H.R. 795, THE "CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION INDIAN RESERVED WATER RIGHTS SETTLEMENT ACT OF 1999"

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

JULY 1, 1999, WASHINGTON, DC

Serial No. 106–41

Printed for the use of the Committee on Resources

Available via the World Wide Web: http://www.access.gpo.gov/congress/house
or
Committee address: http://www.house.gov/resources

U.S. GOVERNMENT PRINTING OFFICE

59–457 ⇆ WASHINGTON : 1999

COMMITTEE ON RESOURCES

DON YOUNG, Alaska, *Chairman*

W.J. (BILLY) TAUZIN, Louisiana
JAMES V. HANSEN, Utah
JIM SAXTON, New Jersey
ELTON GALLEGLY, California
JOHN J. DUNCAN, JR., Tennessee
JOEL HEFLEY, Colorado
JOHN T. DOOLITTLE, California
WAYNE T. GILCHREST, Maryland
KEN CALVERT, California
RICHARD W. POMBO, California
BARBARA CUBIN, Wyoming
HELEN CHENOWETH, Idaho
GEORGE P. RADANOVICH, California
WALTER B. JONES, JR., North Carolina
WILLIAM M. (MAC) THORNBERRY, Texas
CHRIS CANNON, Utah
KEVIN BRADY, Texas
JOHN PETERSON, Pennsylvania
RICK HILL, Montana
BOB SCHAFFER, Colorado
JIM GIBBONS, Nevada
MARK E. SOUDER, Indiana
GREG WALDEN, Oregon
DON SHERWOOD, Pennsylvania
ROBIN HAYES, North Carolina
MIKE SIMPSON, Idaho
THOMAS G. TANCREDO, Colorado

GEORGE MILLER, California
NICK J. RAHALL II, West Virginia
BRUCE F. VENTO, Minnesota
DALE E. KILDEE, Michigan
PETER A. DEFAZIO, Oregon
ENI F.H. FALEOMAVAEGA, American Samoa
NEIL ABERCROMBIE, Hawaii
SOLOMON P. ORTIZ, Texas
OWEN B. PICKETT, Virginia
FRANK PALLONE, JR., New Jersey
CALVIN M. DOOLEY, California
CARLOS A. ROMERO-BARCELO, Puerto Rico
ROBERT A. UNDERWOOD, Guam
PATRICK J. KENNEDY, Rhode Island
ADAM SMITH, Washington
WILLIAM D. DELAHUNT, Massachusetts
CHRIS JOHN, Louisiana
DONNA CHRISTIAN-CHRISTENSEN, Virgin Islands
RON KIND, Wisconsin
JAY INSLEE, Washington
GRACE F. NAPOLITANO, California
TOM UDALL, New Mexico
MARK UDALL, Colorado
JOSEPH CROWLEY, New York
RUSH D. HUNT, New Jersey

LLOYD A. JONES, *Chief of Staff*
ELIZABETH MEGGINSON, *Chief Counsel*
CHRISTINE KENNEDY, *Chief Clerk/Administrator*
JOHN LAWRENCE, *Democratic Staff Director*

SUBCOMMITTEE ON WATER AND POWER RESOURCES

JOHN T. DOOLITTLE, California, *Chairman*

KEN CALVERT, California
RICHARD W. POMBO, California
HELEN CHENOWETH, Idaho
GEORGE P. RADANOVICH, California
WILLIAM M. (MAC) THORNBERRY, Texas
GREG WALDEN, Oregon
MIKE SIMPSOM, Idaho

CALVIN M. DOOLEY, California
GEORGE MILLER, California
PETER A. DEFAZIO, Oregon
OWEN B. PICKETT, Virginia
ADAM SMITH, Washington
DONNA CHRISTIAN-CHRISTENSEN, Virgin Islands
GRACE F. NAPOLITANO, California

ROBERT FABER, *Staff Director/Counsel*
JOSHUA JOHNSON, *Professional Staff*
STEVE LANICH, *Minority Staff*

CONTENTS

	Page
Hearing held July 1, 1999	1
Statement of Members:	
Hill, Hon. Rick, a Representative in Congress from the State of Montana	14
Statement of Witnesses:	
Fragua, Roger, Manager, American Indian Affairs, Enron Corporation	36
Prepared statement of	39
Hayes, David J., Acting Deputy Secretary of Interior, Department of the Interior	3
Prepared statement of	3
Morsette, Jim, Director, Chippewa Cree Tribal Water Resources Department, Chippewa Cree Tribe of the Rocky Boy's Reservation	6
Prepared statement of	8
Tweeten, Chris, Chief Counsel to the Montana Attorney General, Chairman, Montana Reserved Water Rights Compact Commission	15
Prepared statement of	16

H.R. 795, THE "CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION INDIAN RESERVED WATER RIGHTS SETTLEMENT ACT OF 1999"

THURSDAY, JULY 1, 1999

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER AND POWER,
COMMITTEE ON RESOURCES,
Washington, DC.

The Subcommittee met at 11:08 a.m., in Room 1334, Longworth House Office Building; Honorable John Doolittle [chairman] presiding.

Mr. DOOLITTLE. The Subcommittee on Water and Power will come to order. We are meeting today to hear testimony concerning H.R. 795, the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999.

I do want to remind everyone we have a new system in place that places your comments worldwide on the Internet as they are made. So you may wish to remember that as you are making private comments to each other before the microphones.

Last year the Subcommittee held a legislative hearing on the Chippewa Cree Tribe of the Rocky Boy's Reservation on this precise subject, which is the first new Indian water rights settlement to come before the Congress in many years. During that hearing several significant policy issues critical to water management in the western United States were presented. These issues included:

(1) The statutory, regulatory and judicial history of implied Federal reserve water rights.

(2) State jurisdiction in the appropriation and later distribution of water.

(3) The appropriate funding mechanisms to resolve these problems.

(4) The appropriate methods for determining liability in Indian water rights settlements.

Since that hearing we have worked closely with the tribe, the State of Montana, the departments of Justice and Interior and the Senate to work through these issues. I believe that everyone involved has a genuine desire to address the fundamental need the Indian tribe has for adequate water resources.

We now believe we are close to reaching that goal and advancing the legislation. One of the most important initiatives we have been pursuing with the tribe is the opportunity to get the tribe valuable

financial advice in exercising their water rights once we approve the settlement.

It has come to our attention that the business community is interested in working with tribes to provide comprehensive water assessment, valuation and feasibility information at private sector expense.

We have worked to bring the parties together and believe this is the kind of sound advice that should be available to tribes as they look for ways to perfect and use their water rights. We encourage other tribes and private sector interests to build on this approach.

We would further encourage the Administration to work toward this type of practical approach that will allow tribes at the end of day to make real use of their water rights to meet economic development and water quality goals.

We want to express our appreciation to the tribe and to the other interested parties in making progress on these issues.

Recently we have also been pursuing language with the involved parties to create two titles in the legislation. Section 8 of H.R. 795, the Tiber water allocation, would become Title II, and sections 5 through 7 and 9 through 12 would then become Title I. The remaining miscellaneous provisions would be applicable to both titles. These changes will address water issues concerning the use of non-appurtenant water sources for the water rights settlement.

Title II, on the other hand, presents an opportunity outside of a reserved water rights settlement for the tribe to pursue use of unallocated Federal project water in Tiber Reservoir to meet some of their additional water needs.

The Rocky Boy's settlement process has been important for a number of reasons. The State of Montana and the tribe has spent a good deal of time working through the issues in a constructive fashion, taking steps to minimize the impact on other affected water users. Furthermore, there has been minimal emphasis on some of the outmoded bases for calculating these claims.

We need to look to newer, more practical approaches that find solutions which provide tribes with real opportunities without making demands that may destroy the economic livelihood of existing water users. Interior, the tribe and the state are to be commended for their approach in this case and their ongoing flexibility as we set the parameters for future Indian water rights settlements.

I look forward to hearing from our witnesses today. With that, let me ask our witnesses on the panel to rise and raise their right hands.

[Witnesses sworn.]

Mr. DOOLITTLE. Let the record reflect that each answers in the affirmative. Please be seated. We appreciate your being here.

We will begin with hearing testimony from our acting deputy secretary of Interior, Mr. David Hayes, who has rearranged his vacation plans or maybe curtailed his vacation plans to actually be here today to testify. I can't help but observe that Mr. Hayes has been, I feel, a very positive force in helping us bring resolution to these matters. I appreciate your being here, Mr. Hayes. You are now recognized for your statement.

STATEMENT OF DAVID J. HAYES, ACTING DEPUTY SECRETARY OF INTERIOR, DEPARTMENT OF THE INTERIOR

Mr. HAYES. Thank you, Mr. Chairman. I appreciate those words. Let me say at the outset that I appreciate your leadership on this issue, Mr. Chairman, and also that your counsel Bob Faber has been an excellent individual to work with on this as well as the rest of his staff. We think the dialogue that we have had over the past several months has been extremely productive in the best sense of the bipartisanship that we are trying to bring to this issue. I wanted to state that for the record.

Mr. DOOLITTLE. Thank you.

Mr. HAYES. I will be brief, Mr. Chairman. I have a written statement that I request be put in the record. I will only make three brief points here this morning in supplement of my written statement.

First, I would like to emphasize, as your opening statement did, Mr. Chairman, that this western water settlement is a product of a state and tribal-led negotiation process. This is a grassroots led effort from the State of Montana, and that is as it should be. We in the Federal Government very much want to see western water settlements that are framed and negotiated by the real parties and interests on the state level, in this case the State of Montana and its citizens, including the Chippewa Cree Tribe of the Rocky Boy's Reservation.

We believe it is important that the Administration and the Congress respect and implement the accommodations reached by the local, state, Federal, and tribal parties, and we are here to offer our support for what they have done.

Second, the Administration believes that the Federal financial contribution to this water settlement is appropriate and is targeted to the specific needs and rights of the Chippewa Cree Tribe. In particular, Federal funds will be used to enhance on-reservation water supplies, thereby enabling the tribe to stretch its meager water supplies, give it more flexibility, and at the same time protect the interests of downstream non-Indian water users.

Finally, I would like to say that as the trustee to the tribe, the United States has a responsibility to help make the settlement a reality, and we want to do whatever we can to that end. As you well know, north central Montana is a water short area. Farming and ranching are the key economic activities for the tribe, and water is an essential ingredient for the tribe's livelihood.

I will close by just saying that after many years of efforts this legislation has emerged from the grassroots, from the state and local interests, including the tribe, with the help of the local, regional Federal team, and we are excited and hopeful that it can become law with your help, Mr. Chairman. Thank you.

[The prepared statement of Mr. Hayes follows:]

STATEMENT OF DAVID J. HAYES, ACTING DEPUTY SECRETARY OF THE INTERIOR

Good morning Mr. Chairman and members of the Committee. I am David J. Hayes, Acting Deputy Secretary of the Interior. It is my pleasure to be here today to testify on behalf of the Administration in support of H.R. 795. This bill represents the successful culmination of over eight years of negotiation among the United States, the State of Montana and the Chippewa Cree Tribe of the Rocky Boy's Reservation over water rights disputes being litigated in the case entitled, *In the Matter*

of the Adjudication of All Rights to the Use of Water, Both Surface and Underground, within the State of Montana. It represents a true partnership among Federal, State and Tribal interests. Through a great deal of hard work, the parties have forged a water rights settlement that satisfies Tribal rights and needs, while also taking into account the rights and needs of non-Indian neighbors, and enabling all affected Montanans to plan for the future with confidence and certainty. As you know, similar legislation to ratify this agreement was introduced in both the Senate and the House last year. However, a packed legislative calendar and a few eleventh-hour hurdles prevented the legislation from moving. We have worked closely with the State and the Tribe to address the questions that have come from the Hill and, believing that the concerns voiced have been satisfied, we are again here before this Committee seeking your support for this important legislation.

The Rocky Boy's Reservation, located in North Central Montana, consists of approximately 110,000 acres and includes several tributaries of the Milk River. The average annual water supply on the Reservation is limited by hydrological delivery constraints and inadequate storage infrastructure. The Tribe has over 3,500 enrolled members and a population growth rate well above the typical rate for tribes of 3 percent. Tribal unemployment averages around 60-70 percent in an economy based primarily on agriculture, including raising livestock. Existing Reservation water use includes irrigation, livestock consumption, wildlife and recreational use, and municipal and industrial uses. The Tribe's municipal water is derived from 12 community wells and approximately 240 individual wells. A majority of the domestic wells suffer from low production due to aquifer overdraft or improper siting. In addition, groundwater contamination from hydrogen sulfide, iron and manganese contributes to well casing corrosion and makes the water very unpleasant to drink or use for other domestic needs.

Since the Tribal economy is heavily based on livestock and hay is the principal crop grown using irrigation, the Tribe's goal is to maintain, or perhaps slightly increase, the current level of irrigated agriculture on the Reservation in order to avoid having to purchase supplemental livestock forage on a regular basis. Without enhanced on-Reservation storage and other infrastructure improvements, experts calculate that, within 20 to 40 years, the Tribe will be unable both to maintain its modest agricultural base and meet the domestic water needs of its rapidly growing population.

The United States, the State and the Tribe struggled for many years to find an immediate solution to the problem of an inadequate Reservation water supply. For a time, the Tribe viewed the only solution to be the importation of water from the Tiber Reservoir, a Bureau of Reclamation facility some 50 miles from the Reservation. In this context, the water would have been delivered to the Tribe as part of a combined Indian/Non-Indian system. This system would have been very expensive and would have required an extensive Federal subsidy. Moreover, this system would have cost the Federal Government far more than it could reasonably be expected to pay to settle the Tribe's water rights. Rather than pursue this expensive regional water system, the parties decided to focus on developing existing Reservation water supplies and setting aside funds that will be available for use in a future plan to supplement on-Reservation water supplies. This is the approach that has been adopted in H.R. 795.

Under the terms of H.R. 795, Congress would approve, and authorize participation in, a Water Rights Compact entered into by the Tribe and the State. The Compact was enacted into Montana law on April 14, 1997, and recognizes the Tribe's right to approximately 10,000 acre-feet of water on the Reservation. In order to enable the Tribe to exercise its on-Reservation water right, the United States would contribute $24 million for four specific on-Reservation water development projects and additional funds of no more than $1 million to cover Bureau of Reclamation (BOR) administrative costs associated with these construction activities. First and foremost among the projects is the repair and enlargement of Bonneau Reservoir, a facility that has ranked in the top ten of the Department's ranking list of most dangerous dams. Other projects include repair and enlargement of several smaller on-Reservation irrigation and recreational dams, including East Fork, Brown's and Towe's Pond dams.

H.R. 795 also addresses the Tribe's future water needs by providing the Tribe with the right to an additional 10,000 AF of water stored in Tiber Reservoir. This allocation is only a small percentage of the 967,319 acre feet of water stored in Tiber Reservoir and will not impact on any other use of the Reservoir. The Department has carefully considered the impact of the allocation on the reserved water rights of other Indian tribes and has concluded that such rights will not be negatively affected.

It is important to note that by making the Tiber Reservoir allocation, the United States is not undertaking any obligation to deliver water to the Reservation. Section 8(d) of the bill expressly provides that the United States shall have no responsibility or obligation to deliver the Tiber allocation or any other supplemental water to the Reservation.

