

Fort Belknap Indian Community



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Fort Belknap Indian Community
(Tribal Govt.)
Fort Belknap Indian Community
(Elected to administer the affairs of the community and
to represent the Assiniboine and the Gros Ventre
Tribes of the Fort Belknap Indian Reservation)

Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community Water Rights Settlement Act of 2021, S. 1911 Executive Summary

October 29, 2021

The Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community have Treaty rights to the water running through, bordering, and under the Fort Belknap Reservation. These "Indian water rights" are federal rights and different from State water rights. Under the Treaty of 1855, the United States reserved a large territory for the Blackfoot Nation, including the Gros Ventre Tribe, for their exclusive use and control. Neighboring tribes, including the Assiniboine Tribe, were provided a common hunting ground. The Tribes' Indian reserved water rights include rights under the 1888 Act of Congress establishing the Ft. Belknap Reservation. For many years now, the Fort Belknap Indian Community (FBIC) has sought to secure legal recognition and control of their water rights for the Reservation.

In 1908, the United States Supreme Court recognized the Tribes' right to water to irrigate the lands on the Reservation. *Winters v. United States*, 207 U.S. 564 (1908). Our Reservation is the birthplace of federal, Indian reserved water rights. The Court explained that the Ft. Belknap Reservation was established for the purpose of creating a permanent and livable homeland for the Gros Ventre and Assiniboine Tribes. But the 1888 Reservation also resulted in a significant reduction in the territory that the Tribes could use for our homeland. The United States knew that the Tribes would need a sufficient amount of water for the Reservation necessary to irrigate our lands and provide for domestic, livestock, and other uses. The Court awarded the Tribes Indian reserved water rights in the Milk River. This created the "Winters Doctrine," establishing the legal right to water for all reservation-based tribes. The Gros Ventre and Assiniboine Tribes are the first tribes to have a legally enforceable water right recognized by the Federal Government. Now, we will be the last tribes in Montana to get Congressional approval of our negotiated water rights and settle damages against the United States that will provide funding to develop and use all our Indian reserved water rights.

But the Fort Belknap Indian Community (FBIC) has additional rights to water in the Milk River and throughout the Reservation. Dozens of Indian communities have fought for legal

recognition of their Indian water rights. Federal law has developed to offer one of two options for the FBIC to secure all of its Indian water rights: litigation or negotiations and settlement. Instead of litigating its water rights claims, the FBIC Council passed Resolution No. 19-81 in 1981 for the purpose of negotiating with the State of Montana through the Montana Water Rights Commission and the federal government to settle the question of how much water belongs to the FBIC for our Reservation.

After over a decade of negotiations between the FBIC, the State of Montana, and the United States, the Fort Belknap Indian Community-Montana Water Rights Compact (Water Compact) was agreed to by the three negotiating parties. After conducting public meetings with the State on the Reservation and in communities of northcentral Montana, the FBIC Council approved the 2001 Water Compact with passage of Resolution No. 17-2001. The Montana Legislature also approved the Water Compact with an overwhelming majority. The Water Compact quantifies the FBIC's Indian Water Rights for the Fort Belknap Reservation and provides agreement that the FBIC has the legal authority to administer, develop, and manage the waters of our Reservation.

Indian Water Rights are a natural resource and a trust asset, held by the United States as the trustee, for the benefit of the FBIC. However, for over a century the United States has failed to protect the Tribes' water rights and has mismanaged our water resources, breaching its fiduciary responsibilities to the Tribes. The FBIC has legal claims against the United States that result from the federal government's actions and inaction to preserve our Indian water rights. This has had a significant and continuing adverse impact on the Tribes' ability to protect, preserve, and use our Indian water rights—and, ultimately, to establish a permanent homeland.

Because Indian Water Rights are trust property, titled in the United States, the Water Compact must be approved by Congress. The FBIC is now seeking Congressional approval of our Water Compact in order to protect and preserve these rights for current and future use. The Council is also negotiating to settle its claims against the United States for monetary compensation and land transfers. We are negotiating for \$593,110,000. These funds will be used to fully develop the FBIC's water rights through the construction of water resource infrastructure projects. These projects will support the Tribes' water-related needs and create economic development opportunities for current and future generations.

