

CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVA-
TION INDIAN RESERVED WATER RIGHTS SETTLEMENT
AND WATER SUPPLY ENHANCEMENT ACT OF 1999

OCTOBER 12, 1999.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 795]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 795) to provide for the settlement of the water rights claims of the Chippewa Cree Tribe of the Rocky Boy's Reservation, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Chippewa Cree Tribe of The Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999".

SEC. 2. FINDINGS.

Congress finds that—

(1) in fulfillment of its trust responsibility to Indian tribes and to promote tribal sovereignty and economic self-sufficiency, it is the policy of the United States to settle the water rights claims of the tribes without lengthy and costly litigation;

(2) the Rocky Boy's Reservation was established as a homeland for the Chippewa Cree Tribe;

(3) adequate water for the Chippewa Cree Tribe of the Rocky Boy's Reservation is important to a permanent, sustainable, and sovereign homeland for the Tribe and its members;

(4) the sovereignty of the Chippewa Cree Tribe and the economy of the Reservation depend on the development of the water resources of the Reservation;

(5) the planning, design, and construction of the facilities needed to utilize water supplies effectively are necessary to the development of a viable Reservation economy and to implementation of the Chippewa Cree-Montana Water Rights Compact;

(6) the Rocky Boy's Reservation is located in a water-short area of Montana and it is appropriate that the Act provide funding for the development of additional water supplies, including domestic water, to meet the needs of the Chippewa Cree Tribe;

(7) proceedings to determine the full extent of the water rights of the Chippewa Cree Tribe are currently pending before the Montana Water Court as a part of the case "In the Matter of the Adjudication of All Rights to the Use of Water, Both Surface and Underground, within the State of Montana";

(8) recognizing that final resolution of the general stream adjudication will take many years and entail great expense to all parties, prolong uncertainty as to the availability of water supplies, and seriously impair the long-term economic planning and development of all parties, the Chippewa Cree Tribe and the State of Montana entered into the Compact on April 14, 1997; and

(9) the allocation of water resources from the Tiber Reservoir to the Chippewa Cree Tribe under this Act is uniquely suited to the geographic, social, and economic characteristics of the area and situation involved.

SEC. 3. PURPOSES.

The purposes of this Act are as follows:

(1) To achieve a fair, equitable, and final settlement of all claims to water rights in the State of Montana for—

(A) the Chippewa Cree Tribe; and

(B) the United States for the benefit of the Chippewa Cree Tribe.

(2) To approve, ratify, and confirm, as modified in this Act, the Chippewa Cree-Montana Water Rights Compact entered into by the Chippewa Cree Tribe of the Rocky Boy's Reservation and the State of Montana on April 14, 1997, and to provide funding and other authorization necessary for the implementation of the Compact.

(3) To authorize the Secretary of the Interior to execute and implement the Compact referred to in paragraph (2) and to take such other actions as are necessary to implement the Compact in a manner consistent with this Act.

(4) To authorize Federal feasibility studies designed to identify and analyze potential mechanisms to enhance, through conservation or otherwise, water supplies in north central Montana, including mechanisms to import domestic water supplies for the future growth of the Rocky Boy's Indian Reservation.

(5) To authorize certain projects on the Rocky Boy's Indian Reservation, Montana, in order to implement the Compact.

(6) To authorize certain modifications to the purposes and operation of the Bureau of Reclamation's Tiber Dam and Lake Elwell on the Marias River in Montana in order to provide the Tribe with an allocation of water from Tiber Reservoir.

(7) To authorize the appropriation of funds necessary for the implementation of the Compact.

SEC. 4. DEFINITIONS.

In this Act:

(1) **ACT.**—The term "Act" means the "Chippewa Cree Tribe of The Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999".

(2) **COMPACT.**—The term "Compact" means the water rights compact between the Chippewa Cree Tribe of the Rocky Boy's Reservation and the State of Montana contained in section 85-20-601 of the Montana Code Annotated (1997).

(3) **FINAL.**—The term "final" with reference to approval of the decree in section 101(b) means completion of any direct appeal to the Montana Supreme Court of a final decree by the Water Court pursuant to section 85-2-235 of the Montana Code Annotated (1997), or to the Federal Court of Appeals, including the expiration of the time in which a petition for certiorari may be filed in the United States Supreme Court, denial of such a petition, or the issuance of the Supreme Court's mandate, whichever occurs last.

(4) **FUND.**—The term "Fund" means the Chippewa Cree Indian Reserved Water Rights Settlement Fund established under section 104.

(5) **INDIAN TRIBE.**—The term "Indian tribe" has the meaning given that term in section 101(2) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a(2)).

(6) MR&I FEASIBILITY STUDY.—The term “MR&I feasibility study” means a municipal, rural, and industrial, domestic, and incidental drought relief feasibility study described in section 202.

(7) MISSOURI RIVER SYSTEM.—The term “Missouri River System” means the mainstem of the Missouri River and its tributaries, including the Marias River.

(8) RECLAMATION LAW.—The term “Reclamation Law” has the meaning given the term “reclamation law” in section 4 of the Act of December 5, 1924 (43 Stat. 701, chapter 4; 43 U.S.C. 371).

(9) ROCKY BOY’S RESERVATION; RESERVATION.—The term “Rocky Boy’s Reservation” or “Reservation” means the Rocky Boy’s Reservation of the Chippewa Cree Tribe in Montana.

(10) SECRETARY.—The term “Secretary” means the Secretary of the Interior, or his or her duly authorized representative.

(11) TOWE PONDS.—The term “Towe Ponds” means the reservoir or reservoirs referred to as “Stoneman Reservoir” in the Compact.

(12) TRIBAL COMPACT ADMINISTRATION.—The term “Tribal Compact Administration” means the activities assumed by the Tribe for implementation of the Compact as set forth in Article IV of the Compact.

(13) TRIBAL WATER CODE.—The term “tribal water code” means a water code adopted by the Tribe, as provided in the Compact.