Nonetheless, in order to assist the Tribe when the time comes that it needs additional on-Reservation water supplies, H.R. 795 provides that the United States will set aside $15 million in trust toward the planning, design, construction, operation, maintenance and rehabilitation of a future Reservation water supply system. In addition, the bill authorizes BOR feasibility studies totaling $4 million to explore alternative methods of augmenting the Rocky Boy's Reservation water supply, as well as analyzing region-wide Milk River water availability and enhancement opportunities. One particular alternative that will be studied will be the feasibility of releasing the Tribe's proposed Tiber Reservoir allocation into the Missouri River for later diversion into a treatment and delivery system for the Reservation. We are hopeful that this alternative or others identified by the BOR studies will prove to be more realistic and reasonable solutions than an expensive rural water supply system centered upon a pipeline from Tiber Reservoir. The BOR studies should provide an in-depth understanding of the Milk River Basin water supply, its potential and limitations, that will be of valuable assistance to the United States, the State of Montana and Montana Indian tribes in our efforts to address Indian water rights disputes. The studies will address, as well, some of the water supply problems facing many small North Central Montana communities.

Other components of the Chippewa Cree settlement include a $3 million Tribal Compact Administration fund to help defray the Tribe's Compact participation costs and a modest $3 million Tribal Economic Development fund to assist the Tribe in putting its water to use.

The total Federal contribution to the settlement is $50 million. We believe that this expenditure is appropriate and justified. The Tribe has presented the United States with a legal analysis setting forth a substantial damages claim against the United States. The Department of Justice and the Department of the Interior have analyzed the claim and concluded that settlement is appropriate. In addition to releasing the United States from damage claims, the settlement also will relieve the United States of the obligation to litigate, at significant cost and over many years, the Tribe's water rights. The certainty secured by the settlement is, in fact, its central feature. By resolving the Tribe's water rights, all of the citizens of this area of the State of Montana will be able to plan and make investments for the future with the assurance that they have secure and stable water rights.

Like other Indian water rights settlements, the benefits to accrue to the Tribe and other settlement parties will be available only after a final water rights decree is issued by the appropriate court. We expect that the process of entering and gaining final approval of the decree will take approximately eighteen months to two years. As motivation to keep the court approval process moving, the settlement parties have established a three year deadline for finalization of the decree. The Department of the Interior is committed to advancing the court process and other settlement implementation tasks as expeditiously as possible in order to avoid having to seek Congressional relief from the settlement deadline. The Chippewa Cree Tribe has waited many years to see its water rights become a reality and we do not want to see that wait prolonged any more than is absolutely necessary.

As I mentioned at the beginning of my statement, legislation to ratify this settlement was introduced last year, but was not passed. As the State and the Tribe will testify, this settlement is broadly supported within Montana, particularly by Governor Racicot and the State Legislature, who are on record as strongly supporting the settlement. Moreover, appreciating the value and importance of such agreements, the Western Governors Association passed a resolution (98-029, June 30, 1998) reiterating its support for negotiated settlements of Indian land and water claims, lauding recent progress, adding that "the need to resolve these disputes and redress tribal grievances [through settlements] is critical."

H.R. 795 presents an opportunity for the United States to ratify its first Western water settlement since the early 1990's and the Administration strongly supports this bill. I hope that the members of this Committee also will support this non-controversial settlement and that you will encourage swift passage of the legislation before you.

I will be happy to answer any questions you may have.

DAVID J. HAYES, ACTING DEPUTY SECRETARY, DEPARTMEENT OF THE INTERIOR

David J. Hayes is the Acting Deputy Secretary of the Interior, He is serving as the Deputy Secretary in an Acting capacity pending his confirmation by the United States Senate.

As the Acting Deputy Secretary, Mr. Hayes is the second in command at Interior. He is responsible for assisting Secretary Babbitt in supervising and administering the Department's bureaus and offices, including the National Park Service, the U.S. Fish & Wildlife Service, the Bureau of Reclamation, the U.S. Geological Survey, the Bureau of Indian Affairs, the Bureau of Land Management, and the Minerals Management Service. The Department has a total of approximately 70,000 employees, and an annual budget of approximately $8 billion dollars.

Mr. Hayes also has responsibility for addressing legal and policy issues of special importance to the Department. By way of example, Mr. Hayes led the Interior team that acquired the Headwaters old-growth redwood forest in Northern California. He also is leading Interior initiatives related to the Lower Colorado River (including Southern California, Nevada and Arizona water supply issues), salmon recovery, hydropower regulation, Indian water rights matters and a number of eco-system projects, including the Salton Sea (CA), Trinity River (CA), Walker Lake (NV), and others.

Before entering the Administration in early 1997, Mr. Hayes practiced law for nearly twenty years in the environmental and natural resources field. Immediately prior to his Federal service, he was a partner in the Washington, D.C. office of the national law firm of Latham & Watkins where he chaired the office's Environmental Department. Mr. Hayes is a former Chairman of the Board of the Environmental Law Institute, a non-profit research and publication center for environmental law and management professionals.

Mr. Hayes received an A.B. from the University of Notre Dame in 1975, summa cum laude, and a J.D. from Stanford Law School in 1978. He clerked for Judge William Jones and Judge Louis Oberdorfer on the United States District Court for the District of Columbia, He lives in Arlington, Virginia with his wife, Elizabeth, and their three children.

Mr. DOOLITTLE. Thank you.

Our next witness is Mr. Jim Morsette, Director of the Chippewa Cree Tribal Water Resources Department within the Chippewa Cree Tribe of the Rocky Boy's Reservation. Mr. Morsette.

STATEMENT OF JIM MORSETTE, DIRECTOR, CHIPPEWA CREE TRIBAL WATER RESOURCES DEPARTMENT, CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION

Mr. MORSETTE. Good morning, Mr. Chairman. Mr. Chairman, Representative Rick Hill, I bring you greetings from Rocky Boy, Montana and invite you to come back to visit our reservation. It's a unique reservation located in the Bear Paw Mountains. We would appreciate it if you would come back and just see how the Chippewa Cree live.

I would like to introduce our Tribal Chairman in the audience, Mr. Bert Corcoran, and staff sitting behind me, Mr. Dan Belcourt, our staff attorney, and our water attorney, Mrs. Yvonne Knight, sitting directly behind me.

I have detailed written testimony from the tribe that I would like to submit for the record.

I would like to start out by, first of all, thanking the Creator, thanking our God for allowing me to be here and for the many blessings that our Creator has given me in my personal life and my family. I would like to offer some prayers to the Chairman of the Committee, Mr. Hill, and the people you represent, everyone sitting in this room. The prayers that we need around the world today. I would like to say that our belief in the Creator founded our reservation.

Our tribal people, the elders, have wandered around. We were unable to accept some of the treaty conditions that were laid out in the early 1800s, for whatever reasons. I'm not really privy to that, but our people wandered for years trying to find a homeland.

In 1916 Congress granted the Chippewa Cree Tribal Homeland. That was all part of the Assiniboine military reservation. What we wanted was a place to live, practice our way of life, and to raise a family, and we wanted to be able to do that in a home where we could say "this is our land," and we wanted to be able to provide for the economic future of our people and raise them accordingly.

We found that in Rocky Boy's, but as time went on we became more populous. It was never suitable for us to be sustainable. We don't have enough water in that region, and by this agreement that we worked out with our neighbors we satisfied all our neighbors. We satisfied our neighbors and the tribe's needs.

What we began as a pursuit years ago we are finally seeing as a reality. Hopefully today we have come to realize that we do have a homeland now for the Chippewa Cree Tribe that we can call home and practice our culture and raise our children.

This has been a long struggle for us. We started this process in 1989. Our Tribal Council appointed a water rights negotiating committee, and we had a very sacred pipe ceremony where we sat down in the floor of our chambers and said this is a spiritual journey; what we are dealing with is the sacredness of water, the essence of all life. Without water there is no life. We came to understand that and we want to share what we call a resource today not only with our neighbors and our own tribal members, but with the animals we need for our livelihood. For everything that it takes to live this water is that life.

I might add that the chairman of our committee, my immediate boss, is a sundance maker. As we speak, he is in fasting right now. We have our annual sundance with a fast up to four days without water, without food. So that is what he is doing right now. It is to give reverence to this gift that we have, this water, this life that we have that we are talking about today.

So we don't take this lightly. This is a big journey that we are on. This is probably the most important venture I've had in my life that I have committed myself to, bringing water to our Chippewa Cree people and the surrounding community so we could live together and raise our families.

That is what we are here for today. All the technical things that we have are written in our testimony. I would want to share that with you and bring to the Committee about how we feel and reverence that we have for this issue that we talked about today.

In our settlement we have enough water. We have approximately 20,000 acre-feet that comes off of Rocky Boy, and we took 10,000 acre-feet of that to satisfy some of our storage rights, storage facilities, so we could irrigate, so we could have recreation, so we can have fisheries.

The other 10,000 acre-feet is from Tiber Reservoir. We have enough funds to build these facilities, enough money in there to satisfy the implementation of the compact. It's a package deal that we feel we worked out with the United States Government, with

the State of Montana, including the county commissioners, the local ranchers, and we think we have done it for everyone's benefit.

I will answer any questions you might have, and I want to thank you for the opportunity to testify.

Mr. DOOLITTLE. Thank you very much.

[The prepared statement of Mr. Morsette follows:]

STATEMENT OF JIM MORSETTE, DIRECTOR OF THE CHIPPEWA CREE TRIBAL WATER RESOURCES DEPARTMENT ON BEHALF OF THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION

Chairman Doolittle and Honorable Members of the Committee:

My name is Jim Morsette. I am the Director of the Water Resources Department of the Chippewa Cree Tribe of the Rocky Boy's Reservation. I am here to testify on behalf of the Tribe in support of H.R. 795 entitled "The Chippewa Cree Tribe of the Rocky Boys Reservation Indian Reserved Water Rights Settlement Act of 1999." I am accompanied today by the Chairman of the Tribe, Bert Corcoran, and the Tribe's attorneys. Thank you for the opportunity to testify in favor of H.R. 795. I submit, for the record, the Tribe's detailed written testimony. I would also like to take this opportunity to express the Tribe's great appreciation to Representative Rick Hill and his staff, especially Rob Hobart, and to the Chairman of this Subcommittee, Representative John Doolittle, and the staff of this Subcommittee, especially Robert Faber and Josh Johnson, for their hard work and diligence in moving this bill forward.

H.R. 795 represents a milestone of momentous significance in the century-long struggle of the Chippewa Cree people to secure a viable self-sustaining tribal homeland. The bill and the Water Rights Settlement Compact, which the bill ratifies, are the culmination of 16 years of technical and legal research, and negotiation, among the Tribe, the State of Montana, and the Administration. This bill and the Compact signal a turning point in the Chippewa Cree Tribe's history, for these documents set the foundation for the realization of the Tribe's vision of the Rocky Boy's Reservation as a self-sustaining homeland for the Chippewa Cree people. The Tribe has been working toward this end since well before 1916 when the United States set aside the Rocky Boys Reservation for the Chippewa Cree people. Implementation of the bill and the Compact will provide the Tribe with the elements needed to successfully develop the Tribe's economy—a long-term water supply sufficient for drinking and agriculture, and funds to put this water to use. The bill and Compact also represent the fulfillment of the trust obligation of the United States to the Chippewa Cree Tribe to provide the Tribe with sufficient water to enable the Tribe to develop its Reservation into a self-sustaining homeland for the Chippewa Cree people.

1. HISTORY OF THE TRIBE'S EFFORTS TO SECURE A VIABLE HOMELAND

A. THE LONG ROAD TO ESTABLISHMENT OF A RESERVATION

As early as 1893, our forefathers were petitioning the United States to set aside a reservation for the Chippewa Cree people in Montana, who were attempting to live and work in northern Montana as their ancestors had for centuries before them. Being without a federally set aside land base, they became known as and referred to in Montana as the "landless" Indians. The Chippewa Chief Rocky Boy and the Cree Chief Little Bear led these early efforts of our people to secure a permanent tribal homeland in Montana. In 1902, a petition by the Chippewa Cree to President Theodore Roosevelt finally prompted Federal efforts to establish a reservation in Montana. Those efforts were ineffectual until Federal land became available with the abandonment of the Fort Assiniboine military reserve in 1911. Chief Rocky Boy, in a letter on June 14, 1915, pleaded with Congress to set aside for the Tribe the northern portion of the military reserve which had the better land and greatest volume of water.

> I and my people are anxious to have a home; to settle down and become self-supporting. Other tribes have their own land and homes; we are homeless wanderers. We are anxious to learn to farm, and if given land that can be farmed and which will be our own, we will soon be self-supporting.

Regarding the pending legislation to divide up the military reserve land between the Tribe and the local non-Indian community, Superintendent Jewell Martin, whose duties included the supervision of Rocky Boy's band, said predictably:

> If they should pass the bill giving only the two south townships we will still have the Rocky Boy problem, as they will still have no home.

In 1916, Congress enacted a law setting aside the Rocky Boys Reservation for the Chippewa Cree Indians on little more than two townships, about 55,000 acres, in the least productive southern portion of the abandoned military reserve. About 450 Chippewa Cree people settled on this Reservation. Consequently, the Reservation from the beginning did not contain adequate water or land to sustain the Tribe. The part of the military reserve that contained the best land and the most water was granted by Congress to the local non-Indian community for a recreational and sportsmen's park.

B. A WATER-SHORT RESERVATION

From the very beginning, the United States recognized that the 1916 Reservation lacked sufficient land and water to make the Reservation a viable homeland for the Chippewa Cree Tribe. The Chippewa Cree tried to farm their Reservation, which was described in Federal Annual Reports as "rough, dry unsettled section of old military reserve" and "not suited to farming." These reports, from 1918 through the 1930's, were replete with statements that the Reservation was not suited to farming, and that irrigation was difficult or not possible and more water was needed. They said farming would not lead to self-sufficiency; stock raising was felt to be the only feasible activity, provided enough winter feed was available. These reports provide a litany of crop failures due to drought, short season, lack of equipment and horses, and a picture of dogged perseverance against these formidable odds.

Irrigation was essential to stock-raising as well. The 1937 Federal Extension Report stated that, besides being the sixth consecutive year of near complete crop failure:

> The cattle industry received a severe blow this year when no feed was produced to carry the stock through the winter. The breeding stock was culled very closely and approximately 50 percent of them were put on the market. Three hundred fifty-six selected cows and one hundred thirty-eight steer calves were shipped to Dixon, Montana, for winter feeding. Thirty bulls and three milk cows are the only Indian cattle remaining on the reservation. The livestock men were very discouraged.

Commissioner Collier lamented that the Reservation was "entirely inadequate for the needs of the Indians for whose benefit it was set aside . . ." Due to the prevailing unfavorable crop and livestock conditions, and the lack of irrigable land and water, the Indians and the United States began to look for ways to enlarge the Reservation. During subsequent years, various Federal efforts to obtain additional land and water for the Tribe and to develop the Tribe's agricultural projects were undertaken. However, these efforts largely failed because of poor planning and implementation by the Federal Government, and because of the legal uncertainty over the nature and scope of the Tribe's water rights.

