

BYLAWS OF THE FLATHEAD RESERVATION WATER MANAGEMENT BOARD

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DRAFT

REVISION HISTORY

ORIGINAL DRAFT APRIL 13, 2023

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ARTICLE I. PURPOSE, EFFECTIVE DATE, AND JURISDICTIONAL BOUNDARIES [Compact Article IV.I.1]

*Continue to use Articles or switch to something distinct such as Bylaw I, Bylaw II, etc.

The Flathead Reservation Water Management Board (the Board) is an independent board, composed of Tribal and State appointed representatives, created by the Confederated Salish and Kootenai Tribes (the CSKT) - Montana water rights compact (MCA 85-20-1901) (Compact) and the Unitary Administration and Management Ordinance (MCA 85-20-1902 and CSKT Ordinance No. 111-A) (Ordinance) to be the exclusive regulatory body for water rights administration on the Flathead Indian Reservation:

Compact Article IV.I.1: Upon the Effective Date, [which occurred on September 17, 2021] the Board shall be the exclusive regulatory body on the Reservation for the issuance of Appropriation Rights and authorizations for Changes in Use of Appropriation Rights and Existing Uses, and for the administration and enforcement of all Appropriation Rights and Existing Uses. The Board shall also have exclusive jurisdiction to resolve any controversy over the meaning and interpretation of the Compact on the Reservation, and any controversy over the right to the use of water as between the Parties or between or among holders of Appropriation Rights and Existing Uses on the Reservation except as explicitly provided otherwise in Article IV.G.5. The jurisdiction of this Board does not extend to any water rights whose place of use is located outside the exterior boundaries of the Reservation.

The Board's executive arm is the Office of the Engineer (OE) staff as led by the Water Engineer.

ARTICLE II. GENERAL PROVISIONS

SECTION 2.1 ACRONYMS AND TERMS OF THE BOARD

AF – acre-feet of water

CFS – cubic feet per second of water flow

CSKT-MT Compact or *Compact* – water rights compact entered into by the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the State of Montana, and the United States Ratified set forth in MCA 85-20-1901.

CSKT - Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana

FRWMB or *Board* – Flathead Reservation Water Management Board

GW - Groundwater

OE – Office of the [Water] Engineer

Ordinance – the Unitary Administration Management Ordinance set forth in MCA 85-20-1902 and CSKT Ordinance No. 111-A

SECTION 2.2 OFFICE

The known place of business of the Board shall be 400 Main Street Southwest, Ronan, MT 59864. The Board may have other places of business within the state as the Board determines.

SECTION 2.3 CONSTRUCTION AND DEFINITIONS

Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the general provisions of the Compact and Ordinance shall govern the construction of these bylaws. **In the event of a conflict between these bylaws and language contained in the Compact and Ordinance, the Compact and the Ordinance language shall prevail.**

SECTION 2.4 BOARD PROPERTY

The Board can purchase, lease, rent, own, and manage tangible and intangible property. Tangible properties can include real-property, equipment, vehicles, supplies, and furniture. Intangible property includes bank accounts, intellectual property, digital assets such as internet domains and virtual files and products.

Acquisition, management, inventorying, and surplus of property is conducted through the OE Board approved property policies and procedures as set forth in Board resolutions and OE adopted policies and procedures.

Title of real property is held in the name of the **Flathead Reservation Water Management Board and the Office of the Engineer, abbreviated FRWMB & OE** when needed.

SECTION 2.5 WEBSITE DOMAINS AND CLIENTS

The Board and the OE own and operate FRWMB.GOV internet domain and associated clients.

SECTION 2.6 LOGO

The Board and the OE have a logo containing the name of the Board and the OE.

ARTICLE III. BOARD COMPOSITION, APPOINTMENT, TERMS, AND ELIGIBILITY

SECTION 3.1 COMPOSITION AND APPOINTMENT [Compact Article IV.I.2.a-d]

Voting Members. The Board shall consist of five voting members:

Two members selected by the Governor of the State after consultation with holders of Water Rights Arising Under State Law located on the Reservation;

Two members appointed by the Tribal Council; and

A Fifth Board Member selected by the other four members.

Ex Officio Member: The Board shall also have a sixth, non-voting member appointed by the Secretary of the U.S. Department of the Interior.

