

106TH CONGRESS
1ST SESSION

S. 438

AN ACT

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,*

3 **SECTION. 1. SHORT TITLE.**

4 This Act may be cited as the “Chippewa Cree Tribe
5 of The Rocky Boy's Reservation Indian Reserved Water
6 Rights Settlement and Water Supply Enhancement Act of
7 1999”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

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

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

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

14 (4) the sovereignty of the Chippewa Cree Tribe
15 and the economy of the Reservation depend on the
16 development of the water resources of the Reserva-
17 tion;

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

23 (6) the Rocky Boy's Reservation is located in a
24 water-short area of Montana and it is appropriate
25 that the Act provide funding for the development of

1 additional water supplies, including domestic water,
2 to meet the needs of the Chippewa Cree Tribe;

3 (7) proceedings to determine the full extent of
4 the water rights of the Chippewa Cree Tribe are cur-
5 rently pending before the Montana Water Court as
6 a part of In the Matter of the Adjudication of All
7 Rights to the Use of Water, Both Surface and Un-
8 derground, within the State of Montana;

9 (8) recognizing that final resolution of the gen-
10 eral stream adjudication will take many years and
11 entail great expense to all parties, prolong uncer-
12 tainty as to the availability of water supplies, and
13 seriously impair the long-term economic planning
14 and development of all parties, the Chippewa Cree
15 Tribe and the State of Montana entered into the
16 Compact on April 14, 1997; and

17 (9) the allocation of water resources from the
18 Tiber Reservoir to the Chippewa Cree Tribe under
19 this Act is uniquely suited to the geographic, social,
20 and economic characteristics of the area and situa-
21 tion involved.

22 **SEC. 3. PURPOSES.**

23 The purposes of this Act are as follows:

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

4 (A) the Chippewa Cree Tribe; and

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

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

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

19 (4) To authorize Federal feasibility studies de-
20 signed to identify and analyze potential mechanisms
21 to enhance, through conservation or otherwise, water
22 supplies in North Central Montana, including mech-
23 anisms to import domestic water supplies for the fu-
24 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 provide the Tribe with
8 an allocation of water from Tiber Reservoir.

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) ACT.—The term “Act” means the “Chip-
14 pewa Cree Tribe of The Rocky Boy's Reservation In-
15 dian Reserved Water Rights Settlement and Water
16 Supply Enhancement Act of 1999”.

17 (2) COMPACT.—The term “Compact” means
18 the water rights compact between the Chippewa
19 Cree Tribe of the Rocky Boy's Reservation and the
20 State of Montana contained in section 85–20–601 of
21 the Montana Code Annotated (1997).

22 (3) FINAL.—The term “final” with reference to
23 approval of the decree in section 101(b) means com-
24 pletion of any direct appeal to the Montana Supreme
25 Court of a final decree by the Water Court pursuant

1 to section 85–2–235 of the Montana Code Anno-
2 tated (1997), or to the Federal Court of Appeals, in-
3 cluding the expiration of the time in which a petition
4 for certiorari may be filed in the United States Su-
5 preme Court, denial of such a petition, or the
6 issuance of the Supreme Court’s mandate, whichever
7 occurs last.

8 (4) FUND.—The term “Fund” means the Chip-
9 pewa Cree Indian Reserved Water Rights Settlement
10 Fund established under section 104.

11 (5) INDIAN TRIBE.—The term “Indian tribe”
12 has the meaning given that term in section 101(2)
13 of the Federally Recognized Indian Tribe List Act of
14 1994 (25 U.S.C. 479a(2)).

15 (6) MR&I FEASIBILITY STUDY.—The term
16 “MR&I feasibility study” means a municipal, rural,
17 and industrial, domestic, and incidental drought re-
18 lief feasibility study described in section 202.

19 (7) MISSOURI RIVER SYSTEM.—The term “Mis-
20 souri River System” means the mainstem of the
21 Missouri River and its tributaries, including the
22 Marias River.

23 (8) RECLAMATION LAW.—The term “Reclama-
24 tion Law” has the meaning given the term “rec-

1 lamation law” in section 4 of the Act of December
2 5, 1924 (43 Stat. 701, chapter 4; 43 U.S.C. 371).

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

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

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

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

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

21 (14) TRIBAL WATER RIGHT.—

22 (A) IN GENERAL.—The term “Tribal
23 Water Right” means the water right set forth
24 in section 85–20–601 of the Montana Code An-

1 notated (1997) and includes the water alloca-
2 tion set forth in Title II of this Act.