C. INEFFECTUAL FEDERAL EFFORTS TO SECURE SUFFICIENT WATER FOR THE RESERVATION

1. Poor Federal Land Purchase Decisions

In the 1930's and 1940's the United States purchased land for the Rocky Boy's Reservation, adding approximately forty-five thousand (45,000) acres to the Reservation. Unfortunately, the additional lands did little to alleviate the Reservation's problems. The lands acquired were scattered, of poor quality, and were without significant water resources. The Chippewa Cree still could not raise enough crops or feed for stock to meaningfully improve reservation conditions. The United States recognized the Reservation was still wholly inadequate as a self-sustaining homeland. This is evidenced by the government's 1938 Land Acquisition Plan for the Rocky Boy's Reservation which planned for a reservation of more than 800,000 acres with access to the Milk River Irrigation system—a plan which was never implemented.

In the 1930's, the United States took options for the Chippewa Cree Indians on approximately 30,000 acres, under the submarginal land program. The intent of this program was to take submarginal land out of commercial farm production forever. The program was ill-suited to the Chippewa Cree's needs; the government's ill-advised decision to utilize the program as a way to obtain more lands for Indians was made worse by the poor land selections made, when better lands were available. The government planned to carve up the submarginal lands into subsistence farms for the Indians. But without water or sufficient irrigable land, even subsistence farming could not succeed. Before the purchases could be completed, funding for the submarginal land program fell through and the options were transferred to the Indian Reorganization Act, which allowed for purchases of lands to be added to reservations.

The Indian Reorganization Act did not require the purchase of submarginal lands. Nevertheless, rather than identifying lands better suited to the Indian's needs,

against the recommendations of the Reservation Superintendent, and over the objections of the Indians and government personnel, the Indian Office accepted wholesale the badly scattered options taken under the submarginal land program.

Subsequent purchases were an effort to consolidate the scattered purchases to simplify fencing and alleviate jurisdictional problems. Even less attention was given to obtaining irrigable lands with water rights. In fact, good sources of water were sold or traded away in efforts to consolidate purchased land through land and lease exchanges.

2. Failure to Obtain and Develop Adequate Water and Land for the Tribe

In 1937, the United States developed a greatly detailed land purchase plan, which was said to be the result of the collaboration of all units of the Indian Service, and endorsed by the Tribe. Even without consideration for a normal population increase, the plan called for the purchase of an additional 660,000 acres, including 16,000 acres of irrigated land, at a cost of $5,040,000, to serve the then-existing Reservation population of 150 families and 400 eligible homeless families. The purchase area took in part of, and was intended to benefit from, the Milk River Irrigation System. While never followed, this plan has apparently never been discarded.

From the beginning, the United States recognized that water for irrigation was needed, but did little to obtain it. The supervising engineer investigated Indian water rights and reported in 1926 that Indian rights were doubtful because of the late date of the Reservation, and that diversions by Indians from creeks should not be encouraged. The United States did not make a determination as to whether this was legally correct; instead the United States deferred continually to non-Indian interests. Thus, no irrigation project was ever built or utilized at the Rocky Boy's Reservation.

3. Failure to Provide the Tribe with a Self-Sustaining Tribal Homeland

The United States' mismanagement of tribal resources on the Reservation was at great expense to the Tribe. Poor land purchase decisions provide the most egregious example. While more suitable lands were available, purchased lands either lacked usable water rights or lacked the quality to support irrigation development. A key example is the existing Bonneau Dam. This facility could have easily been designed and constructed, at a reasonable cost, at a greater storage capacity that could have been utilized to adequately irrigate the Tribe's cropland. Instead the impoundment was built at 25 percent of the needed capacity. As a result, the Tribal irrigation project has continuously suffered from water shortages due to lack of required supplemental storage water. Yet another example is the chronic past under-performance of the Tribe's agricultural lands due, among other things, to lack of training, equipment and water for irrigation. In addition, thousands of acres of purchased lands were never farmed. The Tribe has suffered and continues to suffer tremendously, financially and otherwise from the United States' historic mismanagement of its resources.

The Federal Government's efforts to secure land and water for the Tribe diminished over the years. However, the Tribe never ceased to press forward in its quest for a viable permanent homeland—a critical goal being to secure rights to sufficient water for its people and its economy.

II. THE CHIPPEWA CREE TRIBE'S NEED FOR WATER

Presently, the Rocky Boy's Reservation occupies about 125,000 acres (see attached map of the Reservation and its drainage's). The Reservation has never been allotted, and all land is held in trust by the United States for the Chippewa Cree Tribe. The present population on the Rocky Boy's Reservation is about 3,500. The population is expected to increase at an average annual growth rate of at least 3 percent. Unemployment on the Reservation is at least 70 percent. The annual per capita income of a tribal member on the Reservation is $4,278 as compared to $14,420 for the nation as a whole (based on 1989 dollars). The percentage of tribal members who live below the poverty level is significantly higher than that of the general population in the United States.

The current water supply systems on the Reservation were designed by the Indian Health Service (IHS) with an average day rate of 60 gallons per capita per day (GPCPD). This is significantly below the current Montana average municipal use rate of 200 GPCPD. It is estimated that only 1,400 out of 3,500 Tribal people are connected to the existing system. As such, the primary sources of domestic water are well systems. Unfortunately, many private Chippewa Cree homes on the Reservation are using wells that provide poor quality water of limited quantity. Some of these localized sources are contaminated. These individuals, when possible, must be hooked up to the municipal system.

The availability of water for domestic and municipal purposes is a major concern. There is great difficulty in developing reliable wells from the groundwater aquifers. The quantity of water from the shallow aquifers on the Reservation is not sufficient for sustained domestic use. The quality of water from deeper aquifers is not suitable for domestic use, although such water may have some use in the future for certain industrial purposes. The IHS acknowledges that long-term future water supplies must come from imported sources of supply.

Wastewater treatment on the Reservation is provided by either individual septic systems or by community lagoon systems that are marginally effective under the current conditions. Because many of the Tribal wells are located in close proximity to these wastewater systems and to stock grazing areas, there is a continuing threat to the water supply from bacterial and viral contamination. Before a chlorination unit was added to the current Rocky Boy Rural Water System (System) in March, 1992, boil orders were occasionally imposed on water from the System due to contamination of one of the system wells. As the population continues to increase at a relatively rapid pace, improvements to the wastewater collection and treatment facilities will be needed to protect existing ground and surface water needs.

Current use, even at the limited IHS per capita usage level, basically utilizes all of the available developable potable groundwater supply on the Reservation. There is little potential for expanding the existing well systems. Present demands, if based on the Montana average usage rate of 200 GPCPD, cannot be met by either the well field supply or the capacity of the existing delivery system infrastructure. Supply is not available to serve the existing population on the Reservation, much less future water requirements, as demand increases by 243 percent in the year 2025 and 438 percent in 2045.

H.R. 795 provides funds to enlarge the Bonneau Dam and Reservoir as well as other minor storage facilities. The Tribe plans to use the water from the increased storage in Bonneau Reservoir to meet their current irrigation water storage needs and to increase agricultural development on the Reservation. However, even storage water from an enlarged Bonneau Reservoir was to be used to supply drinking water, at the expense of the Tribe's agricultural economy, the water would be sufficient only until the year 2025. If per capita use increases to target levels, then water supply could run out as early as 2016.

Presently, there are a maximum of approximately 1,100 acres of actively irrigated land on the Reservation utilizing about 2,000 acre-feet/year (AFY) of water. This acreage includes about 650 acres served by Box Elder Creek and about 450 acres served by Gravel Coulee and groundwater. Even this limited acreage does not receive a full water supply in one out of two years, requiring use of cropping patterns that include early season water use crops such as barley and wheat. In most years, considerably less than this noted acreage base is irrigated. The settlement contemplates the expansion of the Tribal irrigation base from 1,100 to 2,500 acres through the enlargement of two on-Reservation reservoirs, Bonneau Reservoir and Towe Ponds. The Compact provides the Tribe with approximately 7,700 AFY from direct flow, storage, and groundwater from Big Sandy and Box Elder Creeks to serve the expanded Tribal irrigation base. It should be noted that the good quality storage water in an enlarged Bonneau reservoir must be mixed with the poor quality Missouri Ancestral Channel groundwater resources or the groundwater supplies cannot be utilized. Without the programmed 1915 acre-feet of groundwater, less than 2,000 acres of land can be irrigated. If an enlarged Bonneau Reservoir water supply is dedicated to municipal uses, then the groundwater resources allocated for use by the Tribe in the Compact for irrigation are lost. This affects about 20 percent of the Tribe's local water rights negotiated under the Compact.

Clearly, a dependable source of high quality water is needed to enable the Tribe to achieve an adequate standard of living and quality of life. An adequate supply of water is the cornerstone of economic development on the Reservation. Without an adequate supply of good quality water, the Tribe can never achieve its long-standing goal of economic self-sufficiency.

III. SETTLEMENT OF THE CHIPPEWA CREE WATER RIGHTS CLAIMS—THE COMPACT AND THE CONGRESSIONAL ACT.

The Tribe's best opportunity to obtain an adequate water supply for its current and future needs began in 1982 when the United States filed water rights claims for the Tribe in Montana water court. Subsequently, the United States, the Tribe and the State of Montana entered into negotiations to settle the Tribe's water rights claims. The Tribe constructed a water rights settlement plan to further the ultimate goal of making the Rocky Boy's Reservation, a self-sustaining homeland. The settlement plan consists of four main elements: (1) quantification of on-Reservation water and establishment of a water administration program; (2) supplementation of the

on-Reservation drinking water supply to meet future population needs; (3) construction of on-Reservation facilities to deliver drinking and irrigation water; and (4) compensation for Federal failure to protect the Tribe's water rights followed by Tribal release of claims against the Federal Government for such breach of trust. The Tribe's settlement plan would require negotiation of a Compact with the State of Montana settling issues of quantification and administration of on-Reservation water supplies. The plan would require enactment of the bill before you today to ratify the Compact, provide a source of water to supplement the short water supply on the Reservation, authorize the construction of an on-Reservation distribution and irrigation system, and provide an economic development fund.

A. THE CHIPPEWA CREE–MONTANA COMPACT

In 1982, pursuant to state law, the Federal Government filed water rights claims in Montana water court for the Chippewa Cree Tribe. The Tribe then notified the State of Montana that the Tribe wished to negotiate a settlement of its water rights claims. At that point, the State water court stayed proceedings on the Tribe's claims pending settlement negotiations involving the Tribe, the State and the United States. The Tribe then commenced the formidable task of negotiating a compact with the State of Montana and the United States which settles its water rights claims.

On April 14, 1997, after 10 years of extensive technical studies and five years of intensive negotiations, the Chairman of the Chippewa Cree Tribe and the Governor of Montana signed an historic water rights compact between the two governments. The Chippewa Cree–Montana Compact accomplished the first element of the Tribe's settlement plan—it quantifies the Tribes water rights and establishes a joint Tribe/State water administration system. The Compact was ratified by the Tribe on February 21, 1997 and was approved by the Montana Legislature on April 10, 1997. The Chippewa Cree Tribe thus became the third tribe in Montana, after the Northern Cheyenne Tribe and the Assiniboine & Sioux Tribes of the Fort Peck Reservation, to agree to a water rights compact with the State. However, with few exceptions, all provisions of the Compact are subject to approval by the United States Congress.

The Compact establishes the Tribe's water rights to the Big Sandy, Box Elder, and Beaver Creeks on the Reservation, and contemplates tribal rights to supplemental water for drinking. The Compact provides for 9,260 AFY from the Big Sandy Creek and its tributaries, and 740 AFY from Beaver Creek. The Tribe reserves the right to divert from surface water flows for irrigation and other uses from the Lower Big Sandy Creek, Gravel Coulee, and from Box Elder Creek. Additional water for irrigation provided by the Compact will enable the Tribe to expand its irrigation base from 1,100 acres to 2,500 acres. On Beaver Creek, the Tribe reserves the right to divert from surface water flows for recreational uses, subject to a requirement that 280 acre-feet be returned to the stream. The Compact does not address broad issues of jurisdiction over water quality. The Compact does address specific water quality concerns raised by non-Indian water users in provisions that provide (1) for Tribal releases of reservoir water for water quality maintenance on Lower Big Sandy Creek for downstream stock watering purposes (Article IV.B. 1. c&d.), and (2) for the establishment of a joint Tribal/State system for monitoring salinity levels of surface and groundwater associated with the contemplated enlargement of Towe Ponds (Article IV.B.2.b.).

The Compact also calls for Tribal administration of its water rights. The Compact specifies that any change in water use must be without adverse effect on other water users. To resolve disputes concerning water use between Tribal and non-tribal water users under the Compact, a pre-adjudication Tribal/State administrative process is established, and an adjudicatory process is established consisting of a Compact Board made up of three members: one Tribal, one local off-Reservation, and one chosen by the other two.

The Administration, while supportive of the quantification aspects of the Compact, declined to sign the Compact for the United States primarily because the issue of a supplemental water supply for the Tribe had not been resolved. With the signing of the Compact, Congressional legislation became the next step. This necessarily involved continuing negotiations with the Administration to obtain its support.

B. CONGRESSIONAL ACTION IS NEEDED TO RATIFY THE COMPACT, PROVIDE ADDITIONAL SOURCES OF WATER FOR THE TRIBE, AND PROVIDE COMPENSATION FOR THE TRIBE'S RELEASE OF BREACH OF TRUST CLAIMS AGAINST THE UNITED STATES

The Chippewa Cree–Montana Water Rights Compact, intended to permanently settle all existing water rights claims of the Chippewa Cree Tribe in the State of

Montana, accomplishes one important element of the Tribe's settlement plan. The remaining three elements—supplementation of the on-Reservation drinking water supply to meet future population needs; construction of on-Reservation facilities to deliver drinking and irrigation water, and compensation for Federal failure to protect the Tribe's water rights followed by Tribal release of claims against the United States—must be obtained through congressional action. In addition, congressional ratification of the Compact is needed to confirm the quantification of the Tribe's water rights under that agreement. Because of the permanence of the settlement, once secured by congressional legislation, the Tribe seeks a settlement that provides not merely for its present water needs, but also for its future water needs.

