

# 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 2019: Executive Summary**

**November 13, 2019**

The Gros Ventre and Assiniboine Tribes have a legal right to the water bordering, running through, under and on the Fort Belknap Reservation. These water rights are Treaty-based rights, supported by the Treaty of 1855 (in which the Gros Ventre Tribe participated as a part of the Blackfoot Nation and secured a large portion of territory for their exclusive use and control, and the Assiniboine Tribe secured common hunting grounds with the neighboring tribes) and the 1888 Act of Congress establishing the Ft. Belknap Reservation. In 1908, the United States Supreme Court held that when the federal government created the Ft. Belknap Reservation with the purpose of establishing a permanent and independent homeland for the Gros Ventre and Assiniboine Tribes, it intended that the Tribes would have sufficient water necessary to irrigate their lands and provide for domestic, livestock, and other purposes. *Winters v. United States*, 207 U.S. 564 (1908). These water rights are known as Indian Reserved Water Rights and are protected under federal law. The Gros Ventre and Assiniboine Tribes are known as the “Winters Tribes,” responsible for establishing this important legal doctrine for reservation-based tribes. The Fort Belknap Indian Community (FBIC) now seeks Congressional ratification recognizing the Tribes’ water rights in order to protect and preserve them for current and future use in perpetuity.

Indian Reserved Water Rights are a trust asset, held by the United States, as the trustee, for the benefit of the Tribes. However, the United States failed to protect the Tribes’ water rights and has mismanaged the Tribes’ water resources, breaching its fiduciary obligations to the Tribes. The FBIC has legal claims against the United States that result from the federal government’s actions, or inaction, occurring over a period of more than a century and a half. The government’s mismanagement has had a significant and continuing adverse impact on the Tribes’ ability to protect, preserve, and use their water rights. Instead of litigating its claims, however, the FBIC Council passed Resolution No. 19-81 in 1981 for the purpose of entering into negotiations with the Montana Reserved Water Rights Compact Commission and the federal government in order to quantify the Tribes’ reserved water rights.

The purpose of negotiations is the desire of all parties to resolve the water issues amicably, avoid lengthy and costly litigation, and settle the Tribes' water rights claims through Congressional approval of the Gros Ventre and Assiniboine Tribes' Water Rights Settlement Act. The Tribes are seeking monetary compensation for the damages caused by the United States that will be used to develop the Tribal Reserved Water Rights through the construction of water resource infrastructure projects to support the Tribes' water-related needs, fully develop the water resources, and create economic development opportunities for current and future generations.

After over a decade of negotiations between the FBIC, the State of Montana, and the Federal Negotiating Team, the terms of the Fort Belknap Indian Community-Montana Water Rights Compact (Water Compact) were agreed to and, 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. Subsequently, the Montana Legislature ratified the Water Compact with an overwhelming majority in 2001. The Water Compact quantified the Indian Reserved Water Rights on the Fort Belknap Reservation and provided for the FBIC's administration, development, and management of the waters of the Fort Belknap Reservation (as well as other trust and fee lands off the Reservation).

The FBIC Indian Reserved 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 wetlands, and 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 certain 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, Lodge Pole Creek, Lone Tree Coulee, and Mud 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 Water Compact is part of the proposed "Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community Water Rights Settlement Act of 2019" (Water Rights Settlement Act) in order to secure its Congressional ratification. On September 10, 2018, the FBIC Council approved, by Resolution No. 232-2018, moving forward with the proposed Water Rights Settlement Act and working with the Montana delegation for its introduction in Congress and completing the negotiations to secure a comprehensive water rights settlement that includes funds to fully develop and use the Indian Reserved Water Rights. On October 9, 2018, the FBIC Council approved, by Resolution No. 234-2018, the inclusion of a portion of the Grinnell lands, with other State and federal lands, to be transferred and held in trust for the FBIC as partial satisfaction of the damages claims against the United States.

With Congressional approval of the 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. Tribes retain the future use of their designated 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. Approval of the Water Rights Settlement Act will also provide significant funding for water projects, such as improved irrigation and water leasing, which will provide economic benefits for the Tribes and Tribal members, and includes specific economic development funds to be used for the betterment of the FBIC.

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) Tribal Water Rights; (2) Exchange and Transfer of Public Lands into Trust for the FBIC; (3) the Fort Belknap Indian Community Settlement Trust Fund; (4) Development of a Viable Reservation Economy by the Planning, Design, and Construction of Facilities to Use Reservation Water; (5) Milk River Coordinating Committee and Mitigation of Impacts on other Milk River Water Users; (6) Regional Economic Impact and Benefits; (7) Miscellaneous Provisions; and (8) Enforceability Date.

