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

OCTOBER 26, 1999.—Ordered to be printed

Mr. CAMPBELL, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 438]

The Committee on Indian Affairs, to which was referred the bill (S. 438) 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, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 438 is to provide for the settlement of the water rights claims of the Chippewa-Cree Tribe (Tribe) and those who may claim water rights through the Tribe, by ratifying the Water Rights Compact (Compact) entered into by the Chippewa-Cree Indian Tribe of the Rocky Boy's Reservation and the State of Montana, and to authorize the federal actions and appropriations necessary to implement the Compact and to provide for the federal contribution to the development of tribal water resources, including an appropriate federal contribution towards the importation of additional off-reservation sources of domestic water supply. The Compact and S. 438 provide for the settlement of all water rights claims brought by the United States on behalf of the Tribe in a general stream adjudication initiated by the State of Montana (State) in 1979.

BACKGROUND

Following decades of unsuccessful efforts to establish a reservation for Chippewa and Cree Indians in Montana, the Congress in

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1916 set aside some 56,000 acres of the abandoned Fort Assiniboine Military Reserve for the Chippewa and Cree Bands of Chief Rocky Boy. The land is located 50 miles south of the Canadian border in the Bearpaw Mountains, with portions extending onto the plains between the mountains and the Milk River in north-central Montana. However, because the land is of generally poor quality for farming and lacks adequate water, the Tribe and the United States sought to enlarge the Reservation to make it a viable homeland for the Tribe.

In the 1930's and 1940's, the United States purchased or withdrew from the public domain approximately 45,000 acres of land that was added to the Reservation. Two-thirds of this land, however, was acquired under a federal program designed to retire from commercial production submarginal quality lands and could not sustain viable farming operations. Acquisition of much of this land occurred over the objections of the Tribe and the local BIA Superintendent. Recognizing that this was insufficient to sustain the Tribe and its members, in 1938 the United States produced a detailed plan which contemplated adding more than 600,000 acres to the Reservation with access to the Milk River irrigation system. This plan was never implemented.

The Rocky Boy's Reservation currently totals 120,000 unallotted acres which are home to over 3,000 tribal members whose unemployment rate is estimated to be 70 percent. The land is arid, receiving about 12 inches of average annual rainfall. Two drainages—Big Sandy Creek and its tributaries and Beaver Creek—arise on and flow through the Reservation and private farm and ranch land before reaching the Milk River. Land use in the area is primarily for grazing and growing hay.

In 1979, the State of Montana initiated in the State's Water Court a general adjudication of all rights to water, both surface and underground, within the State of Montana, and the United States filed claims to water on behalf of the Chippewa Cree Tribe of the Rocky Boy's Reservation. In 1983, the Court stayed the litigation pending the outcome of negotiations among the State, the Tribe and the United States to settle the Tribe's claims. On April 14, 1997, after more than four years of negotiations, the State and the Tribe entered into a Water Rights Compact. The Montana State Legislature subsequently approved the Compact.[1] For the Compact and the settlement to become effective, Congress must enact implementing legislation and the Montana Water Court must enter and approve an appropriate decree.

As noted in a preceding paragraph, for the Rocky Boy's settlement to become effective, the Congress must enact legislation to ratify the Compact and authorize the Federal actions and appropriations necessary to implement fully the settlement.

Including S. 438, the Committee has reported legislation that has been enacted to settle the water rights claims of 22 Indian tribes, bands, and communities since 1978.[2] In each case, the time needed to negotiate a settlement and to enact the necessary ratifying legis-

[1] 85–20–601 Montana Code Annotated (1997).

[2] For a comprehensive list of settlement acts, see Checchio and Colby, "Indian Water Rights: Negotiating the Future, "Water Resources Research Center, The University of Arizona College of Agriculture, pp. 4–5 (1993).

lation has varied, reflecting the unique history and circumstances of each Reservation, the complexity of the issues and problems presented, and the difficulties inherent in trying to negotiate solutions that not only ensure the Tribe's long term economic benefits from a secure water supply but also are cost-effective, workable, fair and acceptable to all parties. The provisions of each settlement also vary to a significant degree.

Tribes whose water rights settlements have been implemented include the Ak-Chin, Salt River Pima-Maricopa, Fort McDowell and Yavapai-Prescott Indian communities in Arizona; the Pyramid Lake and Fallon Paiute Tribes in Nevada; the Seminole Tribe of Florida; the Shoshone-Bannock Tribes of the Fort Hall Reservation in Idaho; the Northern Cheyenne Tribe in Montana, and the Jicarilla Apache Tribe in New Mexico. Tribes whose settlements have not been implemented, for reasons unique to each, include the Tohono O'Odham Nation and San Carlos Apache Tribe in Arizona, the Ute Mountain and Southern Ute Tribes in Colorado, the La Jolla, Rincon, San Pasquale, Pauma, and Pala Bands of Mission Indians in California; and the Northern Ute Tribe of the Uintah & Ouray Reservation in Utah.

In every case, settlement of a tribe's water rights, whether or not it includes funding from Federal, State, and/or local sources, necessarily benefits a tribe's economic circumstances. The extent of those benefits, however, is largely dependent upon the same panoply of factors that typically affect economic development anywhere, including location, availability of resources, stability of local government, access to capital, and cultural attitudes towards development. Thus, a water rights settlement by itself is not a panacea for economic development for any tribe. It is clear that all of the tribes whose settlements have been fully implemented are utilizing their water and other benefits secured to them by those settlements, and are advancing the development and diversification of their respective tribal economies. The Committee fully expects that the provisions of S. 438, if enacted, will go a long way toward securing the long term economic well-being of the Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana.

