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FILED
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Montana Water Court

**IN THE WATER COURT OF THE STATE OF MONTANA
CROW TRIBE OF INDIANS - MONTANA COMPACT**

IN THE MATTER OF THE ADJUDICATION)
OF EXISTING AND RESERVED RIGHTS)
TO THE USE OF WATER, BOTH SURFACE) **CASE NO. WC-2012-06**
AND UNDERGROUND, OF THE CROW)
TRIBE OF INDIANS OF THE STATE OF)
MONTANA)

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR
COMMENCEMENT OF SPECIAL PROCEEDINGS
FOR CONSIDERATION OF THE WATER RIGHTS QUANTIFIED IN THE
CROW TRIBE OF INDIANS - MONTANA COMPACT**

THIS MATTER came before the Court on motion of the State of Montana, the Crow Tribe, and the United States of America to commence the proceedings required under applicable law to review and approve the water rights of the Crow Tribe, quantified in the Compact between the Tribe, State and United States found at Montana statutory section 85-20-901 (Crow Compact). The Court, based on the submissions of the State, Tribe, and the United States, and being otherwise advised in these matters, FINDS, CONCLUDES, and ORDERS as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The State, Tribe, and the United States (the "Settling Parties") have concluded a Compact settling the water right claims of the Tribe, and the United States on behalf of the Tribe, its members and allottees, in accordance with Mont. Code Ann. § 85-2-702. The Crow Compact was ratified by the Montana Legislature in 1999 (codified

at Mont. Code Ann. § 85-20-901), by the Congress of the United States in late 2010 (P.L. 111-291, Title IV) (Crow Tribe Water Rights Settlement Act herein after “the Act”), ratified by the Tribe in 2011, and signed by the Settling Parties on April 27, 2012.

2. On October 24, 2012, the Settling Parties filed in the Water Court a Joint Motion for Incorporation of the Crow Tribe’s Compact into Preliminary and Final Decrees and for a Consolidated Hearing on any Objections to such Preliminary Decree, and initiated the Water Court process required by the Act and Montana law to settle the water rights of the Crow Tribe. The Settling Parties asked the Water Court to adopt a procedure allowing consolidation of nine basins into a single judicial unit, in accordance with Montana Code Annotated section 85-2-215 and Mont. R. Civ. P. 42(a) and the issuance of a preliminary decree within this judicial unit of a single class of claims encompassing the water rights defined in the Crow Compact. This procedure is consistent with the proceeding envisioned by the Settling Parties in Article VII.B.3 of the Crow Compact and endorsed by the Legislature in its passage of the Compact in 1999. This special procedure has been utilized in the review of other water rights settled through compacts entered into between the State and the United States or Tribes, the State and the United States. *See e.g.*, National Park Service (Case No. WC-94-1), the Northern Cheyenne (Case No. WC-93-1), Fort Peck (Case No. WC-92-1), Rocky Boy’s (Case No. WC-2000-01), and Bureau of Land Management (Case No. WC-2008-10).

3. The Settling Parties asked in their Joint Motion that the Court include the water rights quantified in the Crow Compact in the final decrees for the following nine basins:

a. Basin 42A, the mainstem of Rosebud Creek and its tributaries from its headwaters to its confluence with the Yellowstone River;

b. Basin 42B, the mainstem of the Tongue River and its tributaries from the Montana-Wyoming border to above and including Hanging Woman Creek;

- c. Basin 42KJ, the mainstem of the Yellowstone River and its tributaries between Bighorn River and Tongue River;
- d. Basin 43D, the mainstem of the Clarks Fork Yellowstone River and its tributaries from the Montana-Wyoming border to its confluence with the Yellowstone River;
- e. Basin 43E, the mainstem of Pryor Creek and its tributaries from its headwaters to its confluence with the Yellowstone River;
- f. Basin 43N, the mainstem of the Shoshone River and its tributaries within Montana;
- g. Basin 43O, the mainstem of the Little Bighorn River and its tributaries from the Montana-Wyoming border to its confluence with the Bighorn River;
- h. Basin 43P, the mainstem of the Bighorn River, below Greybull River, and its tributaries (exclusive of the Little Bighorn River and its tributaries) within Montana to its confluence with the Yellowstone River; and
- i. Basin 43Q, the mainstem of the Yellowstone River and its tributaries between Clarks Fork Yellowstone River and Bighorn River.

