

Fort Belknap Indian Community



Fort Belknap Agency
656 Agency Main Street
Harlem, Montana 59526-9455
PH: (406) 353-2205
FAX: Council - (406) 353-4541
FAX: Departments - (406) 353-2797

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 21, 2018

In 1908, the United States Supreme Court held that the federal government had reserved water rights for the Gros Ventre and Assiniboine Tribes when the Fort Belknap Reservation was created. *Winters v. United States*, 207 U.S. 564 (1908). These water rights are known as federal Indian Reserved Water Rights or *Winters* rights. The Supreme Court explained that the Tribes shall have sufficient water necessary to irrigate their lands and to provide water for other purposes so that a permanent homeland can be established.

The Fort Belknap Indian Community's (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.

Indian Reserved Water Rights are titled in the United States, who, as the trustee, holds the water rights for the benefit of the Tribes. However, the United States failed to protect the FBIC water rights and mismanaged the Tribes' water resources, breaching its fiduciary obligations to the Tribes. The FBIC, therefore, has legal claims against the United States that result from federal actions, or inaction, occurring over the period of more than a century, which has had a significant and continuing adverse impact on the water rights of the FBIC. Instead of litigating its claims, however, the FBIC Council in 1981 passed Resolution No. 19-81 for the purpose of quantifying the Tribes' reserved water rights through negotiations and settlement with the Montana Reserved Water Rights Compact Commission and the

federal government. The purpose of negotiations was the desire of all parties to resolve the water issues amicably, avoid lengthy and costly litigation, and settle the FBIC water rights claims through Congressional approval of the Gros Ventre and Assiniboine Tribes' Water Rights Settlement Act.

After nearly fifteen years of negotiations between the State of Montana, the FBIC Council, 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 on the Reservation, the FBIC Council approved the Water Compact in 2001 with passage of Resolution No. 17-2001. Subsequently, the Montana Legislature ratified the Water Compact. The Water Compact quantified the Indian Reserved Water Rights on the Fort Belknap Indian Reservation and provided for the FBIC's administration, development, and management of the waters running through and bordering the Fort Belknap Indian Reservation (and includes other trust and fee lands off the Reservation). The Water Compact is incorporated into 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 approval. 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. On October 9, 2018, the FBIC Council approved, by Resolution No. 234-2018, the inclusion of a portion of the Grinnell lands to be transferred and held in trust for the Tribes as part of the settlement.

With Congressional approval of the Water Rights Settlement Act, the Indian reserved water rights of the FBIC will be secured for its 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 Tribes' water rights, the Tribes will have a 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 our 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 Federal and State Lands into Trust for the FBIC; (3) Development of a Viable Reservation Economy by the Planning, Design, and Construction of Facilities to Use Reservation Water; (4) Milk River Coordinating Committee and Mitigation of Impacts and Protection of Milk River Water Users; (5) Fort Belknap Indian Community Settlement Fund; (6) Regional Economic Impact; (7) Miscellaneous Provisions; and (8) Effective Date.

Tribal Water Rights

Members of each FBIC Council participating in the negotiation of Tribal Water Rights over the last thirty years have had the goal of ensuring that Tribal water claims are negotiated: (a) to provide for the use of Tribal water for multiple purposes; (b) to include all the surface water sources on the Reservation; (c) to have the most superior and senior priority date in the Basin; and (d) to provide for full rights to groundwater on 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 watering 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 subsequent use 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, which 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 fee land off the Reservation that includes the right to divert up to 1,135 acre-feet per year (for the present and historic irrigation of 297 acres and future irrigation of 18 acres) in the Missouri Basin 40EJ, and 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 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 in addition to other rights identified in the Water Compact.

12. The United States is required to hold the Tribal Water Rights in trust for the use and benefit of the FBIC and allottees.

13. The FBIC will create a Tribal Water Code that will regulate 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, allotted, and 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 available for not more than 37,245 net acres of FBIC project lands under irrigation.

Exchange and Transfer of Federal and State Lands Into Trust for the FBIC

The Water Rights Settlement Act provides for the transfer of 58,588 acres of land to be held in trust by the United States for the FBIC. The land transfer contributes to the settlement of the FBIC water rights.

The land transfer includes the exchange of Federal land for designated State land that will be subsequently transferred into trust to be held by the United States for the FBIC, and includes: (1) 20,296 acres of State lands on the Reservation, and (2) 7,413 acres of State lands off the Reservation, for a total of 27,709 acres. The Water Settlement Act excludes from any transfer of federal lands those lands identified for disposal pursuant to a resource management plan developed under the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701 *et seq.*) (such as T 21N, R32E, sections 1, 2, 11, or 12).

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 30,879 acres. This Federal land transfer includes the following lands: (1) 24,785 acres designated as Bureau of Land Management lands (including a portion of what is known as the “Grinnell Lands,” to include 14,496 acres); (2) 2,575 acres designated as Bureau of Reclamation lands (commonly referred to as “Dodson 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 lands subject to the General Mining Act of 1872, 30 U.S.C. § 21 *et seq.* It also places a restriction on the land transfer consisting of the condition that any road necessary for customary access to fee parcels or other private rights within the parcels shall be guaranteed access through easements at the cost and expense of the fee owners. 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 right-of-way (unless an earlier termination is requested). Any improvements upon the land constituting personal property shall remain the property of the lease, permit, or rights-of-way holder.

