

IN THE WATER COURTS OF THE STATE OF MONTANA
MISSOURI DIVISION

IN THE MATTER OF THE ADJUDICATION)	
OF THE EXISTING AND RESERVED RIGHTS TO)	
THE USE OF WATER, BOTH SURFACE AND)	CASE NO. <u>WC-_____</u>
UNDERGROUND, OF THE GROS VENTRE)	
AND ASSINIBOINE TRIBES)	
OF THE FORT BELKNAP RESERVATION,)	PROPOSED DECREE
WITHIN THE STATE OF MONTANA.)	
_____)	

THIS MATTER is before the court on the joint motion of the State of Montana (State, the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation (Tribes, and the United States of America (United States for the entry of a decree confirming the Tribal Water Right as recognized in the Fort Belknap-Montana Water Rights Compact of 2001 (Compact. Upon hearing the motion, objections thereto, the evidence, the claims of the United States on behalf of the Tribes, arguments of counsel, and being otherwise fully advised in the premises, the Court has determined that the motion should be GRANTED and it is hereby ORDERED, ADJUDGED AND DECREED that:

I. Name and Mailing Address of Holder of Right

The name and mailing address of the holder of the right is:

The United States of America in trust for the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation, c/o Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, Federal Building, 316 North 26th Avenue, Billings, Montana, 59101.

II. Tribal Water Right

The following provisions are from Article III of the Compact, without change.

ARTICLE III - TRIBAL WATER RIGHT

The Tribal Water Right set forth in this Article III shall be the water allocation in settlement of the claims including Winters reserved water rights claims of the Tribes, Tribal members, and Allottees, and the United States on behalf of the Tribes, Tribal members, and Allottees within the Fort Belknap Reservation, to water within the State of Montana, as those claims exist on the Effective Date of the Compact, and shall be held in trust by the United States for the benefit of the Tribes, Tribal members, and Allottees within the Fort Belknap Reservation. Non-use of all or any of the Tribal Water Right does not constitute a relinquishment, forfeiture, or abandonment of such rights.

A. **Basin 40J: Milk River Basin 40J.**

1. **Quantification.**

a. The Tribes have the right to divert up to 645 cubic feet per second "Cfs" of the United States' Share of the Natural Flow of the Milk River and its tributaries upstream from the diversion point on the Reservation as calculated pursuant to Section E.2. of Article IV. The right to divert 645 Cfs is in addition to allocation to the Tribes of storage in Fresno Reservoir pursuant to the Memorandum of Agreement between the Bureau of Reclamation and the Office of Indian Affairs (BIA) Milk River Project Montana, I-1-Ind. 18725, July 8, 1946.

(1) Of the right to divert 645 Cfs, up to 125 Cfs may be diverted for Direct Use to a maximum of 10,425 irrigated acres within the Fort Belknap Indian Irrigation Project. This water right is intended to preserve the historic water use protected in *Winters v. United States*, 207 U.S. 564 (1908). Irrigation of the Fort Belknap Indian Irrigation Project pursuant to this paragraph may be on land within the external boundaries of the Project on the Effective Date of the Compact or as modified pursuant to applicable federal law.

(2) Of the right to divert 645 Cfs and in addition to the 125 Cfs water right quantified in Section A.1.a.(1) of this Article III, up to 520 Cfs may be diverted for Direct Use or to off-stream storage, or both, for subsequent use for both of the following: use on an additional 19,390 present and future irrigated acres (including land irrigated historically within the Milk River Basin 40J); and up to 4000 AFY of use for non-irrigation purposes. The off-stream storage pursuant to this Section A.1.a.(2) of Article III is limited to a maximum combined capacity of 60,000 Acre-feet. Irrigation by diversion to Direct Use pursuant to this paragraph

may be accomplished through expansion or modification of the Fort Belknap Indian Irrigation Project pursuant to applicable federal law.

b. In addition to the water rights set forth in Section A.1.a. of this Article III, the Tribes have the right to divert surface flow from tributaries to the Milk River on the Reservation in Basin 40J to irrigate the acreage identified in Section A.1.a.(1) and (2) of this Article III.

c. In addition to the water rights set forth in Sections A.1.a. and b. of this Article III, the Tribes have the right to develop surface water in the Milk River Basin 40J within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section A.1.c., of Article III following the Effective Date of this Compact may not exceed a storage capacity of fifteen Acre-feet times the number of square miles in Basin 40J on the Reservation. This capacity limit does not apply to the water right quantified in Sections A.1.a., b., and d. of this Article III.

