

Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community Water Rights Settlement Act of 2021

October 4, 2021

The Fort Belknap Indian Community (FBIC) includes the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation. The Water Rights Settlement Act of 2021 honors the Treaties and agreements between the Gros Ventre and Assiniboine Tribes and the United States by recognizing FBIC's right to water for its Reservation, providing Congressional approval of the Water Compact between Montana, FBIC, and the U.S., and settling claims the FBIC has against the U.S. for the mismanagement of FBIC's Indian reserved water rights and resources. The Act settles damage claims against the U.S. by providing a total of \$593,110,000 for FBIC infrastructure and economic development, with additional funding to mitigate Tribal water development for current water users.

FBIC fought the judicial battle in 1908 that resulted in the U.S. Supreme Court ruling that Indian reservations include the waters necessary to make a tribal homeland. This is known as the *Winters* Doctrine. More than a century later, FBIC will be the last of the seven reservation tribes in Montana to settle its Indian reserved water rights.

After choosing negotiations and settlement over litigation in the 1980s, Montana, FBIC, and the U.S. agreed to a Water Compact identifying the sources, quantity, and administration of FBIC's Indian reserved water rights. The Compact supports funding for mitigation activities designed to protect existing non-Indian irrigators as FBIC develops its water rights. The Montana State Legislature overwhelmingly approved the Compact on a bipartisan basis in 2001.

The Act will approve the Compact and fully settle all of FBIC's water-related claims against the U.S. The Act will avoid costly litigation for existing water users, FBIC, and the U.S. The Act provides certainty that allows the State to move forward by removing a cloud over the unresolved water rights.

FBIC began irrigating its Reservation in 1889 and the Act provides funds to repair, modernize and expand the Bureau of Indian Affairs' Fort Belknap Indian Irrigation Project. Repairing the Project will strengthen the Reservation's agricultural economy. Over 90% of irrigated lands are trust lands held by FBIC and its members. The funds will also support development of clean and safe water for all FBIC members and communities of the Reservation, especially in the southern part of the Reservation where water pollution from gold mining left much of the water supply unsuitable for human consumption, including important headwaters of the FBIC Indian reserved water rights.

The Act includes Congressional approval of Indian reserved water rights from the Milk River and its tributaries, the Peoples Creek Basin, the Beaver Creek Basin, and the Missouri River Basin within the Reservation. The Act provides water for FBIC irrigation, domestic use, livestock, fish and wildlife, and water-related economic development.

The Act establishes the **Aaniiih Nakoda Settlement Trust Fund** which includes four major funding accounts that will compensate the FBIC for damages related to the U.S. mismanagement of its water rights and resources. These accounts are described below.

Tribal Land and Water, Rehabilitation, Modernization, and Expansion (\$240,140,000)

- More than \$200 million, will go to repairing and expanding BIA's Fort Belknap Indian Irrigation Project, including the Peoples Creek Southern Tributary Irrigation Systems.
- Develop reservoirs needed to store water for the Project.
- Repair and re-establish wetlands.
- Provide for the development of temporary stock-water ponds.
- Purchase lands within the Project and provide farm loans.

Water Resources and Water Rights Administration, O&M and Repair (\$61,300,000)

- Funds would be used to create a trust fund to provide long-term support for a Tribal Water Resources Department to administer and manage the FBIC's water rights and an Operation and Maintenance Fund to ensure repair and upkeep of irrigation projects.

Tribal Economic Development (\$168,390,000)

- Support the tribal labor force by expanding wellness centers to provide treatment and prevention for diabetes, hypertension, obesity, mental health, and substance abuse.
- Three centers are planned with space to provide for community education, an elder's area, a gymnasium, lockers, a kitchen, and a technology lounge.
- Utilize water resources to develop tribal natural gas resources within the Reservation and supply energy resources for an 80MW natural gas power plant.
- Using increased agriculture production, develop an Integrated Bio-Refinery producing 20-million-gallon-per-year of ethanol and cattle feed by-products.

Clean and Safe Domestic Water Supply and Wastewater Systems (\$123,280,000)

- Construct and improve water supply and wastewater removal systems on the Reservation.
- Develop two new wells at 300-ft deep, and one new well at 480-ft deep to provide water for the communities of the Fort Belknap Agency, Hays, and Lodgepole.
- Homesite wells will be developed.
- Construction of new water treatment facilities in Lodge Pole and Hays communities.
- Expansion of existing domestic water delivery lines.

In addition, the Act provides stored water under an existing Fresno Reservoir agreement and 20,000-acre feet per year of stored water in Lake Elwell, protects FBIC's ability to develop groundwater, and provides for FBIC to develop stock-water ponds. The Act also provides for the transfer of 58,553 acres of former Reservation lands to be restored to the FBIC that will ensure Tribal management of its water rights, promote consolidation of Tribal trust lands, foster improved forest management, and protect the Tribe's cultural resources and sacred sites.

Finally, the Act includes funding for (1) mitigation activities that will improve the water supply and protect Milk River Project irrigators because of FBIC's water development, and (2) construction of a dam and reservoir on Upper Peoples Creek for the FBIC that will stabilize the water supply and allow upstream irrigators to continue their water use.