



BLACKFEET NATION

P.O. BOX 850 BROWNING, MONTANA 59417
Telephone (406) 338-7521 Fax: (406) 338-7530

EXECUTIVE COMMITTEE
TIMOTHY F. DAVIS – CHAIRMAN
LILF “SCOTT” KIPP, SR. – VICE CHAIRMAN
LAUREN MONROE, JR. – SECRETARY
TINSUWELLA BIRDRAITLER – TREASURER

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MARK E. POLLOCK
MARVIN WEATHERWAX, JR.
VIRGIL LAST STAR

RESOLUTION

Adopting the Blackfeet Tribe Water Code (2021)

No. 211-2021

WHEREAS, The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Nation pursuant to Section 16 of Act of June 18, 1934 and Amendments thereof, and

WHEREAS, The Blackfeet Tribal Business Council has been organized to represent, develop, protect and advance the views, interests, and resources education and resources of the Blackfeet Indian Reservation, and

WHEREAS, Pursuant to the Blackfeet Tribal Constitution and Bylaws, Article VI, Section 1(k), the Blackfeet Tribal Business Council is empowered to promulgate ordinances for the purposes of safeguarding the peace and safety of residents of the Blackfeet Indian Reservation, and

WHEREAS, The Blackfeet Tribal Business Council has received and reviewed amendments in a formal meeting held on November 18, 2020, and

WHEREAS, The Blackfeet Water Department, and the the Blackfeet Legal Department further refined the Water Code after November 18, 2020 to incorporate additional amendments which will be implemented after an opportunity for public comment, and

WHEREAS, The Blackfeet Tribal Business Council is desirous to advance the implementation of the Blackfeet Water Settlement on the Blackfeet Indian Reservation through the implementation and codification of the new water code developed by the Blackfeet Water Department and the Blackfeet Legal Department, now


THEREFORE, BE IT RESOLVED:

1. The Blackfeet Tribal Business Council hereby approves the Water Code attached hereto and incorporated into this Resolution by this reference. After an opportunity for public comment the Water Code will be codified and into the Blackfeet Law and Order Code at "Chapter 19."
2. This Blackfeet Water Code supersedes and replaces Ordinance 62, Blackfeet Land and Water Conservation adopted by the Blackfeet Tribal Business Council on May 15, 1980 and re-adopted on July 12, 1988.
3. If any provisions of the Water Code or the application thereof to any person, entity or circumstance is held invalid, such invalidity shall not affect any other provision or applications of the Code and such invalidity shall be severed from the Code.
4. The Blackfeet Legal Department shall forward the Water Code to the Department of the Interior for review and approval consistent with the Blackfeet Water Settlement.
5. The Chairman or the Vice-Chairman in the Chairman's absence and the Secretary of the Blackfeet Tribal Business Council are hereby authorized to sign this Resolution and any other documents to effectuate the purposes of this Resolution.

ATTEST:

**THE BLACKFEET TRIBE OF THE
BLACKFEET INDIAN RESERVATION**


LAUREN J. MONROE, JR.
Secretary


TIMOTHY F. DAVIS
Chairman

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Blackfeet Tribal Business Council in a duly called noticed and convened Special Session assembled for business the 18th day of February, 2021, with Six (6) members present to constitute a quorum and by a vote of Six (6) For, Zero (0) Opposed and Zero (0) Abstained.


LAUREN J. MONROE JR., Secretary
Blackfeet Tribal Business Council

(SEAL)

BLACKFEET WATER CODE

CHAPTER 19

(FEBRUARY 18, 2021)

Section 1. Title	2
Section 2. Authority and Purpose	2
Section 3. Scope and Applicability	3
Section 4. Effective Date	3
Section 5. Definitions	3
Section 6. Blackfeet Water Department	7
Section 7. Water Permits	10
Section 8. Disputes and Controversies Among Water Users	14
Section 9. Criteria for Water Permits for New Uses	14
Section 10. Transfer of Permits.	16
Section 11. Change Applications	17
Section 12. Enforcement	18
Section 13. Hearings and Appeals	20
Section 14. Service Charges and Fees	21
Section 15. Blackfeet Irrigation Project	21
Section 16. Irrigable Allotments	22
Section 17. Well Drillers	22
Section 18. Miscellaneous Provisions	22

Section 1. Title

This Code shall be cited as the Blackfeet Water Code.

