

107TH CONGRESS
2d SESSION

S. 934

To require the Secretary of the Interior to construct the Rocky Boy's/North Central Montana Regional Water System in the State of Montana, to offer to enter into an agreement with the Chippewa Cree Tribe to plan, design, construct, operate, maintain and replace the Rocky Boy's Rural Water System, and to provide assistance to the North Central Montana Regional Water Authority for the planning, design, and construction of the noncore system, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 22, 2001

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

MAY 16 (legislative day, MAY 9), 2002

Committee discharged; ordered referred to the Committee on Energy and Natural Resources and if reported the measure then be referred to the Committee on Indian Affairs

A BILL

To require the Secretary of the Interior to construct the Rocky Boy's/North Central Montana Regional Water System in the State of Montana, to offer to enter into an agreement with the Chippewa Cree Tribe to plan, design, construct, operate, maintain and replace the Rocky Boy's Rural Water System, and to provide assistance to the North Central Montana Regional Water Authority for the planning, design, and construction of the noncore system, 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 “Rocky Boy’s/North
 5 Central Montana Regional Water System Act of 2001”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) the water systems serving residents of the
 9 Rocky Boy’s Reservation in the State of Montana—

10 (A) do not meet minimum health and safe-
 11 ty standards;

12 (B) pose a threat to public health and
 13 safety; and

14 (C) are inadequate to supply the water
 15 needs of the Chippewa Cree Tribe;

16 (2) the United States has a trust responsibility
 17 to ensure that adequate and safe water supplies are
 18 available to meet the economic, environmental, water
 19 supply, and public health needs of the Reservation;

20 (3) the entities administering the rural and mu-
 21 nicipal water systems in North Central Montana are
 22 having difficulty complying with regulations promul-
 23 gated under the Safe Drinking Water Act (42
 24 U.S.C. 300f et seq.); and

1 (4) Lake Elwell, near Chester, Montana, would
2 provide the most available, reliable, and safe rural
3 and municipal water supply for serving the needs of
4 the Reservation and north central Montana.

5 (b) PURPOSES.—The purposes of this Act are—

6 (1) to ensure a safe and adequate rural, munic-
7 ipal, and industrial water supply for the residents of
8 the Rocky Boy’s Reservation in the State of Mon-
9 tana;

10 (2) to assist the citizens residing in Chouteau,
11 Hill, Liberty, Pondera, Teton, and Toole Counties,
12 Montana, but outside the Reservation, in developing
13 safe and adequate rural, municipal, and industrial
14 water supplies;

15 (3) to require the Secretary of the Interior, act-
16 ing through the Commissioner of Reclamation—

17 (A) to plan, design, and construct the core
18 and noncore systems of the Rocky Boy’s/North
19 Central Montana Regional Water System in the
20 State of Montana; and

21 (B) to operate, maintain, and replace the
22 core system and the on-Reservation water dis-
23 tribution systems, including service connections
24 to communities and individuals; and

1 (4) to require the Secretary, at the request of
 2 the Chippewa Cree Tribe, to enter into a self-govern-
 3 ance agreement with the Tribe under title IV of the
 4 Indian Self-Determination and Education Assistance
 5 Act (25 U.S.C. 458aa et seq.), under which the
 6 Tribe will plan, design, construct, operate, maintain,
 7 and replace (including service connections to commu-
 8 nities and individuals)—

9 (A) the core system of the water supply
 10 system; and

11 (B) on-Reservation water distribution sys-
 12 tems.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) **AUTHORITY.**—The term “Authority” means
 16 the North Central Montana Regional Water Author-
 17 ity established under State law to allow public agen-
 18 cies to join together to secure and provide water for
 19 resale.

20 (2) **CORE SYSTEM.**—The term “core system”
 21 means a component of the water system described in
 22 section 4(a)(5) and the study.

23 (3) **NONCORE SYSTEM.**—The term “noncore
 24 system” means the rural water system for Chouteau,

1 Hill, Liberty, Pondera, Teton, and Toole Counties,
2 Montana, described in section 5(c) and the study.

3 (4) RESERVATION.—

4 (A) IN GENERAL.—The term “Reserva-
5 tion” means the Rocky Boy’s Reservation in the
6 State.

