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Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992

United States 102nd Congress

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PL 102-374, 106 Stat. 1186

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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,

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

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.

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

(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.

(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.

(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.

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.

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.