## **Tribal Water Rights**

Members of each FBIC Council participating in the negotiations of Tribal Reserved Water Rights' quantification, administration, and settlement over the last thirty years have had the goal of ensuring that Tribal water claims are negotiated: (a) to provide for the FBIC use of Tribal water for multiple purposes; (b) to ensure the FBIC rights to all the surface water sources on the Reservation; (c) to have the most superior and senior priority date for the use of water in the Basin; and (d) to provide for full rights to groundwater under the Reservation. The proposed Water Rights Settlement Act includes Congressional approval of the Water Compact with all the terms and conditions agreed to in 2001. The following rights describe the FBIC Tribal Water Rights.

1. Water to be used for irrigation 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 fish and wildlife populations 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.
2. The Tribes 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 and its tributaries upstream from the diversion point on the Reservation.
3. Of the right to divert 645 cubic feet per second of the natural flow of the Milk River, up to 125 cubic feet per second may be diverted for direct use to 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 off-stream storage, the proposed Ft. Belknap Reservoir, is for a maximum combined capacity up to 60,000 acre-feet.

4. The Tribes have the right to the entire surface water and groundwater, which is hydrologically connected to the surface water that remains 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. The right to use water in the Peoples Creek Basin includes the right to use water conveyed from the Missouri River Basin 40EJ. To assist in maintaining water in the Basin and/or live stream flow for whatever purposes, the State has agreed to build storage with a minimum capacity of 3,000 acre-feet in upper Peoples Creek. The Tribes have the right to develop a new irrigation project amounting to 1,107 acres along the Peoples Creek.
5. The Tribes 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).
6. The Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the effective date of the Water Compact in the entire Reservation.
7. 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 Basin 40EJ, and includes up to 1,290 acre-feet per year for conveyance to the Peoples Creek Basin (with a priority date of July 24, 1893). The Tribes also have the right to develop surface and groundwater in Missouri Basin 40EJ and Peoples Creek on off-Reservation trust and Tribal fee land pursuant to State law.
8. The Tribes have the right to develop surface water from intermittent streams for use by livestock from the Milk River and its tributaries within the Reservation, the Peoples Creek Basin (including Duck Creek, the South Fork of Peoples Creek, Little Peoples Creek, Jim Brown Creek, Lodge Pole Creek, Lone Tree Coulee, and Mud Creek), the Beaver Creek Basin (including Big Warm Creek and Little Warm Creek), 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.
9. Generally, the priority date of the FBIC 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.
10. The Tribes are entitled to 20,000 acre-feet per year of stored water in Lake Elwell without cost to the FBIC.
11. Additionally, the FBIC's continued 1/7 share to the Fresno Reservoir's total quantity of stored water under the 1946 Fresno Reservoir Agreement is protected and available annually to the Tribes, in addition to other rights identified in the Water Compact.

12. The United States is required to hold the Tribal Reserved Water Rights in trust for the use and benefit of the FBIC, with protections for allottees.
13. The FBIC will create a Tribal Water Code that will regulate the use and consumption 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.
14. The FBIC, or a tribal farming enterprise or irrigation district approved by the FBIC Council, may enter into leases or agreements of allotted land for the development of the FBIC 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.
15. 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.
16. 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, 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.
17. The Secretaries of the United States Departments of the Interior and Energy are required to make Pick-Sloan Missouri River Basin Program pumping power rates available for not more than 37,245 net acres of FBIC project lands under irrigation.

### **Exchange and Transfer of Public Lands 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 public lands to be held in trust by the United States for the FBIC. The land transfer contributes to the settlement of the FBIC water rights as partial satisfaction of the FBIC claims against the United States.

The land transfer includes the exchange of designated State land for Federal land that will be subsequently transferred into trust to be held by the United States for the FBIC, and includes 20,296 acres of State lands on the Reservation, and 7,413 acres of State lands off the Reservation (in what is known as the submarginal area immediately west of the Reservation boundary where the FBIC owns other land from its aboriginal territory), for a total of 27,709 acres.

Other Federal lands have been identified and designated to be transferred to the United States to be held in 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 FBIC Water Rights Settlement Act protects lands with valid, existing private rights within the federal land transfer, 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 land owners 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.

Bureau of Reclamation Lands. With regard to the Bureau of Reclamation lands, a land transfer shall not occur unless and until a cooperative agreement has been negotiated among the Bureau of Reclamation, the Bureau of Indian Affairs, and the FBIC: (1) to ensure that the Bureau of Reclamation and any successor in interest, including the Malta Irrigation District, shall retain adequate rights-of-way to operate and maintain, consistent with all applicable laws and any delivery contracts in effect on the date of enactment of this Act, the Milk River Project and facilities of the Milk River Project, including the Dodson Diversion Dam and the Dodson South Canal within the Bureau of Reclamation land; (2) to manage and implement the planning, design, and construction activities described in the Act; and (3) to agree on the uses to which the Fort Belknap Indian Community may put the land.

