

**SUMMARY OF THE
NORTHERN CHEYENNE TRIBE-MONTANA
WATER RIGHTS SETTLEMENT
§85-20-301**

NORTHERN CHEYENNE WATER RIGHTS COMPACT

The Compact entered into by the state of Montana and the Northern Cheyenne tribe of the Northern Cheyenne Indian reservation was ratified effective May 17, 1991. The Compact settles for all time, any and all existing claims of or on behalf of the Northern Cheyenne Tribe to water within the State of Montana.

WATER RIGHTS

In general, the Northern Cheyenne Compact provides water as follows:

- Existing Non-Agricultural Uses.
 - Tribal and individual Indian stockwater, domestic and municipal water uses on the Reservation and in existence as of the ratification date are recognized and protected as part of the Tribal Water Right,
- Tongue River: the Tribal Water Right in the Tongue River basin consists of the right to divert or use or to permit the diversion or use of up to 32,500 acre-feet per year, from a combination of direct flow, storage, and exchange water.
 - Direct Flow Right: The Tribe has a right to divert or use or permit the diversion or use of up to 12,500 acre-feet of water per year from direct flow of the Tongue River and its tributaries with a priority date of October 1, 1881; provided, that:
 - The Tribe's annual depletion of its direct flow water right in the Tongue River and its tributaries will not exceed 75 percent of the amount diverted, or 9,375 acre-feet per year; and
 - The Tribe's direct flow water right in the Tongue River and its tributaries may not be used in a manner that adversely affects:
 - Miles City Decree water rights, or
 - Water rights from off-Reservation tributaries of the Tongue River, which a priority date of June 30, 1973 or earlier and are based on the use of an irrigation system in place and not abandoned as of June 30, 1973.
 - Storage and Exchange Water. The Tribe has a right to divert or deplete, or permit the diversion or depletion of, up to 20,000 acre-feet per year from a combination of water stored in the Tongue River Reservoir and exchange water. The availability of the 20,000 acre-feet per year depends, as provided in the Tongue River Water Model, upon the annual schedule utilized by the Tribe for diversions of Tongue River direct flows.
- Rosebud Creek.
 - Water Right. The Tribe has a right to divert or use or to permit the diversion or use from Rosebud Creek and its tributaries, for agricultural purposes only, of 1,800 acre-feet of water per year, or enough water to irrigate 600 acres of land per year, whichever is less, with a priority date of October 1, 1881.
 - Additional Water Right. The Tribe has a right to divert or use or permit the diversion or use from Rosebud Creek and its tributaries, for any purpose, of up to 19,530 acre-feet of water per year, or enough water to irrigate 6,510 acres of land per year, whichever is less, with a priority date of October 1, 1881.
 - Moratorium on the issuance of permits in the Rosebud Creek basin concurrent with the ratification date of the Compact.
- Groundwater.
 - Alluvial Groundwater. The Tribe has a right to withdraw and use, or permit the withdrawal and use of, alluvial groundwater in lieu of surface water diversions of the Tongue River and

Rosebud Creek Tribal Water Right, subject to the same terms and conditions of this Compact that apply to such surface water diversions.

- Non-alluvial Groundwater. Except where a Tribal right to non-alluvial groundwater is established pursuant to Article VII.B. of this Compact, Tribal use or authorization of use of non-alluvial groundwater will, at the election of the Tribe, comply with state law.
- Stockwater Impoundments.
 - The Tribe may construct, or permit the construction of stockwater impoundments on the Reservation, where the capacity of the impoundment is less than 15 acre-feet
- Subirrigation.
 - The Tribe is entitled to take advantage of any natural subirrigation occurring on the Reservation.
- Big Horn Reservoir (Yellowtail) Storage.
 - Tribal Allocation. As a part of the Tribal Water Right, the Secretary of the Interior will allocate 30,000 acre-feet per year of stored water in Big Horn Reservoir

ADMINISTRATION

- Except as otherwise provided in this Compact, the use of the Tribal Water Right will be administered by the Tribe. Administration and enforcement of the Tribal Water Right will be pursuant to a water code, which shall be developed and adopted by the Tribe (code completed in 1999).
- Any use of the Tribal Water Right involving a point of diversion or place of use located off the Reservation will be considered an off-Reservation use; provided, that releases or diversions from Big Horn Reservoir or Tongue River Reservoir for use on the Reservation will not be considered off-Reservation uses.
- The State will administer all rights to the use of surface water and groundwater within the Reservation which are not a part of the Tribal Water Right.

OPERATION OF TONGUE RIVER RESERVOIR

- To provide for Tongue River Reservoir operation procedures that are consistent with the purposes of this Compact, a reservoir operation plan will be developed by a five-member advisory committee. The committee will have representatives from the State of Montana, the Tongue River Water Users Association, the Northern Cheyenne Tribe, the United States, and a fifth member to be selected by the other four. The advisory committee will annually agree upon a reservoir operation schedule setting forth proposed uses of storage and direct flow for the year.

ESTABLISHMENT OF THE NORTHERN CHEYENNE - MONTANA COMPACT BOARD

- The Board will consist of three members: one member appointed by the Governor of the State of Montana; one member appointed by the Northern Cheyenne Tribal Council; and one member selected by the other two members.
- The Northern Cheyenne-Montana Compact Board will have jurisdiction to resolve controversies over the right to the use of water between users of the Tribal Water Right on the one hand and users of state water rights on the other hand.

CONTRIBUTIONS TO SETTLEMENT

- The United States agreed to provide \$31,500,000 to repair the Tongue River Dam and spillway and to raise the Tongue River Dam spillway crest.
- The State agreed to provide \$16,500,000 to repair the Tongue River Dam and spillway.
- The United States agreed to provide \$10,000,000 for a Tribal Development Fund.

DISCLAIMER

- This summary provides a general summary of some key components of the Compact. For brevity, much detail has been omitted. For a complete description, refer the Compact itself.