

112TH CONGRESS
1ST SESSION

S. 399

To modify the purposes and operation of certain facilities of the Bureau of Reclamation to implement the water rights compact among the State of Montana, the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, and the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 2011

Mr. BAUCUS (for himself and Mr. TESTER) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

A BILL

To modify the purposes and operation of certain facilities of the Bureau of Reclamation to implement the water rights compact among the State of Montana, the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, and the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Blackfeet Water
5 Rights Settlement Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the reservation of the Blackfeet Tribe of the
2 Blackfeet Indian Reservation of Montana was estab-
3 lished from the aboriginal territory of the Tribe by
4 the treaty between the Tribe and the United States
5 dated October 17, 1855 (11 Stat. 657);

6 (2) water was reserved by the Tribe in that
7 treaty—

8 (A) to fulfill the promise of a homeland for
9 members of the Tribe; and

10 (B) for the governmental, economic, social,
11 cultural, and religious well-being of the Tribe
12 and members of the Tribe;

13 (3) the water rights of the Tribe have not been
14 consistently protected by the United States regard-
15 ing—

16 (A) the use and allocation of water on the
17 Reservation, including—

18 (i) the allocation of water of the St.
19 Mary River and the Milk River in the trea-
20 ty between the United States and Great
21 Britain relating to boundary waters be-
22 tween the United States and Canada en-
23 tered into force on May 13, 1910 (36 Stat.
24 2448); and

1 (ii) the diversion of St. Mary River
2 water for use by the Milk River Project of
3 the Bureau of Reclamation; and

4 (B) activities for development carried out
5 on and off the Reservation by non-members of
6 the Tribe;

7 (4) as of the date of enactment of this Act, civil
8 actions to determine the water rights of the Tribe
9 are pending in—

10 (A) the United States District Court for
11 the District of Montana in the action styled
12 “United States v. Aageson”, numbered CIV–
13 79–21–GF, and filed on April 5, 1979; and

14 (B) the Montana Water Court in the ac-
15 tion styled “In the Matter of the Adjudication
16 of the Existing and Reserved Rights to the Use
17 of Water, Both Surface and Underground, of
18 the Blackfeet Tribe of the Blackfeet Reserva-
19 tion within the State of Montana” and num-
20 bered WC–91–1;

21 (5) to avoid divisive, expensive, and lengthy liti-
22 gation of the water rights of the Tribe, to resolve
23 critical issues relating to administration and develop-
24 ment of those water rights, and to provide for appro-
25 priate mitigation measures, the Tribe, the State of

1 Montana, and the United States have negotiated the
2 Blackfoot Tribe-Montana Water Rights Compact;

3 (6) in addition to quantification of the water
4 rights of the Tribe, development of necessary water
5 supplies on the Reservation through the planning,
6 design, and construction of facilities and infrastruc-
7 ture is essential to carrying out the intent of the
8 treaty referred to in paragraph (1)—

9 (A) to create a permanent homeland for
10 members of the Tribe;

11 (B) to provide a viable Reservation econ-
12 omy; and

13 (C) to implement the Compact; and

14 (7) to fulfill the trust responsibility of the
15 United States to Indian tribes and to promote tribal
16 sovereignty and economic self-sufficiency, it is the
17 policy of the United States to resolve tribal reserved
18 water rights claims without lengthy and costly litiga-
19 tion.

20 **SEC. 3. PURPOSES.**

21 The purposes of this Act are—

22 (1) to authorize certain projects on the Res-
23 ervation to implement the Compact, the Birch Creek
24 Agreement, and this Act in a manner that—

1 (A) maximizes the benefits of the water
2 rights of the Tribe established in the Compact;
3 and

4 (B) ensures for the Tribe and members of
5 the Tribe the benefits of a permanent home-
6 land, including cultural, economic, social, and
7 governmental benefits;

8 (2) to authorize certain modifications of the
9 purposes and operation of certain Bureau of Rec-
10 lamation facilities to implement the Compact and
11 this Act;

12 (3) to authorize the rehabilitation, improve-
13 ment, and completion of the Blackfeet Irrigation
14 Project—

15 (A) to maximize the benefits of the Black-
16 feet Irrigation Project for all project water
17 users; and

18 (B) to implement the Compact and the
19 Birch Creek Agreement;

20 (4) to approve, ratify, and confirm the water
21 rights Compact;

22 (5) to require the Secretary of the Interior—

23 (A) to implement the Compact; and

24 (B) to carry out the obligations of the
25 United States under the Compact and this Act;

1 (6) to provide for the final resolution of all
2 water rights claims among—

3 (A) the United States, on behalf of the
4 Tribe and members of the Tribe;

5 (B) the United States, on behalf of the
6 allottees;

7 (C) the Tribe, on behalf of the Tribe and
8 members of the Tribe; and

9 (D) the State of Montana; and

10 (7) to authorize the actions, agreements, and
11 appropriations necessary to implement the Compact
12 and this Act.

13 **SEC. 4. DEFINITIONS.**

14 In this Act:

15 (1) ALLOTTEE.—The term “allottee” means
16 any individual who owns or holds a trust allotment
17 or interest in a trust allotment on the Reservation
18 pursuant to the Act of February 8, 1887 (25 U.S.C.
19 331; 24 Stat. 388, chapter 119), (commonly known
20 as the “General Allotment Act”), the matter under
21 the heading “MONTANA” of title II of the Act of
22 March 1, 1907 (34 Stat. 1035, chapter 2285), and
23 the Act of June 30, 1919 (41 Stat. 3, chapter 4),
24 subject to the terms and conditions of those Acts.

1 (2) AVAILABLE ST. MARY RIVER WATER.—The
2 term “available St. Mary River water” means—

3 (A) water from the St. Mary River allo-
4 cated to the United States under the treaty be-
5 tween the United States and Great Britain re-
6 lating to boundary waters between the United
7 States and Canada entered into force on May
8 13, 1910 (36 Stat. 2448), minus the quantity
9 of water required for the Milk River Project
10 water right; and

11 (B) water that is—

12 (i) otherwise part of the Milk River
13 Project water right; and

14 (ii) made available by the United
15 States to the Tribe without any net reduc-
16 tion of the legal entitlement to water of
17 any water user under the jurisdiction of an
18 entity that is a party to a contract for
19 water from the Milk River Project water
20 right, as determined—

21 (I) initially, by the Secretary;

22 and

23 (II) subsequently, by a court of
24 competent jurisdiction.