SUMMARY OF COMPACT PROVISIONS

The Compact quantifies the Tribe's Water Right[3] at 20,000 acre-feet. Half of this amount would be from sources on the Reservation, most of which is to be realized from the repair and enlargement of Bonneau Dam. The other 10,000 acre-feet would be allocated from Lake Elwell behind Tiber Dam, a federal reclamation project approximately 50 miles from the Reservation on the Marias River.

The Compact provides for a variety of Tribal and State actions to mitigate the impacts of the exercise of the Tribe's water right on off-Reservation water uses. The Tribe would administer the Tribal Water Right; however, any use of transfer of any portion of the Tribal Water Right off the Tribe's Reservation must be in compliance with State law. The Compact establishes a Compact Board to deal with any disputes between users of the Tribal Water Right and users of water rights recognized under State law. Decisions by

[3] The term "Tribal Water Right" is defined in both the Compact and by S. 438.

the Board, which would be comprised of a tribal member, an off-Reservation water user, and a third member chosen by the first two, could be appealed to a court of competent jurisdiction. On appeal, the hearing would be a trial de novo.

THE NEED FOR LEGISLATION

Without a settlement of the tribal water claims, the United States would continue to participate in the general stream adjudication as the legal trustee for the Chippewa Cree Tribe. The tribe would also participate in the proceeding. Economic development on the Reservation would be stymied until the results of the proceeding defined the exact nature of the Tribe's water right. This would place a concomitant constraint on the tribe's sovereign authority. As the Court of Appeals for the 10th Circuit recognized, tribal control of water, land, mineral resources and recognition of governmental jurisdiction, are the core components of tribal sovereign authority. *City of Albuquerque* v. *Browner,* 97 F.3d 415 (10th Cir. 1996).

In addition, until the adjudication is completed, the State's own ability to plan for the use and development of regional water resources would be more difficult or even impossible. This is especially problematic in a water short region such as north central Montana.

Finally, as with other Indian tribes, the outcome of the litigation might hand the Chippewa Cree Tribe a Pyrrhic victory. For example, the rights recognized in the general stream adjudication may be the most difficult, controversial, or difficult to develop. In a letter to Senate Indian Affairs Committee (SCIA) Chairman Campbell from David J. Hayes, Counselor to the Secretary of Interior, the Department indicated its agreement with this concern. "The Department agrees that litigation can result in circumstances in which tribes achieve a legal recognition of their water rights, but may be unable to obtain wet water and recognize economic value from their water rights." The letter continues on to state: "The Chippewa Cree settlement is a success in this regard."

SUMMARY OF PROVISIONS

Short title. Section 1 provides a short title for S. 438, Chippewa Cree Tribe of the Rocky Boy's Indian Water Rights Settlement Act of 1999.

Findings. Section 2 provides the background for S. 438. These include: the federal policy of employing the negotiated settlement of tribal water rights claims as a means of promoting tribal sovereignty and economic self-sufficiency; additional water supplies are needed to establish a permanent, sustainable, and sovereign homeland for the Tribe.

Purposes. Section 3 includes the purposes of S. 438. These purposes include: achieving a fair, equitable, and final settlement of water rights claims of both the Chippewa Cree Tribe and the United States on behalf of the Tribe; approving, ratifying, and confirming the Compact, except as modified in this Act, and providing the funding and authorization necessary for implementation of the Compact; authorizing the Secretary to execute and implement the Compact, including the completion of projects required by the Com-

pact, both on and off the Rocky Boy's Indian Reservation; authorizing feasibility studies to enhance water supplies in north central Montana; and providing authority for appropriation of funds for the implementation of the Compact.

Definitions. Section 4 provides definitions for fifteen terms used in S. 438. Among the key terms defined in this section is the term "Tribal Water Right." The "Rule of Construction" employed in the definition is more than simple disclaimer. As the Indian Affairs Committee pointed out in a 1983 staff memorandum addressing Eastern land claims: "In negotiating the Nonintercourse Act claims, the parties bargain for an agreement with which they can live in the future." As a result, "[a] settlement in the end usually bears little relation to the positions set forth in the initial complaints and answers in the case." This memorandum criticized an approach to settlement negotiations that would tie the terms of any settlements to the nature of the claims asserted in litigation, pointing out that this would "deprive the negotiations of their flexibility." [4]

With respect to the Rocky Boy's Indian Water Rights Settlement, as with more other settlements, the nature of the water rights recognized by the settlement may bear little or no relationship to the rights the tribe may have acquired if the tribal and federal claims were adjudicated in court. If the Committee or Congress were to insist that settlements approximate the potential outcome of litigation, this would discourage settlements, rob the negotiation process of flexibility, and thereby eliminate the most valuable incentive to resolve such conflicts through negotiations. By employing the phrase "Tribal Water Right" to refer to all of the tribal water rights recognized by the Compact and confirmed by S. 438, the parties ensure that all of the protections sought by the State and the Tribe from adverse water and all negotiated mechanisms for resolution of dispute apply to all water sources included in the settlement of claims. For this reason, the rule of construction employed in the definition attests to the *sui generis* nature of tribal right to water under the Compact and S. 438, including the attributes of its administration.

