and Lower Big Sandy drainages  
10 may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the  
11 Tribe may make a change in use or transfer of the water identified for irrigation and non-irrigation purposes.

12 (1) Irrigation.

13 (a) Volume. 1380 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be  
14 used for irrigation.

15 (b) Source. The 1380 AFY for irrigation may come from a combination of direct flow, storage and  
16 groundwater in the Gravel Coulee and Lower Big Sandy drainages.

17 (c) Place of use. The 1380 AFY may be used to irrigate 540 acres at Stoneman Farms on the  
18 Reservation.

19 (2) Non-Irrigation.

20 (a) Volume. 100 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used  
21 for non-irrigation purposes.

22 (b) Source. The 100 AFY for non-irrigation purposes may come from a combination of direct flow,  
23 storage, and groundwater in the Gravel Coulee and Lower Big Sandy drainages.

24 (c) Point of diversion. The 100 AFY for non-irrigation purposes may be diverted on the Reservation  
25 within the Lower Big Sandy and Gravel Coulee drainages.

26 (3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gravel  
27 Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in  
28 use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an  
29 impoundment for stockwatering within the drainage of origin; and provided further that, the new point of  
30 diversion or place of use does not change to a place from upstream of to downstream of, or from

1 downstream of to upstream of the location of the point of diversion of a water right recognized under state  
2 law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date  
3 is later.

4 (a) Volume. 160 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used  
5 for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface  
6 acreage of impoundments shall not exceed 40 surface acres of impoundments on Lower Big Sandy drainage  
7 and 13 surface acres of impoundments on Gravel Coulee drainage. The Tribe shall have the right to  
8 continuously store water in these impoundments.

9 (b) Source.

10 i. Of the 160 AFY, 120 AFY for stockwatering may come from the direct flow of Lower Big Sandy  
11 Creek.

12 ii. Of the 160 AFY, 40 AFY for stockwatering may come from the direct flow of Gravel Coulee.

13 iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other  
14 than for a lined storage facility with a capacity of less than 0.5 AF.

15 (c) Place of use. The Tribal Water Right for stockwatering in the Gravel Coulee and Lower Big  
16 Sandy Creek drainages may be used in the drainage of origin, on the Reservation. The current stockwater  
17 impoundments are shown in Appendix 7.

18 (4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
19 wildlife enhancement in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The  
20 Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement;  
21 provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within  
22 the drainage of origin; and provided further that, the new point of diversion or place of use does not change  
23 to a place from upstream of to downstream of, or from downstream of to upstream of the location of the  
24 point of diversion of a water right recognized under state law with a priority date before the date the  
25 Compact is ratified by the State and the Tribe, whichever date is later.

26 (a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use  
27 measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed  
28 16 surface acres of impoundments in the Gravel Coulee and Lower Big Sandy Creek drainages. The Tribe  
29 shall have the right to continuously store water in these impoundments.

30 (b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gravel

1 Coulee and Big Sandy Creek.

2 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
3 shown in Appendix 4 in the Gravel Coulee and Big Sandy Creek drainages, in the respective drainages of  
4 origin.

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

6 a. Quantification - Source - Volume.

7 (1) Storage. The Tribe shall have the right to continuously store, or permit the continuous storage  
8 in Bonneau Reservoir, Brown's Reservoir, and in any new impoundments, of up to a capacity of 4800 AF  
9 from the natural flow of Box Elder Creek, or any natural flow from the source on which the impoundment  
10 is located. Subject to the 4800 AF limit on storage capacity, the Tribe shall have the additional right to  
11 divert up to 6310 AFY from the direct flow of Box Elder Creek for storage in Brown's Reservoir and in any  
12 new impoundments not located on Box Elder Creek and to divert 1950 AFY from groundwater for storage  
13 in any new or existing impoundment wherever located, as set forth in Section A.2.a.(2) of Article III. The  
14 quantity impounded by continuous storage shall not decrease the 6310 AFY, which the Tribe, ~~under~~ MAY  
15 DIVERT FOR THE PURPOSES ALLOWED IN Section A.2.e.(1) and (2) of Article III, ~~has a right to divert for~~  
16 ~~irrigation and non-irrigation purposes~~. In addition to the storage right set forth in this section, the Tribe shall  
17 have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in  
18 Sections A.2.e.(4) and (5) of Article III.

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

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

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

1 from water derived from storage.

2 (c) Groundwater. Of the 6940 AFY, the Tribe shall have the right to withdraw and use or to permit  
3 the withdrawal and use of up to 1950 AFY of groundwater in the Box Elder Creek drainage in compliance  
4 with ~~Section~~ SECTIONS A.6. A.6.A. AND B. of Article IV. Groundwater may be diverted to storage prior  
5 to application to any purposes allowed in Section A.2.e. of Article III without reducing the amount that can  
6 be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

7 (i) Of the 1950 AFY, 180 AFY may be appropriated from the shallow alluvium in the Box Elder  
8 Creek drainage.

9 (ii) Of the 1950 AFY, 230 AFY may be appropriated from the volcanic bedrock in the Box Elder  
10 Creek drainage.

11 (iii) Of the 1950 AFY, 1570 AFY may be appropriated from the Ancestral Missouri River Channel  
12 Aquifer; provided that, should water be imported to the Reservation, the entire 1950 AFY may be  
13 appropriated from the Ancestral Missouri River Channel Aquifer. Water from the Ancestral Missouri River  
14 Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not  
15 result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri  
16 River Channel Aquifer is a supplemental source for irrigation uses.

17 b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section  
18 A.2. of Article III, for the Box Elder Creek drainage, including water supplied by Box Elder Creek for  
19 off-stream storage, shall have a priority date of September 10, 1888, subject to the subordination  
20 agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

21 c. Period of use. The period of use of this water right shall be from January 1 through December  
22 31 of each year.

23 d. Points and Means of diversion. Subject to the terms and conditions set forth in Article IV, the  
24 Tribe may divert or permit the diversion of this water right from any place and by any means in the Box  
25 Elder Creek drainage on the Reservation.

26 e. Purposes. The Tribe's right to 6940 AFY in the Box Elder Creek drainage may be used for the  
27 following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a  
28 change in use or transfer of the water identified for irrigation, non-irrigation and municipal/domestic  
29 purposes.

30 (1) Irrigation.

1 (a) Volume. 6280 AFY of water in the Box Elder Creek drainage may be used for irrigation.

2 (b) Source. The 6280 AFY for irrigation may come from a combination of direct flow, storage and  
3 groundwater. Water from the Ancestral Missouri River Channel Aquifer is a primary source for  
4 non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to  
5 land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental  
6 source for irrigation uses.

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

9 (2) Non-Irrigation.

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

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

15 (3) Municipal / Domestic.

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

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

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

20 ii. 200 AFY from the volcanic bedrock.

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

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

1 water in these impoundments.

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

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

8 (5) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
9 wildlife enhancement in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a  
10 change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the  
11 Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin;  
12 and provided further that, the new point of diversion or place of use does not change to a place from  
13 upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion  
14 of a water right recognized under state law with a priority date before the date the Compact is ratified by  
15 the State and the Tribe, whichever date is later.

16 (a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive  
17 use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not  
18 exceed 50 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to  
19 continuously store water in these impoundments.

20 (b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Box  
21 Elder Creek AND ITS TRIBUTARIES.

22 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
23 shown in Appendix 4 in the Box Elder Creek drainage, in the drainage of origin.

24 3. Camp Creek and Duck Creek Drainages - 280 AFY diversion.

25 a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 280  
26 AFY of water from the following sources where they occur on the Reservation in any combination up to  
27 the limits on each source and the total limit of 280 AFY:

28 (1) Direct Flow. Of the 280 AFY, the Tribe shall have the right to divert or use or permit the  
29 diversion or use of up to 230 AFY from Duck and Camp Creeks and their respective tributaries in the  
30 following proportions:



1 (a) 170 AFY from Duck Creek.

2 (b) 60 AFY from Camp Creek.

3 (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife  
4 enhancement purposes as set forth in Sections A.3.e.(2) and (3) of Article III.

5 (3) Groundwater. Of the 280 AFY, the Tribe shall have the right to withdraw and use or permit  
6 the withdrawal and use of up to 50 AFY of groundwater in the Camp and Duck Creek drainages on the  
7 Reservation, including groundwater that is hydrologically connected to surface water, in compliance with  
8 Sections A.6.a. and b. of Article IV. This right shall be exercised in the following proportions:

9 (a) 40 AFY from Duck Creek.

10 (b) 10 AFY from Camp Creek.

11 b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in  
12 Section A.3. of Article III, for the Camp and Duck Creek drainages shall have a priority date of September  
13 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage  
14 stipulations set forth in Appendix 2.

15 c. Period of Use. The period of use of this water right shall be from January 1 through December  
16 31 of each year.

17 d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the  
18 Tribe may divert or permit the diversion of this water right from any place and by any means in the Camp  
19 Creek and Duck Creek drainages on the Reservation.

20 e. Purposes. The Tribe's right to 280 AFY in the Camp and Duck Creek drainages may be used for  
21 the following purposes; provided that, the Tribe may not make a change in use or transfer that results in  
22 a change in the place of use, point of diversion or place or means of storage to a place outside the drainage  
23 of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the  
24 location of the point of diversion of a water right recognized under state law with a priority date before the  
25 date the Compact is ratified by the State and the Tribe, whichever date is later.

26 (1) Non-Irrigation.

27 (a) Volume. 50 AFY of water in the Camp and Duck Creek drainages may be used for non-irrigation  
28 purposes.

29 (b) Source. The 50 AFY for non-irrigation purposes may come from groundwater including  
30 groundwater that is hydrologically connected to surface water in the Camp and Duck Creek drainages.

1 (c) Place of use. The Tribal Water Right for non-irrigation purposes in Camp and Duck Creek  
2 drainages may be used in the drainage of origin on the Reservation.

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

10 (a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by  
11 evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 19 surface  
12 acres of impoundments in the Camp Creek drainage and 23 surface acres of impoundments on Duck Creek  
13 drainage. The Tribe shall have the right to continuously store water in these impoundments.

14 (b) Source.

15 i. Of the 130 AFY, 60 AFY for stockwatering may come from the direct flow of Camp Creek.

16 ii. Of the 130 AFY, 70 AFY for stockwatering may come from the direct flow of Duck Creek.

17 iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other  
18 than for a lined storage facility with a capacity of less than 0.5 AF.

19 (c) Place of use. The Tribal Water Right for stockwatering in the Camp and Duck Creek drainages  
20 may be used in the drainage of origin on the Reservation. The current stockwater impoundments are shown  
21 in Appendix 7.

22 (3) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
23 wildlife enhancement in the Camp and Duck Creek drainages is a consumptive use. The Tribe may not  
24 make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that,  
25 the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of  
26 origin; and provided further that, the new point of diversion or place of use does not change to a place from  
27 upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion  
28 of a water right recognized under state law with a priority date before the date the Compact is ratified by  
29 the State and the Tribe, whichever date is later.

30 (a) Volume. 100 AFY of water may be used for fish and wildlife enhancement as a consumptive

1 use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not  
2 exceed 34 surface acres of impoundments in the Camp and Duck Creek drainages. The Tribe shall have  
3 the right to continuously store water in these impoundments.

4 (b) Source. The 100 AFY for fish and wildlife enhancement may come from the direct flow of  
5 Camp and Duck Creeks.

6 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
7 shown in Appendix 4 in the Camp and Duck Creek drainages, in the drainage of origin.

8 4. Gorman Creek Drainage - 60 AFY diversion.

9 a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 60  
10 AFY of water from the following sources where they occur on the Reservation in any combination up to  
11 the limits on each source and the total limit of 60 AFY.

12 (1) Direct Flow. Of the 60 AFY, the Tribe shall have the right to divert or use or permit the  
13 diversion or use of up to 60 AFY from Gorman Creek and its tributaries.

14 (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife  
15 enhancement purposes as set forth in Sections A.4.e.(1) and (2) of Article III.

16 b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in  
17 Section A.4. of Article III, for the Gorman Creek drainage shall have a priority date of September 7, 1916,  
18 subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations  
19 set forth in Appendix 2.

20 c. Period of use. The period of use of this water right shall be from January 1 through December  
21 31 of each year.

22 d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the  
23 Tribe may divert or permit the diversion of this water right from any place and by any means in the Gorman  
24 Creek drainage on the Reservation.

25 e. Purposes. The Tribe's right to 60 AFY in the Gorman Creek drainage may be used for the  
26 following purposes; provided that, the Tribe may not make a change in use or transfer that results in a  
27 change in the place of use, point of diversion or place or means of storage to a place outside the drainage  
28 of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the  
29 location of the point of diversion of a water right recognized under state law with a priority date before the  
30 date the Compact is ratified by the State and the Tribe, whichever date is later.

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

8           (a) Volume. 10 AFY of water in the Gorman Creek drainage may be used for stockwatering as a  
9 consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments  
10 shall not exceed 3 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the  
11 right to continuously store water in these impoundments.

12           (b) Source. The 10 AFY for stockwatering may come from the direct flow of Gorman Creek.  
13 Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for  
14 a lined storage facility with a capacity of less than 0.5 AF.

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

18           (2) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
19 wildlife enhancement in the Gorman Creek drainage is a consumptive use. The Tribe may not make a  
20 change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the  
21 Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin;  
22 and provided further that, the new point of diversion or place of use does not change to a place from  
23 upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion  
24 of a water right recognized under state law with a priority date before the date the Compact is ratified by  
25 the State and the Tribe, whichever date is later.

26           (a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use  
27 measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed  
28 17 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the right to  
29 continuously store water in these impoundments.

30           (b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of

1 Gorman Creek.

2 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
3 shown in Appendix 4 in the Gorman Creek drainage, in the drainage of origin.

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

5 a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 290  
6 AFY of water from the following sources where they occur on the Reservation in any combination up to  
7 the limits on each source and the total limit of 290 AFY.

8 (1) Direct Flow. Of the 290 AFY, the Tribe shall have the right to divert or use or permit the  
9 diversion or use of up to 240 AFY from the direct flow of Upper Big Sandy Creek and its tributaries;

10 (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife  
11 enhancement purposes as set forth in Sections A.5.e.(3) and (4) of Article III.

12 (3) Groundwater. Of the 290 AFY, the Tribe shall have the right to withdraw and use or permit  
13 the withdrawal and use of up to 50 AFY of groundwater in the Upper Big Sandy Creek drainage including  
14 groundwater that is hydrologically connected to surface water, in compliance with Section A.6.a. and b.  
15 of Article IV.

16 b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in  
17 Section A.5. of Article III, for the Upper Big Sandy Creek drainage shall have a priority date of September  
18 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage  
19 stipulations set forth in Appendix 2.

20 c. Period of use. The period of use of this water right shall be from January 1 through December  
21 31 of each year.

22 d. Points and means of diversion. The Tribe may divert or permit the diversion of this water right  
23 from any place and by any means in the Upper Big Sandy Creek drainage on the Reservation; provided that,  
24 the Tribe may not construct or permit the construction of a diversion or diversions with a total capacity in  
25 excess of 100 gpm for the irrigation water right with a source on Upper Big Sandy Creek Drainage. This  
26 diversion limit also applies to any change(s) of use of this right.

27 e. Purposes. The Tribe's right to 290 AFY in the Upper Big Sandy Creek drainage may be used  
28 for the following purposes; provided that, the Tribe may not make a change in use or transfer that results  
29 in a change in the place of use, point of diversion or place or means of storage to a place outside the  
30 drainage of origin, or to a place upstream of to downstream of, or from downstream of to upstream of the

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

3 (1) Non-Irrigation.

4 (a) Volume. 50 AFY of water in the Upper Big Sandy Creek drainage may be used for non-irrigation  
5 purposes.

6 (b) Source. The 50 AFY for non-irrigation purposes may come from groundwater, including  
7 groundwater that is hydrologically connected to surface water, in the Upper Big Sandy Creek drainage on  
8 the Reservation.

9 (c) Place of use. The 50 AFY for non-irrigation purposes may be used on the Reservation within  
10 the drainage of origin.

11 (2) Irrigation.

12 (a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for irrigation.

13 (b) Source. The 45 AFY for irrigation may come from direct flow of Upper Big Sandy Creek on the  
14 Reservation.

15 (c) Place of use. The 45 AFY may be used to irrigate 10 acres in the drainage of origin, on the  
16 Reservation.

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

24 (a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for  
25 stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage  
26 of impoundments shall not exceed 15 surface acres of impoundments in the Upper Big Sandy Creek  
27 drainage. The Tribe shall have the right to continuously store water in these impoundments.

28 (b) Source. The 45 AFY for stockwatering may come from the direct flow of Upper Big Sandy  
29 Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other  
30 than for a lined storage facility with a capacity of less than 0.5 AF.

1 (c) Place of use. The Tribal Water Right for stockwatering in the Upper Big Sandy Creek drainage  
2 may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are  
3 shown in Appendix 7.

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

12 (a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive  
13 use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not  
14 exceed 50 surface acres of impoundments in the Upper Big Sandy drainage. The Tribe shall have the right  
15 to continuously store water in these impoundments.

16 (b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of  
17 Upper Big Sandy Creek.

18 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
19 shown in Appendix 4 in the Upper Big Sandy Creek drainage, in the drainage of origin.

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

22 1. Quantification - Source - Volume.

23 a. Storage. The Tribe shall have the right to continuously store, or permit the continuous storage  
24 in East Fork Reservoir of up to a capacity of 665 AF from the natural flow of the East Fork of Beaver Creek.  
25 Subject to the 665 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 390  
26 AFY from the direct flow of the West Fork of Beaver Creek for storage in East Fork Reservoir as set forth  
27 in Section B.1.b. of Article III. The quantity impounded by continuous storage of the East Fork of Beaver  
28 Creek, shall not decrease the 390 AFY, which the Tribe has a right to divert from storage in East Fork  
29 Reservoir for non-irrigation purposes ~~set forth~~ ALLOWED in Section ~~B.5.a.~~ B.5. of Article III; provided that,  
30 the limit of 260 AFY on net depletion shall apply. In addition to the storage right set forth in this section,

1 the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes  
2 as set forth in Sections B.5.b. and c. of Article III.

3 b. Diversion. The Tribe shall have the right to divert 740 AFY of water in the Beaver Creek  
4 drainage from a combination of direct flow, storage and groundwater where they occur on the Reservation  
5 up to the limits on each source and the total limit of 740 AFY.

6 (1) Direct Flow. Of the 740 AFY, the Tribe shall have the right to divert or permit the diversion  
7 of up to 540 AFY from the direct flow of Beaver Creek and its tributaries on the Reservation. 390 AFY of  
8 the water from direct flow may be diverted to storage prior to application to any purposes allowed in  
9 Section ~~B.5.a.~~ B.5. of Article III without reducing the amount that can be applied to those purposes until  
10 such water is re-diverted from storage and applied to such purposes.

11 (2) Storage. The Tribe shall have the right to divert 390 AFY for non-irrigation purposes from water  
12 stored in East Fork Reservoir. The right to divert 390 AFY from the West Fork of Beaver Creek to storage  
13 is not reduced by the amount of water diverted for non-irrigation purposes from water derived from storage.

14 (3) Groundwater.

15 (a) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal  
16 and use of up to 120 AFY of groundwater including groundwater that is hydrologically connected to surface  
17 water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. Groundwater may be  
18 diverted to storage prior to application to any purposes allowed in Section ~~B.5.a.~~ B.5. of Article III without  
19 reducing the amount that can be applied to these purposes until such water is re-diverted and applied to  
20 such purposes.

21 (b) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal  
22 and use of an additional 200 AFY of groundwater from the volcanic bedrock aquifer and other aquifers that  
23 are not hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section  
24 A.6.a. of Article IV. The limit of 260 AFY on net depletion set forth in SECTION B.1.a.(2) of Article III, shall  
25 not apply to groundwater use pursuant to this section. Groundwater may be diverted to storage prior to  
26 application to any purposes allowed in Section ~~B.5.a.~~ B.5. of Article III without reducing the amount that  
27 can be applied to these purposes until such water is re-diverted and applied to such purposes.

28 c. Net Depletion. Of the 740 AFY diverted, the Tribe shall have a right to a net depletion of 260  
29 AFY in the Beaver Creek drainage. The calculation of net depletion shall not include evaporative loss from  
30 fish and wildlife habitat, from stockwatering, or from East Fork Reservoir, and use of groundwater that is



1 not hydrologically connected to surface water.

2 2. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in  
3 Section B. of Article III, for the Beaver Creek drainage shall have a priority date of September 7, 1916,  
4 subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations  
5 set forth in Appendix 2.

6 3. Period of use. The period of use of this water right shall be from January 1 through December  
7 31 of each year.

8 4. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the  
9 Tribe may divert or permit the diversion of this water right from any place and by any means in the Beaver  
10 Creek drainage on the Reservation.

11 5. Purposes. The Tribe's right to water in the Beaver Creek drainage may be used for the following  
12 purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in  
13 use or transfer of the water identified for non-irrigation purposes.

14 a. Non-Irrigation

15 (1) Volume. 590 AFY of water in the Beaver Creek drainage may be used for non-irrigation  
16 purposes; provided that, the net depletion may not exceed 260 acre-feet per year in accordance with  
17 Section B.1.c. of Article III.

18 (2) Source. The 590 AFY for non-irrigation in the Beaver Creek drainage may come from a  
19 combination of direct flow, storage and groundwater.

20 (3) Place of use. The 590 AFY for non-irrigation may be used in the Beaver Creek drainage on the  
21 Reservation.

