SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE March 28, 2009
BILL NO. HB161

HB 161 FACT SHEET
BLACKFEET – MONTANA WATER RIGHTS COMPACT

BACKGROUND

- The Montana legislature established the Montana Reserved Water Rights Compact Commission as part of the statewide water adjudication to negotiate water rights "compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state." MCA 85-2-701 and 702. Once approved by the State Legislature, the Tribe, and Congress, the water compacts are made part of the water court decrees in the affected basins.
- The Blackfeet Tribe's negotiating team and the Compact Commission have agreed to a water rights settlement (the "Compact"). Under Montana Statute 85-2-702, the Compact must come to the Legislature for approval. Federal law requires that the Compact also be ratified by Congress. HB 161 seeks the Legislature's approval of The Blackfeet-Montana Compact while appropriating a portion of the State's cost-share for the settlement.

COMPACT BASICS

In general the Compact:

- Provides water for the existing and future needs of the Blackfeet Tribe.
- Protects all current holders of non-irrigation water rights, such as domestic and stock water uses, from the Tribe's future exercise of its water right.
- Provides protection for all current irrigation and non-irrigation uses in Birch Creek and the Badger Creek and Two Medicine River basins and a grace period before Tribal development in Cut Bank Creek and Milk River drainages.
- Provides a process for the Tribe to lease a portion of its water right to off-reservation water users.
- Settles Tribal claims in the St. Mary River basin by providing the Tribe with an allocation of 50,000 acre-feet of water with protections for the Milk River Project downstream.
- Closes on-reservation portions of streams to new water appropriations under state law.
- Provides for Tribal administration of the Tribal Water Right, and State administration of water rights arising under state law.
- Creates a Compact Board with an administrative process for the resolution of any future disputes between Tribal and non-Tribal water users.
- Provides for an allocation of water stored in Tiber Reservoir (in an amount to be determined by Congress) for the Tribe to use or market.
- Mitigates the impacts of the Tribe's water rights on Birch Creek water users through a separate Birch Creek Agreement that commits the State to pay the Tribe $14.5 million in exchange for the Tribe deferring new development of its Birch Creek water rights for 15 years and providing 15,000 acre-feet of water per year to Birch Creek water users from on-reservation storage for at least 10 more years, the total deferral and provision of water not to exceed 25 years.

Prepared by the Montana Reserved Water Rights Compact Commission
January 22, 2009

BLACKFEET TRIBAL WATER RIGHT

BIRCH CREEK

- 100 cfs from the natural flow of Birch Creek for irrigation use in the Upper Birch Creek Drainage.
- Instream flow of 25 cfs from April 1 to Sept. 1 and 15 cfs from Oct. 1 to March 31.
- Any additional water remaining after satisfaction of existing rights arising under State law
- A management plan is attached as an Appendix to the Compact, which provides for coordinated management of Birch Creek Tribal and non-Tribal water use.

BADGER CREEK/TWO MEDICINE RIVER

- The Tribe has a water right to all currently unappropriated surface water and groundwater. Current non-Tribal water uses are not subject to a call from new Tribal development.
- Instream flow of 20 cfs in both Badger Creek and Two Medicine River.
- Blackfeet Irrigation Project will be supplied water from the Tribal water right and will be administered by the Bureau of Indian Affairs (or as otherwise provided by Congress).

CUT BANK CREEK AND MILK RIVER

- The Tribe has a water right to all currently unappropriated surface water and groundwater. Current non-Tribal non-irrigation water uses are not subject to a call from any new Tribal development.
- Irrigation uses on Cut Bank Creek and the Milk River are subject to a call from Tribal water uses. The Tribe will not develop new irrigation uses on Cut Bank Creek or the Milk River, except projects using exclusively stored or imported water, for 10 years from the effective date of the Compact.
- Instream flow of 2 cfs in the on-reservation portions of both Cut Bank Creek and the Milk River.

ST. MARY RIVER

- 50,000 acre-feet from the United States' share of the St. Mary River. ,
- The Tribe also has a right to all unappropriated water from the U.S. share of Lee Creek, Willow Creek and groundwater in the St. Mary River drainage on the Reservation and any additional water remaining after satisfaction of existing rights arising under State law.
- Current non-Tribal water uses within the Basin are not subject to a call from new Tribal development.

