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IN THE WATER COURTS OF THE STATE OF MONTANA
MISSOURI DIVISION

* * * * *

IN THE MATTER OF THE ADJUDICATION)	
OF THE EXISTING AND RESERVED RIGHTS TO)	
THE USE OF WATER, BOTH SURFACE AND)	CASE NO. <u>WC-91-1</u>
UNDERGROUND, OF THE BLACKFEET TRIBE)	
OF THE BLACKFEET RESERVATION, WITHIN)	PROPOSED DECREE
THE STATE OF MONTANA.)	
_____)	

THIS MATTER is before the court on the joint motion of the State of Montana (“State”), the Blackfeet Tribe of the Blackfeet Reservation (“Tribe”), and the United States of America (“United States”) for the entry of a decree confirming the Tribal Water Right as recognized in the Blackfeet-Montana Water Rights Compact of 2009 (“Compact”). Upon hearing the motion, objections thereto, the evidence, the claims of the United States on behalf of the Tribe, arguments of counsel, and being otherwise fully advised in the premises, the Court has determined that the motion should be GRANTED and it is hereby ORDERED, ADJUDGED AND DECREED that:

I. Name and Mailing Address of Holder of Right

The name and mailing address of the holder of the right is:

The United States of America in trust for the Blackfeet Tribe of the Blackfeet Reservation, c/o Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, Federal Building, 316 North 26th Avenue, Billings, Montana, 59101.

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II. Tribal Water Right

The following provisions are from Article III of the Compact, without change.

ARTICLE III – TRIBAL WATER RIGHT

A. Religious or Cultural Uses. The Tribal Water Right described in this Article III includes all traditional religious or cultural uses of water by Blackfeet Tribal members within the Reservation.

B. Right of Use. All Existing Uses by the Tribe, its members and Allottees are included in the Tribal Water Right recognized in this Compact. Such uses include but are not limited to irrigation, Stock Water, domestic, municipal, storage and those uses identified in Article III.A.

C. Basin 41M - Birch Creek Drainage.

1. Quantification.

a. **Irrigation right.** The Tribe has a Direct Use water right of 100 Cfs of the Natural Flow of Birch Creek for irrigation use in the Upper Birch Creek Drainage. This right may be changed to another place of use or purpose of use only in accordance with Article IV.D.3.

b. **In-stream Flow Right.**

i. The Tribe also has an in-stream Natural Flow right in Birch Creek of 15 Cfs from October 1 to March 31, and 25 Cfs from April 1 to September 30 of each year. The Tribe may establish, in its discretion and after conferral with appropriate fish and wildlife agencies, a lesser in-stream Natural Flow level of not less than 10 Cfs. Subject to Appendix 1, the Tribe may use all or part of the difference between the in-stream Natural Flow right set forth herein and any lesser in-stream Natural Flow level of not less than 10 Cfs at any place of use and for any purpose of use.

ii. Other than as set forth in Article III.C.1.b.i, the in-stream flow right set forth herein shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.

c. **Additional Flow Right.** After satisfaction of all Water Rights Arising Under State Law in Basin 41M, the Tribe may divert or authorize the use of the

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Natural Flow in Birch Creek as measured at the State Highway 358 bridge crossing Birch Creek and any gaining flows available from the same bridge crossing to Birch Creek's confluence with the Two Medicine River.

- d. **Ground Water Right.** The Tribe also has a right to all Ground Water in the Birch Creek Drainage that is not hydrologically connected to Birch Creek, and to develop or permit the development of Excepted Rights in the Birch Creek Drainage.
2. **Priority Date.** The priority date of the Tribal Water Right set forth in Article III.C.1 shall be October 17, 1855.
3. **Period of Use.**
 - a. Except as provided in Article IV.D.3, the period of use of the water right set forth in Article III.C.1.a shall be April 1 to October 1 of each year.
 - b. The period of use of the water right set forth in Article III.C.1.b, c and d shall be January 1 to December 31 of each year.
4. **Points and Means of Diversion.** Subject to the terms and conditions of Article IV of this Compact, and in addition to what is specifically authorized in Article III.C.1.b.i, the Tribe may divert or permit the diversion of the water right set forth in Article III.C.1.a and c from any point on Birch Creek for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.C.1.c from a point off the Reservation pursuant to a Lease under Article IV.D.2.
5. **Purposes.** The water right set forth in Article III.C.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.
6. **Call Protection.** All Water Rights Arising Under State Law using water from sources other than Birch Creek within Basin 41M shall be protected from any Call for the in-stream flows set forth in Article III.C.1.b.
7. **Birch Creek Management Plan.** The use of the water right set forth in Article III.C.1.a shall also be governed by the terms of the Birch Creek Management Plan, set forth as Appendix 1.