The Bureau of Reclamation land transfer is also subject to (1) the right of ingress and egress by personnel of the Bureau of Reclamation, the Malta Irrigation District, and other authorized personnel for Milk River Project purposes; (2) all existing rights-of-way of record or in use for Milk River Project facilities for Milk River Project purposes, as determined by the Bureau of Reclamation, the Malta Irrigation District, and authorized personnel; and (3) the right of the Bureau of Reclamation and Malta Irrigation District to seep, flood, and overflow the transferred land for Milk River Project purposes and to prohibit the construction of permanent structures on the transferred lands, except as provided for in the cooperative agreement and to meet the requirements of the irrigation project.

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 members of the Tribes, and contain the headwaters of a portion of the Tribes’ Reserved Water Rights. The Indian agents of the United States knew that there was 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 lands, with the federal government's expectation that they 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, i.e., as farmers, after such a short period of time on their new Reservation.<sup>1</sup> 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 . . . ."

In 1895 the Federal government representatives were successful in obtaining an agreement from the Tribal leaders of the Fort Belknap Reservation to surrender as much as 68,000 acres of their Reservation lands in the Little Rockies to the federal government, which was approved by the Act of Congress in 1896, with monetary compensation based on only 40,000 acres. 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

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

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 transferred to the FBIC shall retain the right of non-tribal members to continue to have the same right of 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 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 regulations will remain consistent with these particular State and Federal regulations during this time period.

### **Fort Belknap Indian Community Settlement Trust Fund**

The FBIC Water Rights Settlement Act proposes the establishment of a Fort Belknap Indian Community Settlement Trust Fund for the purpose of carrying out the activities identified in the Act. In addition to the land transfer, the FBIC is seeking \$593,110,000 of Federal funding for the Water Rights Settlement Trust Fund to satisfy and compensate, in part, the legal claims of the Tribes. 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, and Maintenance account; (3) the FBIC Tribal Economic Development account; and (4) the FBIC 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 activities related to exchanging, transferring, or acquiring land; rehabilitating or otherwise improving existing and historically



irrigated land or projects; agricultural development and irrigation project expansion; cultural preservation; water resource development; and other land- and water-related projects.

2. The FBIC Water Resources and Water Rights Administration, Operation, and Maintenance Account—\$61,300,000: This account is established to pay the costs of administering the Tribal water rights and water resources, 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 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 Tribes and its use of its water rights, including activities related to the training, health, and well-being of the Tribal members.

4. The FBIC 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.

The funds for the four accounts in the Settlement Trust Fund are in addition to the \$21,000,000 that is authorized in the Settlement Act for appropriations to the State of Montana for a Mitigation Fund for irrigation projects in the Milk River Basin, mentioned in the previous section.

Finally, the FBIC Water Rights Settlement Act provides that \$1,100,000 be appropriated for the Bureau of Reclamation that will be conducting activities related to planning, designing, and constructing infrastructure improvements (including access roads, bridges, and fencing) necessary to maximize the utility of the rights-of-way with respect to transferred land.

### **Development of a Viable Reservation Economy by Planning, Designing, and Constructing Facilities to Use FBIC Water Rights**

The Water Rights Settlement Act is intended to provide monetary support for the full development of the Tribes' water rights, identified in the Water Compact, and promote the development of a viable Reservation economy. It is based on the Water Compact agreements with the State and federal government for the development of water infrastructure projects that will support the Tribes' use of all their water rights. The settlement funds support the planning, design, and construction of facilities that will support the use of the Tribes' water rights. First, the Secretary of the Interior shall provide assistance to the FBIC with the planning, design, construction, and/or expansion of the Fort Belknap water supply infrastructure, the Fort Belknap Indian Irrigation Rehabilitation Project, the restoration of historic irrigation projects within the interior of the Reservation, livestock water supply improvement, and wetlands rehabilitation. As part of this, the Secretary of the Interior is also directed to conduct one or more studies to

determine the feasibility and design of a domestic water supply and wastewater treatment system for the FBIC, determine the environmental impact, and ensure environmental compliance in the development and construction of projects under the Act. The Secretary may enter into cooperative agreements with the State and the FBIC to carry out all or a portion of one or more studies that are authorized.

Second, 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 component 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 may also use, lease, contract, exchange, or enter into other agreements for the use of its stored water when use of the water occurs within the Missouri Basin and the agreement does not permanently alienate any of the water apportioned to the Tribes. However, the FBIC also seeks to reserve its authority to temporarily transfer its Tribal water rights through inter-basin, interstate, and international agreements to the same extent permissible for state-based and other water users.

