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May 31, 1990

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Water Resource  
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MAY 02 1994  
BAD Water Resources  
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The Honorable Stan Stevens  
Governor  
State of Montana  
Capital Station  
Helena, Montana 59620

JUN 21 1994

MONTANA D.N.R.C.  
HAVRE FIELD OFFICE

Re: Instream flow schedule in Fort Peck-Montana Compact  
(119.45)

Dear Governor Stevens:

In 1985, the Montana legislature adopted the Fort Peck-Montana Compact, a water rights settlement negotiated between the Montana Reserved Water Rights Compact Commission and the Assiniboine & Sioux Tribes of the Fort Peck Reservation. (See Senate bill No. 467, Chapter No. 735, May 15, 1985.) The Tribes also adopted this Compact. We serve as general counsel to the Tribes.

Article III L of the Compact provides that the Tribes may "establish a schedule of instream flows to maintain any fish or wildlife resource in those portions of streams... which are tributaries of the Missouri River that flow through or adjacent to the Reservation."

I am enclosing Resolution No. 681-90-5 which was adopted by the Tribes on May 7, 1990. This Resolution establishes a monthly schedule of the instream flows for various drainages on the Fort Peck Reservation. The maximum flows established are 58,503.59 acre feet per year. The Compact provides that "water remaining in a stream to maintain instream flows pursuant to such a schedule shall be counted by the Tribes as a consumptive use of surface water." The Tribes will undertake to establish procedures for measuring the water flowing in each stream where an instream flow has been established. In years where there is insufficient water remaining in a particular stream to satisfy the instream flows

The Honorable Stan Stevens  
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established by the Tribes, the consumptive use for that year would of course be less than the full 58,503.53 acre feet.

I should be pleased to answer any questions, or to discuss the instream flow schedule further with you or with officials of the State of Montana.

Kind personal regards.

Sincerely,

/s/ Reid Peyton Chambers

Reid Peyton Chambers

RPC:bnm

Enclosure

cc: Chairman Wetsit  
Secretary Brien  
Mr. Tom R. Escarcega ✓  
Senator Jack Galt  
Marsha Rundle, Esquire  
Mr. Paul B. Holden, President

Schedule A Monthly Instream Flows for Drainages on the Fort Peck Reservation

Stream	Flow Measure	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Acres ft/ Yr
1. In the mainstream of Big Muddy Creek, gauged at the USGS gauging station near Culbertson, Montana (Station No. 06185110)	cfs	3.90	1.00	0.20	0.10	0.30	3.50	50.40	22.20	15.10	12.80	2.90	2.10	6902.48
	Acre ft/mo.	239.80	59.50	12.30	6.15	16.66	215.21	2999.01	1365.02	898.51	787.04	178.31	124.96	
2. In the mainstream of the Poplar River, gauged at the USGS gauging station near Poplar, Montana (Station No. 06181000)	cfs	20.40	23.00	12.80	4.80	7.90	179.00	241.00	56.30	50.00	25.70	13.50	10.00	38932.97
	Acre ft/mo.	1254.35	1368.60	787.04	295.14	438.74	11006.3	14340.5	3461.75	2975.20	1580.23	830.08	595.04	
3. In the mainstream of Porcupine Creek, gauged at the USGS gauging station near Nashua, Montana (Station No. 06175000)	cfs	0.10	0.10	0.20	0.10	0.50	46.50	31.10	6.90	6.10	2.00	0.10	0.10	5690.38
	Acre ft/mo.	6.15	5.95	12.30	6.15	27.77	2859.17	1850.58	424.26	362.98	122.98	6.15	5.95	
4. Box Elder Creek, gauged near the mouth of the creek, above its confluence with the Poplar River.	cfs	0.38	0.38	0.30	0.25	0.36	5.70	5.68	1.22	0.95	0.46	0.20	0.22	973.47
	Acre ft/mo.	23.37	22.61	18.45	15.37	19.99	350.38	337.98	75.01	56.53	28.28	12.30	13.09	
5. Chelsea Creek, gauged near the mouth of the creek, north of US Highway 2.	cfs	0.35	0.36	0.28	0.25	0.36	6.14	3.00	1.00	0.81	0.38	0.16	0.19	805.77
	Acre ft/mo.	21.52	21.42	17.22	15.37	19.99	377.53	178.51	61.49	48.20	23.37	9.84	11.31	
6. Tule Creek, gauged near the mouth of the creek north of US Highway 2.	cfs	0.39	0.39	0.31	0.25	0.37	6.66	8.27	1.81	1.24	0.48	0.21	0.24	1245.56
	Acre ft/mo.	23.98	23.21	19.06	15.37	20.55	409.51	492.10	111.29	73.79	29.51	12.91	14.17	

