S. HRG. 106–119

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

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

S. 438

TO PROVIDE FOR THE SETTLEMENT OF THE WATER RIGHTS CLAIMS OF THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION

JUNE 30, 1999
WASHINGTON, DC

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

WEDNESDAY, JUNE 30, 1999

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:02 a.m. in room 485, Russell Senate Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Inouye, and Akaka.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The committee will come to order.

Today the committee will receive testimony on S. 438, the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999.

This bill demonstrates that local solutions are both possible and preferable to those imposed from here in Washington. Though the Federal Government's decisions to settle this tribe in the water-short area is the source of the problem, the State, the tribe, and the local community have produced a solution.

Under the terms of S. 438, one-half of the water needed to supply the tribe's present and future needs would come from existing facilities, which will be enlarged to increase their capacity. The other one-half of the water will come from an existing Bureau of Reclamation Facility named the "Tiber River Dam and Reservoir."

Under S. 438, the Federal Government promised to contribute $15 million toward conveying this water to the reservation. In all likelihood, the tribe will need to work together with the State and local governments to ensure the conveyance of this water to their reservation.

106TH CONGRESS
1ST SESSION

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.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 22, 1999

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

MAY 27, 1999

Committee discharged; referred to the 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 the Committee on Energy and Natural Resources has not reported the measure prior to the expiration of the 60 calendar day period, the Energy Committee be discharged from further consideration of the measure and that the measure be then placed on the calender

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A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Chippewa Cree Tribe
3 of the Rocky Boy's Reservation Indian Reserved Water
4 Rights Settlement Act of 1999".

5 **SEC. 2. FINDINGS.**

6 Congress finds that—

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

12 (2) the Rocky Boy's Reservation was estab-
13 lished as a homeland for the Chippewa Cree Tribe;

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

18 (4) the sovereignty of the Chippewa Cree Tribe
19 and the economy of the Reservation depend on the
20 development of the water resources of the Reserva-
21 tion;

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

1 (6) the Rocky Boy's Reservation is located in a
2 water-short area of Montana and the Compact con-
3 templates the development of additional water sup-
4 plies, including importation of domestic water, to
5 meet the needs of the Chippewa Cree Tribe;
6 (7) proceedings to determine the full extent of
7 the water rights of the Chippewa Cree Tribe are cur-
8 rently pending before the Montana Water Court as
9 a part of In the Matter of the Adjudication of All
10 Rights to the Use of Water, Both Surface and Un-
11 derground, within the State of Montana;
12 (8) recognizing that final resolution of the gen-
13 eral stream adjudication will take many years and
14 entail great expense to all parties, prolong uncer-
15 tainty as to the availability of water supplies, and
16 seriously impair the long-term economic planning
17 and development of all parties, the Chippewa Cree
18 Tribe and the State of Montana entered into the
19 Compact on April 14, 1997; and
20 (9) the allocation of water resources from the
21 Tiber Reservoir to the Chippewa Cree Tribe under
22 this Act is uniquely suited to the geographic, social,
23 and economic characteristics of the area and situa-
24 tion involved.

1 **SEC. 3. PURPOSES.**

2 The purposes of this Act are as follows:

3 (1) To achieve a fair, equitable, and final settle-
4 ment of all claims to water rights in the State of
5 Montana for—

6 (A) the Chippewa Cree Tribe; and

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

9 (2) To approve, ratify, and confirm, as modified
10 in this Act, the Chippewa Cree-Montana Water
11 Rights Compact entered into by the Chippewa Cree
12 Tribe of the Rocky Boy's Reservation and the State
13 of Montana on April 14, 1997, and to provide fund-
14 ing and other authorization necessary for the imple-
15 mentation of the Compact.

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

21 (4) To authorize Federal feasibility studies de-
22 signed to identify and analyze potential mechanisms
23 to enhance, through conservation or otherwise, water
24 supplies in North Central Montana, including mech-
25 anisms to import domestic water supplies for the fu-
26 ture growth of the Rocky Boy's Indian Reservation.

1 (5) To authorize certain projects on the Rocky
2 Boy's Indian Reservation, Montana, in order to im-
3 plement the Compact.
4 (6) To authorize certain modifications to the
5 purposes and operation of the Bureau of Reclama-
6 tion's Tiber Dam and Lake Elwell on the Marias
7 River in Montana in order to implement the Com-
8 pact.
9 (7) To authorize the appropriation of funds
10 necessary for the implementation of the Compact.
11 **SEC. 4. DEFINITIONS.**
12 In this Act:
13 (1) COMPACT.—The term "Compact" means
14 the water rights compact between the Chippewa
15 Cree Tribe of the Rocky Boy's Reservation and the
16 State of Montana contained in section 85–20–601 of
17 the Montana Code Annotated (1997).
18 (2) FINAL.—The term "final" with reference to
19 approval of the decree in section 5(b) means comple-
20 tion of any direct appeal to the Montana Supreme
21 Court of a final decree by the Water Court pursuant
22 to section 85–2–235 of the Montana Code Anno-
23 tated (1997), or to the Federal Court of Appeals, in-
24 cluding the expiration of the time in which a petition
25 for certiorari may be filed in the United States Su-

1 preme Court, denial of such a petition, or the
2 issuance of the Supreme Court's mandate, whichever
3 occurs last.

4 (3) FUND.—The term "Fund" means the Chip-
5 pewa Cree Indian Reserved Water Rights Settlement
6 Fund established under section 10.

7 (4) INDIAN TRIBE.—The term "Indian tribe"
8 has the meaning given that term in section 101(2)
9 of the Federally Recognized Indian Tribe List Act of
10 1994 (25 U.S.C. 479a(2)).

11 (5) MR&I FEASIBILITY STUDY.—The term
12 "MR&I feasibility study" means a municipal, rural,
13 and industrial, domestic, and incidental drought re-
14 lief feasibility study described in section 7.

15 (6) MISSOURI RIVER SYSTEM.—The term "Mis-
16 souri River System" means the mainstem of the
17 Missouri River and its tributaries, including the
18 Marias River.

19 (7) RECLAMATION LAW.—The term "Reclama-
20 tion Law" has the meaning given the term "rec-
21 lamation law" in section 4 of the Act of December
22 5, 1924 (43 Stat. 701, chapter 4; 43 U.S.C. 371).

23 (8) ROCKY BOY'S RESERVATION; RESERVA-
24 TION.—The term "Rocky Boy's Reservation" or

1 "Reservation" means the Rocky Boy's Reservation
2 of the Chippewa Cree Tribe in Montana.
3 (9) SECRETARY.—The term "Secretary" means
4 the Secretary of the Interior, or his or her duly au-
5 thorized representative.
6 (10) TOWE PONDS.—The term "Towe Ponds"
7 means the reservoir or reservoirs referred to as
8 "Stoneman Reservoir" in the Compact.
9 (11) TRIBAL COMPACT ADMINISTRATION.—The
10 term "Tribal Compact Administration" means the
11 activities assumed by the Tribe for implementation
12 of the Compact as set forth in Article IV of the
13 Compact.
14 (12) TRIBAL WATER CODE.—The term "tribal
15 water code" means a water code adopted by the
16 Tribe, as provided in the Compact.
17 (13) TRIBAL WATER RIGHT.—
18 (A) IN GENERAL.—The term "Tribal
19 Water Right" means the water right set forth
20 in section 85–20–601 of the Montana Code An-
21 notated (1997).
22 (B) RULE OF CONSTRUCTION.—The defini-
23 tion of the term "Tribal Water Right" under
24 this paragraph and the treatment of that right
25 under this Act shall not be construed or inter-

1 preted as a precedent for the litigation of re-
2 served water rights or the interpretation or ad-
3 ministration of future compacts between the
4 United States and the State of Montana or any
5 other State.

6 (14) TRIBE.—The term "Tribe" means the
7 Chippewa Cree Tribe of the Rocky Boy's Reserva-
8 tion and all officers, agents, and departments there-
9 of.

10 (15) WATER DEVELOPMENT.—The term "water
11 development" includes all activities that involve the
12 use of water or modification of water courses or
13 water bodies in any way.

14 **SEC. 5. RATIFICATION OF COMPACT AND ENTRY OF DE-**
15 **CREE.**

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

19 (1) the Compact, entered into by the Chippewa
20 Cree Tribe of the Rocky Boy's Reservation and the
21 State of Montana on April 14, 1997, is hereby ap-
22 proved, ratified, and confirmed; and

23 (2) the Secretary shall—

24 (A) execute and implement the Compact
25 together with any amendments agreed to by the

1 parties or necessary to bring the Compact into
2 conformity with this Act; and
3 (B) take such other actions as are nec-
4 essary to implement the Compact.
5 (b) APPROVAL OF DECREE.—
6 (1) IN GENERAL.—Not later than 180 days
7 after the date of enactment of this Act, the United
8 States, the Tribe, or the State of Montana shall pe-
9 tition the Montana Water Court, individually or
10 jointly, to enter and approve the decree agreed to by
11 the United States, the Tribe, and the State of Mon-
12 tana attached as Appendix 1 to the Compact, or any
13 amended version thereof agreed to by the United
14 States, the Tribe, and the State of Montana.
15 (2) RESORT TO THE FEDERAL DISTRICT
16 COURT.—Under the circumstances set forth in Arti-
17 cle VII.B.4 of the Compact, 1 or more parties may
18 file an appropriate motion (as provided in that arti-
19 cle) in the United States district court of appro-
20 priate jurisdiction.
21 (3) EFFECT OF FAILURE OF APPROVAL TO BE-
22 COME FINAL.—In the event the approval by the ap-
23 propriate court, including any direct appeal, does
24 not become final within 3 years after the filing of

1 the decree, or the decree is approved but is subse-
2 quently set aside by the appropriate court—
3 (A) the approval, ratification, and con-
4 firmation of the Compact by the United States
5 shall be null and void; and
6 (B) except as provided in sections 11(g)(1)
7 and 13(a) and (c)(3), this Act shall be of no
8 further force and effect.

9 **SEC. 6. USE AND TRANSFER OF THE TRIBAL WATER RIGHT.**

10 (a) ADMINISTRATION AND ENFORCEMENT.—As pro-
11 vided in the Compact, until the adoption and approval of
12 a tribal water code by the Tribe, the Secretary shall ad-
13 minister and enforce the Tribal Water Right.

14 (b) TRIBAL MEMBER ENTITLEMENT.—

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

20 (2) ADMINISTRATION.—An entitlement de-
21 scribed in paragraph (1) shall be administered by
22 the Tribe pursuant to a tribal water code developed
23 and adopted pursuant to Article IV.A.2 of the Com-
24 pact, or by the Secretary pending the adoption and
25 approval of the tribal water code.

1 (c) TEMPORARY TRANSFER OF TRIBAL WATER
2 RIGHT.—Notwithstanding any other provision of statutory
3 or common law, the Tribe may, with the approval of the
4 Secretary and subject to the limitations and conditions set
5 forth in the Compact, including limitation on transfer of
6 any portion of the Tribal Water Right to within the Mis-
7 souri River Basin, enter into a service contract, lease, ex-
8 change, or other agreement providing for the temporary
9 delivery, use, or transfer of the water rights confirmed to
10 the Tribe in the Compact, except that no service contract,
11 lease, exchange, or other agreement entered into under
12 this subsection may permanently alienate any portion of
13 the Tribal Water Right.

14 **SEC. 7. FEASIBILITY STUDIES AUTHORIZATION.**

15 (a) MUNICIPAL, RURAL, AND INDUSTRIAL FEASI-
16 BILITY STUDY.—

17 (1) IN GENERAL.—

18 (A) STUDY.—The Secretary, through the
19 Bureau of Reclamation, shall perform an MR&I
20 feasibility study of water and related resources
21 in North Central Montana to evaluate alter-
22 natives for a municipal, rural, and industrial
23 supply for the Rocky Boy's Reservation.