1 (3) BIRCH CREEK AGREEMENT.—The term
2 “Birch Creek Agreement” means the agreement be-
3 tween the Tribe and the State regarding Birch
4 Creek water use dated January 31, 2008.

5 (4) BLACKFEET IRRIGATION PROJECT.—The
6 term “Blackfeet Irrigation Project” means the irri-
7 gation project on the Reservation authorized by the
8 matter under the heading “MONTANA” of title II of
9 the Act of March 1, 1907 (34 Stat. 1035, chapter
10 2285), and administered by the Bureau of Indian
11 Affairs.

12 (5) COMPACT.—The term “Compact” means
13 the water rights agreement (including any appendix
14 or amendment to the agreement) among the Tribe,
15 the State, and the United States that was—

16 (A) ratified by the legislature of the State,
17 as codified in section 85–20–1501 of the Mon-
18 tana Code Annotated (2009); and

19 (B) the subject of Blackfeet Resolution No.
20 184–2008.

21 (6) JOINT BOARD.—The term “Joint Board”
22 means the joint board of control of the Milk River
23 Project established in accordance with State law.

24 (7) LAKE ELWELL.—The term “Lake Elwell”
25 means the water impounded on the Marias River in

1 the State by Tiber Dam, a feature of the Lower
2 Marias Unit of the Pick-Sloan Missouri River Basin
3 Program authorized by section 9 of the Act of De-
4 cember 22, 1944 (commonly known as the “Flood
5 Control Act of 1944”), (58 Stat. 891, chapter 665).

6 (8) LAKE SHERBURNE RESERVOIR.—The term
7 “Lake Sherburne Reservoir” means the storage fa-
8 cility of the Milk River Project authorized by the
9 Secretary as part of the St. Mary storage unit on
10 March 25, 1905.

11 (9) MILK RIVER PROJECT.—

12 (A) IN GENERAL.—The term “Milk River
13 Project” means the Bureau of Reclamation
14 project conditionally approved by the Secretary
15 on March 14, 1903, pursuant to the Act of
16 June 17, 1902 (32 Stat. 388, chapter 1093),
17 commencing at Lake Sherburne Reservoir and
18 providing water to a point approximately 6
19 miles east of Nashua, Montana.

20 (B) INCLUSIONS.—The term “Milk River
21 Project” includes—

- 22 (i) the St. Mary storage unit;
23 (ii) the Fresno Dam; and
24 (iii) the Dodson pumping unit.

1 (10) MILK RIVER PROJECT WATER RIGHT.—
2 The term “Milk River Project water right” includes
3 any water right held by the Bureau of Reclamation
4 on behalf of the Milk River Project, as finally adju-
5 dicated by the Montana Water Court.

6 (11) MISSOURI RIVER BASIN.—The term “Mis-
7 souri River Basin” means the hydrologic basin of
8 the Missouri River (including tributaries).

9 (12) MONTANA WATER COURT.—The term
10 “Montana Water Court” means the court estab-
11 lished pursuant to chapter 7 of title 3, Montana
12 Code Annotated, for the adjudication of water rights
13 in the State.

14 (13) PONDERA COUNTY CANAL AND RESERVOIR
15 COMPANY PROJECT.—The term “Pondera County
16 Canal and Reservoir Company Project” means the
17 project authorized in part by section 4 of the Act of
18 August 18, 1894 (28 Stat. 422) and lying south of
19 Birch Creek in Montana Water Court Basin 41M.

20 (14) RESERVATION.—The term “Reservation”
21 means the Blackfeet Indian Reservation of Montana,
22 as in existence on the date of enactment of this Act.

23 (15) ST. MARY RIVER WATER RIGHT.—The
24 term “St. Mary River water right” means the water
25 right of the Tribe in the St. Mary River established

1 by article III.G.1.a.i. of the Compact and imple-
2 mented in accordance with article IV.D.4 of the
3 Compact.

4 (16) SECRETARY.—The term “Secretary”
5 means the Secretary of the Interior.

6 (17) STATE.—The term “State” means the
7 State of Montana, including the officers, agencies,
8 departments, and political subdivisions of that State.

9 (18) TRIBAL WATER CODE.—The term “tribal
10 water code” means the code contained in the ordi-
11 nance of the Tribe numbered 62, adopted by the
12 business council of the Tribe pursuant to the resolu-
13 tion numbered 127–80 on May 15, 1980, and ap-
14 proved by the Blackfeet Indian Agency Super-
15 intendent of the Bureau of Indian Affairs on May
16 23, 1980, as amended in accordance with the Com-
17 pact and this Act.

18 (19) TRIBAL WATER RIGHT.—The term “tribal
19 water right” means—

20 (A) any right of the Tribe (including any
21 member of the Tribe or allottee) to divert, use,
22 or store water, as established in the Compact;

23 (B) any allocation of water to the Tribe
24 from Lake Elwell pursuant to section 5(c); and

1 (C) any allocation of water to the Tribe
 2 from Lake Sherburne Reservoir and the avail-
 3 able St. Mary River water or any other source
 4 pursuant to section 5 that fulfills the St. Mary
 5 River water right of the Tribe under the Com-
 6 pact.

7 (20) TRIBE.—The term “Tribe” means the
 8 Blackfeet Tribe of the Blackfeet Indian Reservation
 9 of Montana, including the officers, agencies, and de-
 10 partments of that tribe.

11 (21) WATER RIGHTS ARISING UNDER STATE
 12 LAW.—The term “Water Rights Arising Under State
 13 Law” has the meaning given the term in article
 14 II.52 of the Compact.

15 **SEC. 5. RECLAMATION ACTIVITIES.**

16 (a) ST. MARY RIVER.—

17 (1) ALLOCATION OF WATER.—

18 (A) IN GENERAL.—In providing to the
 19 Tribe the St. Mary River water right, the Sec-
 20 retary shall allocate to the Tribe 50,000 acre-
 21 feet per year of stored water in Lake Sherburne
 22 Reservoir as part of the tribal water right.