(14) TRIBAL WATER RIGHT.—

(A) IN GENERAL.—The term “Tribal Water Right” means the water right set forth in section 85–20–601 of the Montana Code Annotated (1997) and includes the water allocation set forth in title II of this Act.

(B) RULE OF CONSTRUCTION.—The definition of the term “Tribal Water Right” under this paragraph and the treatment of that right under this Act shall not be construed or interpreted as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State of Montana or any other State.

(15) TRIBE.—The term “Tribe” means the Chippewa Cree Tribe of the Rocky Boy’s Reservation and all officers, agents, and departments thereof.

(16) WATER DEVELOPMENT.—The term “water development” includes all activities that involve the use of water or modification of water courses or water bodies in any way.

SEC. 5. MISCELLANEOUS PROVISIONS.

(a) NONEXERCISE OF TRIBE’S RIGHTS.—Pursuant to Tribal Resolution No. 40–98, and in exchange for benefits under this Act, the Tribe shall not exercise the rights set forth in Article VII.A.3 of the Compact, except that in the event that the approval, ratification, and confirmation of the Compact by the United States becomes null and void under section 101(b), the Tribe shall have the right to exercise the rights set forth in Article VII.A.3 of the Compact.

(b) WAIVER OF SOVEREIGN IMMUNITY.—Except to the extent provided in subsections (a), (b), and (c) of section 208 of the Department of Justice Appropriation Act, 1953 (43 U.S.C. 666), nothing in this Act may be construed to waive the sovereign immunity of the United States.

(c) TRIBAL RELEASE OF CLAIMS AGAINST THE UNITED STATES.—

(1) IN GENERAL.—Pursuant to Tribal Resolution No. 40–98, and in exchange for benefits under this Act, the Tribe shall, on the date of enactment of this Act, execute a waiver and release of the claims described in paragraph (2) against the United States, the validity of which are not recognized by the United States, except that—

(A) the waiver and release of claims shall not become effective until the appropriation of the funds authorized in section 105, the water allocation in section 201, and the appropriation of funds for the MR&I feasibility study authorized in section 204 have been completed and the decree has become final in accordance with the requirements of section 101(b); and

(B) in the event that the approval, ratification, and confirmation of the Compact by the United States becomes null and void under section 101(b), the waiver and release of claims shall become null and void.

(2) CLAIMS DESCRIBED.—The claims referred to in paragraph (1) are as follows:

(A) Any and all claims to water rights (including water rights in surface water, ground water, and effluent), claims for injuries to water rights, claims for loss or deprivation of use of water rights, and claims for failure to acquire or develop water rights for lands of the Tribe from time immemorial to the date of ratification of the Compact by Congress.

(B) Any and all claims arising out of the negotiation of the Compact and the settlement authorized by this Act.

(3) SETOFFS.—In the event the waiver and release do not become effective as set forth in paragraph (1)—

(A) the United States shall be entitled to setoff against any claim for damages asserted by the Tribe against the United States, any funds transferred to the Tribe pursuant to section 104, and any interest accrued thereon up to the date of setoff; and

(B) the United States shall retain any other claims or defenses not waived in this Act or in the Compact as modified by this Act.

(d) OTHER TRIBES NOT ADVERSELY AFFECTED.—Nothing in this Act is intended to quantify or otherwise adversely affect the land and water rights, or claims or entitlements to land or water of an Indian tribe other than the Chippewa Cree Tribe.

(e) ENVIRONMENTAL COMPLIANCE.—In implementing the Compact, the Secretary shall comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

(f) EXECUTION OF COMPACT.—The execution of the Compact by the Secretary as provided for in this Act shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance required by Federal law in implementing the Compact.

(g) CONGRESSIONAL INTENT.—Nothing in this Act is intended to prohibit the Tribe from seeking additional authorization or appropriation of funds for tribal programs or purposes.

(h) ACT NOT PRECEDENTIAL.—Nothing in this Act shall be construed or interpreted as a precedent for the litigation of reserved water rights or the interpretation or administration of future water settlement Acts.

TITLE I—CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION INDIAN RE- SERVED WATER RIGHTS SETTLEMENT

SEC. 101. RATIFICATION OF COMPACT AND ENTRY OF DECREE.

(a) WATER RIGHTS COMPACT APPROVED.—Except as modified by this Act, and to the extent the Compact does not conflict with this Act—

(1) the Compact, entered into by the Chippewa Cree Tribe of the Rocky Boy's Reservation and the State of Montana on April 14, 1997, is hereby approved, ratified, and confirmed; and

(2) the Secretary shall—

(A) execute and implement the Compact together with any amendments agreed to by the parties or necessary to bring the Compact into conformity with this Act; and

(B) take such other actions as are necessary to implement the Compact.

(b) APPROVAL OF DECREE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the United States, the Tribe, or the State of Montana shall petition the Montana Water Court, individually or jointly, to enter and approve the decree agreed to by the United States, the Tribe, and the State of Montana attached as Appendix 1 to the Compact, or any amended version thereof agreed to by the United States, the Tribe, and the State of Montana.

(2) RESORT TO THE FEDERAL DISTRICT COURT.—Under the circumstances set forth in Article VII.B.4 of the Compact, 1 or more parties may file an appropriate motion (as provided in that article) in the United States district court of appropriate jurisdiction.

(3) EFFECT OF FAILURE OF APPROVAL TO BECOME FINAL.—In the event the approval by the appropriate court, including any direct appeal, does not become final within 3 years after the filing of the decree, or the decree is approved but is subsequently set aside by the appropriate court—

(A) the approval, ratification, and confirmation of the Compact by the United States shall be null and void; and

(B) except as provided in sections 105(e)(1), 5(a), and 5(c)(3), this Act shall be of no further force and effect.

SEC. 102. USE AND TRANSFER OF THE TRIBAL WATER RIGHT.

(a) **ADMINISTRATION AND ENFORCEMENT.**—As provided in the Compact, until the adoption and approval of a tribal water code by the Tribe, the Secretary shall administer and enforce the Tribal Water Right.

