

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, GREAT FALLS DIVISION**

FORT BELKNAP INDIAN COMMUNITY OF THE
FORT BELKNAP RESERVATION OF MONTANA,
a federally recognized Indian Tribal Entity,

Plaintiff,

v.

UNITED STATES OF AMERICA;

DOUG BURGUM, in his official capacity as
SECRETARY OF THE UNITED STATES
DEPARTMENT OF INTERIOR, 1849 C Street, N.W.
Washington DC 20240;

UNITED STATES BUREAU OF INDIAN AFFAIRS;

BRIAN MERCIER, in his official capacity as
DIRECTOR OF THE BUREAU OF INDIAN
AFFAIRS, THE UNITED STATES DEPARTMENT
OF INTERIOR;

UNITED STATES BUREAU OF RECLAMATION;

SCOTT CAMERON, in his official capacity as
ACTING COMMISSIONER OF THE UNITED
STATES BUREAU OF RECLAMATION, THE
UNITED STATES DEPARTMENT OF INTERIOR;

Defendants.

Civil Action No.

4:25-cv-00111-BMM

**FIRST AMENDED
COMPLAINT**

Comes now Plaintiff, FORT BELKNAP INDIAN COMMUNITY OF THE FORT
BELKNAP RESERVATION OF MONTANA, a federally recognized Indian Tribal Entity,
by and through its undersigned counsel, and complains of the Defendants, and each of
them, as follows:

JURISDICTION AND VENUE

1. This action arises out of the Secretary of the United States Department of Interior's failure to comply with the Congressional mandate to establish terms and conditions ("Terms and Conditions") by which the U.S. share of the natural flow of the Milk River Basin is allocated between the Fort Belknap Indian Community (FBIC) and Blackfeet Tribe (the FBIC and Blackfeet Tribe are collectively referred to herein as "Tribes") to exercise their respective tribal water rights on their respective Reservations in consideration of their equal priority dates; the water supplies of the Milk River; and the historic, current, and future uses as identified by the Tribes, pursuant to section 3705(e) of the Blackfeet Water Rights Settlement Act, Pub. L. No. 114-322, 130 Stat. 1627, 1814-56 (title III, subtitle G of the Water Infrastructure Improvements for the Nation Act of 2016 (as amended) ("Settlement Act"). A copy of the Terms and Conditions is attached as Exhibit A.
2. This action arises out of the United States' violation of: (1) its treaty and trust responsibilities guaranteeing the FBIC's federally reserved, Indian water rights in the Milk River Basin, and (2) *Winters v. United States*, 143 F. 740 (9th Cir. 1906) affirmed in 207 U.S. 564 (1908) (collectively "*Winters*") and its progeny.
3. This action also arises under the Constitution and various laws and treaties of the United States, as hereinafter more fully appears, including but not limited to: the Commerce Clause, U.S. Const. Art. 1, § 8, cl. 3; the Treaty of Fort Laramie, (the first step towards establishing reservations as it recognized territory for individual tribes), Sept. 17, 1851, 11 Stat. 749 ("1851 Treaty"); Treaty with the Blackfoot, Oct. 17, 1855, 11 Stat. 657 ("1855 Treaty"); the Act of May 1, 1888, 25 Stat. 113 ("1888 Agreement");

Agreement with the Indians of the Fort Belknap Indian Reservation in Montana, ch. 398, 29 Stat. 350 (1895) (“Grinnell Agreement”); 130 Stat. 1818 (action under § 3705(e) of the Settlement Act); the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551 *et seq.*, and §§ 701-706; the Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202; and the federal common law.

4. This Court has jurisdiction over the subject matter of this action pursuant to: (a) 28 U.S.C. § 1331 (federal question action), in that this is a civil action arising under the Constitution, laws, or treaties of the United States; (b) 28 U.S.C. § 1362 (federal question action brought by an Indian tribe), in that this is a civil action brought by an Indian Tribal Entity with a governing body duly recognized by the Secretary of the Interior and the matter in controversy arises under the Constitution, laws or treaties of the United States; and (c) 28 U.S.C. § 1361 (mandamus against federal official), in that this is an action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the Plaintiff.
5. The United States has waived its sovereign immunity from suit in this action under the Settlement Act, § 3705(e)(2) (incorporating the APA, 5 U.S.C. §§ 701-706) for civil actions against the Secretary of the Interior arising under the Settlement Act and under section 702 of the APA, 5 U.S.C. § 702. Section 702 waives sovereign immunity for all claims for relief other than monetary damages, including all forms of equitable relief, involving a federal official’s action or failure to act.
6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1) and (b)(2), because the Fort Belknap Indian Community and the Fort Belknap Reservation (“Reservation”) are located within the District of Montana, the Department of the Interior is an agency

of the United States, and a substantial part of the events or omissions giving rise to the claims herein occurred and are still occurring within this judicial district.

PARTIES

7. Plaintiff FORT BELKNAP INDIAN COMMUNITY OF THE FORT BELKNAP RESERVATION OF MONTANA is a federally recognized sovereign Indian Tribal Entity, recognized to have the immunities and privileges available to federally recognized Indian Tribes by virtue of its government-to-government relationship with the United States, as well as the responsibilities, powers, limitations, and obligations of such Indian Tribes. *See Indian Entities Recognized by and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 89 Fed. Reg. 99899, 99900 (Dec. 11, 2024). The Fort Belknap Indian Community's governmental headquarters is located at 656 Agency Main Street, Harlem, Montana 59526.
8. The Fort Belknap Reservation is the homeland of the Gros Ventre (Aaniiih) and Assiniboiné (Nakoda) Tribes. The Gros Ventre Tribe and the Assiniboiné Tribe are signatories to multiple treaties and agreements in the 1800s with the United States. The FBIC and its members are beneficiaries of the covenants contained therein. In 1935, the FBIC organized under a Constitution pursuant to section 16 of the Indian Reorganization Act of June 18, 1934, 25 U.S.C. § 5123, with a governing body known as the Fort Belknap Indian Community Council.
9. The FBIC brings this action in its governmental capacity to protect its sovereign interests. The FBIC, as beneficiary of the United States' duties, including under the 1855 Treaty and other agreements with the United States, the Settlement Act, and federal common law, suffers its own injury from Defendants' actions complained of

herein. The threat to the health and safety of all FBIC tribal members caused by Defendants' actions and failures to act complained of herein is a specific component of the FBIC's sovereign governmental interests.

