

107TH CONGRESS  
1ST SESSION

# S. 934

To require the Secretary of the Interior to construct the Rocky Boy's/North Central Montana Regional Water System in the State of Montana, to offer to enter into an agreement with the Chippewa Cree Tribe to plan, design, construct, operate, maintain and replace the Rocky Boy's Rural Water System, and to provide assistance to the North Central Montana Regional Water Authority for the planning, design, and construction of the noncore system, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 22, 2001

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

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## A BILL

To require the Secretary of the Interior to construct the Rocky Boy's/North Central Montana Regional Water System in the State of Montana, to offer to enter into an agreement with the Chippewa Cree Tribe to plan, design, construct, operate, maintain and replace the Rocky Boy's Rural Water System, and to provide assistance to the North Central Montana Regional Water Authority for the planning, design, and construction of the noncore system, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Rocky Boy’s/North  
3 Central Montana Regional Water System Act of 2001”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—Congress finds that—

6 (1) the water systems serving residents of the  
7 Rocky Boy’s Reservation in the State of Montana—

8 (A) do not meet minimum health and safe-  
9 ty standards;

10 (B) pose a threat to public health and  
11 safety; and

12 (C) are inadequate to supply the water  
13 needs of the Chippewa Cree Tribe;

14 (2) the United States has a trust responsibility  
15 to ensure that adequate and safe water supplies are  
16 available to meet the economic, environmental, water  
17 supply, and public health needs of the Reservation;

18 (3) the entities administering the rural and mu-  
19 nicipal water systems in North Central Montana are  
20 having difficulty complying with regulations promul-  
21 gated under the Safe Drinking Water Act (42  
22 U.S.C. 300f et seq.); and

23 (4) Lake Elwell, near Chester, Montana, would  
24 provide the most available, reliable, and safe rural  
25 and municipal water supply for serving the needs of  
26 the Reservation and north central Montana.

1 (b) PURPOSES.—The purposes of this Act are—

2 (1) to ensure a safe and adequate rural, munic-  
3 ipal, and industrial water supply for the residents of  
4 the Rocky Boy’s Reservation in the State of Mon-  
5 tana;

6 (2) to assist the citizens residing in Chouteau,  
7 Hill, Liberty, Pondera, Teton, and Toole Counties,  
8 Montana, but outside the Reservation, in developing  
9 safe and adequate rural, municipal, and industrial  
10 water supplies;

11 (3) to require the Secretary of the Interior, act-  
12 ing through the Commissioner of Reclamation—

13 (A) to plan, design, and construct the core  
14 and noncore systems of the Rocky Boy’s/North  
15 Central Montana Regional Water System in the  
16 State of Montana; and

17 (B) to operate, maintain, and replace the  
18 core system and the on-Reservation water dis-  
19 tribution systems, including service connections  
20 to communities and individuals; and

21 (4) to require the Secretary, at the request of  
22 the Chippewa Cree Tribe, to enter into a self-govern-  
23 ance agreement with the Tribe under title IV of the  
24 Indian Self-Determination and Education Assistance  
25 Act (25 U.S.C. 458aa et seq.), under which the

1 Tribe will plan, design, construct, operate, maintain,  
2 and replace (including service connections to commu-  
3 nities and individuals)—

4 (A) the core system of the water supply  
5 system; and

6 (B) on-Reservation water distribution sys-  
7 tems.

8 **SEC. 3. DEFINITIONS.**

9 In this Act:

10 (1) **AUTHORITY.**—The term “Authority” means  
11 the North Central Montana Regional Water Author-  
12 ity established under State law to allow public agen-  
13 cies to join together to secure and provide water for  
14 resale.

15 (2) **CORE SYSTEM.**—The term “core system”  
16 means a component of the water system described in  
17 section 4(a)(5) and the study.

18 (3) **NONCORE SYSTEM.**—The term “noncore  
19 system” means the rural water system for Chouteau,  
20 Hill, Liberty, Pondera, Teton, and Toole Counties,  
21 Montana, described in section 5(c) and the study.

22 (4) **RESERVATION.**—

23 (A) **IN GENERAL.**—The term “Reserva-  
24 tion” means the Rocky Boy’s Reservation in the  
25 State.

1 (B) INCLUSIONS.—The term “Reserva-  
2 tion” includes all land and interests in land  
3 that are held in trust by the United States for  
4 the Tribe (including future additions to the  
5 Reservation).

