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Montana Water Court

**IN THE WATER COURT OF THE STATE OF MONTANA
BLACKFEET TRIBE-STATE OF MONTANA-UNITED STATES COMPACT**

CASE WC-2018-06

NOTICE OF ENTRY OF THE BLACKFEET TRIBE-STATE OF MONTANA-UNITED STATES COMPACT PRELIMINARY DECREE AND NOTICE OF AVAILABILITY

AS A WATER USER YOU MUST READ ALL OF THIS NOTICE

The Montana Water Court has been asked to approve a Compact settling the water rights claims of the Blackfeet Tribe of Indians (“Tribe”). The Blackfeet Tribe, the State of Montana, and the United States (hereinafter collectively referred to as the “Compacting Parties”) entered into a Compact (“Blackfeet Compact”) settling the reserved water right claims of the Tribe, its members, and allottees, and the United States on behalf of the Tribe, its members, and allottees, in accordance with § 85-2-702, MCA. The Blackfeet Compact was ratified by the Montana Legislature on April 15, 2009 (codified at § 85-20-1501, MCA), by the Congress of the United States on December 16, 2016 (P.L. 114-332, Title III, Subtitle G), by members of the Tribe in a referendum vote held on April 2, 2017 and certified by the Secretary on May 30, 2017, and signed by the Compacting Parties on June 12, 2018. The Blackfeet Compact needs your review before the Court determines whether to approve the Blackfeet Compact in accordance with applicable law.

The Blackfeet Compact defines the reserved water rights of the Tribe within the State of Montana and will entitle the Tribe to divert and use water in accordance with the Blackfeet Compact within all or part of the following basins: Basin 40F, the mainstem of the Milk River and its tributaries above Fresno Reservoir; Basin 40T, the mainstem of the St. Mary River and its tributaries; Basin 41L, the mainstem of Cut Bank Creek and its tributaries; and Basin 41M, the mainstem of Birch Creek, Badger Creek, Two Medicine River and their respective tributaries. A summary of the Tribal water right within these basins is enclosed with this notice.

You are receiving this Notice because the State’s water rights records indicate you have filed a statement of claim, applied for or received a permit to appropriate water, or own a water reservation in the vicinity of the area in which a reserved water right quantified in the Blackfeet Compact is located. Since you may have an interest affected by the Blackfeet Compact, you should review the Compact. Accordingly,

YOU ARE HEREBY NOTIFIED that the Montana Water Court has entered a Preliminary Decree and Order for the Commencement of Special Proceedings for Consideration of the Blackfeet Tribe-State of Montana-United States Compact in the affected basins, which includes the Blackfeet Compact, in order to determine whether it should be approved in accordance with

applicable law. If the Court approves the Blackfeet Compact, it will enter a Final Decree adjudicating the water rights of the Tribe as they are recognized in the Blackfeet Compact. That Final Decree will be binding on all water users in the Montana water rights adjudication.

*What Is a Preliminary Decree and What Are Your Rights
And Obligations to Object to the Blackfeet Compact?*

This Preliminary Decree is a decree entered by the Water Court in accordance with § 85-2-231(2), MCA. As explained in Article VII.B.2 of the Compact, the Water Court's review of the Compact is "limited to Article III and Appendix 5 [of the Compact], and may extend to other sections of the Compact only to the extent that they relate to the determination of existing water rights." The Preliminary Decree sets forth the entire Blackfeet Compact and the specific provisions of the Blackfeet Compact that the Court will review in the proceeding. The Court's review will be conducted pursuant to the standard previously identified by the Water Court for the review of Tribal-State water compacts, which treats a compact as "closely analogous to a consent decree." *Chippewa Cree Tribe Water Compact*, 2002 WL 34947007, *3, Case No. WC-2000-01. The Court's review of the Compact is to allow the Court "to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between the negotiating parties." *Id.* (internal quotations omitted). "The purpose of this kind of judicial review is not to ensure that the settlement is fair or reasonable between the negotiating parties, but that it is fair and reasonable to those parties and the public interest who were not represented in the negotiation, but have interests that could be materially injured by operation of the compact." *Id.* at *4.