Appointments are made pursuant the Compact Article IV.1.2.b-d

SECTION 3.2 TERMS OF BOARD MEMBERS [Compact Article IV.1.2.e]

Initially, three voting members of the Board shall serve for four years and two shall serve for two years. Once the initial two-year appointments expire, all subsequently appointed Board members shall serve four-year terms. The sixth, non-voting, member shall be appointed for four years.

SECTION 3.3 BOARD ELIGIBILITY [Compact Article IV.1.2.f]

To be eligible to serve on the Board, an individual must be over 18 years of age and be a Reservation resident. For the purposes of filling a position on the Water Management Board, a Reservation resident is an individual who:

- does business within Flathead Indian Reservation boundaries;
- is domiciled within Flathead Indian Reservation boundaries; or
- owns and maintains a seasonal residence within Flathead Indian Reservation boundaries.

An eligible individual must also have education and experience in one or more of the following fields: natural resources management, public administration, agriculture, engineering, commerce or finance, hydrology, biological sciences, water law or water policy.

No elected official of the State of Montana, or any political subdivision thereof, or of the United States, or of the Tribes is eligible for nomination to the Board while holding such elective office. However, a nominee for Board membership shall not be disqualified by reason of the fact that he or she is an employee or contractor of the State of Montana or any political subdivision thereof, or of the Tribes, or of the United States.

SECTION 3.4 – BOARD EXPECTATIONS

- Board members are expected to understand and implement the Ordinance;
- Board members are expected to provide direction and leadership that promotes and provides for fair and consistent water administration and water conflict resolution;
- Board members are expected to attend 80% of Board meetings OR when possible;
- Board members are expected to read and prepare for each meeting attended;
- Board members are expected to complete assignments;

- Board members are expected to provide the services designated by any Board position for which they are elected; and
- Board members are expected to **comply** with public participation and open-meeting laws, transparency in Board activities, and other charges found in the Compact, the Ordinance, Board Bylaws and Resolutions, or FRWMB and OE policies.

SECTION 3.5 VACANCIES OF BOARD MEMBERS [Compact Article IV.1.2.g]

Should a Tribal Council appointed Board member position become vacant, the Tribal Council shall name a new Board member within 30 days of the occurrence of the vacancy. Should Board action be required during the period of this vacancy, the Department Head of the Tribal Natural Resources Department shall fill the vacant position on an acting basis until a new appointment is made.

Should a Governor appointed Board member position become vacant, the Governor shall name a new Board member within 30 days of the occurrence of the vacancy. Should Board action be required during the period of this vacancy, the Director of the DRNC shall fill the vacant position on an acting basis until a new appointment is made.

Should the Fifth Board Member position become vacant, the four appointed Board members shall name a new Board member within 30 days of the occurrence of the vacancy, or if they cannot agree, follow the procedures set forth in Article IV.1.2.c. [Should there be an acting designation for a fifth member?]

SECTION 3.6 REMOVAL OF BOARD MEMBERS [Reflects 1-step Process]

Any Board member may be recommended for removal for misconduct or poor performance, by a unanimous vote of the other voting Board members at a duly held meeting at which **the other four** voting members are present.

Poor performance includes repeated failure to attend mandatory Board meetings, failure to operate within meeting bylaws and decorum, failure to fulfill Board assignments. Misconduct includes but is not limited to harassment, discrimination, operating while impaired, theft, and criminal, fraudulent, illegal, or dishonest activity that constitutes a break of trust. Misconduct may not be limited exclusively to Board-related activities if misconduct outside of Board activities is determined to infringe on the ability of a Board member to effectively perform Board activities due to a lack of public trust. Willingly holding back information pertaining to conflicts of interest, as defined in **Article VI** of these bylaws may constitute misconduct.

Any Board member may assert that another Board member has conducted poor performance or misconduct, thereby initiating a motion for Board members to consider whether poor performance or misconduct has occurred. Board members may hold a hearing, pursuant to the open-meeting laws, to better investigate allegations of Board member poor performance or misconduct, which may or may not include outside testimony and information demonstrating poor performance, misconduct, or the lack thereof. This process ends with a Board decision about whether or not to recommend removal/remove the Board member in question.

Removal of an Appointed Board Member: The Board may recommend to the appointing entity the removal of a Board member by a unanimous vote of the other voting Board members at a duly held meeting at which all remaining members are present. The Board will direct any recommendation to remove a State appointed member to the Governor of Montana. The Board will direct any recommendation to remove a Tribal appointed member to the Tribal Council. The Board will direct any recommendation to remove the Ex-Officio member to the United States Secretary of the Interior.