Negotiations and settlement amicably resolve the water issues between our Indian water rights and state water users (e.g., how much water belongs to the FBIC), avoids a lengthy and costly litigation process, and settles our water claims against the United States through Congressional approval of the Gros Ventre and Assiniboine Tribes' Water Rights Settlement Act. If we do not settle our Indian water rights, the Montana Water Court will litigate the FBIC claims to these waters. FBIC Indian water right claims were filed in the Water Court by the U.S. as our trustee in June 2015, as required under federal and state laws; they remain pending in the court, which can proceed to litigate these claims at any time in the near future. If the claims are litigated, the Water Court will have no authority to approve funding for our claims against the United States—funding that will allow us to develop our water rights. We will have a “paper” water right: legal rights to the water without the financial ability to develop and use it.

On September 10, 2018, the FBIC Council made a decision, consistent with past Councils since the 1980s, to approve Resolution No. 232-2018 and move forward with the proposed Water Rights Settlement Act. This process involves working with the Montana Congressional delegation to get the Act introduced in Congress and complete the negotiations to secure a comprehensive water rights settlement that includes funds to fully develop and use our Indian Water Rights. On October 9, 2018, the FBIC Council approved Resolution No. 234-2018 to include a portion of the Grinnell lands in our settlement with the requested restoration of other State and federal lands, to be transferred and held in trust for the FBIC as part of the Reservation and in partial satisfaction of the claims against the United States.

With Congressional approval of our Water Rights Settlement Act, the Indian reserved water rights of the FBIC will be secured for the Tribes and Tribal members for all generations. Indian reserved water rights cannot be forfeited or abandoned because it is not being used. Tribes retain the future use of their designated Indian water rights— in perpetuity. This is a critically important outcome at a time when water shortages are predicted for the foreseeable future in the west. Once Congress approves the quantity of the FBIC’s water rights, the Tribes will have a renewable natural resource whose value will increase over time and become more valuable than oil.

The FBIC will have the ability to market its unused water through leasing and other agreements on and off the Reservation. As a renewable resource, the FBIC can lease its available annual water to other users when it is not using its water. This will provide economic benefit to the Tribes and tribal members. However, the FBIC cannot sell its Indian Water Rights. Our Indian Water Rights will belong to the FBIC forever.

This Executive Summary provides a review of the key elements of the proposed Water Rights Settlement Act. It is divided into the following eight sections: (1) FBIC Indian Water Rights; (2) State and Federal Lands to be Transferred into Trust for the FBIC; (3) Aaniiih Nakoda Settlement Trust Fund; (4) Creation of Jobs for Planning, Designing, and Constructing Water-related Facilities; (5) Regional Economic Impact and Benefits; (6) Milk River Coordinating Committee; (7) Waiver and Release of Claims, Reservation and Retention of Claims, and Miscellaneous Provisions; and (8) Enforceability Date.

FBIC Indian Water Rights

FBIC Council members negotiating the FBIC Indian water rights’ quantification, administration, and settlement over the last thirty years have had the goal of ensuring that Tribal water claims are negotiated to: (a) provide for the FBIC use of Tribal water for multiple purposes; (b) ensure the FBIC rights include all the surface water on the Reservation; (c) ensure we have the most superior and senior priority date for the use of water in the Basin; and (d) provide for full rights to groundwater under the Reservation. The 2001 Water Compact describes the FBIC’s Indian water rights in detail.

The FBIC Indian Water Rights include, but are not limited to, water needed for (1) historically irrigated lands, (2) presently irrigated lands, and (3) future irrigable lands. They also include stored water, water for domestic, municipal, industrial, and livestock uses. The FBIC has

the superior, senior water rights to use water from the Milk River and its tributaries, as well as rights to water within the Reservation in (1) the Peoples Creek Basin (including Duck Creek, South Fork of Peoples Creek, Little Peoples Creek, Jim Brown Creek, and Lodge Pole Creek); (2) the Beaver Creek Basin (including Big Warm Creek and Little Warm Creek); (3) the Missouri River Basin within the Reservation; and (4) the Sub-Marginal lands.

