

## **MINUTES**

### **MONTANA SENATE 53rd LEGISLATURE - SPECIAL SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By Senator Bill Yellowtail, on December 13, 1993,  
at 9:40 a.m.

#### **ROLL CALL**

##### **Members Present:**

Sen. Bill Yellowtail, Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Bruce Crippen (R)  
Sen. Lorents Grosfield (R)  
Sen. John Harp (R)  
Sen. David Rye (R)  
Sen. Tom Towe (D)

##### **Members Excused:**

Sen. Steve Doherty  
Sen. Chet Blaylock  
Sen. Chet Bob Brown  
Senator Eve Franklin  
Senator Mike Halligan

**Members Absent:** None.

**Staff Present:** Greg Petesch, Legislative Council  
Fredella Haab, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing: HB 74  
Executive Action: None

#### **HEARING ON HOUSE BILL 74**

##### **Opening Statement by Sponsor:**

Representative David Wanzienried opened on HB 74. He said the purpose of the bill is to have the state of Montana on record endorsing the same version of the Federally Reserve Waterrights Compact with the Northern Cheyenne Reservation as approved by Congress. He said Senator Mazurek had introduced the bill in the '91 session to implement the agreement which had to be approved by Congress because of the funding arrangements in the bill. A different version of the Compact was approved and this bill will bring Montana's agreement in conformity with the federal agreement.

**Proponents' Testimony:** Harley Harris, Assistant Attorney General for the state of Montana, explained that the Water Rights Compact is an agreement between the tribe and the Missouri Water Rights Commission and that, by statute, compacts must be submitted to the Montana Water Court for approval in accordance with the statutes. He pointed out several provisions in this compact that are pertinent to the problem that is being dealt with today and the attempt to remedy them.

Mr. Harris pointed out the provisions of the original compact included 1. that the terms of the compact may not be altered, voided, or amended in any respect without the consent of the parties. 2. Material term of the 1991 compact was also in article 5 which provided the compact was not to be submitted to the Water Board unless and until the Tongue River Dam project was completed which was anticipated to be in 1996 or 1997. 3. The deadline for completion of that project was 1997. There was also some federal funding contemplated for repair of the Tongue River Dam.

Mr. Harris said they went to Congress to have some of those provisions dealt with and some changes were made in the federal bill. The main change was in the funding mechanism and the order was reversed so that we are now required to go to the Montana Water Court before any substantial part of the federal funding is available. The general category of changes were that some of the use of water out of the Yellowtail Dam was requested by the Crow Tribe and placed in the federal act. They had then urged haste by the Water Court in proceeding because of the time constrictions. Judge Loble, asked what the Legislature's decision was in respect to the changes and they were left with two alternatives; either argue on technical grounds that these different provisions were of no consequence or were preempted by the federal law. They concluded it was the intent of the Legislature that it be the final arbiter of matters such as this, and since this could set a precedent in future matters, they brought this to the special session.

Mr. Harris said HB 74 revises legislative consent that those provisions of federal act need to be consistent with the Compact and provides the Compact will be modified to the extent of those inconsistencies. He said each Legislator had a copy of a letter from the U.S. Dept of Interior (exhibit 1) and the Northern Cheyenne Tribe (exhibit 2) indicating support of HB 74.

Mark Simonich, Director of Natural Resources and Conservation spoke in support of HB 74. He said DNRC is the agency which manages water rights in Montana. They also have water projects they own and operate, Tongue River Dam being one of those projects. As a result, they are closely tied to this project and the implications involving the Tongue River dam. He said because of the changes in the original compact they had found it important to ask the Legislature to ratify and agree to the changes. These changes are not substantive in terms of

quantitative water rights, but deal with the funding question and ways of implementing the Compact on the ground.

Mr. Simonich said an enlarged dam will furnish the Northern Cheyenne Tribe with additional water from the reservoirs with part of its water coming from pump action. It will bring the dam into the safety requirements of today. He said at the present time they are in the EIS (Environmental Impact Statement) stage and will not be able to go much further until the Congressional action is cleared up. Originally the \$11.5 million loan to the state of Montana to pay for the state portion was to be repaid to the federal treasury. A Congressional change has the money go to the Cheyenne Tribal Trust. The Tribe makes a 39 year \$11.5 million loan to the state and the state repays the money to the Tribal Trust.

Mr. Simonich said the Crow Tribe voiced concerns with the Compact which allowed the Northern Cheyenne to have the ability to market 30,000 acre-feet of water from the Big Horn Reservoir. Congress recognized these concerns and built a provision into this settlement act that provides for a ten year period in which no water may be marketed unless both the Northern Cheyenne and the Crow Tribes are in agreement on how the water should be marketed.

Mr. Simonich said certain parcels of BLM land along the southern shore of the Tongue River Reservoir would be transferred to the Northern Cheyenne Tribe. He said this would not impact the state dam because it was not too near the top end where the dam is located. Hiring preference is to be given to the Northern Cheyenne tribal members, fish and wildlife enhancement will be cost-shared by the state and Tribe and the Act requires NEPA compliance in the implementation of the compact.

