

110TH CONGRESS
2D SESSION

S. 3355

To authorize the Crow Tribe of Indians water rights settlement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29 (legislative day, JULY 28), 2008

Mr. TESTER (for himself and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To authorize the Crow Tribe of Indians water rights settlement, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Crow Tribe Water
5 Rights Settlement Act of 2008”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to achieve a fair, equitable, and final settle-
9 ment of claims to water rights in the State of Mon-
10 tana for—

1 (A) the Crow Tribe; and

2 (B) the United States for the benefit of
3 the Tribe and allottees;

4 (2) to authorize, ratify, and confirm the Crow
5 Tribe-Montana Water Rights Compact entered into
6 by the Tribe and the State on June 22, 1999;

7 (3) to authorize and direct the Secretary of the
8 Interior—

9 (A) to execute the Crow Tribe-Montana
10 Water Rights Compact; and

11 (B) to take any other action necessary to
12 carry out the Compact in accordance with this
13 Act; and

14 (4) to authorize the appropriation of funds nec-
15 essary for the implementation of the Compact and
16 this Act.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) ALLOTTEE.—The term “allottee” means
20 any individual who holds a beneficial real property
21 interest in an allotment of Indian land that is—

22 (A) located within the Reservation or the
23 ceded strip; and

24 (B) held in trust by the United States.

1 (2) CEDED STRIP.—The term “ceded strip”
 2 means the area identified on the map attached as
 3 appendix 5 to the Compact.

4 (3) CIP OM&R.—The term “CIP OM&R”
 5 means—

6 (A) any recurring or ongoing activity asso-
 7 ciated with the day-to-day operation of the
 8 Crow Irrigation Project;

9 (B) any activity relating to scheduled or
 10 unscheduled maintenance of the Crow Irrigation
 11 Project; and

12 (C) any activity relating to replacement of
 13 a feature of the Crow Irrigation Project.

14 (4) COMPACT.—The term “Compact” means
 15 the water rights compact between the Tribe and the
 16 State contained in section 85–20–901 of the Mon-
 17 tana Code Annotated (2007) (including any exhibit
 18 or part of or amendment to the Compact).

19 (5) CROW IRRIGATION PROJECT.—

20 (A) IN GENERAL.—The term “Crow Irri-
 21 gation Project” means the irrigation project—

22 (i) authorized by section 31 of the Act
 23 of March 3, 1891 (26 Stat. 1040);

24 (ii) managed by the Secretary (acting
 25 through the Bureau of Indian Affairs); and

1 (iii) consisting of the project units
2 of—

- 3 (I) Agency;
4 (II) Big Horn;
5 (III) Forty Mile;
6 (IV) Lodge Grass #1;
7 (V) Lodge Grass #2;
8 (VI) Pryor;
9 (VII) Reno;
10 (VIII) Soap Creek; and
11 (IX) Upper Little Horn.

12 (B) INCLUSION.—The term “Crow Irriga-
13 tion Project” includes land held in trust by the
14 United States for the Tribe and the allottees in
15 the Bozeman Trail and Two Leggins irrigation
16 districts.

17 (6) CROW SETTLEMENT FUND.—The term
18 “Crow Settlement Fund” means the fund estab-
19 lished by section 11(a).

20 (7) ECONOMIC DEVELOPMENT.—The term
21 “Economic Development” means any activity the
22 Tribe determines to further the economic develop-
23 ment of the Tribe.

24 (8) ENFORCEABILITY DATE.—The term “en-
25 forceability date” means the date on which the Sec-

1 retary publishes in the Federal Register the state-
2 ment of findings described in section 10(e).

3 (9) FINAL.—The term “final” with reference to
4 approval of the decree described in section
5 10(e)(1)(A) means—

6 (A) completion of any direct appeal to the
7 Montana Supreme Court of a decree by the
8 Montana Water Court pursuant to section 85–
9 2–235 of the Montana Code Annotated (2007),
10 including the expiration of time for filing of any
11 such appeal; or

12 (B) completion of any appeal to the appro-
13 priate United States Court of Appeals, includ-
14 ing the expiration of time in which a petition
15 for certiorari may be filed in the United States
16 Supreme Court, denial of such petition, or
17 issuance of the United States Supreme Court’s
18 mandate, whichever occurs last.

19 (10) INDIAN TRIBE.—The term “Indian tribe”
20 has the meaning given the term in section 4 of the
21 Indian Self-Determination and Education Assistance
22 Act (25 U.S.C. 450b).

23 (11) MR&I SYSTEM.—

24 (A) IN GENERAL.—The term “MR&I Sys-
25 tem” means the municipal, rural, and industrial

1 water system of the Reservation, generally de-
2 scribed in the document entitled “Crow Indian
3 Reservation Municipal, Rural and Industrial
4 Water System Engineering Report” prepared
5 by HKM Engineering, Inc., and dated July
6 2008.

7 (B) INCLUSIONS.—The term “MR&I Sys-
8 tem” includes—

9 (i) the raw water intake, water treat-
10 ment plant, pipelines, storage tanks, pump-
11 ing stations, pressure-reducing valves, elec-
12 trical transmission facilities, and other
13 items (including real property and ease-
14 ments necessary to deliver potable water to
15 the Reservation) appurtenant to the sys-
16 tem described in subparagraph (A); and

17 (ii) in descending order of construc-
18 tion priority—

19 (I) the Big Horn River Valley
20 Subsystem; and

21 (II) the Little Big Horn River
22 Valley Subsystem.

23 (12) MR&I SYSTEM OM&R.—The term “MR&I
24 System OM&R” means—

1 (A) any recurring or ongoing activity asso-
2 ciated with the day-to-day operation of the
3 MR&I System;

4 (B) any activity relating to scheduled or
5 unscheduled maintenance of the MR&I System;
6 and

7 (C) any activity relating to replacement of
8 project features of the MR&I System.

9 (13) RESERVATION.—The term “Reservation”
10 means the area identified on the map attached as
11 appendix 4 to the Compact.

12 (14) SECRETARY.—The term “Secretary”
13 means the Secretary of the Interior.

