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D.N.R.C.

**AGREEMENT AND PROTOCOL FOR VERIFICATION OF STATE-BASED WATER
USE ON THE FLATHEAD INDIAN RESERVATION FOR PURPOSES OF
NEGOTIATION
Basins 76L and 76LJ**

I.
RECITALS

Whereas, the Parties to this Agreement are the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation (Tribes), the State of Montana acting through the Montana Reserved Water Rights Compact Commission (RWRCC) and/or the Montana Department of Natural Resources and Conservation (DNRC) as applicable (collectively State), and the United States Department of the Interior (United States); and

Whereas, the Tribes, the State of Montana, and the United States are in active negotiation to quantify the Tribes' claims to reserved and aboriginal water rights in groundwater and surface water and to establish an administration system governing the use of surface and groundwater on the Flathead Indian Reservation (FIR); and

Whereas, the Tribes have, as part of the negotiation process, committed "to protect all existing verified water use on the Flathead Reservation;" and

Whereas, the Parties have agreed for the purposes of this Agreement that "existing verified uses" includes all: water right claims filed and decreed in the Montana general stream adjudication; all verified and certified state-based permits and change of use authorizations; ground water certificates, including correct and complete post-Ciotti certificates; post-Ciotti permit and change in use applications that meet the requisite criteria as determined by the DNRC; and all Tribally-authorized water uses and individual Indian uses that occur in whole or in part on the FIR; and

Whereas, "Tribally-authorized uses" includes Tribal revocable water use permits, watershed leases, declarations of water use, and unquantified and unrecorded individual Indian water use such as household, garden and stock water use; and

Whereas, the Parties agree that a final Montana Water Court decree concerning the rights of those claimants who filed claims in Montana's general stream adjudication pertaining to the use of water on the FIR shall constitute verification of all such existing state-based claims to water on the FIR with a priority date prior to July 1, 1973; and

Whereas, the Parties acknowledge that the Montana Water Use Act, 85-2-301 *et seq.* M.C.A., authorized the DNRC to issue beneficial water use permits for uses with a priority date on or after July 1, 1973, and to issue change in use authorizations for existing water rights after July 1, 1973; and

Whereas, the Parties acknowledge that not all water use permits issued by the DNRC for water use on the FIR have yet been verified or certified; and

Whereas, this Agreement does not in any way quantify or otherwise affect the Tribes' claims to reserved and aboriginal water rights to surface and groundwater;

Now, Therefore, Be It Resolved, that the parties agree to a verification process whereby the DNRC will conduct verification of state-based permits and change of use authorizations in accordance with this Agreement.

II. AGREEMENT AND PROTOCOL

1. The DNRC shall commit the equivalent of 0.5 full time staff to perform verification of state-based permits and change of use authorizations on the FIR.
2. The DNRC shall commence the verification process within 10 days of the latest signature to this Agreement and shall continuously perform verification until complete or until any party withdraws from this Agreement for any reason or until this schedule is modified by the mutual consent of the Parties.
3. The verification process for permits and change of use authorizations that have not previously been verified or certified by the DNRC will proceed based upon a prioritization of the classes of existing use to be examined. Generally, verification of each class shall proceed to completion before verification of the class next in priority is initiated. Those uses that shall be field verified are parenthetically noted unless otherwise stated. The priority of classes to be verified is as follows:
 - A. Irrigation (to be field verified);
 - B. Commercial uses (to be field verified);
 - C. Fish and wildlife uses (to be field verified);
 - D. Fishery uses (to be field verified);
 - E. Tribally requested field reviews pursuant to paragraph 6 of this Agreement.
 - F. Municipal;
 - G. Domestic uses from Flathead Lake; and
 - H. All other uses.
4. On or before the effective date of this Agreement the Tribes shall provide the DNRC with the February 2008 Tribal Lands Department land status map, and as soon as practicable shall complete and submit to the DNRC Ownership Updates (Form 608) for all lands acquired by the Tribes with state-based permits, change of use authorizations, and/or certificates, to ensure that the DNRC records of ownership are accurate.
5. The Parties agree that the DNRC, Water Rights Bureau publication entitled

“VERIFICATION/ CERTIFICATION PROCEDURES,” (Procedures Manual) dated as “Revised September 7, 2001,” shall, subject to such terms and conditions contained herein, serve as the procedure for verification of existing state-based permits and change of use authorizations. The DNRC shall use the Procedures Manual, subject to the following changes or modifications to the Procedures Manual:

A. The DNRC shall not issue any “Draft Certificate of Water Right,” as that term is used on page 12 of the Procedures Manual, or any other document representing or that could be construed as a certificate of water right as that term is defined in the Montana Code Annotated;

B. Contrary to the practice identified on page 27 of the Procedures Manual entitled “Ownership,” the DNRC shall identify on the verification form the ownership of the land at the point of diversion for all permits and change of use authorizations that are verified pursuant to this Agreement;

C. The DNRC shall make available to the Tribes and the United States either 1) access to an electronic copy of the scanned contents of the permit and change files to be verified via the NRIS website (<http://nris.mt.gov/dnrc/waterrights/default.aspx>) or, if the scanned contents are not available, 2) an electronic copy of the general abstract of each permit and change of use authorization to be verified. This information will be provided at least 5 working days prior to the commencement of any field verification of those uses. The abstracts shall be provided to John Carter, Tribal Attorney, or his successor, and to David Harder, United States Department of Justice, or his successor;