23 (B) COSTS.—The Tribe shall not be re-
 24 quired to pay any operation, maintenance, or
 25 replacement costs, capital costs, or other costs

1 associated with the allocation under subpara-
2 graph (A).

3 (C) PROHIBITION ON INCREASE.—The al-
4 location under subparagraph (A) shall not be
5 increased by any year-to-year carryover storage.

6 (2) LEASE OF ALLOCATED WATER.—

7 (A) AGREEMENT.—

8 (i) IN GENERAL.—The Tribe and the
9 Secretary, acting through the Commis-
10 sioner of Reclamation, shall enter into an
11 agreement to lease the water allocated to
12 the Tribe under paragraph (1) for use by
13 the Secretary for the Milk River Project, in
14 accordance with such terms and conditions
15 on which the Tribe and the Secretary may
16 agree.

17 (ii) MEDIATION.—

18 (I) IN GENERAL.—If the Tribe
19 and the Secretary fail to agree to
20 terms and conditions as described in
21 clause (i) by the date that is 1 year
22 after the date of enactment of this
23 Act, a mediator acceptable to the
24 Tribe and the Secretary shall be ap-
25 pointed by the Chief Judge of the

1 United States District Court for the
2 District of Montana to assist the par-
3 ties in reaching an agreement.

4 (II) COSTS.—The costs of a me-
5 diator appointed under subclause (I)
6 shall be paid by the Secretary.

7 (B) EFFECTIVE PERIOD.—A lease under
8 subparagraph (A) shall remain in effect until
9 the date described in paragraph (3)(E).

10 (C) MILK RIVER PROJECT WATER
11 USERS.—No Milk River Project water user or
12 other entity that is a party to any contract on
13 behalf of such a water user shall be required to
14 pay any costs associated with—

15 (i) the allocation to the Tribe under
16 paragraph (1); or

17 (ii) a lease under this paragraph.

18 (3) IDENTIFICATION OF AVAILABLE ST. MARY
19 RIVER WATER.—

20 (A) INVESTIGATIONS AND STUDIES.—The
21 Secretary, in cooperation with the Tribe, may
22 carry out any appropriate investigation or study
23 to identify available St. Mary River water to
24 provide to the Tribe the St. Mary River water
25 right.

1 (B) FACILITIES.—The Secretary may plan,
2 design, and construct such facilities as the Sec-
3 retary, the Tribe, and the State determine to be
4 necessary to provide to the Tribe the St. Mary
5 River water right.

6 (C) AGREEMENTS WITH TRIBE.—The Sec-
7 retary may enter into such cooperative agree-
8 ments or contracts under the Indian Self-Deter-
9 mination and Education Assistance Act (25
10 U.S.C. 450 et seq.) with the Tribe as the Sec-
11 retary determines to be necessary to carry out
12 subparagraphs (A) and (B).

13 (D) MODIFICATIONS TO MILK RIVER
14 PROJECT.—The Secretary, in consultation with
15 the Tribe, the State, the Fort Belknap Indian
16 Community, the Joint Board, and other af-
17 fected stakeholders, may make such modifica-
18 tions as are necessary to carry out this para-
19 graph to—

20 (i) the operating procedures of the
21 Milk River Project; or

22 (ii) any federally owned facility of the
23 Milk River Project.

24 (E) DATE TO BEGIN USE.—Beginning on
25 the date on which the Secretary, the Tribe, and

1 the State agree in writing that water has been
 2 identified from available St. Mary River water
 3 or any other source, and is available to satisfy
 4 any portion of the St. Mary River water right
 5 in accordance with articles III.G.1.a.i and
 6 IV.D.4 of the Compact—

7 (i) the Tribe may begin to use that
 8 water; and

9 (ii) the allocation to the Tribe under
 10 paragraph (1) and the lease under para-
 11 graph (2) shall terminate with respect to
 12 that quantum of water.

13 (b) MILK RIVER PROJECT RIGHTS-OF-WAY AND
 14 EASEMENTS.—

15 (1) IN GENERAL.—As soon as practicable after
 16 the date of enactment of this Act, but not later than
 17 the enforceability date described in section 12(e), the
 18 Secretary shall resolve all issues relating to the use
 19 by the United States of tribal land or allotted land
 20 for purposes of the Milk River Project, including the
 21 payment to the Tribe and members of the Tribe of
 22 compensation for that use, notwithstanding any
 23 other provision of law, if such compensation—

24 (A) has not previously been paid; or

25 (B) was inadequate.

1 (2) ACTION BY SECRETARY OF TREASURY.—
2 Notwithstanding any other provision of law, as soon
3 as practicable after the date of enactment of this
4 Act, but not later than the enforceability date de-
5 scribed in section 12(e), the Secretary of the Treas-
6 ury shall return to the Tribe all amounts paid by the
7 Tribe for land relinquished to the Tribe pursuant to
8 the Act of August 28, 1937 (50 Stat. 864, chapter
9 868), including interest on those amounts.

10 (c) LAKE ELWELL.—

11 (1) ALLOCATION.—

12 (A) IN GENERAL.—As part of the tribal
13 water right, the Secretary shall permanently al-
14 locate to the Tribe all remaining unallocated
15 water in Lake Elwell, as measured at the outlet
16 works of the dam, minus any quantity of that
17 water that may be allocated to the Fort
18 Belknap Indian Community, as agreed to by
19 the Tribe and the Fort Belknap Indian Com-
20 munity, for use by the Tribe for any beneficial
21 purpose on or off the Reservation.

22 (B) REQUEST BY TRIBE.—The Secretary
23 may enter into an agreement with the Tribe to
24 establish a procedure through which the Tribe

1 may request and use the allocation under sub-
2 paragraph (A).

3 (2) PRIORITY DATE.—The priority date of the
4 allocation to the Tribe under paragraph (1) shall be
5 the priority date of the Lake Elwell water right held
6 by the Bureau of Reclamation.

7 (3) COSTS.—The Tribe shall not be required to
8 pay any annual operation, maintenance, or replace-
9 ment costs, capital costs, or other costs associated
10 with the allocation under paragraph (1).

11 (4) AGREEMENTS BY TRIBE.—The Tribe may
12 use, lease, contract, exchange, or enter into other
13 agreements for use of the water allocated to the
14 Tribe under paragraph (1) if—

15 (A) the use of water that is the subject of
16 such an agreement occurs within the Missouri
17 River Basin; and

18 (B) the agreement does not permanently
19 alienate any water allocated to the Tribe under
20 paragraph (1).