Ratification of the Compact and entry of decree

Subsection 5(a) approves, ratifies, and confirms the Compact entered into by the Chippewa Cree Tribe of the Rocky Boy's Reservation and the State of Montana on April 14, 1997, except to the extent that it is modified by S. 438 and to the extent it does not conflict with S. 438. It also directs the Secretary to execute and implement the Compact, and any amendments signed to by the parties or which are necessary to bring the Compact into conformity with S. 438, and to take such other actions as necessary to implement the Compact.

Subsection (b) provides that the United States and the State of Montana, either jointly or individually, shall enter and approve the decree attached as Appendix 1 to the Compact or any amended version of such a decree agreed to by the United States, the Tribe, and the State of Montana. This subsection also recognizes that cir-

[4] S. Hrng. 98–877, p. 31, quoting Staff Memorandum—The Veto of S. 366, The Mashantucket Pequot Indian Claims Settlement Act, April 11, 1983.

cumstances not immediately relevant to this Compact may prevent the effective filing of such a decree in Montana State Court. For example, if, for some reason, it was determined that the state court adjudication does not constitute a McCarran Act proceeding under 43 U.S.C. § 666, questions could be raised about whether this proceeding could result in a full and final adjudication of this case. The parties have indicated that they do not wish for such an unintended result to impede or prevent the implementation of this agreement. By providing that they may resort to federal court, the Compact provides a mechanism for addressing and neutralizing such an occurrence.

Another contingency addressed by the Compact and S. 438 concerns the absence of a final decree or the setting of the decree by an appropriate court. While the Committee is not aware of any reasons that this may occur, prudence dictates a need to address this possibility. If this was to occur, the Tribe would be required to return all unexpended funds appropriated pursuant to this Act, the Tribe would retain all of its rights to withdraw from the Compact pursuant to Art. VII.A.3, and the release of claims executed by the Tribe shall become null and void.

Use and transfer of Tribal Water Right

Subsection 6(a) provides that pursuant to the terms of the Compact, the Secretary shall administer and enforce the Tribal Water Right until a water code is adopted by the Tribe and approved.

Subsection (b) provides that to the extent that any tribal member has an entitlement to reserved water rights, these shall be satisfied solely from the water secured by the Tribe by the Compact. In addition, the use and enjoyment of such rights shall be governed by the provisions of the Compact. After a water code is approved and adopted, the Tribe has the right to administer these water uses pursuant to the terms of the Compact. In addition, this provision attests to the deference that should be paid to tribes with respect to the regulation of on-Reservation resources. Because there are not allotments on the Chippewa Cree Reservation, the provision does not address the more difficult question of the appropriate level of protection of allottee interests.

Subsection (c) provides for the temporary transfer of the Tribal Water Right. In many instances, the question of off-Reservation use of tribal water rights secured pursuant to a negotiated settlement has proven to be one of the most controversial elements of water rights settlements, sometimes pitting the interests of the state where the tribe is located against the interest of neighboring states. That is not the case with this settlement for two related reasons. First, the negotiations have produced terms concerning the administration and use of the Tribal Water Right that resolve all of the anticipated questions that could threaten important State or Tribal interests. These terms neutralize issues that might otherwise make it impossible for the parties to address whether or not the water incorporated into the settlement can be used or leased off-Reservation. This settlement is thus preferable to the approach taken when these issues cannot be resolved. In these cases, the issue is often left unaddressed, leaving open the prospect that it may become the subject of subsequent litigation, which is incon-

sistent with one of the primary purposes of negotiated settlements, which is to seek to promote certainty with respect to the use and administration of water. This uncertainty is especially significant when the unresolved issue involves off-Reservation leasing, because this issue remains controversial.

Second, the State and the Tribe are in agreement that the off-Reservation use of the Tribal Water Right, within the terms and conditions of the Compact, are in the best interest of both the State and the Tribe. In one of their submissions to the Committee the State made the following points:

> The leasing of Tribal water is uniquely tailored to meet the needs of Montana citizens. The ability of the Tribe to lease water is a benefit to the State of Montana as well as the Tribe. By far the largest use of water in Montana is irrigated agriculture. With a population of less than 1 million, Montana has no urban centers. Its larger towns: Billings, Helena, Great Falls and Missoula are located on the Yellowstone, the Missouri and Clark Fork Rivers. There is no shortage of water for any reasonable projections of urban growth. Nor do the neighboring states of Idaho, Wyoming and North and South Dakota, need to turn to Montana as a source for water development.
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> However, for irrigation agriculture in the Milk River, the basin in which the Rocky Boy's Reservation is located, water allocation is at capacity. The Milk River Project was one of the first Reclamation Projects authorized by Congress, because even in the early 1900's the water supply was inadequate. The Milk River has been closed to new permits for water use for irrigation under state law since 1983. There are four Indian Reservations and numerous Indian allotments in the Milk River Valley to further stretch these limited resources. Short of importing water from another basin, the only means to maintain the flexibility to develop new irrigation in the future off Reservation is to allow leasing of tribal water, particularly water from tribes. It is also important to note that the Tribe gets no more than other Montana citizens. Under Montana law, any water user has the right to sell or lease their water right.

As this statement makes clear, the unique geographic and jurisdiction factors that form the context for this settlement induce both the State and the Tribe to explicitly provide for off-Reservation use of the Tribal Water Right. To the extent that such activity might threaten State interests, specific provisions are included in both the Compact and S. 438. For example, the Compact does not provide for transfers out of the Missouri River drainage. In addition, if the Tribe receives a good faith offer to transfer water out of the Milk River drainage, the Tribe agrees to allow water users in the Milk River drainage to acquire such rights at the same price and on the same terms and conditions as those contained in the offer. Finally, any federal interests in such transactions are addressed by the provision of S. 438 that prohibits the permanent alienation of any portion of the Tribal Water Right and the provision requiring

Secretarial approval of any service contract, lease, or exchange of the Tribal Water Right.