10. The FBIC also brings this action as *parens patriae* on behalf of all of its Tribal members and raises claims that affect each of those members, including its allottees. The FBIC has a quasi-sovereign interest in the disputes herein, apart from the interests of its Tribal members, and there are specific and serious injuries to the FBIC's Tribal members.
11. Defendant the UNITED STATES OF AMERICA is a party to the 1851 and 1855 Treaties and subsequent agreements with the Gros Ventre and Assiniboine Tribes and is responsible for fulfilling the requirements of the treaties, statutes, agreements, and common law detailed herein. It acts through and is responsible for the actions of its authorized agencies, officials, employees and agents, and the other defendant parties described below.
12. Defendant DOUG BURGUM is the Secretary of the Department of the Interior ("Secretary"). The Secretary is responsible for the establishment of the "terms and conditions that reflect the considerations described in subsection (c)(2) by which the respective water rights of the [Blackfeet] Tribe and the Fort Belknap Indian Community in the Milk River may be exercised." Settlement Act, § 3705 (e)(1). He is sued in his official capacity.
13. Defendant UNITED STATES BUREAU OF INDIAN AFFAIRS ("BIA") is an agency within the United States Department of the Interior and is the federal agency through which the Secretary acts in fulfilling his obligations to tribes related to their Indian water rights and is the federal agency responsible for the administration and

management of Congressionally authorized federal, Indian irrigation projects, including the Fort Belknap Indian Irrigation Project.

14. Defendant BRIAN MERCIER is the Director of the Bureau of Indian Affairs, an agency within the United States Department of the Interior, and is responsible for managing the Bureau's day-to-day operations through the Office of Indian Services and the Office of Trust Services, which administer and/or fund tribal infrastructure, social services, tribal governance, natural and energy resources, and trust management programs, and, in that official capacity, is responsible for implementing and complying with federal law, including the federal laws implicated by this action.

15. Defendant UNITED STATES BUREAU OF RECLAMATION ("Reclamation") is the federal agency identified by the Secretary as responsible for implementation and management under the Terms and Conditions.

16. Defendant SCOTT CAMERON is the Acting Commissioner of Reclamation. He is sued herein in his official capacity.

INTRODUCTION

17. *Winters* established over 100 years ago that the treaties entered into between the FBIC and the United States guaranteed the FBIC with Indian reserved water rights sufficient to sustain a livable, permanent homeland.

18. In a seminal case implementing *Winters*, 207 U.S. 564, the United States Supreme Court ruled that Indian tribes' reserved water rights are quantified (for agricultural reservations such as FBIC's) by establishing a reservation's "practically irrigable acres" ("PIA"). *Arizona v California*, 373 U.S. 546, 600-01 (1963)(disavowed on other grounds).

19. In granting the Blackfeet Tribe the entire U.S. share of the natural flow of the Milk River above Western Crossing¹—without quantification of its PIA or any proof of its historical, current, and future use of that water—the Secretary violated *Winters* and its progeny, the congressional purpose of the Settlement Act (to “achieve a fair, equitable, and final settlement of claims to water rights” Settlement Act § 3701(1)), and section 3705 of the Settlement Act governing allocation of the Tribes’ Milk River water rights.
20. The Terms and Conditions correctly identify the issue to be resolved as the “uses of water to be satisfied by the use of the overlapping Milk River rights.” Terms and Conditions at p. 1, “Subject” and § 2. These uses are synonymous with how the “respective water rights of [each Tribe] . . . in the Milk River may be exercised.” Settlement Act § 3705(e)(1).
21. The uses of each Tribe governed by the Terms and Conditions must be quantified to allocate.
22. The uses or needs of each Tribe are separate from each Tribe’s rights or entitlements to the waters of the Milk River. While each Tribe is entitled to its *Winters* right—that is its Indian reserved water rights in such quantity as is necessary to accomplish the purposes of its reservation—its uses are quantified based on need. *Arizona*, 373 U.S. at 600 (establishing the “Practically Irrigable Acreage” framework for quantification of Indian reserved water rights). *See also*, *United States v. Adair*, 723 F.2d 1394, 1413 (9th Cir. 1983) (upholding the Klamath Tribe’s “aboriginal right to the water used” for “domestic purposes and to support its hunting, fishing, and gathering lifestyle.”)

¹ The Western Crossing is depicted in figure 2, *infra*.

23. Each Tribes' need is its identified historic and current use, and how much it intends to use in the future. Settlement Act § 3705(c)(2)(C).
24. FBIC's entitlements are based on the domestic and agricultural purposes of its Reservation and its needs are quantified at 645 cubic feet per second ("cfs"). (Exhibit A at §4(f)(iii), pg. 4).
25. The only "overlapping" Milk River rights are in the watershed located on the Blackfeet Indian Reservation (i.e., those upstream of the Western Crossing as depicted in figure 2, *infra*) ("Upper Milk River").
26. The Secretary did not identify, much less quantify, the Blackfeet Tribe's needs in the overlapping flow of the Upper Milk River.
27. The Terms and Conditions, therefore, do not provide a means by which the "respective water rights of the [Tribes] . . . in the Milk River may be exercised," in violation of section 3705(e)(1) of the Settlement Act.
28. The Terms and Conditions contain many examples of the Secretary unlawfully ignoring these overlapping Milk River rights:
 - a. The Secretary ignored *Winters* as a source of authority in the Terms and Conditions, section 3. *Winters* ruled that "the Government . . . reserve[ed] the [FBIC's] waters and exempt[ed] them from appropriation under state laws[which reservation] would be necessarily continued through the years." *Winters* 207 U.S. at 577.
 - b. *Winters* is also the authority for water supply used to irrigate Tribal lands under the Fort Belknap Indian Irrigation Project-Milk River Unit ("FBIIP"), one of approximately sixteen Indian irrigation projects in United States (and

one of the oldest). FBIIP irrigates 10,425 acres with the adjudicated *Winters* 125 cfs water right.

- c. Section 4 of the Terms and Conditions states that the “following Terms and Conditions shall be the basis for the Tribes to exercise their respective Tribal Water Right within the Milk River Basin” This ignores the fact that both Tribes have an overlapping right only to the Upper Milk River and that, as such, the Terms and Conditions shall only focus on the Tribes’ water rights in the Upper Milk River.
 - d. The calculation of the U.S. Share of the natural flow of the Upper Milk River is contained in section 4(d) of the Terms and Conditions. There is, however, no allocation between the Tribes of how they will use the available flow, in violation of *Winters* and the Settlement Act.
 - e. Not only do the Terms and Conditions fail to allocate the Upper Milk River, but they also give the entirety of that water supply simultaneously to each Tribe. Section 4(f)(i) apportions the entire Upper Milk River to the Blackfeet Tribe while sections 4(e), (f)(ii)-(iii) apportions the entire Upper Milk River to FBIC.
29. The effects of failing to allocate the Upper Milk River between the two Tribes violates *Winters* and its progeny, violates the Settlement Act, and will have devastating consequences on the FBIC, as more fully set out below.