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8. **Commencement of Development.** In addition to the foregoing, the exercise of the water rights set forth in Article III.C.1.a. and b. is subject to the Agreement Regarding Birch Creek Water Use entered into by the Tribe and the State on ____, 2007.

D. Basin 41M - Badger Creek Drainage and Two Medicine River Drainage.

1. **Quantification.**

- a. The Tribe has a water right to all Natural Flow and Ground Water within the Badger Creek and Two Medicine Drainages, with the exception of those waters subject to the Water Rights Arising Under State Law in those drainages.
- b. Of the Tribal Water Right set forth in Article III.D.1.a, 20 Cfs shall be dedicated to maintain an in-stream flow in the mainstem of Badger Creek within the Badger Creek Drainage, and 20 Cfs shall be dedicated to maintain an in-stream flow in the mainstem of the Two Medicine River within the Two Medicine River Drainage. The in-stream flow right set forth in this Article III.D.1.b shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.
- c. The Tribe is entitled to develop such storage as is necessary to effectuate the right set forth in Article III.D.1.a.

2. **Priority Date.** The priority date of the Tribal Water Right set forth in Article III.D.1 shall be October 17, 1855.
3. **Period of Use.** The period of use of the water right set forth in Article III.D.1 shall be January 1 to December 31 of each year.
4. **Points and Means of Diversion.** Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.D.1 from any point within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.D.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.
5. **Purposes.** The water right set forth in Article III.D.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.

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6. **Call Protection.** All Water Rights Arising Under State Law within Basin 41M shall be protected from any Call from any user of the Tribal Water Right, with the exceptions of Calls for the in-stream flows set forth in Article III.D.1.b, Calls for stored water, and Calls for water diverted from another hydrologic basin.

E. Basin 41L - Cut Bank Creek Drainage.

1. Quantification.

- a. The Tribe has a water right to all Natural Flow and Ground Water within the Cut Bank Creek Drainage, with the exception of those waters subject to the Water Rights Arising Under State Law in that drainage.
- b. Of the water right set forth in Article III.E.1.a, 2 Cfs shall be dedicated to maintain an in-stream flow in the mainstem of Cut Bank Creek as shown on Appendix 2. The in-stream flow right set forth in this Article III.E.1.b shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.
- c. The Tribe is entitled to develop such storage as is necessary to effectuate the right set forth in Article III.E.1.a.
- d. The Tribe shall defer New Development of the Tribal Water Right set forth in Article III.E.1.a for irrigation uses not relying exclusively on stored water or water diverted from another hydrologic basin for a period of ten years after the Effective Date of this Compact.

2. **Priority Date.** The priority date of the Tribal Water Right set forth in Article III.E.1 shall be October 17, 1855.
3. **Period of Use.** The period of use of the water right set forth in Article III.E.1 shall be January 1 to December 31 of each year.
4. **Points and Means of Diversion.** Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.E.1 from any point within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.E.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.

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- 5. Purposes.** The water right set forth in Article III.E.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.
 - 6. Call Protection.** All Water Rights Arising Under State Law for Non-Irrigation Uses within Basin 41L shall be protected from any Call from any user of the Tribal Water Right, with the exceptions of Calls for the in-stream flows set forth in Article III.E.1.b, Calls for stored water, and Calls for water diverted from another hydrologic basin.
- F. Basin 40F - Milk River Drainage.**

1. Quantification.

- a. The Tribe has a water right to all Natural Flow and Ground Water available to the United States under the Boundary Waters Treaty and all Ground Water not subject to the Boundary Waters Treaty in Basin 40F within the Reservation, with the exception of those waters subject to the Water Rights Arising Under State Law in Basin 40F on the Reservation.
 - b. Of the water right set forth in Article III.F.1.a, 2 Cfs shall be dedicated to maintain an in-stream flow in the Milk River, as shown on Appendix 2. The in-stream flow right set forth in this Article III.F.1.b shall not be subject to change to any other use, provided that the emergency use of water pursuant to Article III.H.5 shall not be considered a change or alteration in use, or a violation of a water right for in-stream flow.
 - c. The Tribe is entitled to develop such storage as is necessary to effectuate the right set forth in Article III.F.1.a.
 - d. The Tribe shall defer New Development of the Tribal Water Right set forth in Article III.F.1.a for irrigation uses not relying exclusively on stored water or water diverted from another hydrologic basin for a period of ten years after the Effective Date of this Compact.
- 2. Priority Date.** The priority date of the Tribal Water Right set forth in Article III.F.1 shall be October 17, 1855.
 - 3. Period of Use.** The period of use of the water right set forth in Article III.F.1 shall be January 1 to December 31 of each year.
 - 4. Points and Means of Diversion.** Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.F.1 from any point within Basin 40F within the Reservation for use