Removal of a Fifth Board Member: The Board selected Fifth Board Member may be removed by a unanimous vote of the other voting Board members at a duly held meeting at which all remaining members are present.

ARTICLE IV. BOARD POSITIONS AND COMMITTEES

SECTION 4.1 BOARD POSITIONS

The Board may choose **[3]** of its members to serve in the following roles:

Board Chair. The Chair shall preside at all meetings of the Board and shall have general charge over the affairs of the Board, subject to the approval of the Board. *The Board Chair and the Vice Chair are responsible for maintaining the order and decorum of meetings.*

The Chair can sign contracts on behalf of the Board and perform other duties that may be imposed by the Board. The Chair may also appoint Board members to committees as may be necessary.

The Chair serves as the primary copy on communications from the OE regarding 1) payroll, 2) legal workflow management, 3) contracts relating to the Board or the OE, and 4) issues of personnel action taken by the Water Engineer or the Water Engineer's Designee.

The Board Chair provides final authorization for all Board compensation requests other than their own.

Board Vice Chair. In the absence of the Chair, the Vice Chair shall preside at all meetings of the Board and shall have a general charge over the affairs of the Board, subject to the approval of the Board. *The Board Chair and the Vice Chair are responsible for maintaining the order and decorum of meetings.*

The Vice Chair can sign contracts on behalf of the Board and perform other duties that may be imposed by the Board. The Vice Chair may also appoint Board members to committees as may be necessary.

The Board Vice Chair provides final authorization for compensation requests from the Board Chair.

Board Treasurer. The Treasurer/Secretary receives and submits monthly Board member compensation requests for meeting attendance and other reimbursements including Board travel and per diem. The Treasurer routes request to payroll after getting compensation request authorizations from the Board Chair/Board Vice Chair.

In the absence of the Board Chair or the Board Vice Chair, the Treasurer may approve compensation requests submitted by either the Board Chair or the Board Vice Chair as needed.

The Treasurer monitors budget authorizations and reports to the Board any irregularities or unexplained use of funds.

SECTION 4.2 BOARD POSITION ELECTION FREQUENCY AND TERM

Once per year, during the Board's first or second meeting of the calendar year, Board positions will be revisited and determined. There is no mandate to change Board positions and no position has a term limit.

SECTION 4.3 BOARD POSITION ELECTIONS

To select or reaffirm Board members' positions, an agenda item for board positions is noticed at a regular Board meeting.

For each position, the meeting floor is opened for Board members to nominate or reaffirm a seated position by fellow Board members. Nominees must accept the nomination in order for their name to stand for the position. The floor remains open for nominations until no more nominations or reaffirmations are made. When nominations have been completed, the nomination process is declared closed and those individuals who have agreed to let their names stand are now candidates for election to the position.

The election is held using a voice vote. Board members can vote for themselves if they are a candidate. The candidate with the most votes is selected to hold the Board position.

If only one person accepts the nomination for a Board position, the Board still holds a vote to affirm the position, which requires a majority vote.

If no Board member accepts a nomination for a Board position, the position is filled by lottery decision from Board members that are not already selected into a Board position.

Board positions are selected one at a time, in the order they are listed in section 3.1 above.

SECTION 4.4 BOARD COMMITTEES AND/OR WORKGROUPS

The Board may create committees and workgroups for special tasks. Committee membership is made by appointments and workgroups are made by volunteering. Appointees to committees are made by the Board Chair or Vice Chair in the absence of the Chair. Both

Committees and workgroups must meet and operate consistent with the Board's open-meeting requirements. Committees and Workgroups report back to the Board.

ARTICLE V. BOARD COMPENSATION

SECTION 5.1 BOARD MEETINGS ELIGIBLE FOR COMPENSATION

Regular Board Meetings, Special Board Meetings, Board Work Sessions, Board Hearings, Committee Meetings, and Workgroup Meetings.

Meetings with staff of the OE that may include interviews, work sessions, and technical assistance with projects. Board members must spend at least one and a half hours meeting with OE staff to claim compensation.

Participation in meetings, conferences, or other gatherings approved by the Board Chair or the Vice Chair.

SECTION 5.2 BOARD MEETING COMPENSATION RATES

In 2022 the State and Tribe fixed compensation at a flat rate of \$175 per meeting for Tribal and State appointees and the fifth Board-selected member. The State and the Tribe intend the \$175-per-meeting rate to compensate for a Board member's time spent participating in a meeting and preparing for it.

