

## HOUSE BILL NO. 829

INTRODUCED BY L. JONES, AUGARE, JUNEAU, BLACK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A MEANS TO RATIFY THE IMPENDING WATER RIGHTS COMPACT AMONG THE BLACKFEET TRIBE, THE STATE OF MONTANA, AND THE UNITED STATES; CREATING A BLACKFEET TRIBE WATER RIGHTS COMPACT MITIGATION ACCOUNT; CREATING A BLACKFEET TRIBE WATER RIGHTS COMPACT INFRASTRUCTURE ACCOUNT; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADMINISTER THE ACCOUNTS; PROVIDING A FUND TRANSFER; APPROPRIATING FUNDS FOR THE MITIGATION ACCOUNT; ~~PROVIDING FOR CONTINGENT VOIDNESS;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE DATES."

WHEREAS, it is the policy of the state to seek negotiated settlements of federal and Indian reserved water rights claims in Montana under Title 85, chapter 2, part 7, MCA; and

WHEREAS, pursuant to this policy, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate the settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the state of Montana; and

WHEREAS, the Montana Reserved Water Rights Compact Commission, the Blackfeet Tribe, and the United States are near final agreement on a water rights compact; and

WHEREAS, a final Blackfeet Tribe-Montana water rights compact is essential to provide legal certainty with regard to the water rights of Indian and non-Indian water rights holders; and

WHEREAS, implementation of the compact will require state and federal cost-sharing, in amounts to be determined by future negotiation among the parties, for the renovation and upgrading of infrastructure on the reservation, which may include but is not limited to the Four Horns Reservoir; and

WHEREAS, state law requires legislative ratification of any compact entered into pursuant to 85-2-702, MCA; and

WHEREAS, a compact is expected to be agreed upon between the Blackfeet Tribe and the state of Montana shortly, and state legislative ratification is necessary.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 4], the following definitions

apply:

- (1) "Blackfeet Tribe" means the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; and
- (2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

**NEW SECTION. Section 2. Blackfeet Tribe water rights compact mitigation account -- use.** (1)

There is an account within the state special revenue fund called the Blackfeet Tribe water rights compact mitigation account. The department shall administer the account. UP TO \$650,000 EACH FISCAL YEAR OF INTEREST AND EARNINGS ON THE ACCOUNT MUST BE DEPOSITED IN THE ACCOUNT.

(2) The Blackfeet Tribe water rights compact mitigation account may be used only for:

(A) expenditures for grants to or matching funds for federal or other grants to water right holders under state law for water from Birch Creek, Badger Creek, Cut Bank Creek, the Two Medicine River, and the portion of the Milk River within the exterior boundaries of the Blackfeet Indian Reservation for projects approved by the department to enhance water availability or otherwise mitigate the economic and hydrologic impacts on water right holders under state law caused by the development of the Blackfeet Tribe's water rights under a water rights compact pursuant to 85-2-702 quantifying the water rights of the Blackfeet Tribe; AND

(B) IMPLEMENTATION OF THE WATER RIGHTS COMPACT AMONG THE BLACKFEET TRIBE, THE STATE, AND THE UNITED STATES AND ANY ASSOCIATED AGREEMENTS AS MAY BE SPECIFIED IN THE COMPACT OR AGREEMENTS.

(3) (A) THE DEPARTMENT MAY EXPEND UP TO \$500,000 OF THE ACCOUNT TO CONDUCT PRELIMINARY FEASIBILITY STUDIES AND AN ASSOCIATED ENVIRONMENTAL REVIEW FOR WATER COMPACT PURPOSES ON THE BLACKFEET INDIAN RESERVATION.

(B) THE DEPARTMENT MAY EXPEND UP TO \$650,000 EACH FISCAL YEAR OF THE INTEREST AND INCOME ON THE ESCROW ACCOUNT PROVIDED FOR IN SUBSECTION (4)(B) FOR THE PURPOSES DESCRIBED IN SUBSECTION (2)(B).

(3)(4) (A) At least ~~\$10~~ \$2.5 \$4.5 million of this ~~fund~~ ACCOUNT must be dedicated to mitigate impacts on water right holders under state law for use of water out of Birch Creek.

(B) THE AMOUNT OF \$10 MILLION IN THIS ACCOUNT MUST BE HELD IN ESCROW. THE DEPARTMENT SHALL NEGOTIATE THE TERMS OF AN ESCROW AGREEMENT.

(4)(5) ~~Funds~~ EXCEPT AS PROVIDED IN SUBSECTION (3), FUNDS from this account may not be disbursed unless a water rights compact among the Blackfeet Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfeet Tribe.

**NEW SECTION. Section 3. Blackfoot Tribe water rights compact infrastructure account -- use.**

(1) There is an account within the state special revenue fund called the Blackfoot Tribe water rights compact infrastructure account. The department shall administer the account.

(2) The Blackfoot Tribe water rights compact infrastructure account may be used only for water-related infrastructure projects within the exterior boundaries of the Blackfoot Indian reservation.

(3) Funds from this account may not be disbursed unless a water rights compact among the Blackfoot Tribe, the state, and the United States has been finally ratified by the legislature, the Congress of the United States, and the Blackfoot Tribe.

**NEW SECTION. Section 4. Administrative rules.** (1) The department shall adopt reasonable rules for implementing and administering [sections 1 through 3].

(2) In proposing rules, the department shall:

(a) consult with affected stakeholders, including the Pondera County conservation district and the Glacier County conservation district; and

(b) give priority to mitigating impacts on water right holders under state law who use water out of Birch Creek.

**NEW SECTION. Section 5. Fund transfer.** There is transferred ~~\$42~~ \$15 million from the state general fund to the Blackfoot Tribe water rights compact mitigation state special revenue account created in [section 2].

**NEW SECTION. Section 6. Appropriation.** (1) (A) THERE IS APPROPRIATED \$500,000 FROM THE BLACKFEET TRIBE WATER RIGHTS COMPACT MITIGATION ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR THE BIENNIUM ENDING JUNE 30, 2009. THE APPROPRIATION MAY BE USED SOLELY FOR THE PURPOSES DESCRIBED IN [SECTION 2(3)(A)].

(B) UP TO \$650,000 EACH FISCAL YEAR OF THE INTEREST AND INCOME ON THE ESCROW ACCOUNT PROVIDED FOR IN [SECTION 2] IS APPROPRIATED TO THE DEPARTMENT FOR THE PURPOSES DESCRIBED IN [SECTION 2(2)(B)].

(2) There is appropriated ~~\$42~~ \$14.5 million from the Blackfoot Tribe water rights compact mitigation account to the department of natural resources and conservation ~~for the biennium ending June 30, 2009. IT IS THE INTENT OF THE LEGISLATURE THAT THIS APPROPRIATION IS A ONE-TIME-ONLY APPROPRIATION.~~ This appropriation may be used solely for the purposes described in [section 2].

NEW SECTION. Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [sections 1 through 4].

~~NEW SECTION. Section 8. Contingent voidness.~~ If the text of a water compact between the Blackfeet Tribe, the state of Montana, and the United States is not inserted in [this act], then [this act] is void.

NEW SECTION. Section 8. Effective date DATES -- CONTINGENCY. (1) ~~This~~ EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS act] is effective on passage and approval.

(2) [SECTION 6(2)] IS EFFECTIVE WHEN A WATER RIGHTS COMPACT AMONG THE BLACKFEET TRIBE, THE STATE, AND THE UNITED STATES HAS BEEN FINALLY RATIFIED BY THE LEGISLATURE, THE CONGRESS OF THE UNITED STATES, AND THE BLACKFEET TRIBE.

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