Accordingly, each and every provision of H.R. 795, entitled "The Chippewa Cree of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999," was negotiated among the Tribe, the State and the Administration over a period of one year. Thus, H.R. 795 has the support of all three parties—the first water rights settlement to have such support. The bill would accomplish the following:

1. Ratify the Chippewa Cree–Montana Water Rights Settlement Compact providing 10,000 AFY from surface and groundwater sources on the Reservation.
2. Authorize the appropriation of $3,000,000 to the Tribe to perform its administration obligations under the Compact, such as the installation and maintenance of Compact-required water gauges, and the staff costs associated with administration of the Tribe's Compact-related obligations. However, except for $400,000 for capital expenditures, the Tribe may expend only the interest on this fund for Tribal Compact administration obligations.
3. Authorize the appropriation of $25,000,000 to the Department of the Interior for the Bureau of Reclamation for the construction of certain on-Reservation water development projects, including the enlargement of Bonneau Dam and other designated on-Reservation dams. The Tribe expects to assume responsibility for this work under its Self-Governance Compact. The Tribe and the Bureau of Reclamation have negotiated the terms of an agreement as to the Bureau's oversight role in this work.
4. Authorize the allocation of 10,000 AFY from Lake Elwell located behind Tiber Dam, a Bureau of Reclamation project, approximately 50 miles from the Reservation on the Marias River, to provide a source of future drinking water supplies for the Tribe. Lake Elwell has a capacity of almost 1 million acre-feet. Average annual inflows to Lake Elwell exceed 700,000 acre-feet per year. Roughly 400,000 acre-feet of this capacity is in the active storage pool, thus available for release to downstream use. The Bureau currently has entered contracts for the allocation of less than 8,000 acre-feet per year. This is due to the fact that the original Pick-Sloan plan was based on the reservoir serving 120,000 acres of new irrigated land, of which essentially none has been developed. The 10,000 acre feet in Lake Elwell replaces on-Reservation reserved water rights claims, which, under the water settlement, are released by the Tribe to satisfy existing water needs of downstream non-Indian water users. The Tribe's Lake Elwell water rights are not Winters/reserved water rights. The rights are BOR project water rights assigned to the Tribe in perpetuity by H.R. 795. Under the Compact, the Tribe can market its Lake Elwell project water rights for use off the Reservation. However, such marketing is expressly subject to applicable state law. *See,* 85-20-601, MCA (1997), Article IV.A-4.b.(1) and Article VI.A.1. In addition, the Compact provides that any such marketing shall not exceed 100 years; shall not be permanent; and shall not be transferred to a location outside the Missouri River drainage. *See, id,* Article IVAA.b. And further, the Compact gives Milk River water users the right of first refusal in any marketing of Lake Elwell water rights outside of the Milk River drainage. *See, id,* Article IV.A.4.b. If any precedent is set by the Chippewa Cree water rights settlement as to the right of tribes to market water off the reservation, it is only that such rights must be negotiated with the affected states and non-Indian water users to mitigate any concerns raised, to the satisfaction of all parties. The allocation of Lake Elwell water does not impose on the United States a present obligation to develop or to transport the allocated water to the Rocky Boy's Reservation. However, the bill authorizes other appropriations intended to pave the way for the future importation of water to the Reservation.
   a. $1,000,000 is authorized to be appropriated to the Department of the Interior, through the Bureau of Reclamation, to perform a municipal, rural, and industrial feasibility study of water and related resources in North Central Montana for the purpose of evaluating alternative means of transporting needed water to the Reservation. ($3,000,000 is authorized to be appropriated to the Department of the Interior for a regional feasibility study of water and related resources in North Central Montana.)

b. $15,000,000 is authorized to be appropriated to the Department of the Interior for the Tribe, to be used as seed money for future water supply facilities needed to import drinking water to the Rocky Boy's Reservation consistent with the agreement of the Tribe, the State, and the United States that importation of water is necessary to meet the current and future drinking water needs of the Tribe. However, the Tribe expects that it will be required to return to Congress in the future for additional moneys to fund the final design of a future water importation system.

5. Authorize the appropriation of $3,000,000 for a Tribal economic development fund.

The Tribe may expend the funds appropriated for the Rocky Boy's Reservation feasibility study and for Tribal Compact administration obligations immediately upon appropriation. However, all other funds may not be expended by the Tribe until a final decree is entered by the Montana water court dismissing the Tribe's water rights claims. Upon entry of the final decree and appropriation of the funds authorized by H.R. 795, the Tribe's waiver and release of damages claims against the United States will become effective.

The history of the United States' breach of trust toward the Chippewa Cree Tribe—poor land choice decisions, poor land management, and failure to obtain sufficient water for, or to protect the little water available to, the Rocky Boys Reservation—justifies a substantial Federal contribution to the Chippewa Cree water settlement in the form of authorization of Federal projects and an economic development fund. By enacting H.R. 795, the United States will at long last set a firm foundation for providing sufficient water to support the Rocky Boy's Reservation as a viable, self-sustaining homeland for the Chippewa Cree Tribe.

IV. CONCLUSION

H.R. 795, pending before this Committee today, represents the culmination of many years of hard work on the part of many people. The bill has the support of the Tribe, the State of Montana, and the Administration. It ratifies a water settlement Compact that has the support of the State of Montana, the Tribe's non-Indian neighbors, and the Tribe. And it resolves the Tribe's water right related claims against the United States in a fair and reasonable manner. The Chippewa Cree Tribe urgently requests that H.R. 795 be enacted into law during this first session of the 106th Congress.

Mr. DOOLITTLE. The Committee will stand in recess for 15 minutes or until we return, whichever is earlier.

[Recess.]

Mr. DOOLITTLE. The Committee will reconvene.

Mr. Hill is recognized for his statement.

STATEMENT OF HON. RICK HILL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. HILL. Thank you, Mr. Chairman. I want to thank you for holding the hearing. I am pleased the Committee has scheduled a hearing on H.R. 795.

I introduced this bill on February 23rd, and I am pleased that Senator Burns and Senator Baucus from Montana also introduced companion bills at the same time.

This bill is a culmination of many years of work and negotiations in the state, delicate negotiations, and it will result in the Federal Government sanctioning this water rights compact that has been adopted by the Montana State Legislature.

The settlement may represent, in my view, a textbook example of how a state, tribal governments, local government, private landowners together with on and off-reservation local communities can sit down and resolve our differences.

I am also pleased that local ranchers were involved in every step of the negotiations. This is how we like to do things in Montana.

So I look forward to us moving the bill out of the Subcommittee and completing the long and dedicated journey by all the parties

that have been involved. I want to thank all the panelists from Montana for being here, their dedication, their work, their willingness to cooperate with us to try to address issues as they have arisen in the process, and I remain optimistic that we are going to be able to get this done in this Congress.

I thank you, Mr. Chairman.

Mr. DOOLITTLE. Thank you.

Our next witness will be Mr. Chris Tweeten, chief counsel to the Montana Attorney General, chairman of the Montana Reserve Water Rights Compact Commission. Mr. Tweeten.

STATEMENT OF CHRIS TWEETEN, CHIEF COUNSEL TO THE MONTANA ATTORNEY GENERAL, CHAIRMAN, MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION

Mr. TWEETEN. Thank you, Mr. Chairman. I am pleased to be here this morning on behalf of Governor Marc Racicot and the State of Montana to testify in support of H.R. 795, the Rocky Boy's Montana Water Rights Compact.

I do have a written statement which I believe I have submitted previously that I would like to make part of the record.

Mr. DOOLITTLE. Several have mentioned that. Let me assure you all your full written statements will be made part of the official Committee record.

Mr. TWEETEN. Thank you, Mr. Chairman. I do have three points that I would like to cover briefly in my oral remarks.

First, from Montana's perspective, we believe that this compact illustrates the value of locally crafted solutions to western water allocation problems. We believe that not all western states are like eastern states with respect to their water use problems and not all western states are alike either. Solutions that work in highly populated water short areas in Arizona and California will not always work in Montana, and solutions that are good for the largely agricultural economies of north central Montana may not be suitable for solving water problems in other areas.

We believe Federal policy must encourage states and tribes to work out local solutions to these issues, solutions that are tailored to the very economic, geographic and demographic issues that exist throughout the West. This compact is an excellent example of an agreement that the Federal policy should support. We have crafted a compact that provides for the foreseeable water needs of the tribe and by creative use of state-contributed cost share we have mitigated any potential impacts on existing non-tribal uses.

Briefly, this compact makes storage of spring flow the centerpiece of the tribe's water right. The water availability situation in north central Montana is such that most of the water comes out of the mountains in the springtime as a result of snow melt and much of it is gone by the early part of the summer. If that storage can be captured and held for use later on in the summer, it makes much more water available for all of the parties to use.

State cost share will allow for improved efficiencies of diversion structures on Big Sandy Creek, mitigating the effect of this increased storage which goes for the benefit of the tribe and allows the tribe to capture those and use those spring flood flows without adverse impact on downstream users.

In addition, state cost share also allowed for the purchase of stored water from a facility that is owned by Hill County downstream from the reservation to mitigate the impact of upstream tribal uses, and those uses include in-stream uses that are designed to provide environmental mitigation and to protect fisheries in Beaver Creek. We think this is an excellent example of the way that states and tribes can cooperate together in crafting solutions that satisfy the needs of both parties.

Second, Mr. Chairman, I would like to emphasize the fact that this agreement has broad and deep support among those that are directly affected by its provisions, the members of the tribe and the local area ranchers in the Big Sandy and Beaver Creek drainages.

As Congressman Hill has mentioned, as Mr. Hayes has mentioned, this has been a long process in which we have spent a tremendous amount of time and effort working with local ranching communities, many of whom were quite skeptical early on in this process about the potential for success in reaching an agreement that was going to be beneficial to them.

Many of those skeptics are now among the strongest supporters of this compact. That is a result of hard work on the part of our staff, on the part of the Federal team, on the part of the tribal negotiating team, and also a result of the willingness of the local ranchers to maintain a flexible viewpoint towards these issues. We think that this cooperation that is fostered as a result of this agreement is going to show benefits in other areas as well as we work through other issues of contention between the state and the tribe.

Third, it's important to emphasize how this compact integrates administration of tribal water rights into a state-based water administration system. As you know, there are much different legal attributes to Federal reserve water rights and those water rights that exist under state law, and frequently in litigated outcomes the results are not very satisfactory because those issues of administration, that is, how you are going to take these different animals and put them together into one comprehensive administration system, can't be addressed in litigation. That is one of the benefits of reaching these solutions through negotiation.

In this compact we have reached an administrative solution that downplays the importance of priority and thus minimizes the potential for conflict between tribal users and non-tribal users, and we have also created an alternative dispute resolution process that provides a quick and inexpensive means of resolving those disputes should they arise in the future. We think that is a very important feature of the compact.

Mr. Chairman, I appreciate the opportunity to be with you this morning. I would be happy to answer your questions.

[The prepared statement of Mr. Tweeten follows:]

STATEMENT OF CHRIS D. TWEETEN REPRESENTING THE STATE OF MONTANA ON H.R. 795

Chairman Doolittle and members of the Subcommittee, my name is Chris Tweeten. I am the Chief Counsel to the Montana Attorney General and the Chairman of the Montana Reserved Water Rights Compact Commission. I am here to testify on behalf of the State of Montana and Governor Marc Racicot in support of House Bill 795, the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999, and to urge your approval of the Act. I would like to express my appreciation for the time the staff of this Subcommittee

has taken over the past year to meet with representatives of the State, Tribe, and the Administration to reach an understanding of the provisions of the Act. The purposes of the Act are to: ratify the Compact which settles the quantification of the Tribe's water rights in Montana; provide the necessary authorization for implementation of the Compact; and to settle Federal liability regarding the Tribe's water resources by authorizing appropriations for their development. My testimony will focus on the Compact and the value of negotiated settlements.

I cannot overstate the importance of the Settlement Act to the State of Montana. The unquantified and open ended nature of reserved water rights places a cloud over the certainty regarding investment in private water development throughout the west. The Compact Commission was established by the Montana Legislature in 1979 to act on behalf of the Governor to negotiate the settlement of reserved water rights as part of the state-wide general stream adjudication. The policy of the State of Montana in favor of negotiated solutions to quantification of tribal water rights recognizes the need for individual, site specific solutions to water supply and water allocation problems. We believe that negotiation gives us the greatest control over the outcome since agreement to a settlement is purely voluntary. It also allows consideration of the fact that each tribe is unique in its culture, history, water needs and potential for conflict over water use with its neighbors, and that every basin has unique avenues for enhancement of water supply. We have found through years of experience that the best approach to resolving that uncertainty is through negotiated settlements that allow tailoring of solutions on a site specific basis. In Montana, we have successfully settled the water rights claims of three Indian reservations, five National Park units, three Fish and Wildlife refuges and two wild and scenic rivers. In each of these settlements we have protected existing water use while meeting the needs of the particular reservation.

Resolution 98-029 of the Western Governors Association expressing a preference for negotiated settlement of reserved water rights is attached to my testimony. If you look closely at the west, it is not difficult to see why we favor negotiation, an approach that provides an avenue for the use of the uncertainty in the law to craft unique solutions tailored to a specific location. Westerners are not one people. We are influenced by our landscape to a degree not found in the east, and that landscape is diverse. Our climate, even in agricultural areas, varies from desert to rain forest. The portion of the Rocky Boy's Reservation suitable to agriculture receives an average of 12 inches of rain per year. Our growing season is as short as 45 days in the Centennial Valley of Montana. Water, valued as high as $1,000 per acre foot by urban areas in the southwest, cannot be sold in agricultural areas of Montana when priced at $10.50 per acre foot.

The Compact before you for ratification is uniquely tailored to meet the needs of the citizens of Montana. The site-specific nature of the solutions in the Compact may render them inappropriate if applied elsewhere. That is the nature of a negotiated solution. It is not an exact science. President George Bush, in proposing that the Department of the Interior promulgate guidelines for the settlement of Indian reserved water rights, stated:

> *Indian land and water rights settlements involve a complicated blend of law, treaties, court decisions, history, social policies, technology, and practicality. These interrelated factors make it difficult to formulate hard-and-fast rules to determine exact settlement contributions by the various parties involved in a specific claim.*

A uniform approach to analysis of Indian water rights settlement, or an overlay of new pre-requisites to settlement, would adversely impact negotiations throughout the west. The need for Congressional ratification of each settlement allows review on a case-by-case basis, thus eliminating the need for uniform standards. A chill in negotiations has already been felt by western states due to the reluctance of Congress to ratify this Compact last year. I strongly urge you to help us move this forward and send a signal to western states that Congress will not stand in the way of the settlement of reserved water rights.

The Tribal Water Right created by the Compact and the Act is a settlement right and its attributes should not be considered to represent a legal interpretation of how the rights of the Tribe would be interpreted should they be litigated in court. Negotiation differs from litigation. The focus in negotiation is on finding a compromise that meets the needs of the Tribe and can therefore be approved by their Council, while, at the same time, protecting investment in state-based water rights. In litigation, downstream junior water wers can expect no protection for their water rights.

The following paragraphs will briefly describe some of the unique aspects of the agreement and their relation to water use on private land in Montana. A summary of the Compact and the authorizations for appropriations in the Settlement Act is attached to my testimony.

The Rocky Boy's Reservation is one of four Indian Reservations with land and water right claims in the Milk River Basin. The Milk River has its headwaters in Glacier National Park, then flows onto the Blackfeet Reservation where it receives water from another basin as part of one of the United States' first Reclamation Projects—The Milk River Project. The Milk River, with its enhanced water supply, then flows into Canada where it cuts through the Provinces of Alberta and Saskatchewan before re-entering the United States. It is downstream from this point of re-entry that the Milk River serves seven irrigation districts as part of the Milk River Project. Considerably downstream from its beginning, the Milk River forms boundaries to both the Fort Belknap and Fort Peck Indian Reservations. It is one of the most heavily used and re-used rivers in the United States, and is estimated to be water-short in as many as 5 out of 10 years.

The Rocky Boy's Reservation is located in the Bearpaw Mountains on two tributaries to the Milk River: Big Sandy and Beaver Creeks. The Reservation is home to over 3,500 Tribal members who are also citizens of Montana. The Reservation has an estimated 70 percent unemployment rate. The Reservation is located in an area of scarce water supply. The drinking water system on the Reservation is currently inadequate, providing only 60 gallons per capita per day to households served, compared to a Montana average of 170. Not all households on the Reservation share in even this inadequate supply. Because groundwater is of poor quality and low yield in this region of Montana, many of the surrounding communities and ranches rely on treated surface water for their drinking water supply. The Reservation lags behind the region in the development and treatment of surface water for domestic purposes.

