

## THE FLATHEAD RESERVATION WATER MANAGEMENT BOARD

*Bylaws*  
[            ], 2023

### ARTICLE I. PURPOSE, EFFECTIVE DATE, AND JURISDICTIONAL BOUNDARIES

[Compact Article IV.I.1]

**[General Question of Organization – should bylaw ARTICLE and SECTION terms be replaced with CHAPTER, PROVISION, BYLAW, MEASURE, or other to avoid confusion with newly added Compact referencing?]**

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 (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, including the issuance of new water rights and change applications. The Board has 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.

The jurisdiction of this Board includes all areas within the exterior boundaries of the Flathead Indian Reservation and does not extend to any water rights whose place of use is located outside the exterior boundaries of the Reservation.

The Board’s creation and jurisdiction began on September 17, 2021, which is the Effective Date of the Compact.

### ARTICLE II. BOARD COMPOSITION, APPOINTMENT, TERM LIMITS, AND ELIGIBILITY REQUIREMENTS

#### SECTION 2.1 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 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 Department of Interior.**

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

## SECTION 2.2 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 2.3 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 2.4 VACANCIES OF BOARD MEMBERS [Compact Article IV.1.2.g]

[Abbreviated from previous draft]

In the event there is a vacancy of the Board due to resignations or other, the Tribal Council, if the vacancy is in a position appointed by the Tribal Council, or the Governor, if the vacancy is in a position appointed by 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 any such vacancy, the Department Head of the Tribal Natural Resources Department, if the vacancy is under the purview of the Tribal Council, or the Director of the DNRC, if the vacancy is under the purview of the Governor, shall fill the vacant position until a new appointment is made.

## SECTION 2.5 REMOVAL OF BOARD MEMBERS

[Board members, these are new options listed for your consideration, but don't feel restricted or confined in your bylaw options on this matter – please do provide additional preferences/guidance on this important issue]

[option #1 – Remove Section Entirely]

## ~~SECTION 2.5 REMOVAL OF BOARD MEMBERS~~

[option #2 – Misconduct Section]

Any Board member may be removed for misconduct or poor performance, by a unanimous vote the other voting Board members at a duly held meeting at which all remaining 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 through normal motion and majority vote procedures. Board members may choose to alternatively hold a hearing to better investigate allegation 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.

For purposes of this section and in relation to the removal of a Board member, a majority of Board members must vote on whether the performance of any Board member should be defined as poor performance or misconduct, as confirmed by the Board through majority vote of all Board members excluding a vote from the Board member accused of poor performance or misconduct.

[option #3 – CSKT definition of misconduct could be used for the Board]

2–1–922. Official misconduct.

(1) A Tribal public servant commits the offense of official misconduct when in his or her official capacity he or she commits any of the following acts:

- (a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;
- (b) knowingly performs an act in his or her official capacity which he or she knows is forbidden by law;

- (c) with the purpose to obtain advantage for himself or herself or another, performs an act in excess of his or her lawful authority;
  - (d) solicits or knowingly accepts for the performance of any act a fee or reward which he or she knows is not authorized by law.
- (2) Official misconduct is a Class D offense over which the Tribes have exclusive jurisdiction.
- (3) A public servant who has been charged as provided in this section may be suspended from his or her office without pay pending final judgment.

[option #4 – coordination with appointing entity]

If a Board member is determined to have committed poor performance or misconduct, the Board must draft a letter to the appointing entity requesting the Board member be replaced by a new appointee and must obtain written accord from the appointing entity. If the Board member in question is the 5<sup>th</sup> Board member, the Board must provide written accord before beginning the process for replacing the 5<sup>th</sup> Board member position.

[option #5 – burden shifted to appointing entity]

In the event that Board members question the performance or conduct of a particular Board member, the Board will consider through majority vote of all remaining Board members, to provide written request to the entity appointing that Board member that they review their appointee's performance and conduct and either remove the Board member or affirm the appointment.

[option #6 – burden shifted to appointing entity (KP): The Compact Article IV (I) (5)(a) states in pertinent part: Powers and Duties.

"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 Law of Administration.

Article IV (J) (5)(a) states in pertinent part:

J. Amendments to the Law of Administration. The Board may not amend the Law of Administration. 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. This authority must be left to reside with the Governor and/or Tribal Council.