The following details describe the FBIC Indian Water Rights:

1. Trust Asset. The United States is required to hold the Tribal Indian Water Rights in trust for the use and benefit of the FBIC, with federal protections for allottees who have the right to use Tribal water for irrigation purposes.
2. Senior Priority Date. Generally, the priority date for the FBIC's use of its water rights on the Reservation in the Milk River Basin 40J, Peoples Creek Basin 40I, Beaver Creek Basin 40M, and the Missouri River Basin 40EJ is October 17, 1855—the senior right to use the water on these rivers and streams. Off-Reservation Tribal Fee and Trust lands have a water use priority date of 1893; and the Missouri River Basin 40EJ water right, including when transferred to the Peoples Creek Basin 40I, has a priority date of 1935.
3. Period of Annual Use. Irrigation water can be used between March 1 and October 31 of each year. Other non-irrigation uses, such as for livestock, domestic use, diversion of Milk River water to the proposed Ft. Belknap Reservoir, and water needed to support non-irrigation uses on the Reservation, are authorized for the entire year. Generally, the Tribes can divert water by any means from any point on the water sources that lie within the boundaries of the Reservation, for use any place within the Reservation, and off the Reservation in the Missouri River.
4. Milk River. We have the right to divert up to 645 cubic feet per second of the United States' share of the natural flow of the Milk River Basin from its headwaters, and including upstream tributaries, at the diversion point on the Reservation. This is equal to 119,716 acre-feet of water per year.
 - ✓ Of the Milk River water right, up to 125 cubic feet per second (60,754 acre-feet per year) may be diverted for direct use on a maximum of 10,524 presently irrigated acres within the Fort Belknap Indian Irrigation Project. This water right preserves the historic water use protected under the *Winters Doctrine*.
 - ✓ In addition, up to 520 cubic feet per second may be diverted for direct use or to off-stream storage, or both, for the following: use on an additional 19,930 present and future irrigated acres within the Milk River Basin 40J, and up to 4,000 acre-feet per year of use for non-irrigation purposes. The proposed off-stream storage, the Ft. Belknap Reservoir, is for a maximum combined capacity up to 60,000 acre-feet.
5. Peoples Creek. We have the right to the entire surface water and groundwater, which is hydrologically connected to the surface water, remaining in the Peoples Creek Basin within the Reservation, including the right to store Peoples Creek water, after satisfaction of certain water rights arising under State law for non-tribal, historical irrigators in Upper Peoples Creek off the Reservation, negotiated as part of the Water Compact. In exchange for this agreement, the state

and federal governments have agreed to build Reservation storage with a minimum capacity of about 3,000 acre-feet in Upper Peoples Creek for whatever purposes the Tribes want.

✓ The right to use water in the Peoples Creek Basin includes the right to use water that can be conveyed from the Missouri River Basin 40EJ and transferred to the Peoples Creek Basin.

✓ We have the right to use this water to restore and develop an irrigation project amounting to 1,107 acres along the Peoples Creek and for other purposes.

6. Beaver Creek. We have the right to divert 8,024 acre-feet per year for irrigation of 2,241 acres from surface flow, or from groundwater, within the Reservation in the Beaver Creek Basin. The Tribes have the right to develop or authorize the development of groundwater within the Reservation that is not hydrologically connected to surface water under certain conditions, including consideration of an adverse effect on a water user (which is defined as an actual interference with the reasonable exercise of a water right resulting in a material injury).

7. We have the right to use or authorize the use of our Indian reserved water rights for non-irrigation purposes, such as domestic, municipal, and industrial use.

8. The Tribes have water rights on trust and Tribal fee land off the Reservation that includes the right to divert up to 1,135 acre-feet of water per year (for the present and historic irrigation of 297 acres and future irrigation of 18 acres) in the Missouri River Basin 40EJ, and includes up to 1,290 acre-feet per year for transbasin diversion to the Peoples Creek Basin (with a priority date of July 24, 1893). We also have the right to develop surface and groundwater in the Missouri River 40EJ and Peoples Creek Basins on off-Reservation trust and on Tribal fee lands (pursuant to State law).