14 (15) STATE.—The term “State” means the
15 State of Montana.

16 (16) TRIBAL COMPACT ADMINISTRATION.—The
17 term “Tribal Compact Administration” means any
18 activity relating to—

19 (A) the development or enactment by the
20 Tribe of the tribal water code;

21 (B) establishment by the Tribe of a water
22 resources department; and

23 (C) the operation by the Tribe of that
24 water resources department (or a successor

1 agency) during the 10-year period beginning on
2 the date of establishment of the department.

3 (17) TRIBAL WATER CODE.—The term “tribal
4 water code” means a water code adopted by the
5 Tribe in accordance with section 7(f).

6 (18) TRIBAL WATER RIGHTS.—The term “tribal
7 water rights” means—

8 (A) the water rights of the Tribe described
9 in the Compact; and

10 (B) the water rights provided to the Tribe
11 under section 8.

12 (19) TRIBE.—The term “Tribe” means the
13 Crow Tribe of Indians of the State of Montana on
14 behalf of itself and its members (but not its mem-
15 bers in their capacities as allottees).

16 (20) YELLOWTAIL DAM OM&R.—The term
17 “Yellowtail Dam OM&R” means the charges levied
18 by the Bureau of Reclamation for operation, mainte-
19 nance, and repair costs in association with storage
20 contracts for water stored in Bighorn Lake.

21 (21) WATER DEVELOPMENT PROJECT.—The
22 term “Water Development Project” means any fu-
23 ture potable water system developed by the Tribe to
24 serve the other portions of the Reservation, or such
25 water development projects as the Tribe determines

1 to be appropriate to fulfill the water needs of its
2 members.

3 **SEC. 4. RATIFICATION OF COMPACT.**

4 (a) IN GENERAL.—Except as modified by this Act,
5 and to the extent the Compact does not conflict with this
6 Act, the Compact is authorized, ratified, and confirmed.
7 To the extent amendments to the Compact are executed
8 that are consistent with this Act, such amendments are
9 also authorized, ratified, and confirmed.

10 (b) EXECUTION OF COMPACT.—To the extent that
11 the Compact does not conflict with this Act, the Secretary
12 is directed to and shall promptly execute the Compact, in-
13 cluding all exhibits to or parts of the Compact requiring
14 the signature of the Secretary.

15 (c) NATIONAL ENVIRONMENTAL POLICY ACT OF
16 1969.—

17 (1) ENVIRONMENTAL COMPLIANCE.—In imple-
18 menting the Compact, the Secretary shall promptly
19 comply with all applicable aspects of the National
20 Environmental Policy Act of 1969 (42 U.S.C. 4321
21 et seq.), the Endangered Species Act of 1973 (16
22 U.S.C. 1531 et seq.), and all other applicable envi-
23 ronmental Acts and regulations.

24 (2) EXECUTION OF THE COMPACT.—Execution
25 of the Compact by the Secretary under this section

1 shall not constitute a major Federal action under
2 the National Environmental Policy Act of 1969 (42
3 U.S.C. 4321 et seq.). The Secretary is directed to
4 carry out all Federal compliance necessary to imple-
5 ment the Compact.

6 **SEC. 5. REHABILITATION AND IMPROVEMENT OF THE**
7 **CROW IRRIGATION PROJECT.**

8 (a) IN GENERAL.—The Secretary, acting through the
9 Commissioner of Reclamation, shall carry out such activi-
10 ties as are necessary to rehabilitate and improve the water
11 diversion and delivery features of the Crow Irrigation
12 Project, in accordance with an agreement to be negotiated
13 between the Secretary and the Tribe.

14 (b) LEAD AGENCY.—The Bureau of Reclamation
15 shall serve as the lead agency with respect to any activity
16 to rehabilitate or improve the water diversion or delivery
17 features of the Crow Irrigation Project.

18 (c) SCOPE.—The scope of the rehabilitation and im-
19 provement under this section shall be as described in the
20 document entitled “Engineering Evaluation of Existing
21 Conditions, Crow Agency Rehabilitation Study” prepared
22 by HKM Engineering, Inc., and dated July 2008.

23 (d) COSTS TO TRIBE.—Costs incurred by the Sec-
24 retary in carrying out an agreement under subsection (a)
25 that are allocated to the Tribe shall be nonreimbursable.

1 (e) FUNDING.—The Secretary’s obligation pursuant
2 to this section shall not exceed \$160,653,000, except that
3 the total amount of \$160,653,000 shall be increased or
4 decreased, as appropriate, based on ordinary fluctuations
5 from May 1, 2008, in construction cost indices applicable
6 to the types of construction involved in the rehabilitation
7 and improvement.

8 (f) AGREEMENT.—At the request of the Tribe, in ac-
9 cordance with applicable Federal law, the Secretary shall
10 enter into an agreement with the Tribe to implement the
11 provisions of this section by which the Tribe shall plan,
12 design, and construct any or all of the rehabilitation and
13 improvement required by this section.

14 (g) EFFECT OF ACT.—Nothing in this Act affects
15 any responsibility of the Secretary relating to the oper-
16 ation, maintenance, or repair of the Crow Irrigation
17 Project.

18 **SEC. 6. DESIGN AND CONSTRUCTION OF MR&I SYSTEM.**

19 (a) IN GENERAL.—The Secretary, acting through the
20 Commissioner of Reclamation, shall carry out such activi-
21 ties as are necessary to design and construct the water
22 diversion and delivery features of the MR&I System, in
23 accordance with an agreement to be negotiated between
24 the Secretary and the Tribe.

1 (b) LEAD AGENCY.—The Bureau of Reclamation
2 shall serve as the lead agency with respect to any activity
3 to design and construct the water diversion and delivery
4 features of the MR&I System.

5 (c) SCOPE.—The scope of the design and construc-
6 tion under this section shall be as described in the docu-
7 ment entitled “Crow Indian Reservation Municipal, Rural
8 and Industrial Water System Engineering Report” pre-
9 pared by HKM Engineering, Inc., and dated July 2008.