24 (B) USE OF FUNDS MADE AVAILABLE FOR
25 FISCAL YEAR 1999.—The authority under sub-

1 paragraph (A) shall be deemed to apply to
2 MR&I feasibility study activities for which
3 funds were made available by appropriations for
4 fiscal year 1999.
5 (2) CONTENTS OF STUDY.—The MR&I feasi-
6 bility study shall include the feasibility of releasing
7 the Tribe's Tiber allocation as provided in section 8
8 into the Missouri River System for later diversion to
9 a treatment and delivery system for the Rocky Boy's
10 Reservation.
11 (3) UTILIZATION OF EXISTING STUDIES.—The
12 MR&I feasibility study shall include utilization of ex-
13 isting Federal and non-Federal studies and shall be
14 planned and conducted in consultation with other
15 Federal agencies, the State of Montana, and the
16 Chippewa Cree Tribe.
17 (b) ACCEPTANCE OR PARTICIPATION IN IDENTIFIED
18 OFF-RESERVATION SYSTEM.—The United States, the
19 Chippewa Cree Tribe of the Rocky Boy's Reservation, and
20 the State of Montana shall not be obligated to accept or
21 participate in any potential off-Reservation water supply
22 system identified in the MR&I feasibility study authorized
23 in subsection (a).
24 (c) REGIONAL FEASIBILITY STUDY.—
25 (1) IN GENERAL.—

1 (A) STUDY.—The Secretary, through the
2 Bureau of Reclamation, shall conduct, pursuant
3 to Reclamation Law, a regional feasibility study
4 (referred to in this subsection as the "regional
5 feasibility study") to evaluate water and related
6 resources in North-Central Montana in order to
7 determine the limitations of those resources and
8 how those resources can best be managed and
9 developed to serve the needs of the citizens of
10 Montana.
11 (B) USE OF FUNDS MADE AVAILABLE FOR
12 FISCAL YEAR 1999.—The authority under sub-
13 paragraph (A) shall be deemed to apply to re-
14 gional feasibility study activities for which
15 funds were made available by appropriations for
16 fiscal year 1999.
17 (2) CONTENTS OF STUDY.—The regional feasi-
18 bility study shall—
19 (A) evaluate existing and potential water
20 supplies, uses, and management;
21 (B) identify major water-related issues, in-
22 cluding environmental, water supply, and eco-
23 nomic issues;
24 (C) evaluate opportunities to resolve the
25 issues referred to in subparagraph (B); and

1 (D) evaluate options for implementation of
2 resolutions to the issues.
3 (3) REQUIREMENTS.—Because of the regional
4 and international impact of the regional feasibility
5 study, the study may not be segmented. The re-
6 gional study shall—
7 (A) utilize, to the maximum extent pos-
8 sible, existing information; and.
9 (B) be planned and conducted in consulta-
10 tion with all affected interests, including inter-
11 ests in Canada.
12 **SEC. 8. TIBER RESERVOIR ALLOCATION.**
13 (a) ALLOCATION OF WATER TO THE TRIBE.—
14 (1) IN GENERAL.—The Secretary shall perma-
15 nently allocate to the Tribe, without cost to the
16 Tribe, 10,000 acre-feet per year of stored water
17 from the water right of the Bureau of Reclamation
18 in Lake Elwell, Lower Marias Unit, Upper Missouri
19 Division, Pick-Sloan Missouri Basin Program, Mon-
20 tana, measured at the outlet works of the dam or at
21 the diversion point from the reservoir. The allocation
22 shall become effective when the decree referred to in
23 section 5(b) has become final in accordance with
24 that section.

1 (2) AGREEMENT.—The Secretary shall enter
2 into an agreement with the Tribe setting forth the
3 terms of the allocation and providing for the Tribe's
4 use or temporary transfer of water stored in Lake
5 Elwell, subject to the terms and conditions of the
6 Compact and this Act.
7 (3) PRIOR RESERVED WATER RIGHTS.—The al-
8 location provided in this section shall be subject to
9 the prior reserved water rights, if any, of any Indian
10 tribe, or person claiming water through any Indian
11 tribe.
12 (b) USE AND TEMPORARY TRANSFER OF ALLOCA-
13 TION.—
14 (1) IN GENERAL.—Subject to the limitations
15 and conditions set forth in the Compact and this
16 Act, the Tribe shall have the right to devote the
17 water allocated by this section to any use, including
18 agricultural, municipal, commercial, industrial, min-
19 ing, or recreational uses, within or outside the Rocky
20 Boy's Reservation.
21 (2) CONTRACTS AND AGREEMENTS.—Notwith-
22 standing any other provision of statutory or common
23 law, the Tribe may, with the approval of the Sec-
24 retary and subject to the limitations and conditions
25 set forth in the Compact, enter into a service con-

1 tract, lease, exchange, or other agreement providing
2 for the temporary delivery, use, or transfer of the
3 water allocated by this section, except that no such
4 service contract, lease, exchange, or other agreement
5 may permanently alienate any portion of the tribal
6 allocation.

7 (c) REMAINING STORAGE.—The United States shall
8 retain the right to use for any authorized purpose, any
9 and all storage remaining in Lake Elwell after the alloca-
10 tion made to the Tribe in subsection (a)(1).

11 (d) WATER TRANSPORT OBLIGATION; DEVELOP-
12 MENT AND DELIVERY COSTS.—The United States shall
13 have no responsibility or obligation to provide any facility
14 for the transport of the water allocated by this section to
15 the Rocky Boy's Reservation or to any other location. Ex-
16 cept for the contribution set forth in section 11(c)(3), the
17 cost of developing and delivering the water allocated by
18 this section or any other supplemental water to the Rocky
19 Boy's Reservation shall not be borne by the United States.

20 (e) ACT NOT PRECEDENTIAL.—The provisions of
21 this section regarding the allocation of water resources
22 from the Tiber Reservoir to the Tribe shall not be con-
23 strued as precedent in the litigation or settlement of any
24 other Indian water right claims.

1 **SEC. 9. ON-RESERVATION WATER RESOURCES DEVELOP-**
2 **MENT.**

3 (a) WATER DEVELOPMENT PROJECTS.—The Sec-
4 retary, through the Bureau of Reclamation, is authorized
5 and directed to plan, design, and construct, or to provide,
6 pursuant to subsection (b), for the planning, design, and
7 construction of the following water development projects
8 on the Rocky Boy's Reservation:

9 (1) Bonneau Dam and Reservoir Enlargement.
10 (2) East Fork of Beaver Creek Dam Repair
11 and Enlargement.
12 (3) Brown's Dam Enlargement.
13 (4) Towe Ponds' Enlargement.
14 (5) Such other water development projects as
15 the Tribe shall from time to time consider appro-
16 priate.

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

1 (c) BUREAU OF RECLAMATION PROJECT ADMINIS-
2 TRATION.—
3 (1) IN GENERAL.—Congress finds that the Sec-
4 retary, through the Bureau of Reclamation, has en-
5 tered into an agreement with the Tribe, pursuant to
6 title IV of the Indian Self-Determination and Edu-
7 cation Assistance Act (25 U.S.C. 458aa et seq.)—
8 (A) defining and limiting the role of the
9 Bureau of Reclamation in its administration of
10 the projects authorized in subsection (a);
11 (B) establishing the standards upon which
12 the projects will be constructed; and
13 (C) for other purposes necessary to imple-
14 ment this section.
15 (2) AGREEMENT.—The agreement referred to
16 in paragraph (1) shall become effective when the
17 Tribe exercises its right under subsection (b).
18 **SEC. 10. CHIPPEWA CREE INDIAN RESERVED WATER**
19 **RIGHTS SETTLEMENT TRUST FUND.**
20 (a) ESTABLISHMENT OF TRUST FUND.—
21 (1) IN GENERAL.—
22 (A) ESTABLISHMENT.—There is hereby es-
23 tablished in the Treasury of the United States
24 a trust fund for the Chippewa Cree Tribe of the
25 Rocky Boy's Reservation to be known as the

1 "Chippewa Cree Indian Reserved Water Rights
2 Settlement Trust Fund".
3 (B) AVAILABILITY OF AMOUNTS IN
4 FUND.—
5 (i) IN GENERAL.—Amounts in the
6 Fund shall be available to the Secretary
7 for management and investment on behalf
8 of the Tribe and distribution to the Tribe
9 in accordance with this Act.
10 (ii) AVAILABILITY.—Funds made
11 available from the Fund under this section
12 shall be available without fiscal year limita-
13 tion.
14 (2) MANAGEMENT OF FUND.—The Secretary
15 shall deposit and manage the principal and interest
16 in the Fund in a manner consistent with subsection
17 (b) and other applicable provisions of this Act.
18 (3) CONTENTS OF FUND.—The Fund shall con-
19 sist of the amounts authorized to be appropriated to
20 the Fund under section 11(c) and such other
21 amounts as may be transferred or credited to the
22 Fund.
23 (4) WITHDRAWAL.—The Tribe, with the ap-
24 proval of the Secretary, may withdraw the Fund and
25 deposit it in a mutually agreed upon private finan-

1 cial institution. That withdrawal shall be made pur-
2 suant to the American Indian Trust Fund Manage-
3 ment Reform Act of 1994 (25 U.S.C. 4001 et seq.).
4 (5) ACCOUNTS.—The Secretary of the Interior
5 shall establish the following accounts in the Fund
6 and shall allocate appropriations to the various ac-
7 counts as required in this Act:
8 (A) The Tribal Compact Administration
9 Account.
10 (B) The Economic Development Account.
11 (C) The Future Water Supply Facilities
12 Account.
13 (b) FUND MANAGEMENT.—
14 (1) IN GENERAL.—
15 (A) AMOUNTS IN FUND.—The Fund shall
16 consist of such amounts as are appropriated to
17 the Fund and allocated to the accounts of the
18 Fund by the Secretary as provided in this Act
19 and in accordance with the authorizations for
20 appropriations in paragraphs (1), (2), and (3)
21 of section 11(c), together with all interest that
22 accrues in the Fund.
23 (B) MANAGEMENT BY SECRETARY.—The
24 Secretary shall manage the Fund, make invest-
25 ments from the Fund, and make available funds

1 from the Fund for distribution to the Tribe in
2 a manner consistent with the American Indian
3 Trust Fund Management Reform Act of 1994
4 (25 U.S.C. 4001 et seq.).
5 (2) TRIBAL MANAGEMENT.—
6 (A) IN GENERAL.—If the Tribe exercises
7 its right pursuant to subsection (a)(4) to with-
8 draw the Fund and deposit it in a private fi-
9 nancial institution, except as provided in the
10 withdrawal plan, neither the Secretary nor the
11 Secretary of the Treasury shall retain any over-
12 sight over the accounting, disbursement, or in-
13 vestment of the funds.
14 (B) WITHDRAWAL PLAN.—The withdrawal
15 plan shall provide for—
16 (i) the creation of accounts and allo-
17 cation to accounts in a fund established
18 under the plan in a manner consistent with
19 subsection (a); and
20 (ii) the appropriate terms and condi-
21 tions, if any, on expenditures from the
22 fund (in addition to the requirements of
23 the plans set forth in paragraphs (2) and
24 (3) of subsection (c)).

1 (c) USE OF FUND.—The Tribe shall use the Fund
2 to fulfill the purposes of this Act, subject to the following
3 restrictions on expenditures:
4 (1) Except for $400,000 necessary for capital
5 expenditures in connection with Tribal Compact Ad-
6 ministration, only interest accrued on the Tribal
7 Compact Administration Account referred to in sub-
8 section (a)(5)(A) shall be available to satisfy the
9 Tribe's obligations for Tribal Compact Administra-
10 tion under the provisions of the Compact.
11 (2) Both principal and accrued interest on the
12 Economic Development Account referred to in sub-
13 section (a)(5)(B) shall be available to the Tribe for
14 expenditure pursuant to an economic development
15 plan approved by the Secretary.
16 (3) Both principal and accrued interest on the
17 Future Water Supply Facilities Account referred to
18 in subsection (a)(5)(C) shall be available to the
19 Tribe for expenditure pursuant to a water supply
20 plan approved by the Secretary.
21 (d) INVESTMENT OF FUND.—
22 (1) IN GENERAL.—
23 (A) APPLICABLE LAWS.—The Secretary
24 shall invest amounts in the Fund in accordance
25 with—

1 (i) the Act of April 1, 1880 (21 Stat.
2 70, chapter 41; 25 U.S.C. 161);
3 (ii) the first section of the Act entitled
4 "An Act to authorize the payment of inter-
5 est of certain funds held in trust by the
6 United States for Indian tribes", approved
7 February 12, 1929 (25 U.S.C. 161a); and
8 (iii) the first section of the Act enti-
9 tled "An Act to authorize the deposit and
10 investment of Indian funds", approved
11 June 24, 1938 (25 U.S.C. 162a).
12 (B) CREDITING OF AMOUNTS TO THE
13 FUND.—The interest on, and the proceeds from
14 the sale or redemption of, any obligations of the
15 United States held in the Fund shall be cred-
16 ited to and form part of the Fund. The Sec-
17 retary of the Treasury shall credit to each of
18 the accounts contained in the Fund a propor-
19 tionate amount of that interest and proceeds.
20 (2) CERTAIN WITHDRAWN FUNDS.—
21 (A) IN GENERAL.—Amounts withdrawn
22 from the Fund and deposited in a private finan-
23 cial institution pursuant to a withdrawal plan
24 approved by the Secretary under the American
25 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.

1 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) FISCAL YEAR 1999 APPROPRIATIONS.—Of the
3 amounts made available by appropriations for fiscal year
4 1999 for the Bureau of Reclamation, $1,000,000 shall be
5 used for the purpose of commencing the MR&I feasibility
6 study under section 7(a) and the regional study under sec-
7 tion 7(c), of which—

8 (1) $500,000 shall be used for the MR&I study
9 under section 7(a); and

10 (2) $500,000 shall be used for the regional
11 study under section 7(c).