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within the Reservation and by any means authorized by the Tribal Water Code, or permit the diversion of the water right set forth in Article III.F.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.

5. **Purposes.** The water right set forth in Article III.F.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.
6. **Call Protection.** All Water Rights Arising Under State Law for Non-Irrigation Uses within Basin 40F on the Reservation shall be protected from any Call from any user of the Tribal Water Right, with the exceptions of Calls for the in-stream flows set forth in Article III.F.1.b, Calls for stored water, and Calls for water diverted from another hydrologic basin.

G. Basin 40T - St. Mary River Drainage.

1. Quantification.

a. **St. Mary River.** The Tribe has a water right to:

- i. 50,000 Acre Feet per Year of water from the St. Mary River Drainage, other than Lee Creek and Willow Creek, subject to the Boundary Waters Treaty and the terms of Article IV.D.4; and
- ii. all Ground Water in the St. Mary River Drainage not subject to the Boundary Waters Treaty.

b. **Lee Creek.** The Tribe also has the right to all Natural Flow available to the United States under the Boundary Waters Treaty and all Ground Water in Lee Creek within the Reservation, with the exception of those waters subject to Water Rights Arising Under State Law in Lee Creek.

c. **Willow Creek.** The Tribe also has the right to all Natural Flow available to the United States under the Boundary Waters Treaty and all Ground Water in Willow Creek (also known as Rolf Creek) within the Reservation, with the exception of those waters subject to Water Rights Arising Under State Law in Willow Creek.

d. **Additional Waters.** After satisfaction of all Water Rights Arising Under State Law and full development, pursuant to Article IV.D.4, of the Tribal Water Right set forth in Article III.G.1.a.i, the Tribe also has the right to the remaining portion

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of the United States' share of the St. Mary River under the Boundary Waters Treaty for any tribally authorized use and need.

- e. **Storage.** The Tribe is entitled to develop such storage within the Reservation as is necessary to effectuate the right set forth in Article III.G.1.a-d.
- 2. **Priority Date.** The priority date of the Tribal Water Right set forth in Article III.G.1 shall be October 17, 1855.
- 3. **Period of Use.** The period of use of the water right set forth in Article III.G.1 shall be from January 1 through December 31 of each year.
- 4. **Points and Means of Diversion.** Subject to the terms and conditions of Article IV of this Compact, the Tribe may divert or permit the diversion of the water right set forth in Article III.G.1 from any point within the Reservation for use within the Reservation and by any means authorized by the Tribal Water Code and, if necessary, federal law, or permit the diversion of the water right set forth in Article III.G.1 from a point off the Reservation pursuant to a Lease under Article IV.D.2.
- 5. **Purposes.** The water right set forth in Article III.G.1 may be used for any purpose consistent with the terms of this Compact and allowed by Tribal or federal law.
- 6. **Call Protection.** All Water Rights Arising Under State Law within Basin 40T shall be protected from any Call from any user of the Tribal Water Right, except for Calls for stored water or water diverted from another hydrologic basin.

H. Additional Rights to Water. In addition to the water rights specifically set forth in Article III.A-G of this Compact, the Tribe has the following rights to water:

- 1. **Lake Elwell.** As part of the Tribal Water Right, the Tribe shall be entitled to an allocation of stored water in Lake Elwell [as agreed to by the Parties and as provided by Congress - *this is the Compact language but I'd think we'd need an actual quantity for the decree*], measured at the dam, for use or disposition by the Tribe for any beneficial purpose, pursuant to the terms of this Compact; provided that such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this Compact. Except as directed by Congress, the United States shall have no responsibility or obligation to provide any facility for the transport of water allocated under Article III.H.1 to the Reservation or to any other location.
- 2. **Appurtenant Water Rights.** For land within the Reservation acquired after the Effective Date of this Compact, the Tribe has the right to any Water Right Arising