CONTRIBUTIONS TO SETTLEMENT

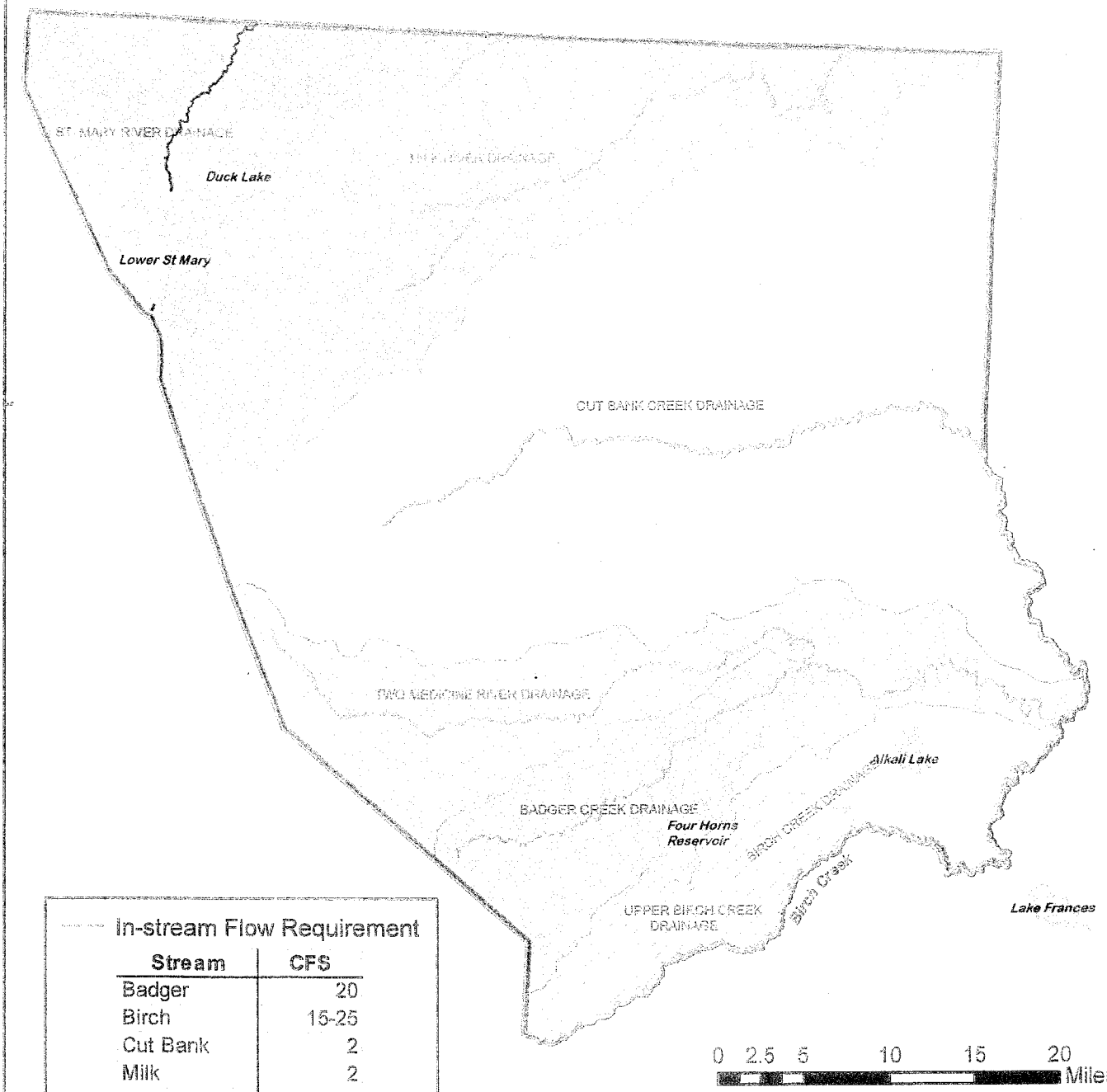
The Montana legislature appropriated $15 million for mitigation during the 2007 regular session. Of these funds, $14.5 million will eventually be paid to the Tribe as part of the Birch Creek Agreement negotiated between the State and the Tribe in 2007. $500,000 was appropriated to the DNRC for engineering studies for the Four Horns Project.

- HB 161 appropriates $4 million toward the State's $20 million cost share commitment to the repair and enlargement of the Four Horns Reservoir system.
- Federal cost share will be determined during Congressional ratification of the settlement.

Prepared by the Montana Reserved Water Rights Compact Commission
January 22, 2009

Blackfeet Indian Reservation

Appendix 2

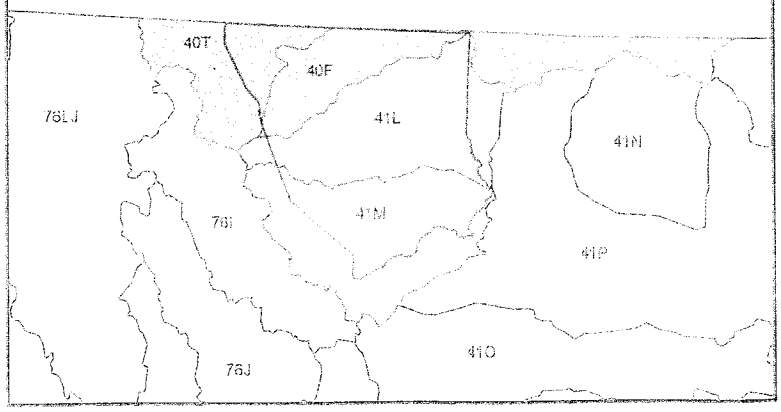


In-stream Flow Requirement

Stream	CFS
Badger	20
Birch	15-25
Cut Bank	2
Milk	2
Two Medicine	20

0 2.5 5 10 15 20 Miles

Water Court Basins



Drainages

- BADGER CREEK DRAINAGE
- CUT BANK CREEK DRAINAGE
- MILK RIVER DRAINAGE
- ST. MARY RIVER DRAINAGE
- TWO MEDICINE RIVER DRAINAGE
- UPPER BIRCH CREEK DRAINAGE