6 (5) SECRETARY.—The term “Secretary” means  
7 the Secretary of the Interior, acting through the  
8 Commissioner of Reclamation.

9 (6) STATE.—The term “State” means the State  
10 of Montana.

11 (7) STUDY.—The term “study” means the  
12 study entitled “North Central Montana Regional  
13 Water System Planning/Environmental Report”  
14 dated May 2000 (including the needs assessment,  
15 environmental report, and feasibility level study).

16 (8) TRIBE.—The term “Tribe” means—

17 (A) the Chippewa Cree Tribe on the Res-  
18 ervation; and

19 (B) all officers, agents, and departments of  
20 the Tribe.

21 (9) WATER SYSTEM.—The term “water sys-  
22 tem” means—

23 (A) the core system; and

24 (B) on-Reservation water distribution sys-  
25 tems.

1 **SEC. 4. ROCKY BOY'S RURAL WATER SYSTEM.**

2 (a) CORE SYSTEM.—

3 (1) IN GENERAL.—The Secretary shall plan, de-  
4 sign, construct, operate, maintain, and replace the  
5 core system.

6 (2) FEDERAL SHARE.—

7 (A) PLANNING, DESIGN, AND CONSTRU-  
8 TION.—The Federal share of the cost of plan-  
9 ning, design, and construction of the core sys-  
10 tem shall be—

11 (i) 100 percent; and

12 (ii) funded through annual appropria-  
13 tions to the Bureau of Reclamation.

14 (B) OPERATION, MAINTENANCE, AND RE-  
15 PLACEMENT.—The Federal share of the cost of  
16 operation, maintenance, and replacement of the  
17 core system shall be—

18 (i) 100 percent of the Tribe's share of  
19 the total capacity of the core pipeline of  
20 the core system; and

21 (ii) funded through annual appropria-  
22 tions to the Bureau of Indian Affairs.

23 (3) NON-FEDERAL SHARE.—The non-Federal  
24 share of the cost of operation, maintenance, and re-  
25 placement of the core shall be—

1 (A) prorated according to the nontribal  
2 users' share of the total capacity of the core  
3 pipeline of the core system; and

4 (B) fully reimbursable to the Secretary.

5 (4) AGREEMENTS.—Federal funds made avail-  
6 able to carry out this subsection may be obligated  
7 and expended only in accordance with an agreement  
8 entered into under subsection (c).

9 (5) COMPONENTS.—The core system shall con-  
10 sist of—

11 (A) intake, pumping, water storage, and  
12 treatment facilities located at Tiber Reservoir,  
13 with water obtained from Lake Elwell stored  
14 behind Tiber Dam, near Chester, Montana;

15 (B) transmission pipelines, pumping sta-  
16 tions, and storage reservoirs extending from  
17 Lake Elwell near Chester, Montana, approxi-  
18 mately 60 miles east to the communities  
19 throughout the Reservation;

20 (C) appurtenant buildings and access  
21 roads;

22 (D) all property and property rights nec-  
23 essary for the facilities described in this sub-  
24 section; and

1           (E) electrical power transmission and dis-  
2           tribution facilities necessary for services to core  
3           system facilities and noncore system facilities.

4           (b) ON-RESERVATION WATER DISTRIBUTION SYS-  
5           TEMS.—

6           (1) IN GENERAL.—The Secretary shall operate,  
7           maintain, and replace the water distribution systems  
8           of the Reservation.

9           (2) FEDERAL SHARE.—The Federal share of  
10          the cost of operation, maintenance, and replacement  
11          of a water distribution system on the Reservation  
12          shall be—

13                 (A) 100 percent; and

14                 (B) funded through annual appropriations  
15          to the Bureau of Indian Affairs.

16          (3) AGREEMENTS.—Federal funds made avail-  
17          able to carry out this subsection may be obligated  
18          and expended only in accordance with an agreement  
19          entered into under subsection (c).