Section 2. Authority and Purpose

- A. The Blackfeet Tribal Business Council adopts this Water Code under the authority of the Blackfeet Constitution and By-Laws and pursuant to the sovereign authority of the Blackfeet Tribe to control, manage and protect the waters of the Reservation in perpetuity in order to maintain a permanent Blackfeet homeland.
- B. Pursuant to the Treaty of October 17, 1855, the Blackfeet Tribe reserved all waters arising on, flowing through, underlying or bordering the Blackfeet Reservation, including surface and groundwater, necessary to provide a permanent homeland for the Blackfeet Tribe and its people, sometimes referred to as Winters Doctrine right.
- C. The waters reserved by the Tribe are essential to the existence of the Blackfeet Tribe culturally, historically and economically, and to the continuing viability of the Blackfeet Indian Reservation as a homeland for the Blackfeet people.
- D. The Blackfeet Tribe entered into a Compact with the State of Montana and the United States which confirms and quantifies the Winters Doctrine rights of the Tribe. The Compact was ratified by the State of Montana, MCA 85-20-1501, and by the United States in the Blackfeet Water Right Settlement Act, Public Law 114-322, 130 Stat. 1628, Title III, Subtitle G. The Compact and Settlement Act were approved by the Blackfeet tribal membership in a referendum vote held on April 20, 2017 and certified by the Secretary of the Interior's delegate on May 30, 2017.
- E. The Tribe possesses the sole jurisdiction and authority to administer Tribal waters on the Reservation for the benefit of the Tribe and its members and to authorize use of the Blackfeet Tribal Water by any person.
- F. The protection and preservation of the Tribe's water resources, and the economic stability and well-being of the Blackfeet Tribe now and for generations to come, are dependent on the efficient and effective management, control and development of the Tribe's water resources which this Water Code is intended to provide.
- G. The purposes of this Water Code are to protect the health and welfare of Reservation residents, the political integrity of the Tribe, and the economic security of the Reservation through effective administration, regulation and management of the Reservation water resource in order to protect the quantity, quality and integrity of the water resource.
- H. The administration, regulation and management of the waters of the Reservation under this Water Code shall comply with all Tribal laws, regulations and procedures and any applicable federal law, and due process requirements.

- I. This Blackfeet Water Code repeals and replaces Ordinance 62, Blackfeet Land and Water Conservation adopted by the Blackfeet Tribal Business Council on May 15, 1980 and re-adopted on July 12, 1988.

Section 3. Scope and Applicability

- A. This Code applies to every person who seeks to use or is using Blackfeet Tribal Water. No person shall use Blackfeet Tribal Water without a permit issued pursuant to this Water Code.
- B. On and after April 15, 2009 (the date of State ratification of the Blackfeet Compact), all basins on the Blackfeet Reservation are closed to issuance of State of Montana certificates of water rights and water permits and the Blackfeet Tribe shall have sole and exclusive jurisdiction to authorize use of water within the Blackfeet Reservation.
- C. The State may continue to issue Certificates of Water Rights for Excepted Rights up through the Effective Date of this Water Code, at which time the Blackfeet Tribe also shall have sole and exclusive authority to authorize use of water for Excepted Rights.

Section 4. Effective Date

This Code or any portion of the Code is effective on the date the Code is approved by the Secretary of the Interior.

Section 5. Definitions

- A. “**Acre-foot**” or “**Acre-feet**” or “**AF**” means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet of water.
- B. “**Agricultural Use**” means the use of water for the purpose of cultivating the soil, producing crops, and raising livestock.
- C. “**Allottee**” or “**Allottees**” means any individual or individuals who own or hold a trust allotment or interest in a trust allotment on the Reservation under the authority of the General Allotment Act (24 Stat. 388) and the Blackfeet Allotment Acts (34 Stat. 1035 and 41 Stat. 3), and subject to the terms and conditions of those Acts.
- D. “**Blackfeet Irrigation Project**” means the irrigation project authorized by federal law on the Reservation and currently administered by the United States Department of the Interior, Bureau of Indian Affairs.
- E. “**Blackfeet Compact**” or “**Blackfeet-Montana-United States Compact**” means the water rights compact entered into by the Blackfeet Tribe, the State of Montana and the United States, which was ratified by the State of Montana in 2009, MCA 85-20-1501, by the United States in the Blackfeet Water Right Settlement Act, Public Law 114-322 (Dec. 16, 2016), Title III, Subtitle G, 130 Stat. 1628, and approved by the Blackfeet Tribal

membership in a referendum vote held on April 20, 2017 and certified by the Secretary of the Interior's delegate on May 30, 2017.

- F. **“Blackfoot-Montana Compact Board”** means the Board established by Article IV, Section J.1 of the Blackfoot- Montana-United States Compact, made up of one member selected by the Chairman of the Blackfoot Tribal Business Council, one member selected by the Governor of the State of Montana, and a third member selected by the other two, to resolve disputes between users of Blackfoot Tribal Water and users of state law water rights.
- G. **“Blackfoot Tribal Water”** or **“Tribal Water”** means the federal reserved water right (“Tribal Water Right”) of the Blackfoot Tribe confirmed in the Blackfoot-Montana-United States Compact.
- H. **“Blackfoot Water Rights Settlement Act”** or **“Blackfoot Settlement Act”** means Title III, Subtitle G of Public Law 114-322 (Dec. 16, 2016), 130 Stat. 1638.
- I. **“Effective Date”** means the date on which this Water Code is approved by the Secretary of the Interior or his delegate.
- J. **“Existing Uses”** means, as applied to Blackfoot Tribal Water, uses both existing and that historically existed, from surface water and groundwater, including but not limited to religious and cultural uses, irrigation, stock water, domestic, municipal, storage, and including use on all assessable and temporarily non-assessable lands within the Blackfoot Irrigation Project, as of the date the ratification of the Compact by the Montana legislature becomes effective. The following shall be considered Existing Uses and not New Developments:
 - 1. Water made available by the replacement, repair or rehabilitation of storage facilities existing as of the Effective Date of the Compact to their originally designed capacity;
 - 2. Water made available by the rehabilitation, betterment, enlargement, improvement and/or construction of facilities of the Badger-Fisher Irrigation Unit of the Bureau of Indian Affairs' Blackfoot Irrigation Project and other related facilities, specifically:
 - a. Rehabilitation and betterment of the Four Horns Feeder Canal system up to at least 300 cfs in capacity;
 - b. Enlargement of the existing off-stream Four Horns Dam and Reservoir to its maximum practical capacity;
 - c. Construction of facilities to deliver a minimum of 15,000 acre-feet of water per year from the enlarged Four Horns Dam to a point on Birch Creek to be designated by the Parties;