BLACKFEET NATION

P.O. BOX 850, BROWNING, MONTANA 59417
(406) 338-7521 FAX (406) 338-7530

EXECUTIVE COMMITTEE
Willie A. Sharp, Jr., Chairman
Peter "Rusty" Tatsey, Vice-Chairman
T.J. Show, Secretary
Kenneth Augare, Treasurer

BLACKFEET TRIBAL BUSINESS COUNCIL
Willie A. Sharp, Jr.
Peter "Rusty" Tatsey
T.J. Show
Rodney "Fish" Gervais
Roger "Sassy" Running Crane
Ronald "Smiley" Kittson
Henry Butterfly
Paul McEver
Reis Fisher

RESOLUTION

No. 227-2009

WHEREAS, The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation, and

WHEREAS, The Blackfeet Tribal Business Council has been organized to represent, develop, protect and advance the views, interests, education and resources of the Blackfeet Indian Reservation, and

WHEREAS, The Blackfeet Tribal Business Council is charged with the responsibility of protecting and preserve the resources of the Blackfeet Tribe, and

WHEREAS, Under the proposed Blackfeet Water Rights Compact, the Tribe's Birch Creek water right is increased from 42 cfs, the amount under the Conrad Investment decree, to 100 cfs, plus an additional 25 cfs for instream flow during the irrigation season, and 15 cfs for instream during the non-irrigation season; and

WHEREAS, As a related agreement to the proposed Water Rights Compact, the Blackfeet Tribal Business Council approved the Agreement between the Blackfeet Tribe of the Blackfeet Indian Reservation and the State of Montana Regarding Birch Creek Water Use (Birch Creek Agreement) by Resolution 185-2008; and

WHEREAS, Under the Birch Creek Agreement, the Tribe agrees to: 1) defer use of additional use of water over and above the 42 cfs under the 1907 Conrad Investment decree for a period of fifteen years; 2) seek funding in cooperation with the State to enlarge Four Horns Dam and construct certain water delivery conveyance facilities; and 3) upon completion of the enlargement of Four Horns, provide 15,000 acre-feet of water to Birch Creek water users for the remainder of the 25 year term of the Agreement; and

*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X*X

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Blackfeet Tribal Business Council in a duly called, noticed and convened Special Session, assembled the 9th day of February 2009, with SEVEN (7) members present to constitute a quorum, and with a vote of FOUR (4) FOR and THREE (3) OPPOSED.

T.J. Show

BLACKFEET NATION

P.O. BOX 850, BROWNING, MONTANA 59417
(406) 338-7521 FAX (406) 338-7530

EXECUTIVE COMMITTEE
Earl Old Person, Chairman
Roger "Sassy" Running Crane, Vice-Chairman
Willie A. Sharp, Jr., Secretary

BLACKFEET TRIBAL BUSINESS COUNCIL
Earl Old Person
Roger "Sassy" Running Crane
Willie A. Sharp, Jr.
Betty N. Cooper
Rodney "Fish" Gervais
Patrick "Pat" Thomas
Edwin "Sooney" Little Plume
Paul McEvers
Ronald H. "Smiley" Kittson

RESOLUTION

No. 184-2008

WHEREAS, The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation, and

WHEREAS, The Blackfeet Tribal Business Council has been organized to represent, develop, protect and advance the views, interests, education and resources of the Blackfeet Indian Reservation, and

WHEREAS, The Blackfeet Tribal Business Council is charged with the responsibility of protecting and preserve the resources of the Blackfeet Tribe, and

WHEREAS, Water is one of the most important resources of the Blackfeet Tribe, and is critical to the culture, religion and economic well-being of the Tribe, and

WHEREAS, Pursuant to the McCarran Amendment, 43 United States Code, section 666, and the U.S. Supreme Court decision in Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983), the water rights of the Blackfeet Tribe are subject to adjudication in the pending Montana state-wide water rights adjudication in the Montana Water Court, and

WHEREAS, The adjudication of the Tribe's water rights has been suspended or stayed by the Montana Water Court while the Tribe has been involved in negotiating a water rights compact with the Montana Reserved Water Rights Compact Commission, and

WHEREAS, The Tribe has finalized the terms of a Compact with the Montana Reserved Water Rights Compact Commission, and

WHEREAS, Completion of the Compact represents the first step in achieving a comprehensive settlement of the Tribe's water rights, and

WHEREAS, The next steps in achieving a comprehensive water rights settlement are: 1) approval of the Compact by Congress, including resolution of water

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Blackfeet Tribal Business Council in a duly called, noticed and convened Regular Session, assembled the 11th day of December, 2007, with SEVEN (7) members present to constitute a quorum, and with a vote of FOUR (4) FOR and THREE (3) OPPOSED, Edwin Little Plume, Willie Sharp, Paul McEvers.