9. The Tribes have the right to develop surface water from intermittent streams within the Reservation for use by livestock from the Milk River and its tributaries, the Peoples Creek Basin, the Beaver Creek Basin, and the Missouri River Basin. (Water for livestock cannot be obtained from a Perennial Stream). The capacity of each impoundment pit may be for a maximum of 15 acre-feet, and the total amount impounded in each impoundment or pit may be for a maximum of 30 acre-feet per year.

10. We are entitled to 20,000 acre-feet per year of stored water in Lake Elwell without cost to the FBIC and for multiple uses on and off the Reservation, including water marketing, within the Missouri River Basin.

11. Additionally, the FBIC will continue to receive its annual 1/7 share to the Fresno Reservoir's total quantity of stored water under the 1946 Fresno Reservoir Agreement, which, while variable, has averaged about 10,983 acre-feet per year. In the event the federal Fresno Dam is expanded and results in increased water storage, we would get a 1/7 share of the expanded storage Reservoir.

12. The FBIC will create a Tribal Water Code that will regulate and enforce the use of the Tribal Water Rights to provide for irrigation, domestic, commercial, municipal, industrial, cultural, recreational, and other uses, with a due process system for determining requests for the use of water on Tribal and allotted trust lands, and Tribal fee lands, and resolving disputes.

13. The FBIC, or a tribal farming enterprise or irrigation district approved by the FBIC Council, may enter into leases or agreements for the use of allotted lands for the development of the Fort Belknap Indian Irrigation Project, or any other irrigation project on the Reservation in the Milk River and Peoples Creek Basins, with the proceeds from a lease or agreement distributed to each owner of land subject to the lease or agreement, in proportion to the interest owned by the owner.
14. The reservation of a rights-of-way through individually-owned allotted lands for irrigation purposes is authorized, with compensation to be paid to the individual owners of such allotted lands.
15. The FBIC may temporarily transfer certain portions of the Tribal water rights by service contract, lease, or exchange for use off the Reservation within the Missouri River Basin, except as may be limited by the 1909 Boundary Waters Treaty between Canada and the United States, and consistent with the conditions specified in the Water Compact. However, the FBIC shall have the right to transfer Tribal water rights internationally, interstate, and inter-basin to the same extent such transfers are permissible for state-based and other water rights users.
16. The Secretaries of the United States Departments of the Interior and Energy are required to make favorable Pick-Sloan Missouri River Basin Program pumping power, preference customer rates available for up to 37,245 net acres of FBIC project lands under irrigation and for the mitigation projects required and funded by the Act.

State and Federal Lands to be Transferred into Trust for the FBIC

The Tribal leaders of the FBIC have always valued and fought for land rights, recognizing the importance of a tribal land base to their existence as a sovereign nation. The Water Rights Settlement Act provides for the transfer of 58,553 acres of State and federal lands to be held in trust by the United States for the FBIC as part of the Fort Belknap Reservation. The land transfer contributes to the settlement of the FBIC water rights as partial satisfaction of the FBIC claims against the United States.

State Lands Exchange and Transfer. The land transfers include a provision for the State to exchange some of its lands for Federal lands, with the identified State lands then transferred into trust to be held by the United States for the FBIC. This will include 20,296 acres of State lands on the Reservation and 7,413 acres of State lands off the Reservation (in what are known as the submarginal lands immediately west of the Reservation boundary where the FBIC owns other land from its aboriginal territory), for a total of 27,709 acres.

Federal Lands Transfer. Other Federal lands have been identified and designated to be transferred into trust for the FBIC, consisting of 30,844 acres. This Federal land transfer includes the following lands: (1) 24,784 acres designated as Bureau of Land Management lands (including a portion of what is known as the “Grinnell Lands,” to include 14,495 acres); (2) 2,541 acres designated as Bureau of Reclamation lands; and (3) 3,519 acres designated as Department of Agriculture lands (former trust lands that were judicially foreclosed on and acquired by the Department).

The Water Rights Settlement Act protects lands with valid, existing private rights within the State and federal land transfers, including rights subject to the General Mining Act of 1872, 30 U.S.C. § 21 *et seq.* Private fee lands are not included in the land transfers (e.g., the 222 acres within the Grinnell Lands transfer). The Act will also provide, as an enforceable federal law, that any road necessary for customary access to fee land parcels or other private rights within the boundary of the transferred lands shall be guaranteed with continued access to the private land parcels through easements. Private fee landowners will not be removed from their land.