Feasibility studies authorization

Section 7 directs the Secretary of Interior to conduct two studies through the Bureau of Reclamation. Subsection (a) establishes that the Secretary, through the Bureau of Reclamation, shall perform a municipal, rural, and industrial (MR&I) feasibility study to assess water and related resources in north central Montana and evaluate alternatives for a municipal, rural, and industrial supply for the Rocky Boy's Reservation. One of the alternatives to be studied includes the releasing of some or all of the Tribe's Tiber Reservoir allocation into the Missouri River System for later diversion, treatment, and delivery to the Rocky Boy's Reservation. The MR&I feasibility study shall utilize existing studies by both federal and non-federal sources. In addition, it should be planned and conducted with other federal agencies, the State, and the Tribe.

Subsection (b) provides that none of the parties to the settlement are obligated to accept or participate in a potential off-Reservation water supply system identified in the MR&I feasibility study.

Subsection (c) provides that the Secretary, through the Bureau of Reclamation, shall conduct a regional feasibility study of water and related resources in north-central Montana in order to determine the limitations of those resources and how those resources can be managed to best serve the needs of the citizens of Montana. Funds provided in the Fiscal Year 1999 Energy and Water Appropriations Act, PL. 105–245, may be used for the regional study. The regional study is to provide the following: (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 these issues and; (4) evaluate options for implementation of resolutions to the issues. The legislation addresses the regional and international impact of the feasibility study and requires that it be planned and conducted in consultation with all affected interests, including Canada.

Tiber Reservoir allocation

Section 8 directs the Secretary to permanently allocate to the Tribe, without cost to the Tribe, 10,000 acre-feet per year of stored water from the Bureau of Reclamation's right to water from Lake Elwell, Lower Marias Unit, Upper Division, Pick-Sloan Missouri Basin Program, Montana. This amount will be measured at the outlet works of the dam or at a diversion point from the reservoir. This allocation shall become effective when the decree referred to in Section 5 is final. The Secretary is to enter into an agreement with the Tribe with the terms of the allocation, including the use or temporary transfer of the allocation stored in Lake Elwell, subject to the terms and conditions of the Compact and S. 438. The water allocated by Section 8 shall be subject to the prior reserved rights, if any, of any Indian Tribe, or person claiming water through any Indian tribe.

Subsection (b) provides that the Tribe has the right to devote the water allocated by Section 8 to any use, subject to the limitations and conditions in the Compact and S. 438. This includes the use,

temporary delivery, or transfer of the water allocated by Section 8. Such an agreement is subject to the approval of the Secretary and no such agreement may permanently alienate any portion of the tribal allocation.

Subsection (c) provides that the United States retains the right to use, as authorized, all the remaining storage in Lake Elwell after the allocation of 10,000 acre-feet per year (af/y) to the Tribe as required by S. 438.

Subsection (d) provides that the United States shall have no responsibility or obligation to provide any facility for the transport of water allocated by Section 8 to the Rocky Boys Reservation or to any other location. Except for the contribution required by Section 11, the United States shall not be required to bear the cost of developing or delivering the water allocated by Section 8. Although Congress may not prohibit the Tribe from seeking additional, programmatic or non-programmatic assistance with water development projects, if enacted, S. 438 does represent the view of the Department, the SCIA, and this Congress that the amounts provided under S. 438 represent an adequate federal contribution to the Tribe's water development.

Subsection (e) provides that the provisions of this section concerning the allocation of water resources from Tiber Reservoir is not to be construed as precedent in the litigation or settlement of other Indian water rights claims.

On-Reservation water resources development

Section 9(a) provides for the development of on-Reservation water resource development. Specifically, the Secretary, through the Bureau of Reclamation, is authorized and directed to plan, construct, and design or to provide for the construction as provided in Section 9, for the following projects: Bonneau Dam and Reservoir Enlargement; East Fork of Beaver Creek Dam Repair and Enlargement; Brown's Dam Enlargement; Tows Ponds' Enlargement; and such other water development projects as the Tribe shall from time to time consider appropriate.

Subsection (b) provides that the Secretary shall, at the Tribe's request, enter into an agreement, or modify an existing agreement pursuant to Title IV of the Indian Self-Determination and Education Assistance Act, which provides for the Tribe to plan, design, or construct all of the projects authorized by Section 9.

Subsection (c) finds that the Secretary, through the Bureau of Reclamation, has entered into an agreement with Tribe pursuant to the Title IV of the Indian Self-Determination and Education Assistance Act, which defines and limits the Bureau's administration of the projects authorized by Section 9, establishes the standards for their construction, and other purposes necessary to implement this section. This agreement shall be effective when the Tribe exercises its rights under subsection 9(b).

Chippewa Cree Indian Reserved Water Rights Settlement Trust Fund

Section 10(a) establishes the Chippewa Cree Indian Reserved Water Rights Settlement Trust Fund in the Treasury of the United States and provides that the proceeds of the Fund are to be avail-

able to the Secretary to manage and invest on behalf of the Tribe in accordance with the Act. These funds shall be made available from the Fund without fiscal year limitation. The fund is to consist of the amounts authorized to be appropriated under section 11(c) and other funds that may be transferred or credited to the Fund. Pursuant to the provisions of the American Indian Trust Fund Management Reform Act of 1994, P.L. 103–412 (25 U.S.C. 4001 et seq.), with the approval of the Secretary, the Tribe may withdraw monies from the Fund and deposit these funds in an appropriate financial institution. The Fund shall include the following accounts: the Tribal Compact Administration Account, the Economic Development Account, and the Future Water Supplies Facilities Account.