Betty N. Cooper

Willie Sharp, Secretary

BLACKFEET NATION

P.O. BOX 850, BROWNING, MONTANA 59417
(406) 338-7521 FAX (406) 338-7530

EXECUTIVE COMMITTEE
Earl Old Person, Chairman
Roger "Sassy" Running Crane, Vice-Chairman
Willie A. Sharp, Jr., Secretary

BLACKFEET TRIBAL BUSINESS COUNCIL
Earl Old Person
Roger "Sassy" Running Crane
Willie A. Sharp, Jr.
Betty N. Cooper
Rodney "Fish" Gervais
Patrick "Pat" Thomas
Edwin "Sooney" Little Plume
Paul McEvers
Ronald H. "Smiley" Kittson

RESOLUTION

No. 185-2008

WHEREAS, The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation, and

WHEREAS, The Blackfeet Tribal Business Council has been organized to represent, develop, protect and advance the views, interests, education and resources of the Blackfeet Indian Reservation, and

WHEREAS, The Blackfeet Tribal Business Council is charged with the responsibility of protecting and preserve the resources of the Blackfeet Tribe, and

WHEREAS, The Tribe has finalized the terms of a Water Rights Compact with the Montana Reserved Water Rights Compact Commission, and

WHEREAS, The Blackfeet Tribal Business Council has determined that the Compact is an appropriate and acceptable basis to proceed with federal, state and tribal approval of the Compact; and

WHEREAS, Among other things, the Compact establishes the water rights of the Tribe in Birch Creek, and

WHEREAS, The Tribe and the State of Montana have agreed that the Tribe's water right in Birch Creek should be implemented over a period of years in order to provide sufficient time to develop other water supplies that may be used to mitigate impacts to State water right holders on Birch Creek; and

WHEREAS, The Tribe and the State of Montana have negotiated an Agreement by which the Tribe will: 1) defer additional use of water over and above its 1907 Conrad Investment decree right for a period of fifteen years; 2) seek funding in cooperation with the State to enlarge Four Horns Dam and construct certain water delivery conveyance facilities; and 3) upon completion of the enlargement of Four Horns, provide 15,000 acre-feet of water to Birch Creek State water right holders for the remainder of the 25 year term of the Agreement; and

RECEIVED
FEB - 3 2009
D.N.R.C.

DONEY | CROWLEY | BLOOMQUIST | PAYNE | UDA P.C.

ATTORNEYS AT LAW

Offices in Helena and Dillon, Montana

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Michael J. Uda, MS

Suzanne F. Bessette, MP
James E. Brown, LL.M.
Marc G. Buyske, LL.M.
Patti L. Rowland
Sarah E Rupp
Abigail J. St. Lawrence
James L. Shuler

January 30, 2009

Willie Sharp, Chairman
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417

Chris Tweeten, Chairman
Montana Reserved Water Rights Compact Commission
P.O. Box 201601
Helena, MT 59620-1601

RE: Blackfeet Compact

Dear Chairman Sharp and Mr. Tweeten,

We understand the Blackfeet-Montana Water Rights Compact has been introduced in the Montana Legislature for approval, and is expected to be introduced in Congress for approval. The Pondera County Canal and Reservoir Company (PCCRC) has expressed concern about the proposed Compact if there is full development of the Tribe's Birch Creek water right under the Compact. Based on information provided to us by the State and the Tribe, and discussions among respective legal counsel, we are satisfied that the following language addresses the concerns of PCCRC in seeking legislative approval of the Compact in the 2009 legislature prior to Congressional approval of the Compact. PCCRC will support state and federal legislation approving the Blackfeet-Montana Water Rights Compact if the following language is included as an amendment to the Birch Creek Agreement between the Tribe and the Reserved Water Rights Compact Commission:

> The Parties agree that, as a result of development and use of the Tribal Water Right described in Section C.1. of Article III of the Compact, the water supply of the Pondera County Canal and Reservoir Company (hereinafter referred to as "PCCRC") and its water users will, at times, be adversely affected if no mitigation of impacts is provided. The Parties agree the Four Horns Project, as described in paragraph 3 of this Agreement, can mitigate these impacts to PCCRC and its water users provided that such water is delivered to PCCRC's water delivery system. The Parties agree that such a mitigation measure will be included in any federal legislation which ratifies this Compact as provided for in paragraph 3 of this Agreement. The Parties further agree that additional funding may be required to mitigate the impacts of development of the Tribal Water Right described in Section C.1. of Article III of the Compact on PCCRC and its water users after the expiration of the term of this Agreement, and the parties would support federal funding for this purpose.

0949.002 - PL 23584

PCCRC's support for implementation of any compact of course is dependent upon PCCRC being able to develop mitigation measures and secure adequate funding to mitigate impacts beyond the term of the Birch Creek Agreement. On behalf of PCCRC and its water users, we appreciate the Tribe's and the State's willingness to address these issues.

Sincerely,

John Bloomquist, Attorney
on behalf of Pondera County Canal and Reservoir Company

cc: Pondera County Canal and Reservoir Company

APPENDIX 1

BIRCH CREEK MANAGEMENT PLAN

This Birch Creek Management Plan is entered into by and among the Blackfeet Tribe of the Blackfeet Indian Reservation, Montana (Tribe), the State of Montana (State), the United States Bureau of Indian Affairs (BIA) and the Pondera County Canal and Reservoir Company, or any successor entity (PCCRC) (collectively the "Parties"). This Plan shall not be effective until the Water Rights Compact ("Compact") among the Tribe, the State and the United States has been approved by the Montana Legislature, the Congress, and the Tribe, and the Montana Water Court has entered an Order approving the Compact and entered as a Final Judgment a Decree that confirms the Tribal Water Right as recognized in the Compact.