So, the Board may make necessary rules to implement the Ordinance and the Compact, but not rules that increase its authority, which would have to change the Compact and Ordinance. Neither the Compact nor the Ordinance authorize the Board to terminate Board members, therefore for the Board to do this in the By-Laws could be a challengeable action for exceeding its authority.]

A Board member may be terminated only by the Governor for state appointments, and only by Tribal Council for tribal appointments. The Board may recommend termination of a Board member to the Governor or Tribal Council by a unanimous vote of the other four voting Board members at a duly held meeting at which all remaining members must be present. The fifth Board member that was selected by the Board may be terminated only by unanimous recommendation to both Tribal Council and the Governor, who must agree to terminate.

[Option #7 – Suggested by DNRC and CSKT]

**Appointed 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.

**Board selected member:** The Board selected 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 III. BOARD POSITIONS AND COMMITTEES

#### SECTION 3.1 BOARD POSITIONS

The Board may choose [2-4] of its members to serve in the following roles:

[New consideration from RN: rotating the chair from meeting to meeting]

[option #1 – Chair/Vice Chair only]

**Board Chair.** The 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 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 Office of the Engineer regarding 1) payroll, 2) legal workflow management, 3) contracts relating to the Board or the Office of the Engineer, and 4) issues of personnel action taken by the Water Engineer or the Water Engineer's Designee.

**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 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.

[option #2 – Add Combined Treasurer/Secretary]

**Board Treasurer/Secretary.** The Treasurer/Secretary receives, organizes, and submits for approval and payment, compensation for Board member meeting attendance, reimbursements to Board members for travel, and reimbursements/payment for Board member function/conference attendance and provides monthly submissions and budget summaries for purposes of providing an annual report regarding Board compensation. The Treasurer/Secretary audits budget authorizations and reports to the Board any irregularities or unexplained use of funds. The Board Treasurer/Secretary maintains the Board's record of decision making (different and distinct from meeting minutes). The Treasurer/Secretary also serves to assist in ensuring the Water Engineer and Staff follow through on Board directives and serves as the Board's primary reviewer of meeting minutes provided by the Office of the Engineer.

[option #3 – Add Separate Treasurer and Secretary positions]

**Board Treasurer.** The Treasurer receives, organizes, and submits for approval and payment, compensation for Board member meeting attendance, reimbursements to Board members for travel, and reimbursements/payment for Board member function/conference attendance and provides monthly submissions and budget summaries for purposes of providing an annual report regarding Board compensation. The Treasurer/Secretary audits budget authorizations and reports to the Board any irregularities or unexplained use of funds.

**Board Secretary.** The Secretary maintains the Board's record of decision making (different and distinct from meeting minutes). The Treasurer/Secretary also serves to assist in ensuring the Water Engineer and Staff follow through on Board directives and serves as the Board's primary reviewer of meeting minutes provided by the Office of the Engineer.

## SECTION 3.2 BOARD POSITION ELECTION FREQUENCY AND TERM

Once per year, during the Board's first or second meeting of the year, Board positions will be determined and revisited. Absent request from the Board to make changes, there is no mandate to change Board positions and no position has a term limit.

## SECTION 3.3 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 3.4 BOARD COMMITTEES AND/OR WORKGROUPS

The Board **may** create committees and workgroups for special tasks. Appointees to committees and workgroups are made by the Board Chair or Vice Chair in the absence of the Chair. Final formation of committees and workgroups, including appointments, is approved by majority vote of the Board. **All committees and workgroups must meet and operate within the Board’s open-meeting guidelines, which require noticing the meetings, allowing for public comment and participation, and maintaining of public records.**

## ARTICLE IV. BOARD COMPENSATION

[For Reference: 7/1 to 12/31 2022 Board Compensation by Board Member by Expense Type]