3 (B) RULE OF CONSTRUCTION.—The defini-
4 tion of the term “Tribal Water Right” under
5 this paragraph and the treatment of that right
6 under this Act shall not be construed or inter-
7 preted as a precedent for the litigation of re-
8 served water rights or the interpretation or ad-
9 ministration of future compacts between the
10 United States and the State of Montana or any
11 other State.

12 (15) TRIBE.—The term “Tribe” means the
13 Chippewa Cree Tribe of the Rocky Boy’s Reserva-
14 tion and all officers, agents, and departments there-
15 of.

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

20 **SEC. 5. MISCELLANEOUS PROVISIONS.**

21 (a) NONEXERCISE OF TRIBE’S RIGHTS.—Pursuant
22 to Tribal Resolution No. 40–98, and in exchange for bene-
23 fits under this Act, the Tribe shall not exercise the rights
24 set forth in Article VII.A.3 of the Compact, except that
25 in the event that the approval, ratification, and confirma-

1 tion of the Compact by the United States becomes null
2 and void under section 101(b), the Tribe shall have the
3 right to exercise the rights set forth in Article VII.A.3 of
4 the Compact.

5 (b) WAIVER OF SOVEREIGN IMMUNITY.—Except to
6 the extent provided in subsections (a), (b), and (c) of sec-
7 tion 208 of the Department of Justice Appropriation Act,
8 1953 (43 U.S.C. 666), nothing in this Act may be con-
9 strued to waive the sovereign immunity of the United
10 States.

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

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

20 (A) the waiver and release of claims shall
21 not become effective until the appropriation of
22 the funds authorized in section 105, the water
23 allocation in section 201, and the appropriation
24 of funds for the MR&I feasibility study author-
25 ized in section 204 have been completed and the

1 decree has become final in accordance with the
2 requirements of section 101(b); and

3 (B) in the event that the approval, ratifica-
4 tion, and confirmation of the Compact by the
5 United States becomes null and void under sec-
6 tion 101(b), the waiver and release of claims
7 shall become null and void.

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

10 (A) Any and all claims to water rights (in-
11 cluding water rights in surface water, ground
12 water, and effluent), claims for injuries to
13 water rights, claims for loss or deprivation of
14 use of water rights, and claims for failure to ac-
15 quire or develop water rights for lands of the
16 Tribe from time immemorial to the date of rati-
17 fication of the Compact by Congress.

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

21 (3) SETOFFS.—In the event the waiver and re-
22 lease do not become effective as set forth in para-
23 graph (1)—

24 (A) the United States shall be entitled to
25 setoff against any claim for damages asserted

1 by the Tribe against the United States, any
2 funds transferred to the Tribe pursuant to sec-
3 tion 104, and any interest accrued thereon up
4 to the date of setoff; and

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

8 (d) OTHER TRIBES NOT ADVERSELY AFFECTED.—
9 Nothing in this Act shall be construed to quantify or oth-
10 erwise adversely affect the land and water rights, or claims
11 or entitlements to land or water of an Indian tribe other
12 than the Chippewa Cree Tribe.

13 (e) ENVIRONMENTAL COMPLIANCE.—In imple-
14 menting the Compact, the Secretary shall comply with all
15 aspects of the National Environmental Policy Act of 1969
16 (42 U.S.C. 4321 et seq.), the Endangered Species Act of
17 1973 (16 U.S.C. 1531 et seq.), and all other applicable
18 environmental Acts and regulations.

19 (f) EXECUTION OF COMPACT.—The execution of the
20 Compact by the Secretary as provided for in this Act shall
21 not constitute a major Federal action under the National
22 Environmental Policy Act (42 U.S.C. 4321 et seq.). The
23 Secretary is directed to carry out all necessary environ-
24 mental compliance required by Federal law in imple-
25 menting the Compact.

1 (g) CONGRESSIONAL INTENT.—Nothing in this Act
2 shall be construed to prohibit the Tribe from seeking addi-
3 tional authorization or appropriation of funds for tribal
4 programs or purposes.

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

9 **TITLE I—CHIPPEWA CREE TRIBE**
10 **OF THE ROCKY BOY’S RES-**
11 **ERVATION INDIAN RESERVED**
12 **WATER RIGHTS SETTLEMENT**

13 **SEC. 101. RATIFICATION OF COMPACT AND ENTRY OF DE-**
14 **CREE.**

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

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

22 (2) the Secretary shall—

23 (A) execute and implement the Compact
24 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 subsections (a)
 7 and (c)(3) of section 5 and section 105(e)(1),
 8 this Act shall be of no further force and effect.