The Board on a biannual basis may review compensation rates and request the State and the Tribe adjust the rate.

SECTION 5.3 BOARD MILEAGE, LODGING, AND PER DIEM RATES AS SET BY CSKT, MT AND THE BOARD

Annual mileage, lodging and meal rates are set by the State and the Tribes.

Board compensation rates follow IRS mileage rates, State per diem rates, and State lodging rates as set forth below. Compensation rates will simultaneously change in accordance with IRS and State rates with bylaw updates occurring thereafter.

Mileage reimbursements shall be in accordance with the IRS standard mileage rates set for the corresponding calendar year in which compensation filings occur.

If meeting meals are not provided and meetings occur for more than three hours in the time periods listed below, Board members are eligible to per diem meal compensations as per the State per diem schedule:

Morning Meal: >3 hours between 12:00 am and 10:00 am
Midday Meal: > 3 hours between 10:01 am and 3:00 pm
Evening Meal: > 3 hours between 3:01 pm and 12:00 am

If a Board member is required to spend a night to attend a meeting or conduct business of the Board, the board member will be reimbursed at State lodging rates and should book reservations at hotels offering a government rate whenever possible. The Board will schedule its meetings and other business to minimize overnight stays to the extent possible.

Section 5.4 BOARD COMPENSATION BUDGET

Individual compensation from the Tribes and the State will be tracked in relation to respective submissions and for half the amount of compensation submissions made by the Fifth Board Member applied to each. Upon exceedance of fiscal year Board member compensation budgets, no additional compensation requests can be processed. In the event of a budget shortfall, unfunded compensation requests will be evenly distributed based on a pro rata basis amongst outstanding Board compensation requests. Board compensation surpluses will be reappropriated to the general fund at the end of each fiscal year.

Section 5.5 BOARD COMPENSATION REQUEST PROCEDURES [Treasurer Option]

Board members will enroll for direct electronic deposit for compensation and reimbursements.

Hotels, lodging, and conference fees will be paid for directly by the Board member incurring the expense and submitted with monthly compensation and reimbursement requests.

Board members will submit to the Board Treasurer, monthly, requests for compensation using a format provided by the OE. Submissions will be made within one week following the end of each month; compensation requests submitted after the one-week deadline will not be honored.

At the end of the one-week deadline, the Treasurer will send all monthly reimbursement requests to the entire Board in a group email at which point the Board Chairman will respond in email to the group with approval, denial, or modification of each Board member's monthly submissions other than their own; the Vice Chair will respond in email to the group with approval, denial, or modification of submissions requested by the Board Chairman. The Board Chair and Vice Chair cannot authorize their own compensation requests respectively. Board Chair and Vice Chair action on these matters is expected within three working days of receiving the monthly compensation requests in a group email.

Once approved the Treasurer will transmit all approved or modified requests for compensation to the OE for remittance to payroll and processing and subsequent direct deposit of approved compensation requests into respective Board members' accounts.

ARTICLE VI. APPROPRIATIONS; FUNDING POLICIES

SECTION 6.1 APPROPRIATIONS

The Board is appropriated money from both the State and the Tribes. The State and the Tribes monitor expenditures to ensure the funds are used in accordance with the appropriations. The Board also receives application fees pursuant to the Ordinance that become part of the overall Board funding.

The Board reviews and approves an annual budget prepared by the OE staff. The budget shall include the details necessary for the Board to provide general direction to OE for appropriate fiscal accountability and transparency. The Board fiscal year ends December 31st, and budgets for the next fiscal year shall be approved prior to the current fiscal year end.

SECTION 6.2 CONTRACTS AND AGREEMENTS

(a) In General

Except as provided below, only the Board shall have the power or authority to bind the Board by any contract or engagement or to pledge its credit or to render it liable for any purpose or amount.

(b) Delegation of Authority

The Board may delegate its authority to executive instruments on behalf of the Board to the Office of the Water Engineer, in such manner as it determines to be appropriate.

The Board may authorize the Chair or the Vice Chair to enter into any contract, agreement, memorandum or document in the name of and on behalf of the OE or the Board through majority vote, and such authority may be general or confined to specific instances. To promote efficiency and serve the public interest, the Board may delegate general signing authority to the Water Engineer to execute any contract, agreement, memoranda, and other documents and instruments in the course of his/her regular duties that conforms with the Board approved annual budget.