GENERAL ALLEGATIONS

I. Treaty History and Indian Water Rights for the FBIC Homeland

30. Since its earliest days, the United States Supreme Court has consistently recognized the special duty the federal government assumed in treaties and related agreements with federally recognized Indian Tribes.
31. As it relates specifically to the FBIC's Indian water rights, it is settled law that, "when the Indians made the treaty granting rights to the United States, they reserved the right to use the waters of the Milk River, at least to an extent reasonably necessary to irrigate their lands." *Winters v. United States*, 143 F. 740, 749 (9th Cir. 1906), *aff'd by Winters*, 207 U.S. 564 (1908).
32. The first treaty with the Indian tribes in the vast territory including part of what would become Montana was the 1851 Treaty of Fort Laramie. This was a Peace Treaty among several tribes but also described the respective territories of the Assiniboiné Nation and the Blackfoot Nation.
33. With the 1855 Treaty, the United States guaranteed the FBIC an agrarian economy and homeland in return for land cessions.
34. The 1855 Treaty was the first treaty that restricted the territory of these tribes to certain areas reserved by them for their exclusive use and control for the major purpose of creating a self-supporting, agrarian homeland.
35. In return for the promise of an agricultural economy and homeland, the United States obtained additional significant ancestral land cessions from the tribes (including the Gros Ventre and Assiniboiné Tribes) through Executive Orders and acts of Congress. Executive Order, July 5, 1873; Act of April 15, 1874, 18 Stat. 28.

36. In 1878, the Fort Belknap Agency was established for the Gros Ventre and Upper Assiniboiné Tribes and Congress established the Fort Belknap Reservation in 1888 within the area first set aside in the 1855 Treaty. 25 Stat. 113, 124, Art. IX.
37. FBIC's Indian reserved water rights, and the livelihoods and industry it supports, remain as crucial today as in 1855 when the Reservation was first created.
38. Agriculture remains the mainstay of the Reservation economy and virtually the sole industry. Fort Belknap Reservation 2018 Program Highlights, Montana State University Extension at 1 (2018), available at www.msuextension.org. Ninety-six percent of today's irrigators under the FBIIP are Indian farmers and ranchers on trust lands, including allottees and the FBIC.
39. The struggles of reliance on an agricultural economy are reflected in the low family incomes² and health disparities currently experienced by Tribal members. "Wet water," the provision of an adequate and enforceable water supply, is necessary for FBIC to develop a sustainable agricultural economy and provide economic self-sufficiency for its permanent homeland—the promise of the United States when it created the Reservation.

² The poverty rate on the Reservation for families with children under 18 years of age is around 32%. *My Tribal Area: Fort Belknap Reservation and Off-Reservation Trust Land, MT* (citing U.S. Census Bureau 2019-2023 American Community Survey 5-Year Estimates), available at <https://www.census.gov/tribal/application/embed.html?st=30&aianihh=1150#> (last visited Dec. 12, 2025).

II. To Satisfy the United States’ Purpose for Creating the FBIC Reservation, the BIA Established, Constructed, and Owns the Fort Belknap Indian Irrigation Project

40. The BIA recognized the need for irrigation on the Fort Belknap Reservation when it constructed irrigation structures serving Reservation lands.
41. Irrigation from the Milk River began on the Fort Belknap Reservation in 1889. Within a decade, Tribal members were irrigating 30,000 acres on the Milk River for grain, grass, and vegetables. *Winters*, 207 U.S. at 566.
42. Congress first authorized construction of and funding for the FBIIP in 1898. *See Id.* at 566-567. That was when Congress appropriated \$360,000 for use on the Fort Belknap Reservation to “carry out the provisions of an [1896] agreement with the Indians of the Fort Belknap Reservation” Act of Jul. 1, 1898, ch. 545, 30 Stat. 577.
43. This 1896 Agreement—later to become known as the “Grinnell Agreement”—was to provide such “sums, or so much thereof as may be necessary in any one year, [which] shall be expended in the purchase of . . . live stock, . . . agricultural implements, . . . [and] in assisting the Indians to . . . inclose [sic] and irrigate their farms” Grinnell Agreement at Art. II. Under the Grinnell Agreement, preference in the distribution of such “cattle or other stock . . . and agricultural implements . . . shall be given to Indians who endeavor by honest labor to support themselves, and especially to those who in good faith undertake the cultivation of the soil and engage in pastoral pursuits as a means of obtaining a livelihood.” *Id.* at Art. IV (emphasis added).
44. The Grinnell Agreement was one of the earliest federal commitments to provide sufficient water for the FBIC to establish a permanent, agrarian homeland.

45. Congress continued to fulfill this commitment through unilateral appropriations. For example, in 1908, “for fulfilling treaty stipulations with various Indian tribes,” Congress appropriated \$25,000 for the “completion and extension of the Milk River Irrigation System on the Fort Belknap Reservation.” Act of Apr. 30, 1908, ch. 153, 35 Stat. 70 at 70, 83.
46. The FBIC and allottees are the beneficial owners of the Indian water rights appurtenant to the Fort Belknap Reservation.
47. In 1908, the *Winters* Court found that the Gros Ventre and Assiniboine Tribes had constantly and uninterruptedly used and enjoyed the water of the Milk River for domestic, culinary and household purposes, and for irrigation of the Reservation lands. 207 U.S. at 566.

III. The Birth of the Winters Doctrine

48. In *Winters*, the United States Supreme Court adjudicated a portion of the FBIC’s Milk River Indian water rights and issued a federal decree awarding 5,000 inches (the equivalent of 125 cfs) of the natural flow from the headwaters of the Milk River Basin upstream of the Reservation for use on the Reservation. *Id.* at 565. State water users were enjoined from preventing and blocking the downstream water from flowing to the Fort Belknap Reservation. *Id.*
49. *Winters* ruled that the natural flow of the Milk River, “exempt . . . from appropriation under the state laws,” be permitted to flow down the channel of the river to the Ft. Belknap Reservation for the purpose of irrigation. 207 U.S. at 577.