9 **SEC. 102. USE AND TRANSFER OF THE TRIBAL WATER**
 10 **RIGHT.**

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

15 (b) TRIBAL MEMBER ENTITLEMENT.—

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

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

1 pact, or by the Secretary pending the adoption and
 2 approval of the tribal water code.

3 (c) TEMPORARY TRANSFER OF TRIBAL WATER
 4 RIGHT.—The Tribe may, with the approval of the Sec-
 5 retary and the approval of the State of Montana pursuant
 6 to Article IV.A.4 of the Compact, transfer any portion of
 7 the Tribal water right for use off the Reservation by serv-
 8 ice contract, lease, exchange, or other agreement. No serv-
 9 ice contract, lease, exchange, or other agreement entered
 10 into under this subsection may permanently alienate any
 11 portion of the Tribal water right. The enactment of this
 12 subsection shall constitute a plenary exercise of the powers
 13 set forth in Article I, section 8(3) of the United States
 14 Constitution and is statutory law of the United States
 15 within the meaning of Article IV.A.4.b.(3) of the Compact.

16 **SEC. 103. ON-RESERVATION WATER RESOURCES DEVELOP-**
 17 **MENT.**

18 (a) WATER DEVELOPMENT PROJECTS.—The Sec-
 19 retary, acting through the Bureau of Reclamation, is au-
 20 thorized and directed to plan, design, and construct, or
 21 to provide, pursuant to subsection (b), for the planning,
 22 design, and construction of the following water develop-
 23 ment projects on the Rocky Boy's Reservation:

24 (1) Bonneau Dam and Reservoir Enlargement.

1 (2) East Fork of Beaver Creek Dam Repair
2 and Enlargement.

3 (3) Brown's Dam Enlargement.

4 (4) Towe Ponds' Enlargement.

5 (5) Such other water development projects as
6 the Tribe shall from time to time consider appro-
7 priate.

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

18 (c) BUREAU OF RECLAMATION PROJECT ADMINIS-
19 TRATION.—

20 (1) IN GENERAL.—Congress finds that the Sec-
21 retary, through the Bureau of Reclamation, has en-
22 tered into an agreement with the Tribe, pursuant to
23 title IV of the Indian Self-Determination and Edu-
24 cation Assistance Act (25 U.S.C. 458aa et seq.)—

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

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

6 (C) for other purposes necessary to imple-
7 ment this section.

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

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

13 (a) ESTABLISHMENT OF TRUST FUND.—

14 (1) IN GENERAL.—

15 (A) ESTABLISHMENT.—There is hereby es-
16 tablished in the Treasury of the United States
17 a trust fund for the Chippewa Cree Tribe of the
18 Rocky Boy's Reservation to be known as the
19 "Chippewa Cree Indian Reserved Water Rights
20 Settlement Trust Fund".

21 (B) AVAILABILITY OF AMOUNTS IN
22 FUND.—

23 (i) IN GENERAL.—Amounts in the
24 Fund shall be available to the Secretary
25 for management and investment on behalf

1 of the Tribe and distribution to the Tribe
2 in accordance with this Act.

3 (ii) AVAILABILITY.—Funds made
4 available from the Fund under this section
5 shall be available without fiscal year limita-
6 tion.

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

11 (3) CONTENTS OF FUND.—The Fund shall con-
12 sist of the amounts authorized to be appropriated to
13 the Fund under section 105(a) and such other
14 amounts as may be transferred or credited to the
15 Fund.

16 (4) WITHDRAWAL.—The Tribe, with the ap-
17 proval of the Secretary, may withdraw the Fund and
18 deposit it in a mutually agreed upon private finan-
19 cial institution. That withdrawal shall be made pur-
20 suant to the American Indian Trust Fund Manage-
21 ment Reform Act of 1994 (25 U.S.C. 4001 et seq.).

22 (5) ACCOUNTS.—The Secretary of the Interior
23 shall establish the following accounts in the Fund
24 and shall allocate appropriations to the various ac-
25 counts as required in this Act:

1 (A) The Tribal Compact Administration
2 Account.

3 (B) The Economic Development Account.

4 (C) The Future Water Supply Facilities
5 Account.