Additionally, any use of land, including grazing, pursuant to a valid lease, permit, or right-of-way that is in effect on the date of the land transfer, shall remain in effect until the date of expiration of the lease, permit, or rights-of-way (unless an earlier termination is requested by the holder of such lease, permit, or rights-of-way). Any improvements upon the land constituting personal property shall remain the property of the lease, permit, or rights-of-way holder.

Grinnell Lands. With the establishment of the Fort Belknap Reservation as a permanent and independent homeland for the Tribes in 1888, more than fourteen million acres of the Gros Ventre, Piegan, Blood, Blackfeet, Crow, and Assiniboine lands were surrendered to the United States. The Grinnell Lands, in the Little Rockies, are a former portion of the 1888 Fort Belknap Reservation that the Tribes have long considered to be sacred lands supporting the spiritual and cultural practices of the Tribal members, and contain the headwaters of the Tribes' Reserved Water Rights in the southern portion of the Reservation. The Indian agents of the United States knew that there were gold and other precious minerals in the Little Rockies as early as 1884, and that non-Indian miners were trespassing on the Indian land seeking to acquire their fortunes.

Soon after the Tribes were put on their geographically-restricted Reservation, with the federal government's expectation that we would become farmers, valuable lode gold was discovered within the southern portion of the Reservation in the Little Rockies. The government supported the interests of the miners and sought to take back a portion of the lands from the newly formed Reservation, shrinking the size of the Fort Belknap Reservation.

The Indian Commissioners, reporting to Congress at this time, admitted that the Tribes would not be self-supporting as farmers after such a short period of time on their new Reservation.¹ In fact, the Indian Commissioners informed the U.S. Senate, as they had informed the Tribal leaders, that it was absolutely certain that the Tribes would suffer and starve if they did not surrender the lands in the southern portion of their new Reservation to the United States in order to have financial support for the survival of their members. In written proceedings of the negotiations before the Tribal Council, Indian Commissioner William C. Pollack told the Tribal leaders that if they did not sell more of their land, "there would be no way to get beef, cattle, flour, wagons, or anything else. . . and your women and babies [will be] crying for something to eat"

Under extreme duress, with a promise that the Tribes' water would not be adversely affected and that surrendered lands would be about 40,000 acres, the Tribal leaders gave in to the Federal government's pressure and fraudulent dealings and signed the Grinnell Agreement in 1895. The Grinnell Agreement was approved by an Act of Congress in 1896—but the assigned

¹ See Senate Report No. 117, 54th Congress, 1st Session, February 12, 1896.

surveyor subsequently expanded the portion of lands that would be removed from the Reservation to about 60,000 acres, even though monetary compensation for the surrendered lands was based on only 40,000 acres, and the Tribes are left with a perpetually contaminated water source. These lands have not been managed and administered in a manner that has protected and preserved the Tribal cultural and sacred resources. The Tribal government is in the best position with the highest interest in restoring, conserving, and protecting these important sacred, cultural, archaeological, and historical resources. This includes improving the ecological integrity, social values, and economic environment of this area, as well as the grazing, vegetation, fishery, geological, biological, wildlife, recreational, and scenic resources.

Importantly, the Tribes have identified the critical need to restore and improve the water quality and otherwise protect the headwaters of the Tribal water rights that flow to the Reservation from the Grinnell Lands. A primary reason for the transfer of a portion of the Grinnell Lands back to the FBIC is because the flows of water generated in the Grinnell Lands' watershed make up a vitally important part of the Tribes' water rights in the southern portion of the Reservation. Notably, the water resources and the population of the FBIC are divided into two distinct areas: the northern part of the Reservation and the southern part of the Reservation. The population in the northern part of the Reservation receive almost all of their water supply from the Milk River, where there is a relatively ample water supply.

However, a substantial portion of the FBIC population resides in the southern part of the Reservation and are dependent on a limited water supply generated in the Little Rockies, including that of the Grinnell Lands. This limited water supply is exacerbated by the FBIC's agreement, in an act of friendship and compromise during the Water Compact negotiations, to subordinate senior water rights in the main Upper Peoples Creek so that the neighboring non-Indian farmers can continue their historical water uses for irrigation.