### **Milk River Coordinating Committee and Mitigation of Impacts on Other Milk River Water Users**

The FBIC has substantial potential for water development from the Milk River, Peoples Creek and its tributaries, Beaver Creek and its tributaries, and several smaller tributaries with its senior water rights. The Water Rights Settlement Act includes a provision to ensure that Fresno Reservoir is operated in accordance with the Water Compact. The 1946 Fresno Reservoir Agreement guarantees the FBIC a 1/7 share to the total quantity of water impounded and stored in the Fresno Reservoir, which is to be available for use by the FBIC during each irrigation season from the waters of the Milk River and its tributaries.

Additionally, the FBIC Water Rights Settlement Act recognizes a basin-wide Milk River Coordinating Committee, created by the Water Compact, and authorizes the Secretary of the Interior, acting through the Bureau of Reclamation, the Bureau of Indian Affairs, the United States Geological Survey, the United States Fish and Wildlife Service, and the Bureau of Land Management, to participate in the Milk River Coordinating Committee. The purpose of the Milk River Coordinating Committee is to improve the coordination of water storage facilities' operations, to provide for the coordination of releases of water from storage within, or for the diversion to, the Milk River Basin, and to improve the management of diversions from the Milk River.

The Water Rights Settlement Act provides for the appropriation of State and Federal funds to mitigate potential adverse effects on non-Tribal water users, in particular, related to the St. Mary Diversion Facilities, the Milk River Project, and the Upper Peoples Creek Dam and Reservoir, due to the development and use of the FBIC Tribal water rights, which is consistent with the agreement of the parties to the Water Compact. The State's contribution includes funding project grants for mitigation and watershed improvement activities, as well as State

technical, modeling, and other services for purposes of identifying, supporting, and enhancing water use and management in the Milk River Basin (\$4,000,000 of in-kind State contributions). Finally, it requires the Secretary of the Interior to establish a trust account in the amount of \$21,000,000 for the State of Montana in order to carry out the mitigation and watershed improvement activities described in the Water Compact.

The Water Rights Settlement Act recognizes a water rights mitigation agreement for Peoples Creek, included in the Water Compact. The FBIC agrees to subordinate its senior priority water rights in Upper Peoples Creek to existing 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 State of Montana has agreed to contribute to the construction of the proposed Peoples Creek Dam and Reservoir on the Reservation. The reservoir will provide for recreational activities and wetlands, as well as irrigation.

### **Regional Economic Impact and Benefits**

The FBIC is requesting a total of \$593,110,000 in monetary compensation. The FBIC Council anticipates that the settlement of the FBIC water rights will result in a significant and positive economic impact on 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.

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. 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](http://www.whitehouse.gov)).

### **Miscellaneous Provisions**

The FBIC 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 Indian Irrigation Projects.

The Water Rights Settlement Act provides for the FBIC to waive and release its water rights claims within the State and its damage claims against the United States, acting in its

capacity as trustee of the FBIC and its members, that are required by the federal government when tribes negotiate and settle their Indian Reserved 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 Tribal Reserved Water Rights and other benefits provided by the Water Rights 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 the retention of certain claims, which can still be asserted in the future. The FBIC reserves the rights and retention of claims that include: (1) all claims that may be necessary to enforce the Water Compact, the Final Court Decree, or the Settlement Act; (2) all rights to use and protect water rights acquired after the date of enactment of the Act; (3) all claims relating to activities affecting the quality of water; (4) all claims related to the enforcement of any Federal, State, or Tribal law to protect the environment or seek damages related to water quality problems (including those caused by mining activities in the Little Rocky Mountains or the depletion in surface flows and groundwater on the southern end of the Reservation); and (5) potential claims to off-reservation hunting, fishing, gathering, and other related rights. Further, the Fort Belknap Indian Community retains the right to enforce its own laws, including with regard to environmental protections.

### **Enforceability Date**

To complete its comprehensive water settlement, the FBIC must move forward to secure several actions to implement the provisions of the Water Compact and Water Rights Settlement Act: (1) submit the proposed Water Rights Settlement Act to Congress and secure its introduction, participate in Congressional hearings, and complete negotiations of the terms and conditions of the proposed Act, which include monetary compensation; (2) secure Congressional approval of the Water Rights Settlement Act, which includes authorizing and ratifying the Fort Belknap Indian Community-Montana Water Rights Compact; (3) secure FBIC approval of the Water Compact and Water Settlement Act by submitting them to a vote by the tribal membership for approval or disapproval; (4) obtain 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 water right; (5) secure all the funds to be appropriated for the four designated accounts of the FBIC Settlement Trust Fund that must have been made available and deposited; (6) execute the agreements of the FBIC with the Secretary required under the Water Compact and Settlement Act; (7) ensure that the State funds related to Peoples Creek Reservoir have been provided; and (8) execute the FBIC and United States waiver and releases.