d. In addition to the water rights set forth in Sections A.1.a., b., and c. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Milk River Basin 40J within the Reservation, provided that, any portion of this water right diverted from the mainstem of the Milk River shall be part of the 4000 AFY non-irrigation water right set forth in Section A.1.a.(2) of this Article III. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

2. Priority Date/Administrative Priority.

a. For purposes of this Compact only, the priority date of the water rights set forth in Sections A.1.a., b., and d. of this Article III is October 17, 1855. The Parties agree that the senior water right quantified in Section A.1.a. of this Article III, shall be satisfied in the following manner:

(1) In the event that the water available for use by the Tribes at the diversion point on the Reservation is less than the amount to which the Tribes are entitled to pursuant to Section A.1.a. of this Article III and Section E.1.b.(2) of Article IV, the Tribes shall seek delivery of the difference between what they are entitled to and what is available solely from release or bypass of water from or through Fresno Dam by the Milk River Project. The Milk River Project shall, pursuant to Section E. of Article IV and applicable federal law, release or bypass the additional water necessary to fulfill the water right of the Tribes.

(2) The allocation between and relative priority of satisfaction of the water rights set forth in Section A.1.a. of this Article III and the water right of the

Blackfeet Tribe in the Milk River Basin shall be resolved among the Fort Belknap Indian Community of the Fort Belknap Reservation, the Blackfeet Tribe, and the United States, or in the event an agreement is not reached, as ultimately decreed by the Montana Water Court or other court of competent jurisdiction, and shall not be prejudiced by this Compact including any agreement on priority date. The amount of the United States' Share of the Natural Flow of the Milk River available to the Tribes as calculated pursuant to Section E.2. of Article IV shall be modified to reflect any adjudication of the water rights of the Blackfeet Tribe or agreement between the Blackfeet Tribe and the Fort Belknap Indian Community of the Fort Belknap Reservation to the extent such agreement or adjudication affects the Calculated Undepleted Flow of the Milk River. The Milk River Project will not be required to provide any exchange water to the Tribes for diversion of the Blackfeet tribal water right.

b. The priority date of the water rights set forth in Section A.1.c. of this Article III for stock impoundments shall be the date of development of the right.

3. **Period of Use.** The period of use of the water rights set forth in Section A.1. of this Article III is:

a. March 1 through October 31 of each year for the 125 Cfs diversion set forth in Section A.1.a.(1) of this Article III.

b. January 1 through December 31 of each year for the 520 Cfs right set forth in Section A.1.a.(2) of this Article III.

c. March 1 through October 31 for water diverted from tributaries set forth in Section A.1.b. of this Article III.

d. January 1 through December 31 of each year for the water rights set forth in Section A.1.c. and d. of this Article III.

4. **Points and Means of Diversion.**

a. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.a. of this Article III may be diverted from the mainstem of the Milk River in the Milk River Basin 40J, or from Groundwater beneath the Reservation that is Hydrologically Connected to the surface water from any place and by any means in the Milk River Basin 40J.

b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.b. of this Article III may be diverted for Direct Use from any place and by any means from tributaries to the Milk River in Basin 40J on the Reservation.

c. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section A.1.c. of this Article III may be developed from a surface water source anywhere within the Milk River Basin 40J within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

d. Subject to the terms and conditions set forth in Article IV, the water rights set forth in Section A.1.d. of this Article III may be diverted from any place and by any means in Basin 40J from surface water or Groundwater that is Hydrologically Connected to surface water, within the Reservation in Basin 40J.

5. Place of Use.

a. Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Sections A.1.a. and b. of this Article III any place within the Reservation.

b. Subject to the terms and conditions of Article IV, the Tribes may transfer water developed (pursuant to Section A.1.a. of this Article III) prior to the date of application for a Change in Use or Transfer or stored (pursuant to Section A.1.a.(2) of this Article III) prior to the date of application for a Change in Use or Transfer for use off the Reservation within the Missouri River Basin.

c. The Tribes may use or authorize the use of the water rights set forth in Sections A.1.c. and d. of this Article III any place within the Reservation.