10 (d) COSTS TO TRIBE.—Costs incurred by the Sec-
11 retary in carrying out an agreement under subsection (a)
12 that are allocated to the Tribe shall be nonreimbursable.

13 (e) FUNDING.—The Secretary’s obligation pursuant
14 to this section shall not exceed \$200,840,000, except that
15 the total amount of \$200,840,000 shall be increased or
16 decreased, as appropriate, based on ordinary fluctuations
17 from May 1, 2008, in construction cost indices applicable
18 to the types of construction involved in the design and con-
19 struction.

20 (f) AGREEMENT.—At the request of the Tribe, in ac-
21 cordance with applicable Federal law, the Secretary shall
22 enter into an agreement with the Tribe to implement the
23 provisions of this section by which the Tribe shall plan,
24 design, and construct any or all of the design and con-
25 struction required by this section.

1 **SEC. 7. TRIBAL WATER RIGHTS.**

2 (a) INTENT OF CONGRESS.—It is the intent of Con-
3 gress to provide to each allottee benefits that are equiva-
4 lent to or exceed the benefits allottees currently possess,
5 taking into consideration—

6 (1) the potential risks, cost, and time delay as-
7 sociated with litigation that would be resolved by the
8 Compact and this Act;

9 (2) the availability of funding under this Act
10 and from other sources;

11 (3) the availability of water from the tribal
12 water rights; and

13 (4) the applicability of section 7 of the Act of
14 February 8, 1887 (25 U.S.C. 381).

15 (b) CONFIRMATION OF TRIBAL WATER RIGHTS.—

16 (1) IN GENERAL.—The tribal water rights are
17 ratified, confirmed, and declared to be valid.

18 (2) USE.—Use of the tribal water rights shall
19 be subject to the terms and conditions established by
20 the Compact.

21 (c) HOLDING IN TRUST.—The tribal water rights
22 shall be held in trust by the United States for the use
23 and benefit of the Tribe, and the allottees in accordance
24 with this section.

25 (d) ALLOTTEES.—As specified in and provided for in
26 this Act:

1 (1) ENTITLEMENT TO WATER.—Any entitle-
2 ment to water of an allottee under Federal law shall
3 be satisfied from the tribal water rights.

4 (2) ALLOCATIONS.—Allottees shall be entitled
5 to a just and equitable allocation of water for irriga-
6 tion purposes.

7 (3) SATISFACTION OF CLAIMS.—The water
8 rights and other benefits granted by this Act shall
9 be considered full satisfaction of any claim of an al-
10 lottee waived pursuant to section 10(a)(2).

11 (4) EXHAUSTION OF REMEDIES.—Before as-
12 serting any claim against the United States under
13 section 7 of the Act of February 8, 1887 (25 U.S.C.
14 381), or any other applicable law, an allottee shall
15 exhaust remedies available under the tribal water
16 code or other applicable tribal law.

17 (5) CLAIMS.—Following exhaustion of remedies
18 available under the tribal water code or other appli-
19 cable tribal law, an allottee may seek relief under
20 section 7 of the Act of February 8, 1887 (25 U.S.C.
21 381), or other applicable law.

22 (6) AUTHORITY.—The Secretary shall have the
23 authority to protect allottees' rights as specified in
24 this section.

25 (e) AUTHORITY OF TRIBE.—

1 (1) IN GENERAL.—Except as provided in para-
 2 graph (2), the Tribe shall have sole authority to allo-
 3 cate, distribute, and lease the tribal water rights—

4 (A) in accordance with the Compact; and

5 (B) subject to approval of the Secretary of
 6 the tribal water code under subsection
 7 (f)(3)(B).

8 (2) LEASES BY ALLOTTEES.—Notwithstanding
 9 paragraph (1), and subject to the tribal water code
 10 and applicable tribal and Federal law, an allottee
 11 may, pursuant to the tribal water code, lease any in-
 12 terest in land held by the allottee, together with any
 13 water right determined to be appurtenant to the in-
 14 terest in land.

15 (f) TRIBAL WATER CODE.—

16 (1) IN GENERAL.—Notwithstanding the time
 17 period set forth in article (IV)(A)(2)(b) of the Com-
 18 pact, not later than 1 year after the enforceability
 19 date, the Tribe shall enact a tribal water code, that
 20 provides for—

21 (A) the management, regulation and gov-
 22 ernance of all uses of the tribal water rights in
 23 accordance with the Compact; and

24 (B) establishment by the Tribe of condi-
 25 tions, permit requirements, and other limita-

1 tions relating to the storage, recovery, and use
2 of the tribal water rights in accordance with the
3 Compact.

4 (2) INCLUSIONS.—Subject to the approval of
5 the Secretary, the tribal water code shall provide
6 that—

7 (A) tribal allocations of water to allottees
8 shall be satisfied with water from the tribal
9 water rights;

10 (B) charges for delivery of water for irriga-
11 tion purposes for allottees shall be assessed on
12 a just and equitable basis;

13 (C) there is a process by which an allottee
14 may request that the Tribe provide water for ir-
15 rigation use in accordance with this Act;

16 (D) there is a due process system for the
17 consideration and determination by the Tribe of
18 any request by an allottee, or any successor in
19 interest to an allottee, for an allocation of such
20 water for irrigation purposes on allotted land,
21 including a process for—

22 (i) appeal and adjudication of any de-
23 nied or disputed distribution of water; and

24 (ii) resolution of any contested admin-
25 istrative decision; and

1 (E) there is a requirement that any allot-
2 tee with a claim relating to the enforcement of
3 rights of the allottee under the tribal water
4 code or relating to the amount of water allo-
5 cated to land of the allottee must first exhaust
6 remedies available to the allottee under tribal
7 law and the tribal water code before initiating
8 an action against the United States or peti-
9 tioning the Secretary pursuant to subsection
10 (d)(5).

11 (3) ACTION BY SECRETARY.—

12 (A) IN GENERAL.—The Secretary shall ad-
13 minister the tribal water rights until the tribal
14 water code is enacted in accordance with para-
15 graph (1) and those provisions requiring ap-
16 proval pursuant to paragraph (2).