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

29 (1) Volume. 40 AFY of water in the Beaver Creek drainage may be used for stockwatering as a  
30 consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments

1 shall not exceed 13 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the  
2 right to continuously store water in these impoundments.

3 (2) Source. The 40 AFY for stockwatering may come from the direct flow of Beaver Creek on the  
4 Reservation. Water for stockwatering may not be diverted from a perennial stream for off-stream storage  
5 other than for a lined storage facility with a capacity of less than 0.5 AF.

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

9 c. Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
10 wildlife enhancement in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change  
11 in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may  
12 repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and  
13 provided further that, the new point of diversion or place of use does not change to a place from upstream  
14 of to downstream of, or from downstream of to upstream of the location of the point of diversion of a  
15 water right recognized under state law with a priority date before the date the Compact is ratified by the  
16 State and the Tribe, whichever date is later.

17 (1) Volume. 110 AFY of water may be used for fish and wildlife enhancement as a consumptive  
18 use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not  
19 exceed 35 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the right to  
20 continuously store water in these impoundments.

21 (2) Source. The 110 AFY for fish and wildlife enhancement may come from the direct flow of  
22 Beaver Creek.

23 (3) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the  
24 areas shown in Appendix 4 in the Beaver Creek drainage, in the drainage of origin.

25 C. Additional Development of Water.

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

28 1. Subject to ~~Section~~ SECTIONS A.6.a. and b. and Section A.7.d. of Article IV, the Tribe may, as  
29 part of the Tribal Water Right, develop or permit the development of groundwater on the Reservation in  
30 addition to the amounts specified in Sections A. and B. of Article III, from new sources or from expanded

1 use of existing sources. The priority date of such new appropriation shall be the date of development, and  
2 notwithstanding any other provision of this Compact, may only be used in priority with other water rights.

3 2. The Tribe may impound or permit the impoundment of surface water for stockwatering purposes  
4 in addition to the amounts set forth in Sections A. and B. of Article III; provided that the priority date of  
5 the new appropriation shall be the date of development and, notwithstanding any other provision of this  
6 Compact, may only be used in priority with other water rights; and further provided that, the maximum  
7 capacity of the impoundment or pit is less than 15 AF and the appropriation is less than 30 AFY and is from  
8 a source other than a perennial flowing stream. The Tribe may not transfer or make a change in use of the  
9 stockwater right obtained pursuant to this section.

10 3. On the acquisition of land after the Compact is ratified by the State and the Tribe, whichever  
11 date is later, the Tribe has the right to the use of any water right acquired as an appurtenance to the land.  
12 Such right shall become part of the Tribal Water Right in addition to the amount set forth in Article III of  
13 this Compact and shall be subject to the terms of this Compact; provided that, the right shall retain the  
14 priority date of the acquired right. The Tribe will notify DNRC of any acquisition of water in the Tribe's  
15 annual report and will identify the water right acquired.

16 4. The Tribe shall be entitled to use any new reserved water rights that may be created with  
17 acquisition of land after the Compact is ratified by the State and the Tribe, whichever date is later; provided  
18 that, in any drainage with a moratorium on new state permits pursuant to Section A.7.a. of Article IV, the  
19 Tribe shall defer exercise of new reserved water rights, if any, until the moratorium is lifted at which time  
20 the Tribe has the first right to use the excess water in accordance with Section A.7.b. of Article IV. The  
21 priority date of the excess water shall be the date of acquisition of the land.

22 5. After the ratification date of the Compact, the Tribe shall have the right to acquire  
23 off-Reservation water rights separate from acquisition of the land to which such water rights are  
24 appurtenant; provided that, water from the Tribal Water Right is not available for economic or other  
25 reasons; and provided further that, the rights shall retain the priority date held by the prior owner of the  
26 rights. Such rights shall become part of the Tribal Water Right and shall thereby become subject to  
27 Sections A.4.b.(1) and (2) of Article IV.

28 6. As a part of the Tribal Water Right, the Tribe shall be entitled to an allocation of 10,000 AFY  
29 of stored water in Lake Elwell, measured at the dam, for use or disposition by the Tribe for any beneficial  
30 purpose, either on or off the Reservation, pursuant to the terms of this Compact; provided that, such

1 allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this  
2 Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or  
3 of persons holding such reserved water rights through that tribe or through the United States. Any use or  
4 disposition of water from Lake Elwell off the Reservation by the Tribe is subject to the specific provisions  
5 relating to such use or disposition in any act of Congress ratifying this Compact.

6 D. Proposed Decree.

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

9 ARTICLE IV - IMPLEMENTATION OF TRIBAL WATER RIGHT

10 A. General Provisions.

11 1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United  
12 States for the benefit of the Tribe.

13 2. Tribal Water Right: Administration. Subject to the limitations imposed by this Compact and  
14 other federal law, the use of the Tribal Water Right shall be administered by the Tribe through the TWRD  
15 both on and off of the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth  
16 in D.4. of Article IV, concerning off-Reservation use of the Tribal Water Right which raise issues  
17 concerning the application of state or federal law shall be resolved in a court of competent jurisdiction.  
18 Those disputes concerning off-Reservation use of the Tribal Water Right which do not raise issues  
19 concerning the application of state or federal law will be within the exclusive jurisdiction of the Tribe.  
20 Subject to the limitations imposed by this Compact, the Tribe shall have the final and exclusive jurisdiction  
21 to resolve all disputes concerning the Tribal Water Right between users of the Tribal Water Right. The  
22 TWRD will, among other activities, develop policies and procedures for monitoring water use, diversions,  
23 and maintaining records of water use and development consistent with this Compact. The current and  
24 future water use and diversions will be identified by location and quantity. Final storage capacities will be  
25 based on project as-built plans, and will store no more than the water right set forth in Article III of this  
26 Compact. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water  
27 code, which shall be developed and adopted by the Tribe within two (2) years following the ratification date  
28 of this Compact pursuant to any requirements set forth in the Constitution of the Chippewa Cree Tribe.  
29 Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right  
30 shall be by the Secretary of the Interior.

1           3. Use.

2           a. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe,  
3 or persons authorized by the Tribe.

4           b. Effect of Non-Use of Tribal Water Rights. Except as specifically provided herein, state law  
5 doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture or  
6 abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right  
7 described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.

8           4. Change in Use or Transfer.

9           a. On-Reservation Changes in Use or Transfer of the Tribal Water Right. Unless otherwise stated  
10 in this Compact, the Tribe may make a change in use or transfer of a water right set forth in Article III of  
11 this Compact on the Rocky Boy Reservation, including the use of water salvaged through the application  
12 of water-saving methods to expand irrigation, provided that:

13           (1) for each source quantified in Article III, any change in use or transfer shall not result in uses  
14 that exceed the water amount quantified for that source;

15           (2) any change in use or transfer shall not result in an increase in net depletion in the Beaver Creek  
16 drainage in excess of the amount specified for that source;

17           (3) any change in use or transfer shall not have an adverse effect on a water right recognized under  
18 state law with a priority date before the date of the change or transfer PROVIDED THAT FOR CHANGE  
19 IN USE OR TRANSFER OF GROUNDWATER, THE BURDEN AS TO ADVERSE EFFECT SHALL BE AS SET  
20 FORTH IN SECTION A.6. OF ARTICLE IV; and

21           (4) any change in use or transfer shall not change the source of the water involved in any such  
22 changes.

23           (5) The Tribe may not make a change in use or transfer of any water rights set forth in Article III  
24 for the purposes of stockwatering or fish and wildlife enhancement; provided that, the Tribe may repair or  
25 relocate an impoundment for stockwatering or fish and wildlife enhancement within the drainage of origin;  
26 and provided further that, the new point of diversion or place of use does not change to a place from  
27 upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion  
28 of a water right recognized under state law with a priority date before the date the Compact is ratified by  
29 the State and the Tribe, whichever date is later.

30           (6) The Tribe may not make a change in use or transfer any of the water rights set forth in Article

1     III with a source on the drainages of Upper Big Sandy Creek, Camp Creek, Duck Creek and Gorman Creek  
2     that results in a change in the place of use, point of diversion or place or means of storage of the water  
3     outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to  
4     upstream of the location of the point of diversion of a water right recognized under state law with a priority  
5     date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

6             (7) The Tribe may make a change in use or transfer of the irrigation water right with a source in  
7     Upper Big Sandy Creek DRAINAGE AS set forth in SECTION A.5.E. OF Article III so long as it does so  
8     within the diversionary limits set forth in Section A.5.d of Article III; provided that, the net depletion shall  
9     not exceed 30 AFY.

10            b. Off-Reservation Changes in Use or Transfer of the Tribal Water Right. Except as may be  
11     otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or permit a change in  
12     use or a transfer of the Tribal Water Right for use off the Reservation; provided that, any transfer shall be  
13     for a term of not to exceed 100 years, and may include provisions authorizing renewal for an additional  
14     term of not to exceed 100 years; and provided further that, no such transfer shall be a permanent alienation  
15     of the water transferred; and provided further that, no transfer or change in place of use shall be made to  
16     a location outside the watershed that forms the Missouri River drainage; and provided further that, if the  
17     Tribe receives a good faith offer from a third person from outside the Milk River drainage to acquire use of  
18     specified Tribal water rights and the Tribe is willing to accept the terms of the offer, the Tribe, before  
19     accepting the offer, shall allow water users in the Milk River drainage the opportunity to acquire use of such  
20     rights at the same price and on the same terms and conditions as those contained in the offer. Any change  
21     in use or transfer of any such water right involving a point of diversion or place of use located off the  
22     Reservation shall be considered an off-Reservation use; provided that, any off-Reservation use of Tribal  
23     water rights described in this Compact shall not be deemed to convert such rights to rights arising under  
24     state law, and nonuse of such rights off the Reservation shall not constitute a relinquishment, forfeiture,  
25     or abandonment of the rights; and provided further that, releases or diversions from Lake Elwell for use on  
26     the Reservation shall not be considered off-Reservation uses. The Tribe may change the point of diversion  
27     or purpose or place of use of the Tribal Water Right back to the Reservation without reduction in the  
28     amount of water provided in the Compact.

29            (1) Applicable Law. No person may initiate an off-Reservation use, change in use, or transfer of  
30     a Tribal water right set forth in this Compact without first applying for and receiving authorization for the

1 use, change in use, or transfer pursuant to Montana law in effect at the time of the application. Approval  
2 of an application for a use, change in use or transfer off the Reservation by the State shall be conditioned  
3 on a valid Tribal permit for such use, change in use or transfer by the Tribe. The applicant shall provide  
4 DNRC with proof of a valid Tribal permit prior to initiating the use, change in use, or transfer.

5 (2) Diversion Facilities. With respect to diversion or transportation facilities located off the  
6 Reservation which are to be used in connection with the exercise of a water right set forth in this Compact,  
7 the Tribe or persons using such water rights shall apply for all permits, certificates, variances and other  
8 authorizations required by state laws regulating, conditioning or permitting the siting, construction,  
9 operation, alteration or use of any equipment, device, facility or associated facility proposed to use or  
10 transport water. A diversion or use of water in the exercise of such water rights may be made only after  
11 all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been  
12 obtained.

13 (3) Subsequent Federal or State Law. All off-Reservation uses of Tribal water rights set forth in  
14 this Compact shall comply with the requirements set forth in Section A.4.b.(1) and (2) of Article IV until  
15 such time as the statutory or common law of the United States or the State of Montana establish that  
16 off-Reservation uses of Indian water rights may occur without regard to state law.

17 c. Placement and Size Survey. Placement and size of stockwater impoundments and fish and  
18 wildlife enhancement areas shall be surveyed by the TWRD every five (5) years commencing one (1) year  
19 after the ratification date of this Compact. The initial survey method shall be through use of data obtained  
20 by aerial photography or an acceptable quantitative substitute with accuracy and verification equal to or  
21 greater than photography. The method may be modified by agreement between the TWRD and the DNRC.  
22 Such modification is pursuant to and shall not be deemed a modification of this Compact. The TWRD shall  
23 provide the DNRC with a completed survey for review within six (6) months of initiation of the survey.

24 d. Net Depletion Table. Net depletion for Tribal water uses in THE Beaver Creek drainage AND FOR  
25 IRRIGATION USES IN THE UPPER BIG SANDY CREEK DRAINAGE shall be as set forth in the table attached  
26 as Appendix 9 to this Compact. The TWRD and the DNRC may jointly agree to modify this initial table.  
27 Such modification is pursuant to, and will not be deemed a modification of, this Compact.

28 5. Reporting requirements.

29 a. On an annual basis the DNRC shall provide the Tribe and the United States with a listing of all  
30 new uses of surface and groundwater for which a permit has been issued by the DNRC in the Big Sandy

1 and Beaver Creek drainages, and of any change in use or transfer of surface water or groundwater  
2 approved by the DNRC in the Big Sandy and Beaver Creek drainages since the last report.

3 b. On an annual basis the TWRD shall provide the State and the United States with a listing of all  
4 new development of the water rights described in this Compact, the net depletion in the Beaver Creek  
5 drainage, and the net depletion for irrigation in the Upper Big Sandy Creek drainage, and of all changes in  
6 use or transfers of the water rights described in this Compact since the last report. The first report by the  
7 TWRD following adoption of a Tribal Water Code shall include a listing of existing uses.

8 c. The TWRD, the DNRC, and the United States may agree to modify the reporting requirements  
9 set forth in subsections a. and b. of this section. Such modification is pursuant to, and will not be deemed  
10 a modification of, this Compact.

11 6. Groundwater.

12 a. New Groundwater Development Without Adverse Effect.

13 (1) Limits on Additional Development of Groundwater from Sources on the Reservation. After the  
14 ratification date of this Compact, the Tribe may develop or permit the development of groundwater;  
15 provided that, such development is without an adverse effect on water rights recognized under state law  
16 with a priority date before the date of development of the new appropriation.

17 (2) Prerequisite Administrative Remedy. The following procedure for determining whether new  
18 development of groundwater will have an adverse effect on existing groundwater rights recognized under  
19 state law shall be followed prior to seeking relief from the Compact Board:

20 (a) Application for development of a groundwater use on the Reservation shall be made to the  
21 TWRD.

22 (b) The TWRD shall review the application and make a determination of whether the new use will  
23 have an adverse effect on existing water rights recognized under state law with a priority date before the  
24 application date. Upon request by the TWRD, the DNRC shall provide information on existing state water  
25 rights as recorded in the DNRC database to the TWRD.

26 (c) If the TWRD determines that the new development will have an adverse effect on a water right  
27 recognized under state law with a priority date before the application date, the TWRD shall deny the  
28 application. If the TWRD determines that the new development will not have an adverse effect on a water  
29 right recognized under state law with a priority date before the application date, the TWRD shall forward  
30 the application with its determination to the DNRC.



1 (d) If, based upon the evidence, DNRC agrees with the TWRD's determination, the application will  
2 be approved. If, however, based upon the evidence, the DNRC cannot agree with the determination of the  
3 TWRD, DNRC shall publish notice, of the application once in a newspaper of general circulation in the area  
4 of the source and shall serve notice by first-class mail on any appropriator of water or holder of a permit  
5 who, according to the records of the department, has a water right with a priority date before the  
6 application date, and may be affected by the proposed development.

7 (e) DNRC and the TWRD ~~should~~ SHALL attempt to resolve any disagreement on the determination  
8 of no adverse effect by the TWRD on a cooperative basis. If the DNRC or a holder of a water right  
9 recognized under state law with a priority date before the application date disagree with the determination  
10 of no adverse effect, DNRC or the water users may seek relief from the Compact Board.

11 (f) In any proceeding concerning the effect of new groundwater development on the Reservation  
12 either before the TWRD, the DNRC, or before the Compact Board, the following shall apply:

13 (i) 1 - 150 Feet Wells: For new Tribal groundwater wells completed at a depth beneath the surface  
14 of 1 to 150 feet, the Tribe shall bear the burden of showing no adverse effect to groundwater uses  
15 recognized under state law with a priority date before the application date.

16 (ii) 150 Feet or Deeper Wells: For Tribal groundwater wells completed at a depth beneath the  
17 surface of 150 feet or deeper, the owner of a water right recognized under state law with a priority date  
18 before the application date shall bear the burden of showing any adverse effect to the water right.

19 b. Groundwater Development Exempt From The Showing Of No Adverse Effect. The following  
20 wells are exempt from the requirement of showing no adverse effect:

21 (1) Existing Tribal wells are exempt from the burden to show no adverse effect. The Tribe may  
22 develop existing wells, or replacements therefor, to their full capacity. The primary municipal and domestic  
23 wells are listed in Appendix 8. A comprehensive list of existing wells will be kept on file in TWRD offices  
24 as per the requirement to list existing uses in Section A.5. of Article IV.

25 (2) New Tribal groundwater wells producing from the Volcanic Bedrock Aquifer may be developed  
26 without a showing of no adverse effect.

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

1           7. Moratorium.

2           a. New State Permits. With the exceptions listed in subsection (1) of this section, the DNRC shall  
3 not process or grant an application for a permit to appropriate water from a source in the Big Sandy Creek  
4 Basin (excluding Sage Creek and Lonesome Lake Coulee), and in the Beaver Creek drainage after the date  
5 this Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee,  
6 whichever date is later. This moratorium shall remain in effect for a minimum of 10 years and shall only  
7 be lifted pursuant to the procedures set forth in Section A.7.b of Article IV. This moratorium is not  
8 intended to apply to applications for change in appropriation under state law.

9           (1) The moratorium shall not apply to the following appropriations:

10           (a) an appropriation of groundwater by means of a well or developed spring with a maximum  
11 appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year unless the appropriation  
12 is a combined appropriation from the same source from two or more wells or developed springs exceeding  
13 the limitation;

14           (b) an appropriation of water for use by livestock if the maximum capacity of the impoundment or  
15 pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source  
16 other than a perennial flowing stream;

17           (c) an appropriation of groundwater from any deep aquifer not hydrologically connected to surface  
18 water.

19           (2) Within 120 days following the date the moratorium takes effect, the DNRC shall publish notice  
20 of the moratorium once in a newspaper of general circulation in the area of the source and shall serve  
21 notice by first-class mail on all appropriators of water or holders of permits who, according to the records  
22 of the department, have a water right with a source in the affected drainages.

23           (3) The moratorium applies only to new permits issued under state law and is not a limit on new  
24 development of the Tribal Water Right as set forth in this Compact.

25           b. Lifting of Moratorium. After 10 years, the Tribe or an individual seeking to appropriate water  
26 in the affected drainages may petition the DNRC for removal of the moratorium, or the DNRC may initiate  
27 proceedings to lift a moratorium on its own initiative. The DNRC shall comply with the following procedure  
28 in making a determination as to whether water is available in excess of the Tribal Water Right and rights  
29 recognized under state law. The DNRC and TWRD may agree to modify procedures or provide additional  
30 procedures. Such modification is pursuant to and shall not be deemed to be a modification of the Compact.

1 (1) Proceedings initiated by TWRD.

2 (a) The TWRD shall have sixty (60) days following the filing of the petition requesting that the  
3 moratorium be lifted to provide the DNRC with data supporting its petition to lift the moratorium.

4 (b) Within sixty (60) days following the receipt of the data supporting TWRD's petition, the DNRC  
5 shall determine whether to lift the moratorium, and shall notify the TWRD of its determination and the  
6 grounds therefor. The TWRD shall be allowed reasonable access to any data relied upon by the DNRC for  
7 its determination.

8 (c) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the  
9 TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The  
10 moratorium shall continue pending Compact Board proceedings and any appeal

11 (2) Proceedings initiated by DNRC.

12 (a) The DNRC may, on request by a water user or on its own initiative, commence proceedings to  
13 determine whether to lift a moratorium.

14 (b) The DNRC shall notify the TWRD of the commencement of proceedings to determine whether  
15 to lift the moratorium and shall submit to the TWRD all data in support of the proceedings at the same time  
16 or as soon after such data becomes available as practical or shall give the TWRD reasonable access to such  
17 data within the same time frame.

18 (c) The TWRD shall be given sixty (60) days following receipt of the data in support of the  
19 proceedings to submit to the DNRC a statement of the Tribe's position concerning the issue along with any  
20 supporting data and argument.

21 (d) The DNRC shall notify the TWRD of its determination and the grounds therefor within sixty (60)  
22 days of receipt of the Tribe's statement.

23 (e) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the  
24 TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The  
25 moratorium shall continue pending Compact Board proceedings and any appeal.

26 c. Excess Water. If the moratorium is lifted pursuant to the procedure described in A.7.b. of Article  
27 IV, the Tribe shall have the first right to use the excess water for the purpose of fulfilling new reserved  
28 water rights, if any, on land acquired after the ratification date of this Compact, but before the date the  
29 moratorium is lifted. The excess water used by the Tribe shall become part of the Tribal Water Right and  
30 ~~may be transferred or stored~~ THE TRIBE MAY MAKE A CHANGE IN USE OF, OR TRANSFER, INCLUDING

1 STORAGE, OF SUCH WATER pursuant to Section A.4.a. of Article IV.

2 d. Limit on New Tribal Groundwater Development. In any drainage with a moratorium, new Tribal  
3 groundwater development pursuant to Section C.1. of Article III, by a well or developed spring from an  
4 aquifer that is hydrologically connected to surface water shall be limited to a maximum appropriation or  
5 combined appropriation from two or more wells or developed springs in a single drainage defined by this  
6 Compact to 35 gallons per minute or less, not to exceed 10 acre-feet per year.

7 8. Mutual Subordination. To reduce the need for daily administration of water use on and off the  
8 Reservation, water rights shall not be administered in priority, but shall be satisfied according to the  
9 following agreements.