- d. Rehabilitation and betterment of the outlet canal delivery system from Four Horns Dam to Blacktail Creek;
 - e. Rehabilitation and betterment of the Badger-Fisher Main Canal; and
 - f. Measures to enhance on-farm efficiency in the Badger-Fisher Irrigation Unit of the Blackfeet Irrigation Project;
3. Water made available by the rehabilitation and betterment of Lower Two Medicine Lake and Mission Lake;
 4. Water used by the development of the Two Medicine Water Treatment Plant and Municipal Water Project and associated delivery works, including delivery of water to East Glacier, Browning, Seville and Cut Bank; and
 5. Water used by the development of the Babb municipal water supply system.
- K. **“Ground Water”** means any water that is beneath the ground surface. A developed spring is ground water if some physical alteration of its natural state occurs at its point of discharge from the ground, such as simple excavation, cement encasement, or rock cribbing.
- L. **“Harm”** means an impact on a water right resulting in a material injury.
- M. **“Hearing Officer”** means the Hearing Officer appointed by the Blackfeet Tribal Business Council to hear and decide denials of and objections to applications for water permits under section 7.4.4 and section 7.4.7 pursuant to Section 13 or other matters authorized by the Blackfeet Tribal Business Council.
- N. **“Instream Flow”** means a quantity of water in a stream reach to maintain or to enhance the integrity of the stream.
- O. **“Lease”** of Blackfeet Tribal Water means to authorize a Person or Persons to use all or any part of Blackfeet Tribal Water through a service contract, temporary assignment, or other similar agreement of limited duration.
- P. **“New Use”** means a use of Blackfeet Tribal Water commencing after April 15, 2009, the date the ratification of the Compact by the Montana legislature, and includes all uses of t Blackfeet Tribal Water after that date.
- Q. **“Permittee”** means the holder of a water permit issued under this Water Code.
- R. **“Person”** means an individual or any other entity, public or private, including the Tribe, the State, and the United States, and all officers, agents and departments of each of the above.

- S. **“Place of Use”** means the location where the water is used.
- T. **“Point of Diversion”** means the location at which water is diverted from the source.
- U. **“Public Water Supply System”** means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 people daily for any 60 or more days in a calendar year.
- V. **“Purpose of Use”** means the authorized purpose for which the water is used.
- W. **“Reservation”** means the Blackfeet Indian Reservation of Montana as established by the Treaty of October 17, 1855, 11 Stat. 657, and as the Reservation was modified by Executive Order of July 5, 1873, I Kappler 855; the Act of April 15, 1874, 18 Stat. 28; Executive Order of August 19, 1874, I Kappler 856; Executive Order of April 13, 1875, I Kappler 856; Executive Order of July 13, 1880, I Kappler 856; Agreements with the Blackfeet, ratified by the Act of May 1, 1888, 25 Stat. 113; and Agreement with the Blackfeet, ratified by the Act of June 10, 1896, 29 Stat. 321, 353.
- X. **“Reservation Water Resources”** means all waters underlying, flowing through or otherwise occurring or contained within the Reservation over which the Tribe has jurisdiction, including all rivers, streams, lakes springs, groundwater or other water sources within the Blackfeet Reservation, including water diverted onto the Reservation from hydrologic basins off the Reservation.
- Y. **“Secretary”** means the Secretary of the United States Department of the Interior, or the Secretary’s duly authorized representative.
- Z. **“State”** means the State of Montana.
- AA. **“State Water Right”** means a water right established under Montana law.
- BB. **“Stock Water”** means water used for livestock.
- CC. **“Surface Water”** means water above the land surface, including but not limited to lakes, rivers, streams, wetlands, wastewater, flood water, and ponds and all hydrologically connected groundwater. A spring is surface water if no development occurs at its point of discharge and any use is made from the unenhanced natural surface flow.
- DD. **“Tribe”** means the Blackfeet Tribe of the Blackfeet Indian Reservation and all officers, agencies, and departments thereof.
- EE. **“Water Rights Arising Under State Law”** or **“State Water Rights”** means those valid water rights arising under Montana law as of April 15, 2009, and not relinquished or abandoned, as : decreed or to be decreed by the Montana Water Court pursuant to

85-2-234, MCA; permitted by DNRC: issued as State water reservations, by the Montana Board of Natural Resources and Conservation or DNRC; exempted from filing in the State adjudication pursuant to 85-2-222, MCA; excepted from the permitting process pursuant to 85-2-306, MCA, with the exception of certain Water Reservations as defined in Article II.52 of the Blackfeet-Montana Compact.

FF. “**United States**” means the federal government and all officers, agencies and departments thereof.

