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## **Chapter 1. General Provisions**

### **Sec. 101. Purposes.**

The purpose of this Code is (1) to provide for the orderly resolution of disputes between persons authorized to use the Tribal Water Right, (2) to regulate and administer all diversions and uses of water under the Tribal Water Right within the Reservation except for diversions or uses received from the Fort Peck Irrigation Project, and (3) to implement the Fort Peck-Montana Compact.

### **Sec. 102. Uses of Tribal Water Right prohibited unless authorized pursuant to this Code.**

No person or entity shall divert or use any portion of the Tribal Water Right unless authorized to do so pursuant to the provisions of this Code.

### **Sec. 103. All diversions and uses subject to paramount rights of Tribes.**

All diversions and uses of the Tribal Water Right shall be subject to the overriding rights and interests and the governmental authority of the Tribes, the provisions of this Code now or hereafter in force, and actions taken pursuant to this Code.

### **Sec. 104. Protection of rights which arise under the laws of the United States.**

This Code shall not be construed to deny any person a water right owned by that person which arises under the laws of the United States.

### **Sec. 105. Construction to be consistent with Compact.**

This Code shall not be construed in any manner which is consistent with the provisions of the Fort Peck-Montana Compact.

### **Sec. 106. Effective date.**

This Code shall take effect on November 15, 1986, or on such earlier date as it is approved by the Secretary of the Interior.

### **Sec. 107. Definitions.**

- (a) "Administrator" shall mean the Water Administrator of the Tribes.
- (b) "Commission" shall mean the Water Resources Control Commission.
- (c) "Compact" shall mean the Fort Peck-Montana Compact ratified by the Tribal Executive Board on April 29, 1985.
- (d) "Domestic use" means any use of water by one or more individuals, family units or households for drinking, cooking, bathing, laundering, sanitation and other personal comforts and necessities, and for the irrigation of a family garden or orchard not exceeding one-half (½) acre in area.

(e) "Effective date" means November 15, 1986 or such earlier date as this Code is approved by the Secretary of the Interior.

(f) "Fort Peck Indian Reservation" or "Reservation" means the Fort Peck Reservation as established in the Agreement of December 28 and December 31, 1986, and confirmed by the Act of May 1, 1988, 25 Stat. 113.

(g) "Fort Peck Irrigation Project" means those irrigation systems and works constructed pursuant to the Act of May 30, 1908, 35 Stat. 558, and all lands receiving water from such systems and works.

(h) "Indian" means any person who:

(1) is an enrolled member of the Tribes; or

(2) is a member of a tribe that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(3) holds or is recognized by the Secretary of the Interior as eligible to hold trust or restricted property on the Reservation.

(i) "Municipal uses" means all reasonable water uses within the Reservation necessary in carrying out the functions of municipal government.

(j) "Nonuse" shall mean the voluntary failure, without sufficient cause,

(1) to put water to actual use within two (2) years after a permit is granted, or

(2) to use all or a portion of the water available under such permit for a period of five (5) consecutive years. "Sufficient cause" shall include:

(A) drought or other unavailability of water;

(B) active service by the permit holder in the armed forces of the United States;

(C) the operation of legal proceedings restraining water use;

(D) the application of any laws restricting water use;

(E) incarceration of the permit holder in a penal institution;

(F) confinement of the permit holder in a mental institution, whether voluntary or not;

(G) incompetence of the permit holder by reason of age or mental incapacity;

(H) other causes of nonuse clearly and demonstrably beyond the control of the holder or holders of the permit.

(k) "Person" means an individual or any other entity, public or private, including the State of Montana, the Tribes, and the government of the United States and all officers, agents, and departments thereof.

(l) "Tribal Executive Board" means the governing body of the Tribes.

(m) "Tribes" mean the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation.

(n) "Tribal Water Right" means the right of the Tribes to divert annually from the Missouri River, certain of its tributaries, and ground water beneath the Reservation the lesser of (1) 1,050,472 acre-feet of water, or (2) the quantity of water necessary to supply a consumptive use of 525,235 acre-feet per year for the uses and purposes set forth in the Compact with priority date of May 1, 1988, provided that no more than 950,000 acre-feet of water, or the quantity of water necessary to supply a consumptive use of 475,000 acre-feet may be diverted annually from surface water sources. This right is held in trust by the United States for the benefit of the Tribes and is

further defined and limited as set forth in the Compact.

(o) "Waste" means the unreasonable loss of water through the design or negligent operation of a diversion or of a water distribution facility. Inadvertent loss of water owing to defects in equipment for diversions and withdrawals shall not be construed as waste if necessary repair is made with reasonable diligence.

## **Chapter 2. Notice of Enactment of this Code**

### **Sec. 201. Notice required.**

To insure that all persons and entities affected by this Code are given adequate notice of the enactment and effect of this Code, public notice of this Code shall be provided by the Administrator within fifteen (15) days of its enactment in accordance with the provisions of this Chapter.

### **Sec. 202. Contents of notice.**

Such public notice shall contain the following statement, prominently displayed and in large, boldface type:

#### **NOTICE**

**THE ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK INDIAN RESERVATION HAVE ENACTED A TRIBAL WATER CODE, TO GOVERN THE DIVERSION AND USE OF THE TRIBAL WATER RIGHT AS DEFINED IN THE TRIBAL WATER CODE AND THE FORT PECK-MONTANA COMPACT. AFTER OCTOBER 1, 1987, NO DIVERSION OR USE OF THE TRIBAL WATER RIGHT SHALL BE ALLOWED EXCEPT AS AUTHORIZED BY THE FORT PECK TRIBAL WATER CODE. THE COURT REQUIRES THAT ANY DIVERSION OR USE OF THE TRIBAL WATER RIGHT ON THE RESERVATION BY (1) THE TRIBES; (2) ANY INDIAN; (3) ANY NON-INDIAN SUCCESSOR-IN-INTEREST TO ANY ALLOTTEE ACTUALLY USING WATER WITHIN THE RESERVATION BY VIRTUE OF A WATER RIGHT ACQUIRED DIRECTLY OR INDIRECTLY FROM AN INDIAN PREDECESSOR-IN-INTEREST; OR (4) ANY OTHER PERSON WISHING TO USE WATER ON THE RESERVATION UNDER AN AGREEMENT WITH THE TRIBES, MUST OBTAIN A TRIBAL WATER USE PERMIT OR OTHER APPROVAL. THE NECESSARY FORMS FOR PERMIT APPLICATIONS MAY BE OBTAINED FROM THE TRIBAL OFFICE AT POPLAR, MONTANA (406) 768- 5155. COMPLETE COPIES OF THE FORT PECK TRIBAL WATER CODE ARE ALSO AVAILABLE AT THE ABOVE ADDRESS.**

### **Sec. 203. Procedure for giving notice.**

(a) The notice provided above shall be placed in at least one regularly published newspaper on the Reservation at least once every other week over a twelve (12) continuous week period.