4. The Court finds that the Settling Parties have established special circumstances as to why the Court should adopt procedures for consideration of the Crow Compact as a single preliminary decree, rather than piecemeal in nine separate preliminary decrees in the normal adjudication of the basins affected. While the Court is unable to accord priority status to all claims filed in the Adjudication, significant reasons exist to prioritize water rights quantified in the Crow Compact in a separate proceeding.

First, the requested procedure is consistent with the procedures adopted for reviewing the water rights quantified in other compacts, such as the National Park Service (No. WC-94-1), Northern Cheyenne (No. WC-93-1), Fort Peck (No. WC-92-1), Rocky Boy's (No. WC-2000-01), and Bureau of Land Management (No. WC-2010-08).

Second, differences between the geographic and hydrologic divisions associated with the adjudication and the settlement process authorized by the Legislature warrant special proceedings to allow integration of settlements into decrees. Section 85-2-702 of the Montana Code Annotated authorizes the Reserved Water Rights Compact Commission to enter into negotiations with Indian Tribes claiming reserved water rights in Montana on a government-to-government basis. This approach can lead to agreements that track political boundaries rather than the basin boundaries utilized in the adjudication. The Crow Compact includes water rights in nine Water Court basins. The Crow Compact includes general provisions that apply to water rights in each basin. Nine separate considerations of the same provisions could lead to conflicting interpretation and to duplication of effort.

Third, the nine basins affected by the Crow Compact are in various stages of the adjudication process. Three basins are currently being examined: Basins 43N, 43P and 42A. Three basins have Preliminary Decrees issued: Basins 43E, 43O, and 42B. Three basins have Temporary Preliminary Decrees issued: Basins 43D, 43Q, and 42KJ. Consideration of the Crow Compact on a basin-by-basin approach would occur over an extended period of time. Background information necessary to evaluate the water rights settled in the Crow Compact could become stale.

Fourth, time is of the essence in this matter. Under the Act ratifying the Crow Compact (P.L. 111-291, Title IV), if Water Court approval of the water rights in the Compact is not final by March 31, 2016, the approval, ratification, and confirmation of the Compact and the Act shall be repealed. P.L. 111-291, §§ 415(1) and 410(e)(1). Most of the basins identified in Finding 3 will not have final decrees issued by March 31, 2016. If the Court were to stay proceeding on the Crow Compact until all the decrees in the nine basins were issued in the normal course of the adjudication process, the approval, ratification, and confirmation of the entire Crow Compact by the United States

would expire before the water rights quantified in the Crow Compact could even be considered by the Water Court.

Fifth, expenditure of some Federal funds under the Federal Act and the principal of the State funds under the Crow Compact are limited until the decree has become final in the Water Court. Crow Compact, article VI.A.2; Mont. Code Ann. § 85-20-904; P.L. 111-291, §§ 410(e)(1), 411(f)(1) and 414(d).

Sixth, the United States is willing to pay the costs for service and publication of the notice of the Preliminary Decree containing the Compact, and otherwise has represented to the Court that it is in the best interest of the Tribe and the United States to have these water rights confirmed on a timely basis.

5. Issuance of the Preliminary Decree containing the Compact as authorized by Montana Code Annotated section 85-2-231(2)-(4) is a reasonable and appropriate measure to commence a process that will lead to the approval and incorporation of the Compact into Montana's general water right adjudication effort or to the Compact's disapproval.

6. The Settling Parties have demonstrated good cause for entry of a preliminary decree for this matter under Montana Code Annotated section 85-2-218(1)(b).

7. Commencement of these special proceedings is consistent with prior Water Court practice in approving and incorporating reserved water rights quantified in compacts into the Montana Adjudication.

