

**TESTIMONY OF CHRIS TWEETEN REPRESENTING
THE STATE OF MONTANA ON S. 1899
THE "CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION
INDIAN RESERVED WATER RIGHTS SETTLEMENT ACT OF 1998"
BEFORE THE SENATE INDIAN AFFAIRS AND
ENERGY AND NATURAL RESOURCES COMMITTEES**

JUNE 24, 1998

Chairman Nighthorse-Campbell, Chairman Murkowski, and Chairman Kyl and members of the Committees, 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. The 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. I am here to testify on behalf of the State of Montana and Governor Marc Racicot in support of Senate Bill 1899 and House Bill 3658, the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1998, and to urge your approval of the Act.

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. The Reservation is home to over 3500 Tribal members who are also citizens of Montana. 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.

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. However, the State of Montana agrees with the Tribe and the Department of the Interior that even full development provides inadequate water supply for both economic use and drinking water. Montana supports the efforts of the Tribe and the Department of the Interior to import drinking water to the Reservation and encourages the Tribe to continue to work with the surrounding communities to develop a system that can solve very urgent drinking water needs in the region as a whole. We appreciate the fact that the Act leaves open the choice of drinking water solutions, and does not prevent the Tribe from returning to Congress with the surrounding communities or on its own for authorization of a drinking water system on its own merits and outside the context of a water rights settlement.

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 homeland. 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 settlement provides protections for the brook trout fishery in Beaver Creek and mitigation of impacts on downstream water use. Because the testimony of the Tribe and the Administration covers the quantification and development of the Tribe's water right and the funding authorized by the Act, I will focus my testimony on the provisions in the settlement that mitigate impact on off-Reservation water use.

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. Included in the senior downstream water use are the Assiniboine and Gros Ventre Tribes of the Fort Belknap Reservation, located on the Milk River below its confluence with Beaver Creek.

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.

The Compact also contains provisions on administration that should reduce the potential for future conflict between the Tribe and its neighbors. 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.

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.

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, many expressing concern, mistrust and even outrage at the prospect of negotiations. Mistrust was aimed equally at the Tribe, the U.S., and the State. Following that meeting the Commission began a five year process of kitchen table meetings with individuals ranch-by-ranch. Out of this process, a certain degree of 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. I believe that support reflects the fact that this is truly a settlement that addresses the needs of all those affected.

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 1998, and urge your timely approval of the Act. I would be happy to answer any questions by the Committees.