17 (B) APPROVAL.—The tribal water code
18 shall not be valid unless—

19 (i) the provisions of the tribal water
20 code required by paragraph (2) are ap-
21 proved by the Secretary; and

22 (ii) each amendment to the tribal
23 water code that affects a right of an allot-
24 tee is approved by the Secretary.

1 (g) EFFECT.—Except as otherwise specifically pro-
2 vided in this section, nothing in this Act—

3 (1) authorizes any action by an allottee against
4 any individual or entity, or against the Tribe, under
5 Federal, State, tribal, or local law; or

6 (2) alters or affects the status of any action
7 pursuant to section 1491(a) of title 28, United
8 States Code.

9 **SEC. 8. STORAGE ALLOCATION FROM BIGHORN LAKE.**

10 (a) STORAGE ALLOCATION TO TRIBE.—

11 (1) IN GENERAL.—As described in and subject
12 to article III(A)(1)(b) of the Compact, the Secretary
13 shall allocate to the Tribe 300,000 acre-feet per year
14 of water stored in Bighorn Lake, Yellowtail Unit,
15 Lower Bighorn Division, Pick Sloan Missouri Basin
16 Program, Montana, under a water right held by the
17 United States and managed by the Bureau of Rec-
18 lamation, as measured at the outlet works of
19 Yellowtail Dam, including—

20 (A) not more than 150,000 acre-feet per
21 year of the allocation, which may be used in ad-
22 dition to the natural flow right described in ar-
23 ticle III(A)(1)(a) of the Compact; and

24 (B) 150,000 acre-feet per year of the allo-
25 cation, which may be used only as supplemental

1 water for the natural flow right described in ar-
2 ticle III(A)(1)(a) of the Compact for use in
3 times of natural flow shortage.

4 (2) TREATMENT.—

5 (A) IN GENERAL.—The allocation under
6 paragraph (1) shall be considered to be part of
7 the tribal water rights.

8 (B) PRIORITY DATE.—The priority date of
9 the allocation under paragraph (1) shall be the
10 priority date of the water right held by the Bu-
11 reau of Reclamation.

12 (C) ADMINISTRATION.—

13 (i) IN GENERAL.—The Tribe shall ad-
14 minister the water allocated under para-
15 graph (1) in accordance with the Compact.

16 (ii) TEMPORARY TRANSFER.—In ac-
17 cordance with subsection (c), the Tribe
18 may temporarily transfer by service con-
19 tract, lease, exchange, or other agreement,
20 not more than 50,000 acre-feet of water
21 allocated under paragraph (1)(A) off the
22 Reservation, subject to the approval of the
23 Secretary and the requirements of the
24 Compact.

25 (b) ALLOCATION AGREEMENT.—

1 (1) IN GENERAL.—As a condition of receiving
2 an allocation under this section, the Tribe shall
3 enter into an allocation agreement with the Sec-
4 retary to establish the terms and conditions of the
5 allocation, in accordance with the terms and condi-
6 tions of the Compact and this Act.

7 (2) INCLUSIONS.—The allocation agreement
8 under paragraph (1) shall include, among other
9 things, a provision that—

10 (A) it is without limit as to term;

11 (B) the Tribe, and not the United States,
12 shall be entitled to all consideration due to the
13 Tribe under any lease, contract, or agreement
14 the Tribe may enter into pursuant to the au-
15 thority in subsection (c);

16 (C) the United States shall have no trust
17 obligation or other obligation to monitor, ad-
18 minister, or account for—

19 (i) any funds received by the Tribe as
20 consideration under any lease, contract, or
21 agreement the Tribe may enter into pursu-
22 ant to the authority in subsection (c); or

23 (ii) the expenditure of such funds;

24 (D) if the facilities at Yellowtail Dam are
25 significantly reduced or are anticipated to be

1 significantly reduced for an extended period of
 2 time, the Tribe shall have the same storage
 3 rights as other storage contractors with respect
 4 to the allocation under this section;

5 (E) the costs associated with the construc-
 6 tion of the storage facilities at Yellowtail Dam
 7 allocable to the Tribe—

8 (i) shall be nonreimbursable; and

9 (ii) shall be excluded from any repay-
 10 ment obligation of the Tribe; and

11 (F) no water service capital charges shall
 12 be due or payable for any water allocated to the
 13 Tribe pursuant to this Act and the allocation
 14 agreement, regardless of whether that water is
 15 delivered for use by the Tribe or is delivered
 16 under any leases, contracts, or agreements the
 17 Tribe may enter into pursuant to the authority
 18 in subsection (c).

19 (c) TEMPORARY TRANSFER FOR USE OFF RESERVA-
 20 TION.—

21 (1) IN GENERAL.—Notwithstanding any other
 22 provision of statutory or common law, subject to
 23 paragraph (2), on approval of the Secretary and
 24 subject to the terms and conditions of the Compact,
 25 the Tribe may enter into a service contract, lease,

1 exchange, or other agreement providing for the tem-
2 porary delivery, use, or transfer of not more than
3 50,000 acre-feet per year of water allocated under
4 subsection (a)(1)(A) for use off the Reservation.

5 (2) REQUIREMENT.—An agreement under para-
6 graph (1) shall not permanently alienate any portion
7 of the water allocated under subsection (a)(1)(A).

8 (d) REMAINING STORAGE.—

9 (1) IN GENERAL.—Upon the date of enactment
10 of this Act, water in Bighorn Lake shall be consid-
11 ered to be fully allocated and no further storage allo-
12 cations shall be made by the Secretary.

13 (2) EFFECT OF SUBSECTION.—Nothing in this
14 subsection prevents the Secretary from renewing the
15 storage contract with Pennsylvania Power and Light
16 Company consistent with the allocation to Pennsyl-
17 vania Power and Light Company in existence on the
18 date of enactment of this Act, or entering into fu-
19 ture agreements with the Northern Cheyenne or
20 Crow Tribes facilitating the Northern Cheyenne and
21 Crow Tribes' use of their allocations of water from
22 Bighorn Lake.