12 (b) FEASIBILITY STUDIES.—There is authorized to
13 be appropriated to the Department of the Interior, for the
14 Bureau of Reclamation, for the purpose of conducting the
15 MR&I feasibility study under section 7(a) and the regional
16 study under section 7(c), $3,000,000 for fiscal year 2000,
17 of which—

18 (1) $500,000 shall be used for the MR&I feasi-
19 bility study under section 7(a); and

20 (2) $2,500,000 shall be used for the regional
21 study under section 7(c).

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

25 (1) TRIBAL COMPACT ADMINISTRATION AC-
26 COUNT.—For Tribal Compact Administration as-

1 sumed by the Tribe under the Compact and this Act,
2 $3,000,000 is authorized to be appropriated for fis-
3 cal year 2000.
4 (2) ECONOMIC DEVELOPMENT ACCOUNT.—For
5 tribal economic development, $3,000,000 is author-
6 ized to be appropriated for fiscal year 2000.
7 (3) FUTURE WATER SUPPLY FACILITIES AC-
8 COUNT.—For the total Federal contribution to the
9 planning, design, construction, operation, mainte-
10 nance, and rehabilitation of a future water supply
11 system for the Reservation, there are authorized to
12 be appropriated—
13 (A) $2,000,000 for fiscal year 2000;
14 (B) $8,000,000 for fiscal year 2001; and
15 (C) $5,000,000 for fiscal year 2002.
16 (d) ON-RESERVATION WATER DEVELOPMENT.—
17 (1) IN GENERAL.—There are authorized to be
18 appropriated to the Department of the Interior, for
19 the Bureau of Reclamation, for the construction of
20 the on-Reservation water development projects au-
21 thorized by section 9—
22 (A) $13,000,000 for fiscal year 2000, for
23 the planning, design, and construction of the
24 Bonneau Dam Enlargement, for the develop-
25 ment of additional capacity in Bonneau Res-

1 ervoir for storage of water secured to the Tribe
2 under the Compact;
3 (B) $8,000,000 for fiscal year 2001, for
4 the planning, design, and construction of the
5 East Fork Dam and Reservoir enlargement, of
6 the Brown's Dam and Reservoir enlargement,
7 and of the Towe Ponds enlargement of which—
8 (i) $4,000,000 shall be used for the
9 East Fork Dam and Reservoir enlarge-
10 ment;
11 (ii) $2,000,000 shall be used for the
12 Brown's Dam and Reservoir enlargement;
13 and
14 (iii) $2,000,000 shall be used for the
15 Towe Ponds enlargement; and
16 (C) $3,000,000 for fiscal year 2002, for
17 the planning, design, and construction of such
18 other water resource developments as the Tribe,
19 with the approval of the Secretary, from time to
20 time may consider appropriate or for the com-
21 pletion of the 4 projects enumerated in sub-
22 paragraphs (A) and (B) of paragraph (1).
23 (2) UNEXPENDED BALANCES.—Any unex-
24 pended balance in the funds authorized to be appro-
25 priated under subparagraph (A) or (B) of paragraph

1 (1), after substantial completion of all of the
2 projects enumerated in paragraphs (1) through (4)
3 of section 9(a)—
4 (A) shall be available to the Tribe first for
5 completion of the enumerated projects; and
6 (B) then for other water resource develop-
7 ment projects on the Reservation.
8 (e) ADMINISTRATION COSTS.—There is authorized to
9 be appropriated to the Department of the Interior, for the
10 Bureau of Reclamation, $1,000,000 for fiscal year 2000,
11 for the costs of administration of the Bureau of Reclama-
12 tion under this Act, except that—
13 (1) if those costs exceed $1,000,000, the Bu-
14 reau of Reclamation may use funds authorized for
15 appropriation under subsection (d) for costs; and
16 (2) the Bureau of Reclamation shall exercise its
17 best efforts to minimize those costs to avoid expendi-
18 tures for the costs of administration under this Act
19 that exceed a total of $1,000,000.
20 (f) AVAILABILITY OF FUNDS.—
21 (1) IN GENERAL.—The amounts authorized to
22 be appropriated to the Fund and allocated to its ac-
23 counts pursuant to subsection (c) shall be deposited
24 into the Fund and allocated immediately on appro-
25 priation.

1 (2) INVESTMENTS.—Investments may be made
2 from the Fund pursuant to section 10(d).
3 (3) AVAILABILITY OF CERTAIN MONEYS.—The
4 amounts made available for use under subsection (a)
5 shall be deemed to have been available for use as of
6 the date on which those funds were appropriated.
7 The amounts authorized to be appropriated in sub-
8 sections (b) and (c)(1) shall be available for use im-
9 mediately upon appropriation.
10 (4) LIMITATION.—Those moneys allocated by
11 the Secretary to accounts in the Fund or in a fund
12 established under section 10(a)(4) shall draw inter-
13 est consistent with section 10(d), but the moneys au-
14 thorized to be appropriated under subsection (d) and
15 paragraphs (2) and (3) of subsection (c) shall not be
16 available for expenditure until the requirements of
17 section 5(b) have been met so that the decree has
18 become final and the Tribe has executed the waiver
19 and release required under section 13(c).
20 (g) RETURN OF FUNDS TO THE TREASURY.—
21 (1) IN GENERAL.—In the event that the ap-
22 proval, ratification, and confirmation of the Compact
23 by the United States becomes null and void under
24 section 5(b), all unexpended funds appropriated
25 under the authority of this Act together with all in-

1 terest earned on such funds, notwithstanding wheth-
2 er the funds are held by the Tribe, a private institu-
3 tion, or the Secretary, shall revert to the general
4 fund of the Treasury 12 months after the expiration
5 of the deadline established in section 5(b).

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

15 (h) WITHOUT FISCAL YEAR LIMITATION.—All money
16 appropriated pursuant to authorizations under this Act
17 shall be available without fiscal year limitation.

18 **SEC. 12. STATE CONTRIBUTIONS TO SETTLEMENT.**

19 Consistent with Articles VI.C.2 and C.3 of the Com-
20 pact, the State contribution to settlement shall be as fol-
21 lows:

22 (1) The contribution of $150,000 appropriated
23 by Montana House Bill 6 of the 55th Legislative
24 Session (1997) shall be used for the following pur-
25 poses:

1 (A) Water quality discharge monitoring
2 wells and monitoring program.
3 (B) A diversion structure on Big Sandy
4 Creek.
5 (C) A conveyance structure on Box Elder
6 Creek.
7 (D) The purchase of contract water from
8 Lower Beaver Creek Reservoir.
9 (2) Subject to the availability of funds, the
10 State shall provide services valued at $400,000 for
11 administration required by the Compact and for
12 water quality sampling required by the Compact.
13 **SEC. 13. MISCELLANEOUS PROVISIONS.**
14 (a) NONEXERCISE OF TRIBE'S RIGHTS.—Pursuant
15 to Tribal Resolution No. 40–98, and in exchange for bene-
16 fits under this Act, the Tribe shall not exercise the rights
17 set forth in Article VII.A.3 of the Compact, except that
18 in the event that the approval, ratification, and confirma-
19 tion of the Compact by the United States becomes null
20 and void under section 5(b), the Tribe shall have the right
21 to exercise the rights set forth in Article VII.A.3 of the
22 Compact.
23 (b) WAIVER OF SOVEREIGN IMMUNITY.—Except to
24 the extent provided in subsections (a), (b), and (c) of sec-
25 tion 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 11 has been completed and the decree has become final in accordance with the requirements of section 5(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 5(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:

1 (A) Any and all claims to water rights (in-
2 cluding water rights in surface water, ground
3 water, and effluent), claims for injuries to
4 water rights, claims for loss or deprivation of
5 use of water rights, and claims for failure to ac-
6 quire or develop water rights for lands of the
7 Tribe from time immemorial to the date of rati-
8 fication of the Compact by Congress.
9 (B) Any and all claims arising out of the
10 negotiation of the Compact and the settlement
11 authorized by this Act.
12 (3) SETOFFS.—In the event the waiver and re-
13 lease do not become effective as set forth in para-
14 graph (1)—
15 (A) the United States shall be entitled to
16 setoff against any claim for damages asserted
17 by the Tribe against the United States, any
18 funds transferred to the Tribe pursuant to sec-
19 tion 11, and any interest accrued thereon up to
20 the date of setoff; and
21 (B) the United States shall retain any
22 other claims or defenses not waived in this Act
23 or in the Compact as modified by this Act.
24 (d) OTHER TRIBES NOT ADVERSELY AFFECTED.—
25 Nothing in this Act is intended to quantify or otherwise

1 adversely affect the land and water rights, or claims or
2 entitlements to land or water of an Indian tribe other than
3 the Chippewa Cree Tribe.

4 (e) ENVIRONMENTAL COMPLIANCE.—In imple-
5 menting the Compact, the Secretary shall comply with all
6 aspects of the National Environmental Policy Act of 1969
7 (42 U.S.C. 4321 et seq.), the Endangered Species Act of
8 1973 (16 U.S.C. 1531 et seq.), and all other applicable
9 environmental Acts and regulations.

10 (f) EXECUTION OF COMPACT.—The execution of the
11 Compact by the Secretary as provided for in this Act shall
12 not constitute a major Federal action under the National
13 Environmental Policy Act (42 U.S.C. 4321 et seq.). The
14 Secretary is directed to carry out all necessary environ-
15 mental compliance required by Federal law in imple-
16 menting the Compact.

17 (g) CONGRESSIONAL INTENT.—Nothing in this Act
18 is intended to—

19 (1) alter the trust responsibility of the United
20 States to the Tribe; or

21 (2) prohibit the Tribe from seeking additional
22 authorization or appropriation of funds for tribal
23 programs or purposes.

24 (h) ACT NOT PRECEDENTIAL.—Nothing in this Act
25 shall be construed or interpreted as a precedent for the

1 litigation of reserved water rights or the interpretation or
2 administration of future water settlement Acts.

○

The CHAIRMAN. I look forward to hearing from our three witnesses, and, without objection, I'll introduce for the record a statement from Senators Baucus and Burns. Senator Burns is suffering from the flu this morning the same as I am, so he could not be with us, but both of their testimony will be included in the record and we will go directly to Mr. David Hayes as our first panel witness as the acting Deputy Secretary of the Interior for the Department of the Interior.

David, if you'd like, just go ahead and proceed. As with all panelists, your complete written testimony will be included in the record, and if you would like to abbreviate, that will be fine.

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

Mr. HAYES. Thank you, Mr. Chairman. Good morning. I'm David Hayes, the acting Deputy Secretary of the Interior, and I'm pleased to testify here today on behalf of the administration in support of S. 438.

I will be short, in light of the fact that my written testimony has been entered into the record. I would like to mention that there is a small technical change that we are recommending with the staff that I don't think will be controversial.

But I would like to say orally here, Senator, three points that actually mesh very closely with your opening remarks.

First, I'd like to emphasize that this western water settlement is the product of a State-led and tribal-led negotiation process. Some years ago, State parties made a decision to take matters into their own hands and attempt to forge a resolution of the tribe's water right claims which would be acceptable to everyone. With the leadership of the governor, the States Reserved Water Rights Commission, the tribe, the congressional delegation, including, in particular, Senators Burns and Baucus, a negotiated settlement emerged. The settlement was enacted into State law in 1997, and it is now our turn to ratify what the State parties have done, and we should.

It is important that the administration and the Congress respect and implement the accommodations reached by the local State, Federal, and tribal parties in this long history of negotiation.

Second, Mr. Chairman, the administration believes that the Federal contribution to this water settlement is appropriate and is targeted to the specific needs and rights of the Chippewa Cree Tribe of the Rocky Boy Reservation. In particular, Federal funds will be used to enhance on-reservation water supplies, thereby enabling the tribe to stretch its meager water supplies on the reservation and give it the flexibility to more fully utilize its water rights without negatively impacting downstream non-Indian water users.

Federal funds also will be set aside in trust to assist the tribe in addressing future needs for supplemental water supply. As the tribe grows, additional water may be needed, and these funds would be available for that purpose.

Third and finally, this settlement is very important to the tribe and, as its trustee, the United States has a responsibility to help make this settlement a reality. North central Montana is a water short area. Farming and ranching are the key economic activities

for the tribe, and water is an essential ingredient for the tribe's livelihood.

After many years of effort, this legislation has emerged as the State- and Federal-approved vehicle and tribal-approved vehicle for securing the tribe's water rights for future generations. We urge you to enact it into law.

Thank you very much, Mr. Chairman, and other members of the committee.

The CHAIRMAN. And thank you for your testimony.

[Prepared statement of Mr. Hayes appears in appendix.]

The CHAIRMAN. To my knowledge, there is no opposition to the bill, but I would just state that I hope you have better luck—hope the tribe has better luck in seeing this through than the Southern Utes have had in our State of Colorado.