Mr. Simonich said conforming the Compact to the Act is critical if we are to move ahead on a timely basis with the repair of Tongue Dam. This dam is a high hazard dam because we have cities and towns located downstream from it. The dam is also unsafe at the present time.

Susan Cottingham, Staff Representative, Reserve Water Rights Compact Commission agreed with the details of the Compact described and said she would like to speak briefly to put this bill in the context of the over all Indian Water Rights Supplements in the western states. She said many states are grappling with the settlement of federal reserve water rights and Montana is the only state with a commission to do so. These water rights are very complicated, complex and costly and there are many parties of interest involved. She told of some of the complications that cause amendments to the compact that arise in Congress before they are approved and why these changes have to be made.

Opponents' Testimony:None

Informational Testimony: None

Questions From Committee Members and Responses: Senator Towe asked if the committee members would get a copy of the text of the changes and said he believed there should be one for the record. Mr. Simonich said perhaps a copy of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1993 would be appropriate and he would get one for the committee. (exhibit 5)

Senator Crippen asked if the Crow Tribe had given consent to these changes and what their position is. Mr. Harris said some of the changes in the Federal Act were at the request of the Crow Tribe. One of the original elements of the Compact had accorded to the Tribe 30,000 acre-feet of water out of the Yellowtail Reservoir and a Crow Tribe representative during the process hearing in 1991 had some concern and opposition to it. We were successful in having Congress impose additional conditions on the Northern Cheyennes' use of water out of Yellowtail. There was a ten year moratorium placed on any marketing water out of the Yellowtail Reservoir and it was designed, in large, to allow the Crow Tribe ten years to get a compact in place of their own. In addition there were some limitations on the term in two years of the types of water marketing contracts that could be let. He said he would submit that the remainder of the changes do not affect the Crow Tribe in any sense. There are some relationships between what happens with this Compact and other legislation pending in the U. S. Congress and it is a matter of some concern to Attorney General Mazurek and the proponents which we will do our best to communicate to the respective tribes.


Senator Towe explained that the Crow Tribe was very concerned about the 30,000 acre-feet from the Yellowtail dam and the Big Horn Reservoir and agreed they would go ahead and support this if they can get an agreement from the Cheyenne that they would support their efforts in Congress on the resolution of the 170 meridian boundary and Edwin Dahl, former Chairman gave the commitment pursuant to that. Claire Nomee, Chairmen of the Crow Tribe, went to Washington and testified in favor of this Compact along with Joe Mazurek on behalf of Montana. The Compact was ratified, then there was a change in administration of the Northern Cheyenne and Cowboy Fisher, the new Chairman, has been less enthusiastic about supporting the 170 meridian. Claire now has said the Crows are very upset at the Northern Cheyenne and that is the reason there is no letter of support from them. He said it was his suggestion and he believed that of Attorney General Mazurek, Susan Cottingham and some others, that we try to contact Cowboy Fisher to make sure that he understands the seriousness of this. He said he believed the Crows will not oppose this agreement.

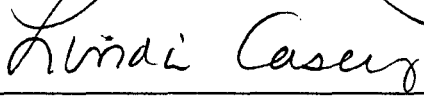
Closing by Sponsor: Representative Wanzenried closed by saying it was clear that these compacts will not always satisfy the parties affected by them. He believed this to be the best

arrangement we can negotiate and much better than one that could be litigated if we went to court. The changes are fairly straight forward and gives us the chance to take care of the Tongue River Dam and resolve the issue of quantified water in Montana. He asked for prompt and favorable consideration of this bill.

ADJOURNMENT

Adjournment: 10:25 a.m.

  
\_\_\_\_\_  
SENATOR DOHERTY, Vice Chair

  
\_\_\_\_\_  
LINDA CASEY, WPC Supervisor

SD/llc

# ROLL CALL

SENATE COMMITTEE JUDICIARY DATE 12-13-93  
14824

9:40am

NAME	PRESENT	ABSENT	EXCUSED
SENATOR YELLOWTAIL, Chair	✓		left
SENATOR DOHERTY, V. C.		✓	
SENATOR BARTLETT	✓		
SENATOR BLAYLOCK			
SENATOR BROWN	✓		
SENATOR CRIPPEN	✓		
SENATOR FRANKLIN		✓	
SENATOR GROSFIELD	✓		
SENATOR HALLIGAN		✓	
SENATOR HARP	✓		
SENATOR RYE	✓		
SENATOR TOWE	✓		
Senator Jorgensen	✓		

14 B74

Attach to each day's minutes



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Billings Area Office

316 North 26th St.

Billings, Montana 59101

IN REPLY REFER TO:

Land and Minerals

Code 350

TAKE  
PRIDE IN  
AMERICA

RECEIVED DEC 08 1993

DEC 09 1993

Harley R. Harris  
Assistant Attorney General  
Department of Justice  
P.O. Box 201401  
Helena, Montana 59620-1401

ATTORNEY GENERALS OFFICE  
HELENA, MONTANA

Dear Mr. Harris:

I have reviewed HB74, which is intended to remove any doubt that the Montana Legislature has consented to those parts of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (P.L. No. 102-374) that differ from the Northern Cheyenne-Montana Compact.