Subsection (b) provides that consistent with the Trust Fund Management Reform Act, the Secretary shall manage and invest the proceeds in the Fund. Similarly, pursuant to the Trust Fund Management Reform Act, to the extent that the Tribe exercises its prerogative to withdraw the Fund from the Treasury, neither the Secretary nor the Secretary of the Treasury shall retain any oversight over the accounting, disbursement, or investment of the Fund, except as provided in the withdrawal plan.[5] Any withdrawal plan approved by the Secretary shall provide for the creation of those accounts established by Section 10(a), specifically the Compact Administration, Economic Development, and Economic Development Accounts. Any withdrawal plan shall also include the requirements contained in Section 10(c).

Subsection (c) provides that except for $400,000 of the principal from the Fund for capital expenditures in connection with Tribal Compact Administration, the Tribe may only use the interest accrued to the Tribal Compact Administration Account to fulfill its obligations for Tribal Compact Administration. The interest from the Compact Administration account will provide a revenue stream to fund ongoing administrative activities by the Tribe. Both principal and accrued interest shall be available to the Tribe for expenditure from the Economic Development Account pursuant to an economic development plan approved by the Secretary. With respect to the Future Water Supply Facilities Account, the Tribe may access both principal and accrued interest for use on a water supply plan approved by the Secretary.

Subsection (d) makes clear that certain federal laws regarding the investment and management of trust funds are applicable to the Fund established by S. 438. Whether the Fund is maintained by the Secretary or by the Tribe pursuant to the Trust Fund Reform Act, the entity managing the Fund will ensure that each of the three accounts receives its proportionate share of interest.

Subsection (e) provides that if the Tribe does not withdraw the Fund from the Treasury, the Secretary is to enter into an agreement providing for the use of the Funds pursuant to the tribal economic development and water supply plans referred to in Section 10(c).

Subsection (f) prohibits the distribution of the Fund on a per capita basis.

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[5] 25 U.S.C. § 4022(c) states: "Beginning on the date the funds are withdrawn pursuant to this section, any trust responsibility or liability of the United States with respect to such funds shall cease except as provided for in section 4027 of this title."

Authorization of appropriations

Section 11 provides for the authorization of appropriations. With respect to the funds appropriated in the Fiscal Year 1999 Energy and Water Appropriations Act, PL. 105–245, $500,000 is to be spent for the MR&I study and $500,000 for the regional study. In addition, section 11 authorizes the appropriation of $3,000,000 in fiscal year 2000, of which, $500,000 is to be used for the MR&I feasibility study and $2,500,000 for the regional study. Subsection (c) provides for the authorization of the appropriation of $21,000,000 for the Fund, of which, $3,000,000 is allocated to Tribal Compact Administration, $3,000,000 for the Economic Development Account, and $2,000,000 for the Future Water Supplies Facility Account, all in the fiscal year 2000 budget. In the next two fiscal years, appropriations of $8,000,000 and $5,000,000 are authorized to be appropriated for the Future Water Supplies Facility Account.

With respect to on-Reservation water development, subsection 11(d) provides for authorization of appropriations for the Bureau of Reclamation, within the Department of Interior, of $13,000,000 in fiscal year 2000 for the planning, design, and construction of Bonneau Dam enlargement, $8,000,000 in the subsequent year for the East Fork Dam and Reservoir enlargement of which $4,000,000 shall be used for East Fork Dam and Reservoir enlargement and $2,000,000 for Brown's Dam and Reservoir enlargement, and $2,000,000 for the Tows Ponds enlargement. In the next fiscal year, $3,000,000 is authorized to be appropriated for the planning, design, and construction of such other water resource developments as the Tribe, with the approval of the Secretary may decide is appropriate or for the completion of the projects described in section 11(d)(1)(A&B). Unexpended balances are first to be applied for the completion of the specified projects and then for other water development projects on the Reservation.

Subsection (e) provides for an authorization of an appropriation of $1,000,000 in fiscal year 2000 for the administrative costs of the Bureau of Reclamation. The Bureau is to minimize the administrative costs under the Act to avoid costs in excess of this amount. However, the Bureau may use funds authorized for appropriation under subsection 11(d) for costs that exceed $1,000,000, but before it does so, the Bureau of Reclamation is to exercise its best efforts to minimize and try to avoid expenditures of more than $1,000,000.

Subsection (f) addresses the availability of the amounts appropriated to the Fund. The amounts appropriated for the MR&I and the regional feasibility study pursuant to Section 11(a) are deemed to be available for use as of the day of their appropriation. In addition, the amounts authorized for these studies by Section 11(b) are also available for use upon appropriation. Also, the amounts authorized for appropriation for Tribal Compact Administration by Section 11(c)(1) are available for immediate use, subject to the limitation on the use of these funds contained in Section 10(c)(1). However, with respect to the amounts appropriated pursuant to Section 11(c) and 11(d)(2)&(3), these proceeds are not to be available for expenditure until the requirements of Section 5(b) are met, producing a Final decree, and the Tribe has executed the waiver and release required by 13(c).