Section 6. Blackfeet Water Department

- A. **Establishment.** There is hereby established the Blackfeet Water Department and the position of Director, Blackfeet Water Department. The Blackfeet Water Department shall have jurisdiction over all matters relating to the use, planning, development, administration and management of Blackfeet Tribal Water. The Director shall have the authority to administer and enforce all Tribal laws and policies relating to the use, planning, development, administration and management of Blackfeet Tribal Water, and shall have authority to promulgate such regulations as may be necessary to carry out the provisions of this Code. The Director shall recommend such staff as may be needed to carry out the functions of this Water Code. The budget for the Water Department shall be approved annually by the Blackfeet Tribal Business Council.
- B. **Water Permit Administration and Enforcement.** The Director shall issue all water permits in conformity with this code. The Director shall:
1. Issue permits for Existing Uses of Blackfeet Tribal Water;
 2. Issue permits for all New Uses of Blackfeet Tribal Water as authorized herein;
 3. Establish and keep a registry of all water right permits which shall be available to the public;
 4. Enforce the terms and conditions of all permits;
 5. Approve all modifications or changes to water permits;
 6. Resolve disputes between or among users of Blackfeet Tribal Water;
 7. Serve as the Tribe’s representative in disputes between Blackfeet Tribal Water Users and State water right users before the Compact Board; and,
 8. Provide annual notice to the State of new water uses on the Reservation pursuant to Article IV.I.5 of the Blackfeet-Montana Compact.

C. Water Management, Planning and Development. The Director shall be responsible for the overall management of Reservation water resources. To carry out this responsibility, the Director shall:

1. Prepare a reservation water management plan covering each basin on the Reservation. The plan shall include the status of surface and groundwater supplies, hydrologic conditions, identification of all uses of water, identification of potential needs and future uses in each basin, the amount of available water for future use, a description of critical resource issues in each basin and such other information that will provide an understanding of the water resource necessary for the conservation, protection and management of the water resource for the benefit of the Tribe and its members. The water management plan shall be utilized in decisions relating to the use of Tribal Water, and shall be reviewed and updated every two years;
2. Monitor water supply and water conditions in each Reservation basin including the hydrologic conditions in each basin, the type of water year and the amount of Tribal water being used on an annual basis;
3. Establish a water measurement program for surface water and groundwater on the Reservation;
4. Develop a groundwater monitoring program and promulgate appropriate regulations to preserve and protect the quantity and quality of the ground water resource, including the establishment of special groundwater protection areas;
5. Identify and plan for future Tribal and Tribal member needs and water uses;
6. Identify and promote practices for water conservation and conduct education and outreach programs concerning water conservation;
7. Identify and develop potential tribal water projects, including tribal irrigation, stock water and other tribal uses;
8. Develop and administer a long-term tribal water marketing program consistent with applicable law and with the Blackfeet Compact and Blackfeet Settlement Act; and,
9. Coordinate with federal, state and local governments and with other tribal departments on all water management matters.

D. Agricultural Resources. The Director shall be responsible for all matters relating to the agricultural use of Tribal Water. The Director shall:

1. Administer Tribal Water consistent with and in coordination with the designated Tribal Department with jurisdiction over agricultural resources;

2. Coordinate with BIA on all matters relating to the Blackfeet Irrigation Project and serve as the Tribe's representative in all matters relating to the Blackfeet Irrigation Project;
 3. Facilitate individual Tribal member use of water for agricultural resources through available funding and programs to improve and encourage use of agricultural resources; and,
 4. Establish programs related to water savings, conservation and increased efficiency of use of water for agricultural resources through available funding and programs.
- E. Implementation of the Blackfeet Water Rights Settlement. The Director will be responsible for all activities necessary to implement the Blackfeet Water Rights Settlement including:
1. Administration of all Tribal Settlement funds, including financial responsibility processes, development of expenditure plans for use of settlement trust funds, negotiation of contracts for use of settlement funds and development of processes for monitoring and tracking use of funds;
 2. Development of a plan for the use of Blackfeet Water Rights Settlement funds in coordination with the Blackfeet Tribal Business Council, relevant Tribal Departments and with Community input for use of Blackfeet Water Rights Settlement Funds;
 3. Planning, design and construction of water settlement projects, including contract management and administration, permitting, environmental review processes, cultural reviews, right of way and access issues, and all other matters relating to completion of Water Settlement projects;
 4. Establishment of a long-term operations, maintenance, replacement and rehabilitation program for all water settlement projects. Permanent operation, maintenance and financial management of tribal water projects may be transferred to an appropriate Tribally owned entity upon approval of the Blackfeet Tribal Business Council;
 5. Establishment of a program or program in conjunction with the Blackfeet Community College and other institutions and programs for the mentoring and training of tribal members;
 6. Representing the Tribe, along with the Blackfeet Tribal Business Council and the Blackfeet Legal Department in the negotiation and implementation of agreements required under the Blackfeet Water Settlement Act; and,
 7. Representing the Tribe in all coordinated activities with the Federal Implementation Team, and all federal and state agencies.

