

APPENDIX 1

BIRCH CREEK MANAGEMENT PLAN

This Birch Creek Management Plan is entered into by and among the Blackfeet Tribe of the Blackfeet Indian Reservation, Montana (Tribe), the State of Montana (State), the United States Bureau of Indian Affairs (BIA) and the Pondera County Canal and Reservoir Company, or any successor entity (PCCRC) (collectively the “Parties”). This Plan shall not be effective until the Water Rights Compact (“Compact”) among the Tribe, the State and the United States has been approved by the Montana Legislature, the Congress, and the Tribe, and the Montana Water Court has entered an Order approving the Compact and entered as a Final Judgment a Decree that confirms the Tribal Water Right as recognized in the Compact.

1. Purpose. The purpose of this Birch Creek Management Plan is to maximize the use of Birch Creek water for the benefit of all water users.

2. Tribal Annual Water Management Plan. The Tribe, in consultation with the BIA, shall develop an annual water management plan for the use of its Birch Creek water right as defined in Article III.C.1.a and b. of the Compact taking into account reasonable efficiencies based on the conditions of facilities of the Blackfeet Irrigation Project. The annual water management plan shall consider water supply and demand conditions, and shall be provided to the other Parties two weeks prior to the Annual Water Allocation Plan Meeting provided for in paragraph 4.

3. PCCRC Annual Water Management Plan. PCCRC shall develop an annual water management plan for its Birch Creek water diversions taking into account reasonable efficiencies based on the conditions of facilities of the PCCRC. The annual water management plan shall consider water supply and irrigation demand conditions, and shall be provided to the other Parties two weeks prior to the Annual Water Management Plan Meeting provided for in paragraph 4.

4. Annual Water Management Plan Meeting. PCCRC, the Tribe, and the BIA will meet no later than March 31st each year to share data on current water supply conditions and to agree collectively upon a master water management plan for the coming irrigation season. Upon promulgation, copies of the master water management plan will be provided to all Parties.

5. Changes to Annual Water Management Plans. Changes to any water management plan promulgated pursuant to paragraphs 2-4 may be made at any time with two days notice to the other Parties, provided by mail, email or telephone. If notice is provided by telephone, it shall also be provided by mail. Provided, however, that no changes to that portion of any water management plan involving the exercise of the portion of the Tribal Water Right set forth in Article III.C.1.b.i of the Compact may be made between April 1 and September 30 of each year.

6. Calculation of Natural Flow. The PCCRC shall calculate weekly the natural flow of Birch Creek at PCCRC's Canal B diversion dam (Canal B). The natural flow shall be calculated as the sum of: a) the measured release from Swift dam; b) the change in storage in Swift reservoir; c) calculated evaporation losses from Swift reservoir; and d) inflows downstream from Swift dam and above Canal B. PCCRC shall implement and maintain a comprehensive gauging measurement program to calculate the natural flow, shall maintain permanent records of all such gauging data and shall make these records available to the Parties upon request and without cost

7. Management of PCCRC Reservoir and Diversion Dams. PCCRC shall manage Swift Reservoir and any diversion dams owned and/or operated by it, and shall manage all diversions at such diversion dams.

8. Gauging of In-stream Flow. The Tribe shall establish and maintain two stream flow gauges to verify in-stream flows. The gauges shall be located on Birch Creek near U.S. Highway 89 and U.S. Highway 358. The Tribe shall maintain permanent records of all gauging data and shall make these records available to the Parties, upon request and without cost.

9. Measurement of Diversions. The Tribe and the State respectively shall implement procedures to measure all diversions from Birch Creek made under their authority. The Tribe and the State shall each maintain permanent records of the uses authorized under their authority and shall make these records available to the Parties, upon request and without cost.

10. Release and Bypass. PCCRC shall release at Swift Dam and bypass at Canal B water necessary to satisfy the Tribe's senior in-stream flow right and any additional natural flow as needed to maintain the in-stream flow right at the Birch Creek stream flow gauges maintained by the Tribe under paragraph 8. PCCRC shall also bypass at Canal B the Tribal call for its senior direct flow right of up to 100 cfs, less the amount of any authorized Tribal diversion(s) taken out above Canal B. The Tribe shall bypass at its diversion or diversions on Birch Creek water necessary to satisfy the Tribe's senior in-stream flow right, any additional natural flow released by PCCRC as needed to maintain the in-stream flow at the Birch Creek stream flow gauges maintained by the Tribe under paragraph 8, and such Natural Flow as may be released by PCCRC to satisfy downstream Water Rights Arising Under State Law.

11. Channel Maintenance Flows. If the natural flows of Birch Creek are insufficient to provide an adequate volume of water for regular channel maintenance, PCCRC, in a manner agreed upon, after consultation with appropriate fish and wildlife agencies, by the Tribe, the BIA, and PCCRC in consultation with other affected water users, shall provide up to 10,000 acre-feet of stored water to ensure that a channel maintenance flow is obtained no fewer than three times every 12 years, and as often as practicable, under hydrologic conditions as shall be agreed upon by the Tribe, the BIA and the PCCRC.

The Tribe, the BIA and PCCRC may also agree to modify the channel maintenance schedule as hydrologic conditions warrant.

12. Amendments to Management Plan. This Birch Creek Management Plan may be amended at any time by the mutual written agreement of the Parties.

13. Dispute Resolution. Any disputes over the interpretation or implementation of this Birch Creek Management Plan, including but not limited to disputes over the promulgation of and changes to the annual management plans contemplated by paragraphs 2-5 and the channel maintenance flow regime contemplated by paragraph 11 of this Birch Creek Management Plan, shall be resolved by the Compact Board pursuant to Article IV.J of the Compact.

Blackfeet Tribe

By _____
Dated _____

Pondera County Canal and Reservoir Company

By _____
Dated _____

The State of Montana

By _____
Dated _____

Bureau of Indian Affairs

By _____
Dated _____