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Under State Law acquired as an appurtenance to the land. At such time as the acquired land is transferred to trust status, the water right appurtenant to the land acquired shall be added to the Tribal Water Right quantified in this Compact with an October 17, 1855 priority date, provided that the Tribe shall continue to use the acquired right as historically used or may change the use of the right pursuant to the provisions set forth in Article IV.D. The Tribe shall notify DNRC of any acquisition of water upon acquisition or no later than in the Tribe's annual report and shall identify the water right acquired, as set forth in Article IV.I.5. Any water right acquired shall be added as decreed by the Montana Water Court to the list of Existing Uses of the Tribal Water Right as provided in Article IV.I.3 of this Compact.

- 3. Water Rights Arising Under State Law - Relinquishment or Abandonment.** Any portion of a Water Right Arising Under State Law within the Reservation that is voluntarily relinquished or is determined under State law to be abandoned, relinquished, or having otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be entitled to no further protection as such a right pursuant to this Compact.
- 4. Lakes, Ponds and Wetlands.** As part of the Tribal Water Right, the Tribe, its members and Allottees have the right to all water naturally occurring in all lakes, ponds, wetlands and other such water bodies located within the Reservation on trust lands and fee lands owned by the Tribe, its members or Allottees as of the Effective Date of this Compact.
- 5. Emergency Use.** The Tribe has the right to use or authorize the use of water from any source on the Reservation for temporary emergency appropriations necessary to protect lives or property.

I. Use of the Tribal Water Right on the Blackfeet Irrigation Project. The use of the water rights set forth in Article III.C through E on units of the Blackfeet Irrigation Project as part of that Blackfeet Irrigation Project is a use of the Tribal Water Right, and the use of this water shall be subject to federal law.

J. Basin Closures.

1. In those portions of Basins 40F, 40T, 41L and 41M within the Reservation, and from the mainstems of the Reservation boundary streams (Birch Creek, Cut Bank Creek, and the Two Medicine River), DNRC shall not process or grant any application for an appropriation received after the ratification of this Compact by the Montana legislature becomes effective. Provided that, in accordance with the terms and conditions of Article IV.G.1, DNRC may issue a certificate of water right or permit for use on fee

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land for Excepted Rights from the sources otherwise closed by this subsection.

Provided further that, after such time as the Tribe promulgates an amended water code pursuant to the provisions of Article IV.C, DNRC shall not issue a certificate of water right or permit for use on fee land within the Reservation for Excepted Rights from the sources otherwise closed by this subsection.

2. The basin closures set forth in Article III.J.1 are not a limit on use of the Tribal Water Right as set forth in this Compact.
3. The basin closures set forth in Article III.J.1 are not a limit on Change in Use or transfers of Water Rights Arising Under State Law, subject to the terms and conditions in Article IV.G.2.

III. Lease.

The following provisions, taken from Article IV, Section D.2. of the Compact, are renumbered but otherwise unchanged.

1. The Tribe may make a Lease for use off the Reservation of the following portion of the Tribal Water Right that has been put to use and/or stored prior to the provision of notice to the DNRC, pursuant to Article IV.D.2.b, or the date of the application for Change in Use, as applicable:
 - a. Water developed by Direct Use from Birch Creek pursuant to Article III.C.1.c, the Badger Creek Drainage and/or Two Medicine River Drainage pursuant to Article III.D.1, and/or the St. Mary River Drainage pursuant to Article III.G.1;
 - b. Water stored from the Badger Creek Drainage and/or Two Medicine River Drainage pursuant to Article III.D.1; from the Cut Bank Creek Drainage pursuant to Article III.E.1; from the Milk River Drainage pursuant to Article III.F.1; from the St. Mary River Drainage pursuant to Article III.G.1; and/or in Tiber Reservoir as allocated to the Tribe pursuant to Article III.H.1 or otherwise and federal law; and
 - c. That portion of the Tribal Water Right quantified in Article III.C.1.b.i that the Tribe may use for purposes other than in-stream flow pursuant to the terms of that subsection.
2. The Tribe may make a Lease for use off the Reservation from the storage sources listed in Article IV.D.2.a.ii and from the source identified in Article IV.D.2.a.iii so long as it provides notice in advance to the DNRC of the terms of the Lease and any modifications thereto or termination thereof. For Leases from the sources identified in Article IV.D.2.a.ii lasting one irrigation season or less, notice to the DNRC shall be provided as far in advance as practicable.