50. In *Winters*, the United States Supreme Court recognized and upheld the federal commitment to provide sufficient water for the FBIC to establish a permanent, agrarian homeland.
51. This decision is the foundation for numerous federal court cases, including by the United States Supreme Court, reaffirming what has become known over the last 118 years as the “Winters Doctrine,” establishing the federal law and characteristics of Indian water rights that govern the right of reservation tribes to sufficient water to make their reservations livable and to establish permanent homelands. *See, e.g., Arizona*, 373 U.S. at 600; *Arizona v Navajo Nation*, 599 U.S. 555 (2023); Exhibit A at §5, Definitions, pg. 5.
52. Unlike the prior appropriation system recognized by states in some form throughout the western United States, where state water rights are based on actual, beneficial use, the recognition and quantification of federal Indian reserved water rights for a reservation include historical, present, *and* future uses, where such Tribal water rights are a trust asset with property rights in perpetuity and cannot be lost due to abandonment or forfeiture. Federal law has established that Indian reservations must have sufficient water as required and reserved to fulfill the original purpose of the reservation. Cohen’s Handbook of Federal Indian Law § 19.01[1], Nell Jessep Newton ed. (2005).

IV. Congress Passes the Settlement Act.

53. Through the 1855 Treaty, the Grinnell Agreement, establishment of the FBIIP, and *Winters*, the federal government has taken an exclusive and specific trust responsibility to provide sufficient water for the FBIC to establish a permanent, agrarian homeland.

Through section 3705 of Settlement Act, the United States has recognized and reinforced this duty.

54. The purpose of the Settlement Act is “to achieve a fair, equitable, and final settlement of claims to water rights” Settlement Act, § 3702(1).

55. In recognition of the fact that the FBIC and Blackfeet Tribe have competing entitlements to the waters of the Milk River arising because of their equal priority dates, Congress added section 3705.

56. That section provides in part that the FBIC and Blackfeet Tribe, in consultation with the federal government, will “enter into an agreement to provide for the exercise of their respective [Milk River] water rights” Settlement Act, § 3705(c)(1) (“Tribal Agreement”).

57. Such Tribal Agreement “shall take into consideration—

- (A) the equal priority dates of the [FBIC and the Blackfeet Tribe];
- (B) the water supplies of the Milk River; and
- (C) historical, current, and future uses identified by each Indian Tribe.”

Id. at § 3705(c)(2).

58. The Secretary shall approve the Tribal Agreement if it does the following : “(A) equitably accommodates the interests of each Indian tribe in the Milk River; (B) adequately considers the factors described in subsection (c)(2); and (C) is otherwise in accordance with applicable law.” *Id.* at § 3705(d)(2).

59. By directing the Secretary to approve a Tribal Agreement only if it “adequately considers the factors described in subsection (c)(2)” (*Id.* at § 3705(d)(2)(B)), Congress recognized the necessary detail for a resolution of the issue that “equitably

accommodates the interests” of both Tribes through an allocation of the Tribes’ Upper Milk River Indian water rights. *Id.* at § 3705(d)(2)(A).

60. If the Tribes do not reach a Tribal Agreement, Congress required the Secretary to establish, after consultation with the Tribes, “terms and conditions that reflect the considerations described in subsection (c)(2) by which the respective water rights of the [Blackfeet] Tribe and the Fort Belknap Indian Community in the Milk River may be exercised.” *Id.* at § 3705(e)(1).
61. Thus, the section 3705(c)(2) considerations reflect the detail required by Congress for a fair and final allocation of the Tribes’ exercise of their Milk River Indian water rights, whether pursuant to a Tribal Agreement or under the Secretary’s Terms and Conditions.
62. The equitable allocation of the use of the Upper Milk River water rights—and the commitments owed by the United States to the FBIC in relation to those rights—is further recognized and protected in Section 3722(b) of the Settlement Act. That section, titled “Other Tribes Not Adversely Affected” states as follows: “Nothing in this subtitle quantifies or diminishes any land or water right, or any claim or entitlement to land or water, of an Indian tribe, band or community other than the [Blackfeet] Tribe.”
63. Despite negotiations during numerous meetings, the Tribes were unable to reach a Tribal Agreement by the three-year statutory deadline, thus starting the section 3705(e) Secretarial Decision process.

V. Consultation on and Finalization of the Secretary’s Terms and Conditions

64. The first consultation between FBIC and the Secretary’s office occurred on November 3, 2023.

65. The correspondence requesting consultation sought FBIC information related to the considerations in section 3705(c)(2). A copy of the September 29, 2023, letter from L. Trujillo to J. Stiffarm is attached as Exhibit B.
66. At the November 3, 2023, consultation, the FBIC presented information advising of facts and legal issues specific to the FBIC as related to the three considerations at section 3705(c)(2).
67. On December 1, 2023, the FBIC submitted a detailed, follow-up written proposal for the Exercise of Milk River Indian Reserved Water Rights by the Fort Belknap Indian Community and the Blackfeet Tribe (November 30, 2023) (“Proposal”).
68. The Proposal provided detailed calculations and estimates of the U.S. share of the natural flow of the Milk River, and made recommendations for the implementation of Terms and Conditions (e.g., monthly availability of water for future irrigated lands in acre-feet) for the exercise of Indian reserved water rights in the Milk River.
69. On April 19, 2024, the Secretary provided FBIC with draft Terms and Conditions and invited it to a joint consultation with the Blackfeet Tribe. A copy of the April 19, 2024, letter from L. Trujillo to J. Stiffarm is attached as Exhibit C.
70. The April 19, 2024, consultation request recognized that, consistent “with both Section 3705(c)(2) and (e)(1), the terms and conditions must take into consideration: the equal priority dates of the two Tribes; the water supplies of the Milk River; and historical, current, and future uses identified by each Tribe.” *Id.*
71. It then posed three questions, namely whether the draft Terms and Conditions adequately reflect the considerations described in section 3705(c)(2).

72. After reviewing the draft Terms and Conditions, the FBIC responded to the Secretary that the draft Terms and Conditions do not adequately reflect the considerations described in section 3705(c)(2). During subsequent consultations and in subsequent written transmittals, the FBIC notified Defendants of specific failures to reflect the considerations of section 3705(c)(2) in the draft Terms and Conditions.
73. For example, on July 3, 2024, the FBIC submitted extensive written comments with its review, analysis, comments, and opposition to the draft Terms and Conditions.
74. On August 26, 2024, the FBIC again submitted comments for the record outlining in detail how the draft Terms and Conditions fail to reflect the considerations described in section 3705(c)(2) and how, as a result, the draft Terms and Conditions violate the United States' *Winters* Indian water right treaty and trust obligations owed to the FBIC.
75. By letter dated December 19, 2024, the Secretary transmitted to the FBIC the final "Secretarial Terms and Conditions, Blackfoot Tribe and Fort Belknap Indian Community Milk River Basin Tribal Water Rights." (Exhibit A).
76. The final Terms and Conditions fail to address many of the violations outlined in the FBIC's comments; fail to reflect the considerations described in section 3705(c)(2); fail to achieve an equitable accommodation of the historical and current uses, as well as future uses, of the respective Tribes; and are unlawful.
77. In addition, on information and belief, the Terms and Conditions are void by operation of law.
78. Any action taken under the Settlement Act is void under section 3723(2) if the Secretary fails to publish in the Federal Register a "statement of findings" by January

21, 2025, or by “such alternative later date as is agreed to by the Tribe and the Secretary, after reasonable notice to the State, as applicable”

79. On information and belief, the Secretary has not published the statement of findings, and no alternative later date was agreed to by the Blackfeet Tribe and the Secretary after reasonable notice to the State of Montana and the Terms and Conditions are void.
80. Alternatively, as addressed below, the Terms and Conditions violate *Winters* and the Settlement Act and are unlawful.