10 a. Subordination to Non-Tribal Water Rights Upstream of the Reservation. The Tribal Water Right  
11 shall be subordinate to water rights recognized under state law upstream from any point on the Reservation  
12 with a priority date before the ratification date of this Compact. It is the intent of the parties that this  
13 subordination extends only to valid water rights, and not to statements of claim filed pursuant to 85-2-221,  
14 MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA,  
15 and rights exempt from the permit process pursuant to 85-2-306, MCA, a list of rights as currently claimed  
16 is attached as Appendix 3. Appendix 3 will be modified by any final decree resolving claims on the affected  
17 drainages. Appendix 3 may be modified due to clerical error or omission.

18 b. Effect of Mitigation. Because the impact of development of the Tribal Water Right on  
19 downstream water rights recognized under State law has been mitigated by provisions of the Compact and  
20 by special measures set forth in drainage stipulations, any person claiming or holding a water right  
21 recognized under State law, or an interest in such water right, may not assert priority over, or make a call  
22 for, or claim any of the water rights of the Tribe set forth in this Compact, in any court, tribunal, or other  
23 forum.

24 9. Stockwatering Impoundments Limited by Surface Area. Except for new stock ponds developed  
25 under Section C.2. of Article III, the surface acreage limitations on stockwatering impoundments set forth  
26 in Article III shall be the measure of compliance with the quantification of water rights for the purpose of  
27 stockwatering.

28 10. Impoundments for the Purpose of Enhancing Fish and Wildlife Habitat.

29 a. Fish and Wildlife Enhancement Impoundments Limited by Surface Area. The surface acreage  
30 limitations on impoundments for the purpose of fish and wildlife enhancement set forth in Article III shall

1 be the measure of compliance with the quantification of water rights for the purpose of fish and wildlife  
2 enhancement.

3 b. Limits on Structures. No structure for the purpose of fish and wildlife enhancement may create  
4 a potential high water line beyond the existing wet riparian habitat delineated as fish and wildlife  
5 enhancement zones on the map attached as Appendix 4.

6 11. Structures Mimic Natural Processes. No structure for the purpose of fish and wildlife  
7 enhancement, or new stockwatering impoundments on a perennial stream built after the ratification date  
8 of the Compact, excluding repair or replacement of existing structures, may stop the entire flow of surface  
9 water during filling of the impoundment. To accomplish this the Tribe shall build any structure to mimic  
10 natural processes by allowing water to flow through the structure, or bypass the structure during filling.

11 B. Big Sandy Creek Basin.

12 1. Operation of Bonneau Reservoir.

13 a. Minimum Pool / 240 AFY Stored for Satisfaction of Release. The minimum pool at Bonneau  
14 Reservoir shall be established by the Tribe. The Tribe shall store annually the minimum pool plus 240  
15 acre-feet, if water is available. The ~~next~~ 240 acre-feet above the minimum pool shall be stored to satisfy  
16 the release set forth in this Article and shall not be available to satisfy the Tribal Water Right. Evaporative  
17 loss shall be accounted for in setting the minimum pool and shall not be subtracted from the 240 acre-foot  
18 pool stored for downstream water users. Any change in use of the water stored in Bonneau Reservoir from  
19 irrigation to other purposes shall be without adverse effect on downstream water uses recognized under  
20 state law with a priority date before the date of change, and measures to prevent adverse effect may  
21 include release of additional water from Bonneau Reservoir.

22 b. Release for Off-Reservation Irrigation Use. The Tribe shall release no more than 104 AFY from  
23 Bonneau Reservoir or from direct flow of Box Elder Creek to satisfy the claims for irrigation water rights  
24 currently held by Bert Corcoran, and the Tribe shall deliver this water to a point of diversion specified in  
25 the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2; provided that,  
26 the Tribe shall have no responsibility to upgrade or to increase the capacity of the existing delivery system;  
27 and further provided that, the Tribe shall not be required to release water from Bonneau Reservoir below  
28 the minimum pool established by the Tribe plus 240 acre-feet prior to satisfaction of the 240 acre-feet per  
29 year ~~bypass~~ RELEASE set forth in Section B.1.c. of Article IV, and the minimum pool at all other times.  
30 The 104 AFY release shall be in accordance with a delivery schedule agreed to by Mr. Corcoran, or his

1 successors in interest, and the TWRD. Mr. Corcoran's claims for irrigation water rights shall be specified  
2 in the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2. Nothing  
3 in the drainage stipulation or in this Compact shall affect any existing right that Mr. Corcoran may have to  
4 the use of on-Reservation conveyance and distribution systems to deliver this water.

5 c. 240 AFY Release. The Tribe shall annually release the first 240 acre-feet of water, as measured  
6 near the confluence of Box Elder Creek and Lower Big Sandy Creek, stored in Bonneau Reservoir above the  
7 minimum pool, at the request of the downstream irrigation water users as set forth below, for maintenance  
8 of instream flow and for domestic and stock purposes on Lower Big Sandy Creek. The 240 AF of water,  
9 once released, shall be designated as an instream flow and shall be senior to all Tribal diversions and all  
10 non-domestic and non-stockwater rights recognized under state law from the point of release to the  
11 confluence with the Milk River. The Tribe shall not divert from direct flow on Lower Big Sandy Creek  
12 between its confluence with Box Elder Creek and the Reservation boundary at Stoneman Farms, as that  
13 boundary exists on the effective date of this Compact, during release of the 240 AF of water to  
14 downstream water users in the months of July and August. A structure that will bypass the peak  
15 scheduled release will be constructed for any diversion of the Tribal Water Right upstream of the confluence  
16 of Big Sandy Creek with Gravel Coulee. Under no circumstances shall the Tribe be required to release more  
17 than 240 AFY of water to maintain instream flow and for domestic and stock purposes.

18 d. Schedule for 240 AFY. The method for determining the schedule of releases is as follows:  
19 Water users on Lower Big Sandy Creek with drainage stipulations listed in Appendix 2 shall elect a three  
20 member Bonneau Release Committee to determine the schedule of release for the 240 AFY. The  
21 Committee shall notify the DNRC which shall notify the TWRD by May 1st of each year of the requested  
22 schedule. The schedule shall not exceed the operating standards of Bonneau Reservoir or result in  
23 unreasonable interference of the Tribe's use of water stored in the Reservoir. If the TWRD does not receive  
24 notice by May 1 of any year, the TWRD shall release 2 cfs continuously for July and August in accordance  
25 with Section B.1.c. of Article IV. DNRC shall notify water users which, according to the records of the  
26 Department, have a water right recognized under state law with a source on Box Elder Creek, or on Big  
27 Sandy Creek between the confluence with Box Elder Creek and the confluence with the Milk River, that the  
28 release may not be diverted. After May 1, at the request of the Bonneau Release Committee, the DNRC  
29 shall request the Tribe to alter the rate of release and the Tribe may agree to comply. At the request of the  
30 Tribe, the DNRC shall request the Bonneau Release Committee to agree to forego the release, and if the

1 Committee believes the purposes for the release as set forth in Section B.1.c. of Article IV are being  
2 satisfied without the release, the Committee may, in any year, agree to forego the release. When  
3 streamflow in lower Big Sandy Creek at the bypass structure referred to in Section B.1.c. of Article IV,  
4 exceeds the peak flow specified in the designated release schedule, such excess flow can be diverted by  
5 the Tribe, subject to the diversion limits designated in Article III.

6 e. Effective Date for Bonneau Reservoir Operational Plan. Notwithstanding ratification of this  
7 Compact by the parties, the operational plan for Bonneau Reservoir set forth in Sections B.1.a. through c.  
8 of Article IV, shall not become effective until completion of the enlargement of Bonneau Dam.

9 2. Water Use on Lower Big Sandy Creek Drainage.

10 a. 2 cfs Bypass at Stoneman Farms. Structures will be constructed at each point of diversion on  
11 Lower Big Sandy Creek which allow a minimum of 2 cfs of water flow from direct and return flow, if  
12 available, to pass year around from the most downstream diversion on the Reservation on Lower Big Sandy  
13 Creek. The 2 cfs shall be designated as an instream flow and shall be senior in priority to Tribal diversions  
14 and all non-domestic and non-stockwatering water rights recognized under state law with a point of  
15 diversion between the bypass and the confluence with the Milk River. When streamflow in Lower Big  
16 Sandy Creek exceeds 2 cfs outside the scheduled 240 AF release period, such excess flow can be diverted  
17 by the Tribe subject to diversion limits designated in Article III.

18 b. Water Quality Issues.

19 (1) Monitoring Wells. Within one year following the effective date of this Compact, a monitoring  
20 well network adequate to detect saline seep shall be installed to depths no greater than 30 feet near the  
21 proposed Enlarged Stoneman Reservoir site shown in Appendix 6. The location of the wells will be  
22 established by TWRD and DNRC (or its representative) and groundwater level and quality shall be measured  
23 on a quarterly basis to establish baseline conditions.

24 (2) Water Quality Monitoring Before Construction. Within one year following the effective date  
25 of this Compact, a surface water quality network will be established by TWRD and DNRC and quarterly  
26 sampling continued for a sufficient period of time to establish the water quality baseline conditions referred  
27 to above, adjacent to and below the Stoneman Farms project. The results of the baseline analysis will be  
28 used to establish a threshold value for water quality degradation associated with salinity which will trigger  
29 the requirement for more extensive study.

30 (3) Water Quality Monitoring After Construction. After construction of the Stoneman Reservoir

1 enlargement, monitoring of the wells and surface water quality will be resumed to evaluate changes in  
2 water quality. If salinity measurements result in a trend of increasing salinity on a sustained basis over a  
3 reasonable period of time, the TWRD or DNRC may petition the Compact Board to appoint a technical  
4 expert to conduct an analysis to identify the causes of the increasing salinity and recommend appropriate  
5 remedies. The analysis and recommendations may include sources of salinity off the Reservation.

6 (4) Remedies. The results of the analysis shall be submitted to the DNRC and to the TWRD which  
7 shall make a joint effort to resolve the degradation issue based on the analyses. If the analysis includes  
8 sources of salinity off the Reservation, the DNRC shall assist the TWRD in obtaining reasonable access onto  
9 the land off the Reservation for the purpose of observation. If the DNRC and the TWRD, are unable to  
10 resolve the issue within 30 days through joint effort, the DNRC, the TWRD, or any affected water user,  
11 may petition the Compact Board for relief. The Compact Board shall have jurisdiction over any contributor  
12 to the salinity problem and shall fashion its remedy in a manner proportionate to the causes contributing  
13 to the problem. The remedy fashioned by the Compact Board for salinity problems shall be limited to  
14 issuance of an order to cease and desist the practice or practices leading to the salinity problems. The  
15 remedies set forth in this section shall be in addition to any remedies or water quality standards provided  
16 for under other applicable law.

17 C. Beaver Creek Drainage.

18 1. Moratorium on Tribal Consumptive Uses. For a period of five years following the ratification  
19 date of the Compact, there shall be a moratorium on the development of Tribal consumptive uses from  
20 surface water in the Beaver Creek drainage. During this moratorium, a monitoring network consisting of  
21 three continuous recording stations will be installed and the resulting data analyzed to determine if Beaver  
22 Creek gains or loses flow between the confluence of East and West Fork and the Reservation boundary.  
23 Location of the three gages shall be:

- 24 (1) the West Fork of Beaver Creek at the location the Tribe intends to divert water to the East Fork;  
25 (2) the confluence of the East and West Forks of Beaver Creek; and  
26 (3) the Reservation boundary at the most downstream point on Beaver Creek. A staff gage shall  
27 also be installed in East Fork Reservoir following enlargement of the Reservoir.

28 2. Development of Management Plan. Based on the results of the five years of gage data on  
29 Beaver Creek, the Tribe and the Montana Department of Fish, Wildlife and Parks shall work cooperatively  
30 to develop a fishery and recreational management plan. The plan may include modifications in minimum



1 instream flows set forth in Section C.3. of Article IV. Such modification is pursuant to, and will not be  
2 deemed a modification of, this Compact. The management plan is not binding on any party and shall not  
3 be used to modify minimum instream flows until it is approved by the Tribe and the Montana Department  
4 of Fish, Wildlife and Parks.

5 3. Operation of East Fork Reservoir Following Enlargement and Pending Adoption of a Management  
6 Plan. During the moratorium imposed by Section C.1. of Article IV, or pending adoption of the management  
7 plan authorized by Section C.2. of Article IV, East Fork Reservoir may be enlarged; provided that,

8 a. The enlarged Reservoir shall be used only for recreational purposes during the five year  
9 moratorium. However, after the five year moratorium period and pending adoption of the management plan,  
10 the enlarged Reservoir may be utilized for multiple purposes, but remains subject to the limitations set forth  
11 under Sections C.3.b., c., and d. of Article IV.

12 b. Any surface water diversion from the West Fork of Beaver Creek and its tributaries on the  
13 Reservation to the East Fork of Beaver Creek shall include a structure which allows a minimum of 1 cfs of  
14 water flow from direct and return flow, if available, to pass year around; provided that, the storing of water  
15 in East Fork Reservoir from the East Fork of Beaver Creek shall not be considered a diversion for the  
16 purposes of this provision.

17 c. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the  
18 northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the  
19 Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return  
20 flow, if available, to pass year round; provided that, the storing of water in East Fork Reservoir from the  
21 East Fork of Beaver Creek shall not be considered a diversion for the purposes of this provision.

22 d. The Tribe shall release water from East Fork Reservoir to augment streamflow on Beaver Creek  
23 if the flow at the confluence of East and West Fork or below the most downstream diversion on the  
24 Reservation, whichever is the most downstream, falls below 1 cfs; provided that, the Tribe shall not be  
25 required to release water if the level of the enlarged Reservoir reaches or falls below the minimum pool; and  
26 provided further that, the Tribe shall not be required to release water if the flow at the Reservation  
27 boundary at the most downstream point on Beaver Creek exceeds 2 cfs.

28 4. Operation of East Fork Reservoir Prior to Enlargement. Prior to enlargement of East Fork  
29 Reservoir and pending adoption of the management plan authorized by Section C.2. of Article IV, the  
30 following diversionary constraints are in effect.

1           a. Any surface water diversion from the West and East Forks of Beaver Creek and its tributaries  
2 on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and  
3 return flow, if available, to pass the structure year around.

4           b. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the  
5 northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the  
6 Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return  
7 flow, if available, to pass year round.

8           D. Enforcement - Chippewa Cree-Montana Compact Board.

9           1. Establishment of Board. There is hereby established the Chippewa Cree-Montana Compact  
10 Board. The Board shall consist of three members: one member selected by the Governor of the State of  
11 Montana from up to six nominees, up to three nominated by the Commissioners of Chouteau County and  
12 up to three nominated by the Commissioners of Hill County; one member appointed by the Chippewa Cree  
13 Business Committee; and one member selected by the other two members. If the Governor fails to select  
14 a board member from the list of nominees, the Commissioners of Chouteau and Hill Counties may select  
15 the member. All members shall be appointed within six months of the ratification date of this Compact and  
16 within thirty days of the date any vacancy occurs. If an appointment is not timely made by the Governor  
17 or County Commissioners, the Director of DNRC or his/her designee shall fill the State's position. If an  
18 appointment is not timely made by the Chippewa Cree Business Committee, the Director of the TWRD or  
19 his/her designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible  
20 for reappointment. The initial term of each member shall be staggered with one member serving a five-year  
21 term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen  
22 by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity  
23 appointing the member. The expenses of the third member and all other expenses shall be borne equally  
24 by the Tribe and the State, subject to the availability of funds.

25           2. Membership. Should the two appointed members fail to agree on the selection of a third  
26 member within sixty days of the date of appointment of the second member, or within thirty days after any  
27 vacancy occurs, the following procedure shall be utilized:

28           a. Within five days thereafter each member shall nominate three persons to serve as a member of  
29 the Board;

30           b. Within fifteen days thereafter each member shall reject two of the persons nominated by the

1 other member;

2 c. Within five days thereafter, the remaining two nominees shall be submitted to the Dean of the  
3 University of Montana School of Law who shall select the third member from the two nominees.

4 3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable  
5 notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in  
6 advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing  
7 and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board,  
8 and on the parties to this Compact.

9 4. Jurisdiction of the Board. The Chippewa Cree-Montana Compact Board shall have jurisdiction  
10 to resolve controversies over the right to the use of water as between users of the Tribal Water Right and  
11 users of water rights recognized under state law including any contributor to a salinity problem. Such  
12 controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.

13 5. Pre-requisite Administrative Remedy.

14 a. Any non-tribal water user concerned that a new development or change in use of water by the  
15 Tribe is inconsistent with the Compact shall first contact the Havre Regional Office of the DNRC. If the  
16 DNRC and the TWRD are unable to resolve the issue in a reasonable time through discussion, DNRC, the  
17 water user, or the Tribe may seek relief through the Compact Board. The Tribe agrees to allow DNRC  
18 reasonable access onto Tribal land to observe the challenged development or change in use.

19 b. The Tribe or any tribal water user concerned that a new development or change in use or  
20 transfer of water by non-tribal water users is inconsistent with the Compact shall first contact the TWRD.  
21 If the TWRD and the DNRC are unable to resolve the issue in a reasonable time through discussion, the  
22 TWRD or the Tribal water user may seek relief through the Compact Board. The DNRC agrees to assist the  
23 TWRD in obtaining reasonable access onto the non-tribal water user's land to observe the challenged  
24 development or change in use or transfer.

25 c. The TWRD and the DNRC may jointly develop supplemental procedures as necessary or  
26 appropriate. Such supplemental procedures are pursuant to, and will not be deemed a modification of, this  
27 Compact.

28 6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall  
29 have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses  
30 or production of documents or other evidence, and to appoint a technical expert for the purposes of Section

1 B.2.b. of Article IV. The Tribe and the State shall enforce the Board's subpoenas in the same manner as  
2 prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each  
3 respective sovereign in a civil action. The parties to the controversy may present evidence and cross  
4 examine any witnesses. The Board shall determine the controversy and grant any appropriate relief,  
5 including a temporary order; provided that, the Board shall have no power to award money damages, costs,  
6 or attorneys fees. All decisions of the Board shall be by majority vote and in writing. The Board shall adopt  
7 necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All  
8 records of the Board shall be open to public inspection, except as otherwise ordered by the Board.

9 7. Review and Enforcement of Board Decisions.

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

15 b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in  
16 Section D.7.a. of Article IV, any decision of the Board shall be recognized and enforced by any court of  
17 competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which  
18 the decision was made.

19 c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Section D.7.a. of  
20 Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, may  
21 order such temporary or permanent relief as it considers just and proper.

22 d. Any appeal may be taken from any decision of the court in which a timely appeal is filed  
23 pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to  
24 Section D.7.b. of Article IV, in the manner and to the same extent as from orders or judgments of the court  
25 in a civil action.

26 e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the  
27 court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.

28 8. Waiver of Immunity. The Tribe and the State hereby waive their respective immunities from suit,  
29 including any defense the State shall have under the Eleventh Amendment of the Constitution of the United  
30 States, in order to permit the resolution of disputes under this Compact by the Chippewa Cree-Montana

1 Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that  
2 such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money  
3 damages, costs, or attorneys' fees. The parties agree that only Congress can waive the immunity of the  
4 United States. The participation of the United States in the proceedings of the Compact Board shall be as  
5 provided by Congress.

#### 6 ARTICLE V - DISCLAIMERS AND RESERVATIONS

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

8 1. The relationship between the water rights of the Chippewa Cree Tribe described herein and any  
9 rights to water of any other Indian Tribe, or of any federally derived water right of an individual, or of the  
10 United States on behalf of such Tribe or individual shall be determined by the rule of priority.

11 2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature,  
12 extent, or manner of administration of the rights to water of any other Indian tribes and tribal members of  
13 other Indian tribes.

14 3. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of  
15 an Indian Tribe other than the Chippewa Cree Tribe regarding its boundaries or property interests.

16 4. Nothing in this Compact may be construed or interpreted in any manner to establish the nature,  
17 extent, or manner of administration of the rights to water of any other federal agency or federal lands other  
18 than those of the Chippewa Cree Tribe.

##### 19 B. General Disclaimers.

20 Nothing in this Compact shall be so construed or interpreted:

21 1. As a precedent for the litigation of reserved water rights or the interpretation or administration  
22 of future compacts between the United States and the State, or the United States and any other state;

23 2. To preclude the acquisition or exercise of a right to the use of water by any member of the Tribe  
24 outside the Reservation by purchase of such right or by acquisition of land, or by application to the State.

25 3. To determine the relative rights inter sese of persons using water under the authority of the  
26 State or the Tribe;

27 4. To limit in any way the rights of the parties or any other person to litigate any issues or  
28 questions not resolved by this Compact;

29 5. To authorize the taking of a water right which is vested under state or federal law;

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



1 provide an allocation of 10,000 acre-feet per year from storage water in Lake Elwell, as described in Section  
2 C.6. of Article III. The priority date of this water right shall be that established for the source of supply.  
3 This water right will be held in trust and will be part of the Tribal Water Right.

4 2. Right to Participate in Future Projects to Import Water to the Milk River. The Tribe shall have  
5 the right to participate in any project to augment the water supply in the Milk River system by transferring  
6 water from another drainage, and to have any such augmentation project deliver any entitlement of the  
7 Tribe to water to a point on the Reservation designated by the Tribe.

8 B. Provision Of A Municipal, Rural, And Industrial Water Supply System, And A Tribal Economic  
9 Development Fund.

10 The State and Tribe agree to support federal legislation that will authorize and fund a municipal,  
11 rural and industrial water system adequate to meet the future MR&I water needs of the Tribe, according  
12 to the needs and population projections as set forth in the Municipal, Rural and Industrial (MR&I) Water  
13 Supply System Needs Assessment prepared for the Bureau of Reclamation, U.S. Department of the Interior  
14 (January, 1996), through either a regional system or a system serving the Reservation only. The State and  
15 Tribe further agree to support federal legislation that will establish an economic development fund as agreed  
16 to by the Tribe and the Department of the Interior, or by the Tribe and the Montana Congressional  
17 Delegation. Support by the Department of Interior for the proposed MR&I system will depend on a  
18 demonstration of feasibility and appropriate allocation of costs.