(b) **TRIBAL MEMBER ENTITLEMENT.**—

(1) **IN GENERAL.**—Any entitlement to Federal Indian reserved water of any tribal member shall be satisfied solely from the water secured to the Tribe by the Compact and shall be governed by the terms and conditions of the Compact.

(2) **ADMINISTRATION.**—An entitlement described in paragraph (1) shall be administered by the Tribe pursuant to a tribal water code developed and adopted pursuant to Article IV.A.2 of the Compact, or by the Secretary pending the adoption and approval of the tribal water code.

(c) **TEMPORARY TRANSFER OF TRIBAL WATER RIGHT.**—Notwithstanding any other provision of statutory or common law, the Tribe may, with the approval of the Secretary and subject to the limitations and conditions set forth in the Compact, including limitation on transfer of any portion of the Tribal Water Right to within the Missouri River Basin, enter into a service contract, lease, exchange, or other agreement providing for the temporary delivery, use, or transfer of the water rights confirmed to the Tribe in the Compact, except that no service contract, lease, exchange, or other agreement entered into under this subsection may permanently alienate any portion of the Tribal Water Right.

SEC. 103. ON-RESERVATION WATER RESOURCES DEVELOPMENT.

(a) **WATER DEVELOPMENT PROJECTS.**—The Secretary, through the Bureau of Reclamation, is authorized and directed to plan, design, and construct, or to provide, pursuant to subsection (b), for the planning, design, and construction of the following water development projects on the Rocky Boy's Reservation:

- (1) Bonneau Dam and Reservoir Enlargement.
- (2) East Fork of Beaver Creek Dam Repair and Enlargement.
- (3) Brown's Dam Enlargement.
- (4) Towe Ponds' Enlargement.
- (5) Such other water development projects as the Tribe shall from time to time consider appropriate.

(b) **IMPLEMENTATION AGREEMENT.**—The Secretary, at the request of the Tribe, shall enter into an agreement, or, if appropriate, renegotiate an existing agreement, with the Tribe to implement the provisions of this Act through the Tribe's annual funding agreement entered into under the self-governance program under title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aa et seq.) by which the Tribe shall plan, design, and construct any or all of the projects authorized by this section.

(c) **BUREAU OF RECLAMATION PROJECT ADMINISTRATION.**—

(1) **IN GENERAL.**—Congress finds that the Secretary, through the Bureau of Reclamation, has entered into an agreement with the Tribe, pursuant to title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aa et seq.)—

(A) defining and limiting the role of the Bureau of Reclamation in its administration of the projects authorized in subsection (a);

(B) establishing the standards upon which the projects will be constructed; and

(C) for other purposes necessary to implement this section.

(2) **AGREEMENT.**—The agreement referred to in paragraph (1) shall become effective when the Tribe exercises its right under subsection (b).

SEC. 104. CHIPPEWA CREE INDIAN RESERVED WATER RIGHTS SETTLEMENT TRUST FUND.

(a) **ESTABLISHMENT OF TRUST FUND.**—

(1) **IN GENERAL.**—

(A) **ESTABLISHMENT.**—There is hereby established in the Treasury of the United States a trust fund for the Chippewa Cree Tribe of the Rocky Boy's Reservation to be known as the "Chippewa Cree Indian Reserved Water Rights Settlement Trust Fund".

(B) **AVAILABILITY OF AMOUNTS IN FUND.**—

(i) **IN GENERAL.**—Amounts in the Fund shall be available to the Secretary for management and investment on behalf of the Tribe and distribution to the Tribe in accordance with this Act.

(ii) **AVAILABILITY.**—Funds made available from the Fund under this section shall be available without fiscal year limitation.

(2) **MANAGEMENT OF FUND.**—The Secretary shall deposit and manage the principal and interest in the Fund in a manner consistent with subsection (b) and other applicable provisions of this Act.

(3) CONTENTS OF FUND.—The Fund shall consist of the amounts authorized to be appropriated to the Fund under section 105(a) and such other amounts as may be transferred or credited to the Fund.

(4) WITHDRAWAL.—The Tribe, with the approval of the Secretary, may withdraw the Fund and deposit it in a mutually agreed upon private financial institution. That withdrawal shall be made pursuant to the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(5) ACCOUNTS.—The Secretary of the Interior shall establish the following accounts in the Fund and shall allocate appropriations to the various accounts as required in this Act:

(A) The Tribal Compact Administration Account.

(B) The Economic Development Account.

(C) The Future Water Supply Facilities Account.

(b) FUND MANAGEMENT.—

(1) IN GENERAL.—

(A) AMOUNTS IN FUND.—The Fund shall consist of such amounts as are appropriated to the Fund and allocated to the accounts of the Fund by the Secretary as provided in this Act and in accordance with the authorizations for appropriations in paragraphs (1), (2), and (3) of section 105(a), together with all interest that accrues in the Fund.

(B) MANAGEMENT BY SECRETARY.—The Secretary shall manage the Fund, make investments from the Fund, and make available funds from the Fund for distribution to the Tribe in a manner consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(2) TRIBAL MANAGEMENT.—

(A) IN GENERAL.—If the Tribe exercises its right pursuant to subsection (a)(4) to withdraw the Fund and deposit it in a private financial institution, except as provided in the withdrawal plan, neither the Secretary nor the Secretary of the Treasury shall retain any oversight over or liability for the accounting, disbursement, or investment of the funds.

(B) WITHDRAWAL PLAN.—The withdrawal plan shall provide for—

(i) the creation of accounts and allocation to accounts in a fund established under the plan in a manner consistent with subsection (a); and

(ii) the appropriate terms and conditions, if any, on expenditures from the Fund (in addition to the requirements of the plans set forth in paragraphs (2) and (3) of subsection (c)).

