

# 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)

## **FORT BELKNAP INDIAN COMMUNITY WATER RIGHTS SETTLEMENT ACT OF 2023, S. 1987 Introduced by Senators Tester & Daines: June 14, 2023**

In 1908, almost 125 years ago, the U.S. Supreme Court held that the Assiniboine and Gros Ventre Tribes reserved enough water for the Ft. Belknap Reservation to establish a permanent homeland, sustained by an agricultural economy. Our Reservation is the birthplace of the *Winters* Doctrine, *Winters v. United States*, 207 U.S. 546 (1908), recognizing the legal right to water for all reservation-based tribes. On June 22, 2023, in *Arizona v. Navajo Nation*, the U.S. Supreme Court upheld the *Winters* Doctrine, explaining that “the Federal Government’s reservation of land for an Indian tribe also implicitly reserves the right to use needed water from various sources...that arise on, border, cross, underlie, or are encompassed within the reservation.”

After more than 30 years of negotiations with the federal government and the state, Senate Bill 1987, the Fort Belknap Indian Community Water Rights Settlement Act of 2023—with the full support of the Montana delegation—will be the last reservation in Montana to finalize and secure its Tribal water rights.

### **Our Water Settlement Bill provides \$1.3 billion for critical infrastructure projects.**

- ✓ \$415 million for the BIA to rehabilitate, modernize, and expand the Fort Belknap Indian Irrigation Project on the Milk River, including the Three Mile and White Bear units, construction of a Fort Belknap Reservoir and the Peoples Creek Flood Protection Project. The Bureau of Indian Affairs will retain federal responsibility for the FBIIP.
- ✓ \$119 million for the FBIC to: restore the Southern Tributary Irrigation Project and Peoples Creek Irrigation Project, including construction of the Upper Peoples Creek Dam and Reservoir, on the southern portion of the Reservation; develop infrastructure for stock-watering across the Reservation; provide on-farm development support; and restore wetlands across the Reservation.
- ✓ \$154 million to deliver clean and reliable water from Lake Elwell, 5,000 acre-feet piped from the Missouri River to our communities at the southern end of the Reservation where over half of our Tribal members live and currently must rely on underground water that is adversely impacted by the contamination from gold mines south of our Reservation.
- ✓ \$268 million to eliminate water insecurity for clean and safe drinking water and sewer treatment systems across the Reservation.

- ✓ Construct a wellness center to improve and support the health and wellbeing of the FBIC workforce to assume the jobs created by the settlement and promote the economic efficiency on the Reservation and tribal self-sufficiency.
  - The Aaniiih Nakoda Settlement Trust Funding will be indexed and adjusted for ordinary fluctuations in project construction costs at the time funds are deposited into the Trust Fund.
  - The Departments of the Interior and Energy are required to make favorable Pick-Sloan Missouri River Basin Program pumping power, preference customer rates to the FBIC and projects funded by the Act.
  
- ✓ \$66.6 million to establish a Tribal water rights and resources department for the administration, and management of the Tribal water rights, include developing a Tribal Water Code.
  - Congress will recognize FBIC’s authority to enact a Tribal Water Code to manage, allocate, distribute, lease, regulate, and enforce the Tribal water rights. The Code will have a due process system for ensuring the rights of allottees with irrigation water and resolving disputes related to use the Tribal water on Reservation.
  - Tribal water rights may be marketed and temporarily transferred by service contract, lease, or exchange agreement within the Missouri River Basin for compensation; Tribal water rights cannot be sold.
  - Establish an FBIC trust account to generate interest and investment earnings to be used to pay a portion of the annual O&M assessment costs for the Tribal irrigators.

**Our Water Settlement Bill supports infrastructure funding for our non-Indian neighbors and irrigators on the Milk River.**

- ✓ \$300 million for the repair and rehabilitation of the St. Mary Canal, restoring it to its full capacity of 850 cubic-feet per second.
- ✓ This will avoid a catastrophic failure of the Canal that delivers water to the Milk River and increases the critical water supply for the Milk River Project irrigators and communities along the Hi-Line.
- ✓ The funding will also enlarge the South Dodson Canal and headworks so that it can convey additional water to the Milk River Project irrigators.
- ✓ The improvements of the infrastructure for the Milk River Project will increase the water supply in the Milk River and provide protection for the non-Indian water users as FBIC develops its irrigation lands, as required under the Water Compact, Art. VI.

**Our Water Settlement will have regional economic impact and benefits.**

- ✓ Funds for infrastructure projects will provide good paying jobs and have long-term positive economic impacts on our Reservation and for communities across the Hi-line.

- ✓ Using a simple rule created by the U.S. Council of Economic Advisors (2009) for calculating the creation of jobs from government funding, our Bill will generate over 700 jobs each year over a 20 year period.
- ✓ Regional contractors and small businesses will assist us in the development and construction of our Projects.
- ✓ It is a win-win for us and the whole region.

### **Over 37,000 Acres of Our Ancestral Lands will be Restored to our Reservation.**

- ✓ The Bill includes the transfer of State (21,705 acres) and Federal (16,117 acres) lands on and off the Reservation.
- ✓ State trust lands across the Reservation will be returned to us. The State will be able to exchange these lands for federal lands across the State.
- ✓ Some State and federal lands, in the area known as the “submarginal” lands off the southwestern side of the Reservation, will be returned to us.
- ✓ These lands will be held in trust by the Bureau of Indian Affairs for the FBIC—who will be the beneficial owners—and become part of our Reservation.
- ✓ None of the land transfers include privately-held land parcels.

### **Our Water Settlement ratifies our Tribal Water Rights**

1. Congress will ratify the 2001 Fort Belknap-Montana Water Rights Compact affirming the quantification of and sources for the FBIC’s Tribal water rights—providing a judicially enforceable right to use the water. The Montana Water Court will issue a Court Decree recognizing these rights. The water sources include the Milk River and its tributaries, Peoples Creek Basin (including Duck Creek, South Fork of Peoples Creek, Little Peoples Creek, Jim Brown Creek, and Lodge Pole Creek), Beaver Creek Basin (including Big Warm Creek and Little Warm Creek), the Missouri River Basin within the Reservation, and the Sub-Marginal Lands.

- The Tribal water rights have the senior priority date (1855) for the use of these waters on the Reservation; and
- The FBIC has both 20,000 acre-feet of Lake Elwell stored water, and 1/7 share to the Fresno Reservoir stored water.

2. The Water Compact provides sufficient Tribal water rights to irrigate 34,500 acres of Reservation lands, including the existing Milk River unit and the Southern Tributary Irrigation Project.

- Once the FBIC has a recognized quantification of our Indian water rights, we may determine how to use it, including not only for irrigation, but also for domestic, municipal, commercial, industrial, cultural, recreational and other uses.