

BLACKFEET – MONTANA WATER RIGHTS COMPACT-updated June 2018

BACKGROUND

- The Montana legislature established the Montana Reserved Water Rights Compact Commission as part of the statewide water adjudication to negotiate water rights “compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.” MCA 85-2-701 and 702.
- The Compact was approved by the Montana Legislature with HB 161 on 4/15/2009) and by Congress with S.612 on 12/16/2016.
- After approval by the State, the Tribe, and Congress, the water compacts are made part of water court decrees.

COMPACT BASICS

In general the Compact:

- Provides water for the existing and future needs of the Blackfeet Tribe.
- Protects all current holders of non-irrigation water rights, such as domestic and stock water uses, from the Tribe’s future exercise of its water right.
- Provides protection for all current irrigation and non-irrigation uses in Birch Creek and the Badger Creek and Two Medicine River basins and a grace period before Tribal development in Cut Bank Creek and Milk River drainages.
- Provides a process for the Tribe to lease a portion of its water right to off-reservation water users.
- Settles Tribal claims in the St. Mary River basin by providing the Tribe with an allocation of 50,000 acre-feet of water with protections for the Milk River Project downstream.
- Closes on-reservation portions of streams to new water appropriations under state law.
- Provides for Tribal administration of the Tribal Water Right, and State administration of water rights arising under state law.
- Creates a Compact Board with an administrative process for the resolution of any future disputes between Tribal and non-Tribal water users.
- Provides for an allocation of water stored in Tiber Reservoir (in an amount to be determined by Congress) for the Tribe to use or market.
- Mitigates the impacts of the Tribe’s water rights on Birch Creek water users through a separate Birch Creek Agreement that commits the State to pay the Tribe \$14.5 million in exchange for the Tribe deferring new development of its Birch Creek water rights for 15 years and providing 15,000 acre-feet of water per year to Birch Creek water users from on-reservation storage for at least 10 more years, the total deferral and provision of water not to exceed 25 years.

BLACKFEET TRIBAL WATER RIGHT

BIRCH CREEK

- 100 cfs from the natural flow of Birch Creek for irrigation use in the Upper Birch Creek Drainage.
- Instream flow of 25 cfs from April 1 to Sept. 1 and 15 cfs from Oct. 1 to March 31.
- Any additional water remaining after satisfaction of existing rights arising under State law
- A management plan is attached as an Appendix to the Compact, which provides for coordinated management of Birch Creek Tribal and non-Tribal water use.

BADGER CREEK/TWO MEDICINE RIVER

- The Tribe has a water right to all currently unappropriated surface water and groundwater. Current non-Tribal water uses are not subject to a call from new Tribal development.
- Instream flow of 20 cfs in both Badger Creek and Two Medicine River.
- Blackfeet Irrigation Project will be supplied water from the Tribal water right and will be administered by the Bureau of Indian Affairs (or as otherwise provided by Congress).

CUT BANK CREEK AND MILK RIVER

- The Tribe has a water right to all currently unappropriated surface water and groundwater. Current non-Tribal non-irrigation water uses are not subject to a call from any new Tribal development.
- Irrigation uses on Cut Bank Creek and the Milk River are subject to a call from Tribal water uses. The Tribe will not develop new irrigation uses on Cut Bank Creek or the Milk River, except projects using exclusively stored or imported water, for 10 years from the effective date of the Compact.
- Instream flow of 2 cfs in the on-reservation portions of both Cut Bank Creek and the Milk River.

ST. MARY RIVER

- 50,000 acre-feet from the United States' share of the St. Mary River
- The Tribe also has a right to all unappropriated water from the United States share of Lee Creek, Willow Creek and groundwater in the St. Mary River drainage on the Reservation and any additional water remaining after satisfaction of existing rights arising under State law.
- Current non-Tribal water uses within the Basin are not subject to a call from new Tribal development.

CONTRIBUTIONS TO SETTLEMENT

Blackfeet Mitigation Account: (85-20-1504, MCA)

- *Current cash balance* = \$0
 - NOTE: SB 287 (2017) transferred \$14,000,000 from Infrastructure account to the Mitigation Account, but there is a contingent effective date, so funds will not transfer until after the Governor certifies that the United States has ratified the Compact, that the Compact references the Birch Creek Agreement, and the United States has contributed \$14,000,000 for projects related to the Four Horns project.
- *Purpose*: Funds must be used to mitigate impacts of development of the Tribal Water Right on water users (i.e., PCCRC and other water users) as provided for in a February 13, 2009, amendment to the January 31, 2008 Birch Creek Agreement.
- *Timing*: After ratification by all parties AND the United States has contributed at least \$14,000,000 to the Four Horns project.

Blackfeet Infrastructure Account: (85-20-1505, MCA)

- *Current cash balance* = \$18,000,000 + interest and income (+ an additional \$16,000,000 in bonding authority).
 - NOTE: SB 287 (2017) transferred \$14,000,000 from Infrastructure account to the Mitigation Account, but there is a contingent effective date, so funds will not transfer until after the Governor certifies that the United States has ratified the Compact, that the Compact references the Birch Creek Agreement, and the United States has contributed \$14,000,000 for projects related to the Four Horns project. After the transfer, there will be \$4,000,000 in the Infrastructure Account, and \$16,000,000 in bonding authority.
- *Purpose*: The \$20,000,000 must be used to fund the State's contribution to the Four Horns project.
- *Timing*: After ratification by all parties

Escrow Account:

- *Current cash balance* = \$14,500,000 + interest income
- *Purpose*: As set forth in the Birch Creek Agreement
- *Timing*: 75 days after final Water Court decree (if no appeals); 30 days after final judgement (if there are appeals)