

TESTIMONY OF BRUCE SUNCHILD, SR., CHAIRMAN
CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION IN MONTANA
BEFORE THE
U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
ON S. 3385

A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO USE
DESIGNATED FUNDING TO PAY FOR CONSTRUCTION OF AUTHORIZED RURAL
WATER PROJECTS

SD-366 of the Dirksen Senate Office Building
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10:00 AM

Mr. Chairman and members of the Senate Committee on Energy and Natural Resources, my name is Bruce Sunchild, Sr., and I serve as Chairman of the Chippewa Cree Tribe of the Rocky Boy's Reservation and Co-Chairman of the Rocky Boy's/North Central Montana Regional Water System (NCRMWS) Coordinating Committee. I have also served as Co-Chair of the Joint Federal-Tribal Water Funding Task Force, which has been an ad-hoc group coordinated by the Western States Water Council, the Native American Rights Fund and the Secretary of the Interior. Our emphasis dealt with the funding of Indian water rights settlements

On behalf of the Chippewa Cree Tribe and Rocky Boy's/NCRMWS Coordinating Committee, I extend our gratitude to Chairman Jeff Bingaman and the members of the Senate Energy and Natural Resources Committee for the timely convening of this hearing and the invitation to testify on Senate Bill 3385, the Authorized Rural Water Projects Completion Act. This legislation authorizes the Secretary of the Interior to use designated funding to help pay for construction of authorized rural water projects, and for other purposes.

Our thanks also goes out to our Senator Max Baucus who introduced the bill and to our Senator Jon Tester who co-sponsored the bill along with several other distinguished Senators including Jeff Bingaman and Tom Udall of New Mexico, Al Franken and Amy Klobuchar of Minnesota, Kent Conrad of North Dakota, Tom Harkin of Iowa and Tim Johnson of South Dakota. It should also be acknowledged that former Senator Pete Domenici of New Mexico was keenly interested in finding a funding source for Indian water projects and spent a large amount of time advancing concepts to do so.

The passage of S. 3385 will provide the long-awaited secure funding mechanism for the completion of construction for authorized rural water projects, like the Rocky Boy's/NCRMWS Project. The Act is consistent with the requirements of the Rural Water Supply Act of 2006 that authorized the Secretary of Interior to establish and carry out the Rural Water Supply Program with funding prioritization criteria to serve as a formula for distributing funds consistent with the authorizing language in each rural water project bill.

Mr. Chairman and Committee members, I would like to briefly explain my tribe's journey to ensure the continuity of clean water for our reservation. Water is sacred to our people and is the lifeblood for our permanent homeland, the Rocky Boy's Reservation located in north central Montana. This is also true for the surrounding communities since water is the scarce common resource that connects us together. Without water, my tribe cannot survive on the permanent homeland held in trust by the United States on behalf of the tribe. This is certainly one of the reasons we chose to negotiate a settlement of the Tribe's water rights claims against the United States.

Our priority in the settlement negotiations was to have a source for clean drinking water since our groundwater is very limited in capacity and contaminated with naturally occurring arsenic from the underground Missouri River Ancestral channel. In fact, our

groundwater resources are so limited that all outside water use (car washing, lawn watering) is prohibited, and indoor water use is never assured.

In December of 1999, after many years of negotiations with our non-Indian neighbors, the State of Montana and representatives of Interior and Justice Departments, President Clinton signed the “Chippewa Cree Tribe of the Rocky Boy’s Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999” into law as P.L.106-163. Among its provisions, that Act provided 10,000 acre feet of water to the Tribe from the Tiber Reservoir (also known as Lake Elwell), located 50 miles west of the reservation¹. PL 106-163 did not include a water delivery system to withdraw, treat, and convey the 10,000 acre feet of tribal water right stored at Tiber Reservoir to the Rocky Boy’s Reservation. It was understood that the authorization for the delivery of that water to my Reservation, while also serving our neighbors in off-Reservation communities, would be accomplished in a subsequent piece of legislation.