(b) The notice provided in Section 202 shall be placed in a prominent and conspicuous location in the County Courthouses of Roosevelt, Valley, Sheridan and Daniels Counties, the Agency Office of the Bureau of Indian Affairs at Poplar, Montana, and the Tribal Office, Poplar, Montana and may be posted in other locations as designated by the Commission or Administrator.

# Chapter 3. Water Resources Control Commission

## **Sec. 301. Creation of Water Resources Control Commission.**

There is hereby established the Water Resources Control Commission.

## **Sec. 302. Composition of the Commission, appointment and term.**

The Commission shall consist of three (3) members appointed for a term of three (3) years each by a two-thirds (2/3) majority vote of those voting at a meeting of the Tribal Executive Board at which a quorum is present; provided however that the initial Commission shall have one member serving for a term of three (3) years, one member serving for a term of two (2) years, and one member serving a term of (1) year, such initial terms as designated by the Tribal Executive Board. Commission members shall attend such programs for training about the Compact, this Tribal Water Code and water resources as the Tribal Executive Board shall require. The Commission shall be majority vote designate which member shall serve as Chairman.

## **Sec. 303. Qualifications of Commission members.**

To be eligible to hold the office of Commission member, a person

- (1) must be at least twenty-five (25) years of age;
- (2) must have at least a high school education or its equivalent;
- (3) must be of high moral character and integrity;
- (4) must have never been convicted of a criminal offense other than traffic

offenses;

(5) must be knowledgeable about the Compact and the provisions of this Tribal Water Code; and

- (6) must be physically able to carry out the duties of the office.

Members of the Tribal Executive Board may serve as members of the Commission.

Commission members must also be members of the Tribes.

## **Sec. 304. Oath of office.**

On taking office, each member of the Commission shall take an oath as follows:

"I, \_\_\_\_\_, do solemnly swear that I will administer justice and do equal right without respect to \_\_\_\_\_ persons and will truly, faithfully and impartially discharge and perform all the duties incumbent upon me as (member) of the Water Resources Control Commission according to the best of my abilities and understanding. So help be God."

## **Sec. 305. Compensation and bond of Commission members.**

The compensation of Commission members shall be fixed by the Tribal Executive Board. The rates of compensation so established may not be decreased during a member's term of office.

Commission members shall be bonded by a surety bond satisfactory to the Tribal Executive Board.

Commission members shall receive compensation only for those days they sit as members of the Commission, including meetings they are required to attend as member of the Commission.

## **Sec. 306. Suspension and removal of Commission members.**

(a) Upon written charges of specific misconduct in office or permanent physical or medical disability to carry out the duties of office, adopted by a majority vote of those voting at a meeting of the Tribal Executive Board at which a quorum is present, the Tribal Executive Board may initiate proceedings to remove the Chairman or any other member of the Commission from office.

"Misconduct", as used in this Section, shall mean:

- (1) conviction of a crime other than a traffic offense;
- (2) abusive or incompetent performance of duties in office, or repeated failure to perform the duties of office;
- (3) self-dealing or biased decision making in performing the duties office.

(b) All charges shall be in writing and served on the Commission member personally, or by certified or registered mail, return receipt requested, not less than ten (10) days prior to the date of hearing before the Tribal Executive Board on the charges. A member proposed to be removed shall be given an opportunity to answer by written and oral presentation before the Tribal Executive Board, to have the charges proven only by sworn testimony of witnesses and documentary evidence, to have the right to cross-examine witnesses and to present his/her own witnesses, and to have the right to be represented by counsel at his/her own expense at the hearing. After hearing, or default, a member may be removed for specific misconduct in office by a vote of two-thirds (2/3) of those voting at a meeting of the Tribal Executive Board at which a quorum is present. The decision of the Tribal Executive Board shall be final.

**Sec. 307. Disqualification of Commission member in particular cases.**

A member of the Commission shall disqualify himself/herself in any proceeding in which his/her impartiality might reasonably be questioned, in which he/she has any personal bias or prejudice concerning any party, in which he/she or a member of his/her immediate family might be a witness or has any personal knowledge of disputed evidentiary facts concerning the proceeding, in which he/she or any member of his/her immediate family is a party or has any financial or other interest in the proceeding, has acted or is acting as an attorney in the proceeding, or in which he/she might otherwise appear to be biased or prejudiced.

**Sec. 308. Rules and regulations.**

The Commission is authorized to adopt such rules and regulations as it deems necessary to implement the objectives and purposes of this Water Code. Such rules and regulations shall be submitted to the Tribal Executive Board and may be approved, modified or disapproved by the Executive Board within ninety (90) days of submission to it by the Commission.

## **Chapter 4. Applications for Water Permits**

**Sec. 401. Permits required.**

Beginning on October 1, 1987, no use of the Tribal Water Right within the Reservation shall be made without a permit issued by the Commission except for any use of water by an Indian for domestic purposes or for stockwatering purposes not in excess of twenty (20) acre-feet per year.

**Sec. 402. Applications for permits.**

The following persons must file an application to divert or use water within the Reservation:

- (a) the Tribes;
- (b) any individual Indian;
- (c) any non-Indian successor-in-interest to any allottee actually using water within the Reservation by virtue of a water right arising under the laws of the United States, which water right was acquired directly or indirectly from an Indian predecessor-in-interest; and

(d) any other person or entity wishing to use water within the Reservation under an agreement with the Tribes pursuant to the terms of Article III, Section K of the Compact.