- F. Water Related Renewable Energy. The Director will be responsible for all use of Tribal Water for water related renewable energy activities and projects, and such other renewable energy projects as designated by the Blackfeet Tribal Business Council, including:
1. The planning and development of water related and other renewable energy projects in coordination with other tribal departments and entities; and,
 2. Ensuring that such projects are consistent with the Water Management Plan and applicable Tribal law and with the Tribal Policies under this Code.
- G. Public Water Supply Systems and Wastewater Systems. The Director will be responsible for the administration, management, operation and maintenance of such Public Water Supply Systems and Wastewater Systems as may be designated by the Blackfeet Tribal Business Council. For all such systems:
1. All activities relating to the administration, management, operation and maintenance of such systems, including the repair, replacement or construction of system infrastructure shall be subject to the management, control and approval of the Director; and,
 2. The Director shall be the Tribal representative in any activities of Tribal, State and Federal entities related to the designated systems.
- H. Other Tribal Water Projects. The Director will be responsible for overseeing all other projects utilizing Tribal Water, or any renewable energy projects designated by the Blackfeet Tribal Business Council, including:
1. The planning, design and construction of the project; and,
 2. The administration, management, operation and maintenance of the projects.
- I. Administrative and Financial Matters. The Director will:
1. Supervise all personnel within the Blackfeet Water Department;
 2. In coordination with the Tribal Treasurer, establish financial reporting processes for all Water Department funding and Water Settlement funding, including financial responsibility processes, and processes for monitoring and tracking use of funds; and,
 3. Set a schedule of fees for permit applications and all other water related matters authorized herein.

Section 7. Water Permits

A. Permits Generally.

1. No person may use Blackfeet Tribal Water without a water permit issued pursuant to this Section, with the exception of use from a Public Water Supply System or by a Wastewater System. A permit shall be required for all uses of surface water, groundwater, springs, or other water sources for all consumptive and non-consumptive uses.
 2. A permit shall authorize the use described in the permit and shall constitute an agreement on the part of the permittee to comply with all applicable tribal laws, regulations and conditions of the permit.
 3. Every permit must provide for the specific purpose, point of diversion, means of diversion, place of use, quantity, flow rate and period of use as applicable.
- B. Permitted Uses. The uses for which water on the Reservation may be permitted include, but are not limited to:
1. Cultural and religious uses;
 2. Domestic use;
 3. Municipal use;
 4. Stock water use;
 5. Irrigation use;
 6. Agricultural use;
 7. Commercial use;
 8. Industrial use;
 9. Instream flow for fish, wildlife, pollution control, aesthetic and cultural use;
 10. Mineral and other resource development;
 11. Water storage;
 12. Groundwater recharge;
 13. Recreational use; or
 14. Power generation, including but not limited to hydropower.
- C. Water Shortage. In times of drought, water shortage or for other reasons of unavailability of water, the following uses shall have priority: cultural and religious uses, domestic, municipal and stock water uses. Other uses shall share shortages on a pro rata basis or in such priority as designated by the Director.
- D. Existing Uses.
1. All Existing Uses of Blackfeet Tribal Water identified and agreed upon pursuant to Article IV.I.3 of the Blackfeet Compact shall be entitled to the issuance of a water permit upon application to continue the use identified. The Director shall provide an application form for such Existing Uses.

2. The Director shall determine any additional elements or attributes of the water use and any conditions that are necessary for the exercise and enforcement of the water use and shall include them in the permit.
3. Existing Use Maps and other related documents shall be maintained and regularly updated by the Water Department.
4. It is the intent of the Tribe that the identified Existing Uses continue whenever feasible, provided that the Existing Uses comply with all applicable laws, standards and procedures.

E. New Uses.

1. *Permit Required.* A permit shall be required for any New Use of Blackfeet Tribal Water, including:
 - a. Diversion of water from any stream, spring or well for any purpose;
 - b. Drilling of any new well or modification of any existing well for any purpose, including but not limited to domestic, irrigation, stock, industrial, municipal or oil and gas development related purposes;
 - c. Developing ground water recharge projects;
 - d. Storing or impounding water;
 - e. Instream flow purposes; and,
 - f. Any other activities determined by the Director to require a permit.
2. *Application.* For any new use of Tribal Water, an application shall be completed and filed on forms provided by the Director. The applicant shall provide all information necessary to process the application, including at minimum, the purpose of the use, the source of water, the point of diversion and place of use, the quantity of water and any structures necessary to facilitate the use of water.
3. *Application Approval Process.* Upon receipt of an application, the Director shall:
 - a. review the application for completeness and accuracy;
 - b. request any additional information that may be needed to process the application;
 - c. perform such field investigations and other investigations that may be necessary to adequately review the application;

- d. identify existing valid water uses that may be potentially harmed by the proposed use, if any;
 - e. determine whether the application is consistent with all applicable laws provisions of this Code and all other applicable laws, regulations and policies.
 - f. consider whether the proposed use will affect the ground water resource in quantity or quality;
 - g. prepare a report on the findings on the application; and,
 - h. approve or disapprove the application based on the findings in the report.
4. *Decision to Deny Application.* If an application is denied, the Applicant may request a hearing under Section 13 within 30 days of the date of the denial.
 5. *Decision to Grant Permit – Public Notice.* A decision to grant a permit shall be published in a local paper of general circulation for two consecutive weeks and on the Tribe’s website as applicable. The notice shall state that objections to the permit may be filed within 30 days of the last date of publication.
 6. *Objections.* Any water user, including any department of the Blackfeet Tribe, who believes that their water use may be adversely impacted if the permit is granted may file an objection. An objection shall be filed with the Director and shall include a clear statement of how the proposed water use would harm the Objector’s water use.
 7. *Hearing Officer.* The objection shall be heard and decided by the Hearing Officer pursuant to Section 13.
 8. *Informal Hearing Before Director.* Prior to a hearing before the Hearing Officer, the Applicant or the Objector may request an informal hearing before the Director. If the objection is not resolved informally within 30 day or such additional time agreed to by the parties, the Hearing Officer shall proceed with a hearing under Section 13.
 9. *Issuance of Permit if No Objections.* If no objection is filed, the permit shall issue on such terms and conditions in the Director’s decision.
- F. Temporary Permits. Upon application, the Director may issue a permit for a temporary water use not to exceed one year. Such temporary uses shall comply with all provisions of this Water Code, provided that publication shall not be required if the use is under 15 acre-feet.
- G. Emergency Use. A permit shall not be required for:

1. Temporary use of water diverted from any source to control fire in the event of an emergency; or,
 2. Upon the declaration of a drought by the Director or other emergency purpose that renders water unavailable, the diversion of water from any source for domestic or stock water use for a period not to exceed 14 days or such extended period authorized by the Director.
- H. **No Permit Required.** No permit will be required for use of water:
1. Associated with a traditional cultural activity, including but not limited to religious, spiritual or other ceremonial activity;
 2. From a Public Water Supply System; or,
 3. From the Blackfeet Irrigation System, provided that such water use complies with all federal law and regulations.

Section 8. Disputes and Controversies Among Water Users

- A. **Tribal Water Users.** Any user of Blackfeet Tribal Water may file a request with the Director to resolve a dispute with another user of Blackfeet Tribal Water. The request shall be served by the Director on the named user of Blackfeet Tribal Water. The Director shall request such information from the parties as necessary to resolve the dispute, shall meet with the parties, and shall issue a final decision within 30 days of such meeting. Either party may appeal the Director's decision to the Hearing Officer under Section 13.0 within 30 days of the date of the Director's decision.
- B. **Blackfeet-Montana Compact Board.** The Blackfeet-Montana Compact Board established under Article IV.J of the Blackfeet Compact has jurisdiction to resolve controversies over the right to the use of water as between holders of water permits authorized under this Code and holders of Water Rights Arising Under State Law as provided in Article IV.J.a of the Blackfeet Compact under such procedures and rules as may be promulgated by the Board.

Section 9. Criteria for Water Permits for New Uses

- A. **Surface Water.** In reviewing an application for a New Use of Surface Water, the Director shall apply the following criteria:
1. Water must be available from Blackfeet Tribal Water for the proposed use.
 2. Water must be physically available at the proposed point of diversion.
 3. A permit may be granted only to a person who owns the property where the place of use is located. If the point of diversion is on land not owned by the person applying for

the permit, permission from the owner of the property, including the beneficial trust owner, must be obtained by the applicant.

4. The use must be consistent with the Tribal Water Management Plan under Section 6.C of this Code.
 5. Existing Uses shall be preserved and protected.
 6. A New Use may not harm an existing use or state water rights for non-irrigation purposes, provided that a permit may be granted if any harm can be abated or mitigated through appropriate conditions.
 7. A permit for a New Use shall not be granted for more than 200 acre-feet of water unless it is for a use that provides community or public benefits.
 8. The use of water under a permit for stock water purposes shall be limited to the carrying capacity of the land which shall be included in the permit.
 9. The waste of water shall be prohibited.
 10. No permit shall be granted if the use of water is inconsistent with the Blackfeet Tribe's water quality standards, Ordinance 90 (Aquatic Lands Protection Ordinance) or other Tribal laws.
 11. The surface use shall be consistent with all applicable tribal and federal laws and regulations governing use of water for refining, production, smelting and milling of ores, coal, petroleum, gas and other industrial minerals.
- B. Groundwater. In reviewing an application for a New Use of Groundwater, the Director shall apply the criteria set forth in section 9.A.1 to 9.A.3 and the following additional criteria:
1. The groundwater use must be consistent with the Water Management Plan under Section 6.C of this Code.
 2. The groundwater use shall take into account the aquifer conditions and must be consistent with any special ground water protections the Director has promulgated.
 3. Existing groundwater uses shall be preserved and protected.
 4. A New Use of groundwater may not harm an already permitted groundwater use, provided that a permit may be granted if any harm can be abated or mitigated through appropriate conditions.
 5. The waste of water is prohibited.

6. The groundwater use shall be consistent with all applicable tribal and federal laws and regulations governing use of groundwater for refining, production, smelting and milling of ores, coal, petroleum, gas and other industrial minerals.
- C. Restricted Applicants. Only the Blackfeet Tribe may apply for and receive a permit for:
1. Leasing or marketing water on or off the Reservation.
 2. Instream flow purposes for fish or wildlife habitat.
 3. Water storage, except storage for use of domestic, stock or irrigation use, provided that any such storage may not exceed 5 acres.
- D. Term of Permits.
1. All water permits will be for a term of 5 years.
 2. A permit for domestic wells, or for stock water, irrigation or agricultural use will be automatically renewed for subsequent 5-year terms if the permittee attests at the end of each 5-year period on a form provided by the Water Department that the permitted quantity of water has been in continuous use for the permitted purpose at the permitted place of use for the prior five years. The Director shall notify the permittee of the requirement of such filing at the end of each 5-year period.
 3. For all other uses, a permittee must apply for and be granted an extension under the same terms and conditions as a new use of water.

Section 10. Transfer of Permits.