6. Purposes.

a. The water rights set forth in Sections A.1.a. and b. of this Article III may be used within the Reservation for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, Non-Exempt New Development, Change in Use, or Transfer of any portion of the Tribal Water Right, is subject to the terms and conditions of Section A. of Article IV

b. The water rights set forth in Section A.1.c. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

c. The water rights set forth in Section A.1.d. of this Article III may be used within the Reservation in Basin 40J for any non-irrigation purposes.

B. Basin 40I: Peoples Creek Basin.

1. Quantification.

a. The Tribes have the right to the surface water and Groundwater that is Hydrologically Connected to surface water that remains in the Peoples Creek Basin within the Reservation after satisfaction of water rights Arising Under State Law set forth in Appendix 3. The Tribes have the right to store water within the Peoples Creek Basin pursuant to this water right. The reservoir or reservoirs must be entirely within the Reservation unless otherwise agreed to with affected landowners off the Reservation.

b. In addition to the water rights set forth in Section B.1.a. of this Article III, the Tribes' right to use water in the Peoples Creek Basin includes the right to use water conveyed from the Missouri River Basin 40EJ pursuant to Section E.1.b. of this Article III. The Tribes have the right to store water within the Peoples Creek Basin pursuant to this water right. The reservoir or reservoirs must be entirely within the

Reservation unless otherwise agreed to with affected landowners off the Reservation.

c. In addition to the water rights set forth in Sections B.1.a. and b. of this Article III, the Tribes have the right to develop surface water in the Peoples Creek Basin within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section B.1.c., of this Article III following the Effective Date of this Compact may not exceed a storage capacity of fifteen Acre-feet times the number of square miles in Basin 40I on the Reservation. This capacity limit does not apply to the water right quantified in Sections B.1.a., b., and d. of this Article III.

d. In addition to the water rights set forth in Sections B.1.a., b., and c. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Peoples Creek Basin within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

2. Priority Date/Administrative Priority.

a. For purposes of this Compact, the priority date of the water rights set forth in Sections B.1.a. and d. of this Article III is October 17, 1855. For the purposes of providing a more reliable water right and simplification of administration, the Parties agree that this senior water right shall be satisfied in the following manner:

(1) Subject to the terms of Section B.2.a.(2) of this Article III, the Seniority of the Water Rights Set Forth in Sections B.1.a. and d. of this Article III Shall Not be Asserted Over non-irrigation water rights Arising Under State Law upstream from the Reservation in the Peoples Creek Basin with a priority date before the Effective Date of the Compact, and irrigation water rights set forth in Appendix 3, provided that water rights numbers W017296, W166075, and C016704 are not protected by this agreement. The Tribes may assert the senior priority of water rights and storage that have been actually developed over water rights Arising Under State Law that are developed after the Effective Date of this Compact, and over any water rights Arising Under State Law not set forth in Appendix 3.

(2) The agreement set forth in Section B.2.a.(1) of this Article III is not effective until completion of construction of a reservoir or reservoirs of a minimum capacity of 3000 AF on the Reservation in upper Peoples Creek for use by the Tribes. Prior to construction of the reservoir, the Tribes may only assert the senior priority of water rights actually developed.

b. The priority date of the water right set forth in Section B.1.b. of this Article III

shall be as set forth in Section E.2.b. of this Article III.

c. The priority date of the water rights set forth in Section B.1.c. of this Article III for stock impoundments shall be the date of development of the right.

3. **Period of Use.** The period of use of the water rights set forth in Section B.1. of this Article III is January 1 through December 31 of each year.

4. **Points and Means of Diversion.**

a. The water right set forth in Sections B.1.a. and d. of this Article III may be diverted for Direct Use or storage from surface water or from Groundwater that is Hydrologically Connected to surface water from any place and by any means within the Peoples Creek Basin within the Reservation.

b. The point and means of diversion of the water right set forth in Section B.1.b. of this Article III shall be as set forth in Section E.4.b. of this Article III.

c. The water right set forth in Section B.1.c. of this Article III may be developed on a surface water source anywhere within the Peoples Creek Basin within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

5. **Place of Use.**

a. The Tribes may use or authorize the use of the water rights set forth in Sections B.1.a. and b. of this Article III for use any place within the Reservation within the Peoples Creek Basin. Subject to the terms and conditions set forth in Article IV, the Tribes may Transfer water stored pursuant to Sections B.1.a. and b. of this Article III for use off the Reservation within the Milk River Basin.

b. The Tribes may use or authorize the use of the water rights set forth in Sections B.1.c., and d. of this Article III for use any place within the Reservation.