8. Prioritization of this decree for issuance furthers the intent of the 1999 Montana Legislature which approved the Crow Compact and incorporated it into the Montana Code. It is fitting and timely to issue the decree now to incorporate the relevant provisions of the Compact into the Water Court Adjudication.

9. These Findings, Conclusions, and Order are issued by the Associate Water Judge as authorized by Montana Code Annotated sections 3-7-224(2) and 85-2-231.

WHEREFORE, for good cause shown, the Court hereby enters the following:

II. ORDER

10. The Court grants a portion of the Settling Parties' motion to commence special proceedings to consider the Crow Compact. The Court sets forth in this Order the initial set of procedures necessary to commence these special proceedings and to provide notice of the Crow Compact in accordance with section 85-2-233, MCA.

11. The water rights quantified in the Crow Compact shall be incorporated into a preliminary decree in those basins in which a source for a water right set forth in the Crow Compact is located. Those basins are: Basin 42A, the mainstem of Rosebud Creek and its tributaries from its headwaters to its confluence with the Yellowstone River; Basin 42B, the mainstem of the Tongue River and its tributaries from the Montana-Wyoming border to above and including Hanging Woman Creek; Basin 42KJ, the mainstem of the Yellowstone River and its tributaries between Bighorn River and Tongue River; Basin 43D, the mainstem of the Clarks Fork Yellowstone River and its tributaries from the Montana-Wyoming border to its confluence with the Yellowstone River; Basin 43E, the mainstem of Pryor Creek and its tributaries from its headwaters to its confluence with the Yellowstone River; Basin 43N, the mainstem of the Shoshone River and its tributaries within Montana; Basin 43O, the mainstem of the Little Bighorn River and its tributaries from the Montana-Wyoming border to its confluence with the Bighorn River; Basin 43P, the mainstem of the Bighorn River, below Greybull River, and its tributaries (exclusive of the Little Bighorn River and its tributaries) within Montana to its confluence with the Yellowstone River; and Basin 43Q, the mainstem of the Yellowstone River and its tributaries between Clarks Fork Yellowstone River and Bighorn River. These basins are hereinafter collectively referred to as the "Crow Basins."

12. For the purposes of these special proceedings, the Court consolidates the Crow Basins into a single judicial unit in accordance with section 85-2-215, MCA. In

accordance with Montana Code Annotated sections 85-2-218(1) and (3), the Court hereby designates the Crow Basins as a priority basin for the purposes of these proceedings.

13. For the purposes of these proceedings and in accordance with Montana Code Annotated section 85-2-231(3), the Court hereby designates all of the water rights quantified in the Crow Compact, as a single class of claims within the Crow Basins.

14. The Court hereby issues a preliminary decree under Montana Code Annotated section 85-2-231(2)-(4) within the Crow Basins in accordance with the requirements of section 85-20-901, Part VII(B(3)). This preliminary decree contains the terms of the entire compact; the contents of the Federal Act ratifying the Crow Compact (P.L. 111-291, Title IV), and these Findings of Fact, Conclusions of Law and Order.

15. The Court shall, in a separate and forthcoming order, outline the necessary process to provide notice to the potentially affected water users in the Crow Basins.

16. Any proceedings following the issuance of this Order shall be pursuant to further order of the Court.

17. Nothing herein constitutes approval of the Compact, the preliminary decree of the Compact or any objections thereto.

DATED this 21 day of December, 2012.



Russ McElyea
Associate Water Judge

CERTIFICATE OF SERVICE

I, Swithin J. Shearer, Deputy Clerk of Court of the Montana Water Court, hereby certify that a true and correct copy of the above **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** was duly served upon the persons listed below by depositing the same, postage prepaid, in the United States mail.

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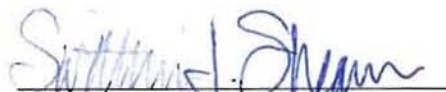
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DATED this 21st day of December, 2012.


Swithin J. Shearer
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