At this stage in the adjudication, all affected persons are required to state any objections that they may have to the Preliminary Decree. Your water usage may be affected by the Blackfeet Compact. If you do not agree with the Tribal Water Rights recognized in the Blackfeet Compact, you may file an objection and request a hearing and the Water Court will hear your objection. **This will be your only opportunity to object to the Preliminary Decree. If you do not file an objection at this time, you will not be able to object to the Preliminary Decree in any other proceedings before the Water Court and you will be bound by any final decree entered by the Water Court approving the Tribal Water Rights quantified in the Blackfeet Compact.**

Right to Appeal

If you do not participate in Water Court proceedings, your right to appeal an adverse decision is limited. Section 85-2-235, MCA, provides that:

(1) A person whose existing rights and priorities are determined in a final decree may appeal the determination only if: (a) the person requested a hearing and appeared and entered objections to the temporary preliminary decree or the preliminary decree; (b) the person's rights or priorities as determined in the temporary preliminary decree or the preliminary decree were affected as the result of an objection filed by another person; (c) the person requested a hearing and appeared before the water court to finally resolve an issue remark, as defined in 85-2-250; or (d) the person is a claimant appealing an adverse decision when the water court issued the decision as the result of an evidentiary hearing or as the result of calling the claim in on the court's own motion.

(2) The attorney general may appeal a determination made in a final decree if the attorney general participated as an intervenor as provided in 85-2-248.

(3) An interlocutory ruling by the water judge upon a question of law may be appealed by any party who is affected by the decision and who participated in the matter in which the ruling was issued.

Should You File an Objection?

Only you can answer this question. To help you determine whether you should file an objection to the Preliminary Decree, you should examine the enclosed summary and the Blackfeet Compact. Your examination should not stop there, however. You should also compare the Tribal Water Rights with the claims that you have filed with the Water Court, the water right permits or certificates that you have received from the Montana Department of Natural Resources and Conservation, and possibly the other claims, permits, certificates, and reservations of water within the diversionary basins. All of the water rights claims filed and all of the water right permits, certificates, or reservations of water that have been granted in the diversionary basins are on record with the Montana Department of Natural Resources and Conservation. You might also review the entire Preliminary Decree and Order for the Commencement of Special Proceedings (Preliminary Decree and Commencement Order). Some or all of the documents referenced in this paragraph can be reviewed during business hours at the following offices:

1. The Montana Water Court, 1123 Research Drive, Bozeman, MT 59718 (Preliminary Decree and Commencement Order only).
2. The Montana Department of Natural Resources & Conservation, Water Resources Regional Office, 210 Sixth Avenue, Havre, MT 59501; (406) 265-5516 (all documents).
3. The Montana Department of Natural Resources & Conservation, Water Resources Regional Office, 222 Sixth Street South, Glasgow, MT 59230; (406) 228-2561 (all documents).
4. Glacier County Clerk's Office, Cut Bank, MT; Pondera County Clerk's Office, Conrad, MT; Toole County Clerk's Office, Shelby, MT; Liberty County Clerk's Office, Chester, MT; Hill County Clerk's Office, Havre, MT; Blaine County Clerk's Office, Chinook, MT; Phillips County Clerk's Office, Malta, MT; Valley County Clerk's Office, Glasgow, MT; Roosevelt County Clerk's Office, Wolf Point, MT (Preliminary Decree and Commencement Order only).
5. Bureau of Indian Affairs, Blackfeet Agency, 531 SE Boundary Street, Browning, MT 59417; (406) 338-7544 (Preliminary Decree and Commencement Order only).
6. Blackfeet Tribal Headquarters, 640 All Chiefs Road, Browning, MT 59417; (406) 338-7522 (Preliminary Decree and Commencement Order only).

You may obtain a paper or electronic copy of the Preliminary Decree and Commencement Order from the Department of Natural Resources and Conservation, Water Rights Bureau, P.O. Box 201601, Helena, MT, 59620-1601. The cost of a paper copy of the Preliminary Decree and Commencement Order, the Summary of Water Rights and this Notice (approximately 43 pages) is \$10.00. An electronic copy of those documents on CD is also \$10.00.

The Preliminary Decree and Commencement Order is also available on the DNRC website at <http://dnrc.mt.gov/divisions/reserved-water-rights-compact-commission/blackfeet-tribe-compact>. The Blackfeet Compact is published in section 85-20-1501 of the Montana Code Annotated, which can be found on the Internet at https://leg.mt.gov/bills/mca/title_0850/chapter_0200/part_0150/section_0010/0850-0200-0150-0010.html. The Montana Code Annotated can also be found in many public offices and public libraries.