21 (5) EFFECTIVE DATE.—The allocation under
22 paragraph (1) takes effect on the enforceability date
23 described in section 12(e).

1 (6) PROHIBITION ON INCREASE.—The alloca-
2 tion under paragraph (1) shall not be increased by
3 any year-to-year carryover storage.

4 (7) EFFECT OF SUBSECTION.—

5 (A) CHIPPEWA CREE TRIBE.—Nothing in
6 this subsection alters or diminishes the alloca-
7 tion from Lake Elwell to the Chippewa Cree
8 Tribe pursuant to the Chippewa Cree Tribe of
9 The Rocky Boy’s Reservation Indian Reserved
10 Water Rights Settlement and Water Supply
11 Enhancement Act of 1999 (Public Law 106–
12 163; 113 Stat 1778).

13 (B) NO TRANSPORTATION FACILITIES RE-
14 QUIREMENT.—Except as otherwise provided in
15 this Act, nothing in this subsection requires the
16 United States to provide any facility for trans-
17 port to the Reservation or any other location of
18 the water allocated to the Tribe under this sub-
19 section.

20 (8) DEVELOPMENT AND DELIVERY COSTS.—Ex-
21 cept as otherwise provided in this Act, the United
22 States is not required to pay the cost of developing
23 or delivering to the Reservation any water allocated
24 under this subsection.

25 (d) BLACKFEET IRRIGATION PROJECT.—

1 (1) IN GENERAL.—The Secretary shall carry
2 out such activities as are necessary relating to—

3 (A) planning, design, and construction for
4 rehabilitation and improvement of the Blackfeet
5 Irrigation Project; and

6 (B) the completion to authorized acreage
7 of the Blackfeet Irrigation Project.

8 (2) FOUR HORNS DAM AND RESERVOIR.—

9 (A) IN GENERAL.—The Secretary shall
10 carry out such activities as are necessary relat-
11 ing to planning, design, and construction for re-
12 habilitation and improvement of the Four
13 Horns Dam and Reservoir and associated deliv-
14 ery systems of the Blackfeet Irrigation Project,
15 including—

16 (i) the rehabilitation and improvement
17 of the Four Horns feeder canal system to
18 a capacity of not less than 300 cubic feet
19 per second;

20 (ii) the enlargement to maximum
21 practical capacity of the off-stream Four
22 Horns Dam and Reservoir;

23 (iii) construction of facilities to deliver
24 not less than 15,000 acre-feet of water per
25 year from the enlarged Four Horns Dam

1 and Reservoir to a point on Birch Creek to
2 be designated by the Tribe and the State
3 for delivery of water to the water delivery
4 system of the Pondera County Canal and
5 Reservoir Company Project;

6 (iv) rehabilitation and improvement of
7 the outlet canal delivery system from Four
8 Horns Dam and Reservoir to Blacktail
9 Creek;

10 (v) rehabilitation and improvement of
11 the Badger-Fisher main canal; and

12 (vi) measures to enhance on-farm effi-
13 ciency in the Badger-Fisher irrigation unit
14 of the Blackfeet Irrigation Project.

15 (B) COOPERATIVE AGREEMENT.—On re-
16 ceipt of a request by the Tribe, the Secretary
17 shall enter into a cooperative agreement or con-
18 tract under the Indian Self-Determination and
19 Education Assistance Act (25 U.S.C. 450 et
20 seq.) with the Tribe to carry out the activities
21 under this paragraph.

22 (C) ALLOCATION OF EXCESS WATER.—
23 Notwithstanding any other provision of law, on
24 completion of the activities under this para-
25 graph, the Secretary shall allocate to the Tribe,

1 at no cost, all stored water in Four Horns Res-
 2 ervoir in excess of the quantity of water nec-
 3 essary to serve the land within the Blackfeet Ir-
 4 rigation Project, but not less than 15,000 acre-
 5 feet, for—

6 (i) fulfillment of the obligations of the
 7 Tribe under the Birch Creek Agreement to
 8 deliver water to holders of Water Rights
 9 Arising Under State Law in Birch Creek;
 10 and

11 (ii) use or lease by the Tribe for any
 12 purpose in accordance with this Act, the
 13 Compact, and the Birch Creek Agreement.

14 (D) IDENTIFICATION OF FACILITIES.—

15 (i) IN GENERAL.—The Tribe, the
 16 State, and the Regional Director of the
 17 Great Plains Region of the Bureau of Rec-
 18 lamation, in consultation with the Bureau
 19 of Indian Affairs, shall—

20 (I) identify each facility or por-
 21 tion of a facility to be constructed, re-
 22 habilitated, or improved primarily for
 23 the purpose of providing to the Tribe
 24 the allocation under subparagraph
 25 (C); and

1 (II) agree on the ownership, op-
2 eration, maintenance, and replacement
3 obligations associated with those fa-
4 cilities and portions of facilities.

5 (ii) COSTS.—No Blackfeet Irrigation
6 Project water user or holder of Water
7 Rights Arising Under State law in Birch
8 Creek shall be required to pay any costs
9 associated with any facility or portion of a
10 facility identified under clause (i).

11 (E) STATE CONTRIBUTION.—As a condi-
12 tion of ratification of the Compact by this Act,
13 the State shall contribute to the cost of the ac-
14 tivities under this paragraph not less than
15 \$20,000,000.

16 (3) TRANSFER OF TITLE.—

17 (A) IN GENERAL.—Notwithstanding any
18 other provision of law, on receipt of a request
19 by the Tribe, the Secretary shall transfer to the
20 Tribe, at no cost, title in and to each facility,
21 asset, and other property of the Blackfeet Irriga-
22 tion Project.

23 (B) OWNERSHIP.—On transfer of title
24 under subparagraph (A), the Blackfeet Irriga-

1 tion Project shall be considered to be owned,
2 operated, and managed by the Tribe.