6. **Purposes.**

a. The water rights set forth in Sections B.1.a. and b. of this Article III may be used for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, any Transfer of the water rights stored pursuant to Sections B.1.a. and b. of this Article III off the Reservation, after the Effective Date of the Compact is subject to the terms and conditions of Section A. of Article IV.

b. The water rights set forth in Section B.1.c. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

c. The water rights set forth in Section B.1.d. of this Article III may be used within the Reservation in Basin 40I for any non-irrigation purposes.

C. **Basin 40M: Beaver Creek Basin.**

1. **Quantification.**

a. The Tribes have the right to divert 8,024 AFY for irrigation of 2,241 acres from surface flow, or from Groundwater that is Hydrologically Connected to surface

flow, within the Reservation in the Beaver Creek Basin. The Tribes agree to use their best efforts to bypass a minimum flow when naturally available.

b. In addition to the water rights set forth in Section C.1.a. of this Article III, the Tribes have the right to develop surface water in the Beaver Creek Basin within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. The cumulative development of stock impoundments pursuant to this Section C.1.b., of this Article III following the Effective Date of this Compact may not exceed a storage capacity of 15 Acre-feet times the number of square miles in Basin 40M on the Reservation. This capacity limit does not apply to the water right quantified in Sections C.1.a. and c. of this Article III.

c. In addition to the water rights set forth in Sections C.1.a. and b. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in the Beaver Creek Basin within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

2. Priority Date/Administrative Priority.

a. For purposes of this Compact, the priority date of the water rights set forth in Sections C.1.a. and c. of this Article III is October 17, 1855.

b. The priority date of the water rights set forth in Section C.1.b. of this Article III for stock impoundments shall be the date of development of the right.

3. Period of Use. The period of use of the water rights set forth in Section C.1. of this Article III is:

a. March 1 through October 31 for the 8,024 AFY water right set forth in Section C.1.a. of this Article III.

b. January 1 through December 31 of each year for the water rights set forth in Sections C.1.b. and c. of this Article III.

4. Points and Means of Diversion.

a. Subject to the terms and conditions set forth in Article IV, the Tribes may divert or authorize the diversion of the water rights set forth in Sections C.1.a. and c. of this Article III from any place and by any means from surface water or Groundwater that is Hydrologically Connected to surface water in the Beaver Creek Basin within the Reservation. When constructing diversion facilities, the Tribes agree to use their best efforts to allow bypass of a minimum flow, when naturally available.

b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section C.1.b. of this Article III may be developed on a surface water

source anywhere within the Beaver Creek Basin within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

5. **Place of Use.** Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Sections C.1.a., b., and c. of this Article III any place within the Reservation within the Beaver Creek Basin.

6. **Purposes.**

a. The Tribes may use or authorize the use of the water rights set forth in Section C.1.a. of this Article III within the Reservation for any purpose allowed by Tribal and federal law, including fish and wildlife purposes, provided that, use of the water rights set forth in Section C.1.a. of this Article III, for any purpose other than irrigation is subject to the terms and conditions of Section A. of Article IV.

b. The water rights set forth in Section C.1.b. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

c. The water rights set forth in Section C.1.c. of this Article III may be used within the Reservation in the Beaver Creek Basin for any non-irrigation purposes.

D. **Reservation Portion of Missouri River Basin 40EJ.**

1. **Quantification.**

a. The Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact in Basin 40EJ within the Reservation. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

b. In addition to the water rights set forth in Section D.1.a. of this Article III, the Tribes have the right to develop surface water in Basin 40EJ within the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream.

2. **Priority Date/Administrative Priority.**

a. For purposes of this Compact, the priority date of the water rights set forth in Section D.1.a. of this Article III is October 17, 1855.

b. The priority date of the water rights set forth in Section D.1.b. of this Article III for stock impoundments shall be the date of development of the right.

3. **Period of Use.** The period of use of the water rights set forth in Section D.1. of this Article III is January 1 through December 31 of each year.