The Compact provides a settlement quantification of 20,000 acre-feet per year. Unlike the farmland irrigated by the Milk River Project along the bottomland of the mainstem, tributary water use is associated primarily with cattle grazing and growing of hay. Without the storage provided by the Milk River Project, streamflow is intermittent with large spring floods and late summer drought. The provisions in the Settlement Act providing for on-Reservation storage and development will allow the Tribe to maximize the utility of this limited water supply by providing a reliable supply of irrigation water for approximately 2,500 acres of Reservation land. On-Reservation water development authorized by H.R. 795 involves enlargement of existing storage on the two dominant drainages on the Reservation, Beaver Creek and Box Elder Creek (a tributary to Big Sandy Creek).

The Rocky Boy's Reservation shares Big Sandy Creek with approximately 8,500 acres of irrigated private land located off the Reservation. On Beaver Creek, there are approximately 3,600 acres of off-Reservation private irrigation. The growing season is short. Small scale storage projects that will capture some spring run-off, such as those authorized on the Reservation by this bill, are the best way to enhance water supply. To prevent impact by those projects on water use on private land, the State has funded local improvements in conveyance and diversion structures and is promoting improved management of existing storage. Description of the specific measures taken to prevent impact on private water use by development of water on the Reservation follows.

The enlargement of the Tribe's Bonneau Reservoir on Box Elder Creek will enhance stream flow during late summer, but will reduce spring flow that is generally relied on by irrigators downstream on Big Sandy Creek. A State grant will be used to improve conveyance and diversion structures off the Reservation so that water users may operate on the lower spring flows anticipated once the Tribe enlarges existing storage on the Reservation. In addition, a 240 acre-foot pool of water will be held in Bonneau Reservoir to be released during late summer to maintain water quality for stockwatering that might otherwise be impaired by low quality irrigation return flow.

Increased storage and diversion from Beaver Creek on the Reservation could impact downstream irrigators with a senior right to divert from natural stream flow. Coordinated use of reservoirs on and off Reservation will mitigate impacts on downstream senior water rights. However, release of water from the small reservoir on the Reservation for irrigators with operations over fifteen miles downstream would be highly inefficient due to conveyance loss, and would prevent realization of the Tribe's development plan. Lower Beaver Creek Reservoir, owned by Hill County and located downstream from the Reservation, had contract water available for sale when contracts were renewed in 1996. Pursuant to the Compact, the State entered an Option to Purchase contract water for release to mitigate impacts from development of the Tribe's right. In effect, this transfers any "call" for water by senior water users from the Tribe's diversions to Lower Beaver Creek Reservoir.

Beaver Creek Park is owned and operated by Hill County, and is located immediately downstream from the Reservation on Beaver Creek. It is a natural park with

camping and an important brook trout fishery. A minimum instream flow is necessary to maintain a viable fishery. The Compact includes provisions for release of water from the Tribe's enlarged East Fork Reservoir to maintain a minimum flow. In addition, the Compact includes an agreement by the State and the Tribe to jointly study the streamflow and the needs of the fishery to more precisely define the minimum flow.

In addition to protection of state-based rights, Montana has strongly asserted that in negotiating water allocation solutions, it will not pit tribe against tribe. In settling, we considered the rights of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation located downstream from the Rocky Boy's Reservation on the Milk River. As a practical matter, the impact from use of water on tributaries to the Milk River by the Chippewa Cree Tribe will not have a measurable impact on the flow of the Milk River. Furthermore, release of the water purchased from Lower Beaver Creek Reservoir by the State will help prevent impact on the Milk River on which Fort Belknap relies.

Negotiation allows the State to settle issues that, in litigation, would be left for another day. The Compact contains provisions on administration that should reduce the potential for future conflict between the Tribe and its neighbors and expedite the process of dispute resolution during critical periods such as the irrigation season. First, the Compact addresses transfers of the Tribal Water Right. Under State law, water users may market appropriative water rights. Consistent with that attribute of water rights arising under State law, the Compact provides that the Tribal Water Right may be transferred off the Reservation. However, off-Reservation use of the Tribal Water Right subjects it to full compliance with State law. Thus, pursuant to Article IV.A.4.b. of the Compact *any* off-Reservation use or transfer of any portion of the Tribal Water Rights must comply with state law for both water use and diversion facilities. In addition to state law protections, the Compact limits marketing of the Tribal Water Right to the Missouri River basin and gives water users on the water-short Milk River a right of first refusal for any marketing of tribal water. Article IV.A.4.b.

Second, to avoid daily administration between the Reservation and off-Reservation water users in dry years, water is allocated as a block for each tributary on which there is both private and Reservation land. Montana, as with most western states, allocates water in times of shortage in order of priority of the date of development. In dry years, junior priority water users must curtail or cease water use so that senior rights are satisfied. This requires close monitoring of stream flow and coordination of diversion. The Compact eliminates priority administration between the Tribe and other water users. Provided the Tribe is using water within its allocation, water users off the Reservation agreed not to assert priority over the Tribe's water. Similarly, provided water users off the Reservation are using water within the amount of their right, the Tribe agreed not to assert priority over state-based rights. To give effect to the allocation by preventing further demands on a short water supply, the drainages are closed to new penrnits for water use under state law. This approach minimizes the interaction necessary and, therefore, the potential interference with the jurisdiction of each sovereign to manage its water.

Third, in the event a dispute does arise, the Compact provides for an initial effort between the water resource departments of the State and the Tribe to resolve the dispute. Should the informal process fail to reach resolution, the Compact establishes a Compact Board with both Tribal and off-Reservation representation to hear disputes. Decisions may be appealed to a court of competent jurisdiction.

The Compact provides for full settlement to claims of the Chippewa Cree of the Rocky Boy's Reservation to water within the State of Montana. The Compact includes a release of all claims stating:

> "The parties intend that the water rights and other rights confirmed to the Tribe in this Compact Are in full satisfaction of the Tribe's water rights claims, including Federal reserved water rights claims based on *Winters v. United States*, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe in this Compact, ... the Tribe and the United States as trustee for the Tribe hereby relinquish any and all claims to water rights of the Chippewa Cree Tribe within the State of Montana existing on the date this Compact is ratified by the State and the Tribe, whichever date is later.

The State of Montana concurs with the Chippewa Cree Tribe and the Administration that this is a fair and equitable settlement that will enhance the ability of the Tribe to develop a sustainable economy while protecting existing investments in water use by off-Reservation ranchers who rely on state-based water rights. We appreciate the efforts of both the Tribe and the Administration to work with us in reaching this agreement and, in doing so, to listen to and address the concerns of water users off the Reservation.

The Compact has the full support of local ranchers, farmers, and elected officials. Arriving at these unique solutions involved the most intensive process of public involvement undertaken by the Commission to date. Because both the timing and volume of stream flow on the two drainages shared with the Reservation is so constrained, it was essential for the Commission to understand the water needs of each rancher and to engage them in the process of designing solutions. Public involvement began in 1992 with a public meeting in which over 200 citizens attended. Following that meeting the Commission began a five year process of kitchen table meetings with individuals ranch-by-ranch. Out of this process, trust and mutual respect developed. Many of the solutions suggested by ranchers are now found in the Compact. The same ranchers who expressed concern in 1992 testified in support of the Compact during legislative hearings in 1997. The value of this Compact in improved relations between neighbors on and off the Reservation alone is unquantifiable. The Compact received overwhelming support in the Montana Legislature. The level of support reflects the fact that this is truly a settlement that addresses the needs of all those affected. The Compact was ratified by the Montana Legislature without opposition and is codified in the Montana statutes at 85-20-601, MCA.

I appreciate the opportunity to testify on behalf of the State of Montana in support of the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999, and urge your timely approval of the Act. The settlement has the full support of the State, the Tribe, ranchers, surrounding communities, and local officials in the area. Because it relies on enlargement of existing storage and mitigation of impacts of new development through efficiency improvements, it has no environmental opposition. No endangered species are known to be involved. We know of no opposition to this settlement. On behalf of Montana I urge you to pass this bill and thereby signal to western states that the United States, after a long hiatus, is once again prepared to help us move toward finality on resolving these Federal claims in our adjudications, rather than opening these issues to further uncertainty and protracted debate. Passage of this Act will help us bring this long process of settlement to closure. I would be happy to answer any questions by members of the Subcommittee.

FACT SHEET ON THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION INDIAN RESERVED WATER RIGHTS SETTLEMENT ACT OF 1999

****

RATIFICATION OF THE COMPACT AMONG THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION THE STATE OF MONTANA and the UNITED STATES OF AMERICA

1. RESERVATION SETTING

The Rocky Boy's Reservation is located in the Bearpaw Mountains with portions extending onto the plains between the mountains and the Milk River in north-central Montana. Historically, the area was part of the large territory north of the Missouri and Musselshell Rivers designated for the Blackfeet Nation in the treaty of 1855. In 1880 the Fort Assiniboine military reservation was established. On disestablishment of the military reservation, Congress on September 16, 1916, set aside a portion of the area for the Rocky Boy's Reservation. Land has been added to the Reservation through both acquisition and reservation since 1916. The Reservation was never allotted. The Reservation is home to over 3000 Tribal members with an annual population growth rate in excess of 3%. The Reservation has an estimated 70% unemployment.

The Reservation is located in an area of scarce water supply. The region is arid with an average annual precipitation of 12 inches in the area of the Reservation suitable for growing hay. Snowpack in the Bearpaw Mountains, which receive an average annual precipitation of 30 inches, contributes to high spring runoff. The two drainages arising on the Reservation are: Big Sandy Creek and its tributaries; and Beaver Creek. Land use in the area is primarily for grazing and growing of hay. Both Creeks flow through Reservation and private farm and ranch land before reaching the Milk River.

2. TRIBAL WATER RIGHT QUANTIFICATION

[Compact codified at §85-20-601, Montana Code Annotated]

A. 10,000 acre-feet per year from surface and groundwater sources on the Reservation:

(1) Big Sandy Creek and tributaries: 9260 acre-feet per year

New water use on Big Sandy Creek and its tributaries is to be accomplished primarily through enlargement of Bonneau Reservoir located on Box Elder Creek to a capacity of 4800 acre-feet. The Tribe has the right to divert from surface water flows for irrigation and other uses: 1690 acre-feet from Lower Big Sandy Creek and Gravel Coulee; and 6590 acre-feet from Box Elder Creek. The Compact quantifies additional minor uses including stockwatering and fish and wildlife enhancement on tributaries to Big Sandy Creek.

(2) Beaver Creek: 740 acre-feet per year (260 acre-feet net depletion)

New water use is to be accomplished primarily through enlargement of East Fork of Beaver Creek Reservoir to a capacity of 665 acre-feet. The Tribe has the right to divert from surface water flows for recreational uses: 540 acre-feet, but could only consume 260 acre-feet of the amount diverted. The remaining water must return to the stream. Additional minor uses are to be from groundwater.

B. 10,000 acre-feet from Lake Elwell:

Lake Elwell is located behind Tiber Dam approximately 50 miles from the Reservation on the Marias River. The reservoir is part of a United States Bureau of Reclamation project. The United States has agreed to allocate 10,000 acre-feet per year for use by the Tribe, however, the settlement does not include any provisions or obligations for development of the water or transport of the water to the Reservation.

3. MITIGATION OF IMPACTS ON OFF-RESERVATION WATER USE

A. Box Elder and Big Sandy Creeks

- Two pools of water stored in Bonneau Reservoir will be designated for off-Reservation water use:
  - 104 acre-feet for irrigation on Box Elder Creek.
  - 260 acre-feet for stockwatering and maintenance of water quality.
  - The Tribe has the discretion to make additional releases if necessary to mitigate the impact of a change in use of the Tribal Water Right.
- Efficiency improvements to off-Reservation irrigation diversion and conveyance systems, funded by the State.

B. Beaver Creek and the Milk River

- Maintenance of brook trout fishery in upper Beaver Creek:
  - Study by the Tribe and the State to determine levels for a minimum instream flow
  - Release of stored water by the Tribe to maintain a minimum instream flow of 1 cfs.
- Purchase by the State of 800 acre-feet of contract water in Lower Beaver Creek Reservoir for release to prevent impact on irrigation from Lower Beaver Creek and the Milk River.
- Improved coordination of storage between Nelson Reservoir, part of the Milk River Reclamation Project, and Lower Beaver Creek Reservoir to allow increased storage in Lower Beaver Creek Reservoir.

4. ALLOCATION IN DRY YEARS

Allocation in times of shortage is not in priority. Provided the Tribe uses water within its quantified right, water right holders downstream from the Reservation may not assert priority over the Tribal Water Right. Provided water right holders use water within their quantified right, the Tribe may not assert priority over upstream water users. This is referred to by the State and the Tribe as "Block Allocation" of water. It is accomplished through mutual subordination of the priorities of off-Reservation rights and the Tribal Water Right to upstream rights.

5. ADMINISTRATION / DISPUTE RESOLUTION

- The Tribe administers the Tribal Water Right.
- Use or transfer of any portion of the Tribal Water Right off the Reservation must be in compliance with State law.
- Any change in use must be without adverse effect on water use pursuant to a valid right off the Reservation.
- The State Department of Natural Resources and Conservation and the Tribal Water Resources Department will work on a cooperative basis to resolve disputes concerning water use.
- The Compact establishes a Compact Board made up of three members: one Tribal, one local off-Reservation, and one chosen by the other two. Disputes concerning use of water between users of the Tribal Water Right and users of water rights recognized under State law may be filed with the Compact Board.
- Decisions by the Compact Board may be appealed to a court of competent jurisdiction. On appeal, the hearing is a trial *de novo*.

AUTHORIZATIONS FOR APPROPRIATIONS [$50 million] AND SCHEDULE OF APPROPRIATIONS

1. CHIPPEWA CREE FUND [$21 million, Bureau of Indian Affairs Budget]

Tribal Compact Administration Account
$3 million FY 2000

Economic Development Account
$3 million FY 2000

Future Water Supply Facilities Account
The Tribe, the State, and the United States have agreed that importation of water to the Reservation is necessary to meet the drinking water needs of the Tribe. The bill introduced to Congress will include authorization for $15 million in federal funding for future importation of drinking water to the Reservation.