Subsection (g) addresses the contingency that the approval of the Compact becomes null and void under Section 5(b). That section provides that the approval of the Compact will become null and void if the decree to be filed by the Tribe, the United States, or the State does not become final within 3 years or if it is set aside by an appropriate court. In that case, within 12 months all unexpended funds, whether they are held by the Tribe, the Secretary, or a private institution, shall revert to the general fund of the Treasury. This requirement is to be included in any annual funding agreement, withdrawal plan, or any other agreement providing for the withdrawal or transfer of Fund by the Tribe.

Subsection (h) provides that any funds appropriated pursuant to this Act are to be available without fiscal year limitation.

State contribution to settlement

Section 12 addresses the State Contribution to the Settlement. Montana House Bill 6 of the 55th Legislative Session (1997) appropriated $150,000 for the following purposes: water quality discharge monitoring wells and monitoring program; diversion structure on Big Sandy Creek; a conveyance structure on Box Elder Creek; and the purchase of contract water from Lower Beaver Creek Reservoir.

Miscellaneous provisions

Subsection 13(a) addresses the fact that the compact authorizes the Tribe to withdraw from the Compact if several events either occur or fail to occur within specified time-frames. This section makes clear that most of the terms and conditions of Article VII.A.3 of the Compact are superseded by S. 438. With the Tribe's consent, its ability to withdraw from the Compact is limited to the terms of S. 438. Specifically, if the Compact becomes null and void under Section 5(b), the Tribe shall have the right to exercise its authority to withdraw pursuant to Article VII.A.3 of the Compact. With respect to the Tribe's release of claims against the United States, this waiver is not effective until the appropriation of funds is completed and the decree is Final as provided in Section 5(b) of S. 438. the broad range of claims to be addressed by the Tribe's waiver are described in section 13(c)(2). If the waiver does not become effective pursuant to the terms of S. 438, the United States is entitled to an offset against any claim against the United States, as well as funds transferred to the Tribe and any accrued interest, which are not returned to the United States pursuant to Section 11(g).

Subsection 13(b) provides that S. 438 should not be construed to waiver the sovereign immunity of the United States except to the extent that this immunity is already waived by the McCarran Act, 43 U.S.C. § 666.

Subsection 13(d) provides that other Indian Tribes are held harmless by S. 438.

Subsection 13(e) provides that the Secretary is to comply with any applicable environmental laws in implementing the Compact.

Subsection 13(f) provides that the Secretary's execution of the Compact is not a major federal action under the National Environmental Policy Act, 42 U.S.C. 3221 *et seq*. The Department's position

on this issue is addressed in the Department's August 31, 1998 letter on an identical provision in S. 1899, the Chippewa Cree Settlement bill approved by the Committee during the 105th Congress. A copy of this letter is included in the section on Executive Communications.

Section 13(g) provides that S. 438 does not alter the trust responsibility of the United States or limit the Tribe's ability to seek additional authorizations or appropriations.

Subsection (h) provides that S. 438 is not to serve as a precedent for either litigation or the interpretation or administration of other water rights settlements.

LEGISLATIVE HISTORY

In the 105th Congress, the Committee approved a nearly identical bill, S. 1899 which was reported as an amendment in the nature of a substitute to S. 1771. It was not taken up by the full Senate before the 105th Congress adjourned *sine die*.

In the 106th Congress, S. 438 was introduced on February 22, 1999 by Senator Burns, for himself and Senator Baucus. Upon introduction, S. 438 was referred to the Committee on Energy and Natural Resources. Subsequently, by unanimous consent, S. 438 was discharged from that Committee and referred to the Senate Committee on Indian Affairs, with instructions that at such time as the Committee on Indian Affairs reports the measure, it be referred to the Committee on Energy and Natural Resources for a period not to exceed 60 calendar days, and that if that Committee does not report the measure prior to the expiration of the 60-calendar day period, it is discharged from further consideration and the S. 438 will be placed on the Senate calendar.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In an open business session on June 30, 1999, the Committee on Indian Affairs, by voice vote, ordered the bill reported to the Senate, with the recommendation to pass S. 438.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 cites the short title of the bill as the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999.

Section 2. Findings

Section 2 provides nine Congressional findings that provide the rationale and basis for the decision by all the parties, including the United States, to resolve the tribal water claim by negotiated settlement.

Section 3. Purposes

Section 3 describes the bill's purposes, which include achieving a fair, equitable, and final settlement of the water rights claims of the Chippewa Cree Tribe and the United States for the benefit of the Chippewa Cree Tribe; approving—except as modified—the Chippewa Cree-Montana Water Rights Compact between the Chip-

pewa Cree Tribe and the State of Montana; and authorizing and directing the appropriate federal bureaus to implement the Compact pursuant to the provisions of S. 438.

Section 4. Definitions

Section 4 provides fifteen definitions for terms employed in the bill. These terms are: "Compact," "Final," "Fund," "Indian tribe," "MR&I Feasibility Study," "Missouri River System," "Reclamation Law," "Rocky Boy's Reservation," "Secretary," "Towe Ponds," "Tribal Compact Administration," "Tribal Water Code," "Tribal Water Right."

Section 5. Ratification of Compact and entry of decree

Section 5 approves, ratifies, and confirms the compact between the Chippewa Cree Tribe and the State of Montana, except to the extent that the Compact conflicts with the bill. It also directs the Secretary of Interior to execute and implement the Compact and approves the filing of an appropriate decree in Montana Water Court, and provides for the contingency in the event the court does not approve the decree.