23 **SEC. 9. SATISFACTION OF CLAIMS.**

24 (a) IN GENERAL.—The benefits provided to the Tribe
25 and the allottees under the Compact and this Act shall

1 be considered to completely satisfy all claims of the Tribe
2 and the allottees waived and released pursuant to section
3 10.

4 (b) NO RECOGNITION OF WATER RIGHTS.—Notwith-
5 standing subsection (a) and except as provided in section
6 7(d), nothing in this Act recognizes or establishes any
7 right of a member of the Tribe or an allottee to water
8 within the Reservation or the ceded strip.

9 **SEC. 10. WAIVERS AND RELEASES OF CLAIMS.**

10 (a) IN GENERAL.—

11 (1) CLAIMS FOR WATER RIGHTS BY THE TRIBE
12 ON BEHALF OF ITSELF AND ITS MEMBERS (BUT NOT
13 ITS MEMBERS IN THEIR CAPACITIES AS ALLOTTEES)
14 AND BY THE UNITED STATES ON BEHALF OF THE
15 TRIBE AND ITS MEMBERS (BUT NOT MEMBERS IN
16 THEIR CAPACITIES AS ALLOTTEES).—Subject to the
17 retention of rights set forth in subsection (c), as
18 consideration for the benefits granted under the
19 Compact and this Act, the Tribe, on behalf of the
20 Tribe and tribal members (but not tribal members
21 in their capacities as allottees) is authorized, and the
22 United States, on behalf of the Tribe and its mem-
23 bers (but not members in their capacities as
24 allottees), is authorized and directed, to execute a
25 waiver and release of any claims for water rights, in-

1 including claims based on aboriginal title, within the
2 State arising from time immemorial up to and in-
3 cluding the enforceability date, except to the extent
4 that such claims are recognized in the Compact or
5 this Act.

6 (2) CLAIMS FOR WATER RIGHTS BY THE
7 UNITED STATES ON BEHALF OF ALLOTTEES.—Sub-
8 ject to the retention of rights set forth in subsection
9 (c), the United States on behalf of allottees, as con-
10 sideration for the benefits granted under the Com-
11 pact and this Act, is authorized and directed to exe-
12 cute a waiver and release of any claims for water
13 rights, including claims based on aboriginal title,
14 within the Reservation and the ceded strip arising
15 from time immemorial and, thereafter, forever, ex-
16 cept to the extent that such claims are recognized in
17 the Compact or this Act.

18 (3) WAIVER AND RELEASE OF CLAIMS AGAINST
19 THE UNITED STATES.—Subject to the retention of
20 rights set forth in subsection (c), the Tribe, on be-
21 half of the Tribe and tribal members (but not mem-
22 bers in their capacities as allottees), as consideration
23 for the benefits granted under the Compact and this
24 Act, is authorized to execute a waiver and release of
25 any claims against the United States (or agencies,

1 or employees of the United States) under Federal,
2 State, or other law for—

3 (A) all claims that the Tribe may have
4 against the United States, its agencies, or em-
5 ployees, arising out of, resulting from, or relat-
6 ing in any manner to claims for water rights in
7 the State that the United States acting in its
8 capacity as trustee for the Tribe asserted, or
9 could have asserted, in any court proceeding at
10 any time up to and including the date of enact-
11 ment of this Act;

12 (B) all claims relating to damages, losses,
13 injuries to water, land, or other trust resources
14 due to loss of water or water rights, including
15 claims of interference with, diversion or taking
16 of water, or claims relating to failure to protect,
17 acquire, replace, or develop water or water
18 rights within the State of Montana that accrued
19 at any time up to and including the date of en-
20 actment of this Act and that the Tribe asserted
21 or could have asserted in any court against the
22 United States, its agencies, or employees;

23 (C) all claims arising out of, resulting from
24 or relating in any manner to the litigation of
25 claims relating to the Tribe's water rights in

1 the State that accrued at any time up to and
2 including the date of enactment of this Act; and

3 (D) all claims arising out of, resulting
4 from, or relating in any manner to the negotia-
5 tion, execution, or the adoption of the Compact
6 or the Act at any time up to and including the
7 date of enactment of this Act.

8 (b) EFFECTIVENESS OF WAIVERS AND RELEASES.—
9 The waivers under subsection (a) shall take effect on the
10 enforceability date.

11 (c) RETENTION OF RIGHTS.—Notwithstanding any
12 other provision of this Act or the Compact, the Tribe, on
13 behalf of itself and tribal members (but not members in
14 their capacities as allottees), and the United States, acting
15 as trustee for the Tribe, tribal members, and the allottees,
16 retain the right to assert—

17 (1) claims for enforcement of the Compact, this
18 Act, and any judgment and decree issued by any
19 court of appropriate jurisdiction in connection with
20 the approval of the Compact or this Act;

21 (2) claims for enforcement of any water rights
22 acquired after the date of enactment of this Act;

23 (3) any and all claims relating to activities af-
24 fecting the quality of water;

1 (4) any objections to any claims for water
2 rights under State law by or for any parties in the
3 Montana statewide adjudication of water rights
4 under title 85 of part 2, Montana Code Annotated
5 (2007); and

6 (5) claims for all rights, privileges, immunities,
7 and powers not specifically waived and released pur-
8 suant to subsection (a) or article VII(E) of the Com-
9 pact.

10 (d) EFFECT OF COMPACT AND ACT.—Nothing in the
11 Compact or this Act—

12 (1) affects the authority of the United States,
13 acting in a sovereign capacity, to carry out any other
14 Federal law (including regulations), including laws
15 relating to health, safety, or the environment, such
16 as—

17 (A) the Federal Water Pollution Control
18 Act (33 U.S.C. 1251 et seq.);

19 (B) the Safe Drinking Water Act (42
20 U.S.C. 300f et seq.);

21 (C) the Comprehensive Environmental Re-
22 sponse, Compensation, and Liability Act of
23 1980 (42 U.S.C. 9601 et seq.); and

24 (D) the Solid Waste Disposal Act (42
25 U.S.C. 6901 et seq.) (commonly known as the

1 “Resource Conservation and Recovery Act of
2 1976”);

3 (2) affects the authority of the United States to
4 carry out any activity as a trustee for any Indian
5 tribe other than the Tribe (or for any allottee of
6 such an Indian tribe); or

7 (3) confers on any State court jurisdiction—

8 (A) to enforce Federal environmental law
9 regarding the duties of the United States; or

10 (B) to conduct judicial review of any Fed-
11 eral agency action.

