

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

FBIC Indian Water Rights

FBIC Council members negotiating the FBIC Indian water rights' sources, quantification, and administration had the goal of ensuring that Tribal water claims would (a) include the water running through, bordering, and under the Reservation; (b) ensure a superior and senior priority date for the use of our Indian water rights; and (c) provide for the FBIC to use of its Tribal water for multiple purposes, including marketing. The 2001 FBIC-Montana 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, industrial, recreational, and cultural uses.

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.