We passed a very similar proposal some years ago with the concurrence of the State, the Federal Government, the Indian tribes—I mean literally everybody—and here we are, you know, going on 12 years later, and we haven't got the thing built yet because we didn't factor in the fact that some groups would sue under the Endangered Species Act and a number of other things to keep the project from moving forward.

So, even when the best intentions are there from different levels of government, there are still lots of hurdles, and I would hope that the tribe and Bureau can move forward and complete this.

Senator Inouye, did you have a statement or any questions?

Senator INOUYE. Mr. Chairman, I thank you very much. I want to commend the leadership of the Chippewa Cree and to simply state they waited too long, so I would hope that we could expedite this.

The CHAIRMAN. Okay. Maybe let me ask you just one question, Mr. Hayes.

Should the Federal Government's contribution to Indian water right settlements be limited to the extent of the financial liability?

Mr. HAYES. Not in all cases, Mr. Chairman. It is our belief that it is appropriate to look at potential liability as a baseline for potential contribution, but in many cases it is also appropriate to give programmatic support, because really, to make water rights settlements work, infrastructure often has to be built, and this case is one in which there is a blending of liability and also programmatic responsibility.

The CHAIRMAN. Also, while this was being negotiated, were State and local—you mentioned the State involvement, but are local communities aware of the negotiated settlement, too?

Mr. HAYES. Very, very much so. As the State representatives can attest, they really took it on a ranch-by-ranch basis to local interests and did a huge amount of leg work in making sure there was grassroots support for the effort.

The CHAIRMAN. Very good. Thank you for your appearance today.

Mr. HAYES. Okay. Thank you very much.

Senator INOUYE. Mr. Chairman?

The CHAIRMAN. Excuse me, Senator Inouye. I didn't realize you had a question.

Senator INOUYE. When is the administration going to request money for this, assuming we pass the bill? Is that the next fiscal year or——

Mr. HAYES. Senator, we have some money in the fiscal year 2000 budget, but, frankly, we are limited in our ability to move forward in any meaningful way until the legislation passes.

What we have done is, without authorizing legislation, we have some limited room to get some study work started, and we've done that already, but we need authorization to move forward.

The primary on-the-ground activity that needs to start first is the Bureau of Reclamation funded efforts in terms of enlarging Benal Reservoir and some of the other reservoirs, and, unfortunately, until there is explicit congressional authorization, we can't move to that phase.

With administration authorization, we in the administration will do everything we can to get the money flowing as soon as absolutely possible.

Senator INOUYE. Will it mean that other projects of other tribes will be reduced proportionately?

Mr. HAYES. No, Senator; we have been—this project has been on the radar screen of our budget office and the Office of Management and Budget now for a couple of years, and we would ensure that it would not come at the expense of other tribes.

Frankly, we need to increase the amount of funding in this arena for tribes, overall, and that's part of our plan here, and the Office of Management and Budget is being quite cooperative.

Senator INOUYE. Members of the Congress have been very much impressed with the improvements in our economy, and we are told that we have billions upon billions of surplus funds. Can we find something for the Indians?

Mr. HAYES. I certainly hope so, Senator, and I'd enjoy the chance to talk further with you about that.

In addition to this settlement, we have some other major settlements, Indian land and water settlements, coming down the pike, and we very much want to find a place for them in the budget, and we would appreciate the chance to discuss it further with you.

Senator INOUYE. As you may be aware, certain members of Congress have expressed concern that the provisions of this settlement enabling the tribe to market its resources may set a bad precedent for other settlements. Do you have any concern over that?

Mr. HAYES. No; I don't, but I appreciate raising it with you because it is an issue that Senator Kyl raised last year, and we have had a number of discussions with him, and I hope that we have resolved the issues to his satisfaction.

Senator Kyl raised a concern that if this is a reserved water right, that in his view it is not appropriate to market the reserved water right off the reservation, and legislation, in fact, defines this as a tribal water right as defined under State law.

The reserve water right claim has been settled and compromised, and the actual water right that is now in the Montana State code, as enacted by the State Legislature, is not a pure reserved water right. It is a State water right that has its roots, some of it, in the reserved water right doctrine.

But under State law, marketing of that right, which is laid out in State law, is appropriate. We think it is only appropriate that we follow State law in that regard and that the tribe have the same right to market water as any other State water right holder would have.

So I think we have avoided the issue Senator Kyl is concerned about and have not set a precedent, and, in fact, a statute that specifically says we're not setting any precedent.

Senator INOUYE. I thank you very much, sir.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Inouye, you brought to mind a couple more questions I think I probably ought to ask, too.

Does this bill allow marketing of the water across State lines out-of-State, or——

Mr. HAYES. I don't believe so.

The CHAIRMAN. You don't believe so. The other thing, as I understand it, four dams will be enlarged; is that correct?

Mr. HAYES. That's correct.

The CHAIRMAN. Do you have to or have you done an environmental impact statement, or do you need to do one to enlarge those?

Mr. HAYES. We are doing environmental analyses of all of those activities. The largest activity is the Benal Reservoir, and that environmental analysis has already been completed.

The CHAIRMAN. I see. Okay. Thank you. I appreciate it.

Mr. HAYES. Okay. Thank you very much.

The CHAIRMAN. We'll now go to Jim Morsette, the director of the Chippewa Cree Tribal Water Resources Department in Box Elder, Montana, accompanied by Yvonne Knight.

Mr. Morsette, if you'd like to begin, your complete testimony will be included in the record, so you may abbreviate that.

STATEMENT OF JIM MORSETTE, DIRECTOR CHIPPEWA CREE TRIBAL WATER RESOURCES DEPARTMENT, CHIPPEWA CREE TRIBE OF ROCKY BOY'S INDIAN RESERVATION, BOX ELDER, MT, ACCOMPANIED BY YVONNE KNIGHT, TRIBAL WATER RIGHTS COUNSEL; BERT CORCORAN, TRIBAL CHAIRMAN; AND DAN BELCOURT, TRIBAL STAFF ATTORNEY

Mr. MORSETTE. Good morning. Good morning, Mr. Chairman, Senator Nighthorse Campbell, Vice Chairman, Senator Inouye, and members of the committee.

I want to thank Senator Burns and his staff, especially Dan Ullman; and Senator Campbell and his staff, especially Steve McHugh; Senator Baucus and his staff—especially Steve McHugh and Dan Ullman for helping us move this bill through the process. We had a lot of help from the Committee on Indian Affairs staff. We appreciate that.

For the record, I will submit a detailed testimony. I'm just going to go through a brief oral testimony, and my testimony in detail is submitted for the record.

I would like to introduce some people that came with me from Rocky Boy. To my left is our tribal chairman, Bert Corcoran, and behind we have a tribal staff attorney, Dan Belcourt. To our right we have Yvonne Knight. She's a tribal water rights attorney.

I would like to first of all show my appreciation for being allowed to testify on this committee.

The first thing I would like to recognize is that I would like to give thanks to our Creator for allowing me to be here, and I wanted to ask a prayer for the Senators, their families, the people they represent, the people at Rocky Boy, and all the people that are affected by this legislation, and ask the Creator to watch over us, to bless us like he has, and to continue to help us carryout this good life that we have that we try to live.

Rocky Boy wandered for years because we didn't have a homeland. Our elders, for whatever reason, our chiefs decided not to settle in North Dakota and parts of Canada, so we wandered without a homeland, without a place to stay in the 1890's, late 1800's to early 1900's.

With a lot of prayers and the help of a lot of our non-Indian neighbors, we got a reservation in 1916. We found a homeland, and our elders were looking for a place where they could pray, where they could carry on their ways and they could raise their families and be Indians and live in peace in their own homeland. That's what we come here to ask you for today—that the Chippewa Cree Tribe is looking for a homeland, something that will sustain us from now until forever.

This treaty that we're going to sign, that we've agreed upon is forever, that we're going to give up our water, our future claims to water rights, so that's what we were looking for, and we believe that we got this through prayer.

Before we started out on our journey, the tribal council sat down in chambers and we had a pipe ceremony, and we went in that direction. We called an elder in and we had this ceremony.

Today we still continue to do that. Our vice chairman of our tribe, the chairman of this water committee, that's my immediate supervisor, Bruce Sunchild. He's in a ceremony right now we call the "Sun Dance." We have the Sun Dance each year while we fast up to 4 days without food or without water. We learn to appreciate what the essence of water is—that it's life, that it's our life. Without water, without water for our people, without water for our neighbors, without water for our animals, without water to replenish Mother Earth, we will not have any life.

So we fast and we do that each year so that we understand, we get this appreciation for this gift that we have that we want to share with our neighbors, we want to share with others this water, this gift of life, and that's really what we're looking for. That's what our elders talked about. We want a homeland where we can do these things, pray in our way, give thanks in our way, and raise our children to understand how we appreciate this life.

So that's what we're trying to share with our communities and that's what we've done through negotiations. We've negotiated with our white brothers, our ranchers and farmers off the reservation. We come to an agreement and understanding that we can share this resource, what we call it now, this water, this resource. We can share it together and we can both have our needs met.

And we came to a good understanding from a very troubled beginning, where it was a hostile beginning in about 1991 or 1992. We've been going this long. So we came to an understanding.

Before you today is that bill—S. 438—that involves all this work that we've done, and we ask that the water—there's approximately 20,000 acre feet of water on Rocky Boy. We get 10,000 acre feet of that. We've got 10,000 acre feet being augmented from another type of reservoir for our drinking supply. We have a small economic development fund. We have four facilities that we're going to enlarge—one of them that we partially enlarged already. There are safety of dam issues where two of them are really hazardous dams and we need to repair them, so that calls for a repairing of these facilities.

The rest is so we can store water and release a certain percentage during the dry years, every year, down to our non-Indians so we can replenish their stream bed.

That's primarily, in a nutshell, what our settlement calls for.

I believe that what the tribe believes is that we went at this in a way that we were dealing with a sacred issue, and we still believe that. Without life, all this—our Sun Dance starts when the first buds come out in the early spring. When we hear the thunder and the lightening, we know that the rain is coming to replenish our earth. So that's how we live our life, and we see it as a cycle. We're all in cycles. It's all a circle. And so that's how we've lived our life and that's how we tried to live with our neighbors. We've tried to have that understanding when we deal with our brothers in Montana.

We have a better relationship, we seem to have satisfied each other's needs, and we urge you to support this bill. We thank you. I'm here to answer any questions you might have in this bill.

Thank you.

[Prepared statement of Mr. Morsette appears in appendix.]

The CHAIRMAN. Mr. Tweeten, I'm sorry I didn't introduce you when you first sat down, but you're the chairman of the Montana Reserved Water Rights Compact Commission; is that right?

Mr. TWEETEN. That's right.

The CHAIRMAN. Please proceed with your testimony.

STATEMENT OF CHRIS D. TWEETEN, CHAIRMAN, MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION, HELENA, MT

Mr. TWEETEN. Thank you, Mr. Chairman and Senator Inouye. I am Chris Tweeten. I am the chairman of the Reserved Water Rights Compact Commission for the State of Montana.

Under State law, the Commission serves as the negotiating arm for the governor of Montana in negotiating settlements of Indian and Federal reserved water rights claims within the State of Montana, and I'm presenting my testimony today on behalf of the State and on behalf of Governor Mark Racicot in support of the Rocky Boy's compact.

Since my written statement is part of the record, I'd like to emphasize briefly three points that have been touched on by some of the other statements that have been made this morning with which we heartily concur.

One is a point that was made in the chairman's opening statement and also, I believe, appears in the written statement of Senator Burns that has been entered in the record. We believe that

this compact illustrates the value of locally-crafted solutions to western water allocation problems, and we strongly urge its passage as an indication of Federal policy and support for the development of those locally-crafted solutions.

Western States are not, I would submit, similarly situated with States in other parts of the country with respect to water allocation problems, and, in more detail, not all western States are alike. Solutions that are appropriate for arid but highly-populated areas in the southwest do not necessarily work for the sparsely-populated agricultural economies of north-central Montana. That's why it is important for Congress to support States and tribes as they craft these local solutions to these water allocation problems, and we believe that this bill is a terrific example of the benefits that can be achieved from allowing the States and tribes to work through these issues with focus on local concerns and without reference to some sort of a Federally- imposed template or cook book or cookie cutter approach to trying to resolve these issues.

We think that in this compact we've worked very hard to try to craft these solutions to the geographic, demographic, and political situations that exist in north-central Montana, and we believe that those solutions are appropriate for north- central Montana, even though they might not necessarily be the solutions that might be adopted in other parts of the west, and we hope that the committee and the Congress will recognize how carefully-crafted this settlement is to the local concerns of all of those people who are affected by the compact, not just tribal members but their non–Indian neighbors, as well.

Second, as also has been touched on briefly by Mr. Hayes in his statement, this compact has broad and deep support among all of the people in the region in north-central Montana that are most directly affected by it.