3 (C) OPERATION AND MAINTENANCE.—The
4 Tribe shall promulgate criteria and procedures,
5 subject to the approval of the Secretary, under
6 which the Tribe shall operate and maintain the
7 Blackfeet Irrigation Project, including—

8 (i) a due process system for the con-
9 sideration and determination of any re-
10 quest by a water user for an allocation of
11 water that provides protection not less
12 stringent than the protection available
13 under Federal law, including a process
14 for—

15 (I) appeal and adjudication of de-
16 nied or disputed distributions of
17 water; and

18 (II) resolution of contested ad-
19 ministrative decisions; and

20 (ii) a system for establishing water
21 rates, including the processes described in
22 subclauses (I) and (II) of clause (i).

23 (4) IRRIGATION EFFICIENCY IN UPPER BIRCH
24 DRAINAGE.—Any activity carried out by the Tribe in
25 the Upper Birch Drainage (as defined in article

1 II.50 of the Compact) using funds made available
2 under this Act shall achieve an irrigation efficiency
3 of not less than 50 percent.

4 (e) RECLAMATION WATER SETTLEMENTS FUND.—
5 In carrying out this section, the Secretary may use
6 amounts in the Reclamation Water Settlements Fund es-
7 tablished by subsection (a) of section 10501 of the Omni-
8 bus Public Land Management Act of 2009 (43 U.S.C.
9 407) pursuant to subsection (c)(3)(B)(iii) of that section.

10 **SEC. 6. APPROVAL OF COMPACT AND BIRCH CREEK AGREE-**
11 **MENT.**

12 (a) RATIFICATION.—

13 (1) IN GENERAL.—Except as modified by this
14 Act, and to the extent that the Compact and the
15 Birch Creek Agreement do not conflict with this Act,
16 the Compact and the Birch Creek Agreement are
17 authorized, ratified, and confirmed.

18 (2) AMENDMENTS.—To the extent that any
19 amendment is executed to ensure that the Compact
20 or the Birch Creek Agreement is consistent with this
21 Act, the amendment is authorized, ratified, and con-
22 firmed.

23 (b) EXECUTION.—

24 (1) IN GENERAL.—To the extent that the Com-
25 pact and the Birch Creek Agreement do not conflict

1 with this Act, the Secretary shall promptly execute
2 the Compact and the Birch Creek Agreement.

3 (2) EFFECT OF SUBSECTION.—Nothing in this
4 subsection precludes the Secretary from approving a
5 modification to any appendix or exhibit to the Com-
6 pact or the Birch Creek Agreement that is not in-
7 consistent with this Act, subject to section 2116 of
8 the Revised Statutes (25 U.S.C. 177) and other ap-
9 plicable Federal law (including regulations).

10 (c) ACTION BY OTHER DEPARTMENTS AND AGEN-
11 CIES.—The Secretary and the head of each other appro-
12 priate Federal department or agency shall carry out such
13 activities as are necessary to implement the Compact, the
14 Birch Creek Agreement, and this Act.

15 **SEC. 7. TRIBAL WATER RIGHT.**

16 (a) TREATMENT.—The tribal water right—

17 (1) shall be held in trust by the United States
18 for the benefit of the Tribe; and

19 (2) shall not be subject to loss by abandonment,
20 forfeiture, or nonuse.

21 (b) ALLOTTEE ENTITLEMENTS.—Each allottee shall
22 be entitled to a just and equitable allocation of the tribal
23 water right for irrigation purposes pursuant to section 7
24 of the Act of February 8, 1887 (25 U.S.C. 381), in ac-
25 cordance with the Compact and the tribal water code.

1 (c) FEDERAL RESERVED WATER RIGHTS.—Any
2 right to Federal reserved water of a member of the Tribe,
3 an allottee, or an owner of fee land within the boundaries
4 of the Reservation shall be—

5 (1) considered to be satisfied by the tribal water
6 right; and

7 (2) governed in accordance with the terms and
8 conditions of the Compact, this Act, and the tribal
9 water code (including any applicable requirement to
10 obtain a permit under the tribal water code).

11 (d) LIMITATION ON CERTAIN CLAIMS.—Notwith-
12 standing any other provision of law, no claim to a Federal
13 reserved water right of an owner of fee land that was with-
14 in the boundaries of the Reservation on June 30, 1996,
15 as the successor to an allottee may be sustained as a mat-
16 ter of Federal law if the claim was not filed in the Mon-
17 tana water rights adjudication (Mont. Code Ann. 85–2–
18 212, et seq.) by the required filing date.

19 (e) TRIBAL WATER CODE.—

20 (1) AMENDMENTS.—Not later than 180 days
21 after the date of enactment of this Act, the Tribe
22 shall amend the tribal water code, subject to the ap-
23 proval of the Secretary under paragraph (2)(A), as
24 necessary to administer the tribal water right in ac-
25 cordance with article IV.C of the Compact.

1 (2) APPROVAL REQUIRED.—

2 (A) IN GENERAL.—No provision of the
3 tribal water code (or any amendment to the
4 tribal water code) that affects any right of an
5 allottee shall take effect until the date on which
6 the provision is approved by the Secretary.

7 (B) INTERIM ADMINISTRATION.—

8 (i) IN GENERAL.—During the period
9 beginning on the date of amendment of the
10 tribal water code under paragraph (1) and
11 ending on the date of approval of the
12 amendment by the Secretary under sub-
13 paragraph (A), the tribal water right shall
14 be administered by the Tribe pursuant to
15 the tribal water code as in existence on the
16 day before the date of enactment of this
17 Act, to the extent that the tribal water
18 code is not inconsistent with the Compact
19 and this Act.

20 (ii) INCONSISTENCIES.—If any incon-
21 sistency exists between the tribal water
22 code as in existence on the day before the
23 date of enactment of this Act and the
24 Compact or this Act, the applicable provi-

1 sion of the Compact or this Act shall con-
2 trol.

3 (3) EXHAUSTION OF REMEDIES.—No member
4 of the Tribe, allottee, or owner of fee land within the
5 boundaries of the Reservation shall file against the
6 United States a claim relating to water under the
7 tribal water right pursuant to section 7 of the Act
8 of February 8, 1887 (25 U.S.C. 381), or any other
9 provision of law or otherwise request relief from the
10 Secretary until the member, allottee, or owner ex-
11 hausts each applicable remedy under the tribal water
12 code or other applicable tribal or Federal law.

