

Fort Belknap Indian Community – Montana Water Rights Compact Summary

RESERVATION SETTING

The Fort Belknap Reservation was established in northcentral Montana for members of the Gros Ventre and Assiniboine Tribes. Historically, the area was part of the large territory north of the Missouri and Musselshell Rivers designated in the treaty of 1855 for the Blackfeet Nation, including the Gros Ventre. On May 1, 1888, this large reserve was split into the smaller separate reservations of the Blackfeet, Fort Peck, and Fort Belknap. On October 9, 1895, 14,900 acres on the southern boundary of the Fort Belknap Reservation was ceded and the Reservation took the form we see today. Land outside of the southwest boundary of the Reservation has been purchased for the Tribes and is held in either trust or fee status. The Fort Belknap Reservation lies partially within four water court sub-basins: the Milk River, Peoples Creek, Beaver Creek, and a small tributary to the Missouri River. Within the Milk River Basin is a large Reclamation Project built after establishment of the Reservation. The Milk River Project includes the diversion of water from the St. Mary River to the Milk River.

TRIBAL WATER RIGHT QUANTIFICATION

Quantification of the Tribal water right is summarized for the four water court sub-basins as outlined below.

Milk River

- * 645 cubic feet per second (cfs) of water from the Milk River mainstem, limited by:
 - 125 cfs of natural flow for direct use to irrigate a maximum of 10,425 irrigated acres;
 - 520 cfs of direct use and/or off-stream storage up to 60,000 afy, for historic and future irrigated acres and non-irrigation uses.
- * Tributary water use
- * Small impoundments for stockwater use
- * Existing non-irrigation use

Water use on tributaries upstream from the Reservation is protected from the seniority of the Tribes' October 17, 1855 priority date by an agreement with the Tribes to seek satisfaction of their water use from the Milk River Project when upstream water use affects Tribal ability to divert water. The Project will be made whole through mitigation measures discussed below.

Peoples Creek

The Tribes are entitled to all the water in the stream after satisfaction of upstream water rights. A reservoir proposed on Peoples Creek on the Reservation is proposed to help keep water in the stream for stockwatering, fisheries and recreation.

Beaver Creek

The Tribes are entitled to historic senior irrigation of 2,241 acres, which uses 8,024 afy, plus new small impoundments for stock watering and 180 acres of new irrigation.

Missouri River Basin 40EJ

The Tribes are entitled to historic senior stock and domestic uses and new small impoundments for stock watering on the Reservation. The Tribes have the right to divert up to 1135 afy for irrigating 297 historically irrigated acres and 18 acres of other land. They may divert 1290 afy for conveyance to Peoples Creek Basin. Water rights acquired with land purchased off the Reservation are recognized and will be administered pursuant to State law.

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Groundwater

- * Development of groundwater that is connected to surface water is counted within the limits on surface water use as listed above.
- * Existing groundwater use is recognized.
- * Groundwater that is not connected to surface water may be developed without adverse effect on other water uses
- * Small wells of 35 gallons per minute (gpm) or less may be developed.

IMPLEMENTATION

- * The Tribes administer the Tribal Water Right
- * The Tribes establish a process for recognizing water rights allocated to allotted land.
- * The Tribes establish a process for recognizing water use on fee land within the Reservation.
- * The U.S. Bureau of Indian Affairs administers BIA Projects. Irrigation companies administer BIA projects quit claimed to them.
- * The U.S. Bureau of Reclamation administers its contracts in the Milk River Project.
- * The State administers state-based water rights.

To coordinate between these entities in the Milk River Basin, the Compact establishes the Milk River Coordinating Committee composed of representatives of the Tribes, the Milk River Joint Board of Control, the U.S. Bureau of Reclamation, the U.S. Bureau of Indian Affairs, and the Montana Department of Natural Resources and Conservation. The purpose of the Milk River Coordinating Committee is to:

- (1) coordinate storage and release of water between the various entities; and
- (2) implement a grant and loan program for funding of watershed and efficiency improvements in the Milk River basin and establishment of a water bank during periods of extreme drought.

The parties will seek appointment of water commissioners in state court for the distribution of water from the mainstem of the Milk River to ensure enforcement of water rights.

The Compact establishes a process for assuring that change in use of either a portion of the Tribal Water Right or a state-based right, does not adversely impact any other water right in the basin.

A Compact Board is established to resolve disputes within the Milk River Basin that are not within the authority of the water commissioner, and within the other three basins.

DEVELOPMENT OF THE TRIBAL WATER RIGHT

The Compact contemplates new development of water by the Tribes. Funding and authorization for specific projects must occur in federal legislation which will be negotiated following State and Tribal approval of the Compact.

MITIGATION

To keep the Milk River Project “whole” after development of the Tribal Water Right, the Compact contemplates improvements to the Project including increased storage and improved utilization of existing storage. The Milk River Project is a federal project, thus Congressional authorization is necessary to accomplish mitigation. State and Tribal approval of a Compact is necessary prior to drafting of a federal bill. Cost share between the State and United States cannot be negotiated until that time. The Compact allows the Governor, on behalf of the State, to withdraw from the Compact if mitigation measures are not ultimately agreed to, authorized, funded, and built.

The importation of water from the St. Mary River as part of the Milk River Project is recognized as key to continuation of the Project and to the ability of the Project to satisfy the Tribal Water Right. The St. Mary diversion is in need of rehabilitation. It is not clear that Compact legislation is the best means to accomplish rehabilitation of St. Mary. The parties to the Compact have agreed to work together and with the Blackfoot Tribe and the Milk River Irrigation Districts to determine the most appropriate means to ensure the integrity of the St. Mary diversion.