As we started these negotiations many years ago, there was a great deal of suspicion and hostility among the parties with respect to their ability to reach this compact, and, through many years of very painstaking work by the staffs of the tribe, the State, and the Federal team, we've managed to work individually with the ranchers in the area and to convince them that this compact is a good compact for them, that it provides them with tangible benefits in terms of their ability to continue to use water in the way that they've used it in the past, while at the same time providing a stable and useful supply of water for the tribe.

Many of the people who were ardent opponents of this negotiation process 8 or 9 years ago are now among the strongest supporters of this compact. The compact passed the Montana Legislature. No witness appeared and testified in opposition to it in hearings of either house of the Montana Legislature, and it passed both houses by very wide margins, which indicates, I believe, that there is a very broad level of support for this compact among the people that were most directly affected by it.

Third, I think it is important to emphasize how compacting allows us to integrate tribal water rights and State-based water rights together in an integrated administration system.

Frequently, when we litigate these issues we find that we end up with a date and an amount of water awarded to the tribe, but no

real conception as to how that water is actually going to be applied on the land and administered in conjunction with State-based rights that frequently have very different legal attributes.

One of the beauties of compacting these issues is that the parties are then able to address those administration issues and put together an administration scheme that integrates the tribal rights and the State rights together in a way that provides wet water for the tribe and provides an administration system that is actually going to work on the ground, and we believe firmly that we've done that with respect to the Rocky Boy's compact.

We've provided an administration system that downplays the importance of priority, and I hope it will avoid many potential conflicts between tribal users, on the one hand, and non-tribal users, on the other. And we've also provided a very simple and very accessible alternative dispute resolution forum in order to resolve any disputes that do come up in a way that is both quick and inexpensive for the parties, and we think that that's an attribute of this settlement that we would not enjoy had we been forced to go through the litigation route.

Mr. Chairman, we firmly believe that this bill is in the strong interest of both the tribe and the non-tribal users in north-central Montana, and that it makes good sense, from a Federal perspective, for you to enact this bill, so we strongly urge your concurrence.

I'd be happy to answer any questions.

[Prepared statement of Mr. Tweeten appears in appendix.]

The CHAIRMAN. I think you'll probably find, Mr. Tweeten, that there will be support in the committee for it, and, as long as the administration supports it, there shouldn't be any problem.

I understand that the Federal amount that we would be contributing is around $50 million? Is that correct?

Mr. TWEETEN. I believe that the total Federal contribution is going to be in the neighborhood of $50 million, but it will be spread over several years.

The CHAIRMAN. Okay. But one thing about water legislation deals in the west, you know, you can pass the laws with all the good intents in the world, and somehow a lot of them don't get done. The money doesn't get funded or somebody backs out even after it is the law, as we've seen in Colorado, so my only advice was keep fighting it. Just because it gets passed doesn't mean it's going to be the end of the game. When you've got the thing completed, that's when it's the end.

Mr. TWEETEN. Well, Mr. Chairman, we have some experience with that in Montana with the Northern Cheyenne settlement which you passed in Congress several years ago.

The CHAIRMAN. Yes.

Mr. TWEETEN. Actually, tomorrow the Northern Cheyenne enlargement of the dam is going to be dedicated in southeastern Montana. That project is completed. It was fully funded through the efforts of the State and the Federal Government, so we know that if the parties are willing to work hard at it, we know that these settlements can be implemented, so we're hopeful that will happen here.

The CHAIRMAN. Yes; I'm aware of the Cheyenne situation because that's where I'm enrolled, and I know very well that problem.

Senator Inouye, did you have some questions you'd like to ask?

Senator INOUYE. Yes.

I'd like to ask Mr. Morsette, because of the concerns expressed by the congressional delegation from Arizona, I'd like to ask these questions for the record.

Under the State law and under the agreement, the tribe will have the right to market water rights resulting from the project. Is the tribe contemplating marketing any other water rights under the settlement? If so, under what circumstances?

Mr. MORSETTE. Not necessarily. We're settling this compact for all time, forever, and we don't know what is going to happen 100 years from now or 200 years from now, whether we're going to have an agricultural business or whether we're going to have some industrial or whatever we have, so we kind of reserve that right to do that. We want to reserve that option to do that in the future, and it is not necessarily the selling of the water, it is the leasing of the water. But we might have some instances where it's not to alienate the water but it is to lease it.

We tried to put that option in so that we don't—we can't read the future.

The CHAIRMAN. So under the present circumstances you have no plans to do it?

Mr. MORSETTE. No, sir.

The CHAIRMAN. May I just interject a comment, Senator Inouye?

Senator INOUYE. Yes.

The CHAIRMAN. I think one of Senator Kyl's concerns—Senator Kyl is from Arizona. Arizona is a lower-basin State in the inter-State compact with Colorado, where I'm from, and one of the concerns I know lower basin States do have is that if tribes market their water to somebody else, will that affect their right under the inter-State compact, so I can understand Senator Kyl's concern.

I just thought I'd mention that. I didn't know if you were aware of that.

Senator INOUYE. This bill, S. 483, authorizes $15 million, and in your prepared statement you stated that the tribe expects that it will be required to return to Congress for additional monies. Is it correct that these additional moneys you refer to are not part of the settlement?

Mr. MORSETTE. Mr. Chairman, Mr. Vice Chairman, the $50 million is a part of the settlement and it is for facilities and it is for economic development fund, and there's $15 million set aside for seed money to look at other options to bring in drinking water. There's also $1 million worth of feasibility studies to look at that option, along with the $15 million for seed.

Senator INOUYE. You will have to get additional authority to get funds from the Government beyond the $15 million?

Mr. MORSETTE. Beyond the $15 million. Yes, sir. And that's after we've studied, that's after we've determined the best way to bring drinking water to the reservation. But that's not a part of the settlement.

The CHAIRMAN. Is the State of Montana going to join the tribe in this endeavor?

Mr. TWEETEN. Mr. Chairman, Senator Inouye, there are moneys provided by the State for feasibility studies for a regional drinking water system that will include the area surrounding the Rocky Boy's Reservation, and the State is very interested in that project and anticipates contributing to the creation of that project.

I think the intention of the parties of the compact would be that there would be Federal money dedicated to the tribe's drinking water system through the compact, but that the tribe and the other parties who have an interest in this regional system will then be able to supplement that funding with other money and, for example, the Safe Drinking Water Act or other Federal funds that might become available or State funds in order to put together a regional project which may rely on several different funding sources.

We think, from the State side, that's the approach that will be of greatest benefit in terms of satisfying the tribe's drinking water needs.

Senator INOUYE. I understand that at least one Member of the House wants to amend the settlement to require that the tribe develop a business plan as a condition for receiving the settlement funding. Do you have any thoughts on that?

Mr. MORSETTE. Mr. Chairman and Mr. Vice Chairman, I know about that. I would like our attorney, Yvonne Knight, to respond to that, please.

Ms. KNIGHT. The House subcommittee has suggested to the tribe that they contact a corporation who does basically business analysis of reservations to see what sort of commercial possibilities there might be utilizing water. The tribe has initiated discussions with this corporation, and it will be having a meeting with them while we're up here in Washington, DC, and our understanding is that the company goes in and will do a commercial analysis of the reservation's resources, including water, to see where there is any possibility of commercial ventures, and then they will—if they find such possibilities, they will work with the tribes to see whether or not there can be some type of commercial arrangement with the tribe to enter into some of these commercial ventures.

Our understanding at this point, although we have not thoroughly discussed it with them, is that they view these sites as capital investment.

The CHAIRMAN. I guess the question was, or at least it should be, what was your reaction to that proposed amendment? If the bill was amended on the House side to include that, would you still support that?

Mr. MORSETTE. We're not sure, Mr. Chairman. We really haven't got a direct answer or direct explanation of what this gentlemen wants. We really don't know. Enron doesn't really know. We talked to Enron. They really have no idea.

We'd have to talk with the State, because these were the negotiations that we had between the State of Montana, the tribe, and the Federal Government, so in order for us to change it or anything like that we'd have to enter into negotiations again with the State of Montana, and we would be concerned that this condition would put on other settlements down the line, that it would set a precedent with this compact. That would be our concern. And the State has this issue, also.

Senator INOUYE. May I ask one more question?

Mr. Tweeten, as you have noted from the questioning, there are certain members of Congress who are concerned about the marketing provisions. Can you tell the committee why the State of Montana was willing to allow the tribe to market water rights?

Mr. TWEETEN. Mr. Chairman and Senator Inouye, first of all, as Mr. Hayes indicated in his statement, under Montana law, leasing of water rights is allowed to anyone who owns a water right in Montana under certain conditions, and we felt initially that there was no reason to bar the tribe from participating in leasing on roughly the same footing as any other water user in Montana.

Second—and this goes back to my earlier statement that locally-crafted solutions that work in Montana may not be appropriate for other regions of the country.

The economics of leasing on Montana I would submit are substantially different from water leasing issues that arise in other parts of the country because of the fact that we are a small population State. Our population centers are located in areas that are relatively well-endowed with water. They are along the Missouri, Yellowstone, and Clark's Fork Rivers, which are very large watersheds with very large supplies that are clearly adequate to meet the foreseeable future needs of our population centers, so marketing water for domestic, municipal, and industrial uses is not a likely requirement in the State.

However, leasing of water rights for agricultural purposes in Montana is a very big issue, because, even though there are areas of the State where irrigated agriculture takes place, water supplies are, in many cases, over-appropriated, and the Milk River Valley is an excellent example of that. That basin has been closed to new appropriations of agricultural irrigation water for quite some time, and the ability to lease water from tribes may very well be the only way to provide a water supply for development of additional agricultural irrigation in those basins that are closed and that have Indian water rights available, and if the tribe chooses to enter into those kinds of economic arrangements with the non–Indian ranchers who are their neighbors, we, from a State perspective, don't think that that's necessarily bad policy. In fact, we think there are advantages to it.

In this compact, we have placed and the tribe has agreed to the placement of significant restrictions on their ability to market that protect all of the foreseeable interests of the State of Montana with respect to leasing water. The leasing is limited to uses within the Missouri River basin. People in the Milk River Valley will be given the right of first refusal for any leasing proposal so they can keep the water within the Milk basin if they choose to do that.

The tribe has agreed that if water is transferred off the reservation for use outside the reservation, that use will be subject to State law.

And, finally, and probably most important, the tribe has agreed that no leasing arrangement can have an adverse effect on existing State-based water right, so we think that all of those protections are very important and provide us a high level of protection for the State's interest in protecting with respect to leasing of water.

Senator INOUYE. I thank you very much, Mr. Tweeten, because I believe your response will strengthen the report of this measure. Thank you.

Mr. TWEETEN. Thank you, Senator.

The CHAIRMAN. I have no further questions. I thank you for appearing.

[Whereupon, at 10:38 a.m., the committee proceeded to further business.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM MONTANA

Thank you Mr. Chairman and committee members for the opportunity to offer my statement of strong support for the bill you are about to consider—"Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999".

As you know, this bill represents the culmination of 16 years of intensive technical studies and 6 years of negotiations involving the Chippewa Cree Tribe, the State of Montana, local governments, water districts and ranchers as well as the U.S. Departments of Justice and the Interior.

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

In 1880, the Fort Assiniboine military reservation was established. In 1916, Congress set aside 56,035 acres for the Chippewa and Cree bands of Chief Rocky Boy. In 1947, it was expanded by 45,523 acres bringing it to near its current size. None of the 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, development of timber and tourism provide solid sources of tribal income.

The reservation is located in an area of scarce water supply. Studies have demonstrated that the reservation could not sustain tribal membership without additional supplies of water for drinking, agricultural and municipal purposes.

Since 1992, the tribe, State and Federal Government have worked hard to reach an equitable water rights settlement.

The tribe and State reached tentative agreement on the 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.

This legislation ratifies the compact and settles the tribe's claims against the United States. The bill provides for:

No. 1, quantification of the tribe's water rights including 10,000 acre feet from surface and groundwater sources on the reservation as well as reserving 10,000 acre feet for the tribe from Lake Elwell, a U.S. Bureau of Reclamation Project located approximately 50 miles from the reservation. The settlement does not provide for transport of this water to the reservation;

No. 2, mitigation of impacts on off-reservation water use including designating two pools of water stored in Bonneau Reservoir on the reservation for irrigation,

stock watering and maintenance of water quality on Box Elder Creek. Additional water will also be made available for protecting the Brook Trout fishery in upper Beaver Creek;

No. 3, authorization of two feasibility studies by the Bureau of Reclamation to examine water and related resources for both reservation and off-reservation water supplies in the area;

No. 4, authorization of $25 million in Federal funding for development of on reservation water supplies including enlargement of Bonneau, Towe, Brown, and East Fork Reservoirs; a $3-million dollar economic development fund for the tribe and $15 million for future importation of drinking water to the reservation, a much needed project in north central Montana. Additionally, $3 million will be provided for tribal administration of the agreement.