Schedule A Continued

Stream	Flow Measure	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Acre ft/ Yr
7. Wolf Creek, gauged at the USGS gauging station near Wolf Point, Montana (Station No. 06176500)	cfs	0.20	0.40	0.10	0.10	0.90	5.90	14.60	4.00	2.80	1.30	0.10	0.10	1834.51
	Acre ft/mo.	12.30	23.80	6.15	6.15	49.98	362.78	868.76	245.95	166.61	79.93	6.15	5.95	
8. Little Porcupine Creek, gauged near the mouth of the creek, north of US Highway 2	cfs	0.74	0.73	0.55	0.45	0.64	10.48	13.41	3.50	2.60	1.07	0.44	0.46	2118.45
	Acre ft/mo.	45.50	43.44	33.82	27.67	35.54	644.39	797.95	215.21	154.71	65.79	27.05	27.37	

Total Instream Flows

58503.59

Schedule A-1 Monthly Instream Flows for Tributaries of Big Muddy Creek

Stream	Flow Measure	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Acre ft/ Yr
1. NE Wolf Creek, gauged near the mouth of the creek, above its confluence with Big Muddy Creek.	cfs	0.37	0.37	0.28	0.23	0.32	4.23	3.17	1.18	0.98	0.50	0.89	0.24	773.24
	Acre ft/mo.	22.75	22.02	17.22	14.14	17.77	260.09	188.63	72.56	58.31	30.74	54.72	14.28	
2. Smoke Creek, gauged near the mouth of the creek, above its confluence with Big Muddy Creek.	cfs	1.48	1.47	1.12	0.91	1.29	16.93	12.68	4.71	3.93	1.98	0.89	0.94	2926.29
	Acre ft/mo.	91.00	87.47	68.87	55.95	71.64	1040.99	754.51	289.61	233.85	121.75	54.72	55.93	
3. Lake Creek, gauged near the mouth of the creek, above its confluence with Big Muddy Creek.	cfs	0.38	0.39	0.30	0.27	0.39	6.53	3.28	1.10	0.89	0.42	0.18	0.21	869.95
	Acre ft/mo.	23.37	23.21	18.45	16.60	21.66	401.51	195.17	67.64	52.96	25.82	11.07	12.50	

Schedule A-2 Monthly Instream Flows for Portions and Tributaries of the Poplar River

Stream	Flow Measure	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Acres ft/ Yr				
1. Cottonwood Creek, gauged near the mouth of the creek, above its confluence with the West Fork of the Poplar River.	cfs	0.72	0.73	0.56	0.48	0.69	10.28	6.24	2.19	1.81	0.88	0.38	0.43	1538.80				
	Acres ft/mo.	44.27	43.44	34.43	29.51	38.32	632.09	371.31	134.66	107.70	54.11	23.37	25.59					
	2. West Fork/Poplar River, gauged near the mouth of the West Fork, above its confluence with the Main Fork	cfs	4.98	4.73	3.51	2.70	3.69	39.25	41.88	17.04	14.57	7.86	3.74		3.51	8916.69		
		Acres ft/mo.	306.21	281.45	215.82	166.02	204.93	2413.39	2492.03	1047.75	866.98	483.29	229.96		208.86			
		3. Main Fork/Poplar at Bredette, gauged near the mouth of the river, above its confluence with the West Fork	cfs	13.92	17.47	8.39	1.75	3.63	126.75	181.12	59.36	53.93	15.94		8.76		5.75	30011.33
			Acres ft/mo.	855.91	1039.54	515.88	107.60	201.60	7793.55	10777.30	3649.90	3209.06	980.11		538.63		342.15	

