

Blackfoot Tribe – Montana Water Compact State Funding: Summary of Appropriations and Transfers Associated with the Compact

Montana Legislative Fiscal Division - December 2022

Compact-Related Details

- In anticipation of the Blackfoot-Montana water compact (Compact) agreement, the 2007 Legislature created two funds under HB 829 related to the compact – a fund for mitigation of impacts to water rights holders and a fund for water infrastructure-related projects within the Blackfoot Reservation boundaries
- In 2008, the Birch Creek Agreement was signed by the State of Montana and the Blackfoot Tribe. This agreement is separate but related to the water compact; it specifically mitigates the impacts of the Tribe’s water rights on Birch Creek water users. This agreement was amended in 2009 to address mitigation of water supply impacts resulting from the compact to the Pondera County Canal and Reservoir Company
- The Compact was ratified by the State under HB 161 (2009)
- The Compact was approved by Congress and signed by the president in December of 2016; approximately \$422.0 million in federal funding was authorized for the Compact. The federal government has until January 2026 to appropriate the full funding
- The Blackfoot Tribe approved the Compact in April of 2017
- In 2021, the Montana Water Court issued a Certification and Final Judgement Order approving the Compact

Blackfoot Mitigation Fund, 02305, 85-20-1504, MCA

- Created under HB 829 (2007) for mitigation of impacts to water rights holders. The 2007 appropriation for this fund totaled approximately \$15.0 million and included: \$500,000 for preliminary feasibility studies & environmental review; \$4.5 million to mitigate impacts of water rights holders for use of Birch Creek; \$10.0 million to be held in escrow, the terms of which were to be negotiated by Department of Natural Resources & Conservation (DNRC); and up to \$650,000 annually of interest and earnings on the account for implementation of the contract
- SB 287 (2017) provided for the transfer of \$14.0 million to the mitigation fund (originally appropriated to the Blackfoot infrastructure fund under HB 6 (2013) upon Congress authorizing federal funding for the Compact’s Four Horns project; this act also required the amount of \$14.0 million in the fund to be used to fulfill the State’s funding obligation under the 2009 Birch Creek Agreement
- In 2018, the Montana Water Court issued a preliminary decree of consideration of the Compact. To prepare to fulfill the disbursement obligation under the Birch Creek Agreement, the DNRC transferred about \$14.6 million from the mitigation fund to the Birch Creek Agreement escrow fund (02307)
- In 2020, Congress authorized federal funding for the Four Horns project, which was the trigger for the transfer of \$14.0 million to the mitigation fund from the infrastructure fund
- The DNRC has requested legislation for the 2023 legislative session for statutory appropriation to allow the expenditure of the \$14.0 million that was transferred to the fund from the infrastructure fund. Timeline for the expenditure is uncertain and is dependent on DNRC rulemaking and negotiation between the State and the Blackfoot Tribe

Ending Fund Balance, FYE 2022: \$14.1 million

Blackfeet Infrastructure Fund, 02306, 85-20-1505, MCA

- Created under HB 829 (2007) for water-related infrastructure projects within the exterior boundaries of the Blackfeet Indian reservation
- HB 161 (2009) appropriated \$4.0 million in the 2011 biennium to the infrastructure account, as well as all interest and income earned on the money in the account
- HB 49 (2011) authorized the issuance of up to \$16.15 million of general fund general obligation (GO) bonds, \$16.0 million to pay for the state's costs for water-related infrastructure and up to \$150,000 for bond issuance costs. The bond proceeds must be deposited into the Blackfeet infrastructure fund, and a statutory appropriation was provided for expenditure of the proceeds
- In accordance with HB 6 (2013), \$14.0 million was deposited into the Blackfeet infrastructure fund for water-related infrastructure projects
- SB 287 (2017) authorized the transfer of \$14.0 million from the infrastructure fund to the mitigation fund upon Congress authorizing federal funding for the Compact's Four Horns project
- In P.L. 116-94 (2020), Congress appropriated federal funding for the Four Horns project. This triggered the \$14.0 million transfer from the infrastructure fund to the mitigation fund
- In FY 2022, the GO bond authorized under HB 49 (2011) was issued for \$16.0 million, and the proceeds were deposited into the infrastructure fund. This is a taxable bond, so is not subject to federal arbitrage limitations/spending timelines

Ending Fund Balance, FYE 2022: \$21.3 million

Blackfeet Birch Creek Agreement – Escrow Fund, 02307, 85-20-1504, MCA

- Under the requirements of 85-20-1504, MCA, the DNRC held funding in an escrow account, the terms of which were to be negotiated by the department
- Under the Birch Creek Agreement, the State of Montana was to pay the Blackfeet Tribe a principal of \$14.5 million in exchange for the Blackfeet Tribe deferring new development of its Birch Creek water rights. The agreement specified that the principal was to be paid within the later of either 75 days after entry of a final decree by the Montana Water Court approving the Blackfeet water rights compact if no appeal is filed or 30 days after the entry of judgment of a judicial decision resolving appeals
- In 2018, the Montana Water Court issued its preliminary decree and notice of availability of the Compact; the DNRC transferred \$14.6 million to the Blackfeet Birch Creek Agreement escrow fund from the mitigation fund
- Between 2020- 2021, the Montana Water Court issued its final decree for the Compact, and the DNRC transferred the balance of the escrow fund, about \$15.2 million, to a tribally controlled escrow account

Ending Fund Balance, FYE 2022: \$0

Links/Resources

DNRC Blackfeet Tribe Compact webpage:

<http://dnrc.mt.gov/divisions/water/water-compact-implementation-program/blackfeet-tribe-compact>

Birch Creek Agreement (2008):

http://dnrc.mt.gov/divisions/water/water-compact-implementation-program/docs/compact-appendices/birch_creek_agreement_2008.pdf

Links/Resources Continued

Birch Creek Agreement Amendment (2009):

http://dnrc.mt.gov/divisions/water/water-compact-implementation-program/docs/compact-appendices/birch_creek_amendment_2009.pdf

HB 829 (2007): <https://leg.mt.gov/bills/2007/billpdf/HB0829.pdf>

HB 161 (2009): <https://leg.mt.gov/bills/2009/billpdf/HB0161.pdf>

HB 49 (2011): <https://leg.mt.gov/bills/2011/billpdf/HB0049.pdf>

HB 6 (2013): <https://leg.mt.gov/bills/2013/billpdf/HB0006.pdf>

SB 287 (2017): <https://leg.mt.gov/bills/2017/billpdf/SB0287.pdf>

Tribe / Reservation	Authorizing Session	Appropriation Legislation	State Funds Appropriated	Bond Issue Authority	Total State Project Commitment	Fund Name	Fund	FYE 2022 FYE Acct. Balance
6 Blackfeet	2007	HB 829	15,000,000	0	15,000,000	Mitigation	02305	21,298,122 14,090,597 0
	2009	HB 161	4,000,000	0	4,000,000	Infrastructure	02306	
	2011	HB 49		16,000,000	16,000,000	Infrastructure	02306	
	2013	HB 6	14,000,000	0	14,000,000	Infrastructure	02306	
	2017	SB287	Authorizes transfer of funds		(14,000,000)	Infrastructure	02306	
					14,000,000	Mitigation	02305	
					(14,600,000)	Mitigation	02305	
				14,600,000	Birch Creek Agreement Escrow Fund	02307		
Total Blackfeet Tribe			\$33,000,000	\$16,000,000	\$49,000,000			\$35,388,719