This legislation would never have become a reality without the hard work and cooperation of many people. I would especially like to recognize the staff and tribal council of the Chippewa Cree Tribe, the staff of the Montana Water Rights Compact Commission, the Department of Interior and the Native American Rights Fund. I am particularly grateful for the efforts of David Hayes, special counselor to Secretary Babbitt. Mr. Hayes' involvement was like a breath of fresh air, he moved forward when others were ready to give up on negotiations. Likewise, I would like to thank all of the Senate staff who have worked tirelessly to keep this bill alive.

Mr. Chairman, I look forward to expedite passage of this historic settlement. Thank You.

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Mr. Chairman, members of the committee, it is with great pleasure that I, along with my colleague, Senator Baucus, bring before you S. 438, the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999. I would like to express my appreciation to Senator Campbell and the staff of the Committee on Indian Affairs for their excellent work in helping us to bring the bill together in its present form.

The Rocky Boy's Settlement Act is truly an historic agreement. You will hear testimony today from the State of Montana, the Chippewa Cree Tribe and the Department of the Interior that will provide information on the details of the agreement. I will focus my statement on the importance of the Settlement Act to the State of Montana and the Chippewa Cree Tribe, and the importance of having Congress send a clear message to western states that we will work with them to define and resolve Indian water rights and, in doing so, will respect the rights of states negotiating with individual tribes to fashion their own solutions to local problems of water allocation.

The Settlement Act, and the water rights compact it ratifies, provide important benefits to both the Tribe and the State. For the Chippewa Cree Tribe, the settlement quantifies its water right, a step essential to enforcement of that right. More importantly, the settlement gives the tribe a means to develop water to provide a secure supply of this valuable resource into the future. For the State of Montana, the settlement ensures that this tribal water development will not come at the expense of existing water use on private land near the reservation.

Most importantly, the dialog that has developed among the State, the tribe and local ranchers has established the basis for resolution of future disputes. The Milk River Basin in Montana, in which the Rocky Boy's Reservation is located, is the most water-short agricultural region in the State. This is an area of Montana located in the plains where the animosity between tribes and non-Indians and concerns over water allocation go back over 100 years. The benefit of resolving these issues in the Milk River Basin in a manner that has the support of everyone affected, cannot be measured. This agreement will end over a century of conflict.

It must be the policy of this Congress to assist States and tribes in their efforts to resolve issues of water allocation and to recognize that a negotiated agreement must be tailored to the specific needs of the region it affects. In this case, the Rocky Boy's settlement is a reflection of the unique circumstances of Montana and the Chippewa Cree Tribe. Even within Montana, the particular area in which the Rocky Boy's Reservation is located has its own special considerations surrounding the supply and demand of water. We get an average of 12 inches of precipitation per year in the Milk River Valley, with most precipitation generally coming in the winter. Over 20 inches are needed to raise crops. Storage is the only means to develop irrigation. This settlement allows the tribe to maximize its use of this limited water supply by providing funds for the enlargement of existing storage on the Reservation. This development is essential to the future economic viability of a tribe with

an approximately 70 percent of tribal members unemployed and roughly one-half of its population living below the poverty line.

The use of water stored during spring runoff also helps reduce impact on neighboring private landowners. In addition, the State's cost share will go to low-cost efficiency improvements on private water diversion facilities to allow water users to continue to meet their needs despite new development on the reservation.

In the 6 years of intensive negotiations to conclude these negotiations, every single sentence in the settlement was gone over and discussed by the Tribe, the State, and local landowners. Every solution adopted was tailored to meet the specific concerns of the people living on the streams shared between the reservation and private landowners. Congress must have a policy that facilitates this type of good faith effort to settle disputes. It must not deviate from its long-standing policy of deference to states to establish their own policies on water allocation within their borders. That deference is based on the recognition that each state faces unique circumstances of water supply and demand and, therefore, each state is in the best position to resolve issues of water allocation.

We have before us an historic agreement that will end over a century of conflict to the benefit of both the Chippewa Cree Tribe and its neighbors. Please join me in moving this vital piece of legislation forward.

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

Good morning Mr. Chairman and members of the committee. I am David J. Hayes, acting deputy secretary of the Interior. It is my pleasure to be here today to testify on behalf of the administration in support of S. 438. This bill represents the successful culmination of over 8 years of negotiation among the United States, the State of Montana and the Chippewa Cree Tribe of the Rocky Boy's Reservation over water rights disputes being litigated in the case entitled, *In the Matter of the Adjudication of All Rights to the Use of Water, Both Surface and Underground, within the State of Montana.* It represents a true partnership among Federal, State, and Tribal interests. Through a great deal of hard work, the parties have forged a water rights settlement that satisfies tribal rights and needs, while also taking into account the rights and needs of non-Indian neighbors, and enabling all affected Montanans to plan for the future with confidence and certainty. As you know, similar legislation to ratify this agreement was introduced in both the Senate and the House last year. However, a packed legislative calendar and a few 11th-hour hurdles prevented the legislation from moving. We have worked closely with the State and the tribe to address the questions that have come from the Hill and, believing that the concerns voiced have been satisfied, we are again here before this committee seeking your support for this important legislation.

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

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

The United States, the State and the tribe struggled for many years to find an immediate solution to the problem of an inadequate reservation water supply. For a time, the tribe viewed 2 the only solution to be the importation of water from the Tiber Reservoir, a Bureau of Reclamation facility some 50 miles from the reserva-

tion. In this context, the water would have been delivered to the tribe as part of a combined Indian/non-Indian system. This system would have been very expensive and would have required an extensive Federal subsidy. Moreover, this system would have cost the Federal Government far more than it could reasonably be expected to pay to settle the tribe's water rights. Rather than pursue this expensive regional water system, the parties decided to focus on developing existing reservation water supplies and setting aside funds that will be available for use in a future plan to supplement on-reservation water supplies. This is the approach that has been adopted in S. 438.

Under the terms of S. 438, Congress would approve, and authorize participation in, a Water Rights Compact entered into by the tribe and the State. The compact was enacted into Montana law on April 14, 1997, and recognizes the tribe's right to approximately 10,000 acre feet of water on the reservation. In order to enable the Tribe to exercise its on-reservation water right, the United States would contribute $24 million for four specific on-reservation water development projects and additional funds of no more than $1 million to cover Bureau of Reclamation [BOR] administrative costs associated with these construction activities. First and foremost among the projects is the repair and enlargement of Bonneau Reservoir, a facility that has ranked in the top ten of the Department's ranking list of most dangerous dams. Other projects include repair and enlargement of several smaller on-reservation irrigation and recreational dams, including East Fork, Brown's and Towe's Pond dams.

3 S. 438 also addresses the tribe's future water needs by providing the tribe with the right to an additional 10,000 AF of water stored in Tiber Reservoir. This allocation is only a small percentage of the 967,319 acre feet of water stored in Tiber Reservoir and will not impact on any other use of the reservoir. The Department has carefully considered the impact of the allocation on the reserved water rights of other Indian tribes and has concluded that such rights will not be negatively affected.

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

Nonetheless, in order to assist the tribe when the time comes that it needs additional on reservation water supplies, S. 438 provides that the United States will set aside $15 million in trust toward the planning, design, construction, operation, maintenance and rehabilitation of a future reservation water supply system. In addition, the bill authorizes BOR feasibility studies totaling $4 million to explore alternative methods of augmenting the Rocky Boy's Reservation water supply, as well as analyzing region-wide Milk River water availability and enhancement opportunities. One particular alternative that will be studied will be the feasibility of releasing the tribe's proposed Tiber Reservoir allocation into the Missouri River for later diversion into a treatment and delivery system for the reservation. We are hopeful that this alternative or others identified by the BOR studies will prove to be more realistic and reasonable solutions than an expensive rural water supply system centered upon a pipeline from Tiber Reservoir. The BOR studies should provide an in-depth understanding of the Milk River Basin water supply, its potential and limitations, that will be of valuable assistance to the United States, the State of Montana and Montana Indian tribes in our efforts to address Indian water rights disputes. The studies will address, as well, some of the water supply problems facing many small North Central Montana communities.

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

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

Like other Indian water rights settlements, the benefits to accrue to the tribe and other settlement parties will be available only after a final water rights decree is issued by the appropriate court. We expect that the process of entering and gaining final approval of the 5 decree will take approximately 18 months to 2 years. As motivation to keep the court approval process moving, the settlement parties have established a 3-year deadline for finalization of the decree. The Department of the Interior is committed to advancing the court process and other settlement implementation tasks as expeditiously as possible in order to avoid having to seek Congressional relief from the settlement deadline. The Chippewa Cree Tribe has waited many years to see its water rights become a reality and we do not want to see that wait prolonged any more than is absolutely necessary.

As I mentioned at the beginning of my statement, legislation to ratify this settlement was introduced last year, but was not passed. As the State and the tribe will testify, this settlement is broadly supported within Montana, particularly by Governor Racicot and the State Legislature, who are on record as strongly supporting the settlement. Moreover, appreciating the value and importance of such agreements, the Western Governors Association passed a resolution [98–029, June 30, 1998] reiterating its support for negotiated settlements of Indian land and water claims, lauding recent progress, adding that "the need to resolve these disputes and redress tribal grievances [through settlements] is critical." S. 438 presents an opportunity for the United States to ratify its first Western water settlement since the early 1990's and the administration strongly supports this bill. I hope that the members of this committee also will support this non-controversial settlement and that you will encourage swift passage of the legislation before you.

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

TESTIMONY OF JIM MORSETTE, DIRECTOR OF THE CHIPPEWA CREE TRIBAL WATER RESOURCES DEPARTMENT IN BEHALF OF THE CHIPPEWA CREE TRIBE OF THE ROCKYBOY'S RESERVATION IN SUPPORT OF S. 438 - "THE CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION INDIAN RESERVED WATER RIGHTS SETTLEMENT ACT OF 1999" - BEFORE THE SENATE INDIAN AFFAIRS COMMITTEE

JUNE 30, 1999

Chairman Campbell and Honorable Members of the Committee:

My name is Jim Morsette. I am the Director of the Water Resources Department of the Chippewa Cree Tribe of the Rocky Boy's Reservation. I am here to testify on behalf of the Tribe in support of S. 438, entitled "The Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999." I am accompanied today by the Chairman of the Tribe, Burt Corcoran, and the Tribe's attorneys. Thank you for the opportunity to testify in favor of S. 438. I submit, for the record, the Tribe's detailed written testimony. I would also like to take this opportunity to express the Tribe's great appreciation to Senator Conrad Burns and his staff, especially Stan Ullman, and to Senator Max Baucus and his staff, and to the Chairman of this Committee, Senator Ben Nighthorse Campbell, and the staff of this Subcommittee, especially Steve McHugh, for their hard work and diligence in moving this bill forward.

S. 438, represents a milestone of momentous significance in the century-long struggle of the Chippewa Cree people to secure a viable, self-sustaining tribal homeland. The bill and the Water Rights Settlement Compact, which the bill ratifies, are the culmination of 16 years of technical and legal research, and negotiation, among the Tribe, the State of Montana, and the Administration. This bill and the Compact signal a turning point in the Chippewa Cree Tribe's history, for these documents set the foundation for the realization of the Tribe's vision of the Rocky Boy's Reservation as a self-sustaining homeland for the Chippewa Cree people. The Tribe has been working toward this end since well before 1916, when the United States set aside the Rocky Boy's Reservation for the Chippewa Cree people. Implementation of the bill and the Compact will provide the Tribe with the elements needed to successfully develop the Tribe's economy -- a long-term water supply sufficient for drinking and agriculture, and funds to put this water to use. The bill and Compact also represent the fulfillment of the trust obligation of the United States to the Chippewa Cree Tribe to provide the Tribe with sufficient water to enable the Tribe to develop its Reservation into a self-sustaining homeland for the Chippewa Cree people.

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

A. THE LONG ROAD TO ESTABLISHMENT OF A RESERVATION

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

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

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

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

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

B. A WATER-SHORT RESERVATION

From the very beginning, the United States recognized that the 1916 Reservation lacked sufficient land and water to make the Reservation a viable homeland for the Chippewa Cree Tribe. The Chippewa Cree tried to farm their Reservation, which was described in Federal Annual Reports as "rough, dry unsettled section of old military reserve" and "not suited to farming." These reports, from 1918 through the 1930's, were replete with statements that the Reservation

was not suited to farming, and that irrigation was difficult or not possible and more water was needed. They said farming would not lead to self-sufficiency; stock raising was felt to be the only feasible activity, provided enough winter feed was available. These reports provide a litany of crop failures due to drought, short season, lack of equipment and horses, and a picture of dogged perseverance against these formidable odds.