1. Purpose. The purpose of this Birch Creek Management Plan is to maximize the use of Birch Creek water for the benefit of all water users.

2. Tribal Annual Water Management Plan. The Tribe, in consultation with the BIA, shall develop an annual water management plan for the use of its Birch Creek water right as defined in Article III.C.1.a and b. of the Compact taking into account reasonable efficiencies based on the conditions of facilities of the Blackfeet Irrigation Project. The annual water management plan shall consider water supply and demand conditions, and shall be provided to the other Parties two weeks prior to the Annual Water Allocation Plan Meeting provided for in paragraph 4.

3. PCCRC Annual Water Management Plan. PCCRC shall develop an annual water management plan for its Birch Creek water diversions taking into account reasonable efficiencies based on the conditions of facilities of the PCCRC. The annual water management plan shall consider water supply and irrigation demand conditions, and shall be provided to the other Parties two weeks prior to the Annual Water Management Plan Meeting provided for in paragraph 4.

4. Annual Water Management Plan Meeting. PCCRC, the Tribe, and the BIA will meet no later than March 31st each year to share data on current water supply conditions and to agree collectively upon a master water management plan for the coming irrigation season. Upon promulgation, copies of the master water management plan will be provided to all Parties.

5. Changes to Annual Water Management Plans. Changes to any water management plan promulgated pursuant to paragraphs 2-4 may be made at any time with two days notice to the other Parties, provided by mail, email or telephone. If notice is provided by telephone, it shall also be provided by mail. Provided, however, that no changes to that portion of any water management plan involving the exercise of the portion of the Tribal Water Right set forth in Article III.C.1.b.i of the Compact may be made between April 1 and September 30 of each year.

6. Calculation of Natural Flow. The PCCRC shall calculate weekly the natural flow of Birch Creek at PCCRC's Canal B diversion dam (Canal B). The natural flow shall be calculated as the sum of: a) the measured release from Swift dam; b) the change in storage in Swift reservoir; c) calculated evaporation losses from Swift reservoir; and d) inflows downstream from Swift dam and above Canal B. PCCRC shall implement and maintain a comprehensive gauging measurement program to calculate the natural flow, shall maintain permanent records of all such gauging data and shall make these records available to the Parties upon request and without cost

7. Management of PCCRC Reservoir and Diversion Dams. PCCRC shall manage Swift Reservoir and any diversion dams owned and/or operated by it, and shall manage all diversions at such diversion dams.

8. Gauging of In-stream Flow. The Tribe shall establish and maintain two stream flow gauges to verify in-stream flows. The gauges shall be located on Birch Creek near U.S. Highway 89 and U.S. Highway 358. The Tribe shall maintain permanent records of all gauging data and shall make these records available to the Parties, upon request and without cost.

9. Measurement of Diversions. The Tribe and the State respectively shall implement procedures to measure all diversions from Birch Creek made under their authority. The Tribe and the State shall each maintain permanent records of the uses authorized under their authority and shall make these records available to the Parties, upon request and without cost.

10. Release and Bypass. PCCRC shall release at Swift Dam and bypass at Canal B water necessary to satisfy the Tribe's senior in-stream flow right and any additional natural flow as needed to maintain the in-stream flow right at the Birch Creek stream flow gauges maintained by the Tribe under paragraph 8. PCCRC shall also bypass at Canal B the Tribal call for its senior direct flow right of up to 100 cfs, less the amount of any authorized Tribal diversion(s) taken out above Canal B. The Tribe shall bypass at its diversion or diversions on Birch Creek water necessary to satisfy the Tribe's senior in-stream flow right, any additional natural flow released by PCCRC as needed to maintain the in-stream flow at the Birch Creek stream flow gauges maintained by the Tribe under paragraph 8, and such Natural Flow as may be released by PCCRC to satisfy downstream Water Rights Arising Under State Law.

11. Channel Maintenance Flows. If the natural flows of Birch Creek are insufficient to provide an adequate volume of water for regular channel maintenance, PCCRC, in a manner agreed upon, after consultation with appropriate fish and wildlife agencies, by the Tribe, the BIA, and PCCRC in consultation with other affected water users, shall provide up to 10,000 acre-feet of stored water to ensure that a channel maintenance flow is obtained no fewer than three times every 12 years, and as often as practicable, under hydrologic conditions as shall be agreed upon by the Tribe, the BIA and the PCCRC.

The Tribe, the BIA and PCCRC may also agree to modify the channel maintenance schedule as hydrologic conditions warrant.

12. Amendments to Management Plan. This Birch Creek Management Plan may be amended at any time by the mutual written agreement of the Parties.

13. Dispute Resolution. Any disputes over the interpretation or implementation of this Birch Creek Management Plan, including but not limited to disputes over the promulgation of and changes to the annual management plans contemplated by paragraphs 2-5 and the channel maintenance flow regime contemplated by paragraph 11 of this Birch Creek Management Plan, shall be resolved by the Compact Board pursuant to Article IV.J of the Compact.

