

Title 20 – Water Resources Use and Administration

Chapter 1. General Provisions

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Sec. 101. Purposes.

The purpose of this Code is

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

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

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

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

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

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

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

Sec. 105. Construction to be consistent with Compact.

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

Sec. 106. Effective date.

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

Sec. 107. Definitions.

- (a) "Administrator" shall mean the Water Administrator of the Tribes.
- (b) "Commission" shall mean the Water Resources Control Commission.
- (c) "Compact" shall mean the Fort Peck-Montana Compact ratified by the Tribal Executive Board on April 29, 1985.
- (d) "Domestic use" means any use of water by one or more individuals, family units or households for drinking, cooking, bathing, laundering, sanitation and other personal comforts and necessities, and for the irrigation of a family garden or orchard not exceeding one-half (½) acre in area.
- (e) "Effective date" means November 15, 1986 or such earlier date as this Code is approved by the Secretary of the Interior.
- (f) "Fort Peck Indian Reservation" or "Reservation" means the Fort Peck Reservation as established in the Agreement of December 28 and December 31, 1986, and confirmed by the Act of May 1, 1988, 25 Stat. 113.
- (g) "Fort Peck Irrigation Project" means those irrigation systems and works constructed pursuant to the Act of May 30, 1908, 35 Stat. 558, and all lands receiving water from such systems and works.
- (h) "Indian" means any person who:
 - (1) Is an enrolled member of the Tribes; or

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

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

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

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

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

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

(A) Drought or other unavailability of water;

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

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

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

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

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

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

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

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

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

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

(n) "Tribal Water Right" means the right of the Tribes to divert annually from the Missouri River,

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

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