D. (1) Any field examination of a permit or change of use authorization shall be arranged by the DNRC and the DNRC shall provide the Tribes and the United States with as much prior notice as is practicable and the Tribes and the United States shall be entitled, but not obligated, to attend any field examination, recognizing that the State has no control over landowner consent to the presence of the Tribes and the United States on private property;

(2) If the DNRC determines the need to conduct a field examination of permits or change of use authorizations on Tribal or trust lands, the DNRC shall notify Clayton Matt, or his designee, of the Tribal Natural Resources Department, who shall act as contact person with the landowner and who shall facilitate the field examination and accompany the DNRC field examination personnel;

E. Throughout the verification process, the United States and the Tribes shall be afforded access during normal business hours to verification information which was and is developed, utilized or produced by the DNRC or is otherwise in the possession of the DNRC as a result of the verification process.

F. The final product of the verification process will consist of the following materials and reports:

(1) the provisional permit or change of use authorization;

- (2) a Verification Abstract printout demonstrating the results of the verification process, as well as any changes indicated by the verification process, whether or not agreed to and executed by the owner of the permit;
- (3) an abstract of the permit or change authorization with modifications as per the results of the verification; and
- (4) a map reflecting the point of diversion, the means of diversion and the place of use of the permit.

G. Upon completion of the verification process, the DNRC shall make available electronically to the Tribes and the United States a complete set of the verification materials for each permit and change of use authorization that has been subject to the verification process set forth in this Agreement.

H. Each Party is responsible for the acts and omissions of its own employees, agents, and consultants in performing the work subject to this Agreement.

6. The Tribes and the United States shall be entitled to review the results of all permits and change of use authorizations previously subjected to a DNRC verification/certification process and may request field review of a permit or change of use that has previously been verified/certified where there appears to be an expansion or change of use from the terms of the originally issued permit or change of use authorization. DNRC shall prioritize such requested field reviews in the manner set forth in paragraph 3 of this Agreement.

7. The following data bases shall constitute the field from which DNRC shall conduct the verification process:

A. WR_Permits_Flathead_Reservation_6_10_2008.xls; and

B. Centralized DNRC Water Rights Database.

8. Nothing in this Agreement shall be deemed as a concession by either party as to the other parties' jurisdictional claims or an admission of the same, or a waiver of the right to challenge such claims upon termination of this Agreement. Nothing in this Agreement shall be deemed as enlarging or diminishing the jurisdiction or authority of any party. Further, regarding any issue, neither this Agreement nor the activities of the Parties pursuant to this Agreement shall be utilized to affect the equitable or legal position of any Party in any litigation.

9. Any Notice to the Tribes necessary or required under this Agreement shall be delivered to:

John Carter
Rhonda Swaney
Confederated Salish & Kootenai Tribes
Legal Department

P.O. Box 278
Pablo, MT 59855
(406) 675-2700 x.1160
rhondas@cskt.org

and

Seth Makepeace
Confederated Salish and Kootenai Tribes
Natural Resources Department
P.O. Box 278
Pablo, MT 59855
(406) 675-2700 x.6255
sethm@cskt.org

Any Notice to the State necessary or required under this Agreement shall be delivered to:

Bill Schultz, Manager
DNRC Missoula Regional Office
1610 South Third Street West, Suite 103
P.O. Box 5004
Missoula, Montana 59806
(406) 721-4284
bischultz@mt.gov

and

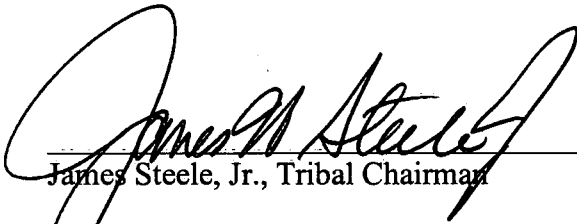
Jay Weiner
Montana Reserved Water Rights Compact Commission
1625 11th Ave.
P.O. Box 201601
Helena, MT 59620
(406) 444-6844
jweiner@mt.gov

Any Notice to the United States necessary or required under this Agreement shall be delivered to:

David Harder
Indian Resources Section
United States Department of Justice
1961 Stout Street, 8th Floor
Denver, CO 80294
(303) 844-1372

david.harder@usdoj.gov

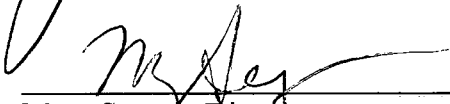
10. This Agreement can only be modified by written agreement executed by all Parties.
11. This Agreement shall terminate upon the mutual consent of the Parties or 30 days after one Party informs the other Party in writing of its intent to withdraw from the Agreement.
12. This instrument contains the entire Agreement between the parties. No statements, promises of inducements made by either party, or agents of either party, which are not contained in the written Agreement shall be valid or binding. This Agreement may not be enlarged, modified, or altered except as provided in paragraph 10 of this Agreement.



James Steele, Jr., Tribal Chairman

Date


8/4/08



Mary Sexton, Director
Montana Department of Natural Resources and Conservation

Date

8/6/08



Chris Tweeten, Chairman,
Montana Reserved Water Rights Compact Commission

Date

8-7-08



Duane Mecham, Chairman
Federal Negotiating Team
United States Department of the Interior

Date

8-8-08