

EXHIBIT 9
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HB 161

**Fort Belknap Indian Community Council
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**Statement of Randy Perez
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Before the Montana State Legislature

State House Federal Relations, Energy, and Telecommunications
Committee Hearing on Montana House Bill No. 161

An Act Ratifying The Water Rights Compact Entered Into By The Blackfeet Tribe Of The Blackfeet Indian Reservation, The State Of Montana, And The United States Of America; Transferring \$4 Million From The General Fund To The Blackfeet Tribe Water Rights Compact Infrastructure Account; Appropriating Funds For Water-Related Infrastructure Projects Within The Exterior Boundaries Of The Blackfeet Indian Reservation; Amending Section 85-20-1505, Mca; And Providing An Immediate Effective Date

Monday, February 16, 2009

As the Fort Belknap Indian Community Director of Water Resources Department, I would like to present this statement on behalf of the Fort Belknap Community Council, which represents the five thousand plus members of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community. The Fort Belknap Indian Community has serious concerns about the current form of the proposed Blackfeet Water Compact ("Compact") and the potential adverse impacts suffered by FBIC should the Blackfeet Tribe fully exercise the water rights purportedly acknowledged in the Compact. Our concern arises from the fact that the Blackfeet Compact takes all of the natural flow from the Milk River which in turn denies the very right that was expressed in the seminal *Winters v. U.S.* case that forms the basis for the reserved rights doctrine and this would constitute a taking of the FBIC's recognized water right. To add insult to injury, the Blackfeet Compact recognizes and protects the state based junior water rights of water users in this basin but does not recognize the U.S. Supreme Court reserved water rights of the FBIC. While FBIC acknowledges that the Blackfeet Tribe does possess water rights, FBIC

challenges the amount of those water rights set forth in the Compact. Although disappointed with the Blackfeet Compact, FBIC remains committed to cooperative discussions with all interested parties, including the Blackfeet Tribe, the State of Montana, and the United States, to collectively resolve areas of disagreement and mitigate negative impacts caused by exercising Compact rights of the Tribes.

FBIC recognizes that the Blackfeet Tribe is entitled to water rights, and specifically rights in the Milk River. In fact, the Blackfeet Tribe's entitlement to such rights derive from the same treaty of October 17, 1855, that reserved water rights in the Milk River for FBIC. Accordingly, these reserved rights of the Blackfeet Tribe and FBIC are of equal priority.

The proposed Blackfeet Compact takes the position that the Blackfeet Tribe has a superior claim to these water rights to the detriment of FBIC. This false assumption appears to be the basis for granting all the natural flow of the Milk River above the Western Crossing without regard for the water rights granted to the FBIC in our Water Compact. Rather than a shared priority as provided in the recognized treaty, the Compact describes the Blackfeet Tribe's right to be senior in priority, and if fully executed, would deprive FBIC of the full benefit if its recognized water rights.

Unlike the proposed Blackfeet Compact, the FBIC Compact recognizes the shared interest and expressly provides for a mechanism to allow for consideration of the water needs of the Blackfeet Tribe. This provision authorizes a process by which the two tribes can reach a compromised settlement on the allocation of their water rights to the Milk River, and to account for such a settlement in future operations of the Milk River. This provision of the FBIC Compact that allows for the incorporation of an agreement with the Blackfeet Tribe and was negotiated with the understanding that the Blackfeet's claim to water would be based upon a

reasonable calculation of the Tribe's needs as determined by their amount of practicably irrigable acreage (PIA) within the Milk River on trust lands above the Western Crossing. To assume that the United States and FBIC had agreed to give the Blackfeet Tribe all of the natural flow to the Milk River within the Blackfeet Reservation at the time the FBIC Compact had been negotiated is unreasonable and totally without merit.

This cooperative measure does not subordinate FBIC's water rights, nor does it mandate FBIC to compromise its fundamental rights. It is simply a confirmation of FBIC's desire to work amicably with the Bureau of Indian Affairs to resolve conflicts that may develop as each Tribe exercises their mutually shared water rights. Importantly, this provision is in no way an acknowledgement that the Blackfeet Tribe possesses a superior right to FBIC, which is a position that FBIC strongly refutes and rejects.

Because of the shared right and equal priority, FBIC further challenges the quantity of water and the appropriate measure for determining the quantity of water that should be made available to the Blackfeet Tribe. With equal priority, one Tribe could potentially only acquire a larger quantity of water than the other Tribe based on demonstrating a higher amount of practicably irrigable acreage, or upon a court's decree allocating more water to a specific tribe. However, given limitations on the amount of tribal and allotted irrigable lands on the Milk River within the Blackfeet reservation, it is not at all clear that the Blackfeet Tribe would successfully be able to claim all of the natural flow of the Milk River and as a result some of the natural flow would remain available for use by the FBIC to meet their water needs and rights.

Significantly, the Blackfeet Compact seeks to preserve a set amount of water for the Blackfeet Tribe based on a standard of quantification that is quite different from the standard utilized to quantify FBIC's water rights. The proposed Compact claims all the natural flow and

merely agrees to hold existing State water users harmless. FBIC is unaware of any justification for the sweeping extent of this water claim. It is the opinion of our water use experts, Natural Resources Consulting Engineers, Inc. ("NRCE"), that the Blackfeet Tribe's true claim to water in the Milk River above the Western Crossing is extremely limited because of limited amounts of potential PIA lands, in that part of the Reservation.

