

BLACKFEET NATION

P.O. BOX 850

BROWNING, MONTANA 59417

(406)338-7179

EXECUTIVE COMMITTEE

EARL OLD PERSON, CHAIRMAN
 ARCHIE ST. GODDARD, VICE CHAIRMAN
 MARVIN WEATHERWAX, SECRETARY
 ELOUISE C. COBELL, TREASURER

TRIBAL COUNCIL

EARL OLD PERSON
 ARCHIE ST. GODDARD
 MARVIN D. WEATHERWAX
 ROLAND F. KENNERLY
 LANE KENNEDY
 BERNARD ST. GODDARD
 LEE WILSON
 GEORGE KICKINGWOMAN
 TED WILLIAMSON

RESOLUTIONNo. 382-88

- WHEREAS, The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation, and
- WHEREAS, The Blackfeet Tribal Business Council has been organized to represent, develop, protect and advance the views, interests, education and resources of the Blackfeet Indian Reservation, and
- WHEREAS, The Blackfeet Tribal Constitution authorizes the Blackfeet Tribal Business Council in Article VI, as amended, of said Constitution, to enact, adopt and implement ordinances for the protection and conservation of natural resources, tribal property and for internal control of all resources, and
- WHEREAS, Pursuant to the aforementioned authority the Blackfeet Tribe, has by special constitutional provisions contained in Article VI (c), (e), (k), (p) and (q), the sovereign authority to enact a Land and Water Ordinance for the above mentioned purposes, and
- WHEREAS, The Blackfeet Tribal Business Council is desirous of implementing the Land and Water Conservation Ordinance for the purposes stated therein, a copy of said Ordinance being attached hereto as Exhibit "A", now

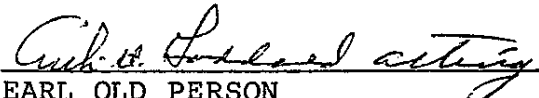
THEREFORE BE IT RESOLVED as follows:

1. That the Blackfeet Tribal Business Council does hereby re-adopt as Ordinance No. 62, the Blackfeet Land and Water Conservation Ordinance, attached hereto as Exhibit "A" and made a part of this Resolution by this reference, on an Interim basis until such time as a permanent Land and Water Conservation Code can be drafted which reflects the contemporary policies of the Blackfeet Tribe.
2. That the Blackfeet Legal Department is directed to work with the Administrator of the Blackfeet Water Department and Special Counsel Jeanne S. Whiteing, to draft a permanent land and water conservation ordinance.

ATTEST:

THE BLACKFEET TRIBE OF THE
BLACKFEET INDIAN RESERVATION


MARVIN D. WEATHERWAX
Secretary


EARL OLD PERSON
Chairman

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Blackfeet Tribal Business Council in a duly called, noticed and convened Special Session, assembled the 12th day of July 1988, with Seven (7) members present to constitute a quorum, and with a vote of Seven (7) members FOR and None (0) members OPPOSED.

(Seal)


MARVIN D. WEATHERWAX
Secretary



IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR

ADM
005

BUREAU OF INDIAN AFFAIRS

BLACKFEET INDIAN AGENCY
BROWNING, MONTANA 59417

May 23, 1980

Memorandum

To: Daniel Boggs, Chairman, Blackfeet Tribal Business Council

From: Superintendent, Blackfeet Agency

Subject: Tribal Resolution No. 127-80 and Ordinance No. 62

Pursuant to the authority contained in the Constitution of the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, Article VI - Powers of the Council, Section 2., Manner of Review, I hereby approve Tribal Resolution No. 127-80 and Tribal Ordinance No. 62, the Blackfeet Land and Water Ordinance.

Michael A. Fairbanks
Superintendent
5/23/80

THE BLACKFEET TRIBE

OF THE BLACKFEET INDIAN RESERVATION

BROWNING, MONTANA 59417

R E S O L U T I O N

TRIBAL COUNCIL

Dan Boggs
Stan Juneau
Dorothy Dragonfly
Earl Old Person
Lee Wilson
Archie St. Goddard
Floyd Gervais
Don Magee
Pat Schildt

EXECUTIVE COMMITTEE

Dan Eggs, Chairman
Stan Juneau, Vice-Chairman
Dorothy Dragonfly, Secretary
Louise C. Cobell, Treasurer

No. 127-80

WHEREAS, The Blackfeet Tribe of the Blackfeet Indian Reservation is organized pursuant to the Indian Reorganization Act of 1934, Section 16(48 Stat. 984), and

WHEREAS, The Blackfeet Tribal Constitution authorizes the Blackfeet Tribal Business Council in Article VI, as amended, of said Constitution to enact, adopt and implement ordinances for the protection and conservation of natural resources, tribal property and for internal control of all resources, and

WHEREAS, The Blackfeet Tribal Business Council is desirous of implementing a land and water conservation ordinance for the purposes stated therein, a copy of said ordinance being attached hereto and made a part of this Resolution as Exhibit "A", now

THEREFORE BE IT RESOLVED AS FOLLOWS:

That the Blackfeet Tribal Business Council does hereby adopt the Blackfeet Land and Water Conservation Ordinance, attached hereto as Exhibit "A", and made a part of this Resolution by this reference.

That the Secretary of the Interior or his duly authorized representative, approve this Ordinance as soon as possible so that the Ordinance may be implemented for the protection of the resources referred to therein.