20          (4) COMPONENTS.—The water distribution sys-  
21          tems of the Reservation shall consist of—

22                 (A) water systems in existence on the date  
23          of enactment of this Act that may be pur-  
24          chased, improved, and repaired in accordance

1 with an agreement entered into under sub-  
2 section (c);

3 (B) water systems owned by individual  
4 members of the Tribe and other residents of the  
5 Reservation;

6 (C) any water distribution system that is  
7 upgraded to current standards, disconnected  
8 from low-quality wells, or expanded to serve in-  
9 creased demands;

10 (D) interconnections; and

11 (E) such other pipelines, pumping plants,  
12 power lines, and facilities as the Secretary de-  
13 termines to be appropriate to meet the water  
14 supply, economic, public health, and environ-  
15 mental needs of the Reservation, including  
16 water storage tanks, water lines, and other fa-  
17 cilities for the Tribe and the villages, commu-  
18 nities, and towns on the Reservation.

19 (c) AGREEMENTS.—

20 (1) IN GENERAL.—At the request of the Tribe,  
21 the Secretary shall enter into a self-governance  
22 agreement under title IV of the Indian Self-Deter-  
23 mination and Education Assistance Act (25 U.S.C.  
24 458aa et seq.) with the Tribe to, in accordance with  
25 this Act—

1 (A) plan, design, construct, operate, main-  
2 tain, and replace the core system; and

3 (B) operate, maintain, and replace on-Res-  
4 ervation water distribution systems.

5 (2) PROJECT OVERSIGHT ADMINISTRATION.—

6 The amount of Federal funds that may be used to  
7 carry out paragraph (1)(A) shall not exceed the  
8 amount that is equal to 3 percent of the total field  
9 cost budget provided in the construction budget for  
10 the core system prepared by the Tribe and approved  
11 by the Secretary for the entire project construction  
12 period.

13 (d) SERVICE AREA.—The service area of the core sys-  
14 tem shall be the Reservation and those non-tribal commu-  
15 nities and persons that are supplied with water directly  
16 from the core transmission line of the core system.

17 (e) CONSTRUCTION REQUIREMENTS.—The compo-  
18 nents of the core system shall be planned and constructed  
19 to the extent necessary to meet the municipal, rural, and  
20 industrial water supply requirements of the service area  
21 of the core system as described in the study.

22 (f) TITLE TO CORE SYSTEM.—Title to the core  
23 system—

24 (1) shall be held in trust by the United States  
25 for the Tribe; and

1           (2) shall not be transferred unless a transfer is  
2           authorized by an Act of Congress enacted after the  
3           date of enactment of this Act.

4           (g) **TECHNICAL ASSISTANCE.**—The Secretary shall  
5           provide such technical assistance as is necessary to enable  
6           the Tribe to plan, design, construct, operate, maintain,  
7           and replace the core system, including operation and man-  
8           agement training.

9           **SEC. 5. NONCORE SYSTEM.**

10          (a) **IN GENERAL.**—The Secretary shall enter into a  
11          cooperative agreement with the Authority to provide Fed-  
12          eral funds for the planning, design, and construction of  
13          the noncore system in Chouteau, Hill, Liberty, Pondera,  
14          Teton, and Toole Counties, Montana, outside the Reserva-  
15          tion.

16          (b) **FEDERAL SHARE.**—

17                (1) **PLANNING, DESIGN, AND CONSTRUCTION.**—  
18          The Federal share of the cost of planning, design,  
19          and construction of the noncore system shall be not  
20          more than 75 percent, as determined by the Sec-  
21          retary.

22                (2) **OPERATION, MAINTENANCE, AND REPLACE-**  
23          **MENT.**—The cost of operation, maintenance, and re-  
24          placement of the noncore system shall be fully reim-  
25          bursable to the Secretary.

1           (3) COOPERATIVE AGREEMENT.—Federal funds  
2           made available to carry out this section may be obli-  
3           gated and expended only in accordance with a coop-  
4           erative agreement entered into under subsection (d).

5           (c) COMPONENTS.—The components of the noncore  
6           system on which Federal funds may be obligated and ex-  
7           pended under this section shall include—

8                   (1) storage, pumping, and pipeline facilities;

9                   (2) appurtenant buildings and access roads;

10                   (3) all property and property rights necessary  
11           for the facilities described in this subsection;

12                   (4) electrical power transmission and distribu-  
13           tion facilities necessary for service to noncore system  
14           facilities;

15                   (5) planning and design services for all such fa-  
16           cilities; and

17                   (6) other facilities and services customary to  
18           the development of a rural water distribution system  
19           in the State.

