

APPENDIX 1

PROPOSED DECREE OF THE TRIBAL WATER RIGHT

IN THE WATER COURTS OF THE STATE OF MONTANA
MISSOURI DIVISION

IN THE MATTER OF THE ADJUDICATION)	
OF THE EXISTING AND RESERVED RIGHTS TO)	
THE USE OF WATER, BOTH SURFACE AND)	CASE NO.
UNDERGROUND, OF THE CHIPPEWA CREE)	
TRIBE OF THE ROCKY BOY'S RESERVATION,)	-PROPOSED DECREE
WITHIN THE STATE OF MONTANA.)	
_____)	

THIS MATTER is before the court on the joint motion of the State of Montana ("State"), the Chippewa Cree Tribe of the Rocky Boy's Reservation ("Tribe"), and the United States of America ("United States") for the entry of a decree confirming the Tribal Water Right as recognized in the Chippewa Cree-Montana Water Rights Compact of 1997 ("Compact"). Upon hearing the motion, objections thereto, the evidence, the claims of the United States on behalf of the Chippewa Cree Tribe, arguments of counsel, and being otherwise fully advised in the premises, the Court has determined that the motion should be GRANTED and it is hereby ORDERED, ADJUDGED AND DECREED that:

I. Name and Mailing Address of Holder of Right

The name and mailing address of the holder of the right is:

The United States of America in trust for the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, c/o Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, Federal Building, 316 North 26th Avenue, Billings, Montana, 59101.

II. Tribal Water Right

The following provisions are from Article III, Sections A., B., and C. of the Compact, without change.

A. Basin 40H: Big Sandy Creek Basin.

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

a. Quantification - Source - Volume.

(1) Storage. The Tribe shall have the right to continuously store or permit the continuous storage of up to a capacity of 1000 AF of water in Stoneman Dam and Reservoir from the natural flow of Gravel Coulee. Subject to the 1000 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 1480 AFY from the direct flow of Lower Big Sandy Creek and up to 445 AFY from groundwater for storage in Stoneman Dam and Reservoir as set forth in Section A.1.a.(2) of Article III. The quantity impounded by continuous storage shall not decrease the 1480 AFY which the Tribe may divert for the purposes allowed in Section A.1.e. of Article III. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife purposes, as set forth in Sections A.1.e. (3) and (4) of Article III.

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

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

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

(c) Groundwater. Of the 1690 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of up to 445 AFY of groundwater in the Gravel Coulee and Lower Big Sandy Creek drainages in compliance with Sections A.6.a. and b. of Article IV. Groundwater may be diverted to storage prior to application to any purposes allowed in Section A.1.e. of Article III without reducing the amount that can be applied to such purposes until such water is re-diverted from storage and applied to such purposes.

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

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

b. Priority Date. The water rights to surface flow, groundwater, and storage as set forth in Section A.1. of Article III, for the Gravel Coulee and Lower Big Sandy drainages shall have a priority date of September 7, 1916, subject to the subordination agreements set forth in Section A.8. of Article IV, and the drainage stipulations set forth in Appendix 2.

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

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

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

(1) Irrigation.

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

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

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

(2) Non-Irrigation.

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

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

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

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

(a) Volume. 160 AFY of water in Gravel Coulee and Lower Big Sandy Creek

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

(b) Source.

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

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

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

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

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

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

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

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

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

a. Quantification - Source - Volume.

(1) Storage. The Tribe shall have the right to continuously store, or permit the continuous storage in Bonneau Reservoir, Brown's Reservoir, and in any new impoundments, of up to a capacity of 4800 AF from the natural flow of Box Elder Creek, or any natural flow from the source on which the impoundment is located. Subject to the 4800 AF limit on storage capacity, the Tribe shall have the additional right to divert up to 6310 AFY from the direct flow of Box Elder Creek for storage in Brown's Reservoir and in any new impoundments not located on Box

Elder Creek and to divert 1950 AFY from groundwater for storage in any new or existing impoundment wherever located, as set forth in Section A.2.a.(2) of Article III. The quantity impounded by continuous storage shall not decrease the 6310 AFY, which the Tribe may divert for the purposes allowed in Section A.2.e. of Article III. In addition to the storage right set forth in this section, the Tribe shall have the right to store water for stockwatering and fish and wildlife enhancement purposes as set forth in Sections A.2.e.(4) and (5) of Article III.