ATTEST:


THE BLACKFEET TRIBE OF THE BLACKFEET
INDIAN RESERVATION


DOROTHY DRAGONFLY, Secretary


DANIEL C. BOGGS, Chairman

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Blackfeet Tribal Business Council in a duly called, noticed and convened Special Session, assembled the 15th day of May, 1980, with Eight (8) members present to constitute a quorum.


DOROTHY DRAGONFLY, Secretary
Blackfeet Tribal Business Council

O R D I N A N C E N O. 6 2

BLACKFEET LAND AND WATER CONSERVATION

BLACKFEET TRIBE OF BLACKFEET
INDIAN RESERVATION
BROWNING, MONTANA

DECLARATION

WHEREAS, The Blackfeet Tribal Business Council is the governing body of the Blackfeet Tribe of the Blackfeet Indian Reservation, Montana, by authority of the Constitution and By-Laws of the Tribe as approved on December 13, 1935 by the Commissioner of Indian Affairs, and

WHEREAS, Free access to and unhindered control of the Waters of the Blackfeet Indian Reservation is essential to the existence of the Blackfeet Tribe and its people and without such access and control the viability of the Blackfeet Indian Reservation as a permanent home and abiding place will be increasingly threatened and the economic development of the Blackfeet Tribe retarded or destroyed, and

WHEREAS, Historic and continuing encroachment upon Tribal water rights by federal and state agencies and other interests threatens a crisis of increasing magnitude for the Blackfeet Tribe and will result in the irreversible commitment of a substantial portion of Tribal waters to non-Tribal interests, and

WHEREAS, At the present time no effective method exists for managing and protecting the Waters of the Blackfeet Indian Reservation, with the result that uncontrolled use and obstruction of those waters causes over appropriation, waste, interference between uses, unreliable stream levels, destruction of fish and other wildlife habitats and the loss of other economic and environmental amenities needed to insure an acceptable quality of life within the Reservation, and

WHEREAS; The future economic stability and well-being of the Blackfeet Tribe of the Blackfeet Indian Reservation are dependent on the efficient and effective control, development and management of their water resources, and

WHEREAS, It is the general intent of the Blackfeet Tribe to provide for the exercise of its sovereign power to administer its own affairs, (1) to preserve and protect in perpetuity the waters reserved by the Blackfeet Tribe, and (2) to further the present and future development of the Blackfeet Indian Reservation, and

WHEREAS, It is the intent of the Blackfeet Tribe to insure a just and equitable allocation of waters through administrative procedures which comply with all of the requirements of due process of law, and

WHEREAS, The Tribe holds title to the superior rights to use of water for any beneficial purpose for present and future uses, and

WHEREAS, The Tribal Business Council of the Blackfeet Tribe, in Regular Session on the 15th day of May, 1980, adopted this Ordinance which sets forth the Blackfeet Land and Water Conservation Ordinance.

THEREFORE, Be it known to all persons, that, through the enactment of this Blackfeet Land and Water Conservation Ordinance, the Blackfeet Tribe hereby declares and asserts their Winter Doctrine rights to the waters arising on, flowing through, underlying or bordering the Blackfeet Indian Reservation, including all surface water and ground water.

It is hereby further declared that all reserved waters not being beneficially used in accordance with this Ordinance are subject to allocation by the Blackfeet Tribe in its capacity as sovereign over Reservation lands.

Be it further known to all persons using water within the exterior boundaries of the Blackfeet Indian Reservation that from the date of adoption of this Ordinance by the Blackfeet Tribal Business Council there shall be no diversion of surface waters, or withdrawal of ground waters within the Blackfeet Indian Reservation, nor shall any well or other works for such withdrawal or diversion be constructed unless an appropriate application to use such waters has been made to, and a Blackfeet Water Permit has been issued by, the Blackfeet Water Board.

ORDINANCE NO. 62

BLACKFEET LAND AND WATER CONSERVATION

SECTION I. BLACKFEET WATER BOARD

A. Duties of the Board

(1) The Blackfeet Water Board shall be responsible for administering the provisions of the Blackfeet Ordinance and its duties will include the following:

- (a) Enter appropriate orders;
- (b) Grant, deny, modify and revoke water use permits;
- (c) Make determinations of rights;
- (d) Make determinations of availability and need;
- (e) Start proceedings involving penalties;
- (f) In cooperation with the Blackfeet Tribal Land Board negotiate for and propose to the Blackfeet Tribal Business Council the purchase or sale of real or personal property or other interests;
- (g) With the permission of the Blackfeet Tribal Business Council, enter into administrative agreements, exchange information and otherwise cooperate with governmental agencies both on and off the Reservation;
- (h) Insure adequate levels in streams and lakes for wildlife conservation and other values;
- (i) In cooperation with the Planning Program determine existing and foreseeable uses of and needs for water and other related resources;
- (j) In cooperation with the Planning Program reserve and set aside water for utilization in the future;
- (k) Cooperate with other committees of the Blackfeet Tribal Business Council;
- (l) Take over actions provided for under this Ordinance.

B. Appointment and Composition of Board

(1) The Blackfeet Water Board shall be composed of five (5) members who shall be selected from a list submitted by the Blackfeet Tribal Land Board to the Business Council, subject to confirmation by a two-thirds (2/3) vote of the Business Council. Board members shall not hold any other tribal elective or appointive office during their

tenure on the Board. At least one (1) Board member shall reside in each of the Tribal Districts.