VI. The Terms and Conditions Are Unlawful

A. The Terms and Conditions Do Not Reflect the Equal Priority Date of the FBIC and Blackfeet Tribe in Violation of Section 3705(c)(2)(A)

81. Congress recognized that the Tribes have an equal priority date to their entitlements in the Milk River. § 3705(c)(2)(A). If this were not the case, there would be no need for section 3705 because the Tribe with the higher priority date would be satisfied first.
82. If Congress intended that the Secretary ignore the Milk River water supply from the Upper Milk River in its allocation of the use of the respective entitlements of the Tribes, it would not have required the Tribal Agreement or Terms and Conditions to reflect the Tribes’ equal priority dates as, again, the Tribe with the higher priority date in the overlapping water supply would be satisfied first. Instead, however, Congress required consideration of the Tribes’ equal priority date in allocating the use of the overlapping Upper Milk River water supply.

B. The Terms and Conditions Failure to Allocate the Overlapping Upper Milk River Water Supply Violates the Settlement Act and the FBIC’s Federally Decreed *Winters* Indian Water Rights

83. The “Milk River Basin” means the mainstem of the Milk River and its tributaries from its headwaters to the confluence with the Missouri River. Exhibit A at § 5, pg. 5; *See also* Fig. 1 (highlighted in grey).

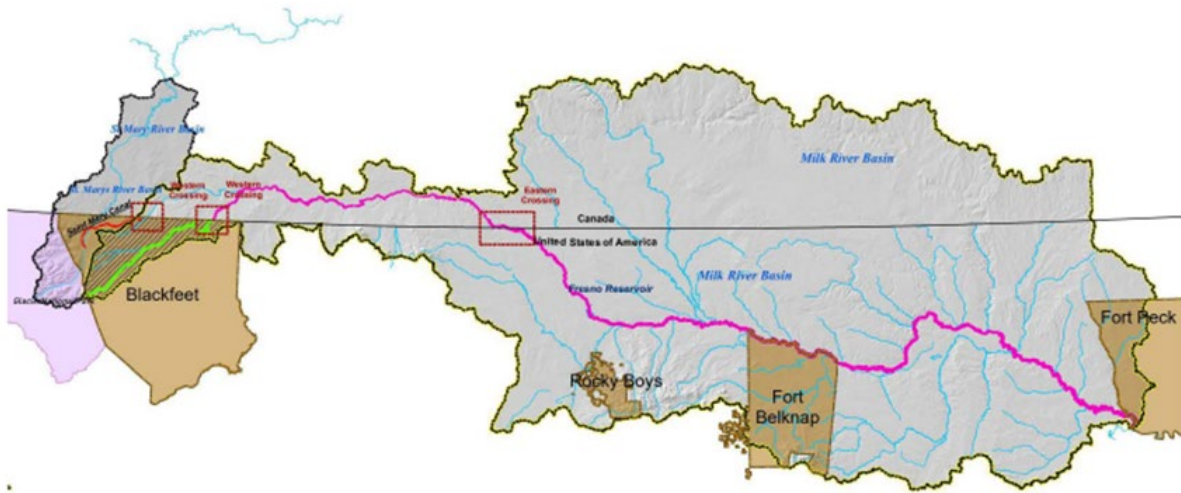


Figure 1. The Milk River Basin and the Fort Belknap and Blackfeet Indian Reservations

84. The FBIC is entitled to the U.S. share of the Milk River as measured at Harlem, Montana, located near the northwest corner of the Fort Belknap Reservation. (Exhibit A at § 4(f)(ii)-(iii) (incorporating the FBIC Compact)).

85. “The calculated US share of the Milk River at Harlem will be the calculated US share of the Milk River at the eastern . . . crossing . . .” FBIC Compact, Appendix 4.³ *See also*, Exhibit A at § 4(e), (f)(ii)-(iii). The Eastern Crossing is depicted on Figure 2.

³ A copy of Appendix 4 to the FBIC Compact is available at https://dnrc.mt.gov/Water-Resources/Compacts/fort_belknap_appendix_4.pdf

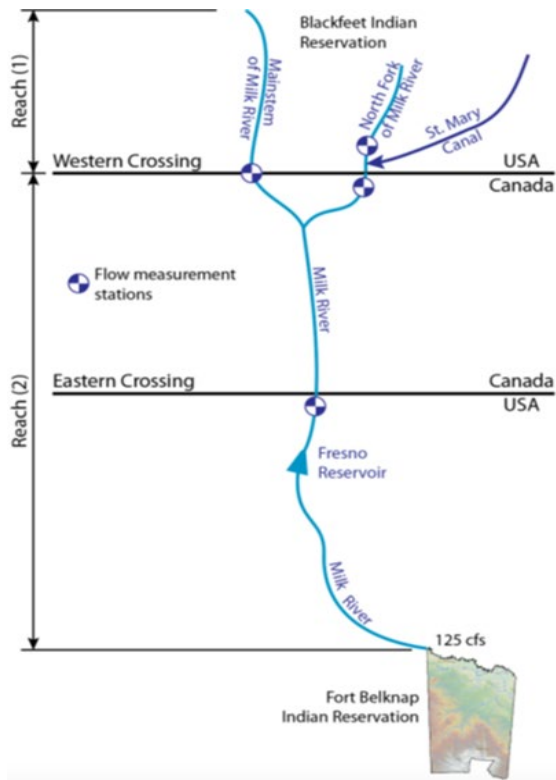


Figure 2. Schematic of the Milk River.

86. The US share of the Milk River at the Eastern Crossing includes waters originating in Canada and the Upper Milk River to the headwaters of the Milk River on the Blackfoot Indian Reservation.
87. The Blackfoot Tribe, by contrast, is limited to that portion of the Milk River from the headwaters to the Western Crossing, i.e., Milk River Basin waters feeding into and contained within (and not downstream of) its Reservation. The Western Crossing is depicted on Fig. 2.
88. The only overlapping water supply of the Tribes is therefore the Upper Milk River, which is calculated at the Western Crossing pursuant to section 4(d) of the Terms and Conditions.