The potential impacts on FBIC's water supply are significant in that the Blackfeet Compact seems to indicate that the Blackfeet Tribe is claiming their right to water with no known quantification criteria. Such a claim does not involve agricultural uses as required under "reserved rights doctrine" that serves as a basis for Indian Water Rights, and this has the effect of allowing the Blackfeet Tribe to take all of the water in the Milk River above the Western Crossing.

FBIC's water rights claim has been quantified based primarily on agricultural water uses and FBIC expects that the proposed Blackfeet Compact would do likewise. Analyses of the past Blackfeet Tribe's PIA based claims had shown that the potential impacts to FBIC were less than under the presently proposed Blackfeet Compact. Based on what was understood with the previously anticipated present and historical water use impacts and future water claim based on PIA standard, FBIC had been willing to negotiate a compromised settlement with the Blackfeet Tribe.

The Blackfeet Compact, as currently proposed, is not quantified based on any specific type of water use, agricultural or otherwise. Instead, the current proposed Compact attempts to lay a senior claim to virtually the entire U.S. share of the natural flow of the Milk River above the western crossing. FBIC could no longer count on agricultural return flows or on any other

practical limitations to the Blackfeet Tribe's use of the natural flow of the Milk River located within the Blackfeet Reservation.

It is recognized that it may not be feasible or practical now or in the near future for these impacts to physically materialize. However, should the proposed Compact come into effect, the mere presence of such a large-scale Blackfeet water right to Milk River flows would be a continuing cause for concern to FBIC. The Ft. Belknap Indian Community is therefore seeking to have their rights protected by limiting the Blackfeet Tribes use of water in the Milk River to an amount that could be claimed under the PIA standard and other non-agricultural uses.

Compounding the problem of the adverse impact that would be sustained by FBIC is the fact that with water settlements negotiated through compacts, federal legislation is required for implementation. Any subsequent issue that may arise with a provision set forth in the underlying compact itself becomes very difficult to correct because any corrections would also require amending a federal statute.

Here, FBIC's agreement to include a provision in our Compact to accommodate the Blackfeet Tribe's right to water in the Milk River becomes even more disadvantageous to FBIC's interest in that the Compact negotiations with the Blackfeet Tribe did not apply the same PIA standard for quantifying the Blackfeet Tribe's water right. Once the Compact has been approved by Congress, any subsequent amendment or additional provision needed to address an unresolved issue with the Blackfeet Compact would require going back to Congress and seeking amending legislation, which would be a very costly and a time consuming process for the FBIC. Therefore, it is incumbent upon all the parties to work diligently to resolve the impacts caused by the proposed Blackfeet Tribe's Compact on the water rights confirmed to the FBIC in their Compact.

These issues cause a potentially disrupting and limiting impact on the FBIC's water projects and uses, which are based on the use of water for agriculture and other purposes. The FBIC wishes to resolve these issues with the Blackfeet Tribe in order to further the water rights settlement negotiations between the United States, the FBIC and the State of Montana so that their respective Compacts can become effective.

FBIC does desire to reach a compromised solution with the Blackfeet Tribe to be incorporated into a modified Compact that accommodates the interests of both Tribes, the State of Montana, and the United States as trustee, and better clarifies future tribal operations so as to avoid future litigation that would potentially jeopardize the interests of all affected parties.

We propose that the following language be added to the proposed Blackfeet Compact:

Article III§ F

§ 7. Mitigation of Impacts

In the unlikely event that the water right conferred upon the Blackfeet Tribe in basin 40 F impacts the water rights of the Fort Belknap Indian Community, then such impacts will be mitigated out of Project Water from the Milk River Project.

Our proposal represents the best efforts of FBIC to resolve the potential problems that are likely to occur in the future between FBIC and the Blackfeet Tribe in the development and implementation of our equal water rights claims. The proposal was written under the assumption that the problem at hand is not only FBIC's problem, but rather is a problem that directly impacts each of the four major parties involved, and consequently, is a problem that should be solved by all the parties, including the Blackfeet Tribe, FBIC, the United States, and the State of Montana.

We recognize that that the interests of the two Tribes in this matter certainly are not diametrically opposed and that a workable solution to this issue can be reached. However, it should be noted that unless significant revisions to the terms of the Compact are instituted, FBIC

will continue our objections to the passage of the Compact. The FBIC's objection would be based on the fact that while the proposed Compact allows for the full and final settlement of the federal reserved water rights on the Blackfeet Indian Reservation, it dramatically impacts and limits the same rights on the Fort Belknap Reservation in the process.

FBIC believes it is necessary that the Blackfeet Compact seek to balance an equitable recognition of the Blackfeet's rights with sufficient protections for water users at Fort Belknap who have an equally recognized claim. It is for these stated reasons that the FBIC submits testimony presented here today in opposition to House Bill No. 161 ratifying the Blackfeet Compact in its present form.

Thank you for your consideration of this matter.