C. Term of Office of Board Members

(1) The initial members of the Board will serve the following term: one member shall be designated at the time of appointment as serving for one year; two members shall be designated at the time of appointment as serving for two years; two members shall be designated at the time of appointment as serving for three years. Thereafter all appointees to the Board, other than interim appointees, shall serve three years.

D. Compensation of Board Members

(1) Board members shall be compensated for service on the Board and reimbursed for travel expenses at a rate commensurate with that of the Blackfeet Tribal Business Council.

E. Vacancies on the Water Board

(1) Vacancies on the Board shall be filled for the remainder of the unexpired term through interim appointment in accordance with the procedures set forth in Section 1.B.

F. Removal of Board Members

(1) A Board member shall serve his full term unless he is removed from the Board in accordance with the provisions of this Section.

(2) Should a Business Council member have substantial evidence showing that a Board member has been extremely negligent or suffered severe impropriety in the performance of his duties, such Business Council member shall enter a motion calling for a Council hearing on removal of the Board member in question. Upon support of the motion by a majority of the Business Council, a Removal Hearing shall be scheduled.

(3) The Board member whose removal is being considered shall have a right to be present and represented by counsel at the Removal Hearing.

(4) At the Removal Hearing the Council member having moved for such hearing shall present all evidence, testimony and argument supporting his allegation that the Board member has been either extremely negligent or suffered severe impropriety in the performance of his duties. The Board member or his counsel may present all evidence, testimony and argument pertinent to disproving allegations or extreme negligence or severe impropriety.

(5) Upon conclusion of the Removal Hearing, a vote shall be taken on removal of the Board member. Upon a vote of two-thirds (2/3) of the Council in favor of removal, the Board member shall be deemed removed from the Board. A lesser vote in favor of removal shall have no effect upon the Board members' tenure of office.

(6) A vacancy caused by removal shall be filled in accordance with Section 1.E.

G. Reserves

In connection with a determination of availability and need or in connection with other actions taken under this Ordinance, the Water Committee may establish within particular areas dependent upon common supplies, reserve supplies which, although they may be subject to existing uses on an interim basis, are set aside for future Tribal and other needs.

H. Designations of Local Management Areas and Subareas

The Water Committee may, upon the recommendation of the Water Administrator or at the request of any person, isolate and define, with the surface and ground water systems in which individual water users are to some degree related by reason of common supply "local management areas and subareas" for specialized administration under this Ordinance.

I. Appointment of Water Master

(1) The Blackfeet Water Board shall employ a technically qualified water master familiar with the principles of hydrology, water management and irrigation, and able to take water measurements in streams and in open and closed conduits of all characters, by the usual methods employed for the purpose.

J. Conditions of Employment of Water Master

(1) The Water Master shall be employed under a contract which shall not be subject to cancellation by the Board except upon unanimous agreement by its members that such Water Master has been negligent in the performance of his duties.

(2) The Water Master shall be compensated at a rate commensurate to that received by officials holding similar management positions with the Blackfeet Tribe.

K. Water Administrator - Staff

The Water Administrator may, from time to time, propose to the Blackfeet Tribal Business Council the employment of additional persons to serve as members of his staff. Their salaries and the terms of their employment shall be set by the Blackfeet Tribal Business Council.

L. Water Administrator - Information Function

It shall be the duty of the Water Administrator and his staff to gather for their own use and for submission to the Water Committee information related to the waters administered under this Ordinance. To this end the Water Administrator shall:

(1) Collect, organize and catalog existing information and studies available from all sources, both public and private, pertaining to the Waters of the Blackfeet Indian Reservation.

(2) Develop such additional data and studies pertaining to water and water resources as are necessary to accomplish the objectives of this Ordinance.

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(3) Solicit public comment and obtain expert advice when appropriate.

(4) Investigate water uses and other activities affecting the Waters of the Blackfeet Indian Reservation to determine whether they are in compliance with this Ordinance, and with applicable regulations, orders, determinations, permits, water quality standards, etc. issued under this Ordinance.

(5) Investigate water quality whenever appropriate.

M. Water Administrator - Enforcement

It shall be the duty of the Water Administrator and his staff to insure compliance with this Ordinance, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken under this Ordinance, as well as the policies and guidelines expressed throughout the Ordinance. To this end the Water Administrator and his staff may:

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

(2) Initiate by citation and other means, as provided herein, proceedings involving penalties for violations of this Ordinance and the actions taken under this Ordinance.

(3) 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 necessary, and elicit testimony and data concerning actions affecting the quality or quantity of the Waters administered under this Ordinance.

N. Water Administrator - Advisory Function

In addition to the duties of the Water Administrator and his staff with respect to information and enforcement, the Water Administrator and his staff may, from time to time, make proposals to the Water Committee concerning the following:

(1) The advisability of establishing local management areas and subareas as provided elsewhere in this Ordinance.

(2) The advisability of making determinations of availability and need.

(3) The advisability of taking other actions and adopting other plans and methods in order to optimize available water supplies and minimize pollution and thermal degradation;

(4) The advisability of purchasing or selling any interest including interests in real or personal property.

(5) The advisability of participating in law suits and other actions:

(6) The advisability of entering into administrative agreements and other cooperative ventures with various agencies outside of the Blackfeet Tribal Business Council and the Water Board.