**Sec. 403. Contents of permit applications.**

(a) Information in applications for permits shall be verified by the applicant under oath on forms provided by the Commission and shall include the following information, in addition to any other information deemed necessary by the Commission:

- (1) The name and mailing address of the applicant;
- (2) The name of or a description of the source or sources from which water is or will be diverted or withdrawn;
- (3) The quantity of water which is or will be used during the year and the period or periods during which water will be used;
- (4) A legal description, or other description reasonably setting forth the point or points of diversion or withdrawal and the place of use;
- (5) A description of the method or methods of diversion or withdrawal;
- (6) The purpose or purposes for which water is or will be used;
- (7) A description of how water is or will be diverted and consumed, including acreage and crop if the water is for irrigation and the kind and number of stock if water is for stock watering; and a description of the changes, if any, in quality;
- (8) The date on which the use or uses were commenced or will be commenced;
- (9) If a use is an existing use, the history of the use, including the length of continuous use;
- (10) For existing uses, an indication whether problems of water levels and supply or problems of declining quality have been encountered;
- (11) The water user's plan for future development and his/her water use or uses and related activities, including the date by which all water sought to be appropriated will be put to full use;
- (12) For applications for the right to store water, the location and design of the dam, evidence that the dam was designed by a licensed engineer; the design, location and capacity of the reservoir; the amount of water sought to be diverted and stored, and the periods during the year when water will be diverted, impounded or withdrawn;
- (13) For proposed uses undertaken pursuant to a transfer by the Tribes of a portion of the right to use the Tribal Water Right under Chapter 11 of this Code, proof that the Tribal Executive Board has approved such a transfer;

(b) An application by any non-Indian successor-in-interest to any allottee actually using water within the Reservation by virtue of a water right arising under the laws of the United States, which right was acquired directly or indirectly from an Indian predecessor-in-interest, shall include the following additional information:

- (1) The name of the original allottee of the lands to be permitted;
- (2) The date of the issuance of the trust patent to the allottee and the number of the trust patent;
- (3) The date the land left trust status, and the number or other designation of the fee patent;
- (4) The date the land was first owned by a non-Indian;
- (5) The names of each non-Indian owner, and the dates of ownership;



(6) The acreage and legal description of lands beneficially irrigated and the quantity of water beneficially used annually by the Indian owner on the date the land left trust status;

(7) The acreage and legal description of lands diligently developed and beneficially irrigated and the quantity of water beneficially used annually by the first owner subsequent to the land leaving trust status, and the date or dates on which irrigation of all such lands actually commenced;

(8) Proof that all lands for which a permit is sought are practicably irrigable and have been continuously beneficially irrigated by each owner since the land left trust status until the date of the permit application;

(9) Such other information as the Commission shall require.

**Sec. 404. Application not required for protected use.**

(a) Inventory of existing diversion and uses by Indian. The Commission shall cause an inventory of all existing diversions and uses of the Tribal Water Right by Indians protected pursuant to Article IV, Section A, paragraph 1 of the Compact. The inventory shall be made within six (6) months of the enactment of this Code. For each such diversion and use, the inventory shall identify the person making the diversion and use, the water source, the point of diversion, the period of use, the place of use, the amount of water being diverted or used annually, and the use for which it is diverted. The Commission shall thereafter issue a permit to each person so identified.

(b) No application for a permit shall be required for any protected use listed on the existing diversions and uses inventory.

**Sec. 405. Fees.**

Each application for a permit shall be accompanied by a fifty dollar (\$50.00) filing fee, except that any person who applies for or holds permits to use more than 1,000 acre feet of water per year shall pay a filing fee of one hundred dollars (\$100.00) for each additional application.

## **Chapter 5. Hearings**

**Sec. 501. Scheduling of hearing on application.**

As soon as practicable after receiving an application for permit, the Commission shall review the application for adequacy and completeness. If additional information is required, the Commission shall so inform the applicant in writing. As soon as the application is adequate and complete, a copy shall be forwarded to the Administrator. The Commission shall then schedule a hearing on that application which hearing shall determine the amount of water authorized to be diverted and used and establish the terms and conditions of diversion and use. The Commission shall notify the applicant of the hearing date, which shall be at least one hundred eighty (180) days but not more than two hundred seventy (270) days from the date of the notice.

**Sec. 502. Public notice of permit hearing.**

After a hearing is scheduled as provided in Section 501, the applicant shall then cause to be published a copy of the application for permit in one regularly published newspaper on the Reservation at least once each week for three (3) successive weeks, and shall submit satisfactory proof of publication to the Commission. The cost of such publication shall be borne by the applicant. The Commission shall also post a public notice of all scheduled hearings at the Tribal Office and such other public places on the Reservation as it shall deem appropriate. The notice shall state the date

by which objections are due.

**Sec. 503. Objections to applications for permits.**

(a) Any person or entity, including the Tribes, whose interests are or may be affected by a water use applied for may, within sixty (60) days of the date of the third (3rd) publication of the notice, file a formal objection to the issuance of the permit applied for.

(b) Objections may be on forms prepared and made available by the Commission and shall include the name and mailing address of the party objecting, the name of the applicant whose application is objected to, a description of the water use objected to, a short and plain statement of reasons why a permit should not be issued or should issue in a form different from that applied for, and any suggested conditions or other provisions which should be included in any permit granted.

(c) Any person making an objection shall file it with the Commission and serve it personally or by mail upon all persons on the service list provided for in Section 505, and proof of such service shall be made in a manner satisfactory to the Commission.

(d) Any applicant for a permit whose use is objected to must reply in writing in the same manner as provided for objections, serving the reply upon all persons on the service list provided for in Section 505 in the manner provided by subsection (c) above, within ninety (90) days of the third (3rd) publication of the notice pursuant to Section 502.

(e) The Administrator may request a field examination of the proposed permit area with the applicant and objectors. In addition, the Administrator shall file with the Commission a report summarizing his/her investigation and recommendations regarding the permit application at least thirty (30) days before the hearing.

**Sec 504. Comments on applications.**

Any person or entity may comment to the Commission in writing upon any application for a permit under this Code, and shall serve any written comment on all persons on the service list provided for in Section 505, in the manner provided in subsection 503 (c).

**Sec. 505. Service list.**

The Commission shall establish a service list for each permit application, which includes the applicant, the Administrator, all objectors and all commentors to the application.

**Sec. 506. Interim authorization to use water.**

The Commission may grant a temporary, revocable authorization to the use while the application is pending for a project not to exceed one (1) year.

**Sec. 507. Public hearing on permit applications.**

(a) A public hearing shall be held on each application unless there has been no objection to or comment upon the application by the Tribes or any other person and the Commission determines to grant it with conditions accepted by the applicant. At least two (2) members of the Commission shall be present and shall preside over the hearing. The applicant and all objectors shall have the right to participate as parties, to present oral and written testimony of witnesses under oath, and to be represented by counsel at their own expense. The Commission shall have power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence. The Fort Peck Tribal Court shall enforce any subpoena issued by the Commission in the same manner as the Court

enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, shall be excluded or may be admitted by the Commission only under special conditions or stipulations.

