

IN THE WATER COURT OF THE STATE OF MONTANA

IN THE MATTER OF THE
ADJUDICATION OF THE EXISTING
AND RESERVED RIGHTS TO THE USE
OF WATER, BOTH SURFACE AND
UNDERGROUND, OF THE
BLACKFEET TRIBE OF THE
BLACKFEET RESERVATION WITHIN
THE STATE OF MONTANA

Case No. WC-1991-01

STIPULATION TO ADDRESS CLAIMS BY AND FOR THE BENEFIT OF THE
BLACKFEET INDIAN TRIBE TO WATER RIGHTS WITHIN
THE LEWIS AND CLARK NATIONAL FOREST
AND
GLACIER NATIONAL PARK

The United States of America ("United States"), on behalf of the Forest Service, an agency of the United States Department of Agriculture, and the National Park Service, an agency of the United States Department of Interior, the Blackfeet Tribe of the Blackfeet Indian Reservation ("Tribe"), and the United States Bureau of Indian Affairs as trustee on behalf of the Tribe (collectively "Parties") stipulate as follows regarding the water rights of the Tribe and the United States as trustee on behalf of the Tribe within Lewis and Clark National Forest ("Forest") and Glacier National Park ("Park").

A. Tribal Instream Flow Reserved Rights

The Parties agree that the Tribe has Federal reserved instream flow water rights in the Forest and in the Park for rights reserved by the Tribe in the Agreement between the Tribe and the United States, ratified by the Act of June 10, 1896, 29 Stat. 321, 353 (collectively "Tribal Instream Flow Water Rights") in the amount of the entire natural flow of the streams identified in Appendix A, subject to the Forest and Park consumptive

use water rights described in paragraphs B and C below, and certain other consumptive use water rights described in paragraph D below. The Tribal Instream Flow Water Rights shall be held in trust by the United States for the benefit of the Tribe and its members, and shall have a priority date of October 17, 1855.

B. The Lewis and Clark National Forest

The Tribal Instream Flow Water Rights within the boundaries of the Forest are subject to the consumptive use water rights owned by the United States on behalf of the Forest Service ("Forest Service Water Rights") described in Appendix B and identified in Mont. Code Ann. §85-20-1401 (Water Rights Compact between the State of Montana and the United States Forest Service) ("FS Compact"), and such other rights described in Appendix B.

C. Glacier National Park

The Tribal Instream Flow Water Rights within the boundaries of the Park are subject to the consumptive use water rights owned by the United States on behalf of the National Park Service ("NPS Water Rights") described in Appendix C and identified in Mont. Code Ann. §85-20-401 (Water Rights Compact between the State of Montana, United States, National Park Service) ("NPS Compact").

D. Water Rights Arising Under State Law

The Tribal Instream Flow Water Rights within the boundaries of the Forest and Park are subject to the consumptive use Water Rights Arising Under State Law as that term is defined in Article II.52 of the Water Rights Compact between the Tribe, the State of Montana, and the United States (Mont. Code Ann. §85-20-1501) and enumerated in Appendix D.

E. Incorporation into Blackfeet Tribe Water Rights Settlement and Decree

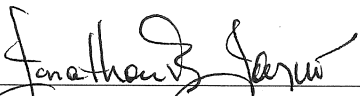
The parties agree that this Stipulation shall be submitted to the Montana Water Court for approval, and that if approved, the Tribal Instream Flow Water Rights shall be decreed in accordance with applicable law.

F. General Provisions

1. The Tribal Instream Flow Water Rights are for instream flow purposes only meaning that the instream flow shall remain in the stream, that there is no diversion, impoundment, or withdrawal associated with the right, that the instream flow right does not cause a net loss of water in the source of supply within the Forest or Park, and that the right may not be changed to any other location or any other or additional use.
2. This Stipulation resolves all claims to water rights within the Forest and Park that have been or could have been asserted by or on behalf of the Tribe, including but not limited to all claims identified in the More Definite Statement of Claim (Nov. 16, 1997), filed in this proceeding by the United States.
3. Nothing in this Stipulation affects the ability of the United States to use water for emergency fire suppression for the benefit of the Forest and the Park as provided in the FS and NPS Compacts, or for the benefit of the Blackfeet Reservation.
4. The recognition of Tribal Instream Flow Water Rights does not confer on the Tribe any authority over the management of Forest or Park lands.
5. The provisions of the Park Compact, Mont. Code Ann. §85-20-401, and

the Forest Compact, Mont. Code Ann. §85-20-1401, continue to apply.

6. This Stipulation shall become effective on the date the members of the Tribe have voted to approve the Blackfeet Water Rights Settlement Act of 2016 and the Blackfeet Montana Water Compact, as certified by the Secretary of the Department of the Interior and the Tribe.



Director, National Park Service
Date: **DEC 02 2016**

Chief, U.S. Forest Service
Date:

Director, Bureau of Indian Affairs
Date:

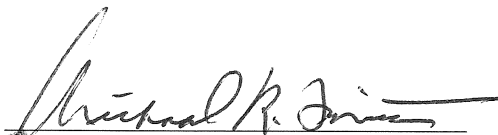
Chairman, Blackfeet Tribal Business Council
Date

the Forest Compact, Mont. Code Ann. §85-20-1401, continue to apply.

6. This Stipulation shall become effective on the date the members of the Tribe have voted to approve the Blackfeet Water Rights Settlement Act of 2016 and the Blackfeet Montana Water Compact, as certified by the Secretary of the Department of the Interior and the Tribe.

Director, National Park Service
Date:

Chief, U.S. Forest Service
Date:



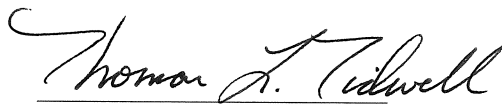
Director, Bureau of Indian Affairs
Date: 12/6/2016

Chairman, Blackfeet Tribal Business Council
Date

the Forest Compact, Mont. Code Ann. §85-20-1401, continue to apply.

6. This Stipulation shall become effective on the date the members of the Tribe have voted to approve the Blackfeet Water Rights Settlement Act of 2016 and the Blackfeet Montana Water Compact, as certified by the Secretary of the Department of the Interior and the Tribe.

Director, National Park Service
Date:



Chief, U.S. Forest Service
Date: DEC 05 2016

Director, Bureau of Indian Affairs
Date:

Chairman, Blackfeet Tribal Business Council
Date:

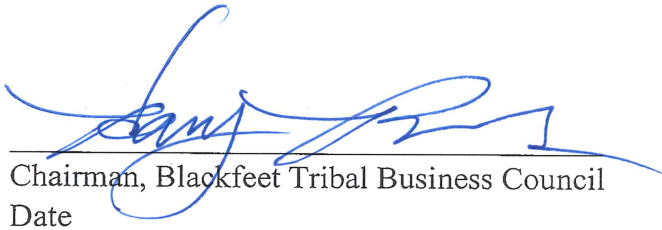
the Forest Compact, Mont. Code Ann. §85-20-1401, continue to apply.

6. This Stipulation shall become effective on the date the members of the Tribe have voted to approve the Blackfeet Water Rights Settlement Act of 2016 and the Blackfeet Montana Water Compact, as certified by the Secretary of the Department of the Interior and the Tribe.

Director, National Park Service
Date:

Chief, U.S. Forest Service
Date:

Director, Bureau of Indian Affairs
Date:



Chairman, Blackfeet Tribal Business Council
Date

DEC 08 2016

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2016, I served a true and correct copy of the foregoing by first-class mail, postage prepaid upon:

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Helena, MT 59620-1601

DNRC – Havre
Water Resources Regional Office
P.O. Box 1828
Havre, MT 59501-1828

Paralegal Specialist

Appendix A
Tribal Instream Flow Rights
Lewis and Clark National Forest

Badger Creek
Benson Creek
Birch Creek
Blind Creek
Box Creek
Coon Creek
Crucifixion Creek
Deep Creek
Dry Creek
East Fork Woods Creek
Elbow Creek
Hall Creek
Haywood Creek
Hungry Man Creek
Hyde Creek
Killem Horse Creek
Killem Quick Creek
Kip Creek
Lee Creek
Limestone Creek
Lonesome Creek
Lookout Creek
Lost Shirt Creek
Muskrat Creek

North Badger Creek
North Fork Birch Creek
North Fork Little Badger Creek
North Fork Sheep Creek
North Fork Whitetail Creek
Phillips Creek
Pike Creek
Pool Creek
Red Poacher Creek
Rowe Creek
Sawmill Creek
Sidney Creek
Slippery Hoof Creek
Small Creek
South Badger Creek
South Fork Birch Creek
South Fork Little Badger Creek
South Fork Two Medicine River
South Fork Whitetail Creek
Steep Creek
Summit Creek
Townsend Creek
Whiterock Creek
Woods Creek

Appendix A
Tribal Instream Flow Rights
Glacier National Park

Allen Creek
Apikuni Creek
Appekunny Creek
Appistoki Creek
Aster Creek
Atlantic Creek
Baring Creek
Boulder Creek
Canyon Creek
Cataract Creek
Coonsa Creek
Divide Creek
Dry Fork Fortymile Creek
Fortyone Mile Creek
Grinnell Creek
Hudson Bay Creek
Hudson Creek
Iceberg Creek
Jule Creek
Kennedy Creek
Lake Creek
Lee Creek

Lunch Creek
Medicine Owl Creek
Midvale Creek
North Fork Cut Bank Creek
Otatso Creek
Paradise Creek
Ptarmigan Creek
Railroad Creek
Red Eagle Creek
Reynolds Creek
Rose Creek
Saint Mary River
Siyeh Creek
South Fork Cut Bank Creek
South Fork Milk River
Swiftcurrent Creek
Two Dog Creek
Two Medicine Creek
Virginia Creek
Two Medicine Creek
Wilber Creek
Wild Creek
Windy Creek

Appendix B

Lewis and Clark National Forest

The Tribal Instream Flow Water Rights within the boundaries of the Forest are subject to the following:

1. The reserved water rights the United States holds on behalf of the Forest Service for Discrete and Dispersed Administrative Uses pursuant to Mont. Code Ann. § 85-20-1401, Article II. A. and B., and shown in the table below.

Basin 41M	Current	Future	Total
Discrete Administrative Uses	3.01	3.01	6.02
Dispersed Administrative Uses			43.50
Total			49.52

2. The reserved water right the United States holds on behalf of the Forest Service pursuant to Mont. Code Ann. § 85-20-1401, Article II.C., for use of water for emergency fire suppression.

3. Incidental backcountry uses of water in the Badger-Two Medicine area including, but not limited to, stock and personal water use by: outfitters and guides and their clientele; recreational users; researchers; and federal employees, volunteers, and partners working on trails, weeds, or other resource protection activities. Such use shall be considered part of the Forest Service Dispersed Administrative Uses quantity in the Table in paragraph 1 above.

4. Up to 40.50 acre feet per year of Post-1973 consumptive water use the United States may appropriate on behalf of the Forest Service under state law in the Badger-Two Medicine area ("Post-1973 Forest Service State Law Water Use Permits"). The Forest Service hereby agrees to reduce the quantity of water that it exercises as a Dispersed Administrative Use pursuant to Mont. Code Ann. § 85-20-1401, Article II. B., and shown in the above table, by the quantity of any active Post-1973 Forest Service Water Use Permit. The Forest Service further agrees that if the State of Montana deems an application for a Post-1973 Forest Service Water Use Permit correct and complete, the Forest Service shall notify the Tribe of the application in addition to any notice the Tribe may receive pursuant to Mont. Code Ann. § 85-2-307(d)(2015)(or subsequent statutory notice requirement).

Appendix C

Glacier National Park

Tribal Instream Flow Water Rights within the boundaries of Glacier National Park are subject to the water rights owned by the United States on behalf of the National Park Service described below.

Place of Use:	Volume AF/YR	Maximum Flow Rate
Saint Mary River Basin 40T		
Northern Border areas	2.20	20
Many Glacier areas	166.40	600
Saint Mary areas	128.40	915
Backcountry Use	2.20	
Backcountry Patrol Cabins	1.50	40
Place of Use:		
Badger Two Medicine Basin 41M		
Two Medicine areas	6.40	70
Backcountry Use	0.38	
Backcountry Patrol Cabins	0.19	5
Place of Use:		
Cut Bank Creek Basin 41L		
Backcountry Use	0.18	
Backcountry Patrol Cabins	0.19	
Place of Use:		
Milk River Basin 40F		
Backcountry Use	0.02	
Glacier National Park Total	307.88	

Appendix D

Lewis and Clark National Forest

The Tribal Instream Flow Water Rights are subject to the following water rights arising under state law, as that term is defined in Article 11(52) of Mont. Code Ann. § 85-20-1501, that the United States owns on behalf of the Forest Service:

41M 56930 00	41M 56946 00
41M 56932 00	41M 56947 00
41M 56933 00	41M 56948 00
41M 56934 00	41M 56949 00
41M 56935 00	41M 56950 00
41M 56936 00	41M 56951 00
41M 56937 00	41M 56952 00
41M 56938 00	41M 56953 00
41M 56939 00	41M 56954 00
41M 56940 00	41M 56955 00
41M 56941 00	41M 56956 00
41M 56942 00	
41M 56943 00	
41M 56944 00	
41M 56945 00	

Appendix D

The Tribal Instream Flow Water Rights are subject to the following Water Rights Arising Under State Law, as that term is defined in Article II(52) of Mont. Code Ann. § 85-20-1501.

WRNUMBER	PURPOSES	SRCNAME	PRIORITY DATE
41M 102123 00	IRRIGATION	BADGER CREEK	5/7/1910 0:00
41M 113543 00	IRRIGATION	COONSA CREEK	11/19/1920 0:00
41M 113545 00	COMMERCIAL	TWO MEDICINE RIVER, SOUTH	3/4/19210:00
41M 113544 00	IRRIGATION	TWO MEDICINE RIVER, SOUTH	3/4/19210:00
41M 153733 00	STOCK	RAILROAD CREEK	7/16/19210:00
41M 12464100	DOMESTIC	UNNAMED TRIBUTARY OF TW	6/4/1923 0:00
41M 124643 00	STOCK	RAILROAD CREEK	7/31/1928 0:00
41M 89580 00	STOCK	TWO MEDICINE RIVER, SOUTH	6/12/1930 0:00
41M 89587 00	STOCK	SUMMIT CREEK	6/12/1930 0:00
41M 118412 00	IRRIGATION	DEEP CREEK	1/6/1936 0:00
41M 175867 00	DOMESTIC	GROUNDWATER	6/30/1936 0:00
41M 175868 00	DOMESTIC	SPRING, UNNAIBUTARY	6/30/1936 0:00
41M 175862 00	STOCK	SPRING, UNNAME TRIBUTARY	6/30/1936 0:00
41M 175863 00	STOCK	GROUNDWATER	6/30/1936 0:00
41M 175864 00	STOCK	SPRING, UNNAMED TRIBUTARY	6/30/1936 0:00
41M 175865 00	STOCK	UNNAMED TRIBUTARY OF TW	6/30/1936 0:00
41M 175866 00	DOMESTIC	SPRING, UNNAMED TRIBUTARY	6/30/1939 0:00
41M 159327 00	STOCK	UNNAMED TRIBUTARY OF TW	12/31/19410:00
41M 159337 00	STOCK	DEEP CREEK	12/31/1942 0:00
41M 159341 00	STOCK	SPRING, UNNAMED TRIBUTARY	12/31/1942 0:00

Appendix D

WRNUMBER	PURPOSES	SRCNAME	PRIORITY DATE
41M 156893 00	STOCK	UNNAMED TRIBUTARY OF SU	12/31/1947 0:00
41M 155364 00	DOMESTIC	UNNAMED TRIBUTARY OF SU	12/31/1957 0:00
41M 159328 00	DOMESTIC	GROUNDWATER	8/31/1958 0:00
41M 44025 00	STOCK; INDUSTRIAL	UNNAMED TRIBUTARY OF UN	6/29/1970 0:00
41M 131191 00	DOMESTIC	SUMMIT CREEK	6/30/1973 0:00
41M 131192 00	DOMESTIC	TWO MEDICINE RIVER, SOUTH	6/30/1973 0:00
41M 24230 00	DOMESTIC	GROUNDWATER	8/15/1979 0:00
41M 24927 00	COMMERCIAL	GROUNDWATER	10/25/1979 0:00
41M 33471 00	COMMERCIAL; DOMEST	GROUNDWATER	6/2/1981 0:00
41M 42075 00	DOMESTIC	GROUNDWATER	7/1/19810:00
41M 38023 00	DOMESTIC	GROUNDWATER	11/23/19810:00
41M 47974 00	DOMESTIC; LAWN AND	GROUNDWATER	11/24/19810:00
41M 46032 00	COMMERCIAL; DOMEST	GROUNDWATER	3/11/1982 0:00
41M 46033 00	COMMERCIAL; DOMEST	GROUNDWATER	3/11/1982 0:00
41M 43542 00	DOMESTIC; LAWN AND	GROUNDWATER	4/8/1982 0:00
41M 51321 00	DOMESTIC; LAWN AND	GROUNDWATER	8/25/1983 0:00
40T 51371 00	COMMERCIAL; DOMEST	GROUNDWATER	11/2/1983 0:00
41M 54637 00	LAWN AND GARDEN; DO	GROUNDWATER	12/1/1983 0:00
41M 75861 00	DOMESTIC	GROUNDWATER	12/7/1990 0:00
41M 108325 00	DOMESTIC	GROUNDWATER	10/27/1999 0:00