Section 6. Use and transfer of the Tribal Water Right

Section 6 provides that until a tribal water code is approved by the Secretary of Interior, the Secretary shall administer and enforce the Tribal Water Right. It also provides that the reserved water rights of individual tribal members, if any, are to be satisfied from the water secured by the Tribe by the Compact and administered by the Tribe under the tribal water code.

Section 7. Feasibility studies authorized

Section 7 authorizes and directs the Secretary of Interior, through the Bureau of Reclamation, to perform both a Municipal, Rural, and Industrial (MR&I) and regional feasibility study of water and related resources in north-central Montana. The MR&I study is to include the feasibility of releasing water from Tiber Reservoir into the Missouri River for diversion into a treatment and delivery system for the Rocky Boy's Reservation. The bill does not require the United States, the Chippewa Cree Tribe, or the State of Montana to participate in any system identified in the MR&I feasibility study.

Section 8. Tiber Reservoir allocation

Section directs the Secretary of Interior to permanently allocate 10,000 af/y of water from the Tiber Reservoir, and Lake Elwell to the Chippewa Cree Indian Tribe. The allocation is to become effective when specified conditions are met. Subject to the limitations and conditions included in the Compact, the Tribe may enter into contracts, leases, exchanges, or other agreements providing for the temporary use of water allocated by this section. Section 8 also circumscribes the federal responsibility to provide for the construction of any facility to develop and deliver water to the Rocky Boy's Reservation. Section 8 also provides that the provisions of this section are not to be considered as precedent in the litigation or settlement of other Indian water rights claims.

Section 9. On-Reservation water resources development

Section 9 directs the Secretary, through the Bureau of Reclamation, to plan, design, and construct a series of water development projects on the Rocky Boys Reservation. The section also references the Indian Self Determination and Education Assistance Act of 1975, 25 U.S.C. § 450 *et seq*., as amended, and directs the Secretary to enter into an agreement or renegotiated agreement, to provide for tribal implementation of planning, design, and construction activities.

The Committee understands that the Tribe and the Department of Interior will have completed this agreement before the bill becomes law. The Committee considers this agreement a very important element of the Tribe's right under the settlement. This agreement ensures that the Tribe's right to define the Bureau of Reclamation's administration of the authorized projects, establish standards for project construction, and fulfill other purposes of the bill relating to the Bureau can be addressed in a comprehensive fashion. Without this agreement, these issues would need to be addressed and resolved on an issue-by-issue basis, which would delay implementation of the agreement and frustrate important Congressional objectives.

Finally, because this contract would address Department of Interior activities that do not involve the Bureau of Indian Affairs or the Indian Health Service, the moratorium imposed on new or expanded self-governance and self-determination compacts by P.L. 105–277, October 21, 1998, would not apply to this section.

Section 10. Chippewa Cree Indian Reserved Water Rights Settlement Trust Fund

Section 10 establishes the Chippewa Cree Indian Reserved Water Rights Settlement Trust Fund in the Treasury of the United States, from which funds may be withdrawn pursuant to provisions of the bill and the American Indian Trust Fund Management Reform Act of 1994. The Fund is to be managed pursuant to the bill and applicable federal laws that address the Secretary's management of trust funds including 25 U.S.C. §§ 161, 161a, and 162a.

Section 11. Authorization of appropriations

Section 11 authorizes the appropriations to implement the provisions of the bill, including the feasibility studies, tribal compact administration, tribal economic development, on-Reservation water development, and future water supplies. This section also addresses when appropriated funds are available for expenditure.

Section 12. State contribution to settlement

Section 12 defines the contributions that the State of Montana will make to the Settlement.

Section 13. Miscellaneous provisions

Section 13 provides that in exchange for the benefits of the act, the Tribe shall not exercise the rights set forth in specified portions of the Compact, except as provided. The bill is not to be interpreted as a waiver of federal sovereign immunity, except to the extent provided by 43 U.S.C. § 666. Section 13 also provides for the waiver

of tribal claims against the United States. Section 13 also addresses certain environmental statutes.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The cost estimate for S. 438 as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 8, 1999.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 438, the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999.

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.

S. 438—Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999

Summary: S. 438 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. S. 438 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, S. 438 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 S. 438 cost $48 million over the 2000–2004 period, assuming the appropriation of the authorized amounts. Enacting S. 438 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. S. 438 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 S. 438 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 S. 438:						
Authorization Level [1]	1	25	16	8	0	0
Estimated Outlays	1	11	9	13	11	4

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

Spending subject to appropriation

Although S. 438 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. S. 438 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 S. 438 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. S. 438 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 timing of federal outlays.

Feasibility Studies. S. 438 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 agreement. 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 amounts authorized for 2000 would be sufficient to cover the remaining costs of these studies.

Water Development Projects. S. 438 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. S. 438 would require the bureau to 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 S. 438 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: S. 438 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. This 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.

Estimate prepared by: Federal costs: Megan Carroll, impact on state, local, and tribal governments: Marjorie Miller.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that enactment of S. 438 will create only de minimis regulatory or paperwork impacts.

EXECUTIVE COMMUNICATIONS

During the 105th Congress, the Committee received a letter from the Department of Interior concerning a similar measure, S. 1899, which is reprinted below.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, August 31, 1998.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter responds to the questions presented in your July 9, 1998, letter to Robert Anderson concerning the Department of the Interior's view on S. 1899, the Chippewa Cree of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1998 (the Act).

Question 1

Section 13(f) of the bill states: "[e]xecution 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."

(a) Does this mean that the full range of environmental impacts that may ensue as a result of the decision to become a party to the Compact will not be analyzed, pursuant to the NEPA process, prior to the Secretary's execution of the agreement?