$15 million
* $2 million FY 2000
* $8 million FY 2001
* $5 million FY 2002

2. ON-RESERVATION WATER DEVELOPMENT [$25 million, Bureau of Reclamation Budget]

$13 million FY2000
Bonneau Reservoir enlargement

$8 million FY 2001
East Fork, Towe and Browns Reservoirs

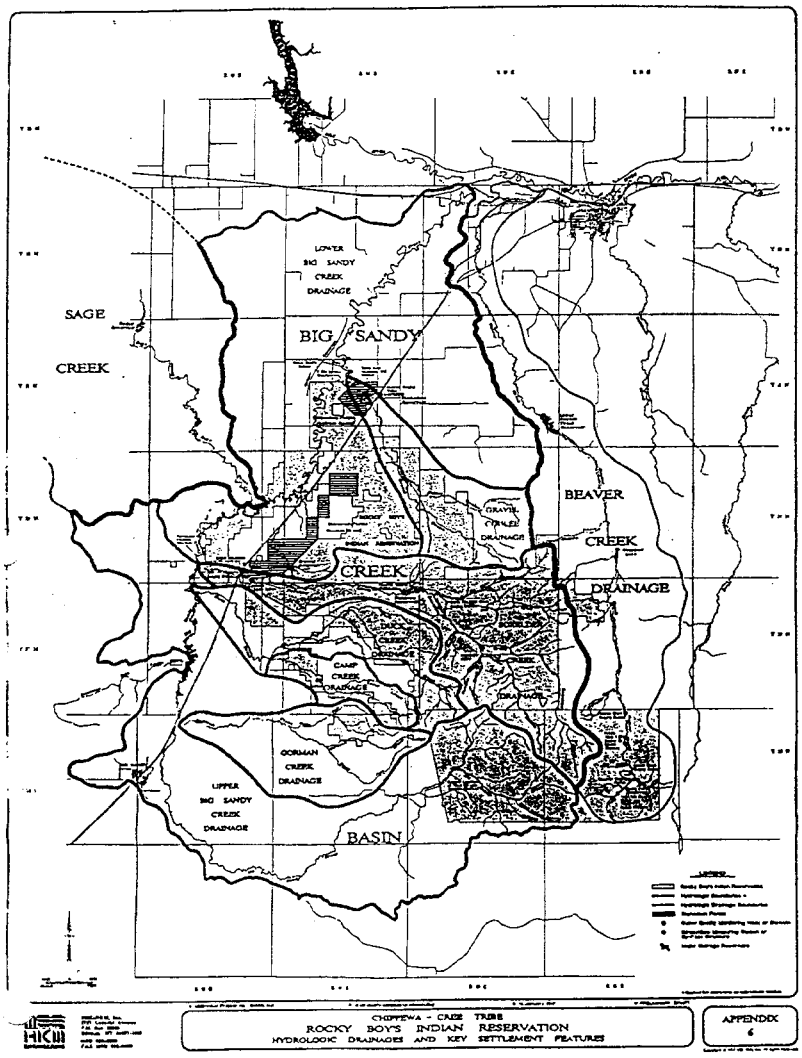
$3 million FY 2002
Completion of the above projects and other water development

$1 million FY 2000
Bureau of Reclamation administrative costs associated with Tribal water development

3. FEASIBILITY STUDIES [$4 million, Bureau of Reclamation Budget]

The Secretary of the Interior, through the Bureau of Reclamation is authorized to perform a municipal, rural and industrial (MR&I) feasibility study of water and related resources in North Central Montana to evaluate alternatives for MR&I supplies for the Rocky Boy's Reservation.
$1 million $.5 million in FY 1999
$.5 million in FY 2000

The Secretary of the Interior, through the Bureau of Reclamation, is authorized to perform a regional feasibility study to evaluate water and related resources in North Central Montana.
$3 million $.5 million in FY 1999
$2.5 million in FY 2000


LOWER
BIG SANDY
CREEK
DRAINAGE
SAGE
CREEK
BIG SANDY
BEAVER
CREEK
DRAINAGE
CREEK
CAMP
CREEK
DRAINAGE
GORMAN
CREEK
DRAINAGE
UPPER
BIG SANDY
CREEK
DRAINAGE
BASIN
CHIPPEWA - CREE TRIBE
ROCKY BOYS INDIAN RESERVATION
HYDROLOGIC DRAINAGES AND KEY SETTLEMENT FEATURES
APPENDIX
6

Western Governors' Association
June 30, 1998
Resolution 98 - 029

SPONSORS: Governors Kitzhaber and Hull

SUBJECT: Negotiated Indian Water Rights Settlements

A. BACKGROUND

1. The western Governors have consistently supported negotiated settlement of Indian land and water rights disputes as stated in WGA Resolutions 87-007, 89-011, 92-008 and 95-006.

2. Through participation in the Ad Hoc Group on Reserved Indian Water Rights, together with representatives of the Native American Rights Fund, Council of Energy Resource Tribes, National Congress of American Indians, and Western Regional Council, western governors contributed to the development of a process that led to the approval of (14) Indian water rights settlements.

The Ad Hoc Group sponsored four workshops in Washington, D.C. between 1988 and 1991 for representatives of the Department of Interior, Department of Justice, Office of Management and Budget, House and Senate committee staff, and tribal and local groups to work out solutions to problems as they arose in negotiations. Over time a working process evolved which included the formation of on-site negotiating teams, high level trouble shooters within the Department of Interior, agreement on guidelines for negotiators, agreement on ways to resolve congressional problems without establishing precedents, and addressing funding problems raised by OMB. A line item was established within the budget to ensure that settlements, once negotiated and approved, would be implemented.

3. In the last several years, that process appeared to have broken down. Few negotiating teams were being formed, few new settlements had been approved, tribes were returning to the courts to get their rights established, agreements which had been approved were experiencing difficulties in being implemented, and funding had all but disappeared. The prospects for returning to an era of adversarial relations between tribes and their local neighbors and neglect of addressing tribal rights appeared imminent.

- The unfavorable climate toward settlements of the last several years appears to have recently changed. The Department of Interior created a Tribal Task Force on Funding to begin looking at the issues of funding settlements. The Department has also assigned new personnel to work on these issues.

5. The governors recognize that settlements today will be considered in arduous financial times. At the same time, the need to resolve these disputes and redress tribal grievances is critical. It is time to revisit the need and process for resolving these issues and to rededicate efforts to continue the positive accomplishments of the last decade.

B. GOVERNORS' POLICY STATEMENT

1. The western governors continue to support negotiated rather than litigated settlement of Indian water rights disputes. The federal government has major responsibility for ensuring successful conclusion of the process, including providing information and technical assistance to tribes, providing federal negotiating teams to represent one federal voice and further the process, seeking approval of agreements, fully funding the federal share, and ensuring that the settlements are implemented.

2. Negotiations shall include the federal agencies, states, tribes, and local governments.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. WGA shall convey this resolution to the President; heads of the Office of Management and Budget,

Department of the Interior, and Department of Justice: members of the House and Senate authorizing and appropriations committees: tribal organizations: and Western Regional Council.

2. WGA shall work with the Ad Hoc Group on Reserved Indian Water Rights for purposes of educating key congressional and committee staff and key federal agency staff, and in order to review and recommend steps to facilitate and implement negotiated settlements of Indian land and water rights disputes.

Note: Originally adopted in 1987 and readopted as WGA Resolutions 87-007, 89-011, 92-008 and 95-006.

BEAR PAW RESOURCES ALLIANCE

Thomas J. Sheehy, President
Julie Strauser, Treasurer
Directors
Kenneth A. Kiemele
Jeffrey Hockett
Contad Nystrom
Dean A. Hanson
Roy Runnion
John Grass

Pete Kuhr, Vice President

P. O. Box 511
Big Sandy, MT 59520
(406) 378-2103

June 2, 1999

Hon. John T. Doolittle
Chairman
Sub-Committee on Water and Power
United States House of Representatives
1522 Longworth
House Office Building
Washington, DC 20510

Re: House Bill 795

Dear Congressman Doolittle:

The purpose of this letter is to express the continued support of Bear Paw Resources Alliance for House Bill 795 which would approve the Reserved Water Rights Compact between the State of Montana and Chippewa Cree Tribe of the Rocky Boy Indian Reservation. Bear Paw Resources Alliance is an association of property owners and other interested persons who live in the drainages that would be affected by the proposed Compact. Our organization actively participated in the negotiations which led to the Compact. Our membership consists of over 100 individuals who own in excess of 80% of all of the land off the reservation which would be affected by the Compact. Our Board of Directors consists of nine persons selected from around the geographical area and representing a cross section of the community.

After considerable review and discussion of the proposed Compact we believe that its approval would be in the best interests of the state of Montana as well as the Chippewa Cree Tribe and the surrounding communities. We urge your support of House Bill 795.

Sincerely yours,

Thomas J. Sheehy
President

TJS:jt

COUNTY OF HILL

STATE OF MONTANA
Havre, Montana 59501

Patrick D. Conway, Chairman
Kathy Bessette, Commissioner
Douglas A. Kaercher, Commissioner

[406]265-5481 Ext. 27

June 3, 1999

The Honorable John Doolittle
1526 Longworth House Office Building
Washington, D.C. 20515-0504

Dear Congressman Doolittle:

We are writing to voice our support for pending legislation pertaining to the Water Compact with the Chippewa-Cree Tribe on the Rocky Boy's Reservation located in Hill County, Montana.

The Hill County Commission participated in negotiations and testified at the State legislature in support of the compact. The entire process brought all groups together and even though not everyone agreed on each decision, a working relationship was formed and everyone involved became aware of specific situations.

This is a very important piece of legislation which will provide a much needed boost to the economy of this entire region. Many communities will benefit with the availability of water.

We would appreciate your support and any additional efforts required to assure passage of this bill.

Sincerely,

Patrick D. Conway

Patrick D. Conway, Chairman

Kathy Bessette

Kathy Bessette, Commissioner

Douglas A. Kaercher

Douglas A. Kaercher, Commissioner

WHEREAS, the Chippewa Cree Tribe of the Rocky Boy's Reservation, the United States of America and the State of Montana are negotiating an agreement that, once ratified by the Montana legislature and Congress and accepted by the Montana Water Court will settle for all time, any and all existing water rights claims of the Chippewa Cree Tribe in the State of Montana;

WHEREAS, the settlement of the Tribe's water right is part of the general stream adjudication which includes the rights to use water from the Milk River;

WHEREAS, the use of the Tribal water right set forth in the Compact will have minimal impact on the water supply in the Milk River during irrigation season;

WHEREAS, it is in the best interest of the District that the water rights claims of the Chippewa Cree Tribe be settled;

WHEREAS, the Board of an irrigation district, through its powers to represent the irrigation district in a suit necessary to carry out its duties, 85-7-1902(3), MCA, to execute all necessary contracts, 85-2-1902(2), to manage district property, 85-7-1908, MCA, to apportion water within the district, 85-7-1911, MCA, and to appropriate water, 85-7-1904, MCA, has the authority to adopt this Resolution;

WHEREAS, the Board action adopting this Resolution took place at a meeting open to the public, as required by 2-3-203, MCA, and notice of the meeting and proposed Resolution was published in a newspaper of general circulation in the area of the District, as required by 2-3-104, MCA;

NOW THEREFORE, on behalf of the irrigation district the Board adopts the following Resolution:

The Board agrees on behalf of the District not to assert priority over, or to make a call for, or to claim any of the water right of the Chippewa Cree Tribe of the Rocky Boy's Reservation in any court, tribunal or other forum as that right is set forth in the Compact among the Chippewa Cree Tribe of the Rocky Boy's Reservation, the United States of America and the State of Montana. Following ratification of the Compact by the Montana legislature and by the Congress, the Board shall enter a stipulation reflecting this agreement that will be filed concurrently with the Compact in Water Court, with the Tribe and the United States on behalf of the Tribe.

IN WITNESS WHEREOF the Board adopted this Resolution on the 25th day of November, 1996.

Harlem Irrigation District

Knut Kulbeck Pres

WHEREAS, the Chippewa Cree Tribe of the Rocky Boy's Reservation, the United States of America and the State of Montana are negotiating an agreement that, once ratified by the Montana legislature and Congress and accepted by the Montana Water Court will settle for all time, any and all existing water rights claims of the Chippewa Cree Tribe in the State of Montana;

WHEREAS, the settlement of the Tribe's water right is part of the general stream adjudication which includes the rights to use water from the Milk River;

WHEREAS, the use of the Tribal water right set forth in the Compact will have minimal impact on the water supply in the Milk River during irrigation season;

WHEREAS, it is in the best interest of the District that the water rights claims of the Chippewa Cree Tribe be settled;

WHEREAS, the Board of an irrigation district, through its powers to represent the irrigation district in a suit necessary to carry out its duties, 85-7-1902(3), MCA, to execute all necessary contracts, 85-2-1902(2), to manage district property, 85-7-1908, MCA, to apportion water within the district, 85-7-1911, MCA, and to appropriate water, 85-7-1904, MCA, has the authority to adopt this Resolution;

WHEREAS, the Board action adopting this Resolution took place at a meeting open to the public, as required by 2-3-203, MCA, and notice of the meeting and proposed Resolution was published in a newspaper of general circulation in the area of the District, as required by 2-3-104, MCA;

NOW THEREFORE, on behalf of the irrigation district the Board adopts the following Resolution:

The Board agrees on behalf of the District not to assert priority over, or to make a call for, or to claim any of the water right of the Chippewa Cree Tribe of the Rocky Boy's Reservation in any court, tribunal or other forum as that right is set forth in the Compact among the Chippewa Cree Tribe of the Rocky Boy's Reservation, the United States of America and the State of Montana. Following ratification of the Compact by the Montana legislature and by the Congress, the Board shall enter a stipulation reflecting this agreement that will be filed concurrently with the Compact in Water Court, with the Tribe and the United States on behalf of the Tribe.

IN WITNESS WHEREOF the Board adopted this Resolution on the 25 day of Nov, 1996.

Paradise Valley Irrigation Dist.

John H Overcast, President

Ernest L. Johnson, Director

WHEREAS, the Chippewa Cree Tribe of the Rocky Boy's Reservation, the United States of America and the State of Montana are negotiating an agreement that, once ratified by the Montana legislature and Congress and accepted by the Montana Water Court will settle for all time, any and all existing water rights claims of the Chippewa Cree Tribe in the State of Montana;

WHEREAS, the settlement of the Tribe's water right is part of the general stream adjudication which includes the rights to use water from the Milk River;

WHEREAS, the use of the Tribal water right set forth in the Compact will have minimal impact on the water supply in the Milk River during irrigation season;

WHEREAS, it is in the best interest of the District that the water rights claims of the Chippewa Cree Tribe be settled;

WHEREAS, the Board of an irrigation district, through its powers to represent the irrigation district in a suit necessary to carry out its duties, 85-7-1902(3), MCA, to execute all necessary contracts, 85-2-1902(2), to manage district property, 85-7-1908, MCA, to apportion water within the district, 85-7-1911, MCA, and to appropriate water, 85-7-1904, MCA, has the authority to adopt this Resolution;

WHEREAS, the Board action adopting this Resolution took place at a meeting open to the public, as required by 2-3-203, MCA, and notice of the meeting and proposed Resolution was published in a newspaper of general circulation in the area of the District, as required by 2-3-104, MCA;

NOW THEREFORE, on behalf of the irrigation district the Board adopts the following Resolution:

The Board agrees on behalf of the District not to assert priority over, or to make a call for, or to claim any of the water right of the Chippewa Cree Tribe of the Rocky Boy's Reservation in any court, tribunal or other forum as that right is set forth in the Compact among the Chippewa Cree Tribe of the Rocky Boy's Reservation, the United States of America and the State of Montana. Following ratification of the Compact by the Montana legislature and by the Congress, the Board shall enter a stipulation reflecting this agreement that will be filed concurrently with the Compact in Water Court, with the Tribe and the United States on behalf of the Tribe.

IN WITNESS WHEREOF the Board adopted this Resolution on the 25 day of November, 1996.

Ft. Belknap Irrigation District

Kay M. Stratton pres.