6 (b) FUND MANAGEMENT.—

7 (1) IN GENERAL.—

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

16 (B) MANAGEMENT BY SECRETARY.—The
17 Secretary shall manage the Fund, make invest-
18 ments from the Fund, and make available funds
19 from the Fund for distribution to the Tribe in
20 a manner consistent with the American Indian
21 Trust Fund Management Reform Act of 1994
22 (25 U.S.C. 4001 et seq.).

23 (2) TRIBAL MANAGEMENT.—

24 (A) IN GENERAL.—If the Tribe exercises
25 its right pursuant to subsection (a)(4) to with-

1 draw the Fund and deposit it in a private fi-
2 nancial institution, except as provided in the
3 withdrawal plan, neither the Secretary nor the
4 Secretary of the Treasury shall retain any over-
5 sight over or liability for the accounting, dis-
6 bursement, or investment of the funds.

7 (B) WITHDRAWAL PLAN.—The withdrawal
8 plan referred to in subparagraph (A) shall pro-
9 vide for—

10 (i) the creation of accounts and allo-
11 cation to accounts in a fund established
12 under the plan in a manner consistent with
13 subsection (a); and

14 (ii) the appropriate terms and condi-
15 tions, if any, on expenditures from the
16 fund (in addition to the requirements of
17 the plans set forth in paragraphs (2) and
18 (3) of subsection (c)).

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

22 (1) Except for \$400,000 necessary for capital
23 expenditures in connection with Tribal Compact Ad-
24 ministration, only interest accrued on the Tribal
25 Compact Administration Account referred to in sub-

1 section (a)(5)(A) shall be available to satisfy the
2 Tribe's obligations for Tribal Compact Administra-
3 tion under the provisions of the Compact.

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

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

14 (d) INVESTMENT OF FUND.—

15 (1) IN GENERAL.—

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

19 (i) the Act of April 1, 1880 (21 Stat.
20 70, chapter 41; 25 U.S.C. 161);

21 (ii) the first section of the Act entitled
22 “An Act to authorize the payment of inter-
23 est of certain funds held in trust by the
24 United States for Indian tribes”, approved
25 February 12, 1929 (25 U.S.C. 161a); and

1 (iii) the first section of the Act enti-
2 tled “An Act to authorize the deposit and
3 investment of Indian funds”, approved
4 June 24, 1938 (25 U.S.C.162a).

5 (B) CREDITING OF AMOUNTS TO THE
6 FUND.—The interest on, and the proceeds from
7 the sale or redemption of, any obligations of the
8 United States held in the Fund shall be cred-
9 ited to and form part of the Fund. The Sec-
10 retary of the Treasury shall credit to each of
11 the accounts contained in the Fund a propor-
12 tionate amount of that interest and proceeds.

13 (2) CERTAIN WITHDRAWN FUNDS.—

14 (A) IN GENERAL.—Amounts withdrawn
15 from the Fund and deposited in a private finan-
16 cial institution pursuant to a withdrawal plan
17 approved by the Secretary under the American
18 Indian Trust Fund Management Reform Act of
19 1994 (25 U.S.C. 4001 et seq.) shall be invested
20 by an appropriate official under that plan.

21 (B) DEPOSIT OF INTEREST AND PRO-
22 CEEDS.—The interest on, and the proceeds
23 from the sale or redemption of, any obligations
24 held under this paragraph shall be deposited in
25 the private financial institution referred to in

1 subparagraph (A) in the fund established pur-
 2 suant to the withdrawal plan referred to in that
 3 subparagraph. The appropriate official shall
 4 credit to each of the accounts contained in that
 5 fund a proportionate amount of that interest
 6 and proceeds.

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

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

18 **SEC. 105. AUTHORIZATION OF APPROPRIATIONS.**

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

22 (1) TRIBAL COMPACT ADMINISTRATION AC-
 23 COUNT.—For Tribal Compact Administration as-
 24 sumed by the Tribe under the Compact and this Act,

1 \$3,000,000 is authorized to be appropriated for fis-
2 cal year 2000.

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

6 (3) FUTURE WATER SUPPLY FACILITIES AC-
7 COUNT.—For the total Federal contribution to the
8 planning, design, construction, operation, mainte-
9 nance, and rehabilitation of a future water supply
10 system for the Reservation, there are authorized to
11 be appropriated—

12 (A) \$2,000,000 for fiscal year 2000;

13 (B) \$8,000,000 for fiscal year 2001; and

14 (C) \$5,000,000 for fiscal year 2002.

