

OPENING STATEMENT
OF
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DEPARTMENT OF THE INTERIOR
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS AND THE
SENATE ENERGY AND NATURAL RESOURCES SUBCOMMITTEE
ON WATER AND POWER
ON S. 1899,
THE CHIPPEWA CREE TRIBE OF THE ROCKY BOYS RESERVATION INDIAN
RESERVED WATER RIGHTS SETTLEMENT ACT OF 1998

JUNE 24,1998

Good Afternoon. I am Robert T. Anderson, Counselor to Secretary of the Interior Bruce Babbitt. It is my pleasure to be here this afternoon to testify on behalf of the Administration in support of S. 1899. This bill represents the successful culmination of approximately eight years of negotiation among the United States, the State of Montana and the Chippewa Cree Tribe of the Rocky Boys 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. By working hard, together, 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.

The Rocky Boys 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%. Tribal unemployment averages around

60-70% 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 to both maintain its modest agricultural base and meet the domestic water needs of its rapidly growing population.

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

funds that will be available for use in a future plan to supplement on Reservation water supplies. This is the approach that has been adopted in S. 1899,

Under the terms of the S. 1899, 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 AF 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 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.

S. 1899 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. 1899 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 Bureau of Reclamation feasibility studies totaling \$4 million to explore alternative methods of augmenting Rocky Boys 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 pipeline from Tiber Reservoir. The BOR studies should provide an in-depth understanding of 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 are 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 justified. The Tribe has presented the United States with a legal analysis setting forth a substantial damages claim against the United States. The Department of Justice and the Department of the Interior have analyzed the claim and concluded that settlement is appropriate.

In addition to releasing the United States from damage claims, the settlement also will relieve the United States of the obligation to litigate, at significant cost and over many years, the Tribe's water rights. The certainty secured by the settlement is, in fact, its central feature. By resolving the Tribe's water rights, all of the citizens of this area of the State of Montana will be able to plan and make investments for the future with the assurance that they have secure and stable water rights.

Like other Indian water rights settlements, the benefits to accrue to the Tribe and other settlement parties will be available only after a final water rights decree is issued by the appropriate court. We expect that the process of entering and gaining final approval of the decree will take approximately eighteen months to two years. As motivation to keep the court approval process moving, the settlement parties have set a three year deadline for finalization of the decree. The Department of the Interior is committed to advancing the court process and other settlement implementation tasks as expeditiously as possible in order to avoid having to seek Congressional relief from the settlement deadline. The 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.

in summary, the Administration strongly supports S. 1899. To strengthen the probability of securing FY 1999 appropriations for this settlement, we support swift passage of S. 1899. We congratulate the Chippewa Cree Tribe for this historic achievement and we extend our thanks to the State of Montana, and, in particular, the States Reserved Water Rights Commission, for the indispensable role it played in bringing this settlement to fruition. Finally, I would like to

acknowledge the key role that David J. Hayes, Counselor to the Secretary, played in forging this major settlement. Mr. Hayes is participating in a long-scheduled visit to Alaska this week on Departmental business, and I know that he regrets that he cannot be personally with you today to deliver this testimony on behalf of the Administration.

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