Public Meetings

Public meetings to explain Water Court procedures will be held by Stephen R. Brown, Associate Water Judge of the Montana Water Court. Representatives of the Compacting Parties will also be present to explain the Blackfeet Compact. The meetings will be held:

- April 30, 2019, 7:00 p.m., Browning High School, 105 Highway 89, Browning, Montana;
- May 1, 2019, 7:00 p.m., Valier High School Gym, 804 4th Street, Valier, Montana;
- May 2, 2019, 7:00 p.m., Hilton Garden Inn, 2520 14th Street SW, Great Falls, Montana.
- May 7, 2019, 7:00 p.m., Valley County Courthouse, 501 Court Square, Glasgow, Montana; and
- May 8, 2019, 7:00 p.m., Best Western Plus Havre Inn & Suites, 1425 U.S. Highway 2 NW, Havre, Montana.

How to File An Objection and Request a Hearing

An objection to the Blackfeet Compact must be filed on the form provided by the Montana Water Court. Objection forms can be found at the Water Court and the DNRC office in Havre and at <https://courts.mt.gov/courts/water/legal>. Any objection to the procedure being followed in this matter may be filed in any format which is in compliance with the Montana Rules of Civil Procedure. **All objections must be filed and received by the Montana Water Court, P.O. Box 1389, Bozeman, MT 59771-1389, on or before October 1, 2019. LATE OBJECTIONS WILL NOT BE CONSIDERED.**

Extensions

The Water Judge may grant a request for an extension of the time for filing objections. A request for an extension must be received by the Water Court on or before **October 1, 2019**. Use the Water Court's Request for Extension form found at <https://courts.mt.gov/courts/water/legal>. If an extension is granted, it will apply to everyone. Any extension will be posted at the offices listed above and will be advertised once in the *Great Falls Tribune*, the *Glacier Reporter*, the *Cut Bank Pioneer Press*, the *Valierian*, *Havre Daily News* and the *Billings Gazette*.

Any Questions?

Use our toll-free number 800-624-3270. Our regular office number is (406) 586-4364, and is not toll-free. Or call the Havre DNRC Regional Office at (406) 265-5516.

DATED this 4th day of April, 2019.

/s/ Stephen R. Brown
Associate Water Judge
Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389

REMEMBER: OBJECTIONS MUST BE RECEIVED BY THE WATER COURT BY OCTOBER 1, 2019.

SUMMARY DESCRIPTION OF WATER RIGHTS IN THE BLACKFEET COMPACT

The Blackfeet Tribe, the State of Montana and the United States (collectively the “Compacting Parties”) have entered into a Compact regarding the water rights of the Blackfeet Tribe (“Blackfeet Compact”). The Blackfeet Compact settles the water rights of the Tribe, its members and allottees, and the United States on behalf of the Tribe, its members and allottees, in accordance with § 85-2-702, MCA. The Blackfeet Compact was ratified by the Montana Legislature in 2009 (codified at § 85-20-1501), by the United States Congress in 2016 (P.L. 114-322, Title III, Subtitle G), and by members of the Blackfeet Tribe in a Referendum Election held on April 20, 2017 and certified by the Secretary on May 30, 2017 and signed by the Compacting Parties on June 12, 2018.

The Blackfeet Compact recognizes water rights for the Blackfeet Tribe in the following basins:

- Basin 40F, the mainstem of the Milk River and its tributaries above Fresno Reservoir;
- Basin 40T, the mainstem of the St. Mary River and its tributaries;
- Basin 41L, the mainstem of Cut Bank Creek and its tributaries; and
- Basin 41M, the mainstem of Birch Creek, Badger Creek, Two Medicine River and their respective tributaries.

Article III of the Blackfeet Compact provides the key water rights provisions:

- The Tribe has the right to all traditional religious or cultural uses of water by its members within the Reservation with a Tribal priority date of October 17, 1855.
- The Tribe has an irrigation water right of 100 cubic feet per second (cfs) of the Natural Flow of Birch Creek (Basin 41M) for irrigation use in the upper Birch Creek Drainage, subject to certain limitations on its ability to change the place or purpose of use, with a Tribal priority date of October 17, 1855. The Tribe also has: a) an instream Natural Flow right in Birch Creek of 15 cfs from October 1 to March 31, and of 25 cfs from April 1 to September 30; b) a right to all Ground Water in the Birch Creek Drainage that is not hydrologically connected to Birch Creek; and c) a right to all remaining Natural Flows in Birch Creek after satisfaction of Water Rights Arising Under State Law at the State Highway 358 bridge and to all gaining flows from there to the confluence with Two Medicine River. These rights all have a Tribal priority date of October 17, 1855. Users of all sources in the Birch Creek Drainage (Basin 41M) other than the mainstem of Birch Creek are protected from any Call for instreams flows.
- The Tribe has the right to all Natural Flow and Ground Water in the Badger Creek and Two Medicine River Drainages (Basin 41M), with the exception of those waters subject to the Water Rights Arising Under State Law in those drainages, with a Tribal priority date of October 17, 1855. Twenty (20) cfs of the Tribal Water Right in Badger Creek and in the Two Medicine River are dedicated to instream flows in those sources. Water Rights Arising Under State Law in all sources in the Badger Creek and Two Medicine River Drainages (Basin 41M) are protected from any Call from any user of the Tribal