We support the efforts of the Montana Legislature in obtaining legislation to conform to P.L. 102-374 and to satisfy the requirements of the Chief Judge Loble of the Montana Water Court.

This water settlement is of vital importance to the State of Montana and the Northern Cheyenne Tribe. Favorable action by the Legislature will allow the Tongue River Dam project to proceed and remove any uncertainties that may exist.

Sincerely,

David W. Pennington,  
Federal Chair, Northern Cheyenne  
Implementing Team

cc: R. Aldrich  
Ronny Skates  
James Rawlings  
Robert Delk  
Area Director  
John Duffy  
Joe Little, Special Assistant, Office of Assistant  
Secretary-Indian Affairs  
Joe Miller, Bureau of Reclamation

STATE JUDICIARY

EXHIBIT NO. 1

DATE 12/13/93

FILE NO. HB74



EXHIBIT 2  
12-13-93  
HB 74



- WOHEHIV -  
The Morning Star

NORTHERN CHEYENNE TRIBE  
INCORPORATED

P.O. Box 128

LAME DEER, MONTANA 59043



- WOHEHIV -  
The Morning Star

RECEIVED

DEC 10 1993

ATTORNEY GENERALS OFFICE  
HELENA, MONTANA

December 9, 1993

Harley R. Harris  
Assistant Attorney General  
Department of Justice  
P.O. Box 201401  
Helena, Montana 59620-1401

Dear Mr. Harris:

I write on behalf of the Northern Cheyenne Tribe to indicate the Tribe's support for HB 74, which is a bill intended to clarify that the Montana Legislature consents to the provisions of the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 (Pub. L. No. 102-374, 106 Stat. 1186).

The Northern Cheyenne Tribe remains fully committed to the Northern Cheyenne-Montana Compact and the modifications to the Compact contained in the federal act. Passage of HB 74 is the most effective way to insure that there will be no delay in the completion of the Tongue River Dam Project and the final settlement of the Tribe's water rights. This matter is of vital importance to the Northern Cheyenne Tribe, and we accordingly urge the passage of HB 74.

Sincerely,

William Walksalong, Vice President  
Northern Cheyenne Tribal Council

cc: Calvin Wilson, Tribal Attorney  
Richard Aldrich

SENATE JUDICIARY

EXHIBIT NO. 2

DATE 12/13/93

HB 74

12-13-93  
HB 74

TESTIMONY OF THE  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
ON HOUSE BILL 74

BEFORE THE SENATE JUDICIARY COMMITTEE

DECEMBER 13, 1993

A bill for an act entitled: "An Act Providing Consent to the Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992 and Certain Specified Amendments to that Act; Conforming the Northern Cheyenne-Montana Water Rights Compact to that Act; and Providing an Immediate Effective Date."

After years of negotiations, the Northern Cheyenne Reserved Water Rights Compact was ratified by the 52nd Montana Legislature and signed by the State and the Tribe on June 11, 1991. Federal legislation was introduced to approve the compact and was signed by President Bush on September 30, 1992. Some additions were made to the bill in Congress. The purpose of this bill is consent to the Act and to conform the Montana-Northern Cheyenne Compact to the Congressional Act.

Rehabilitation of the state-owned Tongue River Dam is the central feature of the settlement. The enlarged dam will furnish the Tribe with a portion of its water supply as negotiated in the Compact, and the rehabilitation will substantially increase the safety of the dam, bringing this project in line with today's dam safety requirements.

Congressional action added provisions to the Compact that DNRC believes to be appropriate. Following are the significant modifications made to the Compact by Congress.

Entry of a water court decree approving the Compact prior to dispensing of federal construction funds.

- Originally an \$11.5 million loan to the State of Montana to pay a portion of the State's share of construction costs was to be repaid to the federal treasury; the loan is now repaid to the Northern Cheyenne Tribe.

SENATE JUDICIARY  
EXHIBIT NO. 3  
DATE 12/13/93  
BILL NO. HB 74

(Over)

3. Congress amended the provisions relating to storage from Big Horn Reservoir to address the Crow Tribe's concerns. No portion of the 30,000 acre-feet of storage water from Big Horn Reservoir allocated to the Northern Cheyenne Tribe may be marketed for 10 years unless the Crow Tribe agrees. Any water marketing contract out of Big Horn Reservoir requires advance notice to both Tribes, is subject to alteration or termination pending the resolution of the Crow Tribe's water claims and is limited to 2 years with a right of renewal after notice to the tribes.
4. Certain BLM land on the shore of Tongue River Reservoir is transferred to the Northern Cheyenne Tribe.
5. The Act requires construction contractors on the Tongue River Dam repair to provide a hiring preference to Northern Cheyenne tribal members.
6. The Act provides for fish and wildlife enhancement that must be cost-shared by the state.
7. The Act requires NEPA compliance in the implementation of the Compact.