(b) The Tribes may participate in any hearing as a party and may present oral or written testimony of witnesses under oath.

(c) The Commission may, in addition to the evidence of record at the hearing, rely in its decision upon such public information and such of its own expertise as it deems necessary to assist it in making the determination to grant or deny any application for a permit.

(d) The Commission member or members present at the hearing may, in their discretion, request or permit the parties to submit additional materials or briefs after the hearing.

**Sec. 508. Consolidation of hearing.**

Hearings concerning applications in a particular basin or area may be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication unless the applicant, and objector or the Tribes file timely objection.

**Sec. 509. Standards for granting permits.**

(a) The applicant for a permit shall be required (1) to prove, by a preponderance of the evidence, that all the data required in the permit application has been provided and is correct, and (2) to respond, to the satisfaction of the Commission, to all objections or comments raised by any person and to all concerns expressed by the Commission regarding any permit application. If these requirements are meant, and if the Commission in its discretion determines that issuance of the permit is in the best interest of the Reservation community, the permit shall be granted.

(b) In addition to the above, any applicant for a permit who is a non-Indian successor-ininterest to any allottee seeking to use water within the Reservation by virtue of a water right arising under the laws of the United States must prove, by a preponderance of the evidence, for the lands for which a permit is sought:

(1) that the Indian owner was beneficially irrigating such lands on the date the lands left trust ownership, and that those lands are practicably irrigable and have been continuously beneficially irrigated by the Indian owner and each successor-in-interest from that time until the date of the application; or

(2) for lands not in irrigation at the time of the lands left trust ownership, that the first owner after the lands left trust ownership diligently developed the lands, and that those lands are practicably irrigable and have been continuously beneficially irrigated by the first nontrust owner and each successor-in-interest from the date of such development until the date of the application.

**Sec. 510. Decision.**

The members of the Commission present at the hearing shall issue a written decision setting forth pertinent findings of fact and an ultimate determination as to whether the application shall be granted with specific conditions or denied. This decision shall be adopted by a majority vote of the members of the Commission present at the hearing and delivered to all parties by registered mail, return receipt requested.

**Sec. 511. Petitions for reconsideration.**

(a) Within fourteen (14) days after the decision, any party may request the Commission to reconsider the decision. A petition for reconsideration shall be writing and state concisely the errors

in the decision the petitioner claims should be reconsidered.

(b) A petition for reconsideration shall be served on all other parties to the proceeding by registered mail, return receipt requested, and any party who wishes to respond must do so within fourteen (14) days of the service of the petition, serving a copy of his/her response on all other parties to the proceeding by registered mail, return receipt requested.

(c) The Commission will not grant any petition for reconsideration without scheduling an additional hearing with proper notice to all parties. At least two (2) members of the Commission must be present at the hearing. After this hearing, the Commission may affirm, nullify or revise its earlier decision by a majority vote of the Commission members present at the hearing. Any revised decision shall comply with Section 509 and shall be a final Commission decision for purposes of appeal.

**Sec. 512. Finality of decision.**

The decisions of the Commission shall become final and take effect unless stayed on appeal when (1) the time for filing a petition for reconsideration has passed and no such petition has been filed, or (2) the Commission has ruled on a petition for reconsideration.

**Sec. 513. Appeal.**

The decisions of the Commission pursuant to this Chapter and Chapters 7 and 8 shall be appealable as provided in Chapter 9 of this Code exclusively to the Fort Peck Court of Appeals.

## **Chapter 6. Water Permits**

**Sec. 601. Form.**

Water permit issued in accordance with this Code shall be on a form standardized by the Commission. The Commission shall serially number each permit in a uniform classification system by water source.

**Sec. 602. Information contained:**

Each permit shall include:

- (a) The name and mailing address of the permittee;
- (b) The name, or a description of, the source or sources from which water is or will be diverted or withdrawn;
- (c) The quantity of water which may be used annually, and the period or periods of use;
- (d) The legal description or other description reasonably describing the point or points of diversion or withdrawal and the place of use;
- (e) A description of the method or methods of diversion or withdrawal;
- (f) The purpose or purposes for which water is authorized to be used and the category of use under Section 801;
- (g) A description of how water is to be applied or consumed, including acreage and crop if the water is for irrigation, and the kind and number of stock if water is for stock watering;
- (h) The approximate date upon which the use (or uses) permitted has been or will be commenced by the permitted, and for existing uses, the date on which continuous use was begun by the predecessors-in-interest of the permittee;
- (i) A provision prohibiting the waste of water by any permittee shall be included in

all permits;

(j) A provision stating that "this permit constitutes authorization by the Tribes to use a portion of the Tribal Water Right in conformity with the terms and conditions of the permit, the Compact, and this Code. This permit shall not be deemed to be a property right or any other interest other than limited permission as described in this provision";

**(AMENDED AS PER RESOLUTION NO. 1552-86-9, DATED 09/22/86.)**

(k) The water permit may contain such other information as is deemed necessary and appropriate by the Commission.

**Sec. 603. Conditions.**

Each water permit issued pursuant to this Code shall contain whatever conditions are necessary to insure adequate quality and quantities of water, to otherwise further the purposes, policies and guidelines contained within this Code, and to assist in the effective administration of this Code. These may include, among other things, conditions concerning:

- (a) The quantity of water which may be withdrawn during any particular time;
- (b) The method of application;
- (c) The location and purpose of application, including acreage for crops and number of stock for stockwatering;
- (d) The quantity and quality of return flow;
- (e) The time period in which water may be used;
- (f) Schedules for withdrawal or diversion, including optional rotation schedules;
- (g) Provisions for surface storage of surplus flows;
- (h) Provisions for increasing the efficiency of a diversion or withdrawal and application;
- (i) Provisions for maintaining minimal levels or otherwise providing protection for fish, wildlife, recreational and aesthetic values;
- (j) Provisions designed to prevent or reduce obstruction or impairment of fish runs;
- (k) Provisions designed to minimize pollution and thermal degradation;
- (l) Provisions designed to insure optimum recharge of aquifers;
- (m) Provisions designed to define and control interbasin transfers;
- (n) Provisions for some degree of overdraft from aquifers when short term recharge is not available or appropriate;
- (o) Provisions designed to prevent or reduce interference between competing users or water sources whether above or below ground;
- (p) Provisions to insure long term development;
- (q) Provisions to prevent interference with Tribal administration of water;
- (r) Other provisions necessary to insure conformity with this code and actions taken hereunder, including limitations on the length of the permit;
- (s) Payment of a reasonable annual charge for the permit, provided however that Indians of the Reservation shall be permitted to use not to exceed 300 acre-feet per year of the Tribal Water Right on allotments in which they hold an interest, without charge;
- (t) Provisions to require suitable water gauging devices to be installed, maintained and operated at the expense of the permittee.