4. **Points and Means of Diversion.**

a. Subject to the terms and conditions set forth in Article IV, the Tribes may continue to divert or authorize the diversion of the water rights set forth in Section D.1.a. of this Article III from any place and by any means from surface water or

Groundwater that is Hydrologically Connected to surface water, within the Reservation in Basin 40EJ.

b. Subject to the terms and conditions set forth in Article IV, the water right set forth in Section D.1.b. of this Article III may be developed on a surface water source anywhere within Basin 40EJ within the Reservation, provided that, the development may not be on a Perennial Flowing Stream.

5. **Place of Use.** Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section D.1. of this Article III on any place within the Reservation within Basin 40EJ.

6. **Purposes.**

a. The Tribes may use or authorize the use of the water rights set forth in Section D.1.a. of this Article III for any non-irrigation purposes.

b. The water rights set forth in Section D.1.b. of this Article III may be used for the purpose of watering stock and may not be changed to any other use.

E. **Off-Reservation Tribal Fee and Trust Lands - Missouri Basin 40EJ and Peoples Creek Basin 40I.** The Tribes have the following water rights on trust and fee land off the Reservation in Missouri Basin 40EJ and Peoples Creek Basin 40I. Unless Congress acts to modify the Reservation boundary to include the Tribal trust and fee land, the rights shall not be considered part of the Tribal Water Right for purposes of administration pursuant to Article IV. The water rights set forth in this Section E. of Article III shall be administered by the State pursuant to Section B.1.b. of Article IV, except that non-use of all or any of the rights shall not constitute a relinquishment, forfeiture, or abandonment of such rights.

1. **Quantification.**

a. The Tribes have the right to divert up to 1135 AFY for irrigation of:

(1) 297 acres of land historically irrigated in Basin 40EJ; and

(2) 18 acres of land in Basin 40EJ developed after the Effective Date of the Compact.

b. In addition to the water rights set forth in Section E.1.a. of this Article III, the Tribes have the right to divert up to 1290 AFY for conveyance to the Peoples Creek Basin.

c. In addition to the water rights set forth in Sections E.1.a. and b. of this Article III, the Tribes have the right to use or authorize the use of water for non-irrigation purposes developed prior to the Effective Date of the Compact on Tribal fee and trust land off the Reservation in Basin 40EJ and Basin 40I. These water uses are subject to the reporting requirements of Section A.7. of Article IV.

d. In addition to the water rights set forth in Sections E.1.a., b., and c. of this Article III, the Tribes have the right to develop surface and Groundwater in Basin 40EJ and Basin 40I on Tribal fee and trust land off the Reservation pursuant to

State law.

e. In addition to the water rights set forth in Sections E.1.a., b., c., and d. of this Article III, the Tribes have the right, pursuant to State law, to develop surface water in Basin 40EJ and Basin 40I on Tribal fee and trust land off the Reservation for use by livestock if the maximum capacity of each impoundment or pit is less than 15 Acre-feet and the total amount impounded in each impoundment or pit is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream.

2. Priority Date/Administrative Priority.

a. The priority date of the water rights set forth in Section E.1.a. of this Article III is:

(1) July 24, 1893 for the water right set forth in Section E.1.a.(1) of this Article III.

(2) The date of development for the 18 acres set forth in Section E.1.a.(2) of this Article III.

b. The priority date of the water right set forth in Section E.1.b. of this Article III is January 1, 1935.

c. The priority dates of the water rights set forth in Section E.1.c. of this Article III are the date on which the water was developed for stock and domestic purposes. The priority date of these rights is subject to the reporting requirements of Section A.7. of Article IV.

d. The priority date of the water rights set forth in Sections E.1.d., and e. of this Article III shall be as provided by State law.

3. Period of Use. The period of use of the water rights set forth in Section E.1. of this Article III is:

a. March 1 through October 31 of each year for the irrigation water rights set forth in Section E.1.a. of this Article III.

b. January 1 through December 31 of each year for diversion of the water right set forth in Section E.1.b. of this Article III.

c. January 1 through December 31 of each year for the water rights set forth in Section E.1.c. of this Article III.

d. As provided by State law for the water rights set forth in Sections E.1.d., and e. of this Article III.