7 (B) INCLUSIONS.—The term “Reserva-
8 tion” includes all land and interests in land
9 that are held in trust by the United States for
10 the Tribe (including future additions to the
11 Reservation).

12 (5) SECRETARY.—The term “Secretary” means
13 the Secretary of the Interior, acting through the
14 Commissioner of Reclamation.

15 (6) STATE.—The term “State” means the State
16 of Montana.

17 (7) STUDY.—The term “study” means the
18 study entitled “North Central Montana Regional
19 Water System Planning/Environmental Report”
20 dated May 2000 (including the needs assessment,
21 environmental report, and feasibility level study).

22 (8) TRIBE.—The term “Tribe” means—

23 (A) the Chippewa Cree Tribe on the Res-
24 ervation; and

1 (B) all officers, agents, and departments of
2 the Tribe.

3 (9) WATER SYSTEM.—The term “water sys-
4 tem” means—

5 (A) the core system; and

6 (B) on-Reservation water distribution sys-
7 tems.

8 **SEC. 4. ROCKY BOY’S RURAL WATER SYSTEM.**

9 (a) CORE SYSTEM.—

10 (1) IN GENERAL.—The Secretary shall plan, de-
11 sign, construct, operate, maintain, and replace the
12 core system.

13 (2) FEDERAL SHARE.—

14 (A) PLANNING, DESIGN, AND CONSTRU-
15 CTION.—The Federal share of the cost of plan-
16 ning, design, and construction of the core sys-
17 tem shall be—

18 (i) 100 percent; and

19 (ii) funded through annual appropria-
20 tions to the Bureau of Reclamation.

21 (B) OPERATION, MAINTENANCE, AND RE-
22 PLACEMENT.—The Federal share of the cost of
23 operation, maintenance, and replacement of the
24 core system shall be—

1 (i) 100 percent of the Tribe's share of
 2 the total capacity of the core pipeline of
 3 the core system; and

4 (ii) funded through annual appropria-
 5 tions to the Bureau of Indian Affairs.

6 (3) NON-FEDERAL SHARE.—The non-Federal
 7 share of the cost of operation, maintenance, and re-
 8 placement of the core shall be—

9 (A) prorated according to the nontribal
 10 users' share of the total capacity of the core
 11 pipeline of the core system; and

12 (B) fully reimbursable to the Secretary.

13 (4) AGREEMENTS.—Federal funds made avail-
 14 able to carry out this subsection may be obligated
 15 and expended only in accordance with an agreement
 16 entered into under subsection (c).

17 (5) COMPONENTS.—The core system shall con-
 18 sist of—

19 (A) intake, pumping, water storage, and
 20 treatment facilities located at Tiber Reservoir,
 21 with water obtained from Lake Elwell stored
 22 behind Tiber Dam, near Chester, Montana;

23 (B) transmission pipelines, pumping sta-
 24 tions, and storage reservoirs extending from
 25 Lake Elwell near Chester, Montana, approxi-

1 mately 60 miles east to the communities
2 throughout the Reservation;

3 (C) appurtenant buildings and access
4 roads;

5 (D) all property and property rights nec-
6 essary for the facilities described in this sub-
7 section; and

8 (E) electrical power transmission and dis-
9 tribution facilities necessary for services to core
10 system facilities and noncore system facilities.

11 (b) ON-RESERVATION WATER DISTRIBUTION SYS-
12 TEMS.—

13 (1) IN GENERAL.—The Secretary shall operate,
14 maintain, and replace the water distribution systems
15 of the Reservation.

16 (2) FEDERAL SHARE.—The Federal share of
17 the cost of operation, maintenance, and replacement
18 of a water distribution system on the Reservation
19 shall be—

20 (A) 100 percent; and

21 (B) funded through annual appropriations
22 to the Bureau of Indian Affairs.

23 (3) AGREEMENTS.—Federal funds made avail-
24 able to carry out this subsection may be obligated

1 and expended only in accordance with an agreement
2 entered into under subsection (c).