Conforming the Compact to the Act is critical if we are to move ahead with the repair of the Tongue River Dam in an expeditious manner. This project is the administration's highest priority water project and will require concentrated effort over the next four years. The time required to decide the issue of whether the compact or act is to be entered in the water court decree entry process would delay construction at the dam by about one year and result in increased costs and potentially place the entire compact in jeopardy.

I urge your support for House Bill 74.

## FACT SHEET

HB 74

## A Bill to Amend the Northern Cheyenne-Montana Water Rights Compact

In 1991 the Montana Legislature ratified the water rights settlement reached by the Northern Cheyenne Tribe and the State of Montana. The centerpiece of the agreement was the repair and enlargement of the State-owned Tongue River Dam, an unsafe dam upstream of the Reservation. Federal cost share commitments and other provisions required Congressional approval; and in September 1992, Congress passed the Northern Cheyenne Indian Reserved Water Right Settlement Act of 1992. Subsequently, in January of 1993, the Northern Cheyenne Tribe ratified the settlement by referendum provided for in the federal legislation.

The federal legislation differed from the Compact in a number of areas, expanding the scope of the State-ratified compact to include federal concerns on implementation, National Environmental Policy Act compliance, and funding specifics. Amendments were also made to address concerns raised by the Crow Tribe and to implement specifics such as a land trade and construction hiring preference. These Congressional changes have been agreed to by State officials from the Department of Natural Resources and Conservation, the Reserved Water Rights Compact Commission, and the Attorney General's Office as well as water users.

One of the key changes made was to require entry of a water court decree approving the Compact prior to dispensing of federal funds. In March 1993, the parties petitioned the Montana Water Court; and on November 16, 1993, the Court held a hearing to determine procedures to be followed in the decree process. Key questions were raised as to which settlement should be entered: the one ratified by the State Legislature or Congress?

HB 74 is designed to clear up this ambiguity through state ratification of the federal legislation, allowing the Water Court to proceed with a single document. The alternative risks delays which could jeopardize funding for the Tongue River Dam and ultimately the Compact.

## Key Congressional changes or additions to the State-approved Compact include:

- The State of Montana will pay a portion of its share of the construction costs through repayment of an \$11.5 million loan from federal monies appropriated to the Northern Cheyenne Tribe and repaid to the Tribe (rather than the federal government) over 39 years. The 1993 Legislature, in HB 12, authorized the issuance of coal severance tax bonds as security for this loan.
- Congress amended the provisions relating to storage from Big Horn Reservoir to address the Crow Tribe's concerns. No portion of the 30,000 acre feet of storage water from Big Horn Reservoir allocated to the Northern Cheyenne Tribe may be marketed for 10 years unless the Crow Tribe agrees. Any water marketing contract out of Big Horn Reservoir requires advance notice to both Tribes, is subject to alteration or termination pending the resolution of the Crow Tribe's water claims and is limited to 2 years with a right of renewal after notice to the Tribes.
- Certain Bureau of Land Management land on the shore of Tongue River Reservoir is transferred to the Northern Cheyenne Tribe.
- The Act requires construction contractors to provide a hiring preference to Northern Cheyenne tribal members.
- The Act provides for fish and wildlife enhancement and sets up procedures for NEPA compliance.

LEGISLATIVE COUNCIL

LEGISLATIVE NO.

4

DATE 12/13/93

BY 11 0 0 11

**NORTHERN CHEYENNE INDIAN RESERVED  
WATER RIGHTS SETTLEMENT ACT OF 1992**

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 12/13/93

FILE NO. HB 74

Public Law 102-374  
102d Congress

An Act

Sept. 30, 1992  
[S. 1607]

To provide for the settlement of the water rights claims of the Northern Cheyenne Tribe, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992".

SEC. 2. PURPOSES OF ACT.

(a) PURPOSES.—The purposes of this Act are:

(1) to achieve a fair, equitable, and final settlement of all claims to Federal reserved water rights in the State of Montana of—

(A) the Northern Cheyenne Tribe and its members and allottees; and

(B) the United States on behalf of the Northern Cheyenne Tribe and its members and allottees;

(2) to approve, ratify and confirm the Water Rights Compact entered into by the Northern Cheyenne Tribe and the State of Montana on June 11, 1991;

(3) to direct the Secretary of the Interior to enter into a cooperative agreement with the State of Montana for the planning, environmental compliance, design, and construction of the Tongue River Dam Project in order to—

(A) implement the Compact's settlement of the Tribe's reserved water rights claims in the Tongue River Basin;

(B) protect existing tribal contract water rights in the Tongue River Basin;

(C) provide 20,000 acre-feet per year of additional storage water for allocation to the Tribe and to allow the State to implement its responsibilities to correct identified Tongue River Dam safety inadequacies; and

(D) provide for the conservation and development of fish and wildlife resources in the Tongue River Basin;

(4) to provide for the enhancement of fish and wildlife habitat in the Tongue River Basin;

(5) to authorize certain modifications to the purposes and operation of the Big Horn Reservoir in order to implement the Compact's settlement of the Tribe's reserved water rights claims; and

(6) to authorize the Secretary of the Interior to take such other actions as are necessary to implement the Compact.