12 (e) ENFORCEABILITY DATE.—

13 (1) IN GENERAL.—The enforceability date shall
14 be the date on which the Secretary publishes in the
15 Federal Register a statement of findings that—

16 (A) the Montana Water Court has issued
17 a final judgment and decree approving the
18 Compact, or if the Montana Water Court is
19 found to lack jurisdiction, the United States
20 District Court of jurisdiction has approved the
21 Compact as a consent decree and such approval
22 is final;

23 (B) \$44,000,000 has been deposited in the
24 Crow Settlement Fund;

1 (C) the Secretary has fulfilled his obliga-
2 tions to negotiate an agreement with the Tribe
3 in accordance with sections 5(a) and 6(a);

4 (D) the State has appropriated and paid
5 into an interest-bearing escrow account any
6 payments then due to the Tribe under the Com-
7 pact;

8 (E) the Tribe has ratified the Compact by
9 submitting the Act and the Compact to a vote
10 by the tribal membership for approval or dis-
11 approval and the tribal membership has voted
12 to approve the Act and the Compact by a ma-
13 jority of votes cast on the day of the vote, as
14 certified by the Secretary and the Tribe; and

15 (F) the Secretary has fulfilled the require-
16 ments of section 8(a).

17 (f) FAILURE OF ENFORCEABILITY DATE TO
18 OCCUR.—If, because of the failure the enforceability date
19 to occur by December 31, 2014, this section does not be-
20 come effective, the Tribe, tribal members, and allottees,
21 and the United States on behalf of the Tribe, tribal mem-
22 bers, and allottees, shall retain the right to assert any and
23 all claims for water within the State of Montana.

24 (g) TOLLING OF CLAIMS.—

1 (1) IN GENERAL.—Each applicable period of
2 limitation and time-based equitable defense relating
3 to a claim described in this section shall be tolled for
4 the period beginning on the date of enactment of
5 this Act and ending on the date on which the
6 amounts authorized to be appropriated to carry out
7 this Act are appropriated.

8 (2) EFFECT OF SUBSECTION.—Nothing in this
9 subsection revives any claim or tolls any period of
10 limitation or time-based equitable defense that ex-
11 pired before the date of enactment of this Act.

12 **SEC. 11. CROW SETTLEMENT FUND.**

13 (a) ESTABLISHMENT.—There is established in the
14 Treasury of the United States the Crow Settlement Fund,
15 consisting of such amounts as are deposited in the fund
16 under subsections (c) through (h) of section 14.

17 (b) ACCOUNTS OF CROW SETTLEMENT FUND.—The
18 Secretary shall establish in the Crow Settlement Fund the
19 following accounts:

20 (1) The Tribal Compact Administration ac-
21 count, consisting of amounts authorized pursuant to
22 section 14(c).

23 (2) The Economic Development account, con-
24 sisting of authorized pursuant to section 14(d).

1 (3) The Water Development Projects account,
2 consisting of authorized pursuant to section 14(e).

3 (4) The MR&I System OM&R account, con-
4 sisting of authorized pursuant to section 14(f).

5 (5) The Yellowtail Dam OM&R account, con-
6 sisting of amounts authorized pursuant to section
7 14(g).

8 (6) The CIP OM&R account, consisting of au-
9 thorized pursuant to section 14(h).

10 (c) DEPOSITS TO CROW SETTLEMENT FUND.—

11 (1) IN GENERAL.—The Secretary of the Treas-
12 ury shall promptly deposit in the Crow Settlement
13 Fund any amounts appropriated for that purpose.

14 (2) DEPOSITS TO ACCOUNTS.—The Secretary of
15 the Treasury shall deposit amounts in the accounts
16 of the Crow Settlement Fund established under sub-
17 section (b) in descending order of priority, with
18 highest priority given to the Tribal Compact Admin-
19 istration account established under subsection
20 (b)(1).

21 (d) MANAGEMENT.—

22 (1) IN GENERAL.—The Secretary shall manage
23 the Crow Settlement Fund, make investments from
24 the Crow Settlement Fund, and make monies avail-
25 able from the Crow Settlement Fund for distribution

1 to the Tribe consistent with the American Indian
2 Trust Fund Management Reform Act of 1994 (25
3 U.S.C. 4001 et seq.) (referred to in this subsection
4 as the “Trust Fund Reform Act”).

5 (2) INVESTMENT OF CROW SETTLEMENT
6 FUND.—The Secretary shall invest amounts in the
7 Crow Settlement Fund in accordance with—

8 (A) the Act of April 1, 1880 (25 U.S.C.
9 161);

10 (B) the first section of the Act of June 24,
11 1938 (25 U.S.C. 162a);

12 (C) the obligations of Federal corporations
13 and Federal Government-sponsored entities the
14 charter documents of which provide that the ob-
15 ligations of the entities are lawful investments
16 for federally managed funds, including—

17 (i) the obligations of the United
18 States Postal Service described in section
19 2005 of title 39, United States Code;

20 (ii) bonds and other obligations of the
21 Tennessee Valley Authority described in
22 section 15d of the Tennessee Valley Au-
23 thority Act of 1933 (16 U.S.C. 831n–4);

24 (iii) mortgages, obligations, and other
25 securities of the Federal Home Loan Mort-

1 gage Corporation described in section 303
 2 of the Federal Home Loan Mortgage Cor-
 3 poration Act (12 U.S.C. 1452); and

4 (iv) bonds, notes, and debentures of
 5 the Commodity Credit Corporation de-
 6 scribed in section 4 of the Act of March 8,
 7 1938 (15 U.S.C. 713a-4); and

8 (D) the obligations referred to in section
 9 201 of the Social Security Act (42 U.S.C. 401).