Furthermore, some of the sub-surface water supply that is supposed to flow towards the Reservation has reversed its direction of flow away from the Reservation. This occurred because of the gold mining operation that took place when the mines were active, which reversed the direction that the groundwater flows. And, due to the old gold mining operations' techniques, some of the creeks that do flow towards the Reservation continue to carry pollutants, polluted water that cannot be used by the Tribal residents of the southern portion of the Reservation. This has diminished even further the available water supply for these Tribal members. Nevertheless, these Tribal members need a water supply for their domestic, municipal, recreational, and irrigation uses.

These numerous, historical man-made problems since the Tribes lost the Grinnell Lands are powerful and persuasive reasons why the FBIC must regain some control, protection, and regulation of the limited water resources generated in the Grinnell Lands watershed. The Water Rights Settlement Act provides for the transfer of a small portion of the Grinnell Lands back to the FBIC. Under the FBIC jurisdiction, the 14,495 acres of Grinnell Lands to be transferred to the FBIC shall retain the right of non-tribal members under Tribal law to continue to have the same access to the Grinnell Lands as it exists today for the next twenty-five years, with the same permit fees, bag limits, and the other rights and privileges non-tribal members currently enjoy under the State's hunting and fishing laws and regulations. The Act also provides non-tribal

members an equivalent right under Tribal law of access for twenty-five years for recreational purposes that is identical to that they currently enjoy under the Bureau of Land Management public lands laws and regulations. The Act provides that FBIC Tribal law will remain consistent with these particular State and Federal regulations during this time period, after which time the FBIC will decide what Tribal law and regulations will govern this area.

Fee-to-Trust lands. As a part of the Settlement bill, the FBIC is also requesting that almost 30,000 acres of Tribally-owned Fee lands, on and off the Reservation, be transferred into trust and become part of the Reservation.

Aaniiih Nakoda Settlement Trust Fund

The FBIC Water Rights Settlement Act proposes the establishment of the Aaniiih Nakoda Settlement Trust Fund for the purpose of developing the FBIC Indian Water Rights by carrying out the activities identified in the Act and the 2019 FBIC Comprehensive Water Development Plan (Plan). The Act provides that the FBIC may make modifications to the Plan that it determines necessary to account for the conditions in existence at the time the funding is received and the activity is carried out.

The FBIC is seeking \$593,110,000 of Federal funding for the Aaniiih Nakoda Settlement Trust Fund to satisfy and compensate for the legal claims that the FBIC has against the United States. The Trust Fund consists of four major accounts established in the Treasury of the United States for expenditures by the FBIC as follows: (1) the FBIC Tribal Land and Water Rehabilitation, Modernization, and Expansion account; (2) the FBIC Water Resources and Water Rights Administration, Operation, Maintenance, and Repair account; (3) the FBIC Tribal Economic Development account; and (4) the FBIC Clean and Safe Domestic Water Supply and Wastewater Systems account.

The proposed FBIC Water Rights Settlement Act authorizes \$593,110,000 in appropriations for the FBIC for each of the four accounts, as follows:

1. The FBIC Tribal Land and Water Rehabilitation, Modernization, and Expansion Account—\$240,140,000: This account is established for the rehabilitation, modernization and expansion of the Fort Belknap Indian Irrigation Project to support the agricultural economy on the Reservation, including restoring historically irrigated lands or projects. It also includes the funding of activities related to exchanging, transferring, or acquiring land for irrigation; cultural preservation; water resource development; and other land- and water-related projects.
2. The FBIC Water Resources and Water Rights Administration, Operation, Maintenance, and Repair Account—\$61,300,000: This account is established to pay the costs of administering the Tribal water rights and water resources, development of a Tribal Water Code, and for the annual operation and maintenance costs for the expanded irrigation projects.
3. The FBIC Tribal Economic Development Account—\$168,390,000: This account is established in order to pay the costs of water-related economic development activities that the FBIC determines will further develop the Reservation economy of the FBIC. This account

provides the FBIC with the flexibility to identify and engage in activities that promote a positive economy for the FBIC and Tribal members and the use of its water rights, including activities related to the training, health, and well-being of the Tribal labor force and members.