In the next Congress, on December 12, 2002, President Bush signed S. 2017, the Rocky Boy’s North Central Montana Regional Water System (NCRMRS) Act of 2002 (Title IX of PL 107-331, 116 Stat. 2859) into law. We were told that this would be the final step in the federal approval process and the beginning of a project to improve the quality of life for the Tribe and residents of north central Montana. This Act established a congressionally authorized water project to distribute clean drinking water from Tiber Reservoir to meet tribal, municipal, rural and industrial needs for the Rocky Boy’s Reservation and seven (7) counties in north central Montana. It was an essential component of the implementation of our water rights settlement, as again, it was the delivery mechanism for 10,000 acre feet of water in Lake Elwell.

Mr. Chairman, to date – 13 years after the United States signed a historic water rights agreement with my Tribe and 10 years after the enactment of a Federal law to deliver that water to us – less than 20% of the Federal appropriations required to construct this project (approximately \$60 million) has been received.

Since its authorization in 2002, the funding ceiling for the Rocky Boy’s/NCRMRS Project has increased from \$229 million to over \$350 million due to the application of annual indexing factors by the Bureau of Reclamation. The receipt of insufficient levels of Federal appropriations and the impact of inflation are having a significant negative impact on realizing Project completion. If Federal appropriations do not exceed, or at least offset, the impact of annual indexing, the completion date for the Rocky Boy’s/NCRMRS Project will be extended indefinitely as shown in the attached graph depicting the effects of inflation versus the annual Federal funding levels. (Exhibit 1 - Effects of Inflation vs. Annual Federal Funding Levels, dated March 2012). Not only

¹ SEC. 201. TIBER RESERVOIR.

(a) Allocation of Water to the Tribe.--

(1) In general.--The Secretary shall permanently allocate to the Tribe, without cost to the Tribe, 10,000 acre-feet per year of stored water from the water right of the Bureau of Reclamation in Lake Elwell, Lower Marias Unit, Upper Missouri Division, Pick-Sloan Missouri Basin Program, Montana, measured at the outlet works of the dam or at the diversion point from the reservoir.

does this delay hurt my people and the health and welfare of both Reservation and off-Reservation residents over a very large swath of Montana, but the increased costs associated with these delays are adding unnecessarily to the Federal deficit. As you can see in the attached chart, if we were to receive funding at the level of \$35 million a year we could complete this project at a total cost of \$418.6 million by the year 2021. Were we to receive funding at a level of \$15 million a year, total project costs would be almost \$647 million and we would not finish until the year 2046. The latter would cost the United States an additional \$228 million and that does not even take into account the impact of health care costs on my people, which as discussed below is considerable. Mr. Chairman I am loathe to report that we have not been receiving annual funding at even \$10 million. As you can see from the chart, funding at that level does not allow us to keep pace with the inflationary factors used by the Bureau of Reclamation and therefore the project would take an infinite period.

Despite the limited funding received to date, we are extremely proud of the progress that has been made to address severe water shortages and surface water regulatory violations. The funding we received through ARRA was especially helpful. Average annual Federal appropriations of \$30 to \$38 million are needed to maintain anything resembling a reasonable implementation and construction timeline.

The passage of the bill pending before you today, S. 3385, will provide a consistent funding stream and certainly will help us get to completion. S. 3385 creates the Reclamation Rural Water Construction Fund. It directs the Secretary of Treasury to deposit \$80 million per fiscal years 2013 through 2029, funds that would otherwise be deposited in the Reclamation Fund, to be made available without further appropriation for the construction of authorized rural water projects. As Chairman Bingaman has noted, Reclamation's analysis shows that an increase in funding for the construction of rural water projects to \$80M per year would reduce the total Federal appropriations needed to complete the projects by more than \$1B, due to project costs and inflation. This is a prudent use of the Reclamation Fund that your colleagues created back in 1902 to construct water projects in the West. Despite having senior water rights to much of the water used by Reclamation Fund dollars, Indian tribes have not benefitted by the establishment of that fund. Allowing us to access this fund is long overdue to put it nicely. It should also be noted that the Fund has increased from \$3.8 billion in 2004 to over \$9 billion in 2009. Even more noteworthy is the fact that it has carried a surplus of at least \$960 million a year every year since 2005. Clearly there are sufficient surplus funds in this account to pay for this bill.