10 (3) DISTRIBUTIONS FROM CROW SETTLEMENT
 11 FUND.—The Secretary shall disburse funds from the
 12 Crow Settlement Fund in accordance with this sec-
 13 tion, as follows:

14 (A) TRIBAL COMPACT ADMINISTRATION
 15 ACCOUNT.—The Secretary shall make expendi-
 16 tures from this account for expenditures by the
 17 Tribe for Tribal Compact Administration, upon
 18 request by the Tribe for an expenditure in-
 19 cluded in the definition of Tribal Compact Ad-
 20 ministration.

21 (B) ECONOMIC DEVELOPMENT AC-
 22 COUNT.—The Secretary shall disburse funds
 23 from this account to the Tribe upon the Tribe's
 24 presentation of an economic development
 25 project proposed to be funded for an expendi-

1 ture included in the definition of Economic De-
2 velopment.

3 (C) WATER DEVELOPMENT PROJECT AC-
4 COUNT.—The Secretary shall disburse funds
5 from this account to the Tribe upon the Tribe’s
6 presentation of a request for funding for a
7 project included in the definition of Water De-
8 velopment Project.

9 (D) YELLOWTAIL DAM OM&R ACCOUNT.—
10 The Secretary shall expend interest accrued on
11 the funds from this account in the prior fiscal
12 year for Yellowtail Dam OM&R costs in the
13 subsequent year. The interest expended by the
14 Secretary shall be used to reduce the Yellowtail
15 Dam OM&R costs to all tribal water users on
16 a pro rata basis for that year.

17 (E) CIP OM&R ACCOUNT.—The Secretary
18 shall expend interest accrued on the funds from
19 this account in the prior fiscal year for CIP
20 OM&R costs in the subsequent year. The inter-
21 est expended by the Secretary shall be used to
22 reduce the CIP OM&R costs to all tribal water
23 users on a pro rata basis for that year.

24 (4) WITHDRAWALS BY TRIBE.—

1 (A) IN GENERAL.—The Tribe may with-
2 draw any portion of amounts in the Crow Set-
3 tlement Fund on approval by the Secretary of
4 a tribal management plan in accordance with
5 the Trust Fund Reform Act.

6 (B) REQUIREMENTS.—

7 (i) IN GENERAL.—In addition to the
8 requirements under the Trust Fund Re-
9 form Act, the tribal management plan of
10 the Tribe under subparagraph (A) shall re-
11 quire that the Tribe spend any amounts
12 withdrawn from the Crow Settlement Fund
13 in accordance with this Act.

14 (ii) ENFORCEMENT.—The Secretary
15 may carry out such judicial or administra-
16 tive actions as the Secretary determines to
17 be necessary to enforce a tribal manage-
18 ment plan to ensure that amounts with-
19 drawn by the Tribe from the Crow Settle-
20 ment Fund under this paragraph are used
21 in accordance with this Act.

22 (C) LIABILITY.—The Secretary and the
23 Secretary of the Treasury shall not be liable for
24 the expenditure or investment of amounts with-

1 drawn from the Crow Settlement Fund by the
2 Tribe under this paragraph.

3 (D) EXPENDITURE PLAN.—

4 (i) IN GENERAL.—For each fiscal
5 year, the Tribe shall submit to the Sec-
6 retary for approval an expenditure plan for
7 any portion of the amounts described in
8 subparagraph (A) that the Tribe elects not
9 to withdraw under this paragraph during
10 the fiscal year.

11 (ii) INCLUSION.—An expenditure plan
12 under clause (i) shall include a description
13 of the manner in which, and the purposes
14 for which, funds of the Tribe remaining in
15 the Crow Settlement Fund will be used
16 during subsequent fiscal years.

17 (iii) APPROVAL.—On receipt of an ex-
18 penditure plan under clause (i), the Sec-
19 retary shall approve the plan if the Sec-
20 retary determines that the plan is—

21 (I) reasonable; and

22 (II) consistent with this Act.

23 (5) ANNUAL REPORTS.—The Tribe shall submit
24 to the Secretary annual reports describing each ex-

1 penditure by the Tribe of amounts in the Crow Set-
2 tlement Fund during the preceding calendar year.

3 (6) CERTAIN PER CAPITA DISTRIBUTIONS PRO-
4 HIBITED.—No amount in the Crow Settlement Fund
5 shall be distributed to any member of the Tribe on
6 a per capita basis.

7 (e) AVAILABILITY.—The amounts in the Crow Settle-
8 ment Fund shall be available for use by the Secretary and
9 withdrawal by the Tribe beginning on the enforceability
10 date.

11 (f) STATE CONTRIBUTION.—The State contribution
12 shall be provided in accordance with article VI(A) of the
13 Compact.

14 **SEC. 12. YELLOWTAIL DAM, MONTANA.**

15 (a) STREAMFLOW AND LAKE LEVEL MANAGEMENT
16 PLAN.—

17 (1) In accordance with Federal approval of the
18 Compact, the Secretary is not limited from exer-
19 cising discretion as provided in section 4F of the
20 Streamflow and Lake Level Management Plan re-
21 ferred to in and part of the Compact.

22 (2) Bighorn Lake water management, including
23 the Streamflow and Lake Level Management Plan,
24 is a Federal activity and review and enforcement of

1 any water management decisions shall be as pro-
2 vided by Federal law.

3 (3) The Streamflow and Lake Level Manage-
4 ment Plan referred to in and part of the Compact
5 shall be interpreted to clearly reflect paragraphs (1)
6 and (2).

7 (b) POWER GENERATION.—

8 (1) Notwithstanding any other provision of law,
9 the Tribe shall have the exclusive right to develop
10 and market power generation as a water develop-
11 ment project on the Yellowtail Afterbay Dam.

12 (2) The Bureau of Reclamation shall cooperate
13 with the Tribe on such project.

14 (3) Any hydroelectric power generated under
15 this provision shall be used or marketed by the
16 Tribe.