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For Leases from the sources identified in Article IV.D.2.a.ii lasting longer than one year, notice shall be provided to the DNRC no later than the later of 120 days prior to the date on which the Lease is to take effect or March 31 of the year in which the Lease is to take effect. Provision of notice regarding Leases from the source identified in Article IV.D.2.iii shall be governed by the provisions of the Birch Creek Management Plan (Appendix 1). The point of delivery for a lease from the storage sources listed in Article IV.D.2.a.ii shall be the dam of the storage project. The point of delivery for leases from the source identified in Article IV.D.2.a.iii shall be the Reservation boundary. If disputes arise between or among holders of Water Rights Arising Under State Law as to the reasonable transmission and carriage losses from the point of delivery to the place of use of the Lease, the district court pursuant to its powers and duties under Title 85, Chapter 5, MCA, shall calculate such losses.

3. The Tribe may make a Lease for use off the Reservation from the sources listed in Article IV.D.2.a.i provided that either the Tribe or its assignee, on behalf of the Tribe, first complies with the following provisions of State law as those provisions read on October 31, 2007:

- a. Subsections (1)-(3), (5)(a) (with the exception of that portion of subsection (5)(a) that requires the application of §85-2-402(4), which shall not apply) and (8)-(17) of § 85-2-402, M.C.A.;
- b. Subsections (1)-(8) of §85-2-407, M.C.A., provided, however, that the term of any such Lease may be for up to 99 years, and the DNRC may approve the renewal of such a Lease for a period of up to 99 years; and
- c. §85-2-408, M.C.A.

If the assignee is the party submitting the change application (pursuant to §§ 85-2-402 and 407, M.C.A.) on behalf of the Tribe, the assignee must first have obtained approval of the Lease from the Tribe pursuant to the Tribal Water Code.

4. In the event that, after the Effective Date of this Compact, the Montana legislature substantively amends or repeals any of the sections identified in Article IV.D.2.c, the Tribe and the DNRC shall meet no later than 60 days after the effective date of the State legislative action amending or repealing to determine whether the provisions set forth in Article IV.D.2.c or the new provisions of State law shall govern the process for off-Reservation Leases under this Compact. In the event that the Tribe and the DNRC are unable to agree, the provisions of Article IV.D.2.c shall remain in effect. Any modification to the provisions of Article IV.D.2.c agreed to by the Tribe and the DNRC in response to future State legislative action shall be pursuant to and not a modification or amendment to this Compact.

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5. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in Birch Creek pursuant to Article III.C.1.c to an off-Reservation point of diversion or place of use, or in the Badger Creek Drainage set forth in Article III.D.1 to an off-Reservation point of diversion or place of use, and if delivery facilities exist to otherwise allow the diversion of Badger Creek water into Birch Creek, the Tribe shall allow holders of Water Rights Arising Under State Law using water out of Birch Creek the first opportunity to acquire use of such rights on the same terms and conditions as the good faith offer.
6. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in the Cut Bank Creek Drainage set forth in Article III.E.1 to an off-Reservation point of diversion or place of use, the Tribe shall allow holders of Water Rights Arising Under State Law using water from the Cut Bank Creek Drainage the first opportunity to acquire use of such rights on the same terms and conditions as the good faith offer.
7. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in the Milk River Drainage set forth in Article III.D.1 to an off-Reservation point of diversion or place of use, the Tribe shall allow holders of Water Rights Arising Under State Law using water from the Milk River Drainage the first opportunity to acquire use of such rights on the same terms and conditions as the good faith offer.
8. If the Tribe receives a good faith offer from a Person for Lease of a portion of the Tribal Water Right in the St. Mary River set forth in Article III.G to an off-Reservation point of diversion or place of use, the Tribe shall allow water users receiving water from the Milk River Project the first opportunity, and other Milk River water users the second opportunity, to acquire use of such rights on the same terms and conditions as the good faith offer.
9. Except as may be provided by Congress, the off-Reservation use of any portion of the Tribal Water Right set forth in Article III.C.1.b, III.D.1, III.E.1 or III.F.1 is limited to a place of use within the Missouri River Basin.
10. No Lease of any portion of the Tribal Water Right may permanently alienate the water right.
11. The Tribe or any Person using diversion or transportation facilities located off the Reservation in connection with a use of the Tribal Water Right shall apply for and obtain all permits, certificates, variances and other authorizations required by State laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water, prior to exercising a use of the Tribal Water Right off the Reservation.