Blackfeet Tribe

By_____
Dated_____

Pondera County Canal and Reservoir Company

By_____
Dated_____

The State of Montana

By_____
Dated_____

Bureau of Indian Affairs

By_____
Dated_____

AMENDMENT TO
AGREEMENT BETWEEN
THE BLACKFEET TRIBE OF THE
BLACKFEET INDIAN RESERVATION
AND
THE STATE OF MONTANA
REGARDING BIRCH CREEK WATER USE

This AMENDMENT to the AGREEMENT BETWEEN THE BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION AND THE STATE OF MONTANA REGARDING BIRCH CREEK WATER USE (hereinafter "Agreement"), is made and entered into by and between the Blackfeet Tribe of the Blackfeet Indian Reservation and the State of Montana (hereinafter the "Parties") on the 13th day of February, 2009.

WITNESSETH:

WHEREAS, the Parties entered into the Agreement in order to set out the terms and conditions under which full implementation of the Blackfeet Tribe's Birch Creek water right under the Compact will occur.

WHEREAS, the Parties now wish to amend the Agreement in order to address certain concerns raised by the Pondera County Canal and Reservoir Company.

NOW THEREFORE, the Parties amend the Agreement as follows [to add a new paragraph 22]:

> The Parties agree that, as a result of development and use of the Tribal Water Right described in Section C.1. of Article III of the Compact, the water supply of the Pondera County Canal and Reservoir Company (hereinafter referred to as "PCCRC") and its water users will, at times, be adversely affected if no mitigation of impacts is provided. The Parties agree the Four Horns Project, as described in paragraph 3 of this Agreement, can mitigate these impacts to PCCRC and its water users provided that such water is delivered to PCCRC's water delivery system. The Parties agree that such a mitigation measure will be included in any federal legislation which ratifies this Compact as provided for in paragraph 3 of this Agreement. The Parties further agree that additional funding may be required to mitigate the impacts of development of the Tribal Water Right described in Section C.1. of Article III of the Compact on PCCRC and its water users after the expiration of the term of this Agreement, and the parties would support federal funding for this purpose.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment of the date indicated.

BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION, MONTANA

Willi A. Shaye Jr.

By Its Chairman

STATE OF MONTANA

By Its GOVERNOR

2/13/2009

AGREEMENT BETWEEN
THE BLACKFEET TRIBE OF THE
BLACKFEET INDIAN RESERVATION
AND
THE STATE OF MONTANA
REGARDING BIRCH CREEK WATER USE

THIS AGREEMENT is made and entered into this 31st day of January, 2008, by and between the BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION, MONTANA ("Blackfeet Tribe" or "Tribe"), acting through the Blackfeet Tribal Business Council, and the STATE OF MONTANA ("State"), acting through the Montana Reserved Water Rights Compact Commission ("Compact Commission"). The Tribe and the State are also referred to herein as the "Parties."

AUTHORITY

The Blackfeet Tribe has authority to enter into this Agreement pursuant to the Constitution and By-Laws for the Blackfeet Tribe of the Blackfeet Indian Reservation, Article. VI, Section 1(a).

The State has authority to enter into this Agreement pursuant to Montana Code Ann. §§ 85-2-702 and 703 and 85-20-1504, MCA.

WITNESSETH:

WHEREAS, the Parties are currently negotiating a Compact to resolve the water rights of the Tribe, and expect to complete the Compact in the near future; and

WHEREAS, the Compact will not be final until approved by the Montana Legislature, the Congress and the Tribe, and entered as a decree by the Montana Water Court; and

WHEREAS, the Parties expect the Compact to resolve, among other things, the water

rights of the Tribe in Birch Creek in the amount of: a) 100 cubic feet per second (cfs) for irrigation use in the Upper Birch Creek Drainage from Swift Dam to the confluence of Blacktail Creek; b) 15 cfs from October 1 to March 31 and 25 cfs from April 1 to September 30 of each year for instream flow; c) the remainder of the natural flow in Birch Creek measured at the State Highway Bridge 358 crossing Birch Creek and any gaining flows available from the same bridge crossing to Birch Creek's confluence with the Two Medicine River after satisfaction of Water Rights Arising Under State Law; and d) all groundwater in the Birch Creek drainage that is not hydrologically connected to Birch Creek; and

WHEREAS, the Parties agree that full use of the Tribe's Birch Creek water right under the Compact should be implemented over a period of years in order to provide sufficient time to develop other water supplies that may be used to mitigate impacts to holders of Water Rights Arising Under State Law in Birch Creek; and

WHEREAS, the Parties desire to set out the terms and conditions under which full implementation of the Tribe's Birch Creek water right under the Compact will occur;

NOW THEREFORE, the Parties agree as follows:

1. With the exception of the terms "Parties" and "Effective Date", which are specifically defined herein, the definitions contained in Article II of the Compact are hereby incorporated by reference to the extent they are used herein.