- A. In General. Water permits granted under this Water Code may not be transferred, exchanged, sold, leased, rented, marketed or assigned except as provided in this Water Code. The transfer of a water permit may be allowed as an exception to the general rule in the following limited circumstances. A water permit for irrigation, stock water or domestic use that has not been relinquished or abandoned and is otherwise valid may be
1. Transferred by a Tribal member to another Tribal Member upon transfer of land from a Tribal Member to another Tribal Member;
 2. Transferred by a Tribal Member to the descendant of a Tribal Member upon the transfer of land from a Tribal Member to the descendant of the Tribal Member;
 3. Transferred by a Tribal member to a non-member other than a family member upon transfer of land from a Tribal member to the non-member.
 4. Temporarily assigned to a lessee as part of a valid lease for agricultural, grazing or residential purposes. Such assignment shall be limited to the term of the lease.

- B. Notice of Intent to Transfer. For any transfer under section 10.A, a notice of intent to transfer shall be filed with the Director prior to transfer.
1. The Director shall determine whether the proposed transfer is authorized under section 10.A.
 2. If the Director finds that the proposed transfer does not come within section 10.A, the transfer shall be denied.
 3. Failure to file a notice of intent to transfer may result in termination of the permit.
 4. The Director may issue a Temporary Permit consistent with Section 7.F for a period not to exceed one year, pending the transfer determination.
- C. Notice of Final Transfer. Notice of completion of a transfer shall be filed with the Director within 30 days of the transfer. Failure to file a notice of final transfer may result in termination of the permit.
- D. Limitations. A permit transferred or assigned under this Section 10 is limited to the amount of water being used by the permittee at the time of transfer or assignment, is subject to all terms and conditions of the permit, including but not limited to purpose, quantity, flow rate, point of diversion, place of use and period of use, and shall comply with all applicable Tribal laws.

Section 11. Change Applications

- A. Change Applications. An application to change a water right may be filed with the Director on forms provided by the Department.
- B. Change applications are limited to changes in the place of use, the point of diversion and means of diversion, provided that a change of the place of use may be granted only within contiguous lands owned by the permittee, and Provided further, that a change of the point of diversion shall require permission of the landowner if not owned by the permittee.
- C. A change in the purpose, water source, quantity of water or flow rate will be considered a new use requiring an application for a permit under Section 9.0.
- D. A change application shall be processed in accordance with section 7.E.
- E. If no objection is filed, the change may be granted as set out in the Director's decision.
- F. Change of Permit Conditions. Permit conditions may be modified only upon a showing by the permittee that the circumstances requiring the condition(s) have changed and the conditions are no longer applicable. Any modification of permit conditions shall be consistent with this section 11.0 and with other applicable provisions of this Code.

- G. No Harm to Existing Uses. Any change may not harm an Existing Use, a permitted New Use or state water rights for non-irrigation purposes, provided that a permit may be granted if any harm can be abated or mitigated through appropriate conditions.
- H. Appeal. A denial of an application to change a water right may be appealed to the Hearing Officer under Section 13.0.

Section 12. Enforcement

- A. Enforcement Authority. The Director shall ensure compliance with this Water Code and with the conditions of all permits, determinations, orders, regulations and other actions taken under this Water Code, and with relevant Tribal policies and guidelines. The Director shall have authority to:
 - 1. Enter on lands within the Reservation, inspect methods of diversion and withdrawal, inspect other activities affecting the quality and quantity of water, install and monitor measuring and recording devices, or require the permittee to install and monitor measuring devices, and gather such other information as may be necessary concerning the use of water under the permit;
 - 2. Remove, render inoperative, shut down, close, seal, cap, modify or otherwise control methods of diversion and withdrawal, obstructions to the flow water, and activities adversely affecting Reservation waters;
 - 3. Issue citations and to initiate proceedings involving penalties for violations of this Water Code; and,
 - 4. Establish and maintain appropriate penalties for violations of this Water Code.
- B. Relinquishment. A water permit may be voluntarily relinquished in whole or in part at any time. Relinquishment of a permit shall be confirmed in writing. The Director shall terminate all or any part of the permit relinquished, and the water shall revert to the Blackfeet Tribe.
- C. Revocation or Termination. A water permit may be revoked or terminated in whole or in part by the Director in the following cases where the permittee:
 - 1. Fails to use all or a portion of the water for five consecutive years;
 - 2. Fails to comply with the terms and conditions of the permit;
 - 3. Knowingly provided false information in the permit application;
 - 4. Knowingly provided false information in response to inquiries of the Director concerning use of the permit; or

5. Willfully took action to evade or defeat the administration of this Water Code with respect to the permit.
- D. Notice Required. The Director's decision to revoke or terminate a permit, including the grounds therefore, shall be served on the permittee by certified mail.
- E. Reinstatement. Upon request of a Tribal member or Allottee made within 30 days of the notice of revocation or termination for non-use, the Director may reinstate a permit if the Tribal member or Allottee establishes that the non-use is due to causes beyond their control. Such causes shall include: (a) unavailability of water; (b) absence from the Reservation due to service in the armed forces, attendance at an educational institution off the reservation, incarceration, confinement in a mental institution; or (d) incompetence.
- F. Remedies Prior to Revocation. Except in the case of non-use, the Director may impose any of the following sanctions prior to a decision to revoke a permit:
1. Monetary damages;
 2. Affirmative remedial action;
 3. Injunctive relief as provided in the Blackfeet Law and Order Code;
 4. Imposition of additional conditions or limitations on the permit;
 5. Suspension of the permit or portion of a permit for a period of time;
 6. Costs; and,
 7. Such other remedies as the Director determines to be appropriate.
- G. Remedies for Taking or Use of Water Without a Permit. Any person who willfully takes or uses Tribal Water without a permit, or alters or damages Tribal water resources may be subject to the following sanctions imposed by the Director:
1. Monetary damages;
 2. Restitution;
 3. Injunctive relief as provided in the Blackfeet Law and Order Code;
 4. Temporary or permanent debarment from use of Tribal Water;
 5. Costs; and,
 6. Such other remedies as the Director determines appropriate.