(7) The advisability of amending or otherwise changing various sections of this Ordinance or adding new sections.

(8) The advisability of taking any other action which will further the purposes and increase the effectiveness of this Ordinance.

SECTION II. REQUEST FOR PERMISSION TO CONTINUE EXISTING USES:
DECLARATIONS OF USE AND INTERIM USE PERMITS

A. Filing of Declaration of Use

(1) The Board shall cause to be published and posted in appropriate public places a notice informing all persons using water within the Blackfeet Indian Reservation that all rights to continued use of such waters are dependent upon filing of a Declaration of Use with the Blackfeet Water Board. Such notice shall be published in a local newspaper of general circulation for at least fifteen (15) days, and shall contain all such additional information as is necessary to protect the rights of existing water users.

(2) Municipal and domestic users shall file Declarations of Use, including new uses and increased uses, with the Board for informational purposes to ascertain the quantity and location of water use on the Blackfeet Indian Reservation.

(3) Declaration of Use must be filed within 180 days of the date of the first publication of such notice.

(4) Each Declaration of Use shall state the amount, place of diversion and initial date of existing uses, and any additional information which the Board deems necessary. For this purpose a Declaration of Use form shall be made available to water users by the Blackfeet Water Board.

(5) Declaration of Use must be accompanied by a Five Dollar (\$5.00) filing fee.

(6) Water users failing to file Declarations within the designated time period shall be treated as new water users, and as such shall have no rights to the use of waters of the Blackfeet Indian Reservation other than as acquired under Section III of this Ordinance.

B. Description of Use and Application for Permit - Contents

Descriptions of Use and Applications for Permits shall be on forms provided by the Water Board and shall include the following information, in addition to any other information deemed necessary by the Water Committee.

(1) The name and mailing address of the claimant;

(2) The name of, if available, 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 each month of the year;

(4) A legal description, if such is readily available, and other description reasonably describing the point or points of withdrawal;

(5) A description of the method or methods of diversion or withdrawal, including well logs and other data concerning particular works used, constructed, or to be constructed;

(6) The purpose of purposes for which water is or will be used;

(7) A description of how water will 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 stockwatering;

(8) The best estimate reasonably possible of how much water will be returned to the source or sources, how, when, at what point or points, and with what changes in quality and temperatures;

(9) The estimated date on which the use or uses were commenced or will be commenced;

(10) If a use is an existing use, the history of the use, including the names of any predecessors in title and the dates of their ownership, if known, and including a description of their uses of water;

(11) If any pre-existing right is claimed, a description of any documents or programs upon which it is based, any statute or statutes or legal doctrine upon which the claim is based, and any pertinent litigation creating or affecting the claim;

(12) If a pre-existing use or uses are described, an indication whether problems of water levels and supply or problems of declining quality have been encountered in the past;

(13) The water user's plan for future development of his water use or uses and related activities.

C. Legal Effect of Declaration of Use

(1) Filing of a Declaration of Use shall constitute application to the Blackfeet Water Board for issuance of both an Interim Use Permit and a Blackfeet Water Permit for continuance of water uses in existence at the time of adoption of this Ordinance.

(2) It is the intent of the Tribe that such uses continue whenever feasible in light of standards and procedures promulgated by the Blackfeet Water Board.

D. Interim Use Permits

(1) Upon filing of a Declaration of Use, the Blackfeet Water Board shall issue to the declarant an Interim Use Permit for the quantum of water validly declared. The validity of a Declaration of Use shall be determined by the Water Administrator.

(2) Such Interim Use Permit shall be valid in force and effect until

the declarant is issued or denied a Blackfeet Water Permit.

(3) Acceptance of a Declaration of Use and issuance of an Interim Use Permit does not constitute a determination of any claim to the right to use of waters as between the water use declarant and the Tribe, or as between the water use declarant and one or more other water users. Filing of a Declaration of Use and issuance of an Interim Use Permit only authorize the declarant to continue existing uses of water insofar as there are consistent with the rights of the Tribe and other persons.

E. Public Notice of All Declarations

(1) At the end of a 180 day period during which Declarations of Use shall be submitted to the Board, the Board shall prepare a compilation basin by basin listing of all validly declared existing uses, including pertinent information as to amount of water uses and place of diversion. This listing shall be posted in appropriate public places and published in a local newspaper of general circulation for fifteen (15) days.

(2) The Board shall post and publish with the listing a statement to the effect that, by having filed Declarations of Use, the named persons, with the exception of municipal and domestic users, have applied for issuance of Blackfeet Water Permits from the Blackfeet Water Board, and that any persons whose rights will be adversely affected by granting of a Permit authorizing a declared use may protest such application in accordance with the provisions of this Ordinance.

SECTION III. REQUEST FOR PERMISSION TO INITIATE NEW USES

A. Applications for Blackfeet Water Permits

(1) From the date of adoption of this Ordinance any person desiring to commence a new water use within the Blackfeet Indian Reservation must file an Application for a Blackfeet Water Permit with the Blackfeet Water Board.

(2) Such new use may not be commenced until a Blackfeet Water Permit has been issued by the Board; and the new use must fully conform with the terms and conditions of such permit.

(3) Each application shall state the amount, place of diversion, and initial date of existing uses, and any additional information which the Board deems necessary. For this purpose an application form shall be made available to water users by the Board.

(4) Applications must be accompanied by a Five Dollar (\$5.00) filing fee.