19 C. Implementation Contingencies and Cost Share of Administration and Mitigation.

20 Implementation of this Compact shall be contingent upon the appropriation of necessary funds by  
21 the Congress and by the Montana Legislature. The performance of any obligation by any party under this  
22 Compact shall be contingent upon appropriation of funds therefor. No liability shall accrue to any party in  
23 case necessary funds are not appropriated. The State and the Tribe agree to recommend the following cost  
24 share for administration and mitigation necessary to implement the Compact to the Montana State  
25 Legislature and the Congress for appropriation on a schedule consistent with implementation as  
26 contemplated in this Compact.

27 1. The State and the Tribe agree to support federal legislation to appropriate \$3,070,000 for the  
28 administration of the Tribal Water Right by the Tribal Water Resources Department as set forth in Articles  
29 III and IV of the Compact, including but not limited to: stream flow gages; diversion/bypass structures on  
30 Big Sandy Creek; aerial survey of impoundments on the Reservation; and development of a Tribal Water

1 Code.

2 2. The State and the Tribe agree to support state legislation to appropriate \$150,000 for the  
3 following purposes as set forth in Articles III and IV of the Compact: water quality discharge monitoring  
4 wells and monitoring program; diversion structure on Big Sandy Creek; conveyance structure on Box Elder  
5 Creek; and purchase of contract water from Lower Beaver Creek Reservoir.

6 3. The state agrees to provide services, subject to the availability of funds, valued at \$400,000  
7 for administration required by the Compact and for water quality sampling required by this Compact.

8 ARTICLE VII - FINALITY, SETTLEMENT OF CLAIMS,  
9 AND EFFECTIVENESS OF COMPACT

10 A. Ratification and Effectiveness of Compact .

11 1. This Compact shall become effective on the date it is ratified by the Tribe, by the State, and by  
12 the Congress of the United States, whichever date is latest; provided that, notwithstanding the provisions  
13 of Section 85-2-702(2), MCA, those aspects of the Compact specifically designated in Section A.2. of  
14 Article VII, shall become effective as stated therein. Upon ratification of this Compact by the Tribe and by  
15 the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any  
16 respect without the consent of both the Tribe and the State. Once ratified by Congress, the Tribe, and the  
17 State, the Compact may not be modified without the consent of the Tribe, the State, and the United States.

18 2. As between the State and the Tribe, the moratorium on state permits in the Big Sandy Creek  
19 Basin set forth in Section A.7. of Article IV, shall become effective upon the date the Compact is ratified  
20 by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. The  
21 reservoir operational plan for Bonneau Reservoir set forth in Section B.1 of Article IV shall not become  
22 effective until the Reservoir is enlarged.

23 3. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw  
24 as a party to this Compact -

25 a. if Congress has not ratified this Compact within four (4) years from the date the Compact is  
26 ratified by the Tribe and by the State, whichever date is later, or

27 b. if the municipal, rural, and industrial water supply system which the feasibility study identifies  
28 as the preferred alternative to serve the Rocky Boy's Reservation, or an equivalent WATER SUPPLY system  
29 as determined by the Tribe, is not authorized within four (4) years of the date the Compact is ratified by  
30 the Tribe and by the State, whichever date is later, or



1 c. if appropriations are not authorized by Congress, including appropriations for planning, design,  
 2 and other pre-construction work on the municipal, rural, and industrial water supply system authorized by  
 3 Congress to serve the Rocky Boy's Reservation, within five (5) years of the date the Compact is ratified  
 4 by the Tribe and by the State, whichever date is later, or

5 d. if appropriations are not made in the manner contemplated by the federal legislation authorizing  
 6 the Tribal municipal, rural, and industrial water supply system, or

7 e. if construction of the Tribal municipal, rural, and industrial water supply system authorized by  
 8 Congress to serve the Rocky Boy's Reservation, has not commenced within seven (7) years from the date  
 9 the Compact is ratified by the Tribe and by the State, whichever date is later, or

10 f. if construction of the Tribal municipal, rural, and industrial water supply system authorized by  
 11 Congress to serve the Rocky Boy's Reservation, has not been completed within fourteen (14) years from  
 12 the date the Compact is ratified by the Tribe and by the State, whichever date is later.

13 The Tribe may exercise its right to withdraw by sending to the Governor of the State of Montana  
 14 and to the Secretary of the Interior by certified mail a resolution of the Chippewa Cree Business Committee  
 15 stating the Tribe's intent to withdraw and specifying a withdrawal date not sooner than 30 days from the  
 16 date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall  
 17 become null and void without further action by any party, and the parties agree to resume negotiation in  
 18 good faith for quantification of the water rights of the Chippewa Cree Tribe and entry of a decree in a court  
 19 of competent jurisdiction. If the Tribe fails to take action to withdraw within five (5) years following the  
 20 fourteen (14) year deadline for completion of the water system, all provisions of the Compact shall remain  
 21 in effect.

22 4. Notwithstanding any other provision in this Compact, the Department of the Interior reserves  
 23 the right to refuse support for federal legislation ratifying this Compact.

24 B. Incorporation Into Decrees and Disposition of Federal Suits.

25 1. The Tribe and the State agree to defend the provisions and purposes of this Compact including  
 26 the quantification set forth in ARTICLE III, from all challenges and attacks in all proceedings pursuant to this  
 27 Section B of Article VII.

28 2. Within 180 days of the date this Compact is ratified by the Chippewa Cree Business Committee,  
 29 the State of Montana, and Congress, whichever is latest, the Tribe, the State, or the United States shall  
 30 file, in the general stream adjudication filed by the State of Montana pursuant to the provisions of

1 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the  
2 water rights held by the United States in trust for the Chippewa Cree Tribe of the Rocky Boy's Reservation.  
3 If the court does not approve the proposed decree submitted with the motion within three years following  
4 the filing of the motion, the Compact shall be voidable by agreement of the parties. If the court approves  
5 the proposed decree within three years, but the decree is subsequently set aside by the court or on appeal,  
6 the Compact shall be voidable by agreement of the parties. The parties understand and agree that the  
7 submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply  
8 with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand  
9 in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43  
10 U.S.C. §666 or other provision of federal law.

11 3. Consistent with section 3-7-224, MCA, setting forth the jurisdiction of the chief water judge,  
12 for the purposes of section 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to  
13 Article III, Section A.8. of Article IV, and Appendix 1, and may extend to other sections of the Compact  
14 only to the extent that they relate to the determination of existing water rights. The final decree shall  
15 consist of Article III and Section A.8. of Article IV as displayed in Appendix 1 and such other information  
16 as may be required by 85-2-234, MCA. Nevertheless, pursuant to section 85-2-702(3), MCA, the terms  
17 of the entire Compact must be included in the preliminary decree without alteration for the purpose of  
18 notice.

19 4. Upon the issuance of a final decree by the Montana Water Court, or its successor, and the  
20 completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal,  
21 the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.  
22 R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe,  
23 in United States v. Aageson, No. CIV-79-21-GF (D. Mont. 1979) (hereinafter referred to as "Aageson") and  
24 such claims may only be refiled if the Tribe exercises its option to withdraw as a party to the Compact  
25 pursuant to Section A.3. of Article VII. This Compact shall be filed as a consent decree in Aageson only  
26 if, prior to the dismissal of Aageson as provided in this Article, it is finally determined in a judgment binding  
27 upon the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings  
28 are inadequate to adjudicate, some or all of the water rights asserted in Aageson.

29 C. Tribal Settlement of Water Claims.

30 The parties intend that the water rights and other rights confirmed to the Tribe in this Compact are

1 in full satisfaction of the Tribe's water rights claims, including federal reserved water rights claims based  
 2 on Winters v. United States, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe  
 3 in this Compact, including rights to the future development of water pursuant to Section C. of Article III,  
 4 and of performance by the State of Montana and the United States of all actions required by this Compact,  
 5 including entry of a final order issuing the decree of the reserved water rights of the Tribe held in trust by  
 6 the United States as quantified in the Compact and displayed in Appendix 1, the Tribe and the United  
 7 States as trustee for the Tribe hereby relinquish any and all claims to water rights of the Chippewa Cree  
 8 Tribe within the State of Montana existing on the date this Compact is ratified by the State and the Tribe,  
 9 whichever date is later.

10 D. Binding Effect.

11 Upon the effectiveness of any provision of this Compact, the terms of that provision will be binding:

12 1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any  
 13 manner asserting any right under the authority of the State to the use of water in the State of Montana;  
 14 provided that, the validity of consent, ratification, or authorization by the State is to be determined by  
 15 Montana law;

16 2. Upon the Tribe and any person or entity of any nature whatsoever using, claiming or in any  
 17 manner asserting any right UNDER THE AUTHORITY OF THE TRIBE to the use of the Tribe's water right,  
 18 or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe, ~~or any right~~  
 19 ~~arising under tribal law~~; provided that, the validity of consent, ratification or authorization by the Tribe is  
 20 to be determined by tribal law; and

21 3. Upon the United States and any person or entity of any nature whatsoever using, claiming or  
 22 in any manner asserting any right under the authority of the United States to the use of water in the State  
 23 of Montana; provided that, the validity of consent, ratification or authorization by the United States is to  
 24 be determined by federal law; and further provided that, nothing contained in this Compact affects any  
 25 claim of any Indian tribe other than the Chippewa Cree Tribe, or of persons claiming water through any  
 26 such other Indian tribe, or the right of any Indian tribe other than the Chippewa Cree Tribe, or persons  
 27 claiming water through any such other Indian tribe, to pursue a claim to any water from any source based  
 28 on any theory of right or entitlement.

29 ARTICLE VIII - LEGISLATION

30 The State and Tribe agree to seek enactment of any legislation necessary to effectuate the

1 provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from  
2 all challenges and attacks; provided that, no provision of the Compact shall be modified as to substance  
3 except as may be provided herein.

4 IN WITNESS WHEREOF the representatives of the State of Montana, the Chippewa Cree Tribe of  
5 the Rocky Boy's Reservation, and the United States have signed this Compact on the \_\_\_\_\_ day of  
6 \_\_\_\_\_, 19\_\_\_\_.

7

8 NEW SECTION. Section 2. Provision exception. Notwithstanding the provisions of 7-6-204, Hill  
9 County may apply the interest accrued on the \$50,000 water purchase contract with the state of Montana  
10 toward operation, maintenance, and future repairs to the Lower Beaver Creek reservoir. THE DEPARTMENT  
11 IS AUTHORIZED TO EXECUTE A CONTRACT WITH HILL COUNTY FOR THE PURCHASE OF 800  
12 ACRE-FEET OF WATER STORED IN LOWER BEAVER CREEK RESERVOIR. THE DEPARTMENT IS  
13 AUTHORIZED TO ASSIST THE TRIBE, HILL COUNTY, AND ANY APPROPRIATE FEDERAL AGENCY IN  
14 DRAFTING AN OPERATING AGREEMENT FOR COORDINATION OF RELEASE OF THE PURCHASED WATER  
15 FROM LOWER BEAVER CREEK RESERVOIR WITH REDUCTIONS IN THE NATURAL FLOW OF BEAVER  
16 CREEK DUE TO DIVERSION AND IMPOUNDMENT OF WATER ON THE RESERVATION.

17

18 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an  
19 integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

20

-END-

## 1 SENATE BILL NO. 337

2 INTRODUCED BY GROSFIELD, STORY, SWYSGOOD, SWANSON, HALLIGAN, JERGSON, JENKINS,  
3 MCCANN, HAGENER, DEBRUYCKER, PECK

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT AMONG  
6 THE STATE OF MONTANA, THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S INDIAN RESERVATION,  
7 AND THE UNITED STATES OF AMERICA."

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE  
REPRINTED. PLEASE REFER TO SECOND READING COPY  
(YELLOW) FOR COMPLETE TEXT.**



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SENATE BILL NO. 337

INTRODUCED BY GROSFIELD, STORY, SWYSGOOD, SWANSON, HALLIGAN, JERGESON, JENKINS,  
MCCANN, HAGENER, DEBRUYCKER, PECK

A BILL FOR AN ACT ENTITLED: "AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT AMONG  
THE STATE OF MONTANA, THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S INDIAN RESERVATION,  
AND THE UNITED STATES OF AMERICA."

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

NEW SECTION. **Section 1. Chippewa Cree Tribe-Montana compact ratified.** The compact entered  
into by the State of Montana and the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation and filed  
with the Secretary of State of the State of Montana under the provisions of 85-2-702 on [date of filing] is  
ratified. The compact is as follows:

WATER RIGHTS COMPACT  
STATE OF MONTANA  
CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION  
UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Chippewa Cree Tribe of the  
Rocky Boy's Reservation, and the United States of America for the purpose of settling any and all existing  
water rights claims of the Chippewa Cree Tribe in the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1979, the United States, on behalf of the Chippewa Cree Tribe of the Rocky Boy's  
Reservation, brought suit in the United States District Court for the District of Montana to obtain a final  
determination of the Tribe's 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 Tribe; see, "the McCarran Amendment", 43  
U.S.C. §666 (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

1 WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions  
2 of Chapter 697, Laws of Montana 1979, which includes Chippewa Cree tribal water rights; and

3 WHEREAS, the United States has filed claims on behalf of the Chippewa Cree Tribe in the general  
4 stream adjudication initiated by the State of Montana; and

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

8 WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana  
9 State court water adjudication proceedings, see, 721 F.2d 1189; and

10 WHEREAS, the adjudication of Chippewa Cree tribal water rights in the state court proceedings has  
11 been suspended while negotiations are proceeding to conclude a compact resolving all water rights claims  
12 of the Chippewa Cree Tribe within the State of Montana; and

13 WHEREAS, the Chippewa Cree Business Committee, or its duly designated representatives, have  
14 authority to negotiate this Compact pursuant to §1(a), of Article VI of the Tribal Constitution; and

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

18 WHEREAS, the Secretary of the Interior, or a duly designated official of the United States  
19 Department of the Interior, has authority to execute this Compact on behalf of the United States  
20 Department of the Interior pursuant to 43 U.S.C. Section 1457 (1986), inter alia; and

21 WHEREAS, the Chippewa Cree Tribe, the State of Montana, and the United States agree that the  
22 Tribal Water Right described in this Compact shall be in satisfaction of the Tribe's water rights claims within  
23 the State of Montana; and

24 WHEREAS, it is in the best interest of all parties that the water rights claims of the Chippewa Cree  
25 Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United  
26 States;

27 NOW THEREFORE, the parties agree to enter into this Compact for the purpose of settling the water  
28 rights claims of the Chippewa Cree Tribe within the State of Montana.

## 29 ARTICLE II - DEFINITIONS

30 The following definitions shall apply for purposes of this Compact:



1           1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a depth of one  
2 foot and is equivalent to 43560 cubic feet.

3           2. "Adverse effect" means an interference with the reasonable exercise of a water right.

4           3. "Acre feet per year" or "AFY" means the quantity of water to which the Tribe has a right each  
5 year measured in acre feet over a period of a year.

6           4. "Ancestral Missouri River Channel Aquifer" means that material deposited by the Missouri River  
7 prior to Pleistocene glaciation, and glacial deposits underlying post-glacial alluvial deposits in the River valley  
8 that are sufficiently permeable to conduct groundwater and to yield water to wells. This aquifer is located  
9 in the valley of Big Sandy Creek at a depth of 150 feet or more beneath the surface of the ground as shown  
10 in Appendix 11 and described in USGS Water Supply Paper 1460-B, Swenson, Frank, "Geology and  
11 Ground-Water Resources of the Lower Marias Irrigation Project Montana," (1957).

12           5. "Beaver Creek Drainage" means Beaver Creek and its tributaries from its headwaters to the  
13 confluence with the Milk River, as shown in Appendices 5 and 6.

14           6. "Big Sandy Creek Basin" means the mainstem of Big Sandy Creek and its tributaries (exclusive  
15 of Sage Creek and Lonesome Lake) in Water Court Basin 40H from the headwaters to the confluence with  
16 the Milk River, as shown in Appendices 5 and 6.

17           7. "Board" means the Chippewa Cree - Montana Compact Board established by Section D. of  
18 Article IV of this Compact.

19           8. "Bonneau Reservoir" means the water impoundment as shown in Appendix 6, including the  
20 existing storage capacity and the proposed expanded storage capacity, and for which a water right is  
21 described in Article III of this Compact.

22           9. "Box Elder Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach  
23 of Box Elder Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

24           10. "Brown's Reservoir" means the proposed water impoundment as shown in Appendix 6,  
25 including the existing storage capacity and the proposed expanded storage capacity, and for which a water  
26 right is described in Article III of this Compact.

27           11. "Bypass" means the designated streamflow around or through a diversion.

28           12. "Camp Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach  
29 of Camp Creek from its headwaters to its confluence with Duck Creek, as shown in Appendix 6.

30           ~~11~~ 13. "Change in use" means a change in the point of diversion, the place of use, the purpose

1 of use, or the place or means of storage.

2 14. "Consumptive use" means use of water other than a "non-consumptive use" as defined in this  
3 Article.

4 15. "Continuously store" or "continuous storage" means the right to fill and then continually refill  
5 the active storage capacity of an impoundment from the natural flow of the source on which the  
6 impoundment is located.

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

9 17. "Drainage Stipulation" means an agreement entered into between and among the Tribe, the  
10 United States acting in its capacity as trustee for the Tribe, and one or more signatory non-tribal water  
11 users for entry as a stipulation in Montana Water Court. Drainage stipulations are set forth in Appendix  
12 2.

13 18. "Drainage of Origin" means the drainage in which the water initially arises. See Appendix 6  
14 showing drainage area boundaries.

15 19. "Duck Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach of  
16 Duck Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

17 20. "East Fork Reservoir" means the proposed water impoundment as shown in Appendix 6,  
18 including the existing storage capacity and the proposed expanded storage capacity, and for which a water  
19 right is described in Article III of this Compact.

20 21. "Evaporative Loss" means reduction in the quantity of water due to the process of evaporation  
21 and shall be three (3) acre feet per surface acre rounded off as set forth in Article III.

22 22. "Fish and Wildlife Enhancement" means the use of water to improve existing habitat for fish  
23 and wildlife use, protection, conservation or management through physical or operational modifications of  
24 impoundments, within the areas designated in Appendix 4.

25 23. "Gorman Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach  
26 of Gorman Creek from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

27 24. "Gravel Coulee Drainage" means the sub-basin of Big Sandy Creek Basin containing the reach  
28 of Gravel Coulee from its headwaters to its confluence with Big Sandy Creek, as shown in Appendix 6.

29 25. "Groundwater" means any water that is beneath the ground surface.

30 26. "Hydrologically Connected" means the interconnection of groundwater and surface water such

1 that they constitute one water supply and use of either results in an impact to both.

2 27. "Lake Elwell" means the water impounded on the Marias River by Tiber Dam.

3 28. "Lonesome Lake Coulee" means the mainstem of Lonesome Lake Coulee and its tributaries in  
4 Water Court Basin 40H from its headwaters to its confluence with Big Sandy Creek, as shown in  
5 Appendices 5 & 6.

6 29. "Lower Big Sandy Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing  
7 the reach of Big Sandy Creek below its confluence with Box Elder Creek as shown in Appendix 6.

8 30. "Minimum Pool" means the quantity of water in an impoundment, as measured in acre-feet, or  
9 by the water surface elevation in feet above sea level, that is not available for release for designated water  
10 uses.

11 31. "MR&I Water" means water for use for municipal, rural, industrial, domestic, and incidental  
12 drought relief purposes on the Reservation.

13 32. "Municipal/Domestic Uses" means water for domestic, public, commercial and industrial uses.

14 33. "Net Depletion" means the difference between the quantity of water diverted from a source and  
15 the quantity of water returned to the same source at or near the point of diversion.

16 34. "New reserved water rights" means any reserved water rights created with acquisition of land  
17 by the Tribe or the United States to be held in trust by the United States for the Tribe, after the date of  
18 ratification of this Compact by the State and the Tribe, whichever is later.

19 35. "Non-consumptive use" means a use of water that does not cause a reduction in the source  
20 of supply and in which substantially all of the water returns without delay to the source of supply, causing  
21 little or no disruption in stream or groundwater conditions.

22 36. "Non-Irrigation Water Uses" means the use of water for purposes other than the production of  
23 agricultural commodities, such as, but not limited to domestic, livestock, fish and wildlife, and recreational  
24 uses, including development of golf courses.

25 37. "Parties" means the Tribe, the State of Montana, and the United States.

26 38. "Person" means an individual or any other entity, public or private, including the State, the Tribe  
27 and the government of the United States and all officers, agents, and departments thereof.

28 39. "Ratification date" means the date on which the Compact is finally approved by the Business  
29 Committee of the Chippewa Cree Tribe, by the Montana Legislature, and by the Congress of the United  
30 States, whichever date is latest.

1           40. "Recognized under state law" when referring to a water right means a water right arising under  
2 state law, but does not include water rights arising under federal law.

3           41. "Release" means (verb) to discharge water from storage, or (noun) the discharge of water from  
4 storage.

5           42. "Reservation" means the Rocky Boy's Reservation and includes all lands and interests in lands  
6 which are held in trust by the United States for the Chippewa Cree Tribe, including future additions to the  
7 Reservation.