SECTION 6.3 BANK ACCOUNT OWNERSHIP AND AUTHORITY

Bank accounts owned by the Board shall be in the name of the Board. The Chair and the Vice Chair are signatories to all of the Board's banks accounts. Immediately upon Board position election changes, vacancy, or removal of a Board Chair or Vice Chair, the Chair or Vice Chair shall be removed from the account as a signatory.

The Treasurer shall have access to all bank account records, receipts, and expenditure records, but not be granted signatory authority.

SECTION 6.3 CHECK SIGNING AND EXPENDATURE AUTHORIZATIONS

The Chair and the Vice Chair may sign checks on behalf of the Board or the OE for authorized expenses approved by the Board.

The Board may delegate its check signing authority to the Office of the Water Engineer, in such a manner as it determines to be appropriate.

Neither the Chair, Vice Chair can authorize transfers of funds for any reimbursements, payments, or other direct receipt of funds directed to themselves or their own accounts.

SECTION 6.3 ADDITIONAL FISCAL POLICIES

Additional fiscal policies and details are outlined in Board Resolution #frwmb 01.

ARTICLE VII. CONFLICTS OF INTEREST AND ETHICS

SECTION 7.1 CONFLICTS OF INTEREST

No Board member may vote on any application or appeal that the member participated in personally and substantially in any non-Board capacity.

A Board member who has a personal or private interest in any vote, decision, hearing, appeal, or other Board action shall disclose the fact to the Board at the time of Board action and abstain from the Board action.

SECTION 7.2 DISCRIMINATION, HARASSMENT, AND RETALIATION PROHIBITED

Board members, OE staff, and all participants in Board activity have the right to work free of discrimination, harassment and retaliation when performing services in furtherance of Board responsibilities, whether the offender is a meeting participant, employee, or Board member.

ARTICLE VIII. BOARD POWERS

SECTION 8.1 POWERS AND AUTHORITY OF THE BOARD

- (a) Generally. Subject to the limitations established in the Compact and Ordinance, these Bylaws, and to the laws of the State of Montana, the laws of the Confederated Salish and Kootenai Tribes of the Flathead Reservation (the "Tribes"), the affairs of the Board shall be managed by the five voting members and one non-voting member. In general, the Board shall have the power to promulgate procedures, prescribe forms, develop additional materials and implement amendments thereto as may be necessary and proper to exercise its jurisdiction and carry out its assigned functions under this Compact and the Ordinance.
- (b) Specifically. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Board shall have the authority to employ a Water Engineer to carry out such functions as assigned by the Board pursuant to the Ordinance, including the

supervision of any water commissioners appointed by the Board. The Board shall have the authority, upon unanimous vote of all five members of the Board, to appoint one or more commissioners to provide day-to-day administration of water on the Reservation. Under the jurisdiction of the Board, and as set forth in the Ordinance, the commissioner(s) shall have the authority to administer and distribute water only on the Reservation.

- (c) The Board shall not have jurisdiction over water right ownership updates on water rights appurtenant to fee lands. That authority shall remain with the Department of Natural Resources & Conservation.
- (d) The Board shall cause all Appropriation Rights and Changes in Use authorized by the Board and all uses of water registered pursuant to the Law of Administration to be entered into the DNRC water rights database in a format agreed to by the Board and the DNRC.

SECTION 8.2 AUTHORITY AND RESPONSIBILITIES OF THE OE

- a. Duties. The Engineer shall be an employee of the Board and shall exercise the duties set forth in the Compact and the Ordinance, which include, but are not limited to: the administration of water rights on the Reservation, and the enforcement of the terms of the Ordinance and the conditions of all appropriation rights, determinations, orders, regulations, places, policies, guidelines, and other actions taken by the Engineer or the Board, pursuant to the Compact and Ordinance; coordination with the project manager of the operations of the Flathead Irrigation Project with the administration and enforcement or water rights outside the FIIP; the supervision and management of staff; and the development and submission to the Board of budget requests for approval by the Board and forwarding to the Tribes and State for the purposes of securing necessary appropriations.
- b. Responsibilities. The Engineer shall hold hearings upon notice in proceedings before the Engineer and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Engineer shall **record all hearings and** shall determine the controversy and grant any relief allowed by the Ordinance, including a temporary order. All decisions of the Engineer shall be in writing **with a written justification of the decision**, and shall be served personally or **by certified mail** to all involved in the proceedings before the Engineer.