Northern  
Cheyenne  
Indian  
Reserved  
Water Rights  
Settlement  
Act of 1992.  
Montana.

### SEC. 3. DEFINITIONS.

As used in this Act:

(1) ALLOTTEE.—The term "allottee" means any person who owns land in trust on the Northern Cheyenne Reservation.

(2) COMPACT.—The term "Compact" means the Water Rights Compact entered into on June 11, 1991, by the Northern Cheyenne Tribe and the State of Montana.

(3) NORTHERN CHEYENNE FUND.—The term "Northern Cheyenne Fund" means the Northern Cheyenne Indian Reserved Water Rights Settlement Trust Fund established by section 6.

(4) RESERVATION.—The term "Reservation" means the Northern Cheyenne Reservation as established by Executive orders of November 26, 1884 and March 19, 1900.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(6) STATE.—The term "State" means the State of Montana.

(7) STATE WATER CONTRACTS.—The term "State water contracts" means contracts with the Montana Department of Natural Resources and Conservation (DNRC), or its successor State agency, to receive stored water from the National Resources and Conservation's storage rights in the Tongue River Reservoir.

(8) TONGUE RIVER DAM PROJECT.—The term "Tongue River Dam Project" means the project, conducted pursuant to the cooperative agreements between the Bureau of Reclamation and the State of Montana authorized by this Act and subject to conditions contained in the Compact and in the record of decision after completion of environmental review, to repair and enlarge the Tongue River Dam.

(9) TRIBAL WATER RIGHT.—The term "tribal water right" means the tribal water right as defined in the Compact.

(10) TRIBE.—The term "Tribe" means the Northern Cheyenne Tribe.

### SEC. 4. RATIFICATION OF COMPACT.

(a) IN GENERAL.—Except as modified by this Act, the Water Rights Compact entered into by the Northern Cheyenne Tribe and the State of Montana is hereby approved, ratified, and confirmed.

(b) IMPLEMENTATION.—The Secretary shall implement the Compact as provided in this Act.

(c) ENTRY OF DECREE.—Except for the authorizations contained in subsections 7(b)(1) and 7(b)(2), the authorization of appropriations contained in this Act shall not be effective until such time as the Montana water court enters and approves a decree as provided in subsection (d) of this section. Notwithstanding the provisions of Article V. 2. of the Compact, for the purposes of the proceeding involving such a decree, the effective date of the Compact shall be the date of the enactment of this Act.

Effective  
date.

(d) **FORM OF DECREE.**—No later than 180 days after the date of the enactment of this Act, the United States, the Tribe, and the State of Montana shall jointly petition the Montana water court to enter and approve the "Proposed Decree" agreed to by the United States, the Tribe, and the State of Montana on May 5, 1992, or any amended version thereof.

#### SEC. 5. USE AND TRANSFER OF THE TRIBAL WATER RIGHT.

(a) **ADMINISTRATION AND ENFORCEMENT.**—As provided in the Compact, until the adoption and approval of a tribal water code, the Secretary shall administer and enforce the tribal water right.

(b) **MEMBERS AND ALLOTTEES.**—Any entitlement to reserved water of any tribal member or allottee shall be satisfied solely from the water secured to the Tribe by the Compact and shall be governed by the terms and conditions thereof. Such entitlement shall be administered by the Tribe pursuant to a tribal water code developed and adopted pursuant to Article III.A. of the Compact, or by the Secretary pending the adoption and approval of the tribal water code.

(c) **TRANSFER OF THE TRIBAL WATER RIGHT.**—

Contracts.

(1) **IN GENERAL.**—Subject to paragraph (2), the Northern Cheyenne Tribe, or persons or entities authorized by the Tribe, may enter into a service contract, lease, exchange, or other agreement providing for the delivery, use, or transfer of the tribal water right confirmed to the Tribe in the Compact.

(2) **LIMITATIONS.**—Any service contract, lease, exchange, or other agreement entered into under subsection (c)(1) shall be subject to approval by the Secretary, and the limitations and conditions set forth in the Compact, and may not permanently alienate any portion of the tribal water right.

#### SEC. 6. NORTHERN CHEYENNE INDIAN RESERVED WATER RIGHTS SETTLEMENT TRUST FUND.

(a) **ESTABLISHMENT OF FUND.**—There is established in the Treasury of the United States a trust fund to be known as the "Northern Cheyenne Indian Reserved Water Rights Settlement Trust Fund".

(b) **EXPENDITURES FROM NORTHERN CHEYENNE FUND.**—Amounts in the Northern Cheyenne Fund shall be available, without fiscal year limitations, to the Secretary for expenditure by the Secretary or by the Tribe in accordance with the provisions of this Act.