**Sec. 604. Materials open to public inspection.**

All permits issued by the Commission, all decisions of the Commission, all applications and all protests, comments and responses made for a water permit shall be maintained by the Water Resources Control Commission in files that shall be open for public inspection.

**Sec. 605. Entry on land.**

Every permittee shall consent to reasonable entry on permittee's land and access to the diversion works by Tribal officers engaged in the administration of this Code, and each permit shall so state.

**Sec. 606. Effect of permit.**

A Tribal water use permit issued under this Code constitutes authorization by the Tribes to use a portion of the Tribal Water Right in conformity with the terms and conditions of the permit, the Compact, and this Code. No Tribal water use permit shall be deemed to be any property right or any other interest other than the limited permission described in this Section.

**(AMENDED AS PER RESOLUTION NO. 1552-86-9, DATED 09/22/86.)**

**Sec. 607. Changes in use.**

(a) Conveyance of permitted lands. The right to use water pursuant to a Tribal permit shall pass by operation of law with the conveyance or transfer of the permitted lands.

(b) Changes in use.

(1) Commission approval required. A permittee shall not change the point of diversion, place of use, or purpose of use without the prior written approval of the Commission.

(2) Procedures. Any permittee proposing a change in point of diversion, place of use or purpose of use shall apply to the Commission on a form furnished by the Commission. No permittee will be allowed to change the place of use of any agricultural water use to a different, noncontiguous piece of land. The application shall include: (1) the type of change proposed, (2) the legal description of the changed point of diversion or place of use, (3) a description of the proposed diversion and service works, (4) the reason for the proposed change, and (5) any adverse impacts, including those affecting uses of water under the Tribal Water Right. The applicant shall provide notice of the proposed change of use, and hearings shall be held by the Commission the proposed change in use, in the manner provided in Chapter 5 of this Code, provided that the Commission may waive the hearing if the proposal will not adversely affect any other Tribal water use, no objections were filed and the Commission, in its discretion, deems it appropriate to proceed without a hearing.

(3) Standard for granting change of use applications. A change of use application shall be granted if the Commission, in its discretion, determines that the change of use is in the best interests of the Reservation community.

## **Chapter 7. Revocation of Water Use Permits**

**Sec. 701. Reasons for revocation.**

A permit may be totally or partially revoked for the following causes:

(a) failure to comply with any terms and conditions of the permit, a provision of this Code or with any order or decision of the Commission;

(b) nonuse of water;

(c) in the case of a permit issued for a specified period, the ending of that period;

(d) any misrepresentation of a material fact in an application for permit, or in any

other statement made as part of the application process;

(e) voluntary relinquishment by any affirmative action manifesting an intention to relinquish a permit.

**Sec. 702. Procedure for revocation hearing.**

(a) The Commission, on its own motion or upon request of the Administrator or any person holding or applying for a Tribal permit, may commence revocation proceedings against any permittee by serving upon such permittee, by registered mail, return receipt requested at his/her last known address, a notice scheduling a revocation hearing at least forty-five (45) days from the date of the notice. Such notice shall be published by the Commission in the manner required by Section 502, and any affected person may participate in the revocation hearing.

(b) A public hearing shall be held on the proposed revocation in the manner provided in Chapter 5 of this Code. The decision of the Commission shall be appealable as provided in Chapter 9 of this Code.

## **Chapter 8. Priority of Tribal Uses in Times of Shortage and Resolution of Disputes Among Users of Tribal Water Right**

**Sec. 801. Preference of uses by purpose of use.**

(a) The following categories of uses of the Tribal Water Right shall be given preference in the order listed below:

(1) Domestic and municipal uses and uses for stockwatering purposes not in excess of twenty (20) acre-feet per year;

(2) Uses protected by Article IV, Section A, paragraph 1 of the Compact and established pursuant to Section 404 of this Code;

(3) Instream flows for fish and wildlife purposes; (4) Agricultural uses;

(5) Stockwatering uses in excess of twenty (20) acre-feet per year;

(6) Industrial uses;

(7) Power uses;

(8) Other uses.

(b) The Tribal Executive Board reserves the right to change by a duly enacted amendment to this Code the order of categories established in subsection (a), provided that no uses shall be given preference over any uses in Section 801 (a) (1) and (2).

**Sec. 802. Reduction of use in times of shortage.**

Whenever the Commission, in its discretion, determines that water is not or will not be available during a particular period from any surface or ground water source, the Commission may order a permittee to reduce or cease entirely his/her use of water. Any such order of the Commission shall be enforced by the Administrator and by the Fort Peck Tribal Court as a matter of the highest importance and without delay on the motion of the Administrator or any water user.

(a) In issuing any order to reduce or cease water use, the Commission shall, except as provided in subsection (b), give preference to the categories of uses in the order established pursuant to Section 801. Uses pursuant to Section 801 (a) (1) shall all be treated as having the same priority. Within each of the other categories of use, the Commission shall give

priority to permits in the order in which they were issued, the earliest having the highest priority.

(b) The Commission, in its discretion, may determine that only a portion of the uses in a particular category (other than uses in Section 801 (a) (1)) shall be satisfied so as to allow some uses in a lower category to be satisfied; provided that any reduction of water use under this subsection shall require that the percentage of total uses to be satisfied for each category must be at least ten percent (10%) greater than the percentage of the total uses to be satisfied for the next highest category.

**Sec. 803. Proceedings to determine that a reduction in use is necessary.**

(a) If the Commission determines in its discretion that it is practicable to do so, it shall give prior notice of its intent to order a reduction in use of water for a particular period by publication in one regularly published newspaper on the Reservation and posting at the Tribal Office and such other public places on the Reservation as the Commission shall deem appropriate. The Commission may in that notice invite written comments to the Commission and may announce a date for a public hearing to hear oral comments and consider any relevant evidence or information offered by the Administrator or any interested person or entity.

