

Chippewa Cree – Montana Water Rights Compact Summary

A. RESERVATION SETTING

The Rocky Boy's Reservation is located in the Bearpaw Mountains with portions extending onto the plains between the mountains and the Milk River in north-central Montana. Historically, the area was part of the large territory north of the Missouri and Musselshell Rivers designated for the Blackfeet Nation in the treaty of 1855. In 1880 the Fort Assiniboine military reservation was established. On disestablishment of the military reservation, Congress on September 16, 1916, set aside a portion of the area for the Rocky Boy's Reservation. Land has been added to the Reservation through both acquisition and reservation since 1916. The Reservation was never allotted. The Reservation is home to over 3000 Tribal members with an annual population growth rate in excess of 3%. The Reservation has an estimated 70% unemployment.

The Reservation is located in an area of scarce water supply. The region is arid with an average annual precipitation of 12 inches in the area of the Reservation suitable for growing hay. Snowpack in the Bearpaw Mountains, which receive an average annual precipitation of 30 inches, contributes to high spring runoff. The two drainages arising on the Reservation are: Big Sandy Creek and its tributaries; and Beaver Creek. Land use in the area is primarily for grazing and growing of hay. Both Creeks flow through Reservation and private farm and ranch land before reaching the Milk River.

B. TRIBAL WATER RIGHT QUANTIFICATION

[Compact codified at §85-20-601, Montana Code Annotated]

10,000 acre-feet per year from surface and groundwater sources on the Reservation:

Big Sandy Creek and tributaries: 9260 acre-feet per year

New water use on Big Sandy Creek and its tributaries is to be accomplished primarily through enlargement of Bonneau Reservoir located on Box Elder Creek to a capacity of 4800 acre-feet. The Tribe has the right to divert from surface water flows for irrigation and other uses: 1690 acre-feet from Lower Big Sandy Creek and Gravel Coulee; and 6590 acre-feet from Box Elder Creek. The Compact quantifies additional minor uses including stockwatering and fish and wildlife enhancement on tributaries to Big Sandy Creek.

Beaver Creek: 740 acre-feet per year (260 acre-feet net depletion)

New water use is to be accomplished primarily through enlargement of East Fork of Beaver Creek Reservoir to a capacity of 665 acre-feet. The Tribe has the right to divert from surface water flows for recreational uses: 540 acre-feet, but could only consume 260 acre-feet of the amount diverted. The remaining water must return to the stream. Additional minor uses are to be from groundwater.

10,000 ac-ft from Lake Elwell:

Lake Elwell is located behind Tiber Dam approximately 50 miles from the Reservation on the Marias River. The reservoir is part of a United States Bureau of Reclamation project. The United States has agreed to allocate 10,000 acre-feet per year for use by the Tribe, however, the settlement does not include any provisions or obligations for development of the water or transport of the water to the Reservation.

C. MITIGATION OF IMPACTS ON OFF-RESERVATION WATER USE

Box Elder and Big Sandy Creeks

- Two pools of water stored in Bonneau Reservoir will be designated for off-Reservation water use:
 - * 104 acre-feet for irrigation on Box Elder Creek.
 - * 260 acre-feet for stockwatering and maintenance of water quality.

- * The Tribe has the discretion to make additional releases if necessary to mitigate the impact of a change in use of the Tribal Water Right.
- Efficiency improvements to off-Reservation irrigation diversion and conveyance systems, funded by the State.

Beaver Creek and the Milk River

- Maintenance of brook trout fishery in upper Beaver Creek:
 - * Study by the Tribe and the State to determine levels for a minimum instream flow
 - * Release of stored water by the Tribe to maintain a minimum instream flow of 1 cfs.
- Purchase by the State of 800 acre-feet of contract water in Lower Beaver Creek Reservoir for release to prevent impact on irrigation from Lower Beaver Creek and the Milk River.
- Improved coordination of storage between Nelson Reservoir, part of the Milk River Reclamation Project, and Lower Beaver Creek Reservoir to allow increased storage in Lower Beaver Creek Reservoir.

D. ALLOCATION IN DRY YEARS

Allocation in times of shortage is not in priority. Provided the Tribe uses water within its quantified right, water right holders downstream from the Reservation may not assert priority over the Tribal Water Right. Provided water right holders use water within their quantified right, the Tribe may not assert priority over upstream water users. This is referred to by the State and the Tribe as “Block Allocation” of water. It is accomplished through mutual subordination of the priorities of off-Reservation rights and the Tribal Water Right to upstream rights.

E. ADMINISTRATION / DISPUTE RESOLUTION

- The Tribe administers the Tribal Water Right.
- Use or transfer of any portion of the Tribal Water Right off the Reservation must be in compliance with State law.
- Any change in use must be without adverse effect on water use pursuant to a valid right off the Reservation.
- The State Department of Natural Resources and Conservation and the Tribal Water Resources Department will work on a cooperative basis to resolve disputes concerning water use.
- The Compact establishes a Compact Board made up of three members: one Tribal, one local off-Reservation, and one chosen by the other two. Disputes concerning use of water between users of the Tribal Water Right and users of water rights recognized under State law may be filed with the Compact Board.
- Decisions by the Compact Board may be appealed to a court of competent jurisdiction. On appeal, the hearing is a trial *de novo*.

II. AUTHORIZATIONS FOR APPROPRIATIONS [\$50 million] AND SCHEDULE OF APPROPRIATIONS

A. CHIPPEWA CREE FUND [\$21 million, Bureau of Indian Affairs Budget]

Tribal Compact Administration Account
\$3 million FY 1999

Economic Development Account
\$3 million FY 2000

Future Water Supply Facilities Account

The Tribe, the State, and the United States have agreed that importation of water to the Reservation is necessary to meet the drinking water needs of the Tribe. The bill introduced to Congress will include authorization for \$15 million in federal funding for future importation of drinking water to the Reservation.

\$15 million
* \$2 million FY 1999
* \$5 million FY 2000
* \$8 million FY 2001

B. ON-RESERVATION WATER DEVELOPMENT [\$25 million, Bureau of Reclamation Budget]

\$13 million FY2000
Bonneau Reservoir enlargement

\$8 million FY 2001
East Fork, Towe and Browns Reservoirs

\$3 million FY 2002
Completion of the above projects and other water development

\$1 million FY 2000
Bureau of Reclamation administrative costs associated with Tribal water development

C. FEASIBILITY STUDIES [\$4 million, Bureau of Reclamation Budget]

The Secretary of the Interior, through the Bureau of Reclamation is authorized to perform a municipal, rural and industrial (MR&I) feasibility study of water and related resources in North Central Montana to evaluate alternatives for MR&I supplies for the Rocky Boy's Reservation.

\$1 million \$.5 million in FY 1999
\$.5 million in FY 2000

The Secretary of the Interior, through the Bureau of Reclamation, is authorized to perform a regional feasibility study to evaluate water and related resources in North Central Montana.

\$3 million \$.5 million in FY 1999
\$2.5 million in FY 2000