(5) Water users failing to file an application for a new water use prior to diverting such waters shall be in violation of this Ordinance and as such shall have no rights to the use of waters of the Blackfeet Indian Reservation other than as acquired under Section II of this Ordinance.

B. Notice of Publication of Applications for Blackfeet Water Permits

(1) Upon filing of an Application for a Blackfeet Water Permit, the Board shall cause to be published for fifteen (15) days in a local newspaper of general circulation a notice of the name of the applicant and the quantum and place of diversion of waters with respect to which the Application is filed. Included in the notice shall be a statement that any person who believes that his rights will be adversely affected by granting of the Application may file a protest with the Blackfeet Water Board within thirty (30) days of the date of first publication of the notice, in accordance with the provisions of this Ordinance.

SECTION IV. REVIEW OF DECLARATIONS OF USE AND APPLICATIONS FOR BLACKFEET WATER PERMITS

A. Due Regard for Rights of Individuals

(1) In reviewing Declarations of Use and Application for Blackfeet Water Permits the Board will fully respect reasonable water uses by non-Indians in addition to the interests of tribal members in tribally held Winter Doctrine rights.

B. Procedures for Review of Declarations of Use and Applications for Blackfeet Water Permits

(1) In determining whether to grant or deny a Blackfeet Water Permit to any declarant or applicant, the Board shall consider all existing and proposed uses in a hydrologic basin, and the reserved rights and beneficial needs of the declarant or applicant.

(2) In reviewing Declarations of Use, the Board shall accord due consideration to the desirability of permitting existing uses to continue whenever these are consistent with procedures it promulgates for reviewing applications.

C. Time Within Which Board Must Act Upon Declaration or Application

(1) Blackfeet Water Permits applied for by filing of a Declaration of Use must be issued or denied within one (1) year of the end of the filing period for such Declarations. Declarants shall be notified of Board action by certified mail.

(2) Review of Applications for Blackfeet Water Permits need not commence until the period has expired for action upon Declarations of Use. Beginning at such time, the Board must move with reasonable diligence in acting upon all Applications. Applicants shall be notified of Board action by certified mail.

SECTION V. ISSUANCE OF BLACKFEET WATER PERMITS

A. Duration

(1) Blackfeet Water Permits will be valid in force and effect for ten (10) years from the date of issuance.

B. Terms and Conditions

Each water permit issued pursuant to this Ordinance 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 Ordinance and to assist in the effective administration of this Ordinance. This may include, among other things, conditions concerning:

- (1) The source from which water may be withdrawn;
- (2) The quantity of water which may be withdrawn during any particular time;
- (3) The point or points of diversion or withdrawal;
- (4) The method or methods of diversion or withdrawal;
- (5) The purposes for which water may be used;
- (6) The method of application;
- (7) The location and purpose of application, including acreage for crops and number of stock for stock watering;
- (8) The quantity and quality of return flow;
- (9) The time period in which water may be used;
- (10) Schedules for withdrawal or diversion, including optional rotation schedules;
- (11) Provisions for surface or ground water storage of surplus flows
- (12) Provisions for increasing the efficiency of diversion or withdrawal and application;
- (13) Provisions for maintaining minimal levels for fish, wildlife, recreational and aesthetic values;
- (14) Provisions for insuring minimum pumping and diversion levels with respect to both surface and underground water;
- (15) Provisions designed to maintain head and pressure in surface and underground water;
- (16) Provisions designed to prevent or reduce obstruction of surface and underground water flows;
- (17) Provisions designed to prevent or reduce obstruction of fish runs;
- (18) Provisions designed to minimize pollution and thermal degradation;
- (19) Provisions designed to insure optimum recharge of aquifers;
- (20) Provisions designed to prevent or reduce loss from losing strea

and aquifers;

(21) Provisions designed to define and limit interbasin transfers from shifting aquifer boundaries;

(22) Provisions for some degree of overdraft from aquifers when short term recharge is not available or appropriate;

(23) Provisions designed to prevent or reduce interference between competing users or water sources whether above or below ground;

(24) Provisions to insure long term development and prevent untimely quantification;

(25) Penalties for misuse;

(26) Provisions to prevent interference with Tribal administration of water;

(27) Other provisions necessary to insure conformity with this Ordinance and actions taken hereunder;

(28) Issuance of a Blackfeet Water Permit to a declarant or applicant shall constitute permission of the Blackfeet Tribe and of the Secretary of the Interior for such declarant or applicant to use, for the duration of the permit, that quantum of water specified for the purposes and in the manner indicated.

C. Modification of Permit While in Force

(1) For reasons of water scarcity or to promote more efficient use of the water resources of the Blackfeet Reservation, the Board is empowered to modify a Permit at any time. Such modification may be with respect to any of the terms or conditions of the Permit, including the quantum of permitted water use the means of diversion. In issuing such modification orders the Board shall exercise due care to respect justly and equitably the rights of all permittees.

(2) The Board shall notify an affected water user of its intention to modify his Water Permit at the earliest possible time.

(3) Subject to the above conditions, it shall be the established policy of the Board not to modify a Permit in any manner while it remains valid in force and effect.

SECTION VI. RENEWAL OF BLACKFEET WATER PERMITS

A. Review of Permits

(1) During the tenth (10th) year that a Permit is in force, the Blackfeet Water Board shall review its terms and conditions to determine the desirability of granting a ten (10) year renewal thereof. Absent a compelling need for denial or modification, a Permit shall be renewed as originally issued.