Wallace T. Elliot

WHEREAS, the Chippewa Cree Tribe of the Rocky Boy's Reservation, the United States of America and the State of Montana are negotiating an agreement that, once ratified by the Montana legislature and Congress and accepted by the Montana Water Court will settle for all time, any and all existing water rights claims of the Chippewa Cree Tribe in the State of Montana;

WHEREAS, the settlement of the Tribe's water right is part of the general stream adjudication which includes the rights to use water from the Milk River;

WHEREAS, the use of the Tribal water right set forth in the Compact will have minimal impact on the water supply in the Milk River during irrigation season;

WHEREAS, it is in the best interest of the District that the water rights claims of the Chippewa Cree Tribe be settled;

WHEREAS, the Board of an irrigation district, through its powers to represent the irrigation district in a suit necessary to carry out its duties, 85-7-1902(3), MCA, to execute all necessary contracts, 85-2-1902(2), to manage district property, 85-7-1908, MCA, to apportion water within the district, 85-7-1911, MCA, and to appropriate water, 85-7-1904, MCA, has the authority to adopt this Resolution;

WHEREAS, the Board action adopting this Resolution took place at a meeting open to the public, as required by 2-3-203, MCA, and notice of the meeting and proposed Resolution was published in a newspaper of general circulation in the area of the District, as required by 2-3-104, MCA;

NOW THEREFORE, on behalf of the irrigation district the Board adopts the following Resolution:

The Board agrees on behalf of the District not to assert priority over, or to make a call for, or to claim any of the water right of the Chippewa Cree Tribe of the Rocky Boy's Reservation in any court, tribunal or other forum as that right is set forth in the Compact among the Chippewa Cree Tribe of the Rocky Boy's Reservation, the United States of America and the State of Montana. Following ratification of the Compact by the Montana legislature and by the Congress, the Board shall enter a stipulation reflecting this agreement that will be filed concurrently with the Compact in Water Court, with the Tribe and the United States on behalf of the Tribe.

IN WITNESS WHEREOF the Board adopted this Resolution on the 25 day of Nov., 1996.

Jack Gist
Bruce Butler

Alfalfa Irr. Dist.
Ed. C. Maddox

MALTA IRRIGATION DISTRICT
Resolution #96-4

COPY

WHEREAS, the Chippewa Cree Tribe of the Rocky Boy's Reservation, the United States of America and the State of Montana are negotiating an agreement that, once ratified by the Montana legislature and Congress and accepted by the Montana Water Court will settle for all time, any and all existing water rights claims of the Chippewa Cree Tribe in the State of Montana;

WHEREAS, the settlement of the Tribe's water right is part of the general stream adjudication which includes the rights to use water from the Milk River;

WHEREAS, the use of the Tribal water right set forth in the Compact will have minimal impact on the water supply in the Milk River during irrigation season;

WHEREAS, it is in the best interest of the District that the water rights claims of the Chippewa Cree Tribe be settled;

WHEREAS, the Board of an irrigation district, through its powers to represent the irrigation district in a suit necessary to carry out its duties, 85-7-1902(3), MCA, to execute all necessary contracts, 85-2-1902(2), to manage district property, 85-7-1908, MCA, to apportion water within the district, 85-7-1911, MCA, and to appropriate water, 85-7-1904, MCA, has the authority to adopt this Resolution;

WHEREAS, the Board action adopting this Resolution took place at a meeting open to the public, as required by 2-3-203, MCA, and notice of the meeting and proposed Resolution was published in a newspaper of general circulation in the area of the District, as required by 2-3-104, MCA;

NOW THEREFORE, on behalf of the irrigation district the Board adopts the following Resolution:

The Board agrees on behalf of the District not to assert priority over, or to make a call for, or to claim any of the water right of the Chippewa Cree Tribe of the Rocky Boy's Reservation in any court, tribunal or other forum as that right is set forth in the Compact among the Chippewa Cree Tribe of the Rocky Boy's Reservation, the United States of America and the State of Montana. Following ratification of the Compact by the Montana legislature and by the Congress, the Board shall enter a stipulation reflecting this agreement that will be filed concurrently with the Compact in Water Court, with the Tribe and the United States on behalf of the Tribe.

IN WITNESS WHEREOF the Board adopted this Resolution on the 13th day of November, 1996.

Commissioner

Commissioner

President

RECEIVED
JAN 13 1997
Montana DNRC
Glasgow Field Office

GLASGOW IRRIGATION DISTRICT

RESOLUTION NO. 96-001

WHEREAS, the Board of Commissioners met on December 11, 1996; and,

WHEREAS, the Chippewa Cree Tribe of the Rocky Boy's Reservation, the United States of America and the State of Montana are negotiating an agreement that, once ratified by the Montana legislature and Congress and accepted by the Montana Water Court will settle for alltime, any and all existing water rights claims of the Chippewa Cree Tribe in the State of Montana; and,

WHEREAS, the settlement of the Tribe's water right is part of the general stream adjudication which includes the rights to use water from the Milk River; and,

WHEREAS, the use of the Tribal water right set forth in the Compact will have minimal impact on the water supply in the Milk River during irrigation season; and,

WHEREAS, it is in the best interest of the District that the water rights claims of the Chippewa Cree Tribe be settled; and,

WHEREAS, the Board of Commissioners of Glasgow Irrigation District, through its powers to represent the irrigation district in a suit necessary to carry out its duties 85-7-1902(3), MCA, to execute all necessary contracts, 85-2-1902(2), MCA, to manage district property, 85-7-1908, MCA, to apportion water within the district, 85-7-1911, MCA, and to appropriate water 85-7-1904, MCA, has the authority to adopt this Resolution; and,

WHEREAS, the Board action adopting this Resolution took place at a meeting open to the public, as required by 2-3-203, MCA, and notice of the meeting and proposed Resolution was published in a newspaper of general circulation in the area of the District, as required by 2-3-104, MCA; and,

NOW THEREFORE, on behalf of Glasgow Irrigation District, the board adopts the following Resolution:

The Board agrees on behalf of the District not to assert priority over, or to make a call for, or to claim any of the water right of the Chippewa Cree Tribe of the Rocky Boy's Reservation in any court, tribunal or other forum as that right is set forth in the Compact among the Chippewa Cree Tribe of the Rocky Boy's Reservation, the United States of America and the State of Montana. Following ratification of the Compact by the Montana legislature and by the Congress, the Board shall enter a stipulation reflecting this agreement that will be filed concurrently with the Compact in Water Court, with the Tribe and the United States on behalf of the Tribe.

IN WITNESS WHEREOF, the Board adopted this Resolution on the 11th day of December, 1996.

GLASGOW IRRIGATION DISTRICT

By: Melvin Novak
Melvin Novak, President

BOARD MEMBERS:

Lee Cornwell
Lee Cornwell

Glenn Rohde
Glenn Rohde

Certificate

I certify that the above is a true and correct copy of the Corporate Resolution No. 96-001 passed by the Board of Commissioners of the Glasgow Irrigation District at the time and place and in the form hereinabove set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said corporation this 8th day of January, 1997.

Deby Murch
Deby Murch, Secretary
Glasgow Irrigation District

(SEAL)

Mr. DOOLITTLE. Thank you.

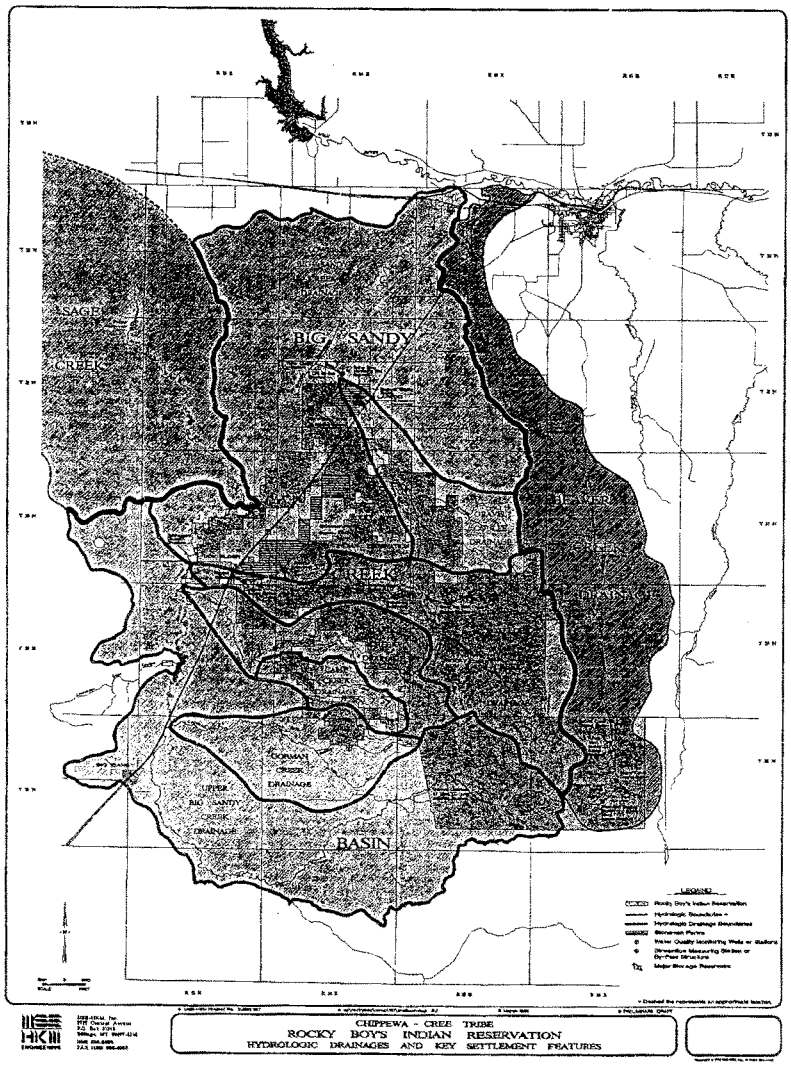
Our final witness is Mr. Roger Fragua, manager, American Indian affairs, Enron Corporation. Mr. Fragua.

STATEMENT OF ROGER FRAGUA, MANAGER, AMERICAN INDIAN AFFAIRS, ENRON CORPORATION

Mr. FRAGUA. Good morning, Mr. Chairman, Representative Hill, staff, tribal leaders, and other honored guests. It is a real pleasure to be invited to address you this morning on an issue that is so politically, professionally and personally important to me.

In addition to my submitted written testimony, which I hope you have a chance to review, I would like to offer these brief verbal comments.

For the record, my name is Roger Fragua. I am from the Pueblo of Jemez, which is a small but traditional tribe located about 50 miles northwest of Albuquerque, New Mexico, in the arid southwest. I've had the honor of serving my tribe as an administrator for several years and continue to hold a strong


BIG SANDY
CREEK
BASIN
LEGEND
CHIPPEWA - CREE TRIBE
ROCKY BOY'S INDIAN RESERVATION
HYDROLOGIC DRAINAGES AND KEY SETTLEMENT FEATURES

sense of commitment to my tribe and the Indian country in general.

Serving my tribe as administrator, one of my chief responsibilities has been community and economic development. The traditional process of economic development at my tribe and others is one that generally is coined as the "deal of the week" where oftentimes a non-tribal developer brings an idea or a concept to our tribe that utilizes our natural resources, captured labor force, and political status, oftentimes in exchange for royalty position far removed from full economic potential.

As a tribal member I am interested in enhancing this process and building more self-sufficient, self-sustaining and self-determined economic development.

In 1997 our tribe took a more holistic approach to development, to include an assessment of our tribal resources, position, and the community's desires for economic development. We began with a critical assessment of our utility infrastructure. Jemez has no natural gas distribution to our community; we pay some of the highest rates for electricity in the state; and water continues to be a health issue for our community to deal with. With this deck of cards it's hard to become a real player in a meaningful development.

Our tribal council created a working conference centered on electricity. Since we learned that the industry was headed toward deregulating itself, we wanted to discern our opportunities and challenges in a deregulated market. It was then that we learned that there are opportunities for tribes, and I had the pleasure of meeting Christy Patrick, the vice president at Enron. I learned that Enron is the world's leading energy company with vast financial and physical assets, but most importantly, intellectual resources that could bring incredible creative solutions to some of our tribal issues and concerns.

After several discussions with my tribal leadership, we carved out a loan program where I could go to Enron and learn more about the energy industry and bring that knowledge and experience to my tribe and share it with many other tribes as well.

Together we created the American Indian Affairs Group, which is a distinct commercial group within Enron to promote Enron and tribal partnerships. In fact, Enron has already had a long history of working with tribes responsibly that evolved over a relationship of necessity such as permitting and right-of-way transactions to our more current proactive process of building real partnerships with tribes.

The partnership concept consists of the strengths and challenges that each of the entities bring to create a more strong and complete whole. We know and understand that tribes bring market, customer bases, natural resources, regulatory and tax advantages, and industry brings financing capabilities, market risk management, technical and operational expertise. This is very exciting and well received in Indian country thus far.

We feel that our experience in energy development working with tribes can be transferred to water with the recent addition of Azurix, our new water company.

As we have already discussed with the Chippewa Cree Tribe, our proposal is simple. We work with our prospective tribal partners to

conduct a joint assessment of the tribe's resources and potential commercial opportunities and move forward in a partnership mode with the tribes to create economic development that is more culturally, environmentally and economically sound for both parties.

We look forward to working with the Cree Tribe and their water opportunities that the water settlement may bring them.

Thank you for the opportunity to address this panel.

[The prepared statement of Mr. Fragua follows:]

STATEMENT OF ROGER FRAGUA, MANAGER, AMERICAN INDIAN AFFAIRS, ENRON CORP.

Mr. Chairman, Members of the Subcommittee, and honored guests here today, my name is Roger Fragua and I am manager of American Indian Affairs for Houston, Texas-based Enron Corp. I am honored to appear before the Subcommittee today and thank you for the opportunity to testify at this hearing on two areas of increasing interest to Enron: American Indians and water.

Enron is one of the world's leading energy companies, with special emphasis in natural gas and electricity, but with rapidly growing interests in markets for other commodities and services such as water and telecommunications. Enron owns approximately $30 billion in energy related assets, produces electricity and natural gas, develops, constructs and operates energy facilities worldwide, delivers physical commodities, and provides risk management and financial services to customers around the world.

Enron is consistently recognized as a leader in the energy industry not only measured by financial and physical assets, but by our vast intellectual resources. Our intellectual resources create new and emerging markets, products and technologies that consistently create positive global impacts. In North America, one market in which Enron is very actively engaged is American Indian Tribes and reservations. To promote this market, Enron's organization includes a distinct commercial business unit: Enron American Indian Affairs.

In fact, Enron has a long history of responsibly working with many American Indian Tribes. Our involvement began many years ago when Enron was largely a gas transmission company with pipelines crossing many miles of Indian lands, participating in numerous amicably negotiated settlements of rights-of-way and permits. From this friendly and mutually-respectful relationship with several Tribes, Enron's involvement in Indian Country has evolved to the current independent proactive business unit that is joining together Enron with Indian Country as multifaceted partners in energy projects.

We value our Tribal relationships and are working toward enhancing the Tribal capacity in order to build strong business partnerships. For example, to assist in developing strong Tribal energy partners, Enron embarked on an energy education program throughout Indian Country, sponsoring energy conferences among regional groups of Tribes, as well as for individual Tribes. These conferences included not only presentations by Enron and other energy companies, but facilitated work sessions exclusively for Tribal leadership, where Tribal participants could map out self-determined energy strategies, in order to position the Tribe to partner equally with corporate America. Enron continues to sponsor this conferencing effort, and we believe that when Tribes have determined their energy strategies, Enron will prove itself to be the best energy partner of choice for Indian Country as we can tailor energy services to meet special Tribal needs. That's what competition is all about—being responsive to the customer, in this case the Tribe.