2. For the fifteen (15) year period beginning from the Effective Date of this Agreement, the Tribe shall defer any use, including authorization of any use by others, of Birch Creek water over and above the amount currently used by the Tribe pursuant to the decree in *Conrad*

Investment Co. v. United States, 156 F. 123 (D. Mt. 1907), *affirmed* 161 F. 829 (9th Cir. 1908). The amount of water currently used by the Tribe under the *Conrad Investment* decree is: a) up to 36 Cfs and 8810 acre-feet annually for irrigation purposes during the irrigation season; and b) 6 Cfs for instream flow during the irrigation season. In addition to use of 6 Cfs for instream flow, the Tribe may continue its current practice of using up to 8810 acre-feet of its *Conrad Investment* irrigation right to irrigate acres within the Birch Creek Unit of the Bureau of Indian Affairs' Blackfeet Irrigation Project or may irrigate additional or different lands within the Upper Birch Creek Drainage so long as the Tribe's total diversions from Birch Creek do not exceed 36 Cfs or 8810 acre-feet and so long as any change in the place of use causes no adverse effect to any holder of Water Rights Arising Under State Law.

3. In any federal legislation approving the Compact, the Tribe and the State will jointly seek authorization and all necessary funding from Congress for the rehabilitation, betterment, enlargement, improvement and/or construction of certain facilities of the Badger-Fisher Irrigation Unit of the Bureau of Indian Affairs' Blackfeet Irrigation Project and other related facilities (collectively the "Four Horns Project" or "Project"). The Parties agree to seek authorization and funding from Congress for the Four Horns Project including : a) rehabilitation and betterment of the Four Horns Feeder Canal system up to at least 300 cfs in capacity; b) enlargement of the existing off-stream Four Horns Dam and Reservoir to its maximum practical capacity; c) construction of facilities to deliver a minimum of 15,000 acre-feet of water per year from the enlarged Four Horns Dam to a point on Birch Creek to be designated by the Parties; d) rehabilitation and betterment of the outlet canal delivery system from Four Horns Dam to

Blacktail Creek; e) rehabilitation and betterment of the Badger-Fisher Main Canal; and f) measures to enhance on-farm efficiency in the Badger-Fisher Irrigation Unit of the Blackfeet Irrigation Project.

4. As part of the planning and feasibility studies relating to the facilities described in paragraph 3, the Tribe, the State and the entity authorized by Congress shall identify those structures or portions of structures that will be constructed, rehabilitated or bettered primarily for the purpose of delivering water to holders of Water Rights Arising Under State Law in Birch Creek under this Agreement, and shall agree on the ownership, operation, maintenance and replacement obligations relating to those facilities, provided that the Tribe and the State will jointly seek provisions in any federal legislation approving the Compact ensuring that the Blackfeet Irrigation Project water users and the holders of Water Rights Arising Under State Law in Birch Creek shall have no obligation for operation, maintenance or replacement costs of structures or portions of structures identified under this paragraph as being constructed, rehabilitated or bettered primarily for the purpose of delivery water to holders of Water Rights Arising Under State Law in Birch Creek under this Agreement.

5. The Tribe and the State will cooperate and coordinate with the Bureau of Indian Affairs in the formulation and development of studies, designs, plans and specifications for the construction and/or rehabilitation of any Blackfeet Irrigation Project facilities.

6. As part of the state contribution to the Blackfeet water rights settlement, the State will contribute a portion of the funding for the Project in an amount to be agreed upon by the Parties or as may be established by Congress if the Parties are unable to agree. Such funding shall be

made available to the entity or entities authorized by Congress, on a schedule to be agreed upon by the Parties or established by Congress, but no later than the schedule on which any federal funding is provided, subject to appropriation of such funds by the Montana legislature. The Parties agree that a cooperative agreement or such other agreement required by Congress shall be entered into to provide for the transfer and accounting of the funding under this Paragraph.

7. The Tribe expects to seek authorization for funding from Congress for other projects and for other purposes as part of a comprehensive water rights settlement. The Tribe will give highest priority to the construction and completion of the Four Horns Project among the projects that may be funded by Congress in any federal legislation approving the Compact, so long as other Reservation projects funded in the same legislation may be constructed during the same period of time as the Four Horns Project.

8. At such time as the entity provided by Congress certifies that the Four Horns Project becomes capable of making such deliveries, the Tribe, as provided by Congress, will provide 15,000 acre-feet of water annually, as measured at Four Horns Dam, to a point on Birch Creek agreed to by the Parties for allocation pursuant to water rights under State law. The Tribe, as provided by Congress, will continue to provide 15,000 acre feet to the agreed upon point on Birch Creek annually thereafter through the conclusion of the 25th year after the Effective Date of this Agreement. The Tribe, in coordination with the BIA, and the State shall agree on a reasonable delivery schedule no later than March 1 of each year in which there is a delivery obligation under this Paragraph. If the Project first becomes capable of making such deliveries during the irrigation season (April 1 to September 30 of each year), the Tribe shall provide a

proportionate amount of water consistent with the remaining irrigation season for that year as mutually agreed with the State. Compensation to the Tribe for providing water under this paragraph is included within the compensation provided for in Paragraph 10.

9. In the event that, after the conclusion of the 15 year period set forth in Paragraph 3, water conditions develop during an irrigation season such that the full 15,000 acre-feet set forth in Paragraph 8 is unavailable to be provided to the agreed upon point in Birch Creek as contemplated by Paragraph 8, the Tribe will reduce the exercise of the instream flow right set forth in Article III.C.1.b of the Compact by an amount not to exceed 13 cfs during the portion of the irrigation season in which the shortage is expected to occur. The Tribe and the State, in consultation with the Bureau of Indian Affairs, shall agree on such additional criteria as may be necessary to implement this provision, taking into account the water use by the Blackfeet Irrigation Project, which shall have priority, and the expected amount and duration of any shortage.