17 (4) The Tribe shall retain any revenues from
18 the sale of hydroelectric power generated under this
19 provision.

20 (5) The United States shall have no trust obli-
21 gation to monitor, administer, or account for the
22 revenues received by the Tribe, or the expenditure of
23 the revenues.

24 (c) CONSULTATION WITH TRIBE.—The Bureau of
25 Reclamation shall consult with the Tribe on at least a

1 quarterly basis on all issues relating to the Bureau's man-
2 agement of Yellowtail Dam.

3 **SEC. 13. MISCELLANEOUS PROVISIONS.**

4 (a) WAIVER OF SOVEREIGN IMMUNITY BY THE
5 UNITED STATES.—Except as provided in subsections (a)
6 through (c) of section 208 of the Department of Justice
7 Appropriation Act, 1953 (43 U.S.C. 666), nothing in this
8 Act waives the sovereign immunity of the United States.

9 (b) OTHER TRIBES NOT ADVERSELY AFFECTED.—
10 Nothing in this Act quantifies or diminishes any land or
11 water right, or any claim or entitlement to land or water,
12 of an Indian tribe, band, or community other than the
13 Tribe.

14 (c) LIMITATION ON CLAIMS FOR REIMBURSEMENT.—
15 With respect to Indian land within the Reservation or the
16 ceded strip—

17 (1) the United States shall not submit against
18 any Indian-owned land located within the Reserva-
19 tion or the ceded strip any claim for reimbursement
20 of the cost to the United States of carrying out this
21 Act and the Compact; and

22 (2) no assessment of any Indian-owned land lo-
23 cated within the Reservation or the ceded strip shall
24 be made regarding that cost.

1 (d) LIMITATION ON LIABILITY OF UNITED
2 STATES.—

3 (1) IN GENERAL.—The United States has no
4 trust or other obligation—

5 (A) to monitor, administer, or account for,
6 in any manner, any funds provided to the Tribe
7 by any party to the Compact other than the
8 United States; or

9 (B) to review or approve any expenditure
10 of those funds.

11 (2) INDEMNIFICATION.—The Tribe shall indem-
12 nify the United States, and hold the United States
13 harmless, with respect to all claims (including claims
14 for takings or breach of trust) arising from the re-
15 ceipt or expenditure of amounts described in para-
16 graph (1)(A).

17 (e) EFFECT ON CURRENT LAW.—Nothing in this sec-
18 tion affects any provision of law (including regulations)
19 in effect on the day before the date of enactment of this
20 Act with respect to preenforcement review of any Federal
21 environmental enforcement action.

22 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

23 (a) REHABILITATION AND IMPROVEMENT OF CROW
24 IRRIGATION PROJECT.—There is authorized to be appro-
25 priated \$160,653,000, adjusted to reflect changes since

1 May 1, 2008, under section 5(d) for the rehabilitation and
2 improvement of the Crow Irrigation Project.

3 (b) DESIGN AND CONSTRUCTION OF MR&I SYS-
4 TEM.—There is authorized to be appropriated
5 \$200,840,000, adjusted to reflect changes since May 1,
6 2008, under section 6(d) for the design and construction
7 of the MR&I System.

8 (c) TRIBAL COMPACT ADMINISTRATION.—There is
9 authorized to be appropriated \$4,000,000 for Tribal Com-
10 pact Administration.

11 (d) ECONOMIC DEVELOPMENT PROJECTS.—There is
12 authorized to be appropriated \$40,000,000 for Economic
13 Development Projects.

14 (e) WATER DEVELOPMENT PROJECTS.—There is au-
15 thorized to be appropriated \$37,594,000 (as adjusted to
16 reflect changes during the period beginning on May 1,
17 2008, and ending on the date of appropriation) for Water
18 Development Projects.

19 (f) MR&I SYSTEM OM&R.—There is authorized to
20 be appropriated \$40,513,000 (as adjusted to reflect
21 changes during the period beginning on May 1, 2008, and
22 ending on the date of appropriation) for MR&I OM&R.

23 (g) YELLOWTAIL DAM OM&R.—There is authorized
24 to be appropriated \$30,876,000 (as adjusted to reflect
25 changes during the period beginning on May 1, 2008, and

1 ending on the date of appropriation) for Yellowtail Dam
2 OM&R.

3 (h) CIP OM&R.—There is authorized to be appro-
4 priated \$12,736,000 (as adjusted to reflect changes dur-
5 ing the period beginning on May 1, 2008, and ending on
6 the date of appropriation) for CIP OM&R.

7 (i) ENVIRONMENTAL COMPLIANCE.—There are au-
8 thorized to be appropriated such sums as are necessary
9 to carry out all necessary environmental compliance activi-
10 ties undertaken by the Secretary associated with the Com-
11 pact and this Act.

12 (j) BUREAU OF RECLAMATION COSTS FOR CROW IR-
13 RIGATION PROJECT.—There are authorized to be appro-
14 priated such sums as are necessary for the Bureau of Rec-
15 lamation to carry out its role as lead agency for the reha-
16 bilitation and improvement of the Crow Irrigation Project.

17 (k) BUREAU OF RECLAMATION COSTS FOR MR&I
18 SYSTEM.—There are authorized to be appropriated such
19 sums as are necessary for the Bureau of Reclamation to
20 carry out its role as lead agency for the design and con-
21 struction of the MR&I System.

22 **SEC. 15. REPEAL ON FAILURE TO MEET EFFECTIVE DATE.**

23 If the Secretary does not publish a statement of find-
24 ings under section 10(e) by December 31, 2014—

1 (1) this Act is repealed effective January 1,
2 2015, and any action taken by the Secretary and
3 any contract or agreement pursuant to the authority
4 provided under any provision of this Act shall be
5 void;

6 (2) any amounts appropriated under section 14,
7 together with any interest on those amounts, shall
8 immediately revert to the general fund of the Treas-
9 ury; and

10 (3) any amounts made available under section
11 14 that remain unexpended shall immediately revert
12 to the general fund of the Treasury.

○