15 (b) ON-RESERVATION WATER DEVELOPMENT.—

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

21 (A) \$13,000,000 for fiscal year 2000, for
22 the planning, design, and construction of the
23 Bonneau Dam Enlargement, for the develop-
24 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 103(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 (c) 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 (b) 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 (d) 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 (a) 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 104(d).

3 (3) AVAILABILITY OF CERTAIN MONEYS.—The
4 amounts authorized to be appropriated in subsection
5 (a)(1) shall be available for use immediately upon
6 appropriation in accordance with subsection
7 104(c)(1).

8 (4) LIMITATION.—Those moneys allocated by
9 the Secretary to accounts in the Fund or in a fund
10 established under section 104(a)(4) shall draw inter-
11 est consistent with section 104(d), but the moneys
12 authorized to be appropriated under subsection (b)
13 and paragraphs (2) and (3) of subsection (a) shall
14 not be available for expenditure until the require-
15 ments of section 101(b) have been met so that the
16 decree has become final and the Tribe has executed
17 the waiver and release required under section 5(c).

18 (e) RETURN OF FUNDS TO THE TREASURY.—

19 (1) IN GENERAL.—In the event that the ap-
20 proval, ratification, and confirmation of the Compact
21 by the United States becomes null and void under
22 section 101(b), all unexpended funds appropriated
23 under the authority of this Act together with all in-
24 terest earned on such funds, notwithstanding wheth-
25 er the funds are held by the Tribe, a private institu-

1 tion, or the Secretary, shall revert to the general
 2 fund of the Treasury 12 months after the expiration
 3 of the deadline established in section 101(b).

4 (2) INCLUSION IN AGREEMENTS AND PLAN.—

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

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

16 **SEC. 106. STATE CONTRIBUTIONS TO SETTLEMENT.**

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

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

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

1 (B) A diversion structure on Big Sandy
2 Creek.

3 (C) A conveyance structure on Box Elder
4 Creek.

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

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

11 **TITLE II—TIBER RESERVOIR AL-**
12 **LOCATION AND FEASIBILITY**
13 **STUDIES AUTHORIZATION.**

14 **SEC. 201. TIBER RESERVOIR.**

15 (a) ALLOCATION OF WATER TO THE TRIBE.—

16 (1) IN GENERAL.—The Secretary shall perma-
17 nently allocate to the Tribe, without cost to the
18 Tribe, 10,000 acre-feet per year of stored water
19 from the water right of the Bureau of Reclamation
20 in Lake Elwell, Lower Marias Unit, Upper Missouri
21 Division, Pick-Sloan Missouri Basin Program, Mon-
22 tana, measured at the outlet works of the dam or at
23 the diversion point from the reservoir. The allocation
24 shall become effective when the decree referred to in
25 section 101(b) has become final in accordance with

1 that section. The allocation shall be part of the Trib-
2 al Water Right and subject to the terms of this Act.

3 (2) AGREEMENT.—The Secretary shall enter
4 into an agreement with the Tribe setting forth the
5 terms of the allocation and providing for the Tribe’s
6 use or temporary transfer of water stored in Lake
7 Elwell, subject to the terms and conditions of the
8 Compact and this Act.

9 (3) PRIOR RESERVED WATER RIGHTS.—The al-
10 location provided in this section shall be subject to
11 the prior reserved water rights, if any, of any Indian
12 tribe, or person claiming water through any Indian
13 tribe.

14 (b) USE AND TEMPORARY TRANSFER OF ALLOCA-
15 TION.—

16 (1) IN GENERAL.—Subject to the limitations
17 and conditions set forth in the Compact and this
18 Act, the Tribe shall have the right to devote the
19 water allocated by this section to any use, including
20 agricultural, municipal, commercial, industrial, min-
21 ing, or recreational uses, within or outside the Rocky
22 Boy’s Reservation.

23 (2) CONTRACTS AND AGREEMENTS.—Notwith-
24 standing any other provision of statutory or common
25 law, the Tribe may, with the approval of the Sec-

1 retary and subject to the limitations and conditions
2 set forth in the Compact, enter into a service con-
3 tract, lease, exchange, or other agreement providing
4 for the temporary delivery, use, or transfer of the
5 water allocated by this section, except that no such
6 service contract, lease, exchange, or other agreement
7 may permanently alienate any portion of the tribal
8 allocation.

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

13 (d) WATER TRANSPORT OBLIGATION; DEVELOP-
14 MENT AND DELIVERY COSTS.—The United States shall
15 have no responsibility or obligation to provide any facility
16 for the transport of the water allocated by this section to
17 the Rocky Boy's Reservation or to any other location. Ex-
18 cept for the contribution set forth in section 105(a)(3),
19 the cost of developing and delivering the water allocated
20 by this title or any other supplemental water to the Rocky
21 Boy's Reservation shall not be borne by the United States.