Sum of Amount								
	Board Meeting	Interviews	Law Conference	Mileage	Misc	Preparation	Workgroup	Grand Total
Noble	\$2,625.00	\$525.00	\$1,249.55	\$843.75	\$112.98	\$2,800.00	\$1,050.00	\$9,206.28
Pitt	\$2,450.00	\$1,050.00	\$2,107.60	\$341.25		\$350.00	\$175.00	\$6,473.85
Smies	\$1,575.00	\$700.00		\$206.25			\$875.00	\$3,356.25
Wall-McDonald	\$525.00			\$1.88				\$526.88
<b>Grand Total</b>	<b>\$7,175.00</b>	<b>\$2,275.00</b>	<b>\$3,357.15</b>	<b>\$1,393.13</b>	<b>\$112.98</b>	<b>\$3,150.00</b>	<b>\$2,100.00</b>	<b>\$19,563.26</b>

[FRWMB/OE Budget developed by CSKT and MT includes \$30,000 ea, \$60,000 total annual Compensation Expenses; for 2022 expenses approximate \$3,333/mo or \$40,000/year]

### SECTION 4.1 BOARD COMPENSATION AUTHORIZATION [Compact Article IV.I.2.h]

Each Board member shall receive such compensation for services and reimbursement for expenses for attendance at Board meetings as shall be fixed by the State and the Tribal Council for the Board members appointed by the same. The compensation for the fifth Board member shall be set jointly by the State and the Tribal Council. The expenses of the Federal ex officio member shall be covered by the United States.

#### SECTION 4.2 BOARD MEETINGS ELIGIBLE FOR COMPENSATION

**NEW:** Meeting compensation is limited to one meeting rate per day per Board member and rates are intended to include meeting preparation.

[Options #1 – base meetings]

Regular Board Meetings, Special Board Meetings, Public Board Meetings, Committee Meetings, and Workgroup Meetings and eligible for Board member Compensation.

[Option #2 – add workshop, staff, interview, tech assistance meetings]

Meetings with staff of the Office of the Engineer that may include interview, workshop, and technical/administrative assistance with projects.

[Option #3 – add related public meetings, gatherings, conferences, etc.]

Conferences, Public Meetings, and other gatherings where one or more Board members' presence is requested and attendance is approved by the Board.

#### SECTION 4.3 BOARD COMPENSATION RATES AS SET BY CSKT, MT AND THE BOARD

**NEW** The Board on an annual basis may review compensation rates and request the State and the Tribes adjust the rate. Board Bylaws compensation rates will be updated at a regularly scheduled Board meeting approximately following any updates provided by the Tribes or the State and may include updates from the Board for the Fifth Appointee.

Board compensation rates as of January 2023:

Daily Meeting Fee for Tribal Appointees:	\$175
Daily Meeting Rate for State Appointees:	\$175
Daily Meeting Rate for Fifth Appointee:	\$175

[consider option to suggest to State and Tribes a progressive compensation rate based on Board executive positions]

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



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

Morning Meal: >3 hours between 12:00 am and 10:00 am	\$7.50
Midday Meal: > 3 hours between 10:01 am and 3:00 pm	\$8.50
Evening Meal: > 3 hours between 3:01 pm and 12:00 am	\$14.50

**NEW** 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. The Board will schedule its meetings an other business to minimize overnight stays to the extent possible.

#### **NEW** Section 4.4 BOARD COMPENSATION BUDGET

Individual compensation from the Tribes and the State will be tracked in relation to respective submissions and for ½ 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 short-fall, 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.

#### **NEW** Section 4.5 BOARD COMPENSATION REQUEST PROCEDURES

##### [Option #1 – overseen by the Office of the Engineer]

Board members will submit to the Office of the Engineer, on a quarterly basis, requests for compensation for reimbursement using a format approved by the Office of the Engineer. Submissions will be made within 30 days following the end of each quarter as defined in section ### of these bylaws; reimbursement requests submitted after the 30-day deadline will not be honored. The Water Engineer will review submissions and submit them to the Board Chair or Vice Chair for final authorization and then provide reimbursement checks to Board members by mail within 30 days of receipt of quarterly reimbursement requests. The Board Chair and Vice Chair cannot authorize their own compensation requests respectively.