- H. Appeals. Any decision of the Director to revoke or terminate a permit or impose sanctions under this Section 11 may be appealed pursuant to the Section 13 within 30 days of the date of the decision.

Section 13. Hearings and Appeals

- A. Hearing Officer. The Blackfeet Tribal Business Council hereby establishes the position of Hearing Officer who will hear and decide all appeals of decisions of the Director as allowed under this Water Code. The Hearing Officer shall be an attorney who is a member of a state bar.
- B. Hearing before the Hearing Officer. Upon the timely filing of an appeal, the Hearing Officer shall hold a hearing.
- C. Conduct of Hearing.
1. The Hearing Officer shall have authority to administer oaths and to issue subpoenas.
 2. The person requesting the hearing may present oral or documentary evidence.
 3. The Director shall provide a copy of the full record relating to the decision and may provide oral testimony.
 4. The Hearing Officer may request such additional information considered necessary to make a decision.
 5. An audio recording of the hearing shall be made and retained by the Blackfeet Water Department.
- D. Decision of the Hearing Officer.
1. The Hearing Office may uphold, reverse or modify the decision of the Director.
 2. The Director's decision may be reversed or modified only upon a finding that the Director's decision was arbitrary and capricious or otherwise contrary to Tribal law.
 3. The Hearing Officer's decision shall be written and include findings of fact and conclusions of law. The decision shall be served on the parties to the hearing.
- E. Appeal to the Blackfeet Court of Appeals.
1. A decision by the Hearing Officer upholding the Director's decision may be appealed to the Blackfeet Court of Appeals within 15 days of the Hearing Officer's decision.
 2. The Court of Appeals shall hear the appeal under the rules and procedures of the Court of Appeals.

3. The appeal shall be decided on the administrative record and not a trial de novo.
4. The Court of Appeals shall determine whether the decision of the Hearing Officer correctly applied the law to the facts in the administrative record.

Section 14. Service Charges and Fees

A. Service Charges. The Director may prescribe charges for any services provided by the Department, including:

1. The filing and processing of permit applications;
2. Administrative hearings under this Water Code; and,
3. Investigations necessary for enforcement of permits.

B. Fees. The Director shall establish and maintain a fee schedule for:

1. Leasing or marketing of water by the Blackfeet Tribe;
2. Commercial use of water not delivered through a municipal water system;
3. Industrial uses of water, including but not limited to water used in the development of oil and gas and other minerals;
4. Temporary use of water for construction;
5. Use of water from Tribally owned storage facilities; and,
6. Water delivered through a Public Water Supply System will be subject to the rate schedule set by the Public Water System for infrastructure, treatment, operation and maintenance, and administration, but will not charge for the water itself.

Section 15. Blackfeet Irrigation Project

Water provided by the Blackfeet Irrigation Project is part of Blackfeet Tribal Water. The Project shall continue to be operated and maintained as a Bureau of Indian Affairs Indian irrigation project under applicable federal law and regulations, unless or until the Blackfeet Tribe assumes responsibility for the Project. No individual water permits shall be issued for the delivery of Project water. Permits shall be required for all water uses within the project from sources other than Project water.

Section 16. Irrigable Allotments

An allottee who holds an allotment subject to section 7 of the Act of February 8, 1887 (25 U.S.C. § 381) (water for irrigable lands) and has not been issued a permit as an Existing Use under section 5.B, or who has not been issued a permit for the full amount of their irrigable lands, may

request an allocation of water for irrigation of the irrigable lands or additional irrigable lands. Such request shall be made to the Director who shall issue a permit upon a determination that irrigation water is necessary to render the lands available for agriculture.

Section 17. Well Drillers

- A. Certification Required. No person may drill a well on the Reservation for any water purpose unless the person is certified under Tribal law, or by the State of Montana in the absence of Tribal certification law.
- B. Certification Requirements. Well drillers will comply with Tribal law requirements for the drilling and abandonment of wells, or by State law requirements in the absence of Tribal law.
- C. State Jurisdiction Not Authorized. Nothing in this provision is intended to authorize or allow State jurisdiction over well driller or well drilling.

Section 18. Miscellaneous Provisions

- A. No Waiver of Sovereign Immunity. Nothing herein shall be construed as a waiver of the sovereign immunity of the Blackfeet Tribe.
- B. Rules and Regulations. Any rules or regulations authorized to be promulgated shall comply with all standards and requirements of the Blackfeet Constitution and Tribal law.
- C. Records. All records required to be maintained under this Code shall be public records. It shall be unlawful for any person to permanently remove or destroy any records required to be maintained by this Code without the consent of the Blackfeet Tribal Business Council.
- D. Severability. In the event any provision of this Code is held invalid, the remaining provisions of the Code shall be considered severable and shall not be affected thereby.
- E. Extension of Time. Any time period provided for in this Code may be extended for good cause shown by the Director or the Hearing Officer when justice so requires and all other requirements have been met.