20           (d) COOPERATIVE AGREEMENT.—

21                   (1) IN GENERAL.—At the request of the Chip-  
22           pewa Cree Water Resources Subcommittee, the Sec-  
23           retary shall enter into a cooperative agreement with  
24           the Authority to provide Federal assistance for the

1 planning, design, and construction of the noncore  
2 system.

3 (2) MANDATORY PROVISIONS.—The cooperative  
4 agreement under paragraph (1) shall specify, in a  
5 manner that is acceptable to the Secretary, the  
6 Tribe, and the Authority—

7 (A) the responsibilities of each party to the  
8 agreement for—

- 9 (i) the final engineering report;  
10 (ii) engineering and design;  
11 (iii) construction;  
12 (iv) water conservation measures; and  
13 (v) administration of contracts relat-  
14 ing to performance of the activities de-  
15 scribed in clauses (i) through (iv);

16 (B) the procedures and requirements for  
17 approval and acceptance of the design and con-  
18 struction and for carrying out other activities  
19 described in subparagraph (A); and

20 (C) the rights, responsibilities, and liabil-  
21 ities of each party to the agreement.

22 (3) PROJECT OVERSIGHT ADMINISTRATION.—  
23 The amount of Federal funds that may be used to  
24 carry out paragraph (1) shall not exceed the amount  
25 that is equal to 3 percent of the total field cost

1 budget provided in the construction budget for the  
2 noncore system prepared by the Authority and ap-  
3 proved by the Secretary for the entire project con-  
4 struction period.

5 (4) OVERSIGHT.—The Authority shall have  
6 oversight responsibility over the noncore system.

7 (e) SERVICE AREA.—

8 (1) IN GENERAL.—Except as provided in para-  
9 graph (2), the service area of the noncore system  
10 shall be generally defined as the area—

11 (A) north of the Missouri River and  
12 Dutton, Montana;

13 (B) south of the border between the  
14 United States and Canada;

15 (C) west of Havre, Montana; and

16 (D) east of Cut Bank, Montana.

17 (2) EXCLUSIONS FROM SERVICE AREA.—The  
18 service area of the noncore system shall not include  
19 the area inside the Reservation.

20 (f) LIMITATION ON USE OF FEDERAL FUNDS.—The  
21 operation and maintenance expenses associated with non-  
22 tribal water deliveries from the core system to the noncore  
23 system—

24 (1) shall not be a Federal responsibility; and

25 (2) shall be borne by the noncore system.

1 (g) TITLE TO NONCORE SYSTEM.—Title to the  
2 noncore system shall be held by the Authority.

3 **SEC. 6. LIMITATION ON AVAILABILITY OF CONSTRUCTION**  
4 **FUNDS.**

5 The Secretary shall not obligate funds for construc-  
6 tion of the core system or the noncore system until—

7 (1) the requirements of the National Environ-  
8 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)  
9 are met with respect to the core system and the  
10 noncore system; and

11 (2) the date that is 90 days after the date of  
12 submission to Congress of a final engineering report  
13 approved by the Secretary.

14 **SEC. 7. INTERCONNECTION CHARGES.**

15 The cost of interconnection of nontribal community  
16 water distribution systems and individual service systems  
17 to transmission lines of the core system and noncore sys-  
18 tem shall be the responsibility of the entities receiving  
19 water from the transmission lines.

20 **SEC. 8. NONDIMINISHMENT OF TIBER RESERVOIR ALLOCA-**  
21 **TION TO THE TRIBE.**

22 In providing for the delivery of water to the noncore  
23 system, the Secretary shall not diminish the 10,000 acre-  
24 feet per year of water stored for the Tribe pursuant to  
25 section 201 of the Chippewa Cree Tribe of The Rocky

1 Boy's Reservation Indian Reserved Water Rights Settle-  
2 ment and Water Supply Enhancement Act of 1999 (Public  
3 Law 106–163; 113 Stat. 1789) in Lake Elwell, Lower  
4 Marias Unit, Upper Missouri Division, Pick-Sloan Mis-  
5 souri Basin Program, Montana.

6 **SEC. 9. USE OF PICK-SLOAN POWER.**

7 (a) IN GENERAL.—The Secretary shall authorize and  
8 provide for the use of power from the Pick-Sloan Eastern  
9 Division to start up and operate the water system and the  
10 noncore system.