Dodson Lands. With regard to the Dodson Land, 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 Dodson 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 Dodson 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. The Grinnell Lands are former Reservation lands that the Tribes have long considered to be sacred lands supporting the spiritual and cultural practices of the Tribes. When gold was discovered in the Little Rockies in the 1890s on the southern edge of the Fort Belknap Reservation, however, federal government representatives were successful in obtaining an agreement from the members of the Fort Belknap Indian Reservation to cede the Grinnell lands to the federal government. 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 cultural, archaeological, and historical resources. This includes improving the ecological integrity, social values, and economic environment of this area, including grazing, vegetation, fishery, geological, biological, wildlife, 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 through the Grinnell Lands. A primary reason for the transfer of a portion of the Grinnell Lands to the FBIC is because the flows of water generated in the Grinnell Lands' watershed make up a vitally important part of the Tribes' Indian reserved 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, to subordinate senior water rights in the main Little Peoples Creek so that our non-Indian, neighboring communities can enjoy their water uses as senior water users. As a result, the available water supply for the southern FBIC communities has been further curtailed.

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, reversing 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, commercial, industrial, 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 Settlement Act provides for the transfer of a small portion of the Grinnell Lands back to the FBIC. Under the FBIC jurisdiction, the 14,496 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.

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

The terms of the Water Rights Settlement Act are intended to promote the development of a viable Reservation economy by providing for the planning, design, and construction of facilities to support the use of the FBIC 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 water supply and sewer 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.

Milk River Coordinating Committee and Mitigation of Impacts and Protection of 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 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 storage 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 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, which has been fully funded, includes funding project grants for mitigation and watershed improvement activities (\$3,500,000), 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 right mitigation agreement for Peoples Creek included in the Water Compact. The FBIC agrees to subordinate its senior priority water rights in Peoples Creek for the development of reservoir storage for the benefit of the FBIC in the Upper Peoples Creek Basin. In effect, the Tribal priority date in Peoples Creek Basin will be junior to existing non-Indian water users in the Peoples Creek Basin. The State of Montana has agreed to provide \$5,000,000 towards construction of the proposed Peoples Creek Dam and Reservoir.

Fort Belknap Indian Community Settlement Fund

The FBIC Water Rights Settlement Act proposes the establishment of a Fort Belknap Indian Community Settlement Fund for the purpose of carrying out the activities identified in the Act. The FBIC is seeking \$593,110,000 of Federal funding for the Settlement Fund to satisfy and compensate, in part, the legal claims of the Tribes. The 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 Water and Wastewater Rehabilitation and Expansion 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 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, including activities related to the health and well-being of the Tribal members.

4. The FBIC Water and Wastewater Rehabilitation and Expansion Account—\$123,280,000: This account is established to pay the costs of (a) a feasibility study and design of a water supply and sewer 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 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.

Regional Economic Impact

The FBIC Council is requesting a total of \$593,110,000 in funding. 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 FBIC Indian Water Rights Settlement Act will create an approximate total of 6,447 job-years.

The Federal Government 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, six Indian water rights settlements were achieved—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. (*See* Mike L. Connor, Commissioner of Reclamation, Sept. 12, 2011, Making Progress in Indian Country, at 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.

In return for recognition of the FBIC's Tribal Water Rights and other benefits provided by the Water Rights Compact and the FBIC Water Rights Settlement, the Act provides for the waiver and release of all claims for Indian reserved water rights within the State of Montana by the FBIC, on behalf of itself and its members, and the United States acting in its capacity as trustee for the FBIC. It also provides for the waiver and release of all claims for water rights within the Reservation by the United States acting in its capacity as trustee for allottees.

The proposed Settlement Act provides for the waiver and release of certain claims that are required by the federal government when tribes are compensated for damages and settle their water rights claims with the federal government. The waiver and release of claims includes all claims for water rights within the State that the FBIC may have as against the United States acting in its capacity as trustee for the FBIC, as well as all claims for damages, losses, or injuries to water, water rights, land, or natural resources due to the loss of water or water rights; claims relating to interference with, diversion, or taking of water, or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure within the State of Montana.

Nevertheless, the FBIC and the United States, acting in its capacity as trustee for the FBIC, reserve rights and retention of certain claims. 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; and (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 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, and other rights. Further, the Fort Belknap Indian Community retains the right to enforce its own laws with regard to environmental protections.

Effective Date

To complete its comprehensive water settlement, the FBIC must move forward to secure several actions to enact the provisions of the Water Rights Settlement Act: (1) the FBIC Council is submitting the Water Rights Settlement Act to Congress to complete negotiations of the terms and conditions of the proposed Act, which includes monetary compensation; (2) Congress must approve the Water Rights Settlement Act, which includes authorizing, ratifying, and confirming the Fort Belknap Indian Community-Montana Water Rights Compact (the terms and conditions of the Water Compact will remain those approved in 2001); (3) the FBIC Council must secure approval of the Water Compact by submitting the Water Compact to a vote by the tribal membership for approval or disapproval; (4) the Montana Water Court must issue a final judgment and decree approving the Water Compact agreed to by the United States, the FBIC, and the State of Montana; (5) all the funds to be appropriated must be made available and deposited into the designated accounts; (6) the transfer of lands is completed; (7) the State has provided the funds related to Peoples Creek Reservoir; and (8) the waiver and releases have been executed by the FBIC and the Secretary.