22 (e) SECTION NOT PRECEDENTIAL.—The provisions
23 of this section regarding the allocation of water resources
24 from the Tiber Reservoir to the Tribe shall not be con-

1 strued as precedent in the litigation or settlement of any
2 other Indian water right claims.

3 **SEC. 202. MUNICIPAL, RURAL, AND INDUSTRIAL FEASI-**
4 **BILITY STUDY.**

5 (a) AUTHORIZATION.—

6 (1) IN GENERAL.—

7 (A) STUDY.—The Secretary, acting
8 through the Bureau of Reclamation, shall per-
9 form an MR&I feasibility study of water and re-
10 lated resources in North Central Montana to
11 evaluate alternatives for a municipal, rural, and
12 industrial supply for the Rocky Boy's Reserva-
13 tion.

14 (B) USE OF FUNDS MADE AVAILABLE FOR
15 FISCAL YEAR 1999.—The authority under sub-
16 paragraph (A) shall be deemed to apply to
17 MR&I feasibility study activities for which
18 funds were made available by appropriations for
19 fiscal year 1999.

20 (2) CONTENTS OF STUDY.—The MR&I feasi-
21 bility study shall include the feasibility of releasing
22 the Tribe's Tiber allocation as provided for in sec-
23 tion 201 into the Missouri River System for later di-
24 version to a treatment and delivery system for the
25 Rocky Boy's Reservation.

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

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

14 **SEC. 203. REGIONAL FEASIBILITY STUDY—**

15 (a) IN GENERAL.—

16 (1) STUDY.—The Secretary, acting through the
17 Bureau of Reclamation, shall conduct, pursuant to
18 Reclamation Law, a regional feasibility study (re-
19 ferred to in this subsection as the “regional feasi-
20 bility study”) to evaluate water and related re-
21 sources in North-Central Montana in order to deter-
22 mine the limitations of those resources and how
23 those resources can best be managed and developed
24 to serve the needs of the citizens of Montana.

1 (2) USE OF FUNDS MADE AVAILABLE FOR FIS-
2 CAL YEAR 1999.—The authority under paragraph
3 (1) shall be deemed to apply to regional feasibility
4 study activities for which funds were made available
5 by appropriations for fiscal year 1999.

6 (b) CONTENTS OF STUDY.—The regional feasibility
7 study shall—

8 (1) evaluate existing and potential water sup-
9 plies, uses, and management;

10 (2) identify major water-related issues, includ-
11 ing environmental, water supply, and economic
12 issues;

13 (3) evaluate opportunities to resolve the issues
14 referred to in paragraph (2); and

15 (4) evaluate options for implementation of reso-
16 lutions to the issues.

17 (c) REQUIREMENTS.—Because of the regional and
18 international impact of the regional feasibility study, the
19 study may not be segmented. The regional study shall—

20 (1) utilize, to the maximum extent possible, ex-
21 isting information; and

22 (2) be planned and conducted in consultation
23 with all affected interests, including interests in
24 Canada.

1 **SEC. 204. AUTHORIZATION OF APPROPRIATIONS FOR FEA-**
2 **SIBILITY STUDIES.**

3 (a) FISCAL YEAR 1999 APPROPRIATIONS.—Of the
4 amounts made available by appropriations for fiscal year
5 1999 for the Bureau of Reclamation, \$1,000,000 shall be
6 used for the purpose of commencing the MR&I feasibility
7 study under section 202 and the regional study under sec-
8 tion 203, of which—

9 (1) \$500,000 shall be used for the MR&I study
10 under section 202; and

11 (2) \$500,000 shall be used for the regional
12 study under section 203.

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

19 (1) \$500,000 shall be used for the MR&I feasi-
20 bility study under section 202; and

21 (2) \$2,500,000 shall be used for the regional
22 study under section 203.

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

1 (d) AVAILABILITY OF CERTAIN MONEYS.—The
2 amounts made available for use under subsection (a) shall
3 be deemed to have been available for use as of the date
4 on which those funds were appropriated. The amounts au-
5 thorized to be appropriated in subsection (b) shall be avail-
6 able for use immediately upon appropriation.

Passed the Senate November 4, 1999.

Attest:

Secretary.

106TH CONGRESS
1ST SESSION

S. 438

AN ACT

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.