4. Points and Means of Diversion.

a. The points and means of diversion for the water rights set forth in Section E.1.a. of this Article III are as follows:

(1) The water right set forth in Section E.1.a.(1) of this Article III may be diverted from any point by any means on Tribal trust or fee land within Section 30, T28N, R22E and the SW 1/4 of Section 18, T27N, R22E;

(2) The water right set forth in Section E.1.a.(2) of this Article III may be diverted

from any point by any means on Tribal trust or fee land within Section 19, T27N, R22E.

b. The water right set forth in Section E.1.b. of this Article III may be diverted from any point by any means on Tribal trust or fee land in the SWSESW, Section 9, T26N, R22E.

c. The water rights set forth in Section E.1.c. of this Article III may be diverted from the place and by the means in use prior to the Effective Date of the Compact, on Tribal fee or trust land in Basin 40EJ and Basin 40I. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the point and means of diversion of a water right set forth in Section E.1.c. of this Article III to any place and any means from surface or Groundwater that is Hydrologically Connected to surface water, on Tribal fee or trust land in Basin 40EJ or Basin 40I.

d. The water right set forth in Sections E.1.d. and e. of this Article III may be diverted from any point by any means on Tribal fee or trust land in Basin 40EJ and Basin 40I, pursuant to State law.

5. Place of Use.

a. The Tribes may use the water rights set forth in Section E.1.a.(1) of this Article III on Tribal trust or fee land in Sections 29, 30, 31, and 32, T28N, R22E, and on the W1/2 of the SE1/2 and the E1/2 of the W 1/2 of Section 19, T27N, R22E. The Tribes may use the water rights set forth in Section E.1.a.(2) of this Article III on Tribal trust or fee land in Sections 19 and 30, T27N, R22E.

b. The water rights set forth in Section E.1.b. of this Article III may be used any place authorized in Section B.5.a. of this Article III, and shall be administered as part of the Tribal Water Right.

c. Subject to the requirements of State law, the water rights set forth in Section E.1.c. of this Article III may be used any place on Tribal fee or trust land in Basin 40EJ and Basin 40I on which the water has been used prior to the Effective Date of the Compact.

d. The water rights set forth in Sections E.1.d. and e. of this Article III may be used on any Tribal fee and trust land in Basin 40EJ and Basin 40I, pursuant to State law.

6. Purposes.

a. The water rights set forth in Section E.1.a. of this Article III may be used for irrigation. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the use of the water rights set forth in Section E.1.a. of this Article III to any other purpose allowed by State law.

b. The water rights set forth in Section E.1.b. of this Article III may be used for any purpose allowed by federal and Tribal law.

c. The water rights set forth in Section E.1.c. of this Article III may continue to

be used for stock and domestic purposes according to their purpose on the Effective Date of the Compact. Subject to the terms and conditions of Section B. of Article IV, the Tribes may change the use of the water rights set forth in Section E.1.c. of this Article III to any other purpose allowed by State law.

d. The water rights set forth in Sections E.1.d., and e. of this Article III may be used for any purpose allowed by State law.

F. Temporary Emergency Appropriations. The Tribes or the United States on behalf of the Tribes may divert water from sources on the Reservation for use on or off the Reservation for temporary emergency use necessary for public health and safety. Temporary emergency use of water from a source for which a water right is quantified in this Article III of this Compact shall not be considered an exercise of that right.

G. Groundwater.

1. **Groundwater that is Hydrologically Connected to Surface Water.** The Tribes have the right to develop Groundwater that is Hydrologically Connected to surface water within the quantification limits for surface water provided in Sections A., B., C., D., and E. of this Article III. The attributes of the water right are as set forth in Sections A., B, C., D., and E. of this Article III.

2. **Existing Groundwater Development.**

a. **Quantification.** The Tribes have the right to the use of Groundwater developed before the Effective Date of the Compact within the Reservation as provided in Sections A.1.d., B.1.d., C.1.c., and D.1.a. of this Article III. These Groundwater uses are subject to the reporting requirements of Section A.7. of Article IV.

3. **New Development of Small Groundwater Wells and Springs.**

a. **Quantification.** In addition to the water rights set forth in Sections A., B., C., and D., of this Article III, the Tribes have the right to develop Groundwater within the Reservation by means of wells or developed springs if the maximum flow of each well or developed spring is 35 gallons per minute or less and does not exceed a use of 10 Acre-feet per year. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs.

b. **Priority Date/Administrative Priority.**

The priority date of the water rights set forth in Section G.3.a. of this Article III shall be the date of development of the right.

c. **Period of Use.** The period of use of the water rights set forth in Section G.3.a. of this Article III is January 1 through December 31 of each year.

d. **Points and Means of Diversion.** Subject to the terms and conditions set forth in Article IV, the water right set forth in Section G.3.a. of this Article III may be

diverted from Groundwater from any point by any means within the Reservation.

e. **Place of Use.** Subject to the terms and conditions set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section G.3.a. of this Article III any place within the Reservation.

f. **Purposes.** Subject to the terms and conditions set forth in Article IV, the water rights set forth in Section G.3.a. of this Article III may be used for any purpose authorized by Tribal or federal law.

4. New Groundwater Development not Hydrologically Connected to Surface Water.

a. **Quantification.** In addition to the water rights set forth in Sections A., B., C., D., and E. of this Article III, the Tribes have the right to develop or authorize the development of Groundwater within the Reservation that is not Hydrologically Connected to surface water subject to the following conditions:

(1) The development of Groundwater that is not Hydrologically Connected to surface water must comply with the provisions of Sections A.5. and 6. of Article IV for determination of Adverse Effect. Pursuant to Section A.5.a. of Article IV, the Tribal Water Resources Department and the DNRC may jointly agree to exempt certain development of Groundwater from a showing of no Adverse Effect due to location, size, or other agreed upon parameter.

(2) If a conflict arises between use of the water right set forth in this Section G.4. of Article III and a water right Arising Under State Law, DNRC and TWRD shall attempt to resolve the controversy. In attempting to resolve the controversy, DNRC and TWRD may establish controlled Groundwater areas off and on the Reservation and may manage them cooperatively pursuant to Sections A.2.d. and B.2. of Article IV. If DNRC and TWRD are unable to resolve the controversy, the Tribes, State or the Person whose water use is affected may seek relief from the Compact Board. Among the remedies the Compact Board may order is imposition of a controlled Groundwater area that includes Groundwater use both on and off the Reservation pursuant to Sections A.2.d. and B.2. of Article IV. The controlled Groundwater area is to be administered by the TWRD on the Reservation and the DNRC off the Reservation pursuant to Article IV and Tribal and State law.

b. **Priority Date.** The priority date of the water rights set forth in Section G.4.a. of this Article III for new Groundwater development shall be the date of development of the right.

c. **Period of Use.** The period of use of the water rights set forth in Section G.4.a. of this Article III for new Groundwater development is January 1 through December 31 of each year.

d. **Points and Means of Diversion.** Subject to the requirements set forth in Article IV, the water rights set forth in Section G.4.a. of this Article III may be

diverted from Groundwater that is not Hydrologically Connected to surface water at any point by any means within the Reservation.

e. **Place of Use.** Subject to the requirements set forth in Article IV, the water rights set forth in Section G.4.a. of this Article III may be used on any place within the Reservation.

f. **Purpose.** Subject to the requirements set forth in Article IV, the Tribes may use or authorize the use of the water rights set forth in Section G.4.a. of this Article III for any purpose allowed by Tribal and federal law.

H. **Additional Water.** As a part of the Tribal Water Right, the Tribes shall be entitled to an allocation of stored water in Lake Elwell as agreed to by the Parties and as provided by Congress, measured at the dam, for use or disposition by the Tribes for any beneficial purpose, either on or off the Reservation, pursuant to the terms of this Compact; provided that, such allocation shall be in accordance with the terms and conditions of any Act of Congress ratifying this Compact. This allocation is subject to the prior reserved water rights, if any, of any other Indian tribe, or persons holding such reserved water rights through that tribe or through the United States. Any use or disposition of water from Lake Elwell off the Reservation by the Tribes is subject to the specific provisions relating to such use or disposition in any Act of Congress ratifying this Compact. The United States shall have no responsibility or obligation to provide any facility for the transport of the water allocated under this Section H. of Article III. to the Fort Belknap Reservation or to any other location.

I. **Basin Closures.**

1. The following closure does not apply to development of the Tribal Water Right as provided for in this Compact. In the Milk River Basin from the Eastern Crossing to the confluence between the Milk River and the Missouri River comprised of Basins 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, and 40O both above the Western Crossing and below the Eastern Crossing, DNRC shall not process or grant an application for an appropriation pursuant to State law after this Compact has been ratified by the Montana legislature, provided that, after compliance by the applicant with all applicable provisions of State and federal law, DNRC may issue a certificate of water right or permit for:

a. An appropriation for municipal use of surface or Groundwater that is Hydrologically Connected to surface water. In addition to compliance with applicable State law, the application shall be treated as a change in use for the purposes of Section B. of Article IV, if the point of diversion is located upstream from any point on the Reservation. For purposes of compliance with State law other than this Compact, the appropriation shall be treated as a new use.

b. An appropriation of Groundwater that is not Hydrologically Connected to

surface water. In addition to compliance with applicable State law, the application shall be treated as a change in use for the purposes of Section B. of Article IV, if the point of diversion is within an aquifer that might extend onto the Reservation. For purposes of compliance with State law other than this Compact, the appropriation shall be treated as a new use.

c. An appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a use of 10 Acre-feet per year. This size limitation includes a Combined Development from the Same Source from two or more wells or developed springs. This exemption includes development on fee land on the Reservation.

d. An appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 Acre-feet and the appropriation is less than 30 Acre-feet per year and is from a source other than a Perennial Flowing Stream. This exemption includes development on fee land on the Reservation. With the exception of Peoples Creek Basin 40I, the cumulative development of stock impoundments pursuant to this exemption following the Effective Date of this Compact may not exceed a storage capacity of 15 Acre-feet times the number of square miles in the Water Court basin in which the new impoundment is located. In the Peoples Creek Basin 40I, development of stock impoundments pursuant to this exemption following the Effective Date of this Compact must be constructed with the ability to bypass inflow.

e. An appropriation for instream use of water by livestock.

f. Temporary emergency appropriations as provided in § [85-2-113\(3\)](#), MCA.

g. An appropriation necessary for the purposes of new storage of imported water or modification and replacement of existing storage as set forth in Section I.4. of this Article III.

h. An appropriation necessary for new storage off the Reservation approved by the Milk River Coordinating Committee pursuant to Section C.3.g. of Article IV.

i. An appropriation for a nonconsumptive use as defined under State law.

j. With the exception of applications for appropriations in Basin 40I upstream from the Reservation, an appropriation of water for an impoundment of any size for use for fish and wildlife purposes if the cumulative development under this provision and Section I.1.d. of this Article III, does not exceed 15 Acre-feet times the number of square miles owned by the applicant in the Water Court basin in which the new impoundment is located.

2. The basin closure is not a limit on change of use or transfer of any water right Arising Under State Law, provided that, applicable provisions of State and federal law and this Compact are followed. For purposes of this Compact, any change in a water right for the purpose of moving instream stockwatering to off-

stream stockwatering that does not result in an increase in the historic consumptive use of water shall be considered a change in use, and is not a new use subject to the basin closure.

3. Due to the shortage of water in the Milk River Basin, water salvaged through efficiency measures may not be used to expand irrigation from a water right Arising Under State Law with a point of diversion in the United States' portion of the Milk River Basin under the following circumstances:

a. the efficiency measures are funded in whole or in part by the State, United States, Tribes, or water users as part of the implementation of this Compact; or

b. the salvaged water may be used to alleviate water shortage in the Milk River Basin. Pursuant to Section B.3. of Article IV, DNRC may promulgate rules to implement this provision.

4. The basin closure is not a limit on: the modification or replacement of existing storage when there is no enlargement of that storage; the modification or development of storage pursuant to this Compact and the federal legislation that ratifies this Compact; or the development of storage to impound water imported to the Milk River Basin from another basin.

5. Within 120 days of the date this Compact is ratified by the Montana Legislature, DNRC shall publish notice of the basin closures set forth in Section I. of this Article III once in newspapers of general circulation in the area of the sources.

IV. Relationship with Compact

This decree is based upon the Compact, and by this reference incorporates the definitions contained therein. The Tribal Water Right confirmed in this decree is subject to all conditions upon use and administration set forth in the Compact. Nothing in this decree is intended to modify, alter, or amend the terms and provisions of the Compact.

V. Jurisdiction of Court

Nothing in this decree or the Compact shall expand the subject matter jurisdiction of the Water Courts of the State of Montana.

RESPECTFULLY SUBMITTED for approval this _____ day of

_____, 200__ by:

THE UNITED STATE OF AMERICA

THE GROS VENTRE AND
ASSINIBOINE TRIBES OF THE
FORT BELKNAP RESERVATION

By: _____
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APPROVED this _____ day of _____, 200__.

CHIEF WATER JUDGE