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

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

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

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

1. Poor Federal Land Purchase Decisions

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

In the 1930's, the United States took options for the Chippewa Cree Indians on approximately 30,000 acres, under the submarginal land program. The intent of this program was to take submarginal land out of commercial farm production forever. The program was ill-suited

to the Chippewa Cree's needs; the government's ill-advised decision to utilize the program as a way to obtain more lands for Indians was made worse by the poor land selections made, when better lands were available. The government planned to carve up the submarginal lands into subsistence farms for the Indians. But without water or sufficient irrigable land, even subsistence farming could not succeed. Before the purchases could be completed, funding for the submarginal land program fell through and the options were transferred to the Indian Reorganization Act, which allowed for purchases of lands to be added to reservations.

The Indian Reorganization Act did not require the purchase of submarginal lands. Nevertheless, rather than identifying lands better suited to the Indian's needs, against the recommendations of the Reservation Superintendent, and over the objections of the Indians and government personnel, the Indian Office accepted wholesale the badly scattered options taken under the submarginal land program.

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

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

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

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

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

The United States' mismanagement of tribal resources on the Reservation was at great expense to the Tribe. Poor land purchase decisions provide the most egregious example. While more suitable lands were available, purchased lands either lacked usable water rights or lacked the quality to support irrigation development. A key example is existing Bonneau Dam. This facility could have easily been designed and constructed, at a reasonable cost, at a greater storage

capacity that could have been utilized to adequately irrigate the Tribe's cropland. Instead the impoundment was built at twenty-five percent of the needed capacity. As a result, the Tribal irrigation project has continuously suffered from water shortages due to lack of required supplemental storage water. Yet another example is the chronic past under-performance of the Tribe's agricultural lands due, among other things, to lack of training, equipment and water for irrigation. In addition, thousands of acres of purchased lands were never farmed. The Tribe has suffered and continues to suffer tremendously, financially and otherwise from the United States' historic mismanagement of its resources.

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

II. THE CHIPPEWA CREE TRIBE'S NEED FOR WATER

Presently, the Rocky Boy's Reservation occupies about 125,000 acres (see attached map of the Reservation and its drainages). The Reservation has never been allotted, and all land is held in trust by the United States for the Chippewa Cree Tribe. The present population on the Rocky Boy's Reservation is about 3500. The population is expected to increase at an average annual growth rate of at least three percent. Unemployment on the Reservation is at least seventy percent. The annual per capita income of a tribal member on the Reservation is $4,278, as compared to $14,420 for the nation as a whole (based on 1989 dollars). The percentage of tribal members who live below the poverty level is significantly higher than that of the general population in the United States.

The current water supply systems on the Reservation were designed by the Indian Health Service (IHS) with an average daily rate of 60 gallons per capita per day (GPCPD). This is significantly below the current Montana average municipal use rate of 200 GPCPD. It is estimated that only 1400 out of 3500 Tribal people are connected to the existing system. As such, the primary sources of domestic water are well systems. Unfortunately, many private Chippewa Cree homes on the Reservation are using wells that provide poor quality water of limited quantity. Some of these localized sources are contaminated. These individuals, when possible, must be hooked up to the municipal system.

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

Wastewater treatment on the Reservation is provided by either individual septic systems or by community lagoon systems that are marginally effective under the current conditions. Because many of the Tribal wells are located in close proximity to these wastewater systems and to stock

grazing areas, there is a continuing threat to the water supply from bacterial and viral contamination. Before a chlorination unit was added to the current Rocky Boy Rural Water System (System) in March, 1992, boil orders were occasionally imposed on water from the System due to contamination of one of the system wells. As the population continues to increase at a relatively rapid pace, improvements to the wastewater collection and treatment facilities will be needed to protect existing ground and surface water needs.

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

S. 438 provides funds to enlarge the Bonneau Dam and Reservoir as well as other minor storage facilities. The Tribe plans to use the water from the increased storage in Bonneau Reservoir to meet their current irrigation water storage needs and to increase agricultural development on the Reservation. However, even if storage water from an enlarged Bonneau Reservoir was to be used to supply drinking water, at the expense of the Tribe's agricultural economy, the water would be sufficient only until the year 2025. If per capita use increases to target levels, then water supply could run out as early as 2016.

Presently, there are a maximum of approximately 1100 acres of actively irrigated land on the Reservation utilizing about 2000 acre feet/year (AFY) of water. This acreage includes about 650 acres served by Box Elder Creek and about 450 acres served by Gravel Coulee and groundwater. Even this limited acreage does not receive a full water supply in one out of two years, requiring use of cropping patterns that include early season water use crops such as barley and wheat. In most years, considerably less than this noted acreage base is irrigated. The settlement contemplates the expansion of the Tribal irrigation base from 1100 acres to 2500 acres through the enlargement of two on-Reservation reservoirs, Bonneau Reservoir and Towe Ponds. The Compact provides the Tribe with approximately 7700 AFY from direct flow, storage, and groundwater from Big Sandy and Box Elder Creeks to serve the expanded Tribal irrigation base. It should be noted that the good quality storage water in an enlarged Bonneau Dam must be mixed with the poor quality Missouri Ancestral Channel groundwater resources or the groundwater supplies cannot be utilized. Without the programmed 1915 acre-feet of groundwater, less than 2000 acres of land can be irrigated. If an enlarged Bonneau Reservoir water supply is dedicated to municipal uses, then the groundwater resources allocated for use by the Tribe in the Compact for irrigation are lost. This affects about twenty percent of the Tribe's local water rights negotiated under the Compact.

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

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

The Tribe's best opportunity to obtain an adequate water supply for its current and future needs began in 1982 when the United States filed water rights claims for the Tribe in Montana water court. Subsequently, the United States, the Tribe and the State of Montana entered into negotiations to settle the Tribe's water rights claims. The Tribe constructed a water rights settlement plan to further the ultimate goal of making the Rocky Boy's Reservation a self-sustaining homeland. The settlement plan consists of four main elements: (1) quantification of on-Reservation water and establishment of a water administration program; (2) supplementation of the on-Reservation drinking water supply to meet future population needs; (3) construction of on-Reservation facilities to deliver drinking and irrigation water; and (4) compensation for federal failure to protect the Tribe's water rights followed by Tribal release of claims against the federal government for such breach of trust. The Tribe's settlement plan would require negotiation of a Compact with the State of Montana settling issues of quantification and administration of on-Reservation water supplies. And the plan would require enactment of the bill before you today to ratify the Compact, provide a source of water to supplement the short water supply on the Reservation, authorize the construction of an on-Reservation distribution and irrigation system, and provide an economic development fund.

A. THE CHIPPEWA CREE - MONTANA COMPACT

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

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

The Compact establishes the Tribe's water rights to the Big Sandy, Box Elder, and Beaver Creeks on the Reservation, and contemplates tribal rights to supplemental water for drinking. The Compact provides for 9260 AFY from the Big Sandy Creek and its tributaries, and 740 AFY

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

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

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

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

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

Accordingly, each and every provision of S. 438, entitled "The Chippewa Cree of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999," was negotiated among the Tribe, the State and the Administration over a period of one year. Thus, S. 438 has

the support of all three parties - the first water rights settlement to have such support. The bill would accomplish the following:

1. Ratify the Chippewa Cree - Montana Water Rights Settlement Compact providing 10,000 AFY from surface and groundwater sources on the Reservation.

2. Authorize the appropriation of $3,000,000 to the Tribe to perform its administration obligations under the Compact, such as the installation and maintenance of Compact-required water gages, and the staff costs associated with administration of the Tribe's Compact-related obligations. However, except for $400,000 for capital expenditures, the Tribe may only expend the interest on this fund for Tribal Compact administration obligations.

3. Authorize the appropriation of $25,000,000 to the Department of the Interior for the Bureau of Reclamation for the construction of certain on-Reservation water development projects, including the enlargement of Bonneau Dam, and other designated on-Reservation dams. The Tribe expects to assume responsibility for this work under its Self-Governance Compact. The Tribe and the Bureau of Reclamation have negotiated the terms of an agreement as to the Bureau's oversight role in this work.

4. Authorize the allocation of 10,000 acre feet per year from Lake Elwell located behind Tiber Dam, a Bureau of Reclamation project, approximately 50 miles from the Reservation on the Marias River, to provide a source of future drinking water supplies for the Tribe. Lake Elwell has a capacity of almost one million acre-feet. Average annual inflows to Lake Elwell exceed 700,000 acre-feet per year. Roughly 400,000 acre-feet of this capacity is in the active storage pool, thus available for release to downstream use. The Bureau currently has entered contracts for the allocation of less than 8,000 acre-feet per year. This is due to the fact that the original Pick-Sloan plan was based on the reservoir serving 120,000 acres of new irrigated land, of which essentially none has been developed. The 10,000 acre feet in Lake Elwell replaces on-Reservation reserved water rights claims, which, under the water settlement, are released by the Tribe to satisfy existing water needs of downstream non-Indian water users. The Tribe's Lake Elwell water rights are not Winters/reserved water rights. The rights are BOR project water rights assigned to the Tribe in perpetuity by S. 438. Under the Compact, the Tribe can market its Lake Elwell project water rights for use off the Reservation. However, such marketing is expressly subject to applicable state law. *See*, 85-20-601, MCA (1997), Article IV.A.4.b.(1) and Article VI.A.1. In addition, the Compact provides that any such marketing shall not exceed 100 years; shall not be permanent; and shall not be transferred to a location outside the

Missouri River drainage. *See, id,* Article IV.A.4.b. And further, the Compact gives Milk River water users the right of first refusal in any marketing of Lake Elwell water rights outside of the Milk River drainage. *See, id,* Article IV.A.4.b. If any precedent is set by the Chippewa Cree water rights settlement as to the right of tribes to market water off the reservation, it is only that such rights must be negotiated with the affected states and non-Indian water users to mitigate any concerns raised to the satisfaction of all parties. The allocation of Lake Elwell water does not impose on the United States a present obligation to develop or to transport the allocated water to the Rocky Boy's Reservation. However, the bill authorizes other appropriations intended to pave the way for the future importation of water to the Reservation.

a. $1,000,000 is authorized to be appropriated to the Department of the Interior, through the Bureau of Reclamation, to perform a municipal, rural, and industrial feasibility study of water and related resources in North Central Montana for the purpose of evaluating alternative means of transporting needed water to the Reservation. ($3,000,000 is authorized to be appropriated to the Department of the Interior for a regional feasibility study of water and related resources in North Central Montana.)

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

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

The Tribe may expend the funds appropriated for the Rocky Boy's Reservation feasibility study and for Tribal Compact administration obligations immediately upon appropriation. However, all other funds may not be expended by the Tribe until a final decree is entered by the Montana water court dismissing the Tribe's water rights claims. Upon entry of the final decree and appropriation of the funds authorized by S. 438, the Tribe's waiver and release of damages claims against the United States will become effective.

The history of the United States' breach of trust toward the Chippewa Cree Tribe — poor land choice decisions, poor land management, and failure to obtain sufficient water for, or to protect the little water available to, the Rocky Boy's Reservation, justifies a substantial federal

contribution to the Chippewa Cree water settlement in the form of authorization of federal projects and an economic development fund. By enacting S. 438 the United States will at long last set a firm foundation for providing sufficient water to support the Rocky Boy's Reservation as a viable, self-sustaining homeland for the Chippewa Cree Tribe.

IV. CONCLUSION

S. 438, pending before this Committee today, represents the culmination of many years of hard work on the part of many people. The bill has the support of the Tribe, the State of Montana, and the Administration. It ratifies a water settlement Compact that has the support of the State of Montana, the Tribe's non-Indian neighbors, and the Tribe. And it resolves the Tribe's water right related claims against the United States in a fair and reasonable manner. The Chippewa Cree Tribe urgently requests that S. 438 be enacted into law during this first session of the 106th Congress.

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TESTIMONY OF CHRIS TWEETEN REPRESENTING THE STATE OF MONTANA ON S. 438 THE "CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION INDIAN RESERVED WATER RIGHTS SETTLEMENT ACT OF 1999" BEFORE THE SENATE INDIAN AFFAIRS COMMITTEE

JUNE 30, 1999

Chairman Nighthorse-Campbell and members of the Committee, my name is Chris Tweeten. I am the Chief Counsel to the Montana Attorney General and the Chairman of the Montana Reserved Water Rights Compact Commission. I am here to testify on behalf of the State of Montana and Governor Marc Racicot in support of Senate Bill 438, the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999, and to urge your approval of the Act. The purposes of the Act are to: ratify the Compact which settles the quantification of the Tribe's water rights in Montana; provide the necessary authorization for implementation of the Compact; and to settle federal liability regarding the Tribe's water resources by authorizing appropriations for their development. My testimony will focus on the Compact and the importance of negotiated settlements to the State of Montana.