SECTION 8.3 AUTHORITY TO APPOINT AND REMOVE WATER COMMISSIONERS

- a. Generally. The Board shall have the authority, upon a unanimous vote of all five members of the Board, to appoint one or more commissioners to provide day-to-day administration of water on the Reservation. The compensation for any such commissioner and the identification of those responsible for paying costs associated with the appointment of such commissioner must be established by unanimous vote of all five members of the Board as part of the Board action appointing the commissioner. **Any commissioner appointed shall act under the supervision of the Water Engineer. Water Commissioners**

shall serve at the pleasure of the Board and may be removed by unanimous vote of the Board at any time.

- b. Authority. The commissioners shall have the authority to administer and distribute water only on the Reservation.

SECTION 8.4 BOARD AUTHORITY OVER ORDINANCE [Compact Article IV.J]

The Board may not amend the **Ordinance**. No amendment by the Tribes or the State of the Law of Administration shall be effective unless and until the other makes an analogous amendment. Such modifications are pursuant to, and shall not be deemed an amendment of, this Compact.

ARTICLE IX. BOARD MEETINGS **?APPEALS AND HEARINGS?**

SECTION 9.1 PLACE OF MEETINGS OF BOARD

Regular meetings of the Board shall be generally held on the second Thursday of each month at the physical location of 400 Main Street Southwest, Ronan, MT 59864 and via a virtual link as provided on the Board's website.

NEW SECTION 9.?**?** OPENING A MEETING

Meeting Invocation/prayer

Meeting pledge

Other Meeting opening considerations

Flags to display

Seating Considerations

Meeting Layout Considerations

SECTION 9.2 APPLICATION OF OPEN MEETINGS LAWS

The Board is a public agency for purposes of the applicability of State and Tribal right to know laws. All regular and executive meetings of the Board, including all hearings conducted by the OE or the Board, shall be open to the observation of the public pursuant to State and Tribal open meeting laws. Where there is a conflict of laws, the law that provides for greater openness to the public applies.

Notice of any meeting or meeting materials, including an agenda, shall be posted on the Board's website, or otherwise provided to the public at least 48 hours in advance of any meeting.

SECTION 9.3 REGULAR MEETINGS

A regular meeting occurs when a quorum of the Board is present by means of in person or electronic equipment, to hear, discuss, or act upon a matter over which the Board has

supervision, control, jurisdiction, or advisory power. A regular meeting is open to the observation of the public.

SECTION 9.4 SPECIAL MEETINGS

A special meeting occurs when members of the Board are present by means of in person or electronic equipment to hear, discuss, or act upon a matter over which the Board has supervision, control, jurisdiction, or advisory power; however, not held during the regularly scheduled Board meeting time or on the regularly scheduled date. A special meeting is open to the observation of the public. The Board may not put forward any motions or approve or deny of such motions in a special meeting. The Board may place matters discussed during a special meeting on the agenda for a regular meeting to be voted on by a quorum of the Board.

SECTION 9.5 CLOSED EXECUTIVE MEETINGS

A closed executive meeting occurs when the Board determines **on the record and before closing a meeting**, that the need of individual privacy clearly exceeds the merits of public disclosure. A closed executive meeting can occur by notice or during a regular or special meeting if such issues of individual privacy clearly exceed the merits of public disclosure **or discussion of active litigation strategy**. The Board must reach a majority vote to carry out a closed executive meeting. A closed executive meeting is not open to the observation of the public.

SECTION 9.6 PROCEDURE TO **CLOSE A MEETING**

During a regular or special meeting, the Board may determine to close the meeting and hold a closed executive meeting when the demands of individual privacy clearly exceed the merits of public disclosure. **The Board must determine by majority vote to close a regular or special meeting.** Once the closed executive meeting commences, the Board may reconvene the previous regular or special meeting. If the privacy concern is waived, the Board may continue with the regular or special meeting.

SECTION 9.7 NOTICE OF REGULAR AND SPECIAL MEETINGS

Notice of regular and special meetings shall be provided to the public in a manner and timeframe consistent with the criteria set forth in State and Tribal law. Notice shall be given either by written notice, either by email or website publication, at least 48 hours prior to the date and time of the regular or special meeting, or in person at any prior regularly held Board meeting. The notice shall contain the date, time, and place of the regular or special meeting and the business to be transacted there, and no business other than that stated in the notice shall be transacted at such regular or special meeting.