13 (f) LEASE OF TRIBAL WATER RIGHT.—

14 (1) IN GENERAL.—The Tribe, without approval
15 of the Secretary, may lease any portion of the tribal
16 water right in accordance with article IV.D.2 of the
17 Compact for use off the Reservation within the Mis-
18 souri River Basin, subject to the tribal water code
19 and the terms and conditions of the Compact and
20 applicable Federal law.

21 (2) USE OF FUNDS.—Any funds paid to the
22 Tribe under a lease under this subsection shall be
23 the property of the Tribe, and the United States
24 shall have no trust or other obligation to monitor,
25 administer, or account for the funds.

1 (3) PROHIBITION ON PERMANENT ALIEN-
2 ATION.—No portion of the tribal water right may be
3 permanently alienated pursuant to a lease under this
4 subsection.

5 **SEC. 8. BLACKFEET LAND AND WATER DEVELOPMENT**
6 **FUND.**

7 (a) ESTABLISHMENT.—There is the established in
8 the Treasury of the United States a fund, to be known
9 as the “Blackfeet Land and Water Development Fund”
10 (referred to in this section as the “Fund”), to be used
11 to pay or reimburse costs incurred by the Tribe for—

- 12 (1) the acquisition of land or water rights;
- 13 (2) water resources planning, development, and
14 construction, including storage and irrigation;
- 15 (3) agricultural development;
- 16 (4) restoring or improving fish or wildlife habi-
17 tat;
- 18 (5) fish or wildlife production;
- 19 (6) any other water storage project, land or
20 land-related project, or water or water-related
21 project;
- 22 (7) cultural preservation;
- 23 (8)(A) the operation and maintenance of water
24 and water-related projects; and

1 (B) environmental compliance relating to those
2 projects constructed under this Act;

3 (9) development and support of administrative
4 infrastructure to implement the Compact, the Birch
5 Creek Agreement, and this Act, including the devel-
6 opment of the tribal water code;

7 (10) design and construction of water supply
8 and sewer systems and related facilities for tribal
9 communities;

10 (11) measures to address environmental condi-
11 tions on the Reservation; and

12 (12) water-related economic development
13 projects.

14 (b) MANAGEMENT.—The Secretary shall manage the
15 Fund in accordance with the American Indian Trust Fund
16 Management Reform Act of 1994 (25 U.S.C. 4001 et
17 seq.), this Act, and the Compact.

18 (c) INVESTMENT.—The Secretary shall invest
19 amounts in the Fund in accordance with—

20 (1) the Act of April 1, 1880 (25 U.S.C. 161);
21 and

22 (2) the first section of the Act of June 24,
23 1938 (25 U.S.C. 162a).

1 (d) NO FISCAL YEAR LIMITATION.—Amounts made
2 available under this Act shall be available for expenditure
3 or withdrawal without fiscal year limitation.

4 (e) EXPENDITURES AND WITHDRAWALS.—

5 (1) TRIBAL MANAGEMENT PLAN.—

6 (A) IN GENERAL.—The Tribe may with-
7 draw any portion of amounts in the Fund on
8 approval by the Secretary of a tribal manage-
9 ment plan under the American Indian Trust
10 Fund Management Reform Act of 1994 (25
11 U.S.C. 4001 et seq.).

12 (B) REQUIREMENTS.—In addition to the
13 requirements under that Act (25 U.S.C. 4001
14 et seq.), the tribal management plan shall re-
15 quire that the Tribe shall use any amounts
16 withdrawn from the Fund for the purposes de-
17 scribed in subsection (a).

18 (C) ACTION BY SECRETARY.—The Sec-
19 retary may take judicial or administrative ac-
20 tion to enforce the provisions of a tribal man-
21 agement plan to ensure that amounts with-
22 drawn from the Fund under the plan are used
23 in accordance with this Act and the Compact.

24 (D) LIABILITY.—On withdrawal by the
25 Tribe of amounts in the Fund, the Secretary

1 and the Secretary of the Treasury shall not re-
2 tain liability for the expenditure or investment
3 of those amounts.

4 (2) EXPENDITURE PLAN.—

5 (A) IN GENERAL.—The Tribe shall submit
6 to the Secretary for approval an expenditure
7 plan for any portion of the amounts in the
8 Fund that the Tribe does not withdraw pursu-
9 ant to this subsection.

10 (B) DESCRIPTION.—The expenditure plan
11 shall describe the manner in which, and the
12 purposes for which, the amounts remaining in
13 the Fund will be used.

14 (C) APPROVAL.—The Secretary shall ap-
15 prove an expenditure plan under this paragraph
16 if the Secretary determines that the plan is—

17 (i) reasonable; and

18 (ii) consistent with this Act and the
19 Compact.

20 (3) REPORTS.—The Tribe shall submit to the
21 Secretary an annual report that describes each ex-
22 penditure from the Fund during the year covered by
23 the report.

1 (f) PER CAPITA DISTRIBUTIONS.—No portion of the
2 Fund or the income accruing to the Fund shall be distrib-
3 uted to any member of the Tribe on a per capita basis.

4 **SEC. 9. BIRCH CREEK MITIGATION FUND.**

5 (a) ESTABLISHMENT.—There is established in the
6 Treasury of the United States a fund, to be known as the
7 “Birch Creek Mitigation Fund” (referred to in this section
8 as the “Fund”) to be used to mitigate the impacts of de-
9 velopment of the tribal water right described in article
10 III.C.1. of the Compact on the Birch Creek water supplies
11 of the Pondera County Canal and Reservoir Company
12 Project.

13 (b) MANAGEMENT.—The Secretary, acting through
14 the Commissioner of Reclamation, shall manage the Fund
15 in accordance with this section.

16 (c) DISBURSEMENT OF FUND.—Amounts from the
17 Fund may not be disbursed until the expiration of the
18 term of the Birch Creek Agreement.

19 (d) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated to carry out this section
21 such sums as are necessary.

22 **SEC. 10. WATER RIGHTS IN LEWIS AND CLARK NATIONAL**
23 **FOREST.**

24 As part of the tribal water right, the Tribe shall hold
25 the rights to water in the Lewis and Clark National Forest

1 identified in the applicable claims filed by the United
2 States on behalf of the Tribe, as those claims are finally
3 decreed by the Montana Water Court.