The unquantified and open ended nature of reserved water rights places a cloud over the certainty regarding investment in private water development throughout the west. The Compact Commission was established by the Montana Legislature in 1979 to act on behalf of the Governor to negotiate the settlement of reserved water rights as part of the state-wide general stream adjudication. The policy of the State of Montana in favor of negotiated solutions to quantification of tribal water rights recognizes the need for individual, site specific solutions to water supply and water allocation problems. It allows consideration of the fact that each tribe is unique in its culture, history, water needs and potential for conflict over water use with its neighbors, and that every basin has unique avenues for enhancement of water supply. We have found through years of experience that the best approach to resolving that uncertainty is through negotiated settlements that allow tailoring of solutions on a site specific basis. In Montana, we have successfully settled the water rights claims of three Indian reservations, five National Park units, three Fish and Wildlife refuges and two wild and scenic rivers. In each of these settlements we have protected existing water use while meeting the needs of the particular reservation.

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

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Montana. Water, valued as high as $1000 per acre foot by urban areas in the southwest, cannot be sold in agricultural areas of Montana when priced at $10.50 per acre foot.

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

The Tribal Water Right created by the Compact and the Act is a settlement right and its attributes should not be considered to represent a legal interpretation of how the rights of the Tribe would be interpreted should they be litigated in court. Negotiation differs from litigation. The focus in negotiation is on finding a compromise that meets the needs of the Tribe and can therefore be approved by its Council, while, at the same time, protecting investment in state-based water rights. The following paragraphs will briefly describe some of the unique aspects of the agreement and their relation to water use on private land in Montana. A summary of the Compact and the authorizations for appropriations in the Settlement Act is attached to my testimony.

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

The Rocky Boy's Reservation is located in the Bearpaw Mountains on two tributaries to the Milk River: Big Sandy and Beaver Creeks. The Reservation is home to over 3500 Tribal members who are also citizens of Montana. The Reservation has an estimated 70% unemployment rate. The Reservation is located in an area of scarce water supply. The drinking water system on the Reservation is currently inadequate, providing only 60 gallons per capita per day to households served, compared to a Montana average of 170. Not all households on the Reservation share in even this inadequate supply. Because groundwater is of poor quality and low yield in this region of Montana, many of the surrounding communities and ranches rely on treated surface water for their drinking water supply. The Reservation lags behind the region in the development and treatment of surface water for domestic purposes.

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The Compact provides a settlement quantification of 20,000 acre-feet per year. Unlike the farmland irrigated by the Milk River Project along the bottomland of the mainstem, tributary water use is associated primarily with cattle grazing and growing of hay. Without storage, streamflow on the tributaries is intermittent with large spring floods and late summer drought. The provisions in the Settlement Act providing for on-Reservation storage and development will allow the Tribe to maximize the utility of this limited water supply by providing a reliable supply of irrigation water for approximately 2500 acres of Reservation land. On-Reservation water development authorized by S. 438 involves enlargement of existing storage on the two dominant drainages on the Reservation, Beaver Creek and Box Elder Creek (a tributary to Big Sandy Creek).

The Rocky Boy's Reservation shares Big Sandy Creek with approximately 8500 acres of irrigated private land located off the Reservation. On Beaver Creek, there are approximately 3600 acres of off-Reservation private irrigation. The growing season is short. Small scale storage projects that will capture some spring run-off, such as those authorized on the Reservation by this bill, are the best way to enhance water supply. To prevent impact by those projects on water use on private land, the State has funded local improvements in conveyance and diversion structures and is promoting improved management of existing storage. Description of the specific measures taken to prevent impact on private water use by development of water on the Reservation follows.

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

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

Beaver Creek Park is owned and operated by Hill County, and is located immediately downstream

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

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

The Compact also contains provisions on administration that should reduce the potential for future conflict between the Tribe and its neighbors. First, the Compact addresses transfers of the Tribal Water Right. Under State law, water users may market appropriative water rights. Consistent with that attribute of water rights arising under State law, the Compact provides that the Tribal Water Right may be transferred off the Reservation. However, off-Reservation use of the Tribal Water Right subjects it to full compliance with State law. Thus, pursuant to Article IV.A.4.b. of the Compact <u>any</u> off-Reservation use or transfer of any portion of the Tribal Water Rights must comply with state law for both water use and diversion facilities. In addition to state law protections, the Compact limits marketing of the Tribal Water Right to the Missouri River basin and gives water users on the water-short Milk River a right of first refusal for any marketing of tribal water. Article IV.A.4.b.

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

S. 438
Montana Testimony - 5

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

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

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

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

I appreciate the opportunity to testify on behalf of the State of Montana in support of the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999, and urge your timely approval of the Act. The settlement has the full support of the State, the Tribe, ranchers, surrounding communities, and local officials in the area. Because it relies on enlargement of existing storage and mitigation of impacts of new development through efficiency improvements, it has no environmental opposition. No endangered species are known to be involved. We know of no opposition to this settlement. On behalf of Montana I urge you

to pass this bill and thereby signal to western states that the United States, after a long hiatus, is once again prepared to help us move toward finality on resolving these federal claims in our adjudications, rather than opening these issues to further uncertainty and protracted debate. Passage of this Act will help us bring this long process of settlement to closure. I would be happy to answer any questions by members of the Committee.

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

****

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

1. RESERVATION SETTING

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

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

2. TRIBAL WATER RIGHT QUANTIFICATION

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

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

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

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

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

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

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

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

3. MITIGATION OF IMPACTS ON OFF-RESERVATION WATER USE

A. Box Elder and Big Sandy Creeks

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

B. Beaver Creek and the Milk River

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

4. ALLOCATION IN DRY YEARS

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

5. ADMINISTRATION / DISPUTE RESOLUTION

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

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

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

Tribal Compact Administration Account
$3 million FY 2000

Economic Development Account
$3 million FY 2000

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

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

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

$13 million FY2000
Bonneau Reservoir enlargement

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

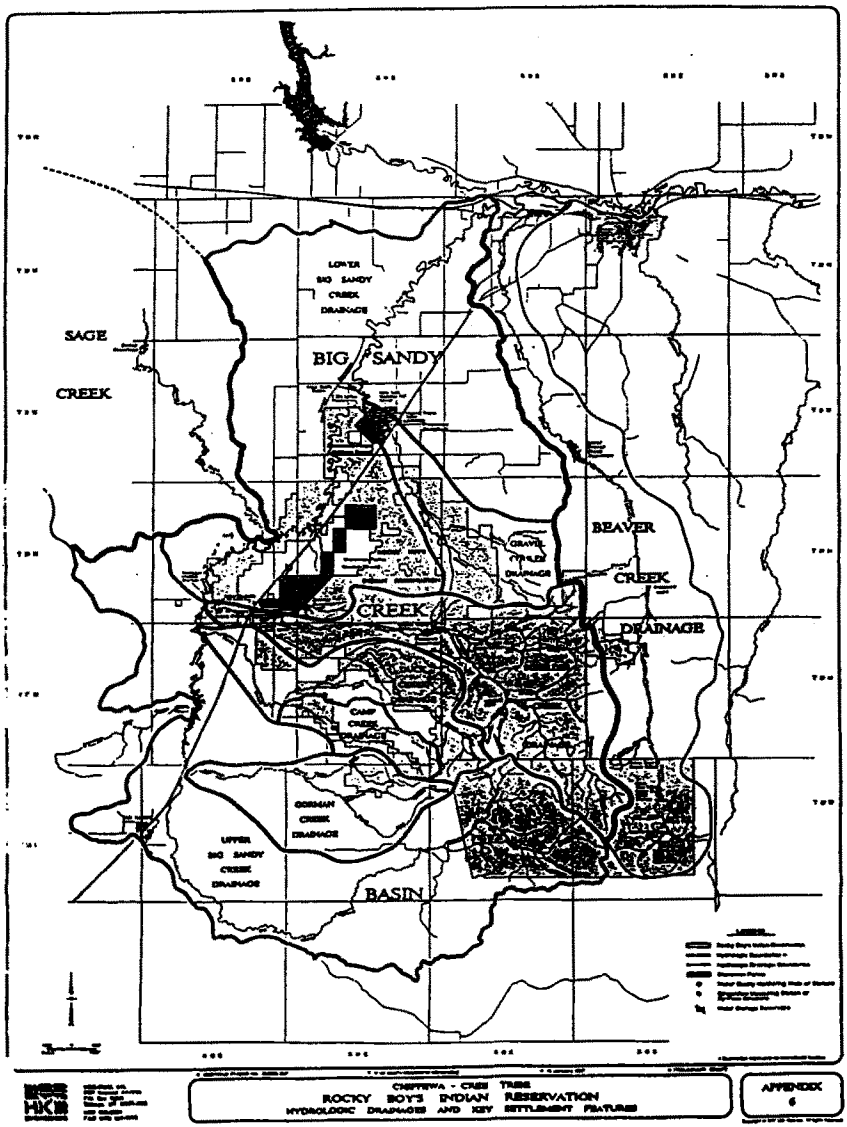
$3 million FY 2002
Completion of the above projects and other water development

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

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

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

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



CHIPPEWA - CREE TRIBE
ROCKY BOY'S INDIAN RESERVATION
HYDROLOGIC DRAINAGES AND KEY SETTLEMENT FEATURES

APPENDIX
6

Negotiated Indian Water Rights Settlements

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

SPONSORS: Governors Kitzhaber and Hull

SUBJECT: Negotiated Indian Water Rights Settlements

A. BACKGROUND

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

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

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

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

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

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

B. GOVERNORS' POLICY STATEMENT

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

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

C. GOVERNORS' MANAGEMENT DIRECTIVE

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

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

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

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

BEAR PAW RESOURCES ALLIANCE

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

Pete Kuhr, Vice President

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

June 2, 1999

Hon. Ben Nighthorse Campbell
Chairman
Committee on Indian Affairs
United States Senate
838 Hart Office Bldg
Washington, DC 20510

Re: Senate Bill 438

Dear Senator Campbell:

The purpose of this letter is to express the continued support of Bear Paw Resources Alliance for Senate Bill 438 which would approve the Reserved Water Rights Compact between the State of Montana and Chippewa Cree Tribe of the Rocky Boy Indian Reservation. Bear Paw Resources Alliance is an association of property owners and other interested persons who live in the drainages that would be affected by the proposed Compact. Our organization actively participated in the negotiations which led to the Compact. Our membership consists of over 100 individuals who own in excess of 80% of all of the land off the reservation which would be affected by the Compact. Our Board of Directors consists of nine persons selected from around the geographical area and representing a cross section of the community.

After considerable review and discussion of the proposed Compact we believe that its approval would be in the best interests of the state of Montana as well as the Chippewa Cree Tribe and the surrounding communities. We urge your support of Senate Bill 438.

Sincerely yours,

Thomas J. Sheehy
President

TJS:jt

COUNTY OF HILL

STATE OF MONTANA
Havre, Montana 59501

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

[406]265-5481 Ext. 27

June 3, 1999

The Honorable Ben Night Horse Campbell
Chairman, Indian Affairs Committee
SH-838 Hart Senate Office Building
Washington, D.C. 20510-6450

Dear Senator Campbell:

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

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

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

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

Sincerely,

Patrick D. Conway

Patrick D. Conway, Chairman

Kathy Bessette

Kathy Bessette, Commissioner

Douglas A. Kaercher

Douglas A. Kaercher, Commissioner

COUNTY OF HILL

STATE OF MONTANA
Havre, Montana 59501

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

[406]265-5481 Ext. 27

June 3, 1999

The Honorable Conrad Burns
183 Dirksen Senate Office Building
Washington, D.C. 20510-2603

Dear Senator Burns:

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

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

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

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

Sincerely,

Patrick D. Conway

Patrick D. Conway, Chairman

Kathy Bessette

Kathy Bessette, Commissioner

Douglas A. Kaercher

Douglas A. Kaercher, Commissioner

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

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

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

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

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

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

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

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

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

Harlem Irrigation District

Knut Kulbeck Pres

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

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

Paradise Valley Irrigation Dist.

John H. Overcast, President

Ernest L. Johnson, Director

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

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

Kay M Blatter pres. FT. Belknap Irrigation District

Wallace E. Elliot

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

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

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

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

Jack Gist

Alfalfa Irr. Dist.

Bruce Butler

Cole C. Maddox

MALTA IRRIGATION DISTRICT
Resolution #96-4

COPY

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

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

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

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

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

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

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

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

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

Commissioner

Commissioner

President

RECEIVED
JAN 13 1997
Montana DNRC
Glasgow Field Office

GLASGOW IRRIGATION DISTRICT

RESOLUTION NO. 96-001

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

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

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

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

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

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

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

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

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

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

GLASGOW IRRIGATION DISTRICT

By: Melvin Novak
Melvin Novak, President

BOARD MEMBERS:

Lee Cornwell
Lee Cornwell

Glenn Rohde
Glenn Rohde

Certificate

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

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

Deby Murch
Deby Murch, Secretary
Glasgow Irrigation District

(SEAL)