3 (4) COMPONENTS.—The water distribution sys-
4 tems of the Reservation shall consist of—

5 (A) water systems in existence on the date
6 of enactment of this Act that may be pur-
7 chased, improved, and repaired in accordance
8 with an agreement entered into under sub-
9 section (c);

10 (B) water systems owned by individual
11 members of the Tribe and other residents of the
12 Reservation;

13 (C) any water distribution system that is
14 upgraded to current standards, disconnected
15 from low-quality wells, or expanded to serve in-
16 creased demands;

17 (D) interconnections; and

18 (E) such other pipelines, pumping plants,
19 power lines, and facilities as the Secretary de-
20 termines to be appropriate to meet the water
21 supply, economic, public health, and environ-
22 mental needs of the Reservation, including
23 water storage tanks, water lines, and other fa-
24 cilities for the Tribe and the villages, commu-
25 nities, and towns on the Reservation.

1 (c) AGREEMENTS.—

2 (1) IN GENERAL.—At the request of the Tribe,
3 the Secretary shall enter into a self-governance
4 agreement under title IV of the Indian Self-Deter-
5 mination and Education Assistance Act (25 U.S.C.
6 458aa et seq.) with the Tribe to, in accordance with
7 this Act—

8 (A) plan, design, construct, operate, main-
9 tain, and replace the core system; and

10 (B) operate, maintain, and replace on-Res-
11 ervation water distribution systems.

12 (2) PROJECT OVERSIGHT ADMINISTRATION.—

13 The amount of Federal funds that may be used to
14 carry out paragraph (1)(A) shall not exceed the
15 amount that is equal to 3 percent of the total field
16 cost budget provided in the construction budget for
17 the core system prepared by the Tribe and approved
18 by the Secretary for the entire project construction
19 period.

20 (d) SERVICE AREA.—The service area of the core sys-
21 tem shall be the Reservation and those non-tribal commu-
22 nities and persons that are supplied with water directly
23 from the core transmission line of the core system.

24 (e) CONSTRUCTION REQUIREMENTS.—The compo-
25 nents of the core system shall be planned and constructed

1 to the extent necessary to meet the municipal, rural, and
 2 industrial water supply requirements of the service area
 3 of the core system as described in the study.

4 (f) TITLE TO CORE SYSTEM.—Title to the core
 5 system—

6 (1) shall be held in trust by the United States
 7 for the Tribe; and

8 (2) shall not be transferred unless a transfer is
 9 authorized by an Act of Congress enacted after the
 10 date of enactment of this Act.

11 (g) TECHNICAL ASSISTANCE.—The Secretary shall
 12 provide such technical assistance as is necessary to enable
 13 the Tribe to plan, design, construct, operate, maintain,
 14 and replace the core system, including operation and man-
 15 agement training.

16 **SEC. 5. NONCORE SYSTEM.**

17 (a) IN GENERAL.—The Secretary shall enter into a
 18 cooperative agreement with the Authority to provide Fed-
 19 eral funds for the planning, design, and construction of
 20 the noncore system in Chouteau, Hill, Liberty, Pondera,
 21 Teton, and Toole Counties, Montana, outside the Reserva-
 22 tion.

23 (b) FEDERAL SHARE.—

24 (1) PLANNING, DESIGN, AND CONSTRUCTION.—

25 The Federal share of the cost of planning, design,

1 and construction of the noncore system shall be not
2 more than 75 percent, as determined by the Sec-
3 retary.

4 (2) OPERATION, MAINTENANCE, AND REPLACE-
5 MENT.—The cost of operation, maintenance, and re-
6 placement of the noncore system shall be fully reim-
7 bursable to the Secretary.

8 (3) COOPERATIVE AGREEMENT.—Federal funds
9 made available to carry out this section may be obli-
10 gated and expended only in accordance with a coop-
11 erative agreement entered into under subsection (d).

12 (c) COMPONENTS.—The components of the noncore
13 system on which Federal funds may be obligated and ex-
14 pended under this section shall include—

15 (1) storage, pumping, and pipeline facilities;

16 (2) appurtenant buildings and access roads;

17 (3) all property and property rights necessary
18 for the facilities described in this subsection;

19 (4) electrical power transmission and distribu-
20 tion facilities necessary for service to noncore system
21 facilities;

22 (5) planning and design services for all such fa-
23 cilities; and

1 (6) other facilities and services customary to
 2 the development of a rural water distribution system
 3 in the State.