89. While calculating the U.S. share of the natural flow at the Western Crossing, the Terms and Conditions fail to allocate that use of the water supply between the Tribes in violation of the Settlement Act, section (c)(2)(B) and the FBIC water rights adjudicated under *Winters* when, as described by the Secretarial Terms and Conditions, the “natural flows of the Milk River may be insufficient to satisfy both Tribe’s rights.” (Exhibit A at §2, pg. 1).
90. The Milk River is the FBIC’s largest and most reliable Reservation water source. The FBIC has limited additional on-Reservation water supplies. Without a sufficient supply of Milk River water for the Reservation, the Treaty-purpose of the Reservation for irrigation and a permanent homeland cannot be achieved.
91. The failure of the Terms and Conditions to allocate the Upper Milk River water supply violates *Winters* and its progeny and fails to equitably accommodate the interests of each Tribe in the Upper Milk River in violation of the Settlement Act.

C. The Terms and Conditions Fail to Reflect the Historical, Current, and Future Uses Identified by the FBIC in Violation of Section 3705(c)(2)(C)

92. The Settlement Act requires the Secretary’s Terms and Conditions to reflect the “historical, current, and future uses identified by each Indian tribe.” § 3705(e)(1) (incorporating (c)(2)).
93. The Secretary noted in the Terms and Conditions that both Tribes “have identified . . . historic, current and future uses of water to be satisfied by use of their overlapping Milk River rights.” (Exhibit A at § 2, pg.2).
94. Because both the FBIC and the Blackfeet Tribe have rights, or entitlements, to the U.S. share of natural flow generated in the Upper Milk River, the available water supply

should serve, first and foremost, the historically and currently irrigated respective lands of the FBIC and the Blackfeet Tribe prior to serving irrigation water to the future lands. For the FBIC, this protects and preserves the purpose of the Ft. Belknap Reservation, recognized in the *Winters* decisions, as well as the BIA (on behalf of the United States), FBIC, and Tribal member investments in water infrastructure on the Reservation.

i. The FBIC has Significantly More Historical and Currently Irrigated Lands than the Blackfeet Tribe

95. The Secretary found that the FBIC has “historically and currently made larger use of Milk River water than the Blackfeet Tribe, and potential future uses communicated to the Department by both Tribes also reflect a far greater use of Milk River water by the FBIC.” *Id.*

96. This is reflected in the Annual Reports of the Bureau of Reclamation Service (which oversaw the planning, development, and operation of the Blackfeet Irrigation Project (“BIP”) on the Blackfeet Reservation from 1906-1923) reporting that the sources of water supply for the BIP were the Two Medicine River, Cut Bank, Badger Creek, Whitetail Creek, and Blacktail Creek. *E.g.* Work, Hubert, Dept. of Interior, 1922-1923 Ann., pg. 142 (Rep. Bureau of Reclamation (1923)) (available at <https://babel.hathitrust.org/cgi/pt?id=uc1.b2861216&seq=148&q1=Blackfeet>) (last visited July 7, 2026).

97. Based on these historical reports for the BIP, the Blackfeet Tribe did not have irrigation on the Milk River.

98. It is unclear when and if the Blackfeet Tribe began irrigating its lands from the Milk River. Nevertheless, FBIC accepted the quantification of 561 acres of historical lands irrigated from the Milk River by the Blackfeet Tribe as presented by the Secretary’s

Indian Water Rights Office in 2019. Memorandum from the Blackfeet Federal Implementation Team Chair, Fain Gildea, and the Ft. Belknap Negotiation Team Chair, John Anevski, Bureau of Indian Affairs, Rocky Mountain Regional Director, to the Blackfeet Tribe and Fort Belknap Indian Community on the Milk River Agreement between Blackfeet and Fort Belknap (Feb. 25, 2019). (Exhibit D).

99. This contrasts with the FBIC’s historical irrigation from the Milk River on the Fort Belknap Reservation, which, as described *supra*, Section II, began in 1889 and, within a decade, included 30,000 acres on the Milk River for grain, grass, and vegetables.

100. This also highlights the Blackfeet Tribe’s Reservation water-resource rich water supply when compared to the Fort Belknap Reservation, which has only one major water source—the Milk River.

101. The Secretary’s allocation of the Milk River between the Tribes, however, does not reflect these facts.

102. The Terms and Conditions instead give the entirety of the Upper Milk River simultaneously to both Tribes—to the Blackfeet Tribe under section 4(f)(i) and to FBIC under sections 4(e)-(f) (incorporating Appendix 4 of the FBIC Compact).

103. Using the heading “The apportionment of the Milk River between the Tribes shall be as follows:”, the Secretary offers no allocation of the Upper Milk River water supply between the Tribes. (Exhibit A at §4(f), pg. 3). Rather, there is an arbitrary identification of the Blackfeet Tribe’s compacted supply and the FBIC’s identified uses. *Id.* This compares apples to oranges as it fails to reflect the historical, current, and future uses of Blackfeet Tribe in violation of the FBIC’s *Winters* adjudicated water rights and section 3705 of the Settlement Act.

- ii. The FBIC has Significantly More Irrigable Lands than the Blackfeet Tribe to be Irrigated in the Future from the Milk River Under a Comprehensive Plan to Expand the Fort Belknap Indian Irrigation Project

104. Instead of reflecting identified historic, current, and future uses of the Blackfeet Tribe, the Terms and Condition require annual negotiations for the Tribes to “coordinate projected respective water demands.” (Exhibit A at §4(g)(i), pg. 4). The FBIC, however, has a proven demand based on a determination and quantification of its practically irrigable acres of 645 cfs which must be recognized under the FBIC Compact III(A)(1) and the *Winters* doctrine as applied by *Arizona v. California*, 373 U.S. 546 (1963). Requiring the FBIC to make a new demand every year fails to comply with the FBIC’s *Winters* rights’ historical and current uses, as well as quantified future uses, in violation of federal law.

105. Reclamation is charged with implementing the Terms and Conditions. (Exhibit A at § 4(g)(i)). It is to do this by coordinating “respective water demands and anticipated water supply” to provide for the exercise of the Tribes’ reserved Milk River Indian water rights. *Id.*

106. Without minimum volumetric requirements for Reclamation’s allocation of the overlapping Upper Milk River, the Terms and Conditions violate FBIC’s rights adjudicated under *Winters* and quantified under the standard established by *Arizona*, 373 U.S. 546.

107. Instead of Reclamation setting requirements for the allocation of the overlapping Milk River Indian water rights, the Terms and Conditions require the Tribal organizations to estimate their annual consumptive use based on the illusory “apportionment” regime contained in section 4(f) of the Terms and Conditions.