4 **SEC. 11. MILK RIVER WATER RIGHTS.**

5 (a) IDENTIFICATION OF ALTERNATIVES.—The Sec-
6 retary shall identify and implement alternatives to resolve
7 any conflict between the Milk River water rights of the
8 Tribe and the Fort Belknap Indian Community in a man-
9 ner that ensures that the full allocation of the water rights
10 of each Indian tribe under the water rights compacts of
11 the Indian tribes are fully satisfied.

12 (b) AGREEMENT OF TRIBES.—The Secretary shall
13 obtain the agreement of the Tribe and the Fort Belknap
14 Indian Community to any alternative identified under sub-
15 section (a).

16 (c) FUNDING.—Amounts used by the Secretary to
17 implement any alternative identified under subsection (a)
18 shall be in addition to the amounts authorized for the
19 water rights settlements of the Tribe and the Fort
20 Belknap Indian Community.

21 **SEC. 12. WAIVERS AND RELEASES OF CLAIMS.**

22 (a) WAIVER AND RELEASE OF CLAIMS BY TRIBE AND
23 UNITED STATES AS TRUSTEE FOR TRIBE.—As a condi-
24 tion for recognition of the tribal water right and other ben-
25 efits under the Compact and this Act and subject to the

1 retention of claims and rights under subsection (c), the
2 Tribe and the United States, acting as trustee for the
3 Tribe and the allottees, shall waive and release each claim
4 for a water right that is or could be asserted in the civil
5 action styled “In the Matter of the Adjudication of the
6 Existing and Reserved Rights to the Use of Water, Both
7 Surface and Underground, of the Blackfeet Tribe of the
8 Blackfeet Reservation within the State of Montana” and
9 numbered WC-91-1, except to the extent that such a
10 claim is recognized in the Compact or this Act.

11 (b) CLAIMS AGAINST UNITED STATES.—As a condi-
12 tion of receiving the tribal water right and other benefits
13 under the Compact and this Act and subject to the reten-
14 tion of claims and rights under subsection (c), the Tribe
15 shall waive and release each claim against the United
16 States—

17 (1) for a water right that is or could be as-
18 serted in the civil action referred to in subsection

19 (a);

20 (2) for failure to protect, acquire, replace, or
21 develop any water right that accrued as of the date
22 of enactment of this Act; or

23 (3) arising from the negotiation or adoption of
24 the Compact.

1 (c) RETENTION OF CERTAIN CLAIMS AND RIGHTS.—

2 Notwithstanding the waivers and releases required under
3 this section, the Tribe and the United States, acting as
4 trustee for the Tribe and the allottees, shall retain—

5 (1) all claims for enforcement of—

6 (A) the Compact;

7 (B) any consent decree that settles a water
8 right claim of the Tribe; or

9 (C) this Act;

10 (2) all rights to use and protect any water right
11 acquired after the date of enactment of this Act;

12 (3) all claims to water rights filed by the
13 United States on behalf of the Tribe in Glacier Na-
14 tional Park for rights retained under the agreement
15 dated September 19, 1895, and ratified on June 10,
16 1896 (29 Stat. 321, chapter 398), unless the water
17 right claims are dismissed in their entirety on entry
18 of a final nonappellable decision by a court of com-
19 petent jurisdiction in any civil action to which the
20 Tribe is a party;

21 (4) all claims relating to activities affecting
22 quality of water; and

23 (5) all rights, remedies, privileges, immunities,
24 and powers not specifically waived and released pur-
25 suant to the Compact or this Act.

1 (d) EFFECTIVE DATE OF RELEASE AND WAIVERS.—
2 The waivers under subsection (a) shall take effect on the
3 enforceability date.

4 (e) ENFORCEABILITY DATE.—

5 (1) IN GENERAL.—The enforceability date is
6 the date on which the Secretary publishes in the
7 Federal Register a statement of findings that—

8 (A) all parties to the Compact have exe-
9 cuted the Compact;

10 (B) the Montana Water Court has issued
11 a final judgment and decree approving the
12 Compact, or if the Montana Water Court lacks
13 jurisdiction, the United States district court for
14 the appropriate jurisdiction has approved the
15 Compact as a consent decree, and that approval
16 is final;

17 (C) the Compact has been ratified by a
18 majority of eligible members of the Tribe voting
19 in a referendum conducted by the Tribe pursu-
20 ant to tribal law;

21 (D) the waivers and releases under sub-
22 section (a) have been executed by the Tribe and
23 the Secretary;

1 (E) the Tribe and the Secretary have en-
2 tered into the agreement described in section
3 5(a)(2)(A);

4 (F) the Secretary has fulfilled the require-
5 ments of section 5(b)(1); and

6 (G) the amounts authorized to be appro-
7 priated under section 14 have been appro-
8 priated.

9 (2) EFFECT OF FAILURE TO PUBLISH.—If the
10 Secretary fails to publish a statement of findings
11 under paragraph (1) by December 31, 2016, or such
12 extended date as is agreed to by the Tribe and the
13 Secretary after reasonable notice to the State—

14 (A) the ratification of the Compact is void;

15 (B) the waivers and release of claims
16 under this Act are nullified;

17 (C) the authority provided by this Act shall
18 terminate; and

19 (D) any unexpended or uncommitted funds
20 made available under section 14 shall revert to
21 the general fund of the Treasury.

22 (3) TOLLING OF CLAIMS.—

23 (A) IN GENERAL.—Each applicable period
24 of limitation and time-based equitable defense
25 relating to a claim described in this section

1 shall be tolled for the period beginning on the
2 date of enactment of this Act and ending on the
3 date on which the amounts authorized to be ap-
4 propriated to carry out this Act are appro-
5 priated.

6 (B) EFFECT OF SUBSECTION.—Nothing in
7 this subsection revives any claim or tolls any
8 period of limitation or time-based equitable de-
9 fense that expired before the date of enactment
10 of this Act.