11 (b) RESERVATION OF POWER.—The Secretary shall  
12 reserve, and make available, for the purpose authorized  
13 by subsection (a)—

14 (1) during the irrigation season, Pick-Sloan  
15 Eastern Division power identified for future project  
16 use pumping; and

17 (2) during the nonirrigation season, Pick-Sloan  
18 Eastern Division preference power, to the extent  
19 that the power is available.

20 (c) RATE.—The rate for project use power made  
21 available under subsection (b) shall be—

22 (1) during the irrigation season, the project use  
23 pumping power rate; and

24 (2) during the nonirrigation season, the whole-  
25 sale firm power rate.

1 (d) ADDITIONAL POWER.—If power in addition to the  
2 power made available under subsection (b) is required to  
3 meet the pumping requirements of the service area of the  
4 water system and the noncore system, the Administrator  
5 of the Western Area Power Administration may purchase  
6 the necessary additional power under such terms and con-  
7 ditions as the Administrator determines to be appropriate.

8 (e) RECOVERY OF EXPENSES.—Expenses associated  
9 with power purchases under subsections (a) and (d) shall  
10 be included in the operation, maintenance, and replace-  
11 ment costs and recovered in accordance with sections  
12 4(a)(3)(B) and section 5(b)(2).

13 **SEC. 10. WATER CONSERVATION PLAN.**

14 (a) IN GENERAL.—The Tribe and the Authority shall  
15 develop a water conservation plan that contains—

16 (1) a description of water conservation objec-  
17 tives;

18 (2) a description of appropriate water conserva-  
19 tion measures; and

20 (3) a time schedule for implementing the water  
21 conservation measures to meet the water conserva-  
22 tion objectives.

23 (b) PURPOSE.—The water conservation plan under  
24 subsection (a) shall be designed to ensure that users of  
25 water from the core system, on-Reservation water dis-

1 tribution systems, and the noncore system will use the best  
2 practicable technology and management techniques to con-  
3 serve water.

4 (c) PUBLIC PARTICIPATION.—Section 210(c) of the  
5 Reclamation Reform Act of 1982 (43 U.S.C. 390jj(e))  
6 shall apply to an activity authorized under this Act.

7 **SEC. 11. WATER RIGHTS.**

8 This Act does not—

9 (1) impair the validity of or preempt any provi-  
10 sion of State water law or any interstate compact  
11 governing water;

12 (2) alter the right of any State to any appro-  
13 priated share of the water of any body of surface or  
14 ground water, whether determined by any past or  
15 future interstate compact or by any past or future  
16 legislative or final judicial allocation;

17 (3) preempt or modify any Federal or State law  
18 or interstate compact concerning water quality or  
19 disposal;

20 (4) confer on any non-Federal entity the au-  
21 thority to exercise any Federal right to the water of  
22 any stream or to any ground water resource;

23 (5) affect any right of the Tribe to water, lo-  
24 cated within or outside the external boundaries of  
25 the Reservation, based on a treaty, compact, Execu-

1       tive order, agreement, Act of Congress, aboriginal  
2       title, the decision in *Winters v. United States*, 207  
3       U.S. 564 (1908) (commonly known as the “Winters  
4       Doctrine”), or other law; or

5             (6) validate or invalidate any assertion of the  
6       existence, nonexistence, or extinguishment of any  
7       water right held or Indian water compact entered  
8       into by the Tribe or by any other Indian tribe or in-  
9       dividual Indian under Federal or State law.

10 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

11       (a) **CORE SYSTEM.**—There are authorized to be  
12 appropriated—

13             (1) \$120,000,000 for the planning, design, and  
14       construction of the core system; and

15             (2) such sums as are necessary for the oper-  
16       ation, maintenance, and replacement of the water  
17       system, including power costs of the Western Area  
18       Power Administration.

19       (b) **NONCORE SYSTEM.**—There is authorized to be  
20 appropriated \$60,000,000 for the planning, design, and  
21 construction of the noncore system.

22       (c) **COST INDEXING.**—The sums authorized to be ap-  
23 propriated under this section may be increased or de-  
24 creased by such amounts as are justified by reason of ordi-  
25 nary fluctuations in development costs incurred after July

1 1, 1997, as indicated by engineering cost indices applica-  
2 ble for the type of construction involved.

○