108. Subsection 3705(e) explicitly requires the Secretary to establish the terms and conditions by which “the respective water rights of the [Blackfeet Tribe] and the Fort Belknap Indian Community in the Milk River may be exercised.” This is parroted in Section 1 of the Terms and Conditions, “Purpose. Establishment of the Terms and Conditions for exercising respective Tribal Water Rights in the Milk River Basin by the Blackfeet Tribe and the Fort Belknap Indian Community.” (Exhibit A, §1, pg. 1).
109. To achieve this end, and to achieve and equitable allocation and resolution under section 3705(e)(1) of the Settlement Act while not adversely affecting FBIC’s claim to its Milk River water rights as required under section 3722(b), Congress required the Secretary to consider, inter alia, the future uses of the Milk River water rights identified by FBIC. The Secretary failed to satisfy this requirement because the Terms and Conditions do not allocate the overlapping water supply in the Upper Milk River between the Tribes when the “natural flows in the Milk River may be insufficient to satisfy both Tribes’ rights.” (Exhibit A at § 2, p. 1).
110. The yearly operation and distribution of project water supply must be the responsibility of the respective Tribe, concurrently with the BIA for the FBIIP, as is the standard method for managing the distribution of Indian water rights of tribes with federal Indian Irrigation Projects.
111. The Terms and Conditions erroneously rely on the Bureau of Reclamation of coordination of a requirement for an annual meeting between the Tribes for determining the yearly project operation and management, including water demands, anticipated and available water supply, project wide irrigation water distribution, and status of project development plans. (Exhibit A at § 4(g)(i)). This unlawfully interferes

with the sovereign rights of the FBIC to protect, administer, and manage its own Indian water rights and uses, which it has been doing for almost 125 years.

112. Additionally, the shortage sharing measures in section 4(g)(iii), which would be determined “no later than March 1” of each year and which are based on the illusory apportionment regime in section 4(f), would prevent the FBIC from the certainty necessary to allow it to continue to distribute its Milk River Indian water rights to the historical and currently irrigated lands of its Tribal farmers and families. It would also prevent it from planning for the development of its future Milk River Indian water rights in violation of its *Winters* adjudicated rights and the Settlement Act.

FIRST CLAIM FOR RELIEF

Failure to Comply with Section 3723 of the Settlement Act

113. The FBIC realleges the preceding paragraphs and incorporates them by this reference.
114. The Settlement Act at section 3723 states that if the Secretary “fails to publish a statement of findings under section 3720(f)” by January 21, 2025, “or such alternative later date as is agreed to by the Tribe and the Secretary, *after reasonable notice to the State*, as applicable” then “any action taken by the Secretary . . . pursuant to this subtitle shall be void.” Settlement Act, § 3723(2) (emphasis added).
115. This is in contrast with the Blackfeet-Montana water rights compact ratified by section 3704 of Settlement Act, which “expires effective on . . . the day after such alternative later date as is agreed to by the [Blackfeet] Tribe and the Secretary.” *Id.* at §3723(1).

116. On information and belief, the Secretary neither published the statement of findings by the statutory deadline nor agreed to an alternative later date after reasonable notice to the State of Montana, pursuant to section 3723(2).
117. For this reason, the FBIC is entitled to a declaratory judgment that the Terms and Conditions are void as a matter of law for failure of the Secretary to comply with § 3723.

SECOND CLAIM FOR RELIEF

Violation of Treaty, Statutory, and Common Law Trust Duty: The United States' Failure to Provide for the Exercise of FBIC's Quantified Milk River Indian Water Rights

118. FBIC realleges the preceding paragraphs and incorporates them by this reference.
119. By proposing, incorporating, and ratifying the 1855 Treaty and establishing a Reservation, today known as the Ft. Belknap Reservation, for the FBIC, thereby reserving federal water rights to the FBIC sufficient to carry out the purposes of the Reservation (i.e. to develop a permanent, sustainable homeland and agricultural economy), the United States obligated itself to provide sufficient water resources for the purposes for which the lands were set aside.
120. This federal commitment was part of the bargain exchanged for the FBIC significantly reducing its aboriginal homelands and curtailing its sovereign authority and its practical ability to exercise its aboriginal hunting and gathering rights as it had for centuries to pursue a more pastoral life.
121. Today, as in 1855, the Reservation remains under federal jurisdiction. Today, this federal commitment is necessary to ensure that the Fort Belknap Reservation remains the “permanent home” for the FBIC, a home “practically valueless” (and upon which

an agrarian community “could not be established”) without irrigation. *Winters v. United States*, 207 U.S. 564 (1908).

122. Pursuant to the Treaty of 1855, the Grinnell Agreement, establishment of the FBIIP, *Winters*, and the Congressional passage of the Settlement Act, Defendants have taken an exclusive and specific trust responsibility to prioritize and provide sufficient water for the FBIC to maintain its historical and current uses of the Milk River—and develop its identified future uses—necessary for a permanent, agrarian homeland.
123. Having undertaken federal responsibility over the quantified, reserved water rights in the Milk River for the FBIC, the Secretary has a trust obligation to protect those rights.
124. The means through which this trust obligation has been implemented is through the requirement to establish Terms and Conditions which are to allocate how “the respective water rights of the [Tribes] in the Milk River” will be exercised. Settlement Act, § 3705(e)(1).
125. By failing to allocate FBIC’s quantified, reserved Milk River Indian water rights, Defendants are in breach of their treaty obligations under the 1855 Treaty, the Grinnell Agreement, and of their trust duty to the FBIC and its members under the commitments expressly accepted in section 3705 of the Settlement Act.
126. Defendants’ breach of the trust obligations in section 3705(e)(1) of the Settlement Act is manifested in the patent failure of the Terms and Conditions:
 - 1) to quantify the Blackfeet Tribe’s Milk River Indian water uses so that an allocation of the overlap area can be made between the Tribes, instead granting the Blackfeet Tribe “all natural flow” of the Upper Milk River;

- 2) to recognize and account for the fact that the FBIC and Blackfeet Tribe have overlapping rights in only the Upper Milk River;
- 3) to equitably resolve the allocation of the Milk River Indian water uses between the Tribes when the natural flow is insufficient to satisfy both Tribes' full use of their entitlements, and to instead require annual renegotiation; and to
- 4) to recognize and account for FBIC's proven irrigable acreages with its historical and current uses, and its future practically irrigable acres, instead requiring the FBIC to renegotiate its respective water demand annually.

127. In short, the Secretarial Terms and Conditions operate to unlawfully diminish the FBIC's *Winters* decreed Milk River Indian water rights and its historical and current uses and to utterly vitiate the United States' treaty and trust obligations to the FBIC and its members.