8           43. "Sage Creek" means the main stem of Sage Creek and its tributaries in Water Court Basin 40G  
9 from the headwaters to the confluence with Big Sandy Creek, as shown in Appendices 5 and 6.

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

12           45. "Shallow Alluvium Aquifer" means the material deposited by flowing water generally during,  
13 or after Pleistocene glaciation that is sufficiently permeable to conduct groundwater and to yield water to  
14 wells and springs.

15           46. "State" means the state of Montana and all officers, agents, departments, and political  
16 subdivisions thereof.

17           47. "Stockwatering" means the storage and use of water for the purpose of providing water to  
18 domesticated animals and wildlife.

19           48. "Stoneman Farms" means the tribal agricultural projects shown in Appendix 6.

20           49. "Stoneman Reservoir" means the water impoundment, as shown in Appendix 6, including the  
21 existing storage capacity and the proposed expanded storage capacity, and for which a water right is  
22 described in Article III of this Compact.

23           50. "Subordinate" means to rank the priority in which a water right is fulfilled behind other specified  
24 water rights without regard to relative priority dates.

25           51. "Supplemental Irrigation Water" means water used for irrigation, as a secondary supply, once  
26 it becomes apparent that the primary supply will be unable to meet the full annual demand.

27           52. "Surface Acres" means the horizontal area in acres associated with the water surface in an  
28 impoundment when filled to the maximum capacity.

29           53. "Transfer" means (verb) to authorize a person to use all or any part of the Tribal Water Right  
30 through a service contract, lease, or other similar agreement of limited duration; (noun) a service contract,

1 lease, or other similar agreement of limited duration authorizing the use of all or any part of the Tribal Water  
2 Right.

3 54. "Tribal Water Resources Department" or "TWRD" means the Chippewa Cree Tribal Water  
4 Resources Department, or any successor agency.

5 55. "Tribal Water Right" means the right of the Chippewa Cree Tribe of the Rocky Boy's  
6 Reservation to divert, use, or store water as described by Article III of this Compact.

7 56. "Tribe" means the Chippewa Cree Tribe of the Rocky Boy's Reservation and all officers, agents  
8 and departments thereof.

9 57. "United States" means the federal government and all officers, agencies, departments, and  
10 political subdivisions thereof.

11 58. "Upper Big Sandy Creek Drainage" means the sub-basin of Big Sandy Creek Basin containing  
12 the reach of Big Sandy Creek from its headwaters to its confluence with Box Elder Creek, as shown in  
13 Appendix 6.

14 59. "Volcanic Bedrock Aquifer" means those Tertiary igneous rock units that are sufficiently  
15 permeable to conduct groundwater and to yield water to wells and springs as shown in USGS  
16 Miscellaneous Geologic Investigations Map I-234, "Preliminary General Geologic Map of the Laredo  
17 Quadrangle, Bearpaw Mountains, Montana," and Map I-235, "Preliminary Geologic Map of the Centennial  
18 Mountain Quadrangle, Bearpaw Mountains, Montana," and shown as surface outcrop in Appendix 11.

### 19 ARTICLE III - TRIBAL WATER RIGHT

20 A. Basin 40H: Big Sandy Creek Basin.

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

23 a. Quantification - Source - Volume.

24 (1) Storage. The Tribe shall have the right to continuously store or permit the continuous storage  
25 of up to a capacity of 1000 AF of water in Stoneman Dam and Reservoir from the natural flow of Gravel  
26 Coulee. Subject to the 1000 AF limit on storage capacity, the Tribe shall have the additional right to divert  
27 up to 1480 AFY from the direct flow of Lower Big Sandy Creek and up to 445 AFY from groundwater for  
28 storage in Stoneman Dam and Reservoir as set forth in Section A.1.a.(2) of Article III. The quantity  
29 impounded by continuous storage shall not decrease the 1480 AFY which the Tribe may divert for irrigation  
30 ~~THE and non-irrigation purposes as set forth~~ ALLOWED in ~~Sections~~ SECTION A.1.e. (1) ~~and (2)~~ of Article

1 III. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for  
2 stockwatering and fish and wildlife purposes, as set forth in Sections A.1.e.(3) and (4) of Article III.

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

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

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

16 (c) Groundwater. Of the 1690 AFY, the Tribe shall have the right to withdraw and use or permit  
17 the withdrawal and use of up to 445 AFY of groundwater in the Gravel Coulee and Lower Big Sandy Creek  
18 drainages in compliance with ~~Section~~ SECTIONS A.6.a. and b. of Article IV. ~~The right to divert 445 AFY~~  
19 ~~from groundwater to storage is not reduced by the amount of water diverted for irrigation or non-irrigation~~  
20 ~~purposes from water derived from storage.~~ Groundwater may be diverted to storage prior to application  
21 to any purposes allowed in Section A.1.e. of Article III without reducing the amount that can be applied  
22 to such purposes until such water is re-diverted from storage and applied to such purposes.

23 (i) Of the 445 AFY, 100 AFY may be appropriated from the shallow alluvium along Gravel Coulee  
24 and Lower Big Sandy Creek.

25 (ii) Of the 445 AFY, 345 AFY may be appropriated from the Ancestral Missouri River Channel  
26 Aquifer in the Gravel Coulee and Lower Big Sandy Creek drainages. Groundwater from the Ancestral  
27 Missouri River Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation  
28 uses do not result in discharge of untreated water to land or surface water. Groundwater from the  
29 Ancestral Missouri River Channel Aquifer is a supplemental source for irrigation uses.

30 b. Priority Date. The water rights to surface flow, groundwater, and storage as set forth in Section

1 A.1. of Article III, for the Gravel Coulee and Lower Big Sandy drainages shall have a priority date of  
2 September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and  
3 the drainage stipulations set forth in Appendix 2.

4 c. Period of Use. The period of use of this water right shall be from January 1 through December  
5 31 of each year.

6 d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the  
7 Tribe may divert or permit the diversion of this water right from any place and by any means on Lower Big  
8 Sandy Creek and Gravel Coulee drainages on the Reservation.

9 e. Purposes. The Tribe's right to 1690 AFY from the Gravel Coulee and Lower Big Sandy drainages  
10 may be used for the following purposes; provided that, subject to the limitations set forth in Article IV, the  
11 Tribe may make a change in use or transfer of the water identified for irrigation and non-irrigation purposes.

12 (1) Irrigation.

13 (a) Volume. 1380 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be  
14 used for irrigation.

15 (b) Source. The 1380 AFY for irrigation may come from a combination of direct flow, storage and  
16 groundwater in the Gravel Coulee and Lower Big Sandy drainages.

17 (c) Place of use. The 1380 AFY may be used to irrigate 540 acres at Stoneman Farms on the  
18 Reservation.

19 (2) Non-Irrigation.

20 (a) Volume. 100 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used  
21 for non-irrigation purposes.

22 (b) Source. The 100 AFY for non-irrigation purposes may come from a combination of direct flow,  
23 storage, and groundwater in the Gravel Coulee and Lower Big Sandy drainages.

24 (c) Point of diversion. The 100 AFY for non-irrigation purposes may be diverted on the Reservation  
25 within the Lower Big Sandy and Gravel Coulee drainages.

26 (3) Stockwatering - Evaporative Loss. Use of the Tribal Water Right for stockwatering in Gravel  
27 Coulee and Lower Big Sandy Creek drainages is a consumptive use. The Tribe may not make a change in  
28 use or transfer of the water right for stockwatering; provided that, the Tribe may repair or relocate an  
29 impoundment for stockwatering within the drainage of origin; and provided further that, the new point of  
30 diversion or place of use does not change to a place from upstream of to downstream of, or from

1 downstream of to upstream of the location of the point of diversion of a water right recognized under state  
2 law with a priority date before the date the Compact is ratified by the State and the Tribe, whichever date  
3 is later.

4 (a) Volume. 160 AFY of water in Gravel Coulee and Lower Big Sandy Creek drainages may be used  
5 for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface  
6 acreage of impoundments shall not exceed 40 surface acres of impoundments on Lower Big Sandy drainage  
7 and 13 surface acres of impoundments on Gravel Coulee drainage. The Tribe shall have the right to  
8 continuously store water in these impoundments.

9 (b) Source.

10 i. Of the 160 AFY, 120 AFY for stockwatering may come from the direct flow of Lower Big Sandy  
11 Creek.

12 ii. Of the 160 AFY, 40 AFY for stockwatering may come from the direct flow of Gravel Coulee.

13 iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other  
14 than for a lined storage facility with a capacity of less than 0.5 AF.

15 (c) Place of use. The Tribal Water Right for stockwatering in the Gravel Coulee and Lower Big  
16 Sandy Creek drainages may be used in the drainage of origin, on the Reservation. The current stockwater  
17 impoundments are shown in Appendix 7.

18 (4) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
19 wildlife enhancement in Gravel Coulee and Lower Big Sandy Creek drainages is a consumptive use. The  
20 Tribe may not make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement;  
21 provided that, the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within  
22 the drainage of origin; and provided further that, the new point of diversion or place of use does not change  
23 to a place from upstream of to downstream of, or from downstream of to upstream of the location of the  
24 point of diversion of a water right recognized under state law with a priority date before the date the  
25 Compact is ratified by the State and the Tribe, whichever date is later.

26 (a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use  
27 measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed  
28 16 surface acres of impoundments in the Gravel Coulee and Lower Big Sandy Creek drainages. The Tribe  
29 shall have the right to continuously store water in these impoundments.

30 (b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of Gravel



1 Coulee and Big Sandy Creek.

2 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
3 shown in Appendix 4 in the Gravel Coulee and Big Sandy Creek drainages, in the respective drainages of  
4 origin.

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

6 a. Quantification - Source - Volume.

7 (1) Storage. The Tribe shall have the right to continuously store, or permit the continuous storage  
8 in Bonneau Reservoir, Brown's Reservoir, and in any new impoundments, of up to a capacity of 4800 AF  
9 from the natural flow of Box Elder Creek, or any natural flow from the source on which the impoundment  
10 is located. Subject to the 4800 AF limit on storage capacity, the Tribe shall have the additional right to  
11 divert up to 6310 AFY from the direct flow of Box Elder Creek for storage in Brown's Reservoir and in any  
12 new impoundments not located on Box Elder Creek and to divert 1950 AFY from groundwater for storage  
13 in any new or existing impoundment wherever located, as set forth in Section A.2.a.(2) of Article III. The  
14 quantity impounded by continuous storage shall not decrease the 6310 AFY, which the Tribe, ~~under~~ MAY  
15 DIVERT FOR THE PURPOSES ALLOWED IN Section A.2.e.(1) and (2) of Article III, ~~has a right to divert for~~  
16 ~~irrigation and non-irrigation purposes.~~ In addition to the storage right set forth in this section, the Tribe shall  
17 have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in  
18 Sections A.2.e.(4) and (5) of Article III.

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

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

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

1 from water derived from storage.

2 (c) Groundwater. Of the 6940 AFY, the Tribe shall have the right to withdraw and use or to permit  
3 the withdrawal and use of up to 1950 AFY of groundwater in the Box Elder Creek drainage in compliance  
4 with ~~Section~~ SECTIONS A.6. A.6.A. AND B. of Article IV. Groundwater may be diverted to storage prior  
5 to application to any purposes allowed in Section A.2.e. of Article III without reducing the amount that can  
6 be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

7 (i) Of the 1950 AFY, 180 AFY may be appropriated from the shallow alluvium in the Box Elder  
8 Creek drainage.

9 (ii) Of the 1950 AFY, 230 AFY may be appropriated from the volcanic bedrock in the Box Elder  
10 Creek drainage.

11 (iii) Of the 1950 AFY, 1570 AFY may be appropriated from the Ancestral Missouri River Channel  
12 Aquifer; provided that, should water be imported to the Reservation, the entire 1950 AFY may be  
13 appropriated from the Ancestral Missouri River Channel Aquifer. Water from the Ancestral Missouri River  
14 Channel Aquifer is a primary source for non-irrigation uses; provided that, the non-irrigation uses do not  
15 result in discharge of untreated water to land or surface water. Groundwater from the Ancestral Missouri  
16 River Channel Aquifer is a supplemental source for irrigation uses.

17 b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in Section  
18 A.2. of Article III, for the Box Elder Creek drainage, including water supplied by Box Elder Creek for  
19 off-stream storage, shall have a priority date of September 10, 1888, subject to the subordination  
20 agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

21 c. Period of use. The period of use of this water right shall be from January 1 through December  
22 31 of each year.

23 d. Points and Means of diversion. Subject to the terms and conditions set forth in Article IV, the  
24 Tribe may divert or permit the diversion of this water right from any place and by any means in the Box  
25 Elder Creek drainage on the Reservation.

26 e. Purposes. The Tribe's right to 6940 AFY in the Box Elder Creek drainage may be used for the  
27 following purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a  
28 change in use or transfer of the water identified for irrigation, non-irrigation and municipal/domestic  
29 purposes.

30 (1) Irrigation.

1 (a) Volume. 6280 AFY of water in the Box Elder Creek drainage may be used for irrigation.

2 (b) Source. The 6280 AFY for irrigation may come from a combination of direct flow, storage and  
3 groundwater. Water from the Ancestral Missouri River Channel Aquifer is a primary source for  
4 non-irrigation uses; provided that, the non-irrigation uses do not result in discharge of untreated water to  
5 land or surface water. Groundwater from the Ancestral Missouri River Channel Aquifer is a supplemental  
6 source for irrigation uses.

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

9 (2) Non-Irrigation.

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

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

15 (3) Municipal / Domestic.

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

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

- 19 i. 150 AFY from the shallow alluvium adjacent to Box Elder Creek.  
20 ii. 200 AFY from the volcanic bedrock.

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

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

1 water in these impoundments.

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

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

8 (5) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
9 wildlife enhancement in the Box Elder Creek drainage is a consumptive use. The Tribe may not make a  
10 change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the  
11 Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin;  
12 and provided further that, the new point of diversion or place of use does not change to a place from  
13 upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion  
14 of a water right recognized under state law with a priority date before the date the Compact is ratified by  
15 the State and the Tribe, whichever date is later.

16 (a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive  
17 use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not  
18 exceed 50 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to  
19 continuously store water in these impoundments.

20 (b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of Box  
21 Elder Creek AND ITS TRIBUTARIES.

22 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
23 shown in Appendix 4 in the Box Elder Creek drainage, in the drainage of origin.

24 3. Camp Creek and Duck Creek Drainages - 280 AFY diversion.

25 a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 280  
26 AFY of water from the following sources where they occur on the Reservation in any combination up to  
27 the limits on each source and the total limit of 280 AFY:

28 (1) Direct Flow. Of the 280 AFY, the Tribe shall have the right to divert or use or permit the  
29 diversion or use of up to 230 AFY from Duck and Camp Creeks and their respective tributaries in the  
30 following proportions:

1 (a) 170 AFY from Duck Creek.

2 (b) 60 AFY from Camp Creek.

3 (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife  
4 enhancement purposes as set forth in Sections A.3.e.(2) and (3) of Article III.

5 (3) Groundwater. Of the 280 AFY, the Tribe shall have the right to withdraw and use or permit  
6 the withdrawal and use of up to 50 AFY of groundwater in the Camp and Duck Creek drainages on the  
7 Reservation, including groundwater that is hydrologically connected to surface water, in compliance with  
8 Sections A.6.a. and b. of Article IV. This right shall be exercised in the following proportions:

9 (a) 40 AFY from Duck Creek.

10 (b) 10 AFY from Camp Creek.

11 b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in  
12 Section A.3. of Article III, for the Camp and Duck Creek drainages shall have a priority date of September  
13 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage  
14 stipulations set forth in Appendix 2.

15 c. Period of Use. The period of use of this water right shall be from January 1 through December  
16 31 of each year.

17 d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the  
18 Tribe may divert or permit the diversion of this water right from any place and by any means in the Camp  
19 Creek and Duck Creek drainages on the Reservation.

20 e. Purposes. The Tribe's right to 280 AFY in the Camp and Duck Creek drainages may be used for  
21 the following purposes; provided that, the Tribe may not make a change in use or transfer that results in  
22 a change in the place of use, point of diversion or place or means of storage to a place outside the drainage  
23 of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the  
24 location of the point of diversion of a water right recognized under state law with a priority date before the  
25 date the Compact is ratified by the State and the Tribe, whichever date is later.

26 (1) Non-Irrigation.

27 (a) Volume. 50 AFY of water in the Camp and Duck Creek drainages may be used for non-irrigation  
28 purposes.

29 (b) Source. The 50 AFY for non-irrigation purposes may come from groundwater including  
30 groundwater that is hydrologically connected to surface water in the Camp and Duck Creek drainages.

1 (c) Place of use. The Tribal Water Right for non-irrigation purposes in Camp and Duck Creek  
2 drainages may be used in the drainage of origin on the Reservation.

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

10 (a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by  
11 evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 19 surface  
12 acres of impoundments in the Camp Creek drainage and 23 surface acres of impoundments on Duck Creek  
13 drainage. The Tribe shall have the right to continuously store water in these impoundments.

14 (b) Source.

- 15 i. Of the 130 AFY, 60 AFY for stockwatering may come from the direct flow of Camp Creek.  
16 ii. Of the 130 AFY, 70 AFY for stockwatering may come from the direct flow of Duck Creek.  
17 iii. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other  
18 than for a lined storage facility with a capacity of less than 0.5 AF.

19 (c) Place of use. The Tribal Water Right for stockwatering in the Camp and Duck Creek drainages  
20 may be used in the drainage of origin on the Reservation. The current stockwater impoundments are shown  
21 in Appendix 7.

22 (3) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
23 wildlife enhancement in the Camp and Duck Creek drainages is a consumptive use. The Tribe may not  
24 make a change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that,  
25 the Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of  
26 origin; and provided further that, the new point of diversion or place of use does not change to a place from  
27 upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion  
28 of a water right recognized under state law with a priority date before the date the Compact is ratified by  
29 the State and the Tribe, whichever date is later.

30 (a) Volume. 100 AFY of water may be used for fish and wildlife enhancement as a consumptive

1 use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not  
2 exceed 34 surface acres of impoundments in the Camp and Duck Creek drainages. The Tribe shall have  
3 the right to continuously store water in these impoundments.

4 (b) Source. The 100 AFY for fish and wildlife enhancement may come from the direct flow of  
5 Camp and Duck Creeks.

6 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
7 shown in Appendix 4 in the Camp and Duck Creek drainages, in the drainage of origin.

8 4. Gorman Creek Drainage - 60 AFY diversion.

9 a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 60  
10 AFY of water from the following sources where they occur on the Reservation in any combination up to  
11 the limits on each source and the total limit of 60 AFY.

12 (1) Direct Flow. Of the 60 AFY, the Tribe shall have the right to divert or use or permit the  
13 diversion or use of up to 60 AFY from Gorman Creek and its tributaries.

14 (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife  
15 enhancement purposes as set forth in Sections A.4.e.(1) and (2) of Article III.

16 b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in  
17 Section A.4. of Article III, for the Gorman Creek drainage shall have a priority date of September 7, 1916,  
18 subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations  
19 set forth in Appendix 2.

20 c. Period of use. The period of use of this water right shall be from January 1 through December  
21 31 of each year.

22 d. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the  
23 Tribe may divert or permit the diversion of this water right from any place and by any means in the Gorman  
24 Creek drainage on the Reservation.

25 e. Purposes. The Tribe's right to 60 AFY in the Gorman Creek drainage may be used for the  
26 following purposes; provided that, the Tribe may not make a change in use or transfer that results in a  
27 change in the place of use, point of diversion or place or means of storage to a place outside the drainage  
28 of origin or to a place from upstream of to downstream of, or from downstream of to upstream of the  
29 location of the point of diversion of a water right recognized under state law with a priority date before the  
30 date the Compact is ratified by the State and the Tribe, whichever date is later.

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

8           (a) Volume. 10 AFY of water in the Gorman Creek drainage may be used for stockwatering as a  
9 consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments  
10 shall not exceed 3 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the  
11 right to continuously store water in these impoundments.

12           (b) Source. The 10 AFY for stockwatering may come from the direct flow of Gorman Creek.  
13 Water for stockwatering may not be diverted from a perennial stream for off-stream storage other than for  
14 a lined storage facility with a capacity of less than 0.5 AF.

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

18           (2) Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
19 wildlife enhancement in the Gorman Creek drainage is a consumptive use. The Tribe may not make a  
20 change in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the  
21 Tribe may repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin;  
22 and provided further that, the new point of diversion or place of use does not change to a place from  
23 upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion  
24 of a water right recognized under state law with a priority date before the date the Compact is ratified by  
25 the State and the Tribe, whichever date is later.

26           (a) Volume. 50 AFY of water may be used for fish and wildlife enhancement as a consumptive use  
27 measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed  
28 17 surface acres of impoundments in the Gorman Creek drainage. The Tribe shall have the right to  
29 continuously store water in these impoundments.

30           (b) Source. The 50 AFY for fish and wildlife enhancement may come from the direct flow of



1 Gorman Creek.

2 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
3 shown in Appendix 4 in the Gorman Creek drainage, in the drainage of origin.

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

5 a. Quantification - Source, Volume. The Tribe shall have the right to use or permit the use of 290  
6 AFY of water from the following sources where they occur on the Reservation in any combination up to  
7 the limits on each source and the total limit of 290 AFY.

8 (1) Direct Flow. Of the 290 AFY, the Tribe shall have the right to divert or use or permit the  
9 diversion or use of up to 240 AFY from the direct flow of Upper Big Sandy Creek and its tributaries;

10 (2) Storage. The Tribe shall have the right to store water for stockwatering and fish and wildlife  
11 enhancement purposes as set forth in Sections A.5.e.(3) and (4) of Article III.