As result of this effort, today Enron American Indian Affairs is working as energy partners with several Tribes throughout North America to develop electric, gas and now, water projects. The Enron-Indian Country partnership is built on mutual respect and admiration for the collective strengths that each entity brings to create a greater whole than either entity possesses individually. We recognize that the strengths of Indian Country lie in its growing market and customer bases, vast natural and renewable resources, and regulatory and tax advantages based on Tribal political status as a sovereign nation. As to Enron's part of the partnership, Enron brings financing, market risk management and technical and operational expertise and experience.

As of January 1999, Enron formed its own water company, Azurix Corporation. Through Azurix, we are now delighted to add privatized water expertise to our energy portfolio. Azurix is currently listed on the New York Stock Exchange and is poised to become a global water company engaged in the business of acquiring, operating and managing water and wastewater assets, providing water and wastewater

related services, and in assisting its clients to manage and develop their water related assets. The capabilities of Enron American Indian Affairs are especially enhanced with the addition of Azurix to recognize the significant and timely water issues in Indian Country.

To this end, Enron American Indian Affairs now works in several additional ways with Tribes: (1) adding water to a "bundled" energy picture in exploring energy partnership opportunities, (2) assessing water opportunities independently with Tribes, and (3) assisting Tribes to evaluate and manage their tribal water resources from a total resource development and management perspective. In all cases, with the addition of specific water expertise to our intellectual capital base, Enron's long experience in gas and electricity is readily transferable to the water arena.

In pursuing energy opportunities with Tribes, Enron's approach has been fairly simple: We seek Tribal partners that are equally motivated in seeking "for-profit" energy projects that are culturally, environmentally and economically sound. The valuation and feasibility process begins with a comprehensive energy assessment performed by Enron, at Enron's expense, of a Tribe's resources, physical infrastructure, and location to markets and general willingness to become proactively engaged in the energy industry. In exchange for this assessment, the Tribe contractually agrees to make Enron its preferred energy partner through mechanisms such as giving Enron a right of first refusal to pursue projects arising from the energy assessment. We anticipate that water opportunities will be explored in a similar manner.

Today, we are currently pursuing assessments with large and small Tribes, aggregations of more than one Tribe, as well as entities such as BIA schools. All assessments and transactions are custom designed for the specific tribal entity or entities. As noted above, while our previous focus has been on gas and electricity, we are now including in these assessments any potential opportunity existing with a Tribe's water resources, as well as wastewater treatment and water management.

The U.S. water industry is one of the most inefficient industries in our nation today. As a leader and participant in developing restructured markets in gas and electricity, Enron sees many parallels between the status of these energy industries 15-20 years ago with the water industry today. Just as Enron led the evolution of natural gas and electric restructuring, we are excited to take a similar role in the water industry. In developing energy partnerships with Tribes, including water project partnerships, Enron and Tribes can explore together new opportunities and markets based on a more efficient use of water.

The future of water lies in the efficient use of water in restructured, open markets. In often complicated water issues, Enron offers talent and innovative thinking to provide management skills and new ideas that are unparalleled in the industry. As we are doing in natural gas and electricity, we believe Enron and Azurix, in partnership with Tribes, can together create mutually profitable commercial opportunities with respect to water resource development and management resulting in maximized economic potential for each partner.

Mr. DOOLITTLE. Thank you very much.

Mr. Hayes, inasmuch as the Administration, I understand, does not support Federal funding of a delivery system to bring the Tiber Reservoir water to the reservation, what do you believe are the most promising ways available to the tribe to make use of the Tiber water supply that is provided in the bill?

Mr. HAYES. Mr. Chairman, we support reasonable efforts to bring the water to the reservation. We are not saying we don't support a delivery system. Our view is twofold.

First, in terms of the settlement, we think a contribution capped at $15 million is an appropriate fund to set aside for a future delivery system.

Number two, we believe that other options should be studied. In fact, another aspect of the legislation has the tribe taking the lead in studying an alternative to the regional water supply system that has been analyzed.

It is our view that it will in the future be likely important for the tribe to have access to this water for drinking water purposes, and we are hopeful that the fund that is being set aside and that will earn interest will be adequate to fund whatever future system

makes the most sense at that time, but I don't think any of us are prepared to identify what that is today.

Mr. DOOLITTLE. Does the Administration have any problem with our efforts to split the bill into two titles, address the non-appurtenant question while assuring the tribe rights in the Tiber Reservoir allocation?

Mr. HAYES. No, Mr. Chairman. We are willing to work with you and your counsel on that subject.

Mr. DOOLITTLE. What limitations exist on the Administration to help the tribes get professional or business assistance in finding ways to better utilize their water rights?

Mr. HAYES. Let me say at the outset that we appreciate your leadership in bringing the business community into this matter. We are very supportive of the business community's interest with this tribe and other tribes.

The only limitation, frankly, is financial. Our entire budget for negotiating water rights matters nationwide is now $11 million. We would like to participate as much as possible in these discussions, but we have some limits in that regard.

To the extent that our financial assistance is not needed, it is certainly not an issue. We are very supportive of the concept that you are putting on the table, Mr. Chairman.

Mr. DOOLITTLE. Thank you. Will the administration work with us to encourage the private sector to assist the tribes in this endeavor?

Mr. HAYES. We certainly will.

Mr. DOOLITTLE. Thank you very much. You indicate that money will be appropriated to repair dangerous dams. What programs are currently available with the department that already authorize the disbursement of monies for these projects?

Mr. HAYES. We have a safety of dams program, of course, and safety of dams funds on the Bureau of Indian Affairs side of the house have been scarce, unfortunately.

Just to clarify the record on this, the primary dam in question, Bonneau Reservoir, has been stabilized so that it is not a threat. That is my understanding. The complete securing of the dam for a permanent basis will be most efficiently done in connection with the enlargement of the reservoir that will accompany the implementation of this statute. So we are trying to address this in an efficient, cost effective, and safe manner.

Mr. DOOLITTLE. Could you explain how is it that these dams have been allowed to become dangerous?

Mr. HAYES. It's a budgetary problem, Mr. Chairman. This is again funded through the BIA, and our request for funds in this regard have been cut back. What we do is do a ranking of the most dangerous dams in the country and give top priority, somewhat like responding to a fire to deal with those situation.

Anything you could do to help us secure good funding for the safety of dams program—because it is obviously a matter of life and death potentially in some situations, and we are doing the best that we can. We are pleased that this settlement will help secure these facilities, not on a patchwork basis, but on a permanent basis, which is the way it should be.

Mr. DOOLITTLE. We will assist you in your efforts. I hope that Interior will be vigorous in pressing its claim with the Administration for the necessary monies to do this work and not let them fall into that condition.

Let me switch to Mr. Tweeten for a minute. In your testimony you indicate that the State of Montana has worked on this settlement for almost a decade, and then you state that "a chill in negotiations has already been felt by western states due to the reluctance of Congress to ratify this compact last year."

Do you think it is unreasonable for the Congress to thoughtfully consider the first Indian water rights settlement brought before it in the last decade?

Mr. TWEETEN. Mr. Chairman, certainly not. I do think it's important for Congress to keep in mind as well that states are watching and tribes are watching as Congress works on this compact and brings it forward through the ratification process, and the signal from the Congress to the states that when states do what we have done with this compact, which is to assiduously address all of the issues and concerns that are raised on the local level and to present you with a package that we think is very well thought out and very well crafted, that Congress is going to go the next step with us in an expeditious way, I think would send an important signal to the states and tribes about the support of the Congress for their efforts in this area.

Mr. DOOLITTLE. Does the State of Montana have any problem with our efforts to split the bill into two titles that address the non-appurtenant question while assuring the tribe rights in the Tiber Reservoir allocation?

Mr. TWEETEN. Mr. Chairman, we have no objection in principle to the splitting of the bill into two titles. We are concerned about making sure that the language that is used to accomplish that maintains the current structure of the compact so that the water that is allocated to the tribe in Tiber remains a part of a tribal water right that is subject to all of the protections for non-Indian users that the tribal right is subject to under the compact, but in principle we have no objection.

Mr. DOOLITTLE. I assume you will be working with us as we make sure the language reflects our common intent to give effect to these provisions.

Mr. TWEETEN. Mr. Chairman, we certainly will.

Mr. DOOLITTLE. Thank you.

Mr. Morsette, does the tribe have any problem on this issue of splitting the bill into two titles, one of which addresses the non-appurtenant question while assuring the tribe rights in the Tiber Reservoir allocation?

Mr. MORSETTE. No, sir, we don't. What we submitted to Mr. Faber is what we agreed with, and we would be willing to work again—What Mr. Tweeten just said. We are willing to work with the community to work that out if there are any other issues involved.

Mr. DOOLITTLE. Thank you.

Mr. Fragua, I gather you have had a chance to meet with the representatives of the Rocky Boy's Tribe.

Mr. FRAGUA. Yes, we have.

Mr. DOOLITTLE. What ideas or thoughts do you have just from the opportunity you have had to assess the situation relative to what they might do to improve upon their situation?

Mr. FRAGUA. We've had a very brief meeting with the Chippewa Cree of the Rocky Boy Tribe. Our preliminary assessment is this. They seem generally interested in our concept of partnering. We seem generally interested in working with Indian country in a partnership mode. To that extent, that is where we are in our discussions.

We are anticipating an opportunity to address the tribal council at some point, and maybe even after that to have an opportunity to take a physical assessment and looking at the opportunities and then render some of that intellectual capital that we had suggested earlier to be able to bring some creative solutions. But at this point we have only very briefly met with the Rocky Boy Tribe.

Mr. DOOLITTLE. I think your involvement in this is a very positive development and may well be of real assistance to not only this tribe, but to the extent that we set a pattern for this kind of cooperation to occur between future tribes and business in developing their water resources, I think that would be very positive.

At this point I recognize Mr. Hill for any questions that he may have.

Mr. HILL. Thank you, Mr. Chairman. Again let me thank all the members of the panel, all the people who have worked on this for their patient persistence in helping us get this done and their willingness to cooperate with our Committee and the staff.

I would just comment that Congress reserved the authority to ratify these agreements with the intention that the Congress would exercise oversight over the agreement. I don't think it was ever an intention that Congress would just ratify whatever occurred or rubber stamp, and I think everybody understands that. Certainly the Chairman has reconfirmed that as we have gone through this process.

Mr. Tweeten, could you explain to the Committee why the State of Montana is willing to agree to allow the tribe to market water allocated to the settlement from sources on the reservation?

Mr. TWEETEN. Thank you, Mr. Chairman, Congressman Hill. First of all, I think it needs to be understood that it's part of the public policy of the State of Montana to allow water users under certain restrictions to lease their water rights. Non-Indian, nontribal water rights can be leased under Montana law. Initially we didn't see any fundamental objection to extending the same privilege to the tribes that is extended to water users under state law to lease their water rights. We see that there are real possibilities for benefits to the state water users from the ability of the tribe to lease its water.

You need to understand that in this area of Montana the largest water use by far involves irrigated agriculture. The Milk River Basin is over-appropriated. It has been closed to new agricultural appropriations for several years. The opportunity to lease water from either the Rocky Boy's Tribe or from the other tribes in the basin that may end up with water rights that could be leased may in fact be the only opportunity that exists for additional development of new irrigation water in the Milk River Basin in the future.

So there is a real tangible benefit to agricultural interests in the Milk River Basin by allowing this tribe and other tribes to market on the same basis as other water users.

We have also included in the compact some very significant protections that guarantee the interests of the State of Montana in this area. We have limited in the compact and the tribe has agreed to limit their leasing to the Missouri River Basin. Water users within the Milk River Basin are allowed a right of first refusal on any leasing proposal. So they have the opportunity to keep the water within the Milk River Basin. The tribe has agreed that any off-reservation marketing opportunities will be exercised in full compliance with state law with respect to both water use and the construction of conveyance structures.

Most importantly, the tribe has agreed that no marketing opportunity will be undertaken that has any adverse effect on any existing users under state law. These are very important protections that the tribe has agreed to, and with those protections we are very comfortable with the opportunities that the tribal leasing will offer us in the future for water users in Montana.

Mr. HILL. It's true that the potential at least exists under this arrangement for users in areas where we have insufficient water to be able to take advantage of this compact beneficially, municipal use, agriculture use, that otherwise wouldn't have an opportunity, right?

Mr. TWEETEN. Mr. Chairman, Congressman Hill, that is right.

Mr. HILL. Also, Mr. Tweeten, do you have any objection to the tribe developing a business plan for its on-reservation economic development?

Mr. TWEETEN. Congressman Hill, we have no objection to the development of a business plan. Indeed, it makes sense that the economic development efforts of any enterprise, whether it be tribal or non-tribal, be conducted in pursuit of carefully thought out planning.

We are concerned from a process standpoint with the creation of an obligation imposed by Federal law that certain kinds of business planning or certain avenues of business planning become mandatory in these settlements. We certainly would hope that if Congress were thinking of imposing such a requirement that it wouldn't, first of all, do it in the context of a compact that has already been negotiated so we would know what the rules are going in and could craft our compact around that requirement.

Furthermore, we think it's important that if Congress thinks that those kinds of planning obligations ought to be imposed that you conduct hearings and take comment from a broader range of tribes and states than simply Montana and the Rocky Boy's Chippewa Cree Tribe. I know other tribal entities and other states certainly have an interest in this question and I'm sure they would like to make their views known to the Congress on it as well.

Mr. HILL. If a water compact contemplates a commercial use of the water, it seems reasonable that Congress might say what are the potentials of that and why do you want to do that. You don't object to that.

Mr. TWEETEN. No, Congressman Hill, we don't object to that.

Mr. HILL. Mr. Morsette, there is some urgency on the reservation, isn't there, with regard to getting this resolved? You have got some health issues with regard to water quality on the reservation, and obviously there are economic development needs on the reservation. Would you address those to the Committee?

Mr. MORSETTE. Mr. Chairman, Representative Hill, our population is growing at an astounding rate. We have people returning to the reservation that don't have anyplace to live. We have some wastewater treatment facility problems. We have a population that we can't take care of right now, and we need extra water; we need economic development; we need jobs; we need a lot of things on the reservation.

We look at this as a start, the beginning, where we can start storing some water and using it for agriculture, where we can start irrigating some of the arable land we have, and going down the road to sustain ourselves for the future, for the economic stability of our tribe. This is our beginning, we hope. We look at this as a big time in our history.

Mr. HILL. Thank you. Again, I want to thank all the panelists, the Chairman and the staff for our ability to work through some of the issues that have been raised. I am optimistic now we are going to be able to move legislation. I thank you, Mr. Chairman, for allowing me to participate in the hearing and I again thank all the panelists.

Mr. DOOLITTLE. I thank you. I want to especially acknowledge Mr. Hill's leading the effort in Congress to bring this about. I know it has been slower than he had hoped, but I do think what we have come up with here is a good product that will stand the test of time and will set a good precedent for the future.

I again acknowledge the contribution of the tribe, the State of Montana, and the Federal Government led by Mr. Hayes, and all the other participants, the stakeholders in this matter.

There will be further questions no doubt we may wish to tender to our witnesses. We would ask you to please respond to them expeditiously, and we will hold the record open for those responses to come back in. We thank all of you for taking your time and making the effort to come here today.

With that, this hearing is adjourned.

[Whereupon at 11:59 a.m. the Subcommittee was adjourned.]

○