4 (d) COOPERATIVE AGREEMENT.—

5 (1) IN GENERAL.—At the request of the Chip-
 6 pewa Cree Water Resources Subcommittee, the Sec-
 7 retary shall enter into a cooperative agreement with
 8 the Authority to provide Federal assistance for the
 9 planning, design, and construction of the noncore
 10 system.

11 (2) MANDATORY PROVISIONS.—The cooperative
 12 agreement under paragraph (1) shall specify, in a
 13 manner that is acceptable to the Secretary, the
 14 Tribe, and the Authority—

15 (A) the responsibilities of each party to the
 16 agreement for—

17 (i) the final engineering report;
 18 (ii) engineering and design;
 19 (iii) construction;
 20 (iv) water conservation measures; and
 21 (v) administration of contracts relat-
 22 ing to performance of the activities de-
 23 scribed in clauses (i) through (iv);

24 (B) the procedures and requirements for
 25 approval and acceptance of the design and con-

1 construction and for carrying out other activities
2 described in subparagraph (A); and

3 (C) the rights, responsibilities, and liabil-
4 ities of each party to the agreement.

5 (3) PROJECT OVERSIGHT ADMINISTRATION.—

6 The amount of Federal funds that may be used to
7 carry out paragraph (1) shall not exceed the amount
8 that is equal to 3 percent of the total field cost
9 budget provided in the construction budget for the
10 noncore system prepared by the Authority and ap-
11 proved by the Secretary for the entire project con-
12 struction period.

13 (4) OVERSIGHT.—The Authority shall have
14 oversight responsibility over the noncore system.

15 (e) SERVICE AREA.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the service area of the noncore system
18 shall be generally defined as the area—

19 (A) north of the Missouri River and
20 Dutton, Montana;

21 (B) south of the border between the
22 United States and Canada;

23 (C) west of Havre, Montana; and

24 (D) east of Cut Bank, Montana.

1 (2) EXCLUSIONS FROM SERVICE AREA.—The
 2 service area of the noncore system shall not include
 3 the area inside the Reservation.

4 (f) LIMITATION ON USE OF FEDERAL FUNDS.—The
 5 operation and maintenance expenses associated with non-
 6 tribal water deliveries from the core system to the noncore
 7 system—

8 (1) shall not be a Federal responsibility; and

9 (2) shall be borne by the noncore system.

10 (g) TITLE TO NONCORE SYSTEM.—Title to the
 11 noncore system shall be held by the Authority.

12 **SEC. 6. LIMITATION ON AVAILABILITY OF CONSTRUCTION**
 13 **FUNDS.**

14 The Secretary shall not obligate funds for construc-
 15 tion of the core system or the noncore system until—

16 (1) the requirements of the National Environ-
 17 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
 18 are met with respect to the core system and the
 19 noncore system; and

20 (2) the date that is 90 days after the date of
 21 submission to Congress of a final engineering report
 22 approved by the Secretary.

23 **SEC. 7. INTERCONNECTION CHARGES.**

24 The cost of interconnection of nontribal community
 25 water distribution systems and individual service systems

1 to transmission lines of the core system and noncore sys-
2 tem shall be the responsibility of the entities receiving
3 water from the transmission lines.

4 **SEC. 8. NONDIMINISHMENT OF TIBER RESERVOIR ALLOCA-**
5 **TION TO THE TRIBE.**

6 In providing for the delivery of water to the noncore
7 system, the Secretary shall not diminish the 10,000 acre-
8 feet per year of water stored for the Tribe pursuant to
9 section 201 of the Chippewa Cree Tribe of The Rocky
10 Boy's Reservation Indian Reserved Water Rights Settle-
11 ment and Water Supply Enhancement Act of 1999 (Public
12 Law 106–163; 113 Stat. 1789) in Lake Elwell, Lower
13 Marias Unit, Upper Missouri Division, Pick-Sloan Mis-
14 souri Basin Program, Montana.

15 **SEC. 9. USE OF PICK-SLOAN POWER.**

16 (a) IN GENERAL.—The Secretary shall authorize and
17 provide for the use of power from the Pick-Sloan Eastern
18 Division to start up and operate the water system and the
19 noncore system.