12 (3) Groundwater. Of the 290 AFY, the Tribe shall have the right to withdraw and use or permit  
13 the withdrawal and use of up to 50 AFY of groundwater in the Upper Big Sandy Creek drainage including  
14 groundwater that is hydrologically connected to surface water, in compliance with Section A.6.a. and b.  
15 of Article IV.

16 b. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in  
17 Section A.5. of Article III, for the Upper Big Sandy Creek drainage shall have a priority date of September  
18 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage  
19 stipulations set forth in Appendix 2.

20 c. Period of use. The period of use of this water right shall be from January 1 through December  
21 31 of each year.

22 d. Points and means of diversion. The Tribe may divert or permit the diversion of this water right  
23 from any place and by any means in the Upper Big Sandy Creek drainage on the Reservation; provided that,  
24 the Tribe may not construct or permit the construction of a diversion or diversions with a total capacity in  
25 excess of 100 gpm for the irrigation water right with a source on Upper Big Sandy Creek Drainage. This  
26 diversion limit also applies to any change(s) of use of this right.

27 e. Purposes. The Tribe's right to 290 AFY in the Upper Big Sandy Creek drainage may be used  
28 for the following purposes; provided that, the Tribe may not make a change in use or transfer that results  
29 in a change in the place of use, point of diversion or place or means of storage to a place outside the  
30 drainage of origin, or to a place upstream of to downstream of, or from downstream of to upstream of the

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

3 (1) Non-Irrigation.

4 (a) Volume. 50 AFY of water in the Upper Big Sandy Creek drainage may be used for non-irrigation  
5 purposes.

6 (b) Source. The 50 AFY for non-irrigation purposes may come from groundwater, including  
7 groundwater that is hydrologically connected to surface water, in the Upper Big Sandy Creek drainage on  
8 the Reservation.

9 (c) Place of use. The 50 AFY for non-irrigation purposes may be used on the Reservation within  
10 the drainage of origin.

11 (2) Irrigation.

12 (a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for irrigation.

13 (b) Source. The 45 AFY for irrigation may come from direct flow of Upper Big Sandy Creek on the  
14 Reservation.

15 (c) Place of use. The 45 AFY may be used to irrigate 10 acres in the drainage of origin, on the  
16 Reservation.

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

24 (a) Volume. 45 AFY of water in the Upper Big Sandy Creek drainage may be used for  
25 stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage  
26 of impoundments shall not exceed 15 surface acres of impoundments in the Upper Big Sandy Creek  
27 drainage. The Tribe shall have the right to continuously store water in these impoundments.

28 (b) Source. The 45 AFY for stockwatering may come from the direct flow of Upper Big Sandy  
29 Creek. Water for stockwatering may not be diverted from a perennial stream for off-stream storage other  
30 than for a lined storage facility with a capacity of less than 0.5 AF.

1 (c) Place of use. The Tribal Water Right for stockwatering in the Upper Big Sandy Creek drainage  
2 may be used in the drainage of origin, on the Reservation. The current stockwater impoundments are  
3 shown in Appendix 7.

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

12 (a) Volume. 150 AFY of water may be used for fish and wildlife enhancement as a consumptive  
13 use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not  
14 exceed 50 surface acres of impoundments in the Upper Big Sandy drainage. The Tribe shall have the right  
15 to continuously store water in these impoundments.

16 (b) Source. The 150 AFY for fish and wildlife enhancement may come from the direct flow of  
17 Upper Big Sandy Creek.

18 (c) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the areas  
19 shown in Appendix 4 in the Upper Big Sandy Creek drainage, in the drainage of origin.

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

22 1. Quantification - Source - Volume.

23 a. Storage. The Tribe shall have the right to continuously store, or permit the continuous storage  
24 in East Fork Reservoir of up to a capacity of 665 AF from the natural flow of the East Fork of Beaver Creek.  
25 Subject to the 665 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 390  
26 AFY from the direct flow of the West Fork of Beaver Creek for storage in East Fork Reservoir as set forth  
27 in Section B.1.b. of Article III. The quantity impounded by continuous storage of the East Fork of Beaver  
28 Creek, shall not decrease the 390 AFY, which the Tribe has a right to divert from storage in East Fork  
29 Reservoir for non-irrigation purposes ~~set forth~~ ALLOWED in Section ~~B.5.a.~~ B.5. of Article III; provided that,  
30 the limit of 260 AFY on net depletion shall apply. In addition to the storage right set forth in this section.

1 the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes  
2 as set forth in Sections B.5.b. and c. of Article III.

3 b. Diversion. The Tribe shall have the right to divert 740 AFY of water in the Beaver Creek  
4 drainage from a combination of direct flow, storage and groundwater where they occur on the Reservation  
5 up to the limits on each source and the total limit of 740 AFY.

6 (1) Direct Flow. Of the 740 AFY, the Tribe shall have the right to divert or permit the diversion  
7 of up to 540 AFY from the direct flow of Beaver Creek and its tributaries on the Reservation. 390 AFY of  
8 the water from direct flow may be diverted to storage prior to application to any purposes allowed in  
9 Section ~~B.5.a.~~ B.5. of Article III without reducing the amount that can be applied to those purposes until  
10 such water is re-diverted from storage and applied to such purposes.

11 (2) Storage. The Tribe shall have the right to divert 390 AFY for non-irrigation purposes from water  
12 stored in East Fork Reservoir. The right to divert 390 AFY from the West Fork of Beaver Creek to storage  
13 is not reduced by the amount of water diverted for non-irrigation purposes from water derived from storage.

14 (3) Groundwater.

15 (a) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal  
16 and use of up to 120 AFY of groundwater including groundwater that is hydrologically connected to surface  
17 water in the Beaver Creek drainage in compliance with Section A.6.a. of Article IV. Groundwater may be  
18 diverted to storage prior to application to any purposes allowed in Section ~~B.5.a.~~ B.5. of Article III without  
19 reducing the amount that can be applied to these purposes until such water is re-diverted and applied to  
20 such purposes.

21 (b) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal  
22 and use of an additional 200 AFY of groundwater from the volcanic bedrock aquifer and other aquifers that  
23 are not hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section  
24 A.6.a. of Article IV. The limit of 260 AFY on net depletion set forth in SECTION B.1.a.(2) of Article III, shall  
25 not apply to groundwater use pursuant to this section. Groundwater may be diverted to storage prior to  
26 application to any purposes allowed in Section ~~B.5.a.~~ B.5. of Article III without reducing the amount that  
27 can be applied to these purposes until such water is re-diverted and applied to such purposes.

28 c. Net Depletion. Of the 740 AFY diverted, the Tribe shall have a right to a net depletion of 260  
29 AFY in the Beaver Creek drainage. The calculation of net depletion shall not include evaporative loss from  
30 fish and wildlife habitat, from stockwatering, or from East Fork Reservoir, and use of groundwater that is

1 not hydrologically connected to surface water.

2 2. Priority Date. The water rights to surface flow, groundwater, and storage, as set forth in  
3 Section B. of Article III, for the Beaver Creek drainage shall have a priority date of September 7, 1916,  
4 subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations  
5 set forth in Appendix 2.

6 3. Period of use. The period of use of this water right shall be from January 1 through December  
7 31 of each year.

8 4. Points and means of diversion. Subject to the terms and conditions set forth in Article IV, the  
9 Tribe may divert or permit the diversion of this water right from any place and by any means in the Beaver  
10 Creek drainage on the Reservation.

11 5. Purposes. The Tribe's right to water in the Beaver Creek drainage may be used for the following  
12 purposes; provided that, subject to the limitations set forth in Article IV, the Tribe may make a change in  
13 use or transfer of the water identified for non-irrigation purposes.

14 a. Non-Irrigation

15 (1) Volume. 590 AFY of water in the Beaver Creek drainage may be used for non-irrigation  
16 purposes; provided that, the net depletion may not exceed 260 acre-feet per year in accordance with  
17 Section B.1.c. of Article III.

18 (2) Source. The 590 AFY for non-irrigation in the Beaver Creek drainage may come from a  
19 combination of direct flow, storage and groundwater.

20 (3) Place of use. The 590 AFY for non-irrigation may be used in the Beaver Creek drainage on the  
21 Reservation.

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

29 (1) Volume. 40 AFY of water in the Beaver Creek drainage may be used for stockwatering as a  
30 consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments

1 shall not exceed 13 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the  
2 right to continuously store water in these impoundments.

3 (2) Source. The 40 AFY for stockwatering may come from the direct flow of Beaver Creek on the  
4 Reservation. Water for stockwatering may not be diverted from a perennial stream for off-stream storage  
5 other than for a lined storage facility with a capacity of less than 0.5 AF.

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

9 c. Fish and Wildlife Enhancement - Evaporative Loss. Use of the Tribal Water Right for fish and  
10 wildlife enhancement in the Beaver Creek drainage is a consumptive use. The Tribe may not make a change  
11 in use or transfer of the Tribal Water Right for fish and wildlife enhancement; provided that, the Tribe may  
12 repair or relocate an impoundment for fish and wildlife enhancement within the drainage of origin; and  
13 provided further that, the new point of diversion or place of use does not change to a place from upstream  
14 of to downstream of, or from downstream of to upstream of the location of the point of diversion of a  
15 water right recognized under state law with a priority date before the date the Compact is ratified by the  
16 State and the Tribe, whichever date is later.

17 (1) Volume. 110 AFY of water may be used for fish and wildlife enhancement as a consumptive  
18 use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not  
19 exceed 35 surface acres of impoundments in the Beaver Creek drainage. The Tribe shall have the right to  
20 continuously store water in these impoundments.

21 (2) Source. The 110 AFY for fish and wildlife enhancement may come from the direct flow of  
22 Beaver Creek.

23 (3) Place of use. The Tribal Water Right for fish and wildlife enhancement may be used in the  
24 areas shown in Appendix 4 in the Beaver Creek drainage, in the drainage of origin.

25 C. Additional Development of Water.

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

28 1. Subject to ~~Section~~ SECTIONS A.6.a. and b. and Section A.7.d. of Article IV, the Tribe may, as  
29 part of the Tribal Water Right, develop or permit the development of groundwater on the Reservation in  
30 addition to the amounts specified in Sections A. and B. of Article III, from new sources or from expanded

1 use of existing sources. The priority date of such new appropriation shall be the date of development, and  
2 notwithstanding any other provision of this Compact, may only be used in priority with other water rights.

3 2. The Tribe may impound or permit the impoundment of surface water for stockwatering purposes  
4 in addition to the amounts set forth in Sections A. and B. of Article III; provided that the priority date of  
5 the new appropriation shall be the date of development and, notwithstanding any other provision of this  
6 Compact, may only be used in priority with other water rights; and further provided that, the maximum  
7 capacity of the impoundment or pit is less than 15 AF and the appropriation is less than 30 AFY and is from  
8 a source other than a perennial flowing stream. The Tribe may not transfer or make a change in use of the  
9 stockwater right obtained pursuant to this section.

10 3. On the acquisition of land after the Compact is ratified by the State and the Tribe, whichever  
11 date is later, the Tribe has the right to the use of any water right acquired as an appurtenance to the land.  
12 Such right shall become part of the Tribal Water Right in addition to the amount set forth in Article III of  
13 this Compact and shall be subject to the terms of this Compact; provided that, the right shall retain the  
14 priority date of the acquired right. The Tribe will notify DNRC of any acquisition of water in the Tribe's  
15 annual report and will identify the water right acquired.

16 4. The Tribe shall be entitled to use any new reserved water rights that may be created with  
17 acquisition of land after the Compact is ratified by the State and the Tribe, whichever date is later; provided  
18 that, in any drainage with a moratorium on new state permits pursuant to Section A.7.a. of Article IV, the  
19 Tribe shall defer exercise of new reserved water rights, if any, until the moratorium is lifted at which time  
20 the Tribe has the first right to use the excess water in accordance with Section A.7.b. of Article IV. The  
21 priority date of the excess water shall be the date of acquisition of the land.

22 5. After the ratification date of the Compact, the Tribe shall have the right to acquire  
23 off-Reservation water rights separate from acquisition of the land to which such water rights are  
24 appurtenant; provided that, water from the Tribal Water Right is not available for economic or other  
25 reasons; and provided further that, the rights shall retain the priority date held by the prior owner of the  
26 rights. Such rights shall become part of the Tribal Water Right and shall thereby become subject to  
27 Sections A.4.b.(1) and (2) of Article IV.

28 6. As a part of the Tribal Water Right, the Tribe shall be entitled to an allocation of 10,000 AFY  
29 of stored water in Lake Elwell, measured at the dam, for use or disposition by the Tribe for any beneficial  
30 purpose, either on or off the Reservation, pursuant to the terms of this Compact; provided that, such

1 allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this  
2 Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or  
3 of persons holding such reserved water rights through that tribe or through the United States. Any use or  
4 disposition of water from Lake Elwell off the Reservation by the Tribe is subject to the specific provisions  
5 relating to such use or disposition in any act of Congress ratifying this Compact.

6 D. Proposed Decree.

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

9 ARTICLE IV - IMPLEMENTATION OF TRIBAL WATER RIGHT

10 A. General Provisions.

11 1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United  
12 States for the benefit of the Tribe.

13 2. Tribal Water Right: Administration. Subject to the limitations imposed by this Compact and  
14 other federal law, the use of the Tribal Water Right shall be administered by the Tribe through the TWRD  
15 both on and off of the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth  
16 in D.4. of Article IV, concerning off-Reservation use of the Tribal Water Right which raise issues  
17 concerning the application of state or federal law shall be resolved in a court of competent jurisdiction.  
18 Those disputes concerning off-Reservation use of the Tribal Water Right which do not raise issues  
19 concerning the application of state or federal law will be within the exclusive jurisdiction of the Tribe.  
20 Subject to the limitations imposed by this Compact, the Tribe shall have the final and exclusive jurisdiction  
21 to resolve all disputes concerning the Tribal Water Right between users of the Tribal Water Right. The  
22 TWRD will, among other activities, develop policies and procedures for monitoring water use, diversions,  
23 and maintaining records of water use and development consistent with this Compact. The current and  
24 future water use and diversions will be identified by location and quantity. Final storage capacities will be  
25 based on project as-built plans, and will store no more than the water right set forth in Article III of this  
26 Compact. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water  
27 code, which shall be developed and adopted by the Tribe within two (2) years following the ratification date  
28 of this Compact pursuant to any requirements set forth in the Constitution of the Chippewa Cree Tribe.  
29 Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right  
30 shall be by the Secretary of the Interior.



1           3. Use.

2           a. Persons Entitled to Use the Tribal Water Right. The Tribal Water Right may be used by the Tribe,  
3 or persons authorized by the Tribe.

4           b. Effect of Non-Use of Tribal Water Rights. Except as specifically provided herein, state law  
5 doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture or  
6 abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right  
7 described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.

8           4. Change in Use or Transfer.

9           a. On-Reservation Changes in Use or Transfer of the Tribal Water Right. Unless otherwise stated  
10 in this Compact, the Tribe may make a change in use or transfer of a water right set forth in Article III of  
11 this Compact on the Rocky Boy Reservation, including the use of water salvaged through the application  
12 of water-saving methods to expand irrigation, provided that:

13           (1) for each source quantified in Article III, any change in use or transfer shall not result in uses  
14 that exceed the water amount quantified for that source;

15           (2) any change in use or transfer shall not result in an increase in net depletion in the Beaver Creek  
16 drainage in excess of the amount specified for that source;

17           (3) any change in use or transfer shall not have an adverse effect on a water right recognized under  
18 state law with a priority date before the date of the change or transfer PROVIDED THAT FOR CHANGE  
19 IN USE OR TRANSFER OF GROUNDWATER, THE BURDEN AS TO ADVERSE EFFECT SHALL BE AS SET  
20 FORTH IN SECTION A.6. OF ARTICLE IV; and

21           (4) any change in use or transfer shall not change the source of the water involved in any such  
22 changes.

23           (5) The Tribe may not make a change in use or transfer of any water rights set forth in Article III  
24 for the purposes of stockwatering or fish and wildlife enhancement; provided that, the Tribe may repair or  
25 relocate an impoundment for stockwatering or fish and wildlife enhancement within the drainage of origin;  
26 and provided further that, the new point of diversion or place of use does not change to a place from  
27 upstream of to downstream of, or from downstream of to upstream of the location of the point of diversion  
28 of a water right recognized under state law with a priority date before the date the Compact is ratified by  
29 the State and the Tribe, whichever date is later.

30           (6) The Tribe may not make a change in use or transfer any of the water rights set forth in Article

1 III with a source on the drainages of Upper Big Sandy Creek, Camp Creek, Duck Creek and Gorman Creek  
2 that results in a change in the place of use, point of diversion or place or means of storage of the water  
3 outside the drainage of origin or to a place from upstream of to downstream of, or from downstream of to  
4 upstream of the location of the point of diversion of a water right recognized under state law with a priority  
5 date before the date the Compact is ratified by the State and the Tribe, whichever date is later.

6 (7) The Tribe may make a change in use or transfer of the irrigation water right with a source in  
7 Upper Big Sandy Creek DRAINAGE AS set forth in SECTION A.5.E. OF Article III so long as it does so  
8 within the diversionary limits set forth in Section A.5.d of Article III; provided that, the net depletion shall  
9 not exceed 30 AFY.

10 b. Off-Reservation Changes in Use or Transfer of the Tribal Water Right. Except as may be  
11 otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or permit a change in  
12 use or a transfer of the Tribal Water Right for use off the Reservation; provided that, any transfer shall be  
13 for a term of not to exceed 100 years, and may include provisions authorizing renewal for an additional  
14 term of not to exceed 100 years; and provided further that, no such transfer shall be a permanent alienation  
15 of the water transferred; and provided further that, no transfer or change in place of use shall be made to  
16 a location outside the watershed that forms the Missouri River drainage; and provided further that, if the  
17 Tribe receives a good faith offer from a third person from outside the Milk River drainage to acquire use of  
18 specified Tribal water rights and the Tribe is willing to accept the terms of the offer, the Tribe, before  
19 accepting the offer, shall allow water users in the Milk River drainage the opportunity to acquire use of such  
20 rights at the same price and on the same terms and conditions as those contained in the offer. Any change  
21 in use or transfer of any such water right involving a point of diversion or place of use located off the  
22 Reservation shall be considered an off-Reservation use; provided that, any off-Reservation use of Tribal  
23 water rights described in this Compact shall not be deemed to convert such rights to rights arising under  
24 state law, and nonuse of such rights off the Reservation shall not constitute a relinquishment, forfeiture,  
25 or abandonment of the rights; and provided further that, releases or diversions from Lake Elwell for use on  
26 the Reservation shall not be considered off-Reservation uses. The Tribe may change the point of diversion  
27 or purpose or place of use of the Tribal Water Right back to the Reservation without reduction in the  
28 amount of water provided in the Compact.

29 (1) Applicable Law. No person may initiate an off-Reservation use, change in use, or transfer of  
30 a Tribal water right set forth in this Compact without first applying for and receiving authorization for the

1 use, change in use, or transfer pursuant to Montana law in effect at the time of the application. Approval  
2 of an application for a use, change in use or transfer off the Reservation by the State shall be conditioned  
3 on a valid Tribal permit for such use, change in use or transfer by the Tribe. The applicant shall provide  
4 DNRC with proof of a valid Tribal permit prior to initiating the use, change in use, or transfer.

5 (2) Diversion Facilities. With respect to diversion or transportation facilities located off the  
6 Reservation which are to be used in connection with the exercise of a water right set forth in this Compact,  
7 the Tribe or persons using such water rights shall apply for all permits, certificates, variances and other  
8 authorizations required by state laws regulating, conditioning or permitting the siting, construction,  
9 operation, alteration or use of any equipment, device, facility or associated facility proposed to use or  
10 transport water. A diversion or use of water in the exercise of such water rights may be made only after  
11 all permits, certificates, variances or other authorizations applied for pursuant to this paragraph have been  
12 obtained.

13 (3) Subsequent Federal or State Law. All off-Reservation uses of Tribal water rights set forth in  
14 this Compact shall comply with the requirements set forth in Section A.4.b.(1) and (2) of Article IV until  
15 such time as the statutory or common law of the United States or the State of Montana establish that  
16 off-Reservation uses of Indian water rights may occur without regard to state law.

17 c. Placement and Size Survey. Placement and size of stockwater impoundments and fish and  
18 wildlife enhancement areas shall be surveyed by the TWRD every five (5) years commencing one (1) year  
19 after the ratification date of this Compact. The initial survey method shall be through use of data obtained  
20 by aerial photography or an acceptable quantitative substitute with accuracy and verification equal to or  
21 greater than photography. The method may be modified by agreement between the TWRD and the DNRC.  
22 Such modification is pursuant to and shall not be deemed a modification of this Compact. The TWRD shall  
23 provide the DNRC with a completed survey for review within six (6) months of initiation of the survey.

24 d. Net Depletion Table. Net depletion for Tribal water uses in THE Beaver Creek drainage AND FOR  
25 IRRIGATION USES IN THE UPPER BIG SANDY CREEK DRAINAGE shall be as set forth in the table attached  
26 as Appendix 9 to this Compact. The TWRD and the DNRC may jointly agree to modify this initial table.  
27 Such modification is pursuant to, and will not be deemed a modification of, this Compact.

28 5. Reporting requirements.

29 a. On an annual basis the DNRC shall provide the Tribe and the United States with a listing of all  
30 new uses of surface and groundwater for which a permit has been issued by the DNRC in the Big Sandy

1 and Beaver Creek drainages, and of any change in use or transfer of surface water or groundwater  
2 approved by the DNRC in the Big Sandy and Beaver Creek drainages since the last report.