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

##### [Option #2 – overseen by the Board Treasurer or Treasurer/Secretary]

Board members will submit to the Treasurer or Treasurer/Secretary, on a quarterly basis, requests for compensation for reimbursement using a format approved by the Office of the Engineer. Submissions will be made within 30 days following the end of each quarter as defined in section ### of these bylaws; reimbursement requests submitted after the 30-day deadline will not be honored. The Treasurer or Treasurer/Secretary will review submissions and submit them to the Board Chair or Vice Chair for final authorization and then provide reimbursement checks

to Board members by mail within 30 days of receipt of quarterly reimbursement requests. The Board Chair and Vice Chair cannot authorize their own compensation requests respectively.

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

## ARTICLE V. APPROPRIATIONS; FUNDING POLICIES

### SECTION 5.1 APPROPRIATIONS

[Edited as per cskt/mt suggestions] 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.

[Edited as per cskt/mt suggestions] The Board reviews and approves an annual budget prepared by the Office of the Engineer staff. The budget shall include the detail necessary for the Board to provide general direction to Office of the Engineer for appropriate fiscal accountability and transparency. The Board fiscal year end is December 31<sup>st</sup>, and budgets for the next fiscal year shall be approved prior to the current fiscal year end.

### SECTION 5.2 CONTRACTS AND AGREEMENTS

(a) In General. [moved from 9.2]

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. [moved from 9.2]

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 from time to time it determines to be appropriate.

[option #1 from original draft]

Contracts and agreements entered into by the Board will be preapproved by the Board though majority vote and subsequently executed by the Chair or Vice Chair as **signors** representing the Board. Recurring billing pursuant approved contracts and agreements does not require recurrent action from the Board unless cost increases associated with billing increase by 20% or more.

[option #2 from CSKT/MT suggested edits]

[[[[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 Office of the Engineer 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. The Water Engineer must receive specific board approval to enter into any contract for spending that is not included in the Board approved annual budget.

Regardless of whether the Board approved an expense in the annual budget, specific Board approval is required before the Water Engineer can enter into any contract that would extend more than one year or any contract valued at more than \$\_,000. ]]]]

~~NEW, as per Board insturciton \*this is eliminated here and will be moved to either 1) OE Policies or 2) Resolution; we do need to prioritize this arrangement, including adding the Water Engineer to the Glacier Bank Account. The Water Engineer can enter into contracts or agreements on behalf of the Board or the Office of the Engineer for up to \$1,200 pursuant this authorizing section and without additional Board authorization. The Water Engineer can enter into contracts and agreements on behalf of the Board or the Office of the Engineer for amounts in excess of \$1,200 only with explicit preapproval of the Board through majority vote.~~

~~Staff of the Office of the Engineer are preapproved for up to \$1000 per month of officer operating supplies and servies pursuant this section and without additional Board authorization. Staff of the Office of the Engineer will seek Board approval through majority vote for office supplies and serfvies in excess of \$1000 per month.~~

## SECTION 5.3 CHECK SIGNING AND AUTHORIZATION

[updated as per CSKT/MT suggestions]

The Chair, the Vice Chair, or the Water Engineer may sign checks on behalf of the Board or the Office of the Engineer for authorized expenses approved by the Board.

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

## ARTICLE VI. CONFLICTS OF INTEREST AND ETHICS

[should misconduct/poor performance info be moved to this section?]

### SECTION 6.1 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 6.2 DISCRIMINATION, HARASSMENT, AND RETALIATION PROHIBITED

Board members, Office of the Engineer 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 VII. BOARD POWERS

### SECTION 7.1 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 7.2 AUTHORITY AND RESPONSIBILITIES OF THE OFFICE OF THE ENGINEER

- 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 cause all hearings to be recorded 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, and, together with a written justification for the decision, shall be served personally or by certified mail on all involved in the proceeding before the Engineer.

## SECTION 7.3 AUTHORITY TO APPOINT WATER AND REMOVE 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.

## NEW SECTION 7.4 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 VIII. BOARD MEETINGS ?APPEALS AND HEARINGS?**

### **SECTION 8.1 PLACE OF MEETINGS OF BOARD**

Meetings of the Board shall be held on the second Thursday of each month at the physical location of 400 Main Street Southwest, Ronan, MT 59864 and via **virtual** link as provided on the Board's website **[update]**.