I applaud the Act's funding prioritization criteria that include authorized projects that address the needs of Indian tribes and its members along with other community needs or interests. This is consistent with the goals of our regional water project by serving the Rocky Boy's Reservation and numerous off-reservation systems including municipalities, county water districts, Hutterite colonies and others.

Our reservation has endured and overcome many hardships over the years. However, the devastation of two recent consecutive years of disastrous flooding required two

declarations of disasters by President Obama in 2010 and 2011. Due to the catastrophic impact of multiple 100-year flood events we have endured significant damage across much of our Reservation, the worst being to our already archaic water system. Our unsanitary drinking water conditions have resulted in numerous problems.

1. Groundwater wells not being able to handle the tremendous surface water flows that resulted in infiltration of contaminating fecal coliform and Escherichia Coli (E. Coli) bacteria into our drinking water;
2. Parker Canyon was one of the reservation communities impacted by the floods and 27 out of 30 homes tested positive for E. Coli and fecal coliform bacteria. Our Tribal Environmental Health Department had to provide bottled water to all the communities such as Parker Canyon that experienced similar groundwater well contamination;
3. Regular water quality testing of the groundwater wells on the reservation has shown that 66 homes in 2011 still tested positive for E. Coli and fecal coliform bacteria. We have gotten consistent fecal coliform and E. Coli hits on monthly Bac-T testing;
4. The extensive flooding of the Reservation watersheds are a direct cause of many Reservation residents' septic drain fields being overwhelmed with flood water and the resulting over saturation causes fecal particulate transfers to the ground water drinking source. What this means is we have fecal coliform bacteria from the flooding of the septic drain fields resulting in an extreme public health emergency similar to what you find in third world countries. Construction funding is desperately needed to connect those reservation communities impacted by contaminated ground water wells to the on-reservation portion of the regional water project; and

A direct result of the flooding and fecal coliform bacterial contamination of groundwater wells from septic tank effluent resulted in hundreds of cases of Helicobacter pylori (H. pylori). H. pylori is a bacterium that causes stomach inflammation and ulcers in the stomach and duodenum. This bacterium is the most common cause of ulcers and severe gastric discomfort and is acquired from contaminated food and water or through person-to-person contact. It is common in crowded populations with poor sanitation, such as third world countries that lack the water treatment facilities that we take for granted here in the U.S.

Complications associated with H. pylori infection include:

- a. Ulcers: H. pylori can damage the protective lining of your stomach and small intestine. This can allow stomach acid to create an open sore (ulcer).
- b. Inflammation of the stomach lining: H. pylori infection can irritate your stomach, causing inflammation (gastritis).

- c. Stomach cancer: H. pylori infection is a strong risk factor for certain types of stomach cancer.

Mr. Chairman and Committee members, as you can see, the completion of the construction of the Rocky Boy's/NCMRWS must happen within the next decade or two in order to honor our water rights settlement by bringing clean drinking water to our reservation and more importantly to prevent the proliferation of H. pylori to our tribal members who suffer from its effects, similar to living in third world country without the means for clean treated water.

It must also be noted that we cannot make progress against the high levels of unemployment that exist on our Reservation until we have this most basic aspect of infrastructure in place. No business is going to locate on an Indian Reservation if they cannot be assured of good drinking water.

In closing, we fully support S. 3385 and respectfully request that provisions be included in the legislation that consider the impacts of project cost indexing applied by the Bureau of Reclamation and the corresponding completion timeline for all of the presently authorized Tribal and rural water projects. Such provisions include:

- 1) increased funding levels on an annual basis to keep pace with project cost indexing;
- 2) supplemental fiscal year contributions pending an improved state of the economy in the future; and
- 3) the possibility of extending the duration of S.3385 in the event that the completion of currently authorized rural water projects is not achieved by year 2034.

Mr. Chairman and Committee members, I thank you again for allowing me to testify on this critically important legislation that will help us to complete the construction of our authorized regional water project on a more timely basis thereby increasing our standard of living on the Rocky Boy's Reservation and surrounding communities in north central Montana to that of rest of the U.S. The ability to drink clean water is not too much to ask for.

Thank you.

Rocky Boy's/North Central Montana Regional Water System

Effects of Inflation vs. Annual Federal Funding Levels

March 2012