4. The FBIC Clean and Safe Domestic Water Supply and Wastewater Systems Account—\$123,280,000: This account is established to pay the costs of (a) a feasibility study and design of a domestic water supply and wastewater treatment system for the FBIC; (b) the planning, design, and construction of a domestic water supply system and related facilities for tribal communities; and (c) the planning, design, and construction of a wastewater treatment system and related facilities for tribal communities.

Mitigation Activities. Consistent with the negotiated Water Compact, the Water Rights Settlement Act provides for the authorization and appropriation of funds to mitigate potential adverse effects on State-based water users due to the full development and use of the FBIC Indian water rights. This includes mitigation for the Milk River Project water users, and a new Upper Peoples Creek Dam and Reservoir on the Reservation. The funds for the four accounts in the Aaniiih Nakoda Settlement Trust Fund are in addition to the \$69,500,000 that are identified for the mitigation activities in the Milk River Basin, required under the 2001 Water Compact, and that the state and federal governments will jointly support.

Also, consistent with the negotiated Water Compact, the Water Rights Settlement Act recognizes a water rights mitigation agreement for non-tribal Upper Peoples Creek irrigators. The FBIC agreed to subordinate a portion of its senior priority water rights in Upper Peoples Creek to existing off-Reservation, non-tribal water users in exchange for the development of reservoir storage for the benefit of the FBIC in the Upper Peoples Creek Basin. The Water Settlement Act identifies \$15,500,000 for the construction of the Upper Peoples Creek Dam and Reservoir, which costs will also to be shared by the state and federal governments. The reservoir will provide for non-agricultural activities, as well as irrigation water uses.

Other. There is \$15,000,000 authorized for the Secretary to carry out the activities related to the land transfers in Section 6.

Under the policy and federal regulations of the United States and the Aaniiih Nakoda Water Rights Settlement Act, settlement funding is not allowed to be used for per capita distribution to Tribal members. The funding is to be used to develop the FBIC's water rights and support water-related economic development. When the FBIC has developed and markets its water, it will be able to use the income generated from water leasing, deferral, forbearance, and other agreements for the benefit of the FBIC and tribal members.

Development of Jobs for Planning, Designing, and Constructing Facilities to Use FBIC Indian Water Rights

The Water Rights Settlement Act is intended to provide monetary support for the full development and use of the FBIC's water rights. This will create jobs and promote the development of a viable Reservation economy. It is based on the Water Compact and agreements with the State and federal government that require the development of water

infrastructure and other water-related economic activities. The settlement funds support the planning, design, and construction of necessary facilities.

In addition to the activities described in the previous section, the Act provides the FBIC a permanent allocation of 20,000 acre-feet per year of stored water from the water right of the Bureau of Reclamation in Lake Elwell (Tiber Reservoir). The stored water will be treated as a part of the Tribal water rights. The FBIC may use the allocated water for any purpose, including agricultural, municipal, commercial, industrial, leasing, mining, or recreational purposes, on or off the Reservation.

To support its economic development efforts, the FBIC will be able to market its unused water when it is used within the Missouri River Basin and the agreement does not permanently alienate any of the water apportioned to the FBIC—that is, the Indian Water Right may not be sold, only used under an FBIC agreement. If applicable State and Federal laws are amended or expanded to authorize water users to temporarily transfer water rights interbasin, interstate, or internationally, the FBIC shall have the same right and authority.

Regional Economic Impact and Benefits

The FBIC is requesting a total of \$593,110,000 in monetary compensation for damages. The FBIC Council anticipates that the settlement of the FBIC water rights will result in a significant and positive economic impact for the Tribes, the local communities, and the region. The Council of Economic Advisers issued a report titled “Estimates of Job Creation from the American Recovery and Reinvestment Act of 2009.” (Executive Office of the President, dated May 2009). Using historical experience, current modeling techniques, and a conservative approach, the Council of Economic Advisers reported that, as a simple rule, \$92,000 of government spending creates one job-year (or one job for one year). Using this rule of estimation, the proposed Tribes’ Indian Water Rights Settlement Act will create an approximate total of 6,447 job-years. Over a 20 year period, this would result in over 300 jobs per year.