11 (f) EFFECT.—Nothing in the Compact or this Act—

12 (1) affects the ability of the United States to
13 carry out any action—

14 (A) authorized by law (including regula-
15 tions), including any law relating to health,
16 safety, or the environment (including the Fed-
17 eral Water Pollution Control Act (33 U.S.C.
18 1251 et seq.), the Safe Drinking Water Act (42
19 U.S.C. 300f et seq.), the Comprehensive Envi-
20 ronmental Response, Compensation, and Liabil-
21 ity Act of 1980 (42 U.S.C. 9601 et seq.), and
22 the Solid Waste Disposal Act (42 U.S.C. 6901
23 et seq.)); or

24 (B) as trustee for any other Indian tribe or
25 the allottees; or

1 (2) confers jurisdiction on any State court—

2 (A) to enforce Federal environmental law
3 regarding the duties of the United States; or

4 (B) to conduct judicial review of a Federal
5 agency action.

6 **SEC. 13. MISCELLANEOUS PROVISIONS.**

7 (a) CONSENT TO JURISDICTION.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the United States consents to the juris-
10 diction of—

11 (A) the Blackfeet-Montana Compact Board
12 to achieve resolution of any dispute under the
13 Compact; and

14 (B) any court of competent jurisdiction for
15 the enforcement of a decision of that board.

16 (2) EXCEPTION.—The consent of the United
17 States to jurisdiction under paragraph (1) does not
18 extend to any civil action for monetary damages,
19 costs, or attorney's fees.

20 (b) NO EFFECT ON OTHER INDIAN TRIBES.—Noth-
21 ing in this Act quantifies or diminishes any land or water
22 right, or any claim or entitlement to land or water, of an
23 Indian tribe other than the Tribe.

24 (c) NO MAJOR FEDERAL ACTION.—The execution of
25 the Compact by the Secretary shall not constitute a major

1 Federal action under the National Environmental Policy
2 Act of 1969 (42 U.S.C. 4321 et seq.).

3 (d) COMPLIANCE WITH FEDERAL LAW.—In carrying
4 out the Compact, the Secretary shall comply with—

5 (1) the National Environmental Policy Act of
6 1969 (42 U.S.C. 4321 et seq.);

7 (2) the Endangered Species Act of 1973 (16
8 U.S.C. 1531 et seq.); and

9 (3) all other applicable Federal environmental
10 law (including regulations).

11 (e) SEEKING OTHER FUNDS.—Nothing in this Act
12 prohibits the Tribe from seeking additional funds for trib-
13 al programs or purposes or other funds from the United
14 States or the State based on the status of the Tribe as
15 an Indian tribe.

16 (f) ACQUISITION AND EXERCISE OF OTHER WATER
17 RIGHTS.—Nothing in this Act or the Compact precludes
18 the acquisition or exercise of—

19 (1) a State water right by the Tribe or any
20 member of the Tribe outside the Reservation
21 through purchase of the right, establishment of title
22 to land outside the Reservation, or submission of an
23 application in accordance with State law, except as
24 provided in article III.J of the Compact; or

1 (2) a Federal reserved water right associated
2 with Federal land outside the Reservation as the re-
3 sult of—

4 (A) the transfer of that land to the Tribe;

5 or

6 (B) the establishment of title by the Tribe
7 to the land.

8 (g) OBJECTIONS TO CLAIMS.—Nothing in this Act or
9 the Compact prohibits the Tribe, a member of the Tribe,
10 an allottee, or the United States in any capacity from ob-
11 jecting to any claim to a water right filed in any general
12 stream adjudication in the Montana Water Court.

13 (h) IMPORT AND STORAGE IN BASINS.—Nothing in
14 this Act or the Compact prevents the Tribe from partici-
15 pating in any project to import water to, or improve stor-
16 age in, any basin affecting the Reservation.

17 (i) ENFORCEMENT OF EXISTING LAW; DAMAGE
18 CLAIMS.—Nothing in the Compact or this Act limits—

19 (1) the ability of the United States, the State,
20 or the Tribe to enforce any Federal, State, or tribal
21 law (including common law) relating to the protec-
22 tion of the environment; or

23 (2) the right to bring any claim of the Tribe,
24 a member of the Tribe, or an allottee, or of the

1 United States on behalf of the Tribe, a member of
2 the Tribe, or an allottee, for—

3 (A) damage to water quality on the Res-
4 ervation; or

5 (B) depletion of surface flows or ground-
6 water.

7 (j) NO PRECEDENT.—Nothing in this Act establishes
8 a precedent in any civil action relating to—

9 (1) a reserved water right; or

10 (2) the interpretation or administration of any
11 compact between the United States and any State.

12 (k) NO EFFECT ON SERVICES OR PROGRAMS FOR IN-
13 DIANS.—No payment made or benefit provided pursuant
14 to this Act shall result in the reduction or denial of any
15 Federal service or program to any Indian tribe or member
16 of an Indian tribe to which the Indian tribe or member
17 is otherwise entitled or eligible for because of—

18 (1) the status of the Tribe as a federally recog-
19 nized Indian tribe; or

20 (2) the status of such a member as an Indian.

21 (l) PREFERENCE.—Applications of the Tribe shall be
22 given preference under section 7(a) of the Federal Power
23 Act (16 U.S.C. 800(a)) for issuance of any preliminary
24 permit or license involving a Federal facility within the
25 Reservation.

1 (m) CONFLICTS BETWEEN ACT AND COMPACT.—If
2 a provision of this Act conflicts with a provision of the
3 Compact, the provision of this Act shall prevail.

4 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

5 (a) ST. MARY RIVER ALLOCATION.—There are au-
6 thorized to be appropriated to the Secretary such sums
7 as are necessary to carry out section 5(a).

8 (b) BLACKFEET IRRIGATION PROJECT.—There is au-
9 thorized to be appropriated to the Secretary to carry out
10 section 5(d) \$125,000,000, adjusted as appropriate based
11 on ordinary fluctuations during the period beginning on
12 May 1, 2011, and ending on the date on which that
13 amount is appropriated in construction cost indices appli-
14 cable to the types of construction involved in the rehabili-
15 tation and improvement activities under that section.

16 (c) BLACKFEET LAND AND WATER DEVELOPMENT
17 FUND.—There is authorized to be appropriated to the
18 Secretary for deposit in the Blackfeet Land and Water
19 Development Fund established by section 8(a)
20 \$93,200,000 for each of fiscal years 2012 through 2016.

21 (d) MILK RIVER WATER RIGHTS.—There are author-
22 ized to be appropriated to the Secretary such sums as are
23 necessary to carry out section 11 (including the implemen-

1 tation of alternatives identified under subsection (a) of
2 that section).

○