B. Notice of Proposed Renewal

(1) Not less than sixty (60) days before expiration of a Permit

the Board shall notify the permittee by certified mail of its proposed action, including any modifications which the Board is considering in the renewed Permit. No such modification shall adversely affect other holders of valid Permits.

C. Renewal Fee

(1) Upon receipt by the Board of a Three Dollar (\$3.00) renewal fee from the permittee, the renewed permit shall be issued in accordance with the terms and conditions decided upon by the Board.

D. Failure of the Board to Act

(1) Failure of the Board to notify a permittee of its decision pursuant to Section VI.B.(1) as to renewal of his Permit will serve to renew automatically for ten (10) years the existing Permit.

E. Protest of Proposed Board Action on Renewal

(1) A Board decision with respect to renewal of a Permit may be protested by the affected permittee within thirty (30) days of notice by certified mail of the proposed board action, in accordance with the provisions of this Ordinance. Until final Board action is taken on such protest, the outstanding Permit shall remain in force.

SECTION VII. PROTESTS

A. Persons Who May Protest

(1) Any person who reasonably believes that issuance of a Permit applied for will conflict with his legally established or contemplated uses of water may file a protest with the Blackfeet Water Board within thirty (30) days of the first public notice of the Application.

(2) Any applicant who objects to Board action on his application, and who has not otherwise had an opportunity to appear before the Board in a protest hearing, may file a protest within thirty (30) days of notification of Board action on his application.

(3) A permittee who objects to denial of, or terms or conditions for, renewal of an outstanding permit may file a protest within thirty (30) days of notification of proposed Board action.

B. Contents of Protest

(1) All protests shall include a statement of the interest of the protestor in the matter, a concise statement of facts which are deemed pertinent to the Board's deliberations, and reasons by the proposed Board action should be reconsidered.

C. Procedure for Filing of Protests

(1) All protests shall be filed in triplicate and shall be accompanied by a Five Dollar (\$5.00) filing fee.

D. Notification of Applicant and Response to Protest

(1) Upon filing of a protest by other than an applicant or

permittee the Board shall send a copy of such protest by certified mail to the affected applicant.

(2) The applicant shall have a right to file with the Board, a written response to the protest within fifteen (15) days of his notification. A copy of such response shall be made available to the protestor.

E. Water Administrator Review

(1) Upon expiration of the time periods for filing a protest and response, the Water Administrator shall review all materials. Should he deem it necessary for ascertainment of pertinent facts, the Water Administrator may conduct his own investigation. Any and all protestors and the applicant shall fully cooperate with the Water Administrator in the performance of these duties.

(2) Upon completing his study of the matter, the Water Administrator shall submit to the Board his findings of fact, recommended conclusions of law, and a suggested order based thereon. A copy of these materials shall be sent by certified mail to each protestor and the applicant. The burden of proving water availability for a new permit rests with the applicant.

SECTION VIII. PROTEST HEARING BY WATER BOARD

A. Scheduling of Protest Hearings

(1) Upon receiving the Water Administrator's findings of fact, recommended conclusions of law, and suggested order, the Board shall schedule a hearing at which any and all protestors and the applicant shall have a right to be present and to be represented by counsel.

B. Procedure for Hearings

(1) The Board shall conduct hearings sitting as a body, with the Water Administrator serving as a hearing officer. No hearing shall be held with less than three (3) Board members present. No Board member may sit at a hearing on a matter with respect to which he has a conflict of interest.

(2) If requested by a protestor or applicant, the Water Administrator shall hire, at the expense of such protestor or applicant, a court reporter to make a transcript of the hearing.

C. Material to be Presented at Hearing

(1) All evidence, testimony and argument pertinent to consideration of the protested application will be heard by the Board.

D. Decision by the Board

(1) At the conclusion of the hearing, the Board shall weigh all evidence, testimony and argument which has been presented to it. In so doing the Board shall accord a strong presumption of validity to the Water Administrator's findings of fact.

(2) Upon completion of its deliberations the Board will issue in writing of its findings of fact, conclusions of law, and order setting forth the terms and conditions upon which a Blackfeet Water Permit, if any, will be issued to the applicant.

(3) A copy of the Board's decision shall be supplied to all protestors and the applicant, accompanied by a notice informing all protestors and the applicant of their right to appeal to the Tribal Court of the Blackfeet Indian Reservation and any other court which may have jurisdiction over the person and subject matter of the dispute.

SECTION IX. ENFORCEMENT OF ORDINANCE - PERMITTEES

A. Violation of Permit

(1) Any person who diverts water in amounts exceeding that set forth in his Permit or uses any water in quantity, for purposes, at places or in a manner other than those authorized in his Permit will be considered in violation of his Permit.

(2) Such acts in violation of a Blackfeet Water Permit may be cause for cancellation as set forth hereafter.

B. Issuance of Warning

(1) Upon finding that a water user is violating one or more of the terms or conditions of his Blackfeet Water Permit, the Water Administrator shall send such permittee by certified mail, a Warning setting forth the alleged violation and notifying said permittee that his water permit will be subject to cancellation should there be further violations.

(2) A copy of such Warning shall be retained by the Water Administrator.