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IV. Special Rules for Changes in Use of the Birch Creek Water Right Set Forth in Article III.C.1.a.

The following provisions, taken from Article IV, Section D.3. of the Compact, are renumbered but otherwise unchanged.

1. Change in Place of Use. The Tribe may change or authorize a change in the place of use of the water right set forth in Article III.C.1.a only if:

a. the proposed change in place of use is to the Badger-Fisher Unit of the Blackfeet Irrigation Project, or to other areas of the Birch Creek Drainage served by water out of the Badger Creek Drainage; and

b. there is a need for irrigation water beyond available supplies in those areas due to constraints imposed on the Badger-Fisher Unit by the physical availability of water other than as a result of Leases, a failure of delivery capabilities, or significant adverse environmental impacts of continued delivery of Badger Creek water due to degraded delivery systems or otherwise; and

c. total annual diversions to the Badger-Fisher Unit pursuant to the water right set forth in Article III.C.1.a do not exceed the volume of water needed to supply 75% of the net irrigation requirement for a crop mix of 75% alfalfa and 25% small grains delivered at 50% efficiency for 6000 acres, and the flow rate of the right set forth in Article III.C.1.a for use in the Upper Birch Creek Drainage is reduced by the flow rate of water being diverted for use in the Badger-Fisher Unit.

2. Change in Purpose of Use. The Tribe may change or authorize a change in the purpose of use of the water right set forth in Article III.C.1.a up to a maximum of 6250 AFY. The relationship between the quantity and flow rate of water proposed for change and the quantity of water available for irrigation pursuant to the water right set forth in Article III.C.1 shall be determined by the following formula:

The volume of water proposed to be changed will be divided by 50% to determine the diverted volume of the Tribal change. This diverted volume of the Tribal change is subtracted from the modeled average diversion volume (12,500 acre-feet) to determine the changed average diversion volume. The new irrigation diversion flow rate is established by dividing the changed average diversion volume by the modeled diversion volume and multiplying this quotient by the flow rate set forth in Article III.C.1.a (100 Cfs). Several example scenarios are shown in Appendix 4.

V. Development of the Tribe's St. Mary River Right Set Forth in Article III.G.1.a.i.

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The following provisions, taken from Article IV, Section D.4. of the Compact, are renumbered but otherwise unchanged.

1. As directed by Congress, and after appropriate investigation and study, the Parties shall identify and the United States shall provide the Tribe, from Available St. Mary River Water, and/or from any other source mutually agreed to by the Parties, sufficient water to fulfill the Tribe's water right set forth in Article III.G.1.a.i. The fulfillment of the Tribe's water right set forth in Article III.G.1.a.i, pursuant to this subsection, from any water subject to the Milk River Project Water Right may occur only in a manner that causes no injury to the Milk River Project and shall not require current or future Milk River Project water users or their contracting entity or entities to subsidize or pay for any costs required to develop or fulfill the water right set forth in Article III.G.1.a.i. The use of the Tribe's water right set forth in Article III.G.1.a.i, or of any portion of that right, shall commence only after the Parties have mutually agreed in writing that water has been identified and is available to fulfill that right or any portion of it consistent with the terms of this Compact.

VI. Relationship with Compact

This decree is based upon the Compact, and by this reference incorporates the definitions contained therein. The Tribal Water Right confirmed in this decree is subject to all conditions upon use and administration set forth in the Compact. Nothing in this decree is intended to modify, alter, or amend the terms and provisions of the Compact.

VII. Jurisdiction of Court

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Nothing in this decree or the Compact shall expand the subject matter jurisdiction of the Water Courts of the State of Montana.

RESPECTFULLY SUBMITTED for approval this _____ day of _____, 200__ by:

THE UNITED STATE OF AMERICA

THE BLACKFEET TRIBE OF THE BLACKFEET RESERVATION

By: _____
SUSAN SCHNEIDER
United States Department of Justice
Environment & Natural Resources Division
Indian Resources Section
1961 Stout Street, 8th Floor
Denver, Colorado 80294

By: JEANNE S. WHITEING
Whiteing & Smith
1136 Pearl Street, Suite 203
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WILLIAM J. MERCER
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District of Montana

THE STATE OF MONTANA

By: JEREMIAH D. WEINER
Assistant Attorney General
State of Montana
Justice Building
215 North Sanders
Helena, MT 59620-1401

APPROVED this _____ day of _____, 200__.

CHIEF WATER JUDGE