(c) USE OF FUND.—The Tribe shall use the Fund to fulfill the purposes of this Act, subject to the following restrictions on expenditures:

(1) Except for \$400,000 necessary for capital expenditures in connection with Tribal Compact Administration, only interest accrued on the Tribal Compact Administration Account referred to in subsection (a)(5)(A) shall be available to satisfy the Tribe's obligations for Tribal Compact Administration under the provisions of the Compact.

(2) Both principal and accrued interest on the Economic Development Account referred to in subsection (a)(5)(B) shall be available to the Tribe for expenditure pursuant to an economic development plan approved by the Secretary.

(3) Both principal and accrued interest on the Future Water Supply Facilities Account referred to in subsection (a)(5)(C) shall be available to the Tribe for expenditure pursuant to a water supply plan approved by the Secretary.

(d) INVESTMENT OF FUND.—

(1) IN GENERAL.—

(A) APPLICABLE LAWS.—The Secretary shall invest amounts in the Fund in accordance with—

(i) the Act of April 1, 1880 (21 Stat. 70, chapter 41; 25 U.S.C. 161);

(ii) the first section of the Act entitled "An Act to authorize the payment of interest of certain funds held in trust by the United States for Indian tribes", approved February 12, 1929 (25 U.S.C. 161a); and

(iii) the first section of the Act entitled "An Act to authorize the deposit and investment of Indian funds", approved June 24, 1938 (25 U.S.C. 162a).

(B) CREDITING OF AMOUNTS TO THE FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations of the United States held in the Fund shall be credited to and form part of the Fund. The Secretary of the Treasury shall credit to each of the accounts contained in the Fund a proportionate amount of that interest and proceeds.

(2) CERTAIN WITHDRAWN FUNDS.—

(A) IN GENERAL.—Amounts withdrawn from the Fund and deposited in a private financial institution pursuant to a withdrawal plan approved by the

Secretary under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.) shall be invested by an appropriate official under that plan.

(B) DEPOSIT OF INTEREST AND PROCEEDS.—The interest on, and the proceeds from the sale or redemption of, any obligations held under this paragraph shall be deposited in the private financial institution referred to in subparagraph (A) in the fund established pursuant to the withdrawal plan referred to in that subparagraph. The appropriate official shall credit to each of the accounts contained in that fund a proportionate amount of that interest and proceeds.

(e) AGREEMENT REGARDING FUND EXPENDITURES.—If the Tribe does not exercise its right under subsection (a)(4) to withdraw the funds in the Fund and transfer those funds to a private financial institution, the Secretary shall enter into an agreement with the Tribe providing for appropriate terms and conditions, if any, on expenditures from the Fund in addition to the plans set forth in paragraphs (2) and (3) of subsection (c).

(f) PER CAPITA DISTRIBUTIONS PROHIBITED.—No part of the Fund shall be distributed on a per capita basis to members of the Tribe.

SEC. 105. AUTHORIZATION OF APPROPRIATIONS.

(a) CHIPPEWA CREE FUND.—There is authorized to be appropriated for the Fund, \$21,000,000 to be allocated by the Secretary as follows:

(1) TRIBAL COMPACT ADMINISTRATION ACCOUNT.—For Tribal Compact Administration assumed by the Tribe under the Compact and this Act, \$3,000,000 is authorized to be appropriated for fiscal year 2000.

(2) ECONOMIC DEVELOPMENT ACCOUNT.—For tribal economic development, \$3,000,000 is authorized to be appropriated for fiscal year 2000.

(3) FUTURE WATER SUPPLY FACILITIES ACCOUNT.—For the total Federal contribution to the planning, design, construction, operation, maintenance, and rehabilitation of a future water supply system for the Reservation, there are authorized to be appropriated—

- (A) \$2,000,000 for fiscal year 2000;
- (B) \$8,000,000 for fiscal year 2001; and
- (C) \$5,000,000 for fiscal year 2002.

(b) ON-RESERVATION WATER DEVELOPMENT.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of the Interior, for the Bureau of Reclamation, for the construction of the on-Reservation water development projects authorized by section 103—

(A) \$13,000,000 for fiscal year 2000, for the planning, design, and construction of the Bonneau Dam Enlargement, for the development of additional capacity in Bonneau Reservoir for storage of water secured to the Tribe under the Compact;

(B) \$8,000,000 for fiscal year 2001, for the planning, design, and construction of the East Fork Dam and Reservoir enlargement, of the Brown's Dam and Reservoir enlargement, and of the Towe Ponds enlargement of which—

- (i) \$4,000,000 shall be used for the East Fork Dam and Reservoir enlargement;
- (ii) \$2,000,000 shall be used for the Brown's Dam and Reservoir enlargement; and
- (iii) \$2,000,000 shall be used for the Towe Ponds enlargement; and

(C) \$3,000,000 for fiscal year 2002, for the planning, design, and construction of such other water resource developments as the Tribe, with the approval of the Secretary, from time to time may consider appropriate or for the completion of the 4 projects enumerated in subparagraphs (A) and (B) of paragraph (1).

(2) UNEXPENDED BALANCES.—Any unexpended balance in the funds authorized to be appropriated under subparagraph (A) or (B) of paragraph (1), after substantial completion of all of the projects enumerated in paragraphs (1) through (4) of section 103(a)—

- (A) shall be available to the Tribe first for completion of the enumerated projects; and
- (B) then for other water resource development projects on the Reservation.

(c) ADMINISTRATION COSTS.—There is authorized to be appropriated to the Department of the Interior, for the Bureau of Reclamation, \$1,000,000 for fiscal year 2000, for the costs of administration of the Bureau of Reclamation under this Act, except that—

(1) if those costs exceed \$1,000,000, the Bureau of Reclamation may use funds authorized for appropriation under subsection (b) for costs; and

(2) the Bureau of Reclamation shall exercise its best efforts to minimize those costs to avoid expenditures for the costs of administration under this Act that exceed a total of \$1,000,000.

(d) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—The amounts authorized to be appropriated to the Fund and allocated to its accounts pursuant to subsection (a) shall be deposited into the Fund and allocated immediately on appropriation.