C. Notification of Cancellation Hearing

(1) The Water Administrator shall inform the Board should he find that a permittee has continued to violate a term or condition of his permit despite issuance of a warning.

(2) The Board shall then notify such permittee of the alleged violations and of the date of a Cancellation Hearing at which the permittee must appear to show cause why his permit should not be cancelled.

(3) Failure of an alleged violator to appear at such a Cancellation Hearing shall be cause for cancellation of his Blackfeet Water Permit.

D. Conduct of Hearing

(1) The chairman of the Board shall preside over the Cancellation Hearing.

(2) The Water Administrator shall present evidence, testimony, or argument substantiating his findings that the permittee has violated one or more of the terms or conditions of his Permit.

(3) The permittee or his counsel may present any evidence, testimony or argument which will establish that he has not violated such term or condition of his Permit.

E. Decision of the Board:

(1) Upon completion of the Cancellation Hearing, the Board shall issue a written decision, including findings of fact, conclusions of law, and order.

(2) In accordance with the Board's findings of fact and conclusions of law, the order shall either preserve the outstanding Permit or cancel such Permit in whole or in part.

SECTION X. ENFORCEMENT OF ORDINANCE

A. Non-Permit Water Users

(1) The Board is empowered, on behalf of the Blackfeet Tribe, in conjunction with the Secretary of the Interior, to take any and all legal steps necessary to enforce the provisions of this Code against any person using any water within the exterior boundaries of the Blackfeet Indian Reservation other than in accordance with a duly issued Blackfeet Water Permit

(2) Domestic and municipal water users are subject only to those provisions of the Ordinance regarding the filing of Declarations of Use.

XI. NOTICE OF ENACTMENT AND EFFECT

A. Notice Required

To insure that all persons and entities affected by this Ordinance are given adequate notice of the enactment and effect of this Ordinance, the Water Board created herein shall, within fifteen (15) days after the effective date of this Ordinance, provide for public notice of its enactment and effect in accordance with the provisions of this Chapter.

B. Contents of Notice

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

NOTICE! AFTER _____ NO PERSON OR PUBLIC OR PRIVATE ENTITY OF ANY KIND SHALL BE ENTITLED TO MAKE ANY USE OF OR OTHERWISE AFFECT THE WATERS OF THE BLACKFEET INDIAN RESERVATION, AS DEFINED IN CHAPTER I OF THE BLACKFEET WATER ORDINANCE, UNLESS SUCH USE IS AUTHORIZED BY A PERMIT AS PROVIDED FOR BY THE BLACKFEET WATER ORDINANCE. NO OTHER WATER RIGHTS OF ANY KIND, FROM WHATEVER SOURCE, SHALL BE RECOGNIZED. APPLICABLE PORTIONS OF THE BLACKFEET WATER ORDINANCE ARE QUOTED BELOW. THE NECESSARY FORMS FOR PERMIT APPLICATIONS HAVE BEEN INCLUDED WITH THIS NOTICE

WHENEVER POSSIBLE. SUCH FORMS MAY ALSO BE PROCURED FROM THE BLACKFEET WATER OF THE BLACKFEET INDIAN RESERVATION AT THE FOLLOWING ADDRESS OR TELEPHONE NUMBER. Blackfeet Tribal Offices, P. O. Box 850, Browning, Montana 59417 - (406) 338-~~221~~ 7278

COMPLETE COPIES OF THE BLACKFEET WATER ORDINANCE ARE ALSO AVAILABLE FOR SALE AT THE ABOVE ADDRESS.

(2) In addition to the above-quoted statement, such public notice shall also contain, prominently displayed, the section of this Ordinance declaring the prior and supreme rights and jurisdiction of the Blackfeet Tribe, defining the waters of the Blackfeet Indian Reservation, describing the procedures to be followed in obtaining permits, including interim permits, and setting forth penalties for use of water without authorization under this Ordinance.

(3) In addition, the Blackfeet Tribal Business Council and the Water Board may include in such public notice additional information deemed necessary in order to assure adequate notice of the enactment and legal effect of this Ordinance.

C. Notice - How Given

The Water Board shall give notice of the provisions of this Ordinance as follows:

(1) It shall cause the notice provided above to be placed in at least one regularly published newspaper in both Glacier and Pondera Counties and in at least one newspaper having a circulation of more than 50,000 copies for each weekday in Cascade County, at least once every other week over a 12-week period.

(2) It shall cause the notice provided above to be placed in a prominent and conspicuous location in the County Courthouse of Pondera County and in the County Courthouse of Glacier County, and at the Tribal Office. The Board may post notices in other locations as it deems necessary.

(3) It shall acquire from the County Treasurers of Glacier and Pondera Counties the names and addresses of the recipients of any tax statements for real property located on the Reservation and shall mail a written notice to such persons as soon as possible and no more than thirty (30) days after the effective date of this Ordinance, together with a statement that it shall be the duty of the recipient of the notice to forward same to the beneficial or other owner of the property. The Board shall likewise obtain the names and addresses of any owners of beneficial trust interests or other interests known to the Superintendent, Blackfeet Indian Agency, Bureau of Indian Affairs and mail similar notices to such persons.

(4) The Board shall, to the extent it is reasonably feasible to do so, cause a written notice to be posted on all tracts of land within the Reservation known to be owned, or claimed or occupied by other than the Blackfeet Tribe of the Blackfeet Indian Reservation.

(5) The Board may take any other steps and post any other notices it deems necessary to provide notice of the provisions of this Ordinance.