SECTION 9.8 NOTICE OF CLOSED EXECUTIVE MEETINGS

Notice of a closed executive meeting shall be given either by written notice, either by email or website publication, at least 48 hours prior to the date and time of the executive meeting, or in person at a regularly held Board meeting. The Board may also provide notice

contemporaneously during a regular or special meeting should matters of privacy arise and require a closed executive meeting. The Board shall maintain minutes, or a record of the business conducted during the closed executive meeting, however, the minutes or records would not be available for the public to review.

SECTION 9.9 PARTICIPATION IN MEETINGS BY CONFERENCE TELEPHONE/VIDEO CONFERENCE

Meetings of the Board, whether regular or executive, may be held by means of a conference telephone, online video meeting or similar communications equipment, such that all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

SECTION 9.10 QUORUM; ACT OF BOARD

As set forth in Article IV.1.3 of the Compact, four voting members of the Board shall constitute a quorum. No Board action may be voted upon in the absence of a quorum. All Board decisions shall be made by affirmative vote of a majority of the Board. If a proposal put to a vote of a quorum of Board members ends in a tie vote, the proposal, or matter under consideration is deemed disapproved or denied. Except as otherwise provided in the Compact or Ordinance, if a quorum is present, the act of a majority of members present at the meeting shall be the act of the Board. Each voting member shall have one vote. There shall be no voting by proxy.

Some specific actions require unanimous vote, such as: water right application form actions presented by the OE, Removal of the fifth Board member, Recommendation for removal of an appointed Board member and removal of a Water Commissioner.

A quorum is required for a meeting, but not for a majority vote within that meeting, meaning that abstention of Board members does not inhibit the majority voting process.

SECTION 9.11 BOARD OPERATING RULES

The Board generally operates under Robert's Rules of Order for small boards. Additional operational procedures are set for in Board Resolution #frwmb 02.

SECTION 9.12 ADJOURNMENT

Ordinarily, the Chair or Vice Chair shall request a motion to adjourn before adjourning a meeting. However, a majority of the members present at a meeting, whether or not a quorum is present, may adjourn any Board meeting to another time and place.

SECTION 9.13 REVIEW AND ENFORCEMENT OF BOARD DECISIONS [Compact Article IV.1.6]

Decisions by the Board shall be effective immediately, unless stated by the Board. Persons involved in the proceedings before the Board may appeal against any final decision by the Board

to a Court of Competent Jurisdiction within thirty days of such decision. An appeal of a final decision of the Board shall be styled as a petition for judicial review of an agency decision pursuant to the rules of procedure of the court from which review is sought. The petition for judicial review shall be filed with the Board and the court and served upon all Persons involved in the proceeding before the Board, as well as the Tribes, the State and the United States. Service shall be accomplished according to the requirements of the court's rules of procedure.

Unless a petition is filed within thirty days of a final decision of the Board, as provided in Article IV.I.6.a, any decision of the Board shall be recognized and enforced by any court with personal and subject matter jurisdiction over the matter on petition by any Person, or a successor in interest, before the Board in the proceeding in which the decision was made.

A Court of Competent Jurisdiction in which a timely petition is filed pursuant to Article IV.I.6.a, or any court with personal and subject matter jurisdiction over the matter in which a petition to confirm or enforce is filed pursuant to Article IV.I.6.b, may order such temporary or permanent relief as it considers just and proper subject to the limited waivers of immunity set forth in Article IV.I.8.

An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Article IV.I.6.a, or in which a petition to confirm or enforce is filed pursuant to Article IV.I.6.b, in the manner and to the same extent as from orders or judgments of the court in a civil action.

In any petition to confirm or enforce the Board's decision, the Board shall file with the court to which the appeal is taken for record of the proceedings before the Board within the time and in the manner provided by the court's rules of procedure.

The appellate court shall conduct the review on the record made before the Board. In considering the petition, the Board's legal conclusions shall be reviewed for correctness and its factual findings for abuse of discretion.

In the event that a court determines that it lacks subject matter or personal jurisdiction to rule on a petition for judicial review of a Board decision, the party filing the petition shall be entitled to petition for judicial review from any other Court of Competent Jurisdiction within thirty days from the date of a final court order finding a lack of jurisdiction.

