

## **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.**