(c) **CONTENTS OF NORTHERN CHEYENNE FUND.**—The Northern Cheyenne Fund shall consist of such amounts as are appropriated to it in accordance with the authorization provided by this Act, together with such amounts credited to it in accordance with section 7(e).

(d) **USE OF NORTHERN CHEYENNE FUND.**—The Tribe shall make \$11,500,000 available from the Northern Cheyenne Fund to the State of Montana as a loan to assist financing Tongue River Dam Project costs, and such loan shall be repaid by the State to the Tribe. All other moneys appropriated to the Northern Cheyenne Fund pursuant to section 7(a), together with interest credited thereto, may be used by the Tribe for—

(1) land and natural resources administration, planning, and development within the Reservation;

(2) land acquisition by the Tribe within the Reservation;

or



(e) ENVIRONMENTAL COMPLIANCE.—There are authorized to be appropriated to the Northern Cheyenne Fund for fiscal year 1993, and each fiscal year thereafter, such sums as are necessary to carry out all necessary environmental compliance associated with the Compact, including mitigation measures adopted by the Secretary.

(f) OPERATION, MAINTENANCE, AND REPLACEMENT COSTS.—There are authorized to be appropriated to the Northern Cheyenne Fund, for fiscal year 1993, and each fiscal year thereafter, on a nonreimbursable basis, such sums as are necessary to pay the annual operation, maintenance, and replacement costs provided for in section 10(f).

(g) WITHOUT FISCAL YEAR DEFINITIONS.—All moneys appropriated pursuant to authorizations under this Act shall be available without fiscal year limitation.

#### SEC. 8. STATE CONTRIBUTIONS TO SETTLEMENT.

The provisions of section 6(d) shall be subject to the State of Montana contributing the following amounts to the settlement:

- (1) \$5,000,000 for contract costs associated with repair of the Tongue River Dam Project;
- (2) \$11,500,000 to be contributed to the Northern Cheyenne Fund as repayment of the loan provided for in section 6(d);
- (3) \$4,200,000 of noncontract costs assumed by the State of Montana according to the terms of the letter of agreement on cost-sharing between the State of Montana and the United States dated April 17, 1991; and
- (4) \$1,100,000 for the Fish and Wildlife enhancement measures identified in section 7(d).

#### SEC. 9. BIG HORN RESERVOIR STORAGE.

##### (a) ALLOCATION FOR TRIBE.—

(1) IN GENERAL.—As provided in the Compact, the Secretary shall allocate 30,000 acre-feet per year of stored water in Big Horn Reservoir, Yellowtail Unit, Lower Bighorn Division, Pick-Sloan Missouri Basin Program, Montana, measured at the outlet works of the dam or at the diversion point from the Reservoir, for use or disposition by the Tribe for any purpose.

(2) PRIOR RESERVED RIGHTS.—This allocation shall be subject to the prior reserved water rights, if any, of any Indian tribe, or of persons claiming water through that tribe, to the water allocated in paragraph (1).

##### (b) PAYMENTS BY TRIBE.—

(1) IN GENERAL.—The Tribe shall not be required to make payments to the United States for the portion of the tribal water right stored in or used from the Big Horn Reservoir except for each acre-foot of stored water used or sold for municipal or industrial purposes. The Tribe shall pay annually to the United States an amount to cover the proportionate share of the—

(A) annual operation, maintenance and replacement costs for the Yellowtail Unit allocable to the amount of water for municipal and industrial purposes used or sold by the Tribe; and

(B) capital costs with appropriate interest for the Yellowtail Unit allocable to the amount of water for municipal and industrial purposes used or sold by the Tribe.

(3) any other purpose determined by the Tribe.

(e) **PER CAPITA PAYMENTS.**—Funds within the Northern Cheyenne Fund shall not be distributed on a per capita basis to members of the Tribe.

(f) **CONGRESSIONAL INTENT.**—Nothing in this Act is intended—

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

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

## SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) **TRIBAL FUNDS.**—There are authorized to be appropriated to the Northern Cheyenne Fund for use by the Tribe \$7,400,000 in fiscal year 1995, \$9,000,000 in fiscal year 1996, and \$5,100,000 in fiscal year 1997.

(b) **TONGUE RIVER DAM PROJECT.**—(1) There are authorized to be appropriated to the Northern Cheyenne Fund for use, in accordance with paragraph (2), for the Tongue River Dam Project:

(A) \$700,000 in fiscal year 1993;

(B) \$700,000 in fiscal year 1994;

(C) \$15,300,000 in fiscal year 1995;

(D) \$11,400,000 in fiscal year 1996; and

(E) \$3,400,000 in fiscal year 1997.

(2) Moneys appropriated pursuant to paragraph (1) shall be available for use by the State of Montana and the Secretary for the planning, design, and construction of the Tongue River Dam Project in accordance with provisions of April 17, 1991, letter of agreement signed by the Northern Cheyenne Tribal Federal Negotiation Team and Montana Department of Natural Resources and Conservation. The Federal contribution is provided for development of additional capacity in the Tongue River Dam for storage of water secured to the Tribe in satisfaction of the Tribe's claims to water under the Compact.