### **NEW SECTION 8.? OPENING A MEETING**

**Meeting Invocation/prayer**

**Meeting pledge**

**Other Meeting opening considerations**

**Flags to display**

**Seating Considerations**

**Meeting Layout Considerations**

### **SECTION 8.2 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 Office of the Engineer or the Board, shall be open to the observation of the general 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 8.3 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 general public.

### **SECTION 8.4 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 general 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 8.5 CLOSED EXECUTIVE MEETINGS

A closed executive meeting occurs when the Board determines **on the record, before closing a meeting**, that the needs of individual privacy clearly exceed 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 general public.

#### SECTION 8.6 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 8.7 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 8.8 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 and a record of the business conducted during the closed executive meeting, however, the minutes and records would **not be available for public review**.

#### SECTION 8.9 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 or similar communications equipment, by means of which 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. ~~Any act of the Board may be taken (a) without a meeting or (b) by telephone or email poll, provided that written consent in writing is obtained from all other voting members of the Board with respect to the subject matter. The consent shall have the same force and effect as a unanimous vote of the Board.~~

#### SECTION 8.10 QUORUM; ACT OF BOARD

[as per CSKT/MT suggestions] 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 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.

Any action taken must be by a majority vote, except as specified in Ord. 2-2-104 and 3-1-117.

[NEW] Specific actions require unanimous vote of a quorum, such as: water right application form actions presented by the Office of the Engineer, Removal of a Board member or determination of the presence of poor performance or misconduct of a Board member, removal of a Water Commissioner, or ....., [Section to be revised once all voting requirements are known]

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 8.11 BOARD OPERATING RULES

[selected abbreviated version from last draft]

The Board generally operates under Robert's Rules of Order for small boards.

#### SECTION 8.12 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. ~~Notice of the time and place of holding an adjourned meeting need not be given to absent members if the time and place be fixed at the meeting adjourned; provided, however, that if the meeting is adjourned for more than twenty-four hours, notice of any adjournment to another time and place shall be given prior to the time of the adjourned meeting to the members who were not present at the time of the adjournment.~~



## SECTION 8.13 REVIEW AND ENFORCEMENT OF BOARD DECISIONS [Compact Article IV.I.6]

Decisions by the Board shall be effective immediately, unless stayed by the Board. Persons involved in the proceedings before the Board may appeal 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 appeal is taken the 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 8.14 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 Office of the Engineer; (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.

[New] Record retention actions, policies, and procedures are assigned to the Office of the Engineer and will be specifically documented in Office of the Engineer approved policies and procedures as reviewed and approved by the Board.

[New/Update] SECTION 8.15 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 Office of the Engineer digital files, long-term storage arrangements, or website.

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

## ARTICLE IX. GENERAL PROVISIONS

### SECTION 9.1 OFFICE

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

### SECTION 9.2 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.

### NEW SECTION 9.3 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 Office of the Engineer Board approved property policies and procedures as set forth in Board resolutions and Office of the Engineer 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.

#### NEW SECTION 9.4 WEBSITE DOMAINS AND CLIENTS

The Board and the Office of the Engineer own and operate FRWMB.GOV internet domain and associated clients.

#### SECTION 9.5 LOGO

The Board Board and the Office of the Engineer have a logo containing the name of the Board and the Office of the Engineer.

#### NEW SECTION 9.6 ACKRONYMS 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

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

## 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 XII. AMENDMENTS TO THE ORDINANCE**

**Note: I think this is useful as it spells out limitations on Board authority RE the Ordinance, but this inclusion should be determined by FRWMB**

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 XIII. REVIEW; AMENDMENT OF BYLAWS**

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

#### **NEW ARTICLE XIV. 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 Office of the Engineer’s website. **The Board’s resolutions typically relate to important Board decisions such as setting forth fiscal policy, water right policy, directives to the Office of the Engineer, or clarifying details of the Ordinance.** A Board resolution can also be used, but is not always required, to indicate that the Office of the Engineer 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:

1. FRWMB Resolution #1: Fiscal Policies of the Flathead Reservation Water Management Board and the Office of the Engineer.
2. FRWMB Resolution #2: Flathead Reservation Water Management Board Intent for Rules of Decorum
3. FRWMB Resolution #3: Office of the Engineer’s Personnel Policies.
4. FRWMB Future Resolutions.....