SECTION 9.14 RECORD KEEPING

Notwithstanding any other provisions of law, the Board is a public agency for purposes of the applicability of State and Tribal right to know laws.

The Board shall keep the following records: (1) minutes of all meetings; (2) recordings of all hearings conducted by the Board or the OE; (3) all documents filed with or generated by the Board or Office of Engineer; and (4) any other records required by applicable provisions of Federal, State, or Tribal law, provided that if there is a conflict of laws, the law that provides for more expansive record retention shall apply. All Board records are public records and shall be

made available to the public for inspection under such reasonable terms and conditions as the Board shall establish.

Record retention actions, policies, and procedures are assigned to the OE and will be specifically documented in OE approved policies and procedures as reviewed and approved by the Board.

SECTION 9.15 PUBLIC ACCESS TO RECORDS [Compact Article IV.1.7.e]

All Board records are public records and shall be made available to the public for inspection under such reasonable terms and conditions as the Board shall establish.

Public records shall be in written form or in any other form capable of being converted into written form within a reasonable time. Minutes shall be published and made available on the Board's website and kept in a hard copy or digital record within the Board's place of business, which includes the Board and the OE digital files, long-term storage arrangements, or website.

[New Consider Section or Article for Board Reports you would like to commit to]

ARTICLE X. INDEMNIFICATION AND INSURANCE

SECTION 10.1 IMMUNITY OF BOARD MEMBERS [Compact Article IV.1.7.f]

Members of the Board, the Engineer, any Designee, any Water Commissioner appointed, and any Staff shall be immune from suit for damages arising from the lawful discharge of an official duty associated with the carrying out of powers and duties set forth in the Compact or the Ordinance relating to the authorization, administration, or enforcement of water rights on the Reservation.

[From RN]

In the event of litigation _____ will represent Board members and the Engineer

In the event of litigation _____ will fund counsel

~~SECTION 10.2 INDEMNIFICATION OF TRIBES AND STATE (as PER KP COMMENT)~~

~~Additionally, pursuant to the Compact, the Board shall defend, indemnify, and hold harmless the Tribes and DNRC and the State of Montana and their agents from and against any and all claims, demands, or actions for damages to property or injury to persons or other damages to persons or entities arising out of or resulting from the performance of the work or services funding by the State and the Tribes.~~

SECTION 10.3 INSURANCE

The Board shall have and maintain insurance to indemnify any member against any liability asserted against the Board or incurred by a member in that capacity or arising out of the member's status as a member, whether or not the Board would have the power to indemnify the member against that liability.

ARTICLE XI. AMENDMENTS TO THE ORDINANCE [Compact Article IV.J]

The Board may not amend the Ordinance. No amendment by the Tribes or the State of the Law of Administration shall be effective unless and until the other makes an analogous amendment. Such modifications are pursuant to and shall not be deemed an amendment of the Compact.

ARTICLE XII. BYLAWS: REVIEW AND AMENDMENT

Board bylaws shall be reviewed from time to time, but not less frequently than every **three** years, and if appropriate, revised by the Board. These bylaws and any part thereof, may be amended or repealed, and new bylaws may be adopted by the Board by:

[Option #1 - majority] the affirmative vote of a majority of the total number of members present at a meeting duly held at which a quorum is present; provided, that written notice setting forth the proposed amendments has been given to all members of the Board at least **five** days prior to said meeting

[Option #2 - unanimous] the affirmative vote of all of the total number of members present at a meeting duly held at which a quorum is present; provided, that written notice setting forth the proposed amendments has been given to all members of the Board at least **five** days prior to said meeting

ARTICLE XIII. BOARD RESOLUTIONS

A Board resolution is a written document that indicates a certain action(s) is approved by the Board. A resolution is written as an addendum to the Board's bylaws and documented in the Board's **bylaws Table of Contents** and documented by date and description and published on the Board and the OE's website. **The Board's resolutions typically relate to important Board decisions such as setting forth fiscal policy, water right policy, directives to the OE, or clarifying details of the Ordinance.** A Board resolution can also be used, but is not always required, to indicate that the OE is authorized to negotiate, advocate for, speak for, or sign contracts on behalf of the Board.

Resolutions shall be numbered in order of occurrence. Resolutions can be modified by **majority vote or as otherwise specified in a specific resolution**. Modified resolutions shall retain the original resolution number and be modified by updated language, updated enactment date, updated description if necessary, and updated publication on the Board's website. Resolutions include, but are not limited to: