

**Statement of John Bezdek
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United States Department of the Interior
Before the
Subcommittee on Water, Power and Oceans
Committee on Natural Resources
House of Representatives
On Discussion Draft - HR ___ - The Blackfeet Water Rights Settlement Act of 2016
May 24, 2016**

Chairman Fleming, Ranking Member Huffman and Members of the Subcommittee, I am John Bezdek, Counselor to the Deputy Secretary at the Department of the Interior (Department). I am here today to provide the Department's views on the discussion draft HR ___, the Blackfeet Water Rights Settlement Act of 2016, which would provide approval for, and authorizations to carry out, a settlement of the water rights claims of the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana. The Department is supportive of the discussion draft HR ___, the Blackfeet Water Settlement Act of 2016, and looks forward to working with the Committee to consider this legislation.

The Department supports resolving Indian water rights claims through negotiated settlement. Our general policy of support for negotiations is premised on a set of general principles including that the United States participate in water settlements consistent with its responsibilities as trustee to Indians; that Indian tribes receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; that Indian tribes should realize value from confirmed water rights resulting from a settlement; and that settlements are to contain appropriate cost-sharing proportionate to the benefits received by all parties benefiting from the settlement.

Disputes over Indian water rights are expensive and divisive. In many instances, Indian water rights disputes, which can last for decades, are a tangible barrier to progress for tribes, and significantly, hinder the rational and beneficial management of water resources. Settlements of Indian water rights disputes break down these barriers and help create conditions that improve water resources management by providing certainty as to the rights of all water users who are parties to the dispute. That certainty provides opportunities for economic development, improves relationships, and encourages collaboration among neighboring communities. This has been proven time and again throughout the West as the United States has pursued a policy of settling Indian water rights disputes whenever possible. Indian water rights settlements are also consistent with the Federal trust responsibility to American Indians and with Federal policy promoting Indian self-determination and economic self-sufficiency.

Today, implementing existing settlements and reaching new agreements is more important than ever given the need for water on many Indian reservations and throughout the West and the

uncertainty regarding its availability due to drought, climate change, and increasing demands for this scarce resource.

The Treaty with the Blackfeet in 1855 encompassed some 27,500 square miles of Blackfeet tribal lands in what was to become Montana. The discovery of gold in the early 1860s brought the first wave of non-Indians into the territory, along with increasing pressure to open the Reservation to non-Indian settlement. A series of executive orders reduced and reconfigured the Reservation and then in 1888, it was divided into three separate and smaller reservations: the Fort Belknap Reservation, the Fort Peck Reservation, and the Blackfeet Reservation. The Blackfeet Reservation was further diminished in 1895 (Agreement of September 19, 1895, ratified on June 10, 1896, 29 Stat. 321, chapter 398, hereafter “1895 Agreement”), when the United States purchased from the Tribe 800,000 acres of land along the western boundary of the Reservation.

In the 1895 Agreement, the United States promised that the Reservation would not be allotted without ‘the consent of the adult men of the Tribe’ (Article V), and that if the government were to build a canal to control the abundant supply of water available seasonally in the St. Mary River, the canal would be constructed to provide irrigation water for the Reservation (Article III and Meeting Minutes). Within just a few years, the Reservation was opened to allotment; construction of a canal to capture the supply of the St. Mary River had begun but the canal was designed and constructed to divert St. Mary water off of the Reservation for the benefit of the Milk River Project, located some 200 miles away, and not for the benefit of the Tribe. In 1909, the United States entered into a treaty with Canada apportioning the waters of the St. Mary and Milk Rivers. This Treaty did not specifically address the water rights of the Blackfeet Nation and other Tribes, even though it was concluded just after the United States Supreme Court handed down its 1908 decision in *Winters v. United States* - a case involving the Milk River, which established the doctrine of Federal Indian reserved water rights.

The Tribe’s water rights have been fought over for more than 100 years, as reflected in approximately 14 court cases and congressional proceedings addressing directly or indirectly the use and control of the Reservation’s water resources. Modern efforts to quantify the Tribe’s reserved water rights began in 1979 when the State of Montana (State) filed suit in State court as part of the statewide water rights adjudication proceeding. At the same time, the United States filed a case in Federal court in Montana to adjudicate the Tribe’s reserved water rights claims. The question of jurisdiction that arose as a result of the two lawsuits was decided in 1983 by the United States Supreme Court, which held that state court was the appropriate forum to adjudicate tribal reserved water rights pursuant to the McCarran Amendment, 43 U.S.C. § 666.¹

¹ *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545 (1983). The Federal Court action has been stayed since 1983 pending the outcome of the State adjudication.

In 1989, the Tribe initiated negotiations with the Montana Compact Commission and in 1990 the Department appointed a Federal Negotiation Team to assist in achieving a negotiated settlement of the Tribe's reserved water rights claims. The State and the Tribe reached an agreement in 2007, in the form of a Compact, which the Montana Legislature approved in 2009. Federal legislation to authorize the Compact was first introduced in 2010. Since then the Administration has been negotiating with the Tribe and the State to resolve important Federal concerns relating to cost, cost sharing, Federal interests, and Federal responsibilities. Those negotiations lowered the Federal cost of the settlement by approximately \$230 million.

The Blackfeet Water Rights Settlement will provide many benefits, as it resolves all outstanding Blackfeet water claims, quantifies a tribal water right to more than 750,000 acre-feet of surface water and nearly all groundwater on the Reservation, and funds the construction and rehabilitation of water related infrastructure on the Reservation for the benefit of the tribal community. Federal settlement funding will provide lasting benefits for the Tribe and its members, by protecting public health and creating substantial numbers of temporary and permanent employment opportunities on the Reservation, including opportunities in the construction, water management, renewable energy, agricultural, recreation, and tourism industries. The settlement also includes a process that will enable the Blackfeet Tribe and the Fort Belknap Indian Community to resolve a conflict that exists between them over relative rights to use the Milk River. The settlement process provides funding to support the Tribes' efforts to reach a resolution, and authorizes the Secretary to establish criteria to provide for such an arrangement if the Tribes do not reach a successful sharing arrangement. This settlement is a crucial and long-awaited step towards achieving the permanent tribal homeland promised to the Blackfeet Tribe in the treaties and agreements ratified by Congress between 1855 and 1896 that serve as the foundation of the relationship between the Tribe and the United States.²

Settlement funding focuses primarily on Federal programmatic responsibilities, including funding for dam safety repairs and deferred maintenance for Bureau of Indian Affairs facilities on the Reservation;³ increasing water storage capacity for irrigation and other economic activities on the Reservation;⁴ construction, rehabilitation, and expansion of the Blackfeet Regional Water System to provide safe, clean drinking water to all of the Reservation's major population centers;⁵

² *Treaty with the Blackfeet*, 1855, Oct. 17, 1855, 11 Stat., 657, Ratified Apr. 15, 1856, Proclaimed Apr. 25, 1856, *Act of April 15, 1874* (18 Stat. 28, chapter 96), *Agreement of 1888*, ratified by the Act approved May 1, 1888 (25 Stat. 113), *Agreement of 1895*, dated September 26, 1895, ratified by the Act approved June 10, 1896 (29 Stat. 321, 353), *Criteria and Procedures*, No. 10.

³ Indian Dam Safety Act of 1994, 25 U.S.C. § 3801 et seq.

⁴ 25 U.S.C. §13, "the Secretary of the Interior . . . shall expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians . . . for development of water supplies." (Emphasis supplied).

⁵ It is "the policy of the United States that all Indian communities and Indian homes, new and existing be provided with safe and adequate water supply systems...as soon as possible." 25 U.S.C. §1632(a)(5).

improving tribal irrigation projects with on-farm improvements for tribal trust lands;⁶ and establishing the Blackfeet Tribal Water and Energy Office to support self-determination and enhance the Tribe's capacity to manage its trust resources.

The Blackfeet Reservation is set up against the Rocky Mountains and possesses some of the most spectacular scenery in the United States. It provides significant habitat for countless wildlife and fish species, including many protected species. Reservation fisheries are world renowned. Yet, the Reservation struggles with high unemployment, extreme poverty, and a lack of employment opportunities. The Reservation ranks as the 5th poorest reservation in the United States. The American Community Survey of 2014 calculates the poverty rate on the Reservation at nearly 40 percent, with unemployment at more than 20 percent, and the share of the population that did not work in the previous 12 months even higher, at 39.1 percent. In addition to these bleak statistics, at least 30 percent of Reservation households live in housing that lacks complete plumbing or kitchen facilities and more than 80 percent of school age children are eligible for free or reduced school lunches.

The improvements to irrigation infrastructure on the Reservation should have a major beneficial impact on the tribal economy, which is a rural economy dependent on farming and ranching and associated hay and alfalfa farming operations. Settlement funding will also provide vital improvements for the Tribe's farming and ranching activities, including the significant bison herds maintained by the Tribe. Such activities are an important source of tribal revenues and an important source of jobs for tribal members. Settlement funds will also support improvements to tribal lakes and fisheries, providing important habitat improvements as well as recreational and economic development opportunities that take advantage of the natural environment. Such activities will contribute to increased tribal revenues and allow the Tribe to provide better and more comprehensive services to Tribal members.

The Blackfeet Water Settlement funding may add significant temporary and permanent job opportunities for tribal members on the Reservation. These benefits will derive from Federal spending on important water related infrastructure projects and improvements.

The settlement will also provide water supplies and increased water storage capacity which will help the Tribe establish better economic conditions to support a viable homeland for its members. The funding to construct, rehabilitate, and expand the Tribe's municipal water system will ensure all major population centers on the Reservation have reliable and safe drinking water supply for 50 years into the future. Currently, the Tribe experiences school closures and business disruptions because of the unreliability of municipal water systems, and has had to operate under a "boil order" for more than a decade in a major population center until the Tribe was able to cobble together grants, loans, and its own funds to update part of its system.

⁶ 1907 Blackfeet Allotment Act

The Blackfeet Water Settlement also provides important benefits to American taxpayers and the State of Montana. The final quantification of the Tribe's reserved water rights will bring stability for all water users within the State and will provide the certainty and reliability necessary to sustain the economy of the State without disruption. As originally proposed to this Administration, the Blackfeet Water Settlement included Federal funding of more than \$650 million. The Department scrutinized every Federal dollar in the original proposal, and worked closely with the Tribe and the State to reduce the overall cost of the settlement by well over \$200 million and increase State cost share. The State's direct contribution to the Blackfeet Water Settlement is now \$49 million, a substantial and appropriate direct state cost share. While the current Blackfeet Water Settlement authorizes substantial Federal funding requirements through fiscal year 2025, we have confirmed that this level of funding is necessary in order for the Tribe to develop its capacity to manage and develop its water resources.

Important Federal proprietary interests in Glacier National Park (Park), the Lewis and Clark National Forest (Forest), the Bowdoin National Wildlife Refuge, and the Milk River Project will be protected by the settlement. The Park and Forest will enjoy protection of important instream flows with early priority dates. Federal funding also will address important obligations of the Bureau of Reclamation on the Reservation and provide compensation to the Tribe for deferring water use

Notably, the Settlement will resolve or provide a process for resolving disputes and any Federal liability regarding the Milk River Project. Reclamation's use and occupancy of Reservation lands for the St. Mary Canal and other features of the Milk River Project has been disputed by the Tribe for more than 100 years. Under the process described in section 7 of the Settlement Act, the dispute will be resolved, and the parties' legitimate interests will be protected going forward on a permanent basis. Additionally, the Tribe has filed objections to the Milk River Project water rights claims that are pending in the Montana general stream adjudication. The Tribe will withdraw its objections in certain basins at the request of the United States. The United States will realize tremendous value from the resolution of these two disputes in addition to the consideration from the Tribe's waivers of legal claims for damages relating to its water rights and water resources. Avoidance of these potential money damage awards against the United States represents additional and very significant benefits for the Federal Government and the American taxpayer.

That concludes my written statement. I would be pleased to answer questions at the appropriate time. #