128. There is a substantial controversy between the FBIC and the Defendants of sufficient immediacy and reality to warrant the issuance of a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

129. FBIC asks this Court to declare that the proper interpretation and construction of the obligations undertaken by and through the 1855 Treaty (as interpreted and applied by the Ninth Circuit and the United States Supreme Court in *Winters*), the Grinnell Agreement, establishment of the FBIIP, and the Congressional passage of section 3705 of the Settlement Act, is that the United States is legally obligated to provide for the exercise of the FBIC's quantified Milk River Indian water rights on the Fort Belknap

Indian Reservation by allocating the Upper Milk River based on considerations required by Congress in section 3705(c)(2) of the Settlement Act.

THIRD CLAIM FOR RELIEF

Violation of the APA, 5 U.S.C. § 701 et seq.

130. The FBIC realleges the preceding paragraphs and incorporates them by this reference.
131. Because the Settlement Act, 3705(e)(2), states that the establishment by the Secretary of terms and conditions “shall be considered to be final agency action for purposes of review under [the APA],” the Terms and Conditions are judicially reviewable.
132. In the Terms and Conditions, Defendants arbitrarily, irrationally, and in excess of statutory authority failed to provide for FBIC’s exercise of its reserved water rights by failing to quantify the Blackfeet Tribal water rights so that allocation of the use of the Tribes’ respective Upper Milk River water rights could be identified and allocated; failed to consider the factors described in section 3705(c)(2), instead relying on other, unspecified factors; failed to recognize that the FBIC and Blackfeet Tribe both have legal rights to the Milk River natural flow from its headwaters with overlapping rights only in those Upper Milk River waters within the exterior boundaries of the Blackfeet Reservation; failed to fairly allocate and resolve use of the respective Upper Milk River water rights, instead requiring annual renegotiation; failed to recognize the FBIC’s proven, historical, present, and future PIA, instead requiring the FBIC to renegotiate its respective water demand annually; failed to examine relevant data or articulate an explanation with a rational connection between facts found and choices made; and

unlawfully diminished the FBIC's *Winters* decreed Indian water rights. Such Terms and Conditions are arbitrary and capricious, an abuse of discretion, in excess of statutory authority, and contrary to the FBIC's federal Indian water rights.

133. In implementing the Terms and Conditions, Defendants require the Blackfoot Tribe, the FBIC, and Reclamation to meet annually to "coordinate projected respective water demands." This fails to recognize or protect the FBIC's 1908 federally decreed historical and current uses of 125 cfs and its future practically irrigable acres, instead requiring the FBIC to renegotiate its respective water demand annually
134. The failure to quantify the Blackfoot Tribe's Indian water rights in the Upper Milk River so that an allocation between the Tribes of their respective uses under section 3705(e)(1) could be accomplished also violates the *Winters* Doctrine, under which the Federal Government reserves water only "to the extent needed to accomplish the purpose of the reservation." *Sturgeon v. Frost*, 587 U. S. 28, 43 (2019), *relying on* *Cappaert v. U.S.*, 426 U.S. 128, 138 (1976); and *Winters*, 207 U.S. at 576. The unquantified Milk River Indian water rights of the Blackfoot Tribe in the Terms and Conditions fails to allocate the use of such rights to any extent, much less to the extent needed to accomplish the purpose of its Reservation or to equitably accommodate the interests of each Tribe through application of the considerations incorporated in section 3705(e)(1) of the Settlement Act.
135. For these reasons, the FBIC is entitled to declaratory judgment that the Secretary violates the APA, 5 U.S.C. § 701 *et seq.*, by failing to consider the equal priority dates of the Tribes; the water supplies of the Milk River; and historical, current, and future uses identified by the FBIC in the Terms and Conditions.

136. The FBIC is also entitled to an order invalidating those portions of the Terms and Conditions applicable to it as ultra vires under 5 U.S.C. § 706(2)(B) and compelling agency action unlawfully withheld or unreasonably delayed pursuant to 5 U.S.C. § 706(1), namely compelling Defendants to comply with the statutory requirements of both § 3705(c)(2) and (e)(1) in establishing terms and conditions for the exercise of the FBIC's Indian water rights on its Reservation.

PRAYER FOR RELIEF

WHEREFORE, the FBIC prays for the following relief:

1. A declaratory judgment stating that:

- (A) The Terms and Conditions are void for failure of the Secretary to publish a statement of findings by the statutory deadline applicable to section 3723(2) without agreeing to an alternative later date “after reasonable notice to the State”; and
- (B) The United States has a treaty and trust responsibility to ensure the FBIC's Milk River Indian water rights on its Reservation in a sufficient amount to support the FBIC's quantified PIA needs required to establish a permanent and sustainable homeland with an agricultural economy for its members; and
- (C) Defendants have a statutory and trust obligation to the FBIC to provide for the exercise of FBIC's Indian water rights on its Reservation taking into consideration the equal priority dates of the FBIC and the Blackfeet Tribe; the water supplies of the Milk River; and historical, current, and future uses identified by the FBIC to be satisfied by use of its overlapping Upper Milk

River rights and to reasonably ensure that Defendants' treaty, statutory and trust obligations are met, and that the FBIC has sufficient water to irrigate the irrigable portions of its Reservation; and

(D) The Secretary has violated the APA and the Settlement Act § 3705(c)(2) and (e)(1) by failing to take into consideration the factors outlined in the Settlement Act § 3705(c)(2) and reflecting them in the establishment of the Terms and Conditions; and

(E) The Secretary's establishment of the Terms and Conditions violates the rights of the FBIC and its members under the 1855 Treaty; the Grinnell Agreement; *Winters v. United States*, 143 F. 740 (9th Cir. 1906); *Winters v. United States*, 207 U.S. 564 (1908); *Arizona v California*, 373 U.S. 546 (1963); and the Settlement Act and violates Defendants' trust responsibility to the FBIC.

2. An Order compelling Defendants to:

(A) Comply with the Settlement Act § 3705(c)(2) and (e)(1) by modifying the terms and conditions to provide for the exercise of the FBIC's Indian water rights on its Reservation taking into consideration the equal priority date; the water supplies of the Milk River; and FBIC's historical, current, and future uses to be satisfied by use of the FBIC's overlapping Milk River rights in the Upper Milk River;

(B) Comply with its treaty and trust duties to the FBIC by ensuring an equitable allocation of FBIC's water rights to irrigate the irrigable portions of its Reservation.

3. Award to the FBIC its costs, fees and expenses incurred in this lawsuit, including attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, and other applicable statutes, and under general principles of law and equity.
4. Such other and further relief as this Court may deem just and proper.

Dated: July 10, 2026.

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