3 b. On an annual basis the TWRD shall provide the State and the United States with a listing of all  
4 new development of the water rights described in this Compact, the net depletion in the Beaver Creek  
5 drainage, and the net depletion for irrigation in the Upper Big Sandy Creek drainage, and of all changes in  
6 use or transfers of the water rights described in this Compact since the last report. The first report by the  
7 TWRD following adoption of a Tribal Water Code shall include a listing of existing uses.

8 c. The TWRD, the DNRC, and the United States may agree to modify the reporting requirements  
9 set forth in subsections a. and b. of this section. Such modification is pursuant to, and will not be deemed  
10 a modification of, this Compact.

11 6. Groundwater.

12 a. New Groundwater Development Without Adverse Effect.

13 (1) Limits on Additional Development of Groundwater from Sources on the Reservation. After the  
14 ratification date of this Compact, the Tribe may develop or permit the development of groundwater;  
15 provided that, such development is without an adverse effect on water rights recognized under state law  
16 with a priority date before the date of development of the new appropriation.

17 (2) Prerequisite Administrative Remedy. The following procedure for determining whether new  
18 development of groundwater will have an adverse effect on existing groundwater rights recognized under  
19 state law shall be followed prior to seeking relief from the Compact Board:

20 (a) Application for development of a groundwater use on the Reservation shall be made to the  
21 TWRD.

22 (b) The TWRD shall review the application and make a determination of whether the new use will  
23 have an adverse effect on existing water rights recognized under state law with a priority date before the  
24 application date. Upon request by the TWRD, the DNRC shall provide information on existing state water  
25 rights as recorded in the DNRC database to the TWRD.

26 (c) If the TWRD determines that the new development will have an adverse effect on a water right  
27 recognized under state law with a priority date before the application date, the TWRD shall deny the  
28 application. If the TWRD determines that the new development will not have an adverse effect on a water  
29 right recognized under state law with a priority date before the application date, the TWRD shall forward  
30 the application with its determination to the DNRC.

1 (d) If, based upon the evidence, DNRC agrees with the TWRD's determination, the application will  
2 be approved. If, however, based upon the evidence, the DNRC cannot agree with the determination of the  
3 TWRD, DNRC shall publish notice, of the application once in a newspaper of general circulation in the area  
4 of the source and shall serve notice by first-class mail on any appropriator of water or holder of a permit  
5 who, according to the records of the department, has a water right with a priority date before the  
6 application date, and may be affected by the proposed development.

7 (e) DNRC and the TWRD ~~should~~ SHALL attempt to resolve any disagreement on the determination  
8 of no adverse effect by the TWRD on a cooperative basis. If the DNRC or a holder of a water right  
9 recognized under state law with a priority date before the application date disagree with the determination  
10 of no adverse effect, DNRC or the water users may seek relief from the Compact Board.

11 (f) In any proceeding concerning the effect of new groundwater development on the Reservation  
12 either before the TWRD, the DNRC, or before the Compact Board, the following shall apply:

13 (i) 1 - 150 Feet Wells: For new Tribal groundwater wells completed at a depth beneath the surface  
14 of 1 to 150 feet, the Tribe shall bear the burden of showing no adverse effect to groundwater uses  
15 recognized under state law with a priority date before the application date.

16 (ii) 150 Feet or Deeper Wells: For Tribal groundwater wells completed at a depth beneath the  
17 surface of 150 feet or deeper, the owner of a water right recognized under state law with a priority date  
18 before the application date shall bear the burden of showing any adverse effect to the water right.

19 b. Groundwater Development Exempt From The Showing Of No Adverse Effect. The following  
20 wells are exempt from the requirement of showing no adverse effect:

21 (1) Existing Tribal wells are exempt from the burden to show no adverse effect. The Tribe may  
22 develop existing wells, or replacements therefor, to their full capacity. The primary municipal and domestic  
23 wells are listed in Appendix 8. A comprehensive list of existing wells will be kept on file in TWRD offices  
24 as per the requirement to list existing uses in Section A.5. of Article IV.

25 (2) New Tribal groundwater wells producing from the Volcanic Bedrock Aquifer may be developed  
26 without a showing of no adverse effect.

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

1           7. Moratorium.

2           a. New State Permits. With the exceptions listed in subsection (1) of this section, the DNRC shall  
3 not process or grant an application for a permit to appropriate water from a source in the Big Sandy Creek  
4 Basin (excluding Sage Creek and Lonesome Lake Coulee), and in the Beaver Creek drainage after the date  
5 this Compact is ratified by the Montana Legislature and by the Chippewa Cree Business Committee,  
6 whichever date is later. This moratorium shall remain in effect for a minimum of 10 years and shall only  
7 be lifted pursuant to the procedures set forth in Section A.7.b of Article IV. This moratorium is not  
8 intended to apply to applications for change in appropriation under state law.

9           (1) The moratorium shall not apply to the following appropriations:

10           (a) an appropriation of groundwater by means of a well or developed spring with a maximum  
11 appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year unless the appropriation  
12 is a combined appropriation from the same source from two or more wells or developed springs exceeding  
13 the limitation;

14           (b) an appropriation of water for use by livestock if the maximum capacity of the impoundment or  
15 pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source  
16 other than a perennial flowing stream;

17           (c) an appropriation of groundwater from any deep aquifer not hydrologically connected to surface  
18 water.

19           (2) Within 120 days following the date the moratorium takes effect, the DNRC shall publish notice  
20 of the moratorium once in a newspaper of general circulation in the area of the source and shall serve  
21 notice by first-class mail on all appropriators of water or holders of permits who, according to the records  
22 of the department, have a water right with a source in the affected drainages.

23           (3) The moratorium applies only to new permits issued under state law and is not a limit on new  
24 development of the Tribal Water Right as set forth in this Compact.

25           b. Lifting of Moratorium. After 10 years, the Tribe or an individual seeking to appropriate water  
26 in the affected drainages may petition the DNRC for removal of the moratorium, or the DNRC may initiate  
27 proceedings to lift a moratorium on its own initiative. The DNRC shall comply with the following procedure  
28 in making a determination as to whether water is available in excess of the Tribal Water Right and rights  
29 recognized under state law. The DNRC and TWRD may agree to modify procedures or provide additional  
30 procedures. Such modification is pursuant to and shall not be deemed to be a modification of the Compact.

1 (1) Proceedings initiated by TWRD.

2 (a) The TWRD shall have sixty (60) days following the filing of the petition requesting that the  
3 moratorium be lifted to provide the DNRC with data supporting its petition to lift the moratorium.

4 (b) Within sixty (60) days following the receipt of the data supporting TWRD's petition, the DNRC  
5 shall determine whether to lift the moratorium, and shall notify the TWRD of its determination and the  
6 grounds therefor. The TWRD shall be allowed reasonable access to any data relied upon by the DNRC for  
7 its determination.

8 (c) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the  
9 TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The  
10 moratorium shall continue pending Compact Board proceedings and any appeal

11 (2) Proceedings initiated by DNRC.

12 (a) The DNRC may, on request by a water user or on its own initiative, commence proceedings to  
13 determine whether to lift a moratorium.

14 (b) The DNRC shall notify the TWRD of the commencement of proceedings to determine whether  
15 to lift the moratorium and shall submit to the TWRD all data in support of the proceedings at the same time  
16 or as soon after such data becomes available as practical or shall give the TWRD reasonable access to such  
17 data within the same time frame.

18 (c) The TWRD shall be given sixty (60) days following receipt of the data in support of the  
19 proceedings to submit to the DNRC a statement of the Tribe's position concerning the issue along with any  
20 supporting data and argument.

21 (d) The DNRC shall notify the TWRD of its determination and the grounds therefor within sixty (60)  
22 days of receipt of the Tribe's statement.

23 (e) Within thirty (30) days following a determination by the DNRC not to lift the moratorium, the  
24 TWRD may challenge the DNRC's determination in a de novo proceeding before the Compact Board. The  
25 moratorium shall continue pending Compact Board proceedings and any appeal.

26 c. Excess Water. If the moratorium is lifted pursuant to the procedure described in A.7.b. of Article  
27 IV, the Tribe shall have the first right to use the excess water for the purpose of fulfilling new reserved  
28 water rights, if any, on land acquired after the ratification date of this Compact, but before the date the  
29 moratorium is lifted. The excess water used by the Tribe shall become part of the Tribal Water Right and  
30 ~~may be transferred or stored~~ THE TRIBE MAY MAKE A CHANGE IN USE OF, OR TRANSFER, INCLUDING

1 STORAGE OF SUCH WATER pursuant to Section A.4.a. of Article IV.

2 d. Limit on New Tribal Groundwater Development. In any drainage with a moratorium, new Tribal  
3 groundwater development pursuant to Section C.1. of Article III, by a well or developed spring from an  
4 aquifer that is hydrologically connected to surface water shall be limited to a maximum appropriation or  
5 combined appropriation from two or more wells or developed springs in a single drainage defined by this  
6 Compact to 35 gallons per minute or less, not to exceed 10 acre-feet per year.

7 8. Mutual Subordination. To reduce the need for daily administration of water use on and off the  
8 Reservation, water rights shall not be administered in priority, but shall be satisfied according to the  
9 following agreements.

10 a. Subordination to Non-Tribal Water Rights Upstream of the Reservation. The Tribal Water Right  
11 shall be subordinate to water rights recognized under state law upstream from any point on the Reservation  
12 with a priority date before the ratification date of this Compact. It is the intent of the parties that this  
13 subordination extends only to valid water rights, and not to statements of claim filed pursuant to 85-2-221,  
14 MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA,  
15 and rights exempt from the permit process pursuant to 85-2-306, MCA, a list of rights as currently claimed  
16 is attached as Appendix 3. Appendix 3 will be modified by any final decree resolving claims on the affected  
17 drainages. Appendix 3 may be modified due to clerical error or omission.

18 b. Effect of Mitigation. Because the impact of development of the Tribal Water Right on  
19 downstream water rights recognized under State law has been mitigated by provisions of the Compact and  
20 by special measures set forth in drainage stipulations, any person claiming or holding a water right  
21 recognized under State law, or an interest in such water right, may not assert priority over, or make a call  
22 for, or claim any of the water rights of the Tribe set forth in this Compact, in any court, tribunal, or other  
23 forum.

24 9. Stockwatering Impoundments Limited by Surface Area. Except for new stock ponds developed  
25 under Section C.2. of Article III, the surface acreage limitations on stockwatering impoundments set forth  
26 in Article III shall be the measure of compliance with the quantification of water rights for the purpose of  
27 stockwatering.

28 10. Impoundments for the Purpose of Enhancing Fish and Wildlife Habitat.

29 a. Fish and Wildlife Enhancement Impoundments Limited by Surface Area. The surface acreage  
30 limitations on impoundments for the purpose of fish and wildlife enhancement set forth in Article III shall



1 be the measure of compliance with the quantification of water rights for the purpose of fish and wildlife  
2 enhancement.

3 b. Limits on Structures. No structure for the purpose of fish and wildlife enhancement may create  
4 a potential high water line beyond the existing wet riparian habitat delineated as fish and wildlife  
5 enhancement zones on the map attached as Appendix 4.

6 11. Structures Mimic Natural Processes. No structure for the purpose of fish and wildlife  
7 enhancement, or new stockwatering impoundments on a perennial stream built after the ratification date  
8 of the Compact, excluding repair or replacement of existing structures, may stop the entire flow of surface  
9 water during filling of the impoundment. To accomplish this the Tribe shall build any structure to mimic  
10 natural processes by allowing water to flow through the structure, or bypass the structure during filling.

11 B. Big Sandy Creek Basin.

12 1. Operation of Bonneau Reservoir.

13 a. Minimum Pool / 240 AFY Stored for Satisfaction of Release. The minimum pool at Bonneau  
14 Reservoir shall be established by the Tribe. The Tribe shall store annually the minimum pool plus 240  
15 acre-feet, if water is available. The ~~next~~ 240 acre-feet above the minimum pool shall be stored to satisfy  
16 the release set forth in this Article and shall not be available to satisfy the Tribal Water Right. Evaporative  
17 loss shall be accounted for in setting the minimum pool and shall not be subtracted from the 240 acre-foot  
18 pool stored for downstream water users. Any change in use of the water stored in Bonneau Reservoir from  
19 irrigation to other purposes shall be without adverse effect on downstream water uses recognized under  
20 state law with a priority date before the date of change, and measures to prevent adverse effect may  
21 include release of additional water from Bonneau Reservoir.

22 b. Release for Off-Reservation Irrigation Use. The Tribe shall release no more than 104 AFY from  
23 Bonneau Reservoir or from direct flow of Box Elder Creek to satisfy the claims for irrigation water rights  
24 currently held by Bert Corcoran, and the Tribe shall deliver this water to a point of diversion specified in  
25 the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2; provided that,  
26 the Tribe shall have no responsibility to upgrade or to increase the capacity of the existing delivery system;  
27 and further provided that, the Tribe shall not be required to release water from Bonneau Reservoir below  
28 the minimum pool established by the Tribe plus 240 acre-feet prior to satisfaction of the 240 acre-feet per  
29 year ~~bypass~~ RELEASE set forth in Section B.1.c. of Article IV, and the minimum pool at all other times.  
30 The 104 AFY release shall be in accordance with a delivery schedule agreed to by Mr. Corcoran, or his

1 successors in interest, and the TWRD. Mr. Corcoran's claims for irrigation water rights shall be specified  
2 in the drainage stipulation between the Tribe and Mr. Corcoran attached as part of Appendix 2. Nothing  
3 in the drainage stipulation or in this Compact shall affect any existing right that Mr. Corcoran may have to  
4 the use of on-Reservation conveyance and distribution systems to deliver this water.

5 c. 240 AFY Release. The Tribe shall annually release the first 240 acre-feet of water, as measured  
6 near the confluence of Box Elder Creek and Lower Big Sandy Creek, stored in Bonneau Reservoir above the  
7 minimum pool, at the request of the downstream irrigation water users as set forth below, for maintenance  
8 of instream flow and for domestic and stock purposes on Lower Big Sandy Creek. The 240 AF of water,  
9 once released, shall be designated as an instream flow and shall be senior to all Tribal diversions and all  
10 non-domestic and non-stockwater rights recognized under state law from the point of release to the  
11 confluence with the Milk River. The Tribe shall not divert from direct flow on Lower Big Sandy Creek  
12 between its confluence with Box Elder Creek and the Reservation boundary at Stoneman Farms, as that  
13 boundary exists on the effective date of this Compact, during release of the 240 AF of water to  
14 downstream water users in the months of July and August. A structure that will bypass the peak  
15 scheduled release will be constructed for any diversion of the Tribal Water Right upstream of the confluence  
16 of Big Sandy Creek with Gravel Coulee. Under no circumstances shall the Tribe be required to release more  
17 than 240 AFY of water to maintain instream flow and for domestic and stock purposes.

18 d. Schedule for 240 AFY. The method for determining the schedule of releases is as follows:  
19 Water users on Lower Big Sandy Creek with drainage stipulations listed in Appendix 2 shall elect a three  
20 member Bonneau Release Committee to determine the schedule of release for the 240 AFY. The  
21 Committee shall notify the DNRC which shall notify the TWRD by May 1st of each year of the requested  
22 schedule. The schedule shall not exceed the operating standards of Bonneau Reservoir or result in  
23 unreasonable interference of the Tribe's use of water stored in the Reservoir. If the TWRD does not receive  
24 notice by May 1 of any year, the TWRD shall release 2 cfs continuously for July and August in accordance  
25 with Section B.1.c. of Article IV. DNRC shall notify water users which, according to the records of the  
26 Department, have a water right recognized under state law with a source on Box Elder Creek, or on Big  
27 Sandy Creek between the confluence with Box Elder Creek and the confluence with the Milk River, that the  
28 release may not be diverted. After May 1, at the request of the Bonneau Release Committee, the DNRC  
29 shall request the Tribe to alter the rate of release and the Tribe may agree to comply. At the request of the  
30 Tribe, the DNRC shall request the Bonneau Release Committee to agree to forego the release, and if the

1 Committee believes the purposes for the release as set forth in Section B.1.c. of Article IV are being  
2 satisfied without the release, the Committee may, in any year, agree to forego the release. When  
3 streamflow in lower Big Sandy Creek at the bypass structure referred to in Section B.1.c. of Article IV,  
4 exceeds the peak flow specified in the designated release schedule, such excess flow can be diverted by  
5 the Tribe, subject to the diversion limits designated in Article III.

6 e. Effective Date for Bonneau Reservoir Operational Plan. Notwithstanding ratification of this  
7 Compact by the parties, the operational plan for Bonneau Reservoir set forth in Sections B.1.a. through c.  
8 of Article IV, shall not become effective until completion of the enlargement of Bonneau Dam.

9 2. Water Use on Lower Big Sandy Creek Drainage.

10 a. 2 cfs Bypass at Stoneman Farms. Structures will be constructed at each point of diversion on  
11 Lower Big Sandy Creek which allow a minimum of 2 cfs of water flow from direct and return flow, if  
12 available, to pass year around from the most downstream diversion on the Reservation on Lower Big Sandy  
13 Creek. The 2 cfs shall be designated as an instream flow and shall be senior in priority to Tribal diversions  
14 and all non-domestic and non-stockwatering water rights recognized under state law with a point of  
15 diversion between the bypass and the confluence with the Milk River. When streamflow in Lower Big  
16 Sandy Creek exceeds 2 cfs outside the scheduled 240 AF release period, such excess flow can be diverted  
17 by the Tribe subject to diversion limits designated in Article III.

18 b. Water Quality Issues.

19 (1) Monitoring Wells. Within one year following the effective date of this Compact, a monitoring  
20 well network adequate to detect saline seep shall be installed to depths no greater than 30 feet near the  
21 proposed Enlarged Stoneman Reservoir site shown in Appendix 6. The location of the wells will be  
22 established by TWRD and DNRC (or its representative) and groundwater level and quality shall be measured  
23 on a quarterly basis to establish baseline conditions.

24 (2) Water Quality Monitoring Before Construction. Within one year following the effective date  
25 of this Compact, a surface water quality network will be established by TWRD and DNRC and quarterly  
26 sampling continued for a sufficient period of time to establish the water quality baseline conditions referred  
27 to above, adjacent to and below the Stoneman Farms project. The results of the baseline analysis will be  
28 used to establish a threshold value for water quality degradation associated with salinity which will trigger  
29 the requirement for more extensive study.

30 (3) Water Quality Monitoring After Construction. After construction of the Stoneman Reservoir

1 enlargement, monitoring of the wells and surface water quality will be resumed to evaluate changes in  
 2 water quality. If salinity measurements result in a trend of increasing salinity on a sustained basis over a  
 3 reasonable period of time, the TWRD or DNRC may petition the Compact Board to appoint a technical  
 4 expert to conduct an analysis to identify the causes of the increasing salinity and recommend appropriate  
 5 remedies. The analysis and recommendations may include sources of salinity off the Reservation.

6 (4) Remedies. The results of the analysis shall be submitted to the DNRC and to the TWRD which  
 7 shall make a joint effort to resolve the degradation issue based on the analyses. If the analysis includes  
 8 sources of salinity off the Reservation, the DNRC shall assist the TWRD in obtaining reasonable access onto  
 9 the land off the Reservation for the purpose of observation. If the DNRC and the TWRD, are unable to  
 10 resolve the issue within 30 days through joint effort, the DNRC, the TWRD, or any affected water user,  
 11 may petition the Compact Board for relief. The Compact Board shall have jurisdiction over any contributor  
 12 to the salinity problem and shall fashion its remedy in a manner proportionate to the causes contributing  
 13 to the problem. The remedy fashioned by the Compact Board for salinity problems shall be limited to  
 14 issuance of an order to cease and desist the practice or practices leading to the salinity problems. The  
 15 remedies set forth in this section shall be in addition to any remedies or water quality standards provided  
 16 for under other applicable law.

17 C. Beaver Creek Drainage.

18 1. Moratorium on Tribal Consumptive Uses. For a period of five years following the ratification  
 19 date of the Compact, there shall be a moratorium on the development of Tribal consumptive uses from  
 20 surface water in the Beaver Creek drainage. During this moratorium, a monitoring network consisting of  
 21 three continuous recording stations will be installed and the resulting data analyzed to determine if Beaver  
 22 Creek gains or loses flow between the confluence of East and West Fork and the Reservation boundary.  
 23 Location of the three gages shall be:

- 24 (1) the West Fork of Beaver Creek at the location the Tribe intends to divert water to the East Fork;  
 25 (2) the confluence of the East and West Forks of Beaver Creek; and  
 26 (3) the Reservation boundary at the most downstream point on Beaver Creek. A staff gage shall  
 27 also be installed in East Fork Reservoir following enlargement of the Reservoir.

28 2. Development of Management Plan. Based on the results of the five years of gage data on  
 29 Beaver Creek, the Tribe and the Montana Department of Fish, Wildlife and Parks shall work cooperatively  
 30 to develop a fishery and recreational management plan. The plan may include modifications in minimum

1 instream flows set forth in Section C.3. of Article IV. Such modification is pursuant to, and will not be  
2 deemed a modification of, this Compact. The management plan is not binding on any party and shall not  
3 be used to modify minimum instream flows until it is approved by the Tribe and the Montana Department  
4 of Fish, Wildlife and Parks.

5 3. Operation of East Fork Reservoir Following Enlargement and Pending Adoption of a Management  
6 Plan. During the moratorium imposed by Section C.1. of Article IV, or pending adoption of the management  
7 plan authorized by Section C.2. of Article IV, East Fork Reservoir may be enlarged; provided that,

8 a. The enlarged Reservoir shall be used only for recreational purposes during the five year  
9 moratorium. However, after the five year moratorium period and pending adoption of the management plan,  
10 the enlarged Reservoir may be utilized for multiple purposes, but remains subject to the limitations set forth  
11 under Sections C.3.b., c., and d. of Article IV.