20 (b) RESERVATION OF POWER.—The Secretary shall
21 reserve, and make available, for the purpose authorized
22 by subsection (a)—

23 (1) during the irrigation season, Pick-Sloan
24 Eastern Division power identified for future project
25 use pumping; and

1 (2) during the nonirrigation season, Pick-Sloan
 2 Eastern Division preference power, to the extent
 3 that the power is available.

4 (c) RATE.—The rate for project use power made
 5 available under subsection (b) shall be—

6 (1) during the irrigation season, the project use
 7 pumping power rate; and

8 (2) during the nonirrigation season, the whole-
 9 sale firm power rate.

10 (d) ADDITIONAL POWER.—If power in addition to the
 11 power made available under subsection (b) is required to
 12 meet the pumping requirements of the service area of the
 13 water system and the noncore system, the Administrator
 14 of the Western Area Power Administration may purchase
 15 the necessary additional power under such terms and con-
 16 ditions as the Administrator determines to be appropriate.

17 (e) RECOVERY OF EXPENSES.—Expenses associated
 18 with power purchases under subsections (a) and (d) shall
 19 be included in the operation, maintenance, and replace-
 20 ment costs and recovered in accordance with sections
 21 4(a)(3)(B) and section 5(b)(2).

22 **SEC. 10. WATER CONSERVATION PLAN.**

23 (a) IN GENERAL.—The Tribe and the Authority shall
 24 develop a water conservation plan that contains—

1 (1) a description of water conservation objec-
2 tives;

3 (2) a description of appropriate water conserva-
4 tion measures; and

5 (3) a time schedule for implementing the water
6 conservation measures to meet the water conserva-
7 tion objectives.

8 (b) PURPOSE.—The water conservation plan under
9 subsection (a) shall be designed to ensure that users of
10 water from the core system, on-Reservation water dis-
11 tribution systems, and the noncore system will use the best
12 practicable technology and management techniques to con-
13 serve water.

14 (c) PUBLIC PARTICIPATION.—Section 210(c) of the
15 Reclamation Reform Act of 1982 (43 U.S.C. 390jj(c))
16 shall apply to an activity authorized under this Act.

17 **SEC. 11. WATER RIGHTS.**

18 This Act does not—

19 (1) impair the validity of or preempt any provi-
20 sion of State water law or any interstate compact
21 governing water;

22 (2) alter the right of any State to any appro-
23 priated share of the water of any body of surface or
24 ground water, whether determined by any past or

1 future interstate compact or by any past or future
 2 legislative or final judicial allocation;

3 (3) preempt or modify any Federal or State law
 4 or interstate compact concerning water quality or
 5 disposal;

6 (4) confer on any non-Federal entity the au-
 7 thority to exercise any Federal right to the water of
 8 any stream or to any ground water resource;

9 (5) affect any right of the Tribe to water, lo-
 10 cated within or outside the external boundaries of
 11 the Reservation, based on a treaty, compact, Execu-
 12 tive order, agreement, Act of Congress, aboriginal
 13 title, the decision in *Winters v. United States*, 207
 14 U.S. 564 (1908) (commonly known as the “Winters
 15 Doctrine”), or other law; or

16 (6) validate or invalidate any assertion of the
 17 existence, nonexistence, or extinguishment of any
 18 water right held or Indian water compact entered
 19 into by the Tribe or by any other Indian tribe or in-
 20 dividual Indian under Federal or State law.

21 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

22 (a) CORE SYSTEM.—There are authorized to be
 23 appropriated—

24 (1) \$120,000,000 for the planning, design, and
 25 construction of the core system; and

1 (2) such sums as are necessary for the oper-
2 ation, maintenance, and replacement of the water
3 system, including power costs of the Western Area
4 Power Administration.

5 (b) NONCORE SYSTEM.—There is authorized to be
6 appropriated \$60,000,000 for the planning, design, and
7 construction of the noncore system.

8 (c) COST INDEXING.—The sums authorized to be ap-
9 propriated under this section may be increased or de-
10 creased by such amounts as are justified by reason of ordi-
11 nary fluctuations in development costs incurred after July
12 1, 1997, as indicated by engineering cost indices applica-
13 ble for the type of construction involved.

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