(b) The Commission's order for a reduction in use shall be published in the same manner as the notice provided in subsection (a) and shall be final for the Commission. The decision may be appealed as provided in Chapter 9 but shall be enforced by the Administrator and by the Fort Peck Tribal Court unless it is modified or set aside by a final decision on appeal.

**Sec. 804. Resolution of disputes among Tribal water users.**

Any person permitted to use a portion of the Tribal Water Right may file a petition with the Commission challenging another person or entity for using water in a manner that infringes upon the petitioner's permitted use. If the challenged person or entity claims the right to use water under state law or as part of the Fort Peck Irrigation Project, the Commission shall proceed no further but shall forward the petition to the Administrator for submission to the Fort Peck-Montana Compact Board or the Bureau of Indian Affairs, as the case may be. Otherwise, the Commission shall serve a copy of the petition upon any person or entity named in it and upon the Administrator and shall hold a public hearing on the petition in the manner provided in Sections 506, 507, 509, and 510, after reasonable notice to all parties. In any proceeding before it, the Commission may enter an order after a hearing granting the Tribes or any party to the dispute before it temporary or preliminary injunctive relief, or any other relief it deems appropriate, including revocation of the water permit. The Fort Peck Tribal Court shall enforce orders of the Commission, including orders granting temporary or preliminary injunctive relief, in the same manner in which the Court enforces its own orders and on such terms as to bond or otherwise as it deems proper for the security of the rights of the enjoined party, except that in no event shall the Tribes be required to post any bond. Final decisions of the Commission may be appealed as provided in Chapter 9 of this Code, but shall remain in effect and shall be enforced by the Administrator and by the Fort Peck Tribal Court unless the decision is modified or set aside by a final decision on appeal.

## **Chapter 9. Appeals**

**Sec. 901. Jurisdiction.**

The Court of Appeals of the Fort Peck Tribal Court shall have exclusive jurisdiction to hear



appeals from final decisions of the Commission.

**Sec. 902. Notice of appeal.**

Any party may appeal any final decision of the Commission by filing a notice of appeal with the Commission within thirty (30) days after the decision becomes final. The Commission shall thereafter serve the notice of appeal on all parties to the proceeding by registered mail, return receipt requested and shall promptly file the full record of the proceeding with the Fort Peck Tribal Court of Appeals.

**Sec. 903. Appeal procedures.**

The appeal shall thereafter proceed in the same manner as appeals of civil cases from the Fort Peck Tribal Court. In all appeals, the Court shall give proper deference to the administrative expertise of the Commission. The Court of Appeals shall not set aside, modify or remand any determination by the Commission unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law. The Court of Appeals shall issue a written decision on all appeals, which decision shall be final.

**Sec. 904. Costs and attorneys fees.**

The Court of Appeals may, in its discretion, award costs and attorneys fees to the Commission against any appellant whose appeal was frivolous, malicious, or in bad faith.

## **Chapter 10. Water Administrator**

**Sec. 1001. Water Administrator: appointment.**

A Water Administrator shall be appointed by a majority vote of those voting at a meeting of the Tribal Executive Board at which a quorum is present.

**Sec. 1002. Qualifications.**

To be eligible to serve as Administrator, a person (1) must be at least twenty-five (25) years of age; (2) must be of high moral character and integrity; (3) must have a high school education or its equivalent; (4) must have never been convicted of a criminal offense other than a traffic offense; and (5) must be physically able to carry out the duties of the office.

**Sec. 1003. Compensation.**

The Tribal Executive Board shall establish rates of compensation for the Administrator.

**Sec. 1004. Oath of office.**

Before entering upon the duties of office, the Administrator shall take the following oath or affirmation:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will truly, faithfully and impartially discharge all \_\_\_\_\_ duties of my office as Tribal Water Administrator to the best of my abilities and understanding. So help me God."

**Sec. 1005. Duties.**

The Administrator shall be responsible for the enforcement and administration of the policies and water permits issued under this Code. He/she shall assure compliance with this Code, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken by

the Commission under this Code. To this end the Administrator may:

(a) Remove, render inoperative, shut down, close, seal, cap, modify or otherwise control methods of diversion, impoundment and withdrawal, obstructions to the flow of water, and activities adversely affecting water quantity or quality;

(b) Enter upon land, inspect methods of diversion and withdrawal, inspect other activities affecting water quality and quantity, install and monitor measuring and recording devices when he/she deems it necessary, and elicit testimony and data concerning actions affecting the quality or quantity of the waters administered under this Code;

(c) Participate on behalf of the Tribes in proceedings before the Commission;

(d) Initiate proceedings for violations of this Code, and the orders, regulations and permits issued by the Commission;

(e) Collect, organize and catalog existing information and studies available from all sources, both public and private, pertaining to the waters of the Reservation;

(f) Develop such additional data and studies pertaining to water and water resources as are necessary to accomplish the objectives of this Code, including studies of the scope, characteristics and method for managing water shortages;

(g) Solicit public comment and obtain expert advice when appropriate;

(h) Investigate water uses and other activities affecting the waters of the Reservation to determine whether they are in compliance with this Code and with applicable regulations, orders, determinations, permits and water quality standards issued under this Code;

(i) Investigate water quality whenever appropriate;

(j) Make recommendations to the Commission concerning distribution of water in times of shortage according to the policies of this Code and the priorities established in water permits issued by the Commission.

#### **Sec. 1006. Staff.**

The Administrator may, from time to time, propose to the Tribal Executive Board the employment of additional persons to serve as members of his/her staff. The appointment, salaries and terms of employment of any assistants to the Administrator shall be set by the Tribal Executive Board.

#### **Sec. 1007. Term of office and removal.**

The Administrator shall serve until he/she resigns, until a successor is appointed, or until he/she is terminated for any reason upon a majority vote of the Tribal Executive Board at a meeting at which a quorum is present.

## **Chapter 11. Transfer of Rights to Use Water**

#### **Sec. 1101. Transfer of the right to use the Tribal Water Right.**

The Tribes may transfer the right to use a portion of the Tribal Water Right within the Reservation, as authorized by the Compact and federal law, but may not permanently alienate any part of the Tribal Water Right. Any right so transferred shall be subject to the priority of uses as set forth in Chapter 8 of this Code. No person other than the Tribes shall have any authority to transfer any portion of the Tribal Water Right, except as allowed under Section 607 (a) of this Code. Any other action by any person other than the Tribes attempting to transfer any portion of the Tribal Water Right shall be null and void.