(2) INVESTMENTS.—Investments may be made from the Fund pursuant to section 104(d).

(3) AVAILABILITY OF CERTAIN MONEYS.—The amounts authorized to be appropriated in subsection (a)(1) shall be available for use immediately upon appropriation in accordance with subsection 104(c)(1).

(4) LIMITATION.—Those moneys allocated by the Secretary to accounts in the Fund or in a fund established under section 104(a)(4) shall draw interest consistent with section 104(d), but the moneys authorized to be appropriated under subsection (b) and paragraphs (2) and (3) of subsection (a) shall not be available for expenditure until the requirements of section 101(b) have been met so that the decree has become final and the Tribe has executed the waiver and release required under section 5(c).

(e) RETURN OF FUNDS TO THE TREASURY.—

(1) IN GENERAL.—In the event that the approval, ratification, and confirmation of the Compact by the United States becomes null and void under section 101(b), all unexpended funds appropriated under the authority of this Act together with all interest earned on such funds, notwithstanding whether the funds are held by the Tribe, a private institution, or the Secretary, shall revert to the general fund of the Treasury 12 months after the expiration of the deadline established in section 101(b).

(2) INCLUSION IN AGREEMENTS AND PLAN.—The requirements in paragraph (1) shall be included in all annual funding agreements entered into under the self-governance program under title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aa et seq.), withdrawal plans, withdrawal agreements, or any other agreements for withdrawal or transfer of the funds to the Tribe or a private financial institution under this Act.

(f) WITHOUT FISCAL YEAR LIMITATION.—All money appropriated pursuant to authorizations under this title shall be available without fiscal year limitation.

SEC. 106. STATE CONTRIBUTIONS TO SETTLEMENT.

Consistent with Articles VI.C.2 and C.3 of the Compact, the State contribution to settlement shall be as follows:

(1) The contribution of \$150,000 appropriated by Montana House Bill 6 of the 55th Legislative Session (1997) shall be used for the following purposes:

(A) Water quality discharge monitoring wells and monitoring program.

(B) A diversion structure on Big Sandy Creek.

(C) A conveyance structure on Box Elder Creek.

(D) The purchase of contract water from Lower Beaver Creek Reservoir.

(2) Subject to the availability of funds, the State shall provide services valued at \$400,000 for administration required by the Compact and for water quality sampling required by the Compact.

TITLE II—TIBER RESERVOIR ALLOCATION AND FEASIBILITY STUDIES AUTHORIZATION

SEC. 201. TIBER RESERVOIR.

(a) ALLOCATION OF WATER TO THE TRIBE.—

(1) IN GENERAL.—The Secretary shall permanently allocate to the Tribe, without cost to the Tribe, 10,000 acre-feet per year of stored water from the water right of the Bureau of Reclamation in Lake Elwell, Lower Marias Unit, Upper Missouri Division, Pick-Sloan Missouri Basin Program, Montana, measured at the outlet works of the dam or at the diversion point from the reservoir. The allocation shall become effective when the decree referred to in section 101(b) has become final in accordance with that section. The allocation shall be part of the Tribal Water Right and subject to the terms of this Act.

(2) AGREEMENT.—The Secretary shall enter into an agreement with the Tribe setting forth the terms of the allocation and providing for the Tribe's use or

temporary transfer of water stored in Lake Elwell, subject to the terms and conditions of the Compact and this Act.

(3) **PRIOR RESERVED WATER RIGHTS.**—The allocation provided in this section shall be subject to the prior reserved water rights, if any, of any Indian tribe, or person claiming water through any Indian tribe.

(b) **USE AND TEMPORARY TRANSFER OF ALLOCATION.**—

(1) **IN GENERAL.**—Subject to the limitations and conditions set forth in the Compact and this Act, the Tribe shall have the right to devote the water allocated by this section to any use, including agricultural, municipal, commercial, industrial, mining, or recreational uses, within or outside the Rocky Boy's Reservation.

(2) **CONTRACTS AND AGREEMENTS.**—Notwithstanding any other provision of statutory or common law, the Tribe may, with the approval of the Secretary and subject to the limitations and conditions set forth in the Compact, enter into a service contract, lease, exchange, or other agreement providing for the temporary delivery, use, or transfer of the water allocated by this section, except that no such service contract, lease, exchange, or other agreement may permanently alienate any portion of the tribal allocation.

(c) **REMAINING STORAGE.**—The United States shall retain the right to use for any authorized purpose, any and all storage remaining in Lake Elwell after the allocation made to the Tribe in subsection 201(a).

(d) **WATER TRANSPORT OBLIGATION; DEVELOPMENT AND DELIVERY COSTS.**—The United States shall have no responsibility or obligation to provide any facility for the transport of the water allocated by this section to the Rocky Boy's Reservation or to any other location. Except for the contribution set forth in subsection 105(a)(3), the cost of developing and delivering the water allocated by this title or any other supplemental water to the Rocky Boy's Reservation shall not be borne by the United States.

(e) **SECTION NOT PRECEDENTIAL.**—The provisions of this section regarding the allocation of water resources from the Tiber Reservoir to the Tribe shall not be construed as precedent in the litigation or settlement of any other Indian water right claims.

SEC. 202. MUNICIPAL, RURAL, AND INDUSTRIAL FEASIBILITY STUDY.

(a) **AUTHORIZATION.**—

(1) **IN GENERAL.**—

(A) **STUDY.**—The Secretary, through the Bureau of Reclamation, shall perform an MR&I feasibility study of water and related resources in north central Montana to evaluate alternatives for a municipal, rural, and industrial supply for the Rocky Boy's Reservation.

(B) **USE OF FUNDS MADE AVAILABLE FOR FISCAL YEAR 1999.**—The authority under subparagraph (A) shall be deemed to apply to MR&I feasibility study activities for which funds were made available by appropriations for fiscal year 1999.