(c) **INDEXING OF AUTHORIZATION FOR CONSTRUCTION COSTS.**—For the purposes of this section, the total estimated costs of construction of the Tongue River Dam Project, inclusive of noncontract costs, shall be \$52,200,000 at the January 1991 price level. The project's annual authorization provided in subsection (b) and the Federal and State shares shall be adjusted up or down as may be required by reason of ordinary fluctuations in construction costs, as indicated by engineering cost indices applicable to the type of construction involved in the Tongue River Dam Project.

(d) **FISH AND WILDLIFE ENHANCEMENT.**—

(1) **IN GENERAL.**—The Secretary shall identify and develop features of the Tongue River Dam Project that provide for the enhancement of fish and wildlife habitats, in accordance with the Federal Water Project Recreation Act (16 U.S.C. 4601–12 et seq.).

(2) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Northern Cheyenne Fund, for expenditure by the Secretary, \$1,800,000 in fiscal year 1996, and \$1,700,000 in fiscal year 1997 for Fish and Wildlife Enhancement, plus such sums as are necessary to defray increases in development costs reflected in appropriate engineering costs indices after January 1991. The Tribe shall not be required to reimburse amounts expended pursuant to this section.

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(2) **ADJUSTMENT OF PAYMENTS.**—The annual payments shall be reviewed and adjusted, as appropriate, to reflect the actual operation, maintenance, and replacement costs, and the actual capital costs, for the Yellowtail Unit.

(c) **USE AND SALE OF WATER.**—

(1) **IN GENERAL.**—Except for payments required to be made to the United States pursuant to subsection (b), the Tribe shall—

(A) set such rates as it considers proper for its use or sale of stored water; and

(B) retain all revenues from its use or sale of the stored water.

(2) **HYDROPOWER GENERATION.**—The United States shall retain the right to use any and all water stored in the Big Horn Reservoir for hydropower generation.

(d) **AGREEMENT WITH TRIBE.**—The Secretary shall enter into an agreement with the Tribe providing—

(1) for the Tribe's use or sale of water stored in the Big Horn Reservoir subject to the terms and conditions of the Compact; and

(2) for the collection and disposition of revenues in connection with water stored in the Big Horn Reservoir that is made available to the Tribe.

(e) **MORATORIUM ON WATER MARKETING.**—Notwithstanding any provision of this Act or the Compact, no portion of the allocation described in paragraph (1) of subsection (a) shall be sold or leased by the Tribe for a period of 10 years following the date on which the Compact becomes effective pursuant to Article V(A)(1) of the Compact or for a period of 10 years following any earlier date on which the allocation may become available to the Tribe, unless the Crow Tribe and the Northern Cheyenne Tribe agree otherwise.

(f) **LIMITATION ON WATER MARKETING.**—The Secretary may enter into contracts for the sale or lease of water to which the United States holds legal title and which is stored in the Big Horn Reservoir, except that with respect to any such contract—

(1) the Secretary provides notice to the Northern Cheyenne Tribe and the Crow Tribe of his intent to enter into a contract at least 120 days in advance of entering into such contract;

(2) the terms of the contract for sale or lease of water provide that the contract will not exceed a 2-year term, with a right of renewal following a 120-day notice period to the Northern Cheyenne Tribe and Crow Tribe; and

(3) the terms of the contract for sale or lease of water contain a provision that makes clear that the contract is subject to alteration or termination by the United States pending the resolution of claims to water by the Crow Tribe.

#### SEC. 10. TONGUE RIVER DAM PROJECT.

(a) **IN GENERAL.**—The Secretary shall enter into a cooperative agreement with the State of Montana for the planning, design, and construction of the Tongue River Dam Project in accordance with the provisions of the April 17, 1991, letter of agreement signed by the Northern Cheyenne Tribe Federal Negotiating Team and the Montana Department of Natural Resources and Conservation. The Secretary shall also enter into a cooperative agreement with the State of Montana for compliance with the National

Contracts.

Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) on the Tongue River Dam Project.

(b) OWNERSHIP.—Notwithstanding Federal participation in the Tongue River Dam Project, the Tongue River Dam shall remain in the ownership of the State of Montana.

(c) STATE OPERATION OF RESERVOIR.—Except as otherwise provided in the Compact, nothing in this Act shall affect the State's operation of the Tongue River Reservoir to fulfill State water contracts.

(d) CONGRESSIONAL INTENT.—Nothing in this Act is intended to subject holders of State water contracts from the Tongue River Reservoir who do not have a contract for Federal reclamation storage to the provisions of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.).

(e) LAND TRANSFER.—

(1) Notwithstanding any other provisions of law, the Bureau of Land Management shall transfer to the Bureau of Indian Affairs in trust for the Northern Cheyenne Tribe the following described land:

T. 8 S., R. 40 E., P.M.M.

Sec. 26, N $\frac{1}{2}$ SW $\frac{1}{4}$

Sec. 27, N $\frac{1}{2}$ SE $\frac{1}{4}$

T. 8 S., R. 40 E., P.M.M.

Sec. 23, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$

Sec. 24, NW $\frac{1}{4}$ SW $\frac{1}{4}$ .