06179200.0

Schedule A-3 Monthly Instream Flows for Portions of Porcupine Creek

Stream	Flow Measure	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Acre ft/ Yr
1. Porcupine Creek at Dry Creek, gauged on the mainstem of the creek downstream from its confluence with Dry Creek	cfs Acre ft/mo.	0.10 6.15	0.06 3.57	0.12 7.38	0.10 6.15	0.30 16.66	28.30 1740.10	18.90 1124.63	4.20 258.25	3.71 220.76	1.22 75.01	0.06 3.69	0.10 5.95	3468.30

WHEREAS, the Fort Peck Tribal Executive Board is the duly elected body representing the Assiniboine and Sioux Tribes of the Fort Peck Reservation and is empowered to act on behalf of the Tribes. All actions shall be adherent to the provisions set forth in the 1960 Constitution and By-Laws and Public Law #83-449, and

WHEREAS, Article VII, Section 5(c), of the Constitution and By-Laws of the Tribes authorizes the Tribal Executive Board "to protect and preserve the wildlife and natural resources of the (Fort Peck) Reservation;" and

WHEREAS, the Tribal Executive Board on April 29, 1985, ratified the Fort Peck Montana Compact, which Compact became effective on May 15, 1985; and

WHEREAS, the Fort Peck-Montana Compact determines finally and forever the water rights reserved to the Tribes under Federal law; and

WHEREAS, Article III L of the Compact provides that the Tribes may "establish a schedule of instream flows to maintain any fish or wildlife resource in those portions of streams... which are tributaries of the Missouri River that flow through or adjacent to the Reservation;" and

WHEREAS, Article III L further provides that instream flows so established "shall be a part of the Tribal Water Right" and that "water remaining in a stream to maintain instream flows pursuant to such a schedule shall be counted by the Tribes as a consumptive use of surface water;" and

WHEREAS, the Compact provides that instream flows so established shall be prior in right to all water rights except those protected by Article IV A of the Compact; and

WHEREAS, Article V D 1 of the Compact prohibits both the State of Montana and the Tribes from authorizing or continuing any use of groundwater (other than a use protected by Article IV A) which will "result in degradation of instream flows" so established by the Tribes;

NOW THEREFORE BE IT RESOLVED that the Tribes hereby establish the schedule of instream flows set forth in Schedules A, A-1, A-2 and A-3, attached to this Resolution. The instream flow schedule for each drainage basin is established in Schedule A. All flows shall be measured at the points indicated in that schedule. In addition:

As components of the instream flows established in Schedule A for Big Muddy Creek, instream flows as set forth in Schedule A-1 are established for the tributaries of that Creek, to be measured at the points indicated in that Schedule.

As components of the instream flows established in Schedule A for the Poplar River, instream flows as set forth in Schedule A-2 are established for the tributaries and portions of the Poplar river, to be measured at the points indicated in that Schedule.

As a component of the instream flows established in Schedule A




for the Porcupine Creek, instream flows are established for the portion of Porcupine Creek as set forth in Schedule A-3, to be measured at the point indicated in that Schedule.

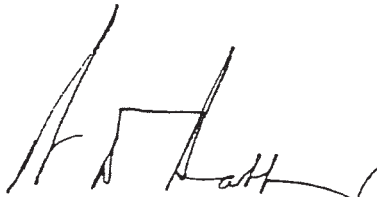
C E R T I F I C A T I O N

I, the undersigned Secretary/Accountant of the Tribal Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, hereby certify that the Executive Board is composed of 12 voting members of whom 10 constituting a quorum were present at a Special meeting duly called and convened this 7th day of May, 1990 that the foregoing resolution was duly adopted at such meetig by the affirmative vote of 6.

  
\_\_\_\_\_  
Paula Brien, Secretary Accountant

APPROVED:

  
\_\_\_\_\_  
Lawrence D. Wetsit, Chairman  
Fort Peck Tribal Executive Board

  
\_\_\_\_\_  
Wyman Babby, Superintendent  
Fort Peck Agency