(2) **CONTENTS OF STUDY.**—The MR&I feasibility study shall include the feasibility of releasing the Tribe's Tiber allocation as provided in section 201 into the Missouri River System for later diversion to a treatment and delivery system for the Rocky Boy's Reservation.

(3) **UTILIZATION OF EXISTING STUDIES.**—The MR&I feasibility study shall include utilization of existing Federal and non-Federal studies and shall be planned and conducted in consultation with other Federal agencies, the State of Montana, and the Chippewa Cree Tribe.

(b) **ACCEPTANCE OR PARTICIPATION IN IDENTIFIED OFF-RESERVATION SYSTEM.**—The United States, the Chippewa Cree Tribe of the Rocky Boy's Reservation, and the State of Montana shall not be obligated to accept or participate in any potential off-Reservation water supply system identified in the MR&I feasibility study authorized in subsection (a).

SEC. 203. REGIONAL FEASIBILITY STUDY.

(a) **IN GENERAL.**—

(1) **STUDY.**—The Secretary, through the Bureau of Reclamation, shall conduct, pursuant to Reclamation Law, a regional feasibility study (referred to in this subsection as the "regional feasibility study") to evaluate water and related resources in north central Montana in order to determine the limitations of those resources and how those resources can best be managed and developed to serve the needs of the citizens of Montana.

(2) **USE OF FUNDS MADE AVAILABLE FOR FISCAL YEAR 1999.**—The authority under paragraph (1) shall be deemed to apply to regional feasibility study ac-

tivities for which funds were made available by appropriations for fiscal year 1999.

- (b) CONTENTS OF STUDY.—The regional feasibility study shall—
- (1) evaluate existing and potential water supplies, uses, and management;
 - (2) identify major water-related issues, including environmental, water supply, and economic issues;
 - (3) evaluate opportunities to resolve the issues referred to in paragraph (2); and
 - (4) evaluate options for implementation of resolutions to the issues.
- (c) REQUIREMENTS.—Because of the regional and international impact of the regional feasibility study, the study may not be segmented. The regional study shall—
- (1) utilize, to the maximum extent possible, existing information; and
 - (2) be planned and conducted in consultation with all affected interests, including interests in Canada.

SEC. 204. AUTHORIZATION OF APPROPRIATIONS FOR FEASIBILITY STUDIES.

(a) FISCAL YEAR 1999 APPROPRIATIONS.—Of the amounts made available by appropriations for fiscal year 1999 for the Bureau of Reclamation, \$1,000,000 shall be used for the purpose of commencing the MR&I feasibility study under section 202 and the regional study under section 203, of which—

- (1) \$500,000 shall be used for the MR&I study under section 202; and
- (2) \$500,000 shall be used for the regional study under section 203.

(b) FEASIBILITY STUDIES.—There is authorized to be appropriated to the Department of the Interior, for the Bureau of Reclamation, for the purpose of conducting the MR&I feasibility study under section 202 and the regional study under section 203, \$3,000,000 for fiscal year 2000, of which—

- (1) \$500,000 shall be used for the MR&I feasibility study under section 202; and
- (2) \$2,500,000 shall be used for the regional study under section 203.

(c) WITHOUT FISCAL YEAR LIMITATION.—All money appropriated pursuant to authorizations under this title shall be available without fiscal year limitation.

(d) AVAILABILITY OF CERTAIN MONEYS.—The amounts made available for use under subsection (a) shall be deemed to have been available for use as of the date on which those funds were appropriated. The amounts authorized to be appropriated in subsection (b) shall be available for use immediately upon appropriation.

PURPOSE OF THE BILL

The purpose of H.R. 795 is to provide for the settlement of the water rights claims of the Chippewa Cree Tribe of the Rocky Boy's Reservation, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Overview of Indian reserved water rights

The 1908 U.S. Supreme court case, *Winters v. United States*, 207 U.S. 564, was the first case to determine an Indian water right. The case also has served to establish the foundation for many other aspects of implied federal reserved water rights. Since 1908 both Indian and non-Indian implied reserved federal water rights have undergone a judicial evolution.

It has been many years since an Indian water rights settlement has been presented to the Congress for ratification. One of the most recent settlements, the Animas La Plata settlement in Colorado, has not been completed, although it was authorized a decade ago.

Rocky Boy's Reservation

The 108,000 acre Rocky Boy's Reservation is located west of Havre, Montana, in the Bear Paw 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 Blackfoot Nation in a 1855 treaty.

In 1880 the Fort Assiniboine military reservation was established in this area. In 1916 Congress set aside 56,035 acres of this land for the Chippewa and Cree Bands of Chief Rocky Boy. In 1947 this reservation was expanded by 45,523 acres, bringing it to near its current size. None of the reservation land has been allotted although some individual assignments have been made.

The reservation is home to over 3,000 tribal members and has an annual population growth exceeding 3 percent. While unemployment is estimated at nearly 70 percent, the Tribe has made important progress in economic development. Production of cattle and grain, and development of timber and tourism provide solid sources of tribal income. However, the reservation is located in an area of scarce water supply. Studies have demonstrated that the reservation can not sustain tribal membership without additional supplies of water for drinking, agricultural and municipal purposes.

The water rights settlement process

Since 1992, the Tribe, State and federal governments have worked to reach a water rights settlement. The Tribe and State reached tentative agreement on a compact in January 1997. The Tribal Council passed a resolution supporting ratification of the agreement shortly thereafter. In the spring of 1997, the Montana State Senate unanimously ratified the compact and the State House gave its approval on a 91-9 vote. It was signed into law by the Governor of Montana on April 14, 1997. In the summer of 1997, the Department of Interior became actively involved in reviewing and negotiating modifications to the settlement. By the summer of 1998, the Administration and the State of Montana contacted the Committee on Resources to discuss the need to advance legislation approving the water rights settlement.

The Rocky Boy's settlement process has been important for a number of reasons. The State of Montana and the Tribe have 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. This process has allowed the parties to look to newer, more flexible solutions which provide tribes with real opportunities without making demands that may destroy the economic livelihood of existing water users. Additionally, this process has brought private sector expertise to the Tribe's efforts to utilize these water supplies once the settlement is authorized.