(2) Nothing in this section is intended to address the jurisdiction of the Tribe or the State of Montana over the property being transferred.

(3) This transfer shall not be construed as creating a Federal reserved water right.

(f) PAYMENT OF THE TRIBE'S SHARE.—The Secretary, acting through the Bureau of Indian Affairs, shall continue to pay annually to the State of Montana on a nonreimbursable basis an amount to cover the proportionate share of the annual operation, maintenance and replacement costs for the Tongue River Dam allocable to the Tribe's stored water in the reservoir.

(g) EMPLOYMENT PREFERENCE.—Notwithstanding any other provision of law, the State shall require in all contracts and subcontracts relating to construction of the Tongue River Dam Project, a provision that the contractor and its subcontractors shall provide a hiring preference to Northern Cheyenne tribal members. The State and the Tribe shall enter into an agreement setting forth the manner in which the preference will be implemented and enforced.

Contracts.

#### SEC. 11. MISCELLANEOUS PROVISIONS.

(a) WAIVER OF SOVEREIGN IMMUNITY.—Notwithstanding the provisions of Article IV, Section G. of the Compact, the United States shall not be deemed to have waived its immunity from suit except to the extent provided in subsections (a), (b), and (c) of section 208 of the Act of July 10, 1952 (43 U.S.C. 666).

(b) EFFECT ON YELLOWSTONE RIVER COMPACT.—Nothing in this Act shall be construed to alter or amend any provision of the Yellowstone River Compact, as consented to in the Act entitled "An Act granting the consent of Congress to a Compact entered into by the States of Montana, North Dakota, and Wyoming relating to the waters of the Yellowstone River", approved October 30, 1951 (65 Stat. 663).

(c) EFFECT ON RIGHTS OF OTHER TRIBES.—Nothing in this Act is intended to quantify or otherwise adversely affect the land and water rights, or claims or entitlements to land or water, of an Indian Tribe other than the Northern Cheyenne Tribe.

(d) ENVIRONMENTAL COMPLIANCE.—In implementing the Compact, the Secretary shall comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 433–4335), and the Endangered Species Act (16 U.S.C. 1531 et seq.), and other applicable environmental Acts and regulations.

42 USC 4321-4335.

(e) EXECUTION OF COMPACT.—Execution of the Compact by the Secretary as provided for in section 4 shall not constitute major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance during the implementation phase of this settlement.

(f) BUREAU OF RECLAMATION DESIGNATED AS THE LEAD AGENCY.—With respect to the Tongue River Dam Project and uses of the Tribe's Big Horn Reservoir storage allocation, the Bureau of Reclamation is designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable environmental laws.

(g) BUREAU OF INDIAN AFFAIRS DESIGNATED AS THE LEAD AGENCY.—With respect to all other provisions of the Compact, the Bureau of Indian Affairs is designated as the lead agency in regard to environmental compliance, and shall coordinate and cooperate with the other affected Federal agencies as required under applicable environmental laws.

## SEC. 12. APPLICATION OF PROVISIONS REGARDING ALLOCATION OF WATER RESOURCES.

(a) FINDING.—Congress finds that the allocation of water resources to the Tribe under this Act is uniquely suited to the geographic, social, and economic characteristics of the area and situation involved.

(b) APPLICATION.—The provisions of this Act regarding the allocation of water resources to the Tribe shall not be construed to be applied to nor be precedent for any other Indian water right claims.

## SEC. 13. EFFECTIVE DATE OF SETTLEMENT.

The settlement contained in this Act shall not become effective if a tribal referendum on the settlement is requested pursuant to the Northern Cheyenne Constitution within 60 days following the date of enactment of this Act, and the settlement fails to be approved in such referendum held within 120 days following the date of enactment of this Act. If the settlement does not become effective pursuant to this section, the United States (including the Secretary and all other officers), the State of Montana, and the Tribe are relieved of all rights, entitlements, duties, responsibilities and authorities conferred, imposed or created by this Act.

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If a referendum is not requested within such 60-day period, the settlement shall take effect upon the date next following the expiration of such 60-day period. If a referendum is requested within such 60-day period, and the settlement is approved in a referendum held within 120 days following the date of enactment of this Act, the settlement shall take effect on the date next following the date of such approval.

Approved September 30, 1992.

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**LEGISLATIVE HISTORY—S. 1607:**

HOUSE REPORTS: No. 102-894 (Comm. on Interior and Insular Affairs).

SENATE REPORTS: No. 102-347 (Select Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 138 (1992):

Aug. 7, considered and passed Senate.

Sept. 22, considered and passed House.

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DATE 12-13-93SENATE COMMITTEE ON JudicialBILLS BEING HEARD TODAY: HB 74

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Name	Representing	Bill No.	Support	Oppose
MARK Simonich	DNRC	HB 74	X	

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