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

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

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

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

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

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

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

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

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

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

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

(1) Irrigation.

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

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

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

(2) Non-Irrigation.

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

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

(3) Municipal / Domestic.

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

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

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

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

(a) Volume. 130 AFY of water may be used for stockwatering as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not

exceed 44 surface acres of impoundments in Box Elder Creek drainage. The Tribe shall have the right to continuously store water in these impoundments.

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

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

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

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

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

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

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

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

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

(a) 170 AFY from Duck Creek.

(b) 60 AFY from Camp Creek.

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

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

(a) 40 AFY from Duck Creek.

(b) 10 AFY from Camp Creek.

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

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

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

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

(1) Non-Irrigation.

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

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

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

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

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

(b) Source.

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

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

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

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

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

(a) Volume. 100 AFY of water may be used for fish and wildlife enhancement as a consumptive use measured by evaporative loss; provided that, the total surface acreage of impoundments shall not exceed 34 surface acres of impoundments in the Camp and Duck Creek drainages. The Tribe shall have the right to continuously store water in these impoundments.

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

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

4. Gorman Creek Drainage - 60 AFY diversion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Non-Irrigation.

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

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

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

(2) Irrigation.

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

used for irrigation.

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

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

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

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

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

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

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

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

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

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

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

1. Quantification - Source - Volume.

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

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

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

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

(3) Groundwater.

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

(b) Of the 740 AFY, the Tribe shall have the right to withdraw and use or permit the withdrawal and use of an additional 200 AFY of groundwater from the volcanic bedrock aquifer and other aquifers that are not hydrologically connected to surface water in the Beaver Creek drainage in compliance with Section 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 not apply to groundwater use pursuant to this section. Groundwater may be diverted to storage prior to application to any purposes allowed in Section B.5. of Article III without reducing the amount that can be applied to these purposes until such water is re-diverted and applied to such purposes.

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

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

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

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

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

a. Non-Irrigation

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

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

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

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

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

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

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

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

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

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

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

C. Additional Development of Water.

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

1. Subject to Sections A.6.a. and b. and Section A.7.d. of Article IV, the Tribe may, as part of the Tribal Water Right, develop or permit the development of groundwater on the Reservation in addition to the amounts specified in Sections A. and B. of Article III, from new sources or from expanded use of existing sources. The priority date of such new appropriation shall be the date of development, and notwithstanding any other provision of this Compact, may only be used in priority with other water rights.

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

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

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

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

6. As a part of the Tribal Water Right, the Tribe shall be entitled to an allocation of 10,000 AFY of stored water in Lake Elwell, measured at the dam, for use or disposition by the Tribe for any beneficial purpose, either on or off the Reservation, pursuant to the terms of this Compact; provided that, such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or of persons holding such reserved water rights through that tribe or through the United States. Any use or disposition of water from Lake Elwell off the Reservation by the Tribe is subject to the specific provisions relating to such use or disposition in any act of Congress ratifying this Compact.

III. Mutual Subordination.

The following provisions, taken from Article IV, Section A.8. of the Compact, are re-numbered, but are otherwise unchanged.

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

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

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

IV. Relationship with Compact

This decree is based upon the Compact, and by this reference incorporates the definitions contained therein. The Tribal Water Right confirmed in this decree is subject to all conditions upon use and administration set forth in the Compact. Nothing in this decree is intended to modify, alter, or amend the terms and provisions of the Compact.

V. Jurisdiction of Court

Nothing in this decree or the Compact shall expand the subject matter jurisdiction of the Water Courts of the State of Montana.

RESPECTFULLY SUBMITTED for approval this _____ day of

_____, 200__ by:

THE UNITED STATE OF AMERICA

THE CHIPPEWA CREE TRIBE OF THE
ROCKY BOY'S RESERVATION

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APPROVED this _____ day of _____, 200__.

CHIEF WATER JUDGE