By approaching these settlements in more creative ways, Congress and the federal government can narrow the divergent expectations of the parties as they enter negotiations and attempt to correct problems that have existed for decades. It is important for Congress to modernize the process and bases for settling these claims. It is taking far too long to arrive at settlements. Often tribes receive water and money under circumstances that do not ultimately help them realize the benefits of the broader economy. It is the intention of the Committee that this settlement will help the Chippewa Cree Tribe reach its goal of self-determination.

COMMITTEE ACTION

H.R. 795 was introduced on February 23, 1999, by Congressman Rick Hill (R-MT). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power. On July 1, 1999, the Subcommittee held a legislative hearing on the bill, where David Hayes, Acting Deputy Secretary of Interior; a member of the Chippewa Cree Tribe, and a representative from the State of Montana testified in favor of the bill. On August 4, 1999, the Committee on Resources discharged the Subcommittee on Water and Power from further consideration of the bill by unanimous consent, and the Committee met to consider the bill. Congressman Hill, on behalf of Congressman John T. Doolittle (R-CA), offered an amendment to create two titles in the legislation. Section 8 of H.R. 795, the Tiber Reservoir water allocation, became Title II, and Sections 5-7 and 9-12 then became Title I. The remaining miscellaneous provisions are applicable to both titles. These changes addressed issues concerning the use of non-appurtenant water sources concerning the water right settlement. The amendment was adopted by voice. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section indicates that the short title of the bill is the Chippewa Cree Tribe of The Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999.

Section 2. Findings

This section sets out nine findings. The allocation of water resources from Tiber Reservoir referred to in paragraph (9) of this section is implemented under section 201 of the bill. Tiber Reservoir is a Bureau of Reclamation facility located 50 miles west of the Rocky Boy's Reservation and has available unallocated water providing a unique opportunity to meet the water needs of the Chippewa Cree Tribe. The Reservoir is also referred to as "Lake Elwell" in the Act and in the Compact.

Section 3. Purposes

This section sets forth the seven purposes of the bill.

Section 4. Definitions

This section defines 16 terms used in the bill. The use of the term "Tribal Water Right" is not intended to create a new class of water rights. The term "Tribal Water Right" is used in the Compact between the State of Montana and the Chippewa Cree Tribe of the Rocky Boy's Reservation and in other compacts entered into by the State of Montana as a shorthand method of reference to multiple sources of water made available or confirmed to a tribe as part of the settlement of claims to water within the State of Montana. "Tribal Water Right" is then used in sections of compacts entered into by the State of Montana setting forth the parameters for

administration and dispute resolution. The parties adopted this approach to assure that, through use of a single term, all protections sought by the State and the Tribe from adverse use of water and all negotiated mechanisms for resolution of disputes apply to all water sources included in the settlement of claims.

Section 5. Miscellaneous provisions

This section sets forth miscellaneous provisions of the bill that are applicable to both Titles 1 and 2, including the requirement of a waiver and release of claims by the Chippewa Cree Tribe against the United States. The claims released by the Tribe are claims arising from time immemorial to the date of enactment of the Act: any and all claims to water rights, claims for injuries to water rights, claims for loss or deprivation of use of water rights, and claims for failure to acquire or develop water rights for lands of the Tribe and any claims arising out of the negotiation of the Compact and the settlement authorized by the bill.

Title I—Chippewa Cree Tribe of the Rocky Boy’s Reservation Indian reserved water rights settlement

Title I of the bill ratifies the Compact between the Chippewa Cree Tribe and the State of Montana regarding the Tribe’s Indian reserved water rights. The title also provides for entry of a judicial decree associated with these water rights by the Montana Water Court. Section 102 details the use and transfer of the tribal water right. Section 103 speaks to on-reservation water resources development. Section 104 establishes a Chippewa Cree Indian Reserved Water Rights Settlement trust fund. Section 105 provides an authorization of appropriations. Section 106 specifies the State of Montana’s contributions to the settlement.

Title II—Tiber Reservoir allocation and feasibility studies authorization

Title II presents an opportunity, outside of a reserved water right settlement, for the Tribe to pursue use of unallocated federal project water in Tiber Reservoir to meet some of its additional water needs. This is an opportunity that is unique to this settlement and is not likely to be available in settling other claims. This title also provides for a more comprehensive evaluation of the regional and tribal water needs.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources’ oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. *Cost of Legislation.*—Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. *Congressional Budget Act.*—As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in tax expenditures. According to the Congressional Budget Office, enactment of H.R. 795 would eventually affect direct spending (including offsetting receipts) by directing the Bureau of Reclamation to provide water to the Tribe (which might otherwise be marketed) but any such impact “would not be significant over the next 10 years.”

3. *Government Reform Oversight Findings.*—Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. *Congressional Budget Office Cost Estimate.*—Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 23, 1999.

Hon. DON YOUNG,
*Chairman, Committee on Resources, House of Representatives,
Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 795, the Chippewa Cree Tribe of the Rocky Boy’s Reservation Indian Reserved Water Rights Settlement and Water Supply enhancement Act of 1999. This estimate supersedes a CBO cost estimate prepared for H.R. 795 on September 10, 1999, which was transmitted with an incorrect reference to the bill’s title.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll (for federal costs) and Marjorie Miller (for the impact on state, local, and tribal governments).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 795—Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999

Summary

H.R. 795 would approve and ratify the water rights settlement agreement entered into by the Chippewa Cree Tribe of the Rocky Boy's Reservation and the state of Montana on April 14, 1997. The bill would authorize appropriations for the Department of Interior (DOI) to implement the agreement, but most of these funds could not be spent until the agreement is approved by the Montana Water Court. H.R. 795 would create the Chippewa Cree Indian Reserved Water Rights Settlement Trust fund and would allow the tribe to spend most amounts deposited to the fund (including interest earnings) without further appropriation. The bill also would authorize funding for the Bureau of Reclamation to conduct two feasibility studies and several on-reservation water development projects. (That amount includes \$1 million for 1999 which has already been provided for the current year.) In addition, H.R. 795 would require the bureau to permanently allocate 10,000 acre-feet per year of stored water to the tribe.