Congress has shown a commitment to create jobs and improve the quality of life for Native American communities by strongly supporting Indian water rights settlements. Between 2010 and 2012, Congress approved six Indian water rights settlements—an unprecedented number of Indian water rights settlements in that short period of time. Since then, several additional Indian water rights settlements have been approved, including the Blackfoot Tribe and the Confederated Salish and Kootenai Tribes. A good portion of the jobs generated by the implementation of the settlements will be in Native American communities, and the benefits of the reliable and modern water infrastructure that these projects create will bring additional and lasting economic benefits to Indian Country and local communities. (See Mike L. Connor, Commissioner of Reclamation, Sept. 12, 2011, Making Progress in Indian Country, at www.whitehouse.gov).

Milk River Coordinating Committee

Because water flows, rivers and streams enter and exit the Fort Belknap Reservation. The State and the FBIC have sovereign water rights in some of the same rivers and streams, such as

the Milk River. The FBIC Water Rights Settlement Act recognizes a Basin-wide Milk River Coordinating Committee, negotiated as part of the Water Compact, that includes the participation of the FBIC, State water users, and federal agencies under the Secretary of the Interior. The purpose of the Milk River Coordinating Committee is to improve the coordination of the operation of water storage facilities for the release of water from storages within, or for the diversion to, the Milk River Basin, and to improve the management of diversions from the Milk River.

Waiver and Release of Claims, Reservation and Retention of Claims, and Miscellaneous Provisions

The Water Rights Settlement Act provides for the FBIC to waive and release its water rights claims within the State and its water-related damage claims against the United States. Waiving and releasing claims to any additional Indian water rights in the State and releasing the United States from existing breach of trust claims related to these water rights and resources are required by the federal government when tribes negotiate and settle their Indian Water Rights and are compensated for damages without litigation. The waiver and releases are in return for the State and Federal recognition of the FBIC's Indian Reserved Water Rights and other benefits provided by the Water Compact and the FBIC Water Rights Settlement.

Nevertheless, the FBIC and the United States, acting in its capacity as trustee for the FBIC, reserve rights and retains certain claims, which can still be asserted in the future. The FBIC reserves the rights and retains claims that include: (1) all claims that may be necessary to enforce the Water Compact, the Final Court Decree, and the Settlement Act; (2) all rights to use and protect water rights acquired after the date of the enactment of the Act; and (3) potential claims to off-reservation hunting, fishing, and gathering. Further, the Fort Belknap Indian Community retains the right to enforce its own laws, including with regard to environmental protections.

The Water Rights Settlement Act provides for the cancellation and elimination of any and all debt or liens against the allotments of land held by the FBIC and its allottee members due to construction and operation and maintenance assessments, which have been assessed against Tribal and allotted lands within the Fort Belknap Indian Irrigation Project.

Enforceability Criteria

To complete its comprehensive water settlement, the FBIC must move forward to complete several activities in order to implement the provisions of the Water Compact and Water Rights Settlement Act, including:

(1) Introduction of the Water Rights Settlement Act in the House and a Hearing (the Bill was reintroduced in the Senate on May 27, 2021, by Senator Jon Tester, and a Hearing was conducted for the first time on October 6, 2021), and complete negotiations of the terms and conditions of the proposed Act with the Department of Interior, the State, and Congress, which includes the amount of monetary compensation;

- (2) Approval of the Water Rights Settlement Act by Congress and President Biden, which includes approval of the Water Compact;
- (3) FBIC Tribal member approval of the Water Compact and Water Settlement Act by submitting them to a vote by the membership;
- (4) Issuance of a final judgment and decree from the Montana Water Court approving the Water Compact agreed to by the United States, the FBIC, and the State of Montana, creating an enforceable FBIC Indian Water Right;
- (5) Appropriations of all the settlement funds for the four designated accounts of the Aaniiih and Nakoda Settlement Trust Fund, deposited and made available to the FBIC;
- (6) Execution of certain agreements of the FBIC with the Secretary that are required under the Water Compact and Settlement Act;
- (7) State payment as part of the cost share with the federal government for the Milk River Project and tributary water users mitigation activities and for the construction of the FBIC Peoples Creek Reservoir and Dam; and
- (8) Execution of the FBIC and United States waiver and releases.