(b) If the Secretary signs the Compact before complying with NEPA, does this mean that [the] Secretary will not, in the manner established by NEPA, consider the entire range of options for meeting the objectives of the Compact?

Response to question 1

In our view, the language of section 13(f) allows the Secretary to take the ministerial action of executing the Compact but does not in any way diminish the Department's responsibility to comply with NEPA or other environmental statutes as particular actions are taken to implement the Compact. The controlling provision of S. 1899 with respect to NEPA and environmental compliance is Section 13(e) which provides:

> (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.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), and all other applicable environmental acts and regulations.

Reading Sections 13(e) and (f) together, the Department believes that formal analysis under NEPA is not required prior to execution of the Compact, but rather that full NEPA and other environmental compliance is required prior to implementation of any particular element of the Compact or Settlement Act, including the construction of the various on-Reservation water enhancement projects. For example, the Department commenced the NEPA analysis required in connection with the enlargement of Bonneau Dam.

Departmental policy requires that potential environmental impacts be identified and analyzed as early as possible in the water rights negotiation process. It is for this reason that federal negotiation teams are composed not only of representatives from the Bureau of Indian Affairs, but also of representatives from the Fish and Wildlife Service, the Bureau of Land Management and other agencies. During negotiation of the Chippewa Cree Compact, the federal team and the other parties were careful to consider the possible environmental consequences of various Compact provisions, in large part because of the awareness that the failure to do so could cause significant problems in settlement implementation. We believe that this is a responsible and proper practice during negotiation. Moreover, we believe that it is more appropriate for full NEPA, Endangered Species Act and other environmental compliance processes to be carried out at the implementation stage when actions are not merely contemplated in theory, but actually proposed.

As a final matter, the Committee should be aware that the provisions contained in Sections 13 (e) and (f) are not unique to this Indian water rights settlement. Similar provisions are contained in other Indian water rights settlements such as the Jicarilla Apache Tribe Water Rights Settlement Act, Pub. L. No. 102–441, § 9, 106 Stat. 2241 (1992); the San Carlos Apache Tribe Water Rights Settlement Act of 1992, Pub. L. No. 102–575, § 3709, 106 Stat. 4749; and the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992, Pub. L. No. 102–374, § 11, 106 Stat. 1193.

Our experience has been that such provisions are fully consistent with the letter and spirit of NEPA. For example, in the implementation of the Northern Cheyenne Settlement Act, the Secretary interpreted the Act to require that the NEPA process take into account certain minimum elements included in the settlement (i.e., delivering to the Tribe, from any source, a particular quantity of water specified in the Compact). In conducting the NEPA analysis under those broad parameters, the Secretary reviewed alternatives to accomplish the settlement elements and ultimately concluded that the repair and enlargement of Tongue River Dam was the best alternative to satisfy the settlement.

We contemplate that a similar course of action will be followed in implementation of the Chippewa Cree settlement. The settlement contemplates the repair and enlargement of four existing water facilities and the construction of additional water development projects on the Rocky Boy's Reservation in order to secure

and put to use the water quantities provided in the Compact. In carrying out environmental compliance under section 13(e) of the proposed Act, the Secretary will be obligated to look at the full range of alternatives which can fulfill all the settlement elements, regardless of whether such alternatives are included in the Compact or the Settlement Act.

In sum, we do not read Sections 13 (e) and (f) of S. 1899 to, in any way, absolve the Secretary of his obligation to follow the mandates of federal environmental law.

Question 2

As you are well aware, asserting reserved rights claims in court involves a great deal of risk and cost. In addition, a tribe may "prevail" and acquire a legal right to water in circumstances where economic and other factors may, as a practical matter, preclude use of such water by the tribe. Are these factors that the Department would consider in deciding whether to support a water rights settlement that supplied a tribe with a "wet" water supply instead of protracted litigation over reserved rights?

Response to question 2

The Department takes the potential outcome of litigation into consideration in deciding whether to support a settlement. The Department agrees that litigation can result in circumstances in which tribes achieve legal recognition of their water rights, but may be unable to put those rights to use immediately. It is precisely such situations that Indian water rights settlements are designed to avoid.

The goal sought by the Department in crafting any settlement, including the Chippewa Cree settlement, is to secure a final and permanent water right which can be put to use by the tribe. We fully support the concept that Indian tribes should be able to obtain wet water and recognize economic value from their water rights. We strive to include provisions in every settlement that will allow tribes to realize these important benefits.

The Chippewa Cree settlement is a success in this regard. The Tribe will be able immediately to enhance on-Reservation water supplies to address existing irrigation and domestic water needs. The establishment of the Future Water Supply Account within the Chippewa Cree Indian Water Rights Settlement Fund will assist the Tribe in securing the delivery of additional water supplies when the need for water arises in the future. In addition to these provisions which will allow the Tribe to obtain, and immediately put to use, "wet" water, S. 1899 also provides the Tribe with the additional flexibility of marketing settlement water in the event that a market for such water develops.

Conclusion

We hope that our responses to the Committee's questions will be of assistance to you and the Committee as you further consider the enactment of S. 1899. The Chippewa Cree Tribe and the State of Montana have labored in good faith for many years negotiating the settlement contained in S. 1899. We urge the Committee to act fa-

vorably upon it so that settlement benefits can be realized. If the Committee has further questions, we would be pleased to respond.

Sincerely,

DAVID J. HAYES,
Counselor to the Secretary.

EFFECT ON EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that the bill will not make any changes in existing law.

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