Based on information from DOI, CBO estimates that implementing H.R. 795 would cost \$48 million over the 2000–2004 period, assuming the appropriation of the authorized amounts. Enacting H.R. 795 could eventually affect direct spending (including offsetting receipts); therefore, pay-as-you-go procedures would apply. CBO estimates, however, that any such impact would not be significant over the next 10 years. H.R. 795 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any costs resulting from the settlement agreement would be incurred voluntarily by the state and tribal governments as parties to that agreement.

Estimated cost to the Federal Government

The estimated impact of H.R. 795 on discretionary spending is shown in the following table. CBO estimates that the bill could affect future offsetting receipts, but that any such effects would not be significant over the 2000–2004 period. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 450 (community and regional development).

	By fiscal year, in millions of dollars—					
	1999	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION						
Spending under current law:						
Budget authority ¹	1	0	0	0	0	0
Estimated outlays	1	0	0	0	0	0
Proposed changes:						
Authorization level	0	25	16	8	0	0
Estimated outlays	0	11	9	13	11	4
Spending under H.R. 795						
Authorization level ¹	1	25	16	8	0	0
Estimated outlays	1	11	9	13	11	4

¹The 1999 level is the amount appropriated to the bureau of preauthorization feasibility studies related to the settlement in that year.

Spending subject to appropriation

Although H.R. 795 would authorize specific amounts for each fiscal year, most of the funds could not be spent until the Montana Water Court has approved the settlement agreement between the tribe and the state of Montana. H.R. 795 requires at least one of the parties to petition the court within 180 days of enactment to approve the settlement. Unless the court offers final approval of the settlement within three years of the date when this petition is filed, all unexpended funds provided to implement H.R. 795 would be returned to the Treasury.

Based on information from the tribe, the state, and DOI, CBO estimates that the settlement would be approved during fiscal year 2002, assuming the bill is enacted by the beginning of fiscal year 2000. For purposes of this estimate, CBO assumes that the amounts authorized for each year would be appropriated as specified in the bill, but that any federal funding contingent upon the approval of the settlement agreement would not be spent before 2002. For purposes of this estimate, we assume that outlays would occur at historical rates once the funds are released.

Chippewa Cree Indian Reserved Water Rights Settlement Trust Fund.—H.R. 795 would authorize appropriations totaling \$21 million over the 2000–2002 period to be deposited in the Chippewa Cree Indian Reserved Water Rights Settlement Trust Fund. Starting in fiscal year 2000, the federal budget will exclude trust funds that are held and managed in a fiduciary capacity by the federal government on the behalf of Indian tribes. Hence, deposits to the trust fund established under this bill would be treated as payments to a nonfederal entity. As a result, the entire amount appropriated to the fund in any fiscal year would be recorded as an outlay in that year.

Once funds are deposited, the tribe could either withdraw the money (subject to DOI approval) and invest it in a private financial institution or leave it in the Treasury where it would earn simple interest at a specified rate. Most of the amounts in the fund would become available to the tribe upon final approval of the settlement agreement. Because the trust fund would be nonbudgetary, such restrictions on the tribe's use of the trust fund would not impact the time of federal outlay.

Feasibility Studies.—H.R. 795 would authorize appropriations of \$1 million in 1999 and \$3 million in 2000 for the bureau to conduct two feasibility studies. The use of these funds would not be contingent on the approval of the settlement. According to the bureau, the \$1 million authorized for 1999 has already been appropriated for feasibility studies related to the settlement. CBO estimates that the amount authorized for 2000 would be sufficient to cover the remaining costs of these studies.

Water Development Projects.—H.R. 795 would authorize appropriations totaling \$24 million over the 2000–2002 period for the bureau to implement several on-reservation water development projects. None of these funds could be spent until the settlement agreement is approved. Based on information from the bureau, CBO estimates that once the funds become available, the agency would spend the accumulated appropriations at historical rates.

Direct Spending (including offsetting receipts)

Effective upon the date when the Montana Water Court approves the settlement agreement, H.R. 795 would require the bureau of permanently allocate 10,000 acre-feet per year of water to the tribe. The tribe could devote the water to any use within or outside of the reservation and would bear the cost of developing and transporting the water. According to the bureau, the allocation to the tribe would not affect other users over the 2000–2004 period. Because the allocation would reduce the amount of a marketable resource currently owned by the federal government, this provision could eventually reduce offsetting receipts; thus, pay-as-you-go procedures would apply. CBO estimates, however, that any such impact would not be significant in the foreseeable future.

Pay-as-you-go considerations

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting H.R. 795 eventually could reduce offsetting receipts (a credit against direct spending) that might have been collected if the water allocated to the tribe had been contracted to some other use. Thus, pay-as-you-go procedures would apply, but CBO estimates that any such impact would not be significant over the next 10 years.

Estimated impact on State, local, and tribal governments

H.R. 795 contains no intergovernmental mandates as defined in UMRA. Any costs resulting from the settlement agreement would be incurred voluntarily by the state and tribal governments as parties to that agreement. The tribe has agreed to release the United States from all claims relating to its water rights in exchange for the benefits to be provided by this bill. The state of Montana has agreed to make financial contributions totaling \$550,000 for various activities in support of the settlement.

Estimated impact on the private sector

This bill contains no new private-sector mandates as defined in UMRA.

Previous CBO estimate

On September 8, 1999, CBO transmitted a cost estimate for S. 438, the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement of 1999, as reported by the Senate Committee on Indian Affairs on July 22, 1999. The two bills are virtually identical, and the cost estimates are the same.

Estimate prepared by: Federal costs: Megan Carroll; Impact on State, local, and tribal governments: Marjorie Miller.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

