



Crow Tribe Water Rights

- Crow Tribe Water Rights Settlement Act of 2010
- Crow Tribe – State of Montana Water Compact of 1999

Crow Tribe - Montana Water Compact

- Ratified by Montana Legislature in 1999.
- Crow Tribe is entitled to at least 650,000 Acre Feet per year from natural flow and storage in the Bighorn River .
- After respecting existing uses, Crow has the right to surface water, ground water, and storage in all basins on the Reservation.
- Approved and ratified by federal government through Title IV of Claims Settlement Act of 2010.
- Ratified by Crow Tribal voters on March 19, 2011.



Crow Tribe Water Rights Settlement Act

- Passed by U.S. Congress as Title IV of the Claims Settlement Act of 2010, P.L. 111-291
- Passed Senate by Unanimous Consent on November 19, 2010
- Passed House by roll call vote on November 30, 2010.
- Signed into law by President Obama on December 8, 2010.
- Ratified by Crow Tribal General Council on March 19, 2011.



Crow Ratification Vote

- Key considerations:
 - Crow Tribal Community Concerns
 - Long-term viability of plans
 - Translation of key issues to Crow audience
 - History of irrigation projects
 - Ongoing failure of local water systems
 - History of Crow Tribe and Big Horn River
 - Cultural role of Big Horn River
 - Yellowtail Dam
 - Montana v. U.S.



History - key milestones

- 1999: Passage of Crow-Montana Compact by Montana State Legislature
- 1999 – 2008: Tribal representatives collaborated with State Reserved Rights Compact Commission to draft federal legislation ratifying compact.
- 1999 – 2008: Studies by engineering firm performed to support federal contribution to Settlement.
- 2008: Draft legislation was submitted in the form of the Crow Water Rights Settlement Act.
- 2008: Montana Congressional Delegation submitted and supports legislation.
- Passage by Congress as Title IV of Claims Settlement Act of 2010, signed into law on December 8, 2010
- March 8, 2011: Projected date for tribal ratification vote

Crow Tribe - Montana Water Rights Compact : Tribal Water Right

- Secures 300,000 acre feet from storage, plus additional allocation in case of shortage
- Secures 500,000 acre feet in natural flow of the Big Horn River
- Secures entire natural flow, groundwater, and storage in all other waterways on the Crow Reservation, specifically: Little Big Horn, Pryor Creek, Rosebud Creek, Youngs Creek, Spring Creek, Squirrel Creek, Sarpy Creek, Cottonwood Creek, Tanner Creek, Five Mile Creek, Blue Creek, Dry Creek, Bitter Creek, and Sage Creek, *with the agreement to respect valid state uses as of 1999 Compact passage by Montana Legislature.*

Crow Tribe - Montana Water Rights Compact

- Priority date of May 7, 1868.
- New uses or developments will be junior to state uses existing at state compact ratification.
- Tribe has right to 500,000 AFY **natural flow** (defined as water that would exist in the Bighorn River and its tributaries in the absence of human intervention) of the Bighorn River. And Tribe has right to 300,000 AFY stored in the Lake.
- Some of the Tribal Water Right must be used for in-stream flow protection. 150,000 AFY must be left in storage. (Gray area: compact and management plan are slightly different.)



Crow Tribe-State of Montana Water Rights Compact

- State contributes \$15M cash, currently in interest-bearing account.
- Provides dispute-resolution structure.
- Federal contribution negotiated and enacted through the federal legislation signed into law in December 2010.
- State and Tribe agreed to pursue federal legislation supporting the compact and by MOA to not withdraw from the compact.
- Tribe waives other water claims within the State of Montana.

Crow Tribe - State of MT Water Compact: Streamflow and Lake Level Management Plan

Key Tribal and State Rights and Obligations

- Tribe dedicates 250,000 AFY of the Tribal Water Right to Instream Flow in the Bighorn River and cannot use the water until 500 feet upstream of the Two Leggins diversion facility.
- Tribe may develop Tribal Water Right dedicated to Instream Flow after the Downstream Measuring Point.
- Tribe will consult with State of Montana prior to any significant Developments above the Downstream Measuring Point to consider ways of minimizing impacts to Instream Flow.
- State will consult with the Tribe concerning management of the Bighorn River fishery.
- State will grant access to Bighorn River and Yellowstone River for Development of Tribal Water Right, provided that diversion facilities are designed and constructed to maintain or bypass Instream Flow and comply with any applicable environmental laws.

Big Horn Ditch - July 12 2011





Target Streamflow Rates - Big Horn River Streamflow and Lake Level Management Plan

1. Optimum Instream Flow – minimum flow target of 2,500 cubic ft. per second
2. Standard Instream Flow – minimum flow target of 2,000 cubic ft. per second
3. Minimum Instream Flow – During low flow periods, minimum target of 1,500 cubic feet per second.