(6) Whenever possible, forms for "Description of Use and Application for Permit" as provided by this Ordinance, shall be included with notices in order to facilitate compliance with this Ordinance.

SECTION XII. GUIDELINES FOR ADMINISTRATION

A. General Policy Provisions

In taking any action under this Ordinance, the Water Board shall be guided by the following basic policy guidelines:

(1) Whenever practicable, actions taken should benefit the Blackfeet Tribe and its members and further the objections for which the Blackfeet Indian Reservation was created, namely, to provide a permanent home and abiding place for the Blackfeet Tribe and its members, both now and in the future. Alternatives to existing and proposed uses are to be considered whenever practicable in order to achieve this goal. Included in those alternatives shall be the option to restrict or prohibit entirely any further use of water for any reason. If there is presented to the Water Board a conflict between use and/or users, the Water Board shall resolve the conflict in favor of the use most consistent with maintaining and developing the Blackfeet Indian Reservation as a permanent home and land base for Indian people.

(2) In taking any action under this Ordinance which may impose substantial economic hardship on persons or entities presently using water; or which threatens degradation of other economic, cultural, historic, aesthetic, natural and environmental values, the Water Board Water Administrator, or their designees, shall in reaching their decisions, carefully consider and give weight to:

The economic dislocation and hardship which will be imposed by its actions;

The investment in time, money and other resources made by the parties affected in reliance upon the existing system of distribution and use of water;

Such other burdens as may be imposed by the action;

And the nature and extent of degradation of other economic cultural, historic, aesthetic, natural and environmental values.

(3) The Water Board Water Administrator, or their agents, when considering a proposed action, shall balance these adverse effects against the benefits to tribal and other interests which are advanced as justifying the proposed action, consider alternatives to the proposed action which will lessen adverse effects, and, shape any final action so that its adverse effects will be minimized.

Unless otherwise provided, the following uses shall,

when conflicting, be given preference in the other in which they are listed, unless exceptions are made by the Water Board.

Domestic Uses;
Municipal Uses;
Stock Watering;
Fish and Wildlife;
Agriculture;
Recreation;
Industry;
Power; hydroelectric
Other Uses.

B. Guidelines for Making Most Effective Use of Available Resources

In addition to the policy guidelines contained in the previous section, the Water Board should take appropriate actions, in its discretion, to:

- (1) Insure an adequate supply;
- (2) Maintain water levels or diversion and withdrawal systems;
- (3) Maintain head and pressure in surface and underground water;
- (4) Prevent or reduce obstruction of surface and groundwater flow;
- (5) Increase efficiency of diversion and withdrawal, increase efficiency in application, increase return flow, prevent waste and maximize use of the available supply;
- (6) Create and enhance the efficiency of natural and artificial surface and underground storage;
- (7) Insure optimum recharge of aquifers;
- (8) Prevent or reduce loss from losing streams and aquifers;
- (9) Define and limit interbasin transfers from shifting aquifer boundaries;
- (10) Provide for some degree of overdraft from aquifers when short term recharge is not advisable;
- (11) Prevent or reduce interference between competing users of water sources, whether above or below ground;
- (12) Prevent or reduce pollution or the effects of pollution;
- (13) Prevent or reduce thermal degradation or the effects of thermal degradation;
- (14) Shape use of available supplies to promise economic, scenic, aesthetic, historical, cultural, natural or domestic values;
- (15) Provide for long-term development and prevent untimely quantification;

- (16) Penalize misuse;
- (17) Prevent interference with Tribal administration of water;
- (18) Otherwise insure conformity with the provision of this Ordinance:

C. Additional Policy Guidelines

(1) Rivers and streams of the Reservation should be retained with base flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic, and other environmental values and navigational values. Lakes and ponds should be retained substantially in their natural conditions. Withdrawals of water which would conflict therewith should be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(2) Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given to means and methods for protection of fishery resources in the planning for and construction of water impoundment structures and other artificial obstructions.

~~SECTION XIII. DEFINITIONS~~
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SECTION XIII. DEFINITIONS

- A. Business Council: The governing body of the Blackfeet Tribe.
- B. Secretary: The Secretary of the Interior or his designated representative.
- C. Board: The Blackfeet Water Board which is to administer the provisions of the Blackfeet Land and Water Conservation Ordinance.
- D. Water: Water arising on, flowing through, underlying or bordering the Indian Reservation, including, but not limited to, ground water, springs, wells, natural lakes or ponds used or having a potential future use for domestic, stock, agricultural, aquacultural, recreational, fisheries, geothermal, hydro-electric, municipal, and industrial uses, with or without purification.
- E. Declaration of Use: A written declaration filed with the Blackfeet Water Board by all persons using waters of the Blackfeet Indian Reservation at the time of approval of this Ordinance containing information pertinent to granting of permission for continued use of such waters. Such declaration, with the exception of municipal and domestic uses, constitutes application to the Blackfeet Water Board for issuance of both an Interim Use Permit and a Blackfeet

- F. Interim Use Permit: Authorization by the Blackfeet Tribe to continue a validly declared use until a decision is made by the Blackfeet Water Board as to issuance of a Blackfeet Water Permit.
- G. Blackfeet Water Permit: Constitutes permission of the Blackfeet Tribe for use of the quantum of water specified in such Permit, subject to all conditions and terms contained therein.