10. In consideration for the obligations undertaken by the Tribe in Paragraphs 2-9, and separate and apart from the State's obligation to contribute to the construction of the Four Horns Project as set forth in Paragraph 6 and any other State contribution to a Blackfeet water rights settlement, the State shall pay to the Tribe $14.5 million ($14,500,000.00). Payment to the Tribe shall be made as follows:

a) provided that the total amount of interest disbursed shall not exceed $650,000 annually, as required by §85-20-1504(3)(b), MCA, or such additional interest amount that may be established by the Montana legislature, interest on the $14.5 million described in

this Paragraph shall be made available to the Tribe upon the date this Agreement is executed by the Tribe and the State (the Execution Date) and shall be paid to the Tribe quarterly through a payment arrangement to be established by the Tribe and the State separately from this Agreement; and

b) the principal of $14.5 million shall be paid to the Tribe through a payment arrangement to be established by the Tribe and the State separately from this Agreement within the later of:

(1) 75 days after the entry of a final decree by the Montana Water Court approving the Blackfeet water rights compact if no appeal therefrom is filed; or

(2) 30 days after the entry of judgment of a judicial decision finally resolving any and all appeals taken from such decree.

11. The payments set forth in Paragraph 10 are in full satisfaction of the obligations undertaken by the Tribe in this Agreement. The amount paid to the Tribe under this Agreement is not, and shall not be considered as, a precedent for or a basis to set the market value or price of water for any water marketed by the Tribe.

12. Pursuant to any federal legislation approving the Compact, the Tribe may market any available water stored in Four Horns Reservoir over and above the 15,000 acre feet that the Tribe is obligated to deliver annually under this Agreement, and any available water stored in Four Horns Reservoir after the termination of this Agreement, under such terms and conditions as may be set in the Compact or as may be directed by Congress.

13. The Parties expect the Project to be completed and constructed prior to the end of the

period of deferral in Paragraph 2. However, if completion is delayed due to cataclysmic or catastrophic events caused by events beyond the control of the Parties, such as acts of war or terrorism, or earthquake, flood or fire, or if, despite best efforts, construction is rendered impossible or impracticable due to the unavailability of materials, transportation or manpower, or if Congress otherwise is unable timely to appropriate the necessary funding to complete the Project within 15 years of the Effective Date of this Agreement due to such cataclysmic or catastrophic events, then the period of the deferral set forth in Paragraph 2 shall be extended until completion of the Project under such schedule as may be necessary given the nature of the delay. The Parties understand that the events causing delay contemplated by this Paragraph are only events of extraordinary magnitude and seriousness.

14. Any disputes concerning the meaning of this Agreement or actions to enforce the provisions of this Agreement shall be brought in a court of competent jurisdiction, provided that any disputes over the annual delivery of the 15,000 acre-feet of water required by Paragraph 8 shall be presented first to the Compact Board created by the Compact. The Tribe and the State waive their respective immunities from suit in a court of competent jurisdiction for the sole purpose of obtaining a declaration of the meaning of this Agreement or to enforce its terms, but not for money damages or attorney fees, provided that the Tribe may be awarded interest on any payments under this Agreement that are determined by a court of competent jurisdiction to have been improperly withheld or delayed.

15. Any notice, demand or request required by this Agreement shall be provided to the State to:

Director
Department of Natural Resources and Conservation
1625 11th Avenue
Helena, MT 59620

and to the Tribe to:

Chairman
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417

16. This Agreement shall be voidable at the discretion of either Party if either Party exercises its right, as set forth in Article VII.A of the Compact, to withdraw from the Compact, or if the Compact is not entered as a final decree by the Montana Water Court within the time period set forth in Article VII.B of the Compact, except that any interest paid to the Tribe under Paragraph 10 may be retained by the Tribe and shall not be refunded to the State. The Parties commit to use their best efforts to ensure that the Compact is finalized and the necessary approvals are obtained, including federal legislative approval, as soon as possible.

17. The Effective Date of this Agreement shall be the later of the date of execution of this Agreement by the Parties or the date of the issuance of any required approval by the Secretary of the Interior or his authorized representative, or by Congress, if the Secretary determines that congressional approval of this Agreement is necessary.

18. No amendments or modifications of this Agreement, or any provisions contained herein, shall be binding and enforceable unless the same shall be in writing and executed in the same manner as this original Agreement and shall after execution become a part of this Agreement. No amendment or modification of this Agreement shall constitute an amendment or

modification of the Compact.

19. Any waiver or failure to enforce the terms of this Agreement by either Party shall not constitute a waiver by that Party of the right to enforce or compel performance with respect to any continuing or subsequent default hereunder.

20. Neither this Agreement nor any of the rights, duties or obligations hereunder shall be assigned or transferred except with the express written consent of the Parties, provided that upon the sunset of the Compact Commission, any duties of the Compact Commission under this Agreement may be carried out by any designated successor of the Compact Commission.

21. The term of this Agreement shall be for a period commencing on the Execution Date and ending at the conclusion of the 25th year from the Effective Date.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION, MONTANA

acting

By Its Chairman

STATE OF MONTANA

By Its Governor