Crow Water Rights Settlement Act

Purposes of the Act

- To achieve a fair, equitable, and final settlement of claims to water rights in Montana for the Crow Tribe and the United States for the benefit of the Tribe and allottees
- To authorize, ratify and confirm the Crow Tribe-Montana Water Rights Compact (1999)
- To appropriate funds necessary to carry out the Compact and the Act

Section 407: Tribal Water Right

- ▶ Section 407 provides that the tribal water rights are ratified, confirmed and declared to be valid.
- ▶ The tribal water rights are defined as the water rights of the Tribe described in article III of the Compact and the water rights provided to the Tribe under Section 8 (Storage Allocation from Bighorn Lake)
- ▶ Section 407 provides that a Tribal Water Code must be established to manage, regulate and govern all uses of the tribal water rights within three years.
- ▶ Section 407 provides substantial protections for allottees.



Section 412: Streamflow and Lake Level Management Plan

- Section 412 describes the Streamflow and Lake Level Management Plan.
- Section 412(b) establishes the Tribe has the exclusive right to develop and market power generation as a water development project on the Yellowtail Afterbay Dam.
- Any hydroelectric power shall be used or marketed by the Tribe and the Tribe shall retain any revenues from the sale of hydroelectric power.

Section 414: Appropriations

- Total Appropriations is approximately \$460 million (plus indexing)
- S. 375/H.R.3563 authorize 6 Separate Appropriations
 1. Rehab. & Improvement of CIP (\$132 million)
 2. Design & Construction of MR&I System (\$246 million)
 3. Tribal Compact Administration (\$5 million)
 4. Energy Development Projects (\$20 million)
 5. MR&I System OM&R (\$47 million)
 6. CIP OM&R (\$10 million)

Crow Indian Project Rehabilitation and Upgrade: \$132 Million in funding

- ▶ S. 375/H.R.3563 provide direct funding and authorization for appropriations necessary to rehabilitate and improvement the Crow Irrigation Project (CIP).
- ▶ The CIP consists of eleven units with a total area of 63,365 acres. There are nine diversion dams, one storage dam, nine canal systems and five drainage systems.
- ▶ The CIP has been operated and maintained by the BIA, with a majority of the Operation, Maintenance and Repair (OM&R) budget weighted towards personnel costs and deferred maintenance.
- ▶ HKM Engineering Inc. evaluated the existing deficiencies with the CIP and determined that the costs involved with rehabilitating and improving the CIP equal approximately \$132 million.

Reno Diversion Dam - April 2011



Big Horn Canal - May 2011



Big Horn Unit - May 2011



Big Horn Unit - May 2011



Design and Construction of MR&I System: \$246 Million

- S. 375/H.R.3563 authorize appropriations to design and construct the Municipal, Rural & Industrial System (MR&I System) on the Reservation.
- Engineering firm examined several options for providing a comprehensive water system to service the population of the Crow Reservation.
- The selected system would provide a reliable supply of safe drinking water for Bighorn and Little Bighorn and would include the capacity for existing and future economic development.
- The major cost items include: surface water diversion and raw water pump station, water treatment plant, pipelines, pump stations, storage tanks, pressure reducing/control valves, service connections, livestock connections, and the SCADA System.
- The estimated cost of designing and constructing the MR&I System is **\$246 million**.



Crow Settlement Fund

- In addition to the funds authorized for the CIP and the MR&I System, the Act establishes the “Crow Settlement Fund” that consists of the 4 other sections:
 1. Tribal Compact Administration
 2. Energy Development Projects
 3. MR&I System OM&R
 4. CIP OM&R

Crow Settlement Fund

MR&I System OM&R Funding

- All water systems require operation and maintenance in order to deliver a reliable supply of water.
- Even though the facilities proposed for the Crow MR&I System would be done through the SCADA System, human effort and adequate funding are still essential for successful operation and maintenance.
- The MR&I OM&R funds were calculated so that there would be a subsidy for these costs that are paid for out of the MR&I OM&R Fund.
- Funding appropriated for MR&I OM&R is **\$47 Million**.



Crow Settlement Fund CIP OM&R Funding

- The CIP OM&R fund is **\$12 million**.
- The current irrigation assessment is \$20.50/acre.
- With the CIP OM&R funds, the Tribe will provide a substantial subsidy for Indian owned land.
- The funds from this account shall only be used to pay irrigation assessments for the Tribe, tribal entities and instrumentalities, tribal members, allottees, and entities owned by the Tribe, tribal members, or allottees.

Benefits to the Crow People

- Enforceable, quantified water rights for all Tribal lands.
- Tribal sovereign authority to govern and allocate tribal water uses.
- Agricultural growth on Crow Lands requires an updated irrigation system! ALL Tribal members benefit from increasing the value of ALL Tribal lands!
- This settlement provides the Crow Tribe the tools to build a better future, and ALL residents of the Crow Reservation can benefit from safe, functioning water systems.

Protecting our future and our lands!