**Sec. 1102. Applications for transfer of Tribal Water Right.**

Applications for the transfer of any portion of the Tribal Water Right shall be made in writing to the Fort Peck Tribal Executive Board, and the Board shall send a copy to the Commission. The Tribal Executive Board has exclusive authority to accept or reject proposals to transfer the Tribal Water Right and decisions of this Tribal Executive Board in this regard shall be final.

**Sec. 1103. Reservation of rights.**

Nothing in this Code shall diminish or limit the authority of the Tribes to divert, use or transfer any portion of the Tribal Water Right outside of the Reservation, as provided in the Compact and by law.

## **Chapter 12. Miscellaneous Provisions**

**Sec. 1201. Severability.**

If any provision of this Code or the application thereof to any person or circumstance is held invalid, the Code shall be given effect without the invalid provision or application; and to this end the provisions of this Code are declared to be severable.

**Sec. 1202. Construction.**

This Code shall be liberally construed to effectuate its policies and purposes.

**(THIS TITLE ADOPTED AS PER RESOLUTION NO. 993-86-5, DATED 05/15/86.)**

## **Chapter 13. Assiniboine and Sioux Tribes Municipal, Rural & Industrial (MR&I) Water Commission**

**Sec. 1301. Establishing the MR&I Water Commission.**

1. The MR&I Water Commission shall consist of five (5) Commissioners, one of whom shall be designated by the Tribal Executive Board as Chair of the MR&I Water Commission.

2. The MR&I Water Commissioners shall be appointed by the Tribal Executive Board.

3. To be eligible to hold the office of MR&I Water Commissioner, a person must (1) be at least twenty-five years of age; (2) have at least a high school education or its equivalent; (3) be of high moral character and integrity; (4) never have been convicted of a felony criminal offense or an offense involving fraud or theft; and (5) be physically able to carry out the duties of the office.

4. Initial appointments to the MR&I Water Commission shall be made for the following terms:

Chair of the MR&I Water Commission - three years; two (2) MR&I Water Commissioners - two years; and two (2) MR&I Water Commissioners - one year. Thereafter, all appointments shall be for three year terms, provided that if a permanent vacancy occurs because of removal, resignation or other reason, the Tribal Executive Board will appoint a replacement Commissioner for the remainder of the term of the member being replaced.

5. MR&I Water Commissioners are not Tribal employees by virtue of their office and shall not be subject to the Tribes' personnel policies and procedures, other than as specified in this Code or as a result of other tribal employment.

6. On taking office, each Commissioner shall take an oath as follows:

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will administer justice and do

equal right without respect to persons and will truly, faithfully and impartially discharge and perform all the duties incumbent upon me as a MR&I Water Commissioner according to the best of my abilities and understanding. So help me God.

**Sec. 1302. Quorum and Voting By MR&I Water Commissioners.**

1. A quorum of the MR&I Water Commission shall consist of three (3) of the Commissioners.
2. Whenever the Chair of the MR&I Water Commission is unavailable for a meeting because of recusal or for another reason, the Commissioners present shall appoint an Acting Chair of the Commission to serve during the period of the Chair's unavailability.
3. The Chair or Acting Chair of the MR&I Water Commission shall be entitled to vote and shall preside over all meetings.
4. Action by the MR&I Water Commission shall be by consensus whenever possible, but if consensus cannot be achieved, final action shall be by majority vote of all Commissioners present with a quorum established.

**Sec. 1303. Recusal of MR&I Water Commissioners.**

1. No MR&I Water Commissioner shall participate in any action or decision of the Commission directly involving matters which primarily benefit the Commissioner, or a member of his or her immediate family, or which primarily benefit a business or other entity of which the Commissioner or an immediate family member holds any ownership interest or with whom the Commissioner or immediate family has a contractual relationship.
2. Nothing in this Section shall preclude a MR&I Water Commissioner from participating in any action by the Commission which generally affects Tribal members, a Tribal enterprise, or a person or entity in a contractual relationship with the Tribes, regardless whether the Commissioner or a member of his or her immediate family indirectly benefits by the action or decision.
3. A MR&I Water Commissioner may voluntarily recuse himself or herself and decline to participate in any Commission action or decision when the Commissioner, in his or her own discretion, believes:
  - a. He or she cannot act fairly or without bias; or
  - b. There is created the appearance that he or she could not act fairly or without bias.
4. As used in this Code, "immediate family relative" shall include spouses, children, parents, brothers and sisters, grandparents, grandchildren and in-laws.

**Sec. 1304. Rules of the MR&I Water Commission.**

1. From time to time, the MR&I Water Commission may promulgate and enforce such written rules and regulations as it deems necessary to carry out the orderly performance of its duties, including but not limited to, rules and regulations relating to:
  - a. Internal operating procedures of the MR&I Water Commission;
  - b. Administrative interpretations and applications of this Code;
  - c. Development and amendment of short and long range plans to plan, design, construct, administer, operate and maintain the Assiniboine and Sioux Rural Water Supply System;
  - d. Development and amendment of quality controls for improving the planning, design, construction, administration, operation and maintenance of the Assiniboine and Sioux Rural Water Supply System
  - e. The conduct of inspections, investigations, public hearings, and other powers of the MR&I Water Commission as authorized by this Code.

2. No rule or regulation of the MR&I Water Commission shall be of any force or effect until and unless copies of the rule or regulation have been filed in the office of the Secretary-Accountant of the Tribes for at least fifteen (15) days. The copy shall bear the signatures of a majority of the MR&I Water Commissioners, certifying that the rule or regulation was duly adopted by the MR&I Water Commission pursuant to this Code. If the Tribal Executive Board takes no action to modify or repeal the rule or regulation within the fifteen (15) day time period, the rule or regulation shall go into effect at the conclusion of this time period; provided however, that the Tribal Executive Board retains the authority to modify or repeal the rule or regulation at any time.

3. The Tribal Court shall take judicial notice of all rules and regulations of the MR&I Water Commission promulgated pursuant to this Code.