12 b. Any surface water diversion from the West Fork of Beaver Creek and its tributaries on the  
13 Reservation to the East Fork of Beaver Creek shall include a structure which allows a minimum of 1 cfs of  
14 water flow from direct and return flow, if available, to pass year around; provided that, the storing of water  
15 in East Fork Reservoir from the East Fork of Beaver Creek shall not be considered a diversion for the  
16 purposes of this provision.

17 c. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the  
18 northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the  
19 Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return  
20 flow, if available, to pass year round; provided that, the storing of water in East Fork Reservoir from the  
21 East Fork of Beaver Creek shall not be considered a diversion for the purposes of this provision.

22 d. The Tribe shall release water from East Fork Reservoir to augment streamflow on Beaver Creek  
23 if the flow at the confluence of East and West Fork or below the most downstream diversion on the  
24 Reservation, whichever is the most downstream, falls below 1 cfs; provided that, the Tribe shall not be  
25 required to release water if the level of the enlarged Reservoir reaches or falls below the minimum pool; and  
26 provided further that, the Tribe shall not be required to release water if the flow at the Reservation  
27 boundary at the most downstream point on Beaver Creek exceeds 2 cfs.

28 4. Operation of East Fork Reservoir Prior to Enlargement. Prior to enlargement of East Fork  
29 Reservoir and pending adoption of the management plan authorized by Section C.2. of Article IV, the  
30 following diversionary constraints are in effect.

1           a. Any surface water diversion from the West and East Forks of Beaver Creek and its tributaries  
2 on the Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and  
3 return flow, if available, to pass the structure year around.

4           b. For the drainage area below the confluence of the East and West Forks of Beaver Creek to the  
5 northern Reservation boundary, any surface water diversion from Beaver Creek and its tributaries on the  
6 Reservation shall include a structure which allows a minimum of 1 cfs of water flow from direct and return  
7 flow, if available, to pass year round.

8           **D. Enforcement - Chippewa Cree-Montana Compact Board.**

9           1. **Establishment of Board.** There is hereby established the Chippewa Cree-Montana Compact  
10 Board. The Board shall consist of three members: one member selected by the Governor of the State of  
11 Montana from up to six nominees, up to three nominated by the Commissioners of Chouteau County and  
12 up to three nominated by the Commissioners of Hill County; one member appointed by the Chippewa Cree  
13 Business Committee; and one member selected by the other two members. If the Governor fails to select  
14 a board member from the list of nominees, the Commissioners of Chouteau and Hill Counties may select  
15 the member. All members shall be appointed within six months of the ratification date of this Compact and  
16 within thirty days of the date any vacancy occurs. If an appointment is not timely made by the Governor  
17 or County Commissioners, the Director of DNRC or his/her designee shall fill the State's position. If an  
18 appointment is not timely made by the Chippewa Cree Business Committee, the Director of the TWRD or  
19 his/her designee shall fill the Tribe's position. Each member shall serve a five-year term and shall be eligible  
20 for reappointment. The initial term of each member shall be staggered with one member serving a five-year  
21 term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen  
22 by lot. Expenses of the members appointed by the State and the Tribe shall be borne by the entity  
23 appointing the member. The expenses of the third member and all other expenses shall be borne equally  
24 by the Tribe and the State, subject to the availability of funds.

25           2. **Membership.** Should the two appointed members fail to agree on the selection of a third  
26 member within sixty days of the date of appointment of the second member, or within thirty days after any  
27 vacancy occurs, the following procedure shall be utilized:

28           a. Within five days thereafter each member shall nominate three persons to serve as a member of  
29 the Board;

30           b. Within fifteen days thereafter each member shall reject two of the persons nominated by the

1 other member;

2 c. Within five days thereafter, the remaining two nominees shall be submitted to the Dean of the  
3 University of Montana School of Law who shall select the third member from the two nominees.

4 3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable  
5 notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in  
6 advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing  
7 and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board,  
8 and on the parties to this Compact.

9 4. Jurisdiction of the Board. The Chippewa Cree-Montana Compact Board shall have jurisdiction  
10 to resolve controversies over the right to the use of water as between users of the Tribal Water Right and  
11 users of water rights recognized under state law including any contributor to a salinity problem. Such  
12 controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.

13 5. Pre-requisite Administrative Remedy.

14 a. Any non-tribal water user concerned that a new development or change in use of water by the  
15 Tribe is inconsistent with the Compact shall first contact the Havre Regional Office of the DNRC. If the  
16 DNRC and the TWRD are unable to resolve the issue in a reasonable time through discussion, DNRC, the  
17 water user, or the Tribe may seek relief through the Compact Board. The Tribe agrees to allow DNRC  
18 reasonable access onto Tribal land to observe the challenged development or change in use.

19 b. The Tribe or any tribal water user concerned that a new development or change in use or  
20 transfer of water by non-tribal water users is inconsistent with the Compact shall first contact the TWRD.  
21 If the TWRD and the DNRC are unable to resolve the issue in a reasonable time through discussion, the  
22 TWRD or the Tribal water user may seek relief through the Compact Board. The DNRC agrees to assist the  
23 TWRD in obtaining reasonable access onto the non-tribal water user's land to observe the challenged  
24 development or change in use or transfer.

25 c. The TWRD and the DNRC may jointly develop supplemental procedures as necessary or  
26 appropriate. Such supplemental procedures are pursuant to, and will not be deemed a modification of, this  
27 Compact.

28 6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall  
29 have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses  
30 or production of documents or other evidence, and to appoint a technical expert for the purposes of Section

1 B.2.b. of Article IV. The Tribe and the State shall enforce the Board's subpoenas in the same manner as  
2 prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each  
3 respective sovereign in a civil action. The parties to the controversy may present evidence and cross  
4 examine any witnesses. The Board shall determine the controversy and grant any appropriate relief,  
5 including a temporary order; provided that, the Board shall have no power to award money damages, costs,  
6 or attorneys fees. All decisions of the Board shall be by majority vote and in writing. The Board shall adopt  
7 necessary rules and regulations to carry out its responsibilities within six months after its first meeting. All  
8 records of the Board shall be open to public inspection, except as otherwise ordered by the Board.

9 **7. Review and Enforcement of Board Decisions.**

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

15 b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in  
16 Section D.7.a. of Article IV, any decision of the Board shall be recognized and enforced by any court of  
17 competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which  
18 the decision was made.

19 c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Section D.7.a. of  
20 Article IV, or in which a petition to confirm or enforce is filed pursuant to Section D.7.b. of Article IV, may  
21 order such temporary or permanent relief as it considers just and proper.

22 d. Any appeal may be taken from any decision of the court in which a timely appeal is filed  
23 pursuant to Section D.7.a. of Article IV, or in which a petition to confirm or enforce is filed pursuant to  
24 Section D.7.b. of Article IV, in the manner and to the same extent as from orders or judgments of the court  
25 in a civil action.

26 e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the  
27 court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.

28 **8. Waiver of Immunity.** The Tribe and the State hereby waive their respective immunities from-suit,  
29 including any defense the State shall have under the Eleventh Amendment of the Constitution of the United  
30 States, in order to permit the resolution of disputes under this Compact by the Chippewa Cree-Montana



1 Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that  
 2 such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money  
 3 damages, costs, or attorneys' fees. The parties agree that only Congress can waive the immunity of the  
 4 United States. The participation of the United States in the proceedings of the Compact Board shall be as  
 5 provided by Congress.

#### 6 ARTICLE V - DISCLAIMERS AND RESERVATIONS

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

8 1. The relationship between the water rights of the Chippewa Cree Tribe described herein and any  
 9 rights to water of any other Indian Tribe, or of any federally derived water right of an individual, or of the  
 10 United States on behalf of such Tribe or individual shall be determined by the rule of priority.

11 2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature,  
 12 extent, or manner of administration of the rights to water of any other Indian tribes and tribal members of  
 13 other Indian tribes.

14 3. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of  
 15 an Indian Tribe other than the Chippewa Cree Tribe regarding its boundaries or property interests.

16 4. Nothing in this Compact may be construed or interpreted in any manner to establish the nature,  
 17 extent, or manner of administration of the rights to water of any other federal agency or federal lands other  
 18 than those of the Chippewa Cree Tribe.

##### 19 B. General Disclaimers.

20 Nothing in this Compact shall be so construed or interpreted:

21 1. As a precedent for the litigation of reserved water rights or the interpretation or administration  
 22 of future compacts between the United States and the State, or the United States and any other state;

23 2. To preclude the acquisition or exercise of a right to the use of water by any member of the Tribe  
 24 outside the Reservation by purchase of such right or by acquisition of land, or by application to the State.

25 3. To determine the relative rights inter sese of persons using water under the authority of the  
 26 State or the Tribe;

27 4. To limit in any way the rights of the parties or any other person to litigate any issues or  
 28 questions not resolved by this Compact;

29 5. To authorize the taking of a water right which is vested under state or federal law;

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



1 provide an allocation of 10,000 acre-feet per year from storage water in Lake Elwell, as described in Section  
2 C.6. of Article III. The priority date of this water right shall be that established for the source of supply.  
3 This water right will be held in trust and will be part of the Tribal Water Right.

4 2. Right to Participate in Future Projects to Import Water to the Milk River. The Tribe shall have  
5 the right to participate in any project to augment the water supply in the Milk River system by transferring  
6 water from another drainage, and to have any such augmentation project deliver any entitlement of the  
7 Tribe to water to a point on the Reservation designated by the Tribe.

8 B. Provision Of A Municipal, Rural, And Industrial Water Supply System, And A Tribal Economic  
9 Development Fund.

10 The State and Tribe agree to support federal legislation that will authorize and fund a municipal,  
11 rural and industrial water system adequate to meet the future MR&I water needs of the Tribe, according  
12 to the needs and population projections as set forth in the Municipal, Rural and Industrial (MR&I) Water  
13 Supply System Needs Assessment prepared for the Bureau of Reclamation, U.S. Department of the Interior  
14 (January, 1996), through either a regional system or a system serving the Reservation only. The State and  
15 Tribe further agree to support federal legislation that will establish an economic development fund as agreed  
16 to by the Tribe and the Department of the Interior, or by the Tribe and the Montana Congressional  
17 Delegation. Support by the Department of Interior for the proposed MR&I system will depend on a  
18 demonstration of feasibility and appropriate allocation of costs.

19 C. Implementation Contingencies and Cost Share of Administration and Mitigation.

20 Implementation of this Compact shall be contingent upon the appropriation of necessary funds by  
21 the Congress and by the Montana Legislature. The performance of any obligation by any party under this  
22 Compact shall be contingent upon appropriation of funds therefor. No liability shall accrue to any party in  
23 case necessary funds are not appropriated. The State and the Tribe agree to recommend the following cost  
24 share for administration and mitigation necessary to implement the Compact to the Montana State  
25 Legislature and the Congress for appropriation on a schedule consistent with implementation as  
26 contemplated in this Compact.

27 1. The State and the Tribe agree to support federal legislation to appropriate \$3,070,000 for the  
28 administration of the Tribal Water Right by the Tribal Water Resources Department as set forth in Articles  
29 III and IV of the Compact, including but not limited to: stream flow gages; diversion/bypass structures on  
30 Big Sandy Creek; aerial survey of impoundments on the Reservation; and development of a Tribal Water

1 Code.

2 2. The State and the Tribe agree to support state legislation to appropriate \$150,000 for the  
3 following purposes as set forth in Articles III and IV of the Compact: water quality discharge monitoring  
4 wells and monitoring program; diversion structure on Big Sandy Creek; conveyance structure on Box Elder  
5 Creek; and purchase of contract water from Lower Beaver Creek Reservoir.

6 3. The state agrees to provide services, subject to the availability of funds, valued at \$400,000  
7 for administration required by the Compact and for water quality sampling required by this Compact.

8 ARTICLE VII - FINALITY, SETTLEMENT OF CLAIMS,

9 AND EFFECTIVENESS OF COMPACT

10 A. Ratification and Effectiveness of Compact .

11 1. This Compact shall become effective on the date it is ratified by the Tribe, by the State, and by  
12 the Congress of the United States, whichever date is latest; provided that, notwithstanding the provisions  
13 of Section 85-2-702(2), MCA, those aspects of the Compact specifically designated in Section A.2. of  
14 Article VII, shall become effective as stated therein. Upon ratification of this Compact by the Tribe and by  
15 the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any  
16 respect without the consent of both the Tribe and the State. Once ratified by Congress, the Tribe, and the  
17 State, the Compact may not be modified without the consent of the Tribe, the State, and the United States.

18 2. As between the State and the Tribe, the moratorium on state permits in the Big Sandy Creek  
19 Basin set forth in Section A.7. of Article IV, shall become effective upon the date the Compact is ratified  
20 by the Montana Legislature and by the Chippewa Cree Business Committee, whichever date is later. The  
21 reservoir operational plan for Bonneau Reservoir set forth in Section B.1 of Article IV shall not become  
22 effective until the Reservoir is enlarged.

23 3. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw  
24 as a party to this Compact -

25 a. if Congress has not ratified this Compact within four (4) years from the date the Compact is  
26 ratified by the Tribe and by the State, whichever date is later, or

27 b. if the municipal, rural, and industrial water supply system which the feasibility study identifies  
28 as the preferred alternative to serve the Rocky Boy's Reservation, or an equivalent WATER SUPPLY system  
29 as determined by the Tribe, is not authorized within four (4) years of the date the Compact is ratified by  
30 the Tribe and by the State, whichever date is later, or

1 c. if appropriations are not authorized by Congress, including appropriations for planning, design,  
2 and other pre-construction work on the municipal, rural, and industrial water supply system authorized by  
3 Congress to serve the Rocky Boy's Reservation, within five (5) years of the date the Compact is ratified  
4 by the Tribe and by the State, whichever date is later, or

5 d. if appropriations are not made in the manner contemplated by the federal legislation authorizing  
6 the Tribal municipal, rural, and industrial water supply system, or

7 e. if construction of the Tribal municipal, rural, and industrial water supply system authorized by  
8 Congress to serve the Rocky Boy's Reservation, has not commenced within seven (7) years from the date  
9 the Compact is ratified by the Tribe and by the State, whichever date is later, or

10 f. if construction of the Tribal municipal, rural, and industrial water supply system authorized by  
11 Congress to serve the Rocky Boy's Reservation, has not been completed within fourteen (14) years from  
12 the date the Compact is ratified by the Tribe and by the State, whichever date is later.

13 The Tribe may exercise its right to withdraw by sending to the Governor of the State of Montana  
14 and to the Secretary of the Interior by certified mail a resolution of the Chippewa Cree Business Committee  
15 stating the Tribe's intent to withdraw and specifying a withdrawal date not sooner than 30 days from the  
16 date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall  
17 become null and void without further action by any party, and the parties agree to resume negotiation in  
18 good faith for quantification of the water rights of the Chippewa Cree Tribe and entry of a decree in a court  
19 of competent jurisdiction. If the Tribe fails to take action to withdraw within five (5) years following the  
20 fourteen (14) year deadline for completion of the water system, all provisions of the Compact shall remain  
21 in effect.

22 4. Notwithstanding any other provision in this Compact, the Department of the Interior reserves  
23 the right to refuse support for federal legislation ratifying this Compact.

24 B. Incorporation Into Decrees and Disposition of Federal Suits.

25 1. The Tribe and the State agree to defend the provisions and purposes of this Compact including  
26 the quantification set forth in ARTICLE III, from all challenges and attacks in all proceedings pursuant to this  
27 Section B of Article VII.

28 2. Within 180 days of the date this Compact is ratified by the Chippewa Cree Business Committee,  
29 the State of Montana, and Congress, whichever is latest, the Tribe, the State, or the United States shall  
30 file, in the general stream adjudication filed by the State of Montana pursuant to the provisions of

1 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the  
2 water rights held by the United States in trust for the Chippewa Cree Tribe of the Rocky Boy's Reservation.  
3 If the court does not approve the proposed decree submitted with the motion within three years following  
4 the filing of the motion, the Compact shall be voidable by agreement of the parties. If the court approves  
5 the proposed decree within three years, but the decree is subsequently set aside by the court or on appeal,  
6 the Compact shall be voidable by agreement of the parties. The parties understand and agree that the  
7 submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply  
8 with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand  
9 in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43  
10 U.S.C. §666 or other provision of federal law.

11 3. Consistent with section 3-7-224, MCA, setting forth the jurisdiction of the chief water judge,  
12 for the purposes of section 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to  
13 Article III, Section A.8. of Article IV, and Appendix 1, and may extend to other sections of the Compact  
14 only to the extent that they relate to the determination of existing water rights. The final decree shall  
15 consist of Article III and Section A.8. of Article IV as displayed in Appendix 1 and such other information  
16 as may be required by 85-2-234, MCA. Nevertheless, pursuant to section 85-2-702(3), MCA, the terms  
17 of the entire Compact must be included in the preliminary decree without alteration for the purpose of  
18 notice.

19 4. Upon the issuance of a final decree by the Montana Water Court, or its successor, and the  
20 completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal,  
21 the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed.  
22 R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe,  
23 in United States v. Aageson, No. CIV-79-21-GF (D. Mont. 1979) (hereinafter referred to as "Aageson") and  
24 such claims may only be refiled if the Tribe exercises its option to withdraw as a party to the Compact  
25 pursuant to Section A.3. of Article VII. This Compact shall be filed as a consent decree in Aageson only  
26 if, prior to the dismissal of Aageson as provided in this Article, it is finally determined in a judgment binding  
27 upon the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings  
28 are inadequate to adjudicate, some or all of the water rights asserted in Aageson.

29 C. Tribal Settlement of Water Claims.

30 The parties intend that the water rights and other rights confirmed to the Tribe in this Compact are

1 in full satisfaction of the Tribe's water rights claims, including federal reserved water rights claims based  
 2 on Winters v. United States, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe  
 3 in this Compact, including rights to the future development of water pursuant to Section C. of Article III,  
 4 and of performance by the State of Montana and the United States of all actions required by this Compact,  
 5 including entry of a final order issuing the decree of the reserved water rights of the Tribe held in trust by  
 6 the United States as quantified in the Compact and displayed in Appendix 1, the Tribe and the United  
 7 States as trustee for the Tribe hereby relinquish any and all claims to water rights of the Chippewa Cree  
 8 Tribe within the State of Montana existing on the date this Compact is ratified by the State and the Tribe,  
 9 whichever date is later.

10 D. Binding Effect.

11 Upon the effectiveness of any provision of this Compact, the terms of that provision will be binding:

12 1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any  
 13 manner asserting any right under the authority of the State to the use of water in the State of Montana;  
 14 provided that, the validity of consent, ratification, or authorization by the State is to be determined by  
 15 Montana law;

16 2. Upon the Tribe and any person or entity of any nature whatsoever using, claiming or in any  
 17 manner asserting any right UNDER THE AUTHORITY OF THE TRIBE to the use of the Tribe's water right,  
 18 or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe, ~~or any right~~  
 19 ~~arising under tribal law~~; provided that, the validity of consent, ratification or authorization by the Tribe is  
 20 to be determined by tribal law; and

21 3. Upon the United States and any person or entity of any nature whatsoever using, claiming or  
 22 in any manner asserting any right under the authority of the United States to the use of water in the State  
 23 of Montana; provided that, the validity of consent, ratification or authorization by the United States is to  
 24 be determined by federal law; and further provided that, nothing contained in this Compact affects any  
 25 claim of any Indian tribe other than the Chippewa Cree Tribe, or of persons claiming water through any  
 26 such other Indian tribe, or the right of any Indian tribe other than the Chippewa Cree Tribe, or persons  
 27 claiming water through any such other Indian tribe, to pursue a claim to any water from any source based  
 28 on any theory of right or entitlement.

29 ARTICLE VIII - LEGISLATION

30 The State and Tribe agree to seek enactment of any legislation necessary to effectuate the

1 provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from  
2 all challenges and attacks; provided that, no provision of the Compact shall be modified as to substance  
3 except as may be provided herein.

4 IN WITNESS WHEREOF the representatives of the State of Montana, the Chippewa Cree Tribe of  
5 the Rocky Boy's Reservation, and the United States have signed this Compact on the \_\_\_\_\_ day of  
6 \_\_\_\_\_, 19\_\_\_\_.

7

8 **NEW SECTION. Section 2. Provision exception.** Notwithstanding the provisions of 7-6-204, Hill  
9 County may apply the interest accrued on the \$50,000 water purchase contract with the state of Montana  
10 toward operation, maintenance, and future repairs to the Lower Beaver Creek reservoir. THE DEPARTMENT  
11 IS AUTHORIZED TO EXECUTE A CONTRACT WITH HILL COUNTY FOR THE PURCHASE OF 800  
12 ACRE-FEET OF WATER STORED IN LOWER BEAVER CREEK RESERVOIR. THE DEPARTMENT IS  
13 AUTHORIZED TO ASSIST THE TRIBE, HILL COUNTY, AND ANY APPROPRIATE FEDERAL AGENCY IN  
14 DRAFTING AN OPERATING AGREEMENT FOR COORDINATION OF RELEASE OF THE PURCHASED WATER  
15 FROM LOWER BEAVER CREEK RESERVOIR WITH REDUCTIONS IN THE NATURAL FLOW OF BEAVER  
16 CREEK DUE TO DIVERSION AND IMPOUNDMENT OF WATER ON THE RESERVATION.

17

18 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
19 integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

20

-END-