Water Right, except calls for instream flows, stored water, or water diverted from other basins.

- The Tribe has the right to all Natural Flow and Ground Water in the Cut Bank Creek Drainage (Basin 41L), with the exception of those waters subject to the Water Rights Arising Under State Law in the drainage, with a Tribal priority date of October 17, 1855. Two (2) cfs of the Tribal Water Right is dedicated to instream flows in Cut Bank Creek. Water Rights Arising Under State Law for Non-Irrigation Uses in all sources in the Cut Bank Creek Drainage (Basin 41L) are protected from any Call from any user of the Tribal Water Right, except calls for instream flows, stored water, or water diverted from other basins.
- The Tribe has the right to all Natural Flow and Ground Water in the Milk River Drainage (Basin 40F), with the exception of those waters subject to the Water Rights Arising Under State Law in the drainage, with a Tribal priority date of October 17, 1855. Two (2) cfs of the Tribal Water Right is dedicated to instream flows in the Milk River. Water Rights Arising Under State Law for Non-Irrigation Uses in all sources in the Milk River Drainage (Basin 40F) are protected from any Call from any user of the Tribal Water Right, except calls for instream flows, stored water, or water diverted from other basins.
- The Tribe agrees to defer New Development of the Tribal Water Right for certain irrigation uses, with the exception of uses from stored water or water diverted from other basins, for a period of 15 years in the Birch Creek Drainage, and for 10 years in the Cut Bank Creek and Milk River Drainages.
- The Tribe has a quantified water right of 50,000 Acre Feet per Year (AFY) to surface water in the St. Mary River Drainage (Basin 40T), subject to the Boundary Waters Treaty, as well as all Ground Water in the drainage not subject to the Boundary Waters Treaty, with a Tribal priority date of October 17, 1855. After satisfaction of all Water Rights Arising Under State Law in the St. Mary River, the Tribe also is entitled to any remaining portion of the United States' share of the St. Mary River under the Boundary Waters Treaty. The Tribe also has the right to all Natural Flow from Willow Creek and Lee Creek available to the United States under the Boundary Waters Treaty, and all Ground Water from those creeks within the Reservation, with the exception of those waters subject to Water Rights Arising Under State Law in those creeks, with a Tribal priority date of October 17, 1855.
- The Tribe has the right to all water naturally occurring in all lakes, ponds, wetlands, and other water bodies within the Reservation on trust lands and fee lands owned by the Tribe, its members, or Allottees.
- The Tribe is entitled to an allocation of 45,000 AFY of water stored in Lake Elwell, for use by the Tribe for any beneficial purpose on or off the Reservation, with a priority date of the Lake Elwell water right held by the Bureau of Reclamation.

- Those portions of Basins 40F, 40T, 41L, and 41M situated within the Reservation are closed to the issuance of new water rights permits under state law after April 15, 2009.

The Compact also provides:

- Water delivered by the Blackfeet Irrigation Project is a use of the Tribal Water Right and is subject to federal law.
- The Tribe agrees that any future uses or changes of use of the Tribal Water Right shall not harm any Water Rights Arising Under State Law for Non-irrigation Uses.
- The State will administer all Water Rights Arising Under State Law. The Tribe will administer the Tribal Water Right through a water code adopted by the Tribe and approved by the Secretary of the Interior. A Blackfeet Tribe – Montana Compact Board established under the Compact will have jurisdiction to resolve disputes between the Tribal Water Right and Water Rights Arising Under State Law.
- The Water Court will issue a final decree of the Tribal Water Right in the Montana General Stream Adjudication and the parties will seek dismissal of related federal court litigation regarding the Tribe's water right claims.

This document summarizes key parts of a lengthy legal document, the Blackfeet Compact; reviewers are urged to read the Compact on any issue of particular interest. Note that all terms capitalized in this summary are defined in the Blackfeet Compact.