**Sec. 1305. Powers of the MR&I Water Commission.**

The MR&I Water Commission is a subordinate administrative body of the Assiniboine and Sioux Tribes. As such, all final actions of the MR&I Water Commission are subject to review, modification or repeal by official action of the Tribal Executive Board. Subject to this right of review by the Tribal Executive Board, the MR&I Water Commission shall have the following powers:

1. Oversee and develop policies to guide the administrative operations of the Assiniboine and Sioux Rural Water Supply System, including overseeing and directing the duties of the MR&I Project Manager.
2. Provide technical advice to the Tribal Executive Board on matters relating to the planning, design, construction, administration operation and maintenance of the Assiniboine and Sioux Water Supply System, including preparing and soliciting and making recommendations to the Tribal Executive Board of all Project bid packages.
3. Review, comment and make recommendations to the Tribal Executive Board on Tribal design, construction, operation and maintenance standards, contract documents, budgets, and other materials prepared by Tribal employees and consultants to ensure that the Tribes' operating procedures for the Assiniboine and Sioux Rural Water Supply System comply with applicable laws and regulations, as well as the requirements of the Tribes' Indian Self- Determination agreements with the U.S. Department of Interior, Bureau of Reclamation and Bureau of Indian Affairs.
4. Coordinate with other Tribal Commissions and Administrative bodies whose jurisdiction may affect or overlap with the duties of the MR&I Water Commission.
5. Coordinate with Federal, State and local governments on matters relating to the planning, design, construction, administration, operation and maintenance of the Assiniboine and Sioux Rural Water Supply System.
6. Oversee the development for Tribal Executive Board review and approval, of budgets, contract documents, annual funding agreements, amendments and renewals of the Tribes' Indian Self-Determination agreements with the Bureau of Reclamation and the Bureau of Indian Affairs and such other project-related documents as the MR&I Water Commission deems appropriate.
7. Consult with Tribal attorneys, accountants, engineers and other advisors regarding matters affecting the administrative operations of the Assiniboine and Sioux Rural Water Supply System.
8. Develop and make recommendations to the Tribal Executive Board regarding methods for improving the Assiniboine and Sioux Rural Water Supply System, and regarding the amendment of this Code.

9. Delegate to individual MR&I Water Commissioners, such of its functions as may be necessary to administer this Code efficiently, provided that the Commission may not delegate its power to promulgate rules and regulations.

10. Delegate to the MR&I Project Manager and staff sufficient responsibility to assist the Commission in exercising its duties and responsibilities as set out in this Code.

11. Exercise all other authority delegated to it by the Tribal Executive Board, or as may be reasonably necessary for the implementation of this Code.

**Sec. 1306. Public Notice and Hearings.**

1. For all proposed construction projects related to the development of the Assiniboine and Sioux Rural Water Supply System, the Commission shall:

a) give adequate notice to the public prior to the commencement of construction activities;

b) include in the notice the project name and location, type of improvement planned, the date the activity is scheduled to commence, the name and address where more information can be obtained, and procedures for requesting a public hearing by the MR&I Water Commission.

2. The MR&I Water Commission may determine from time to time, in its in its sole and complete discretion, to hold a public hearing on matters relating to the planning, design, construction, administration, operation and maintenance of the Assiniboine and Sioux Rural Water Supply System. Matters appropriate for a public hearing may include matters that:

a) would significantly change the layout, function or services provided by Assiniboine and Sioux Rural Water Supply System;

c) would cause a substantial adverse impact on adjacent real property;

d) would be a significant or controversial undertaking.

3. When a public hearing is scheduled by the MR&I Water Commission, the Commission shall notify the public by publishing a notice setting forth the following:

a) date, time, and place of hearing;

b) the topics to be considered, including planning activities or project locations; and

c) how and where to obtain more information.

4. The MR&I Water Commission shall maintain records of all public hearings it holds. The public may request and receive a copy of any public, non-privileged hearing record provided that the requesting person agrees to pay all copying costs.

5. All public hearings serve a purely advisory function to assist the MR&I Water Commission in developing final recommendations and decisions. No Tribal member or member of the general public shall have the right to appeal final recommendations and decisions of the MR&I Water Commission.

**Sec. 1307. MR&I Water Commission Expenses and Budget.**

1. To the greatest extent permitted by law, the MR&I Water Commission's expenses and incidental costs shall be budgeted and paid for from the funds received under the Tribes' Indian Self-Determination agreements with the Bureau of Reclamation and the Bureau of Indian Affairs. Any additional funds required by the MR&I Water Commission shall be set by the Tribal Executive Board.

2. The MR&I Water Commission shall submit to the Tribal Executive Board a line item proposed budget for the next fiscal year not later than May 15th of each year and shall indicate

whether any of the funds requested are to be general funds of the Tribes. Unless the Tribal Executive Board otherwise directs, the MR&I Water Commission's fiscal year shall be set to correspond with the annual funding agreements included in the Tribes' Indian Self-Determination agreements with the Bureau of Reclamation and the Bureau of Indian Affairs.

**Sec. 1308. Records of the MR&I Water Commission.**

1. When not in executive session, the MR&I Water Commission shall keep and maintain accurate and complete records to the greatest extent practicable, including minutes of all public meetings of the Commission.

2. Such records shall be maintained at the MR&I Water Commission's offices and shall not be removed from that location without the consent of the MR&I Water Commission by formal resolution.

3. Such records shall be subject to audit at any time upon the direction of the Tribal Executive Board, or as required by the terms of the Tribes' Indian Self-Determination agreements with the Bureau of Reclamation and the Bureau of Indian Affairs.

**Sec. 1309. Temporary or Permanent Removal from Office - Replacement.**

1. Any MR&I Water Commissioner may be removed from office under the rules and procedures established by the Commission, subject the right of review by the Tribal Executive Board.

2. A MR&I Water Commissioner shall automatically be removed from office if the Commissioner is convicted of a criminal offense other than a traffic offense or fails to attend three consecutive scheduled meetings of the MR&I Water Commission. The absence of a MR&I Water Commissioner from a scheduled meeting shall not count against the Commissioner if the absence is authorized or excused by a majority of the remaining Commissioners.

3. Upon the removal of a Commissioner or upon the Commissioner's voluntary resignation, the Tribal Executive Board shall appoint a replacement for the remainder of the official's term of office, as provided in Section 1301 of this Code.

**Sec. 1310. Decisions of the MR&I Water Commission.**

Unless reviewed, modified, amended or repealed by the Tribal Executive Board, all decisions of the MR&I Water Commission are final and unappealable.

**Sec. 1311. Sovereign Immunity.**

The Tribes and all of its constituent parts, subordinate organizations, boards, committees or commissions, including the MR&I Water Commission established pursuant to this Code, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by the Tribes or the United States. Nothing in this Code shall be construed as waiving the sovereign immunity of the Tribes or any of its constituent parts, including the MR&I Water Commission.

**(THIS CHAPTER ADOPTED AS PER RESOLUTION NO. 437-2004-03,DATED 03/22/04.)**