

**CROW TRIBE-MONTANA
WATER RIGHTS SETTLEMENT
Montana Code Annotated
§85-2-901 (2007)**

BACKGROUND of the SETTLEMENT

In the fall of 1998, officials from the Crow Tribe approached the Montana Governor and Attorney General with a proposal for a settlement of three important issues that had gone unresolved for decades: tribal water rights, coal severance tax litigation, and “Section 2” land ownership.

The Montana Reserved Water Rights Compact Commission and the Crow worked closely with the negotiating team for the United States and engaged in intensive negotiations and public involvement on the water rights issues. In April, 1999, the Tribe and Compact Commission finalized a compact which recognizes a significant water right for the Tribe while protecting the rights of existing water users. At the same time, the Governor and Attorney General negotiated a final settlement of the contentious coal tax litigation. These two agreements were ratified by the Montana Legislature in special session on June 16, 1999. The remaining approval process for the Crow Tribe water rights settlement includes Congressional ratification, a Crow Tribal vote and approval by the Montana Water Court. The “Section 2” issue is addressed by the Tribe and the United States in separate Congressional legislation.

CROW WATER RIGHTS COMPACT

In general, the Crow water rights compact:

- provides water from surface flow, groundwater and storage for the Crow Tribe for existing and future Tribal water needs (Article III)
- provides protection for all state and Tribal current water uses in the affected water basins from the Tribe’s future exercise of its water rights; also protects the local conservation districts’ right to future water use. (Article III)
- “closes” certain basins and sub-basins to new water appropriations under State law; small domestic and stock uses, as well as changes and transfers of water rights, can continue. (Article III)
- creates an administrative process for resolution of any future disputes between Tribal and non-Tribal water users.
- Authorizes the State to pay the Tribe the \$15 million plus interest in escrow in consideration for the Tribe’s dismissal of the coal severance lawsuit and for the State’s “cost-share” for the water rights settlement and also authorizes the Governor and Attorney General to agree that any future State production taxes on the Tribe’s coal will be paid to the Tribe.

CROW TRIBAL WATER RIGHT

BIGHORN RIVER

- 500,000 AFY of natural flow of the River including groundwater for existing and future Tribal uses.
- The United States will allocate 300,000 AFY of storage in Bighorn Lake to the Tribe.
 - 150,000 AFY of the 300,000 AFY used for Tribal development,
 - not more than 50,000 AFY from this 150,000 AFY for use off-Reservation.
 - 150,000 AFY of the 300,000 used only to supplement the natural flow right.

- All of the rights listed for future Tribal development can be developed only if there is no adverse effect on current Tribal and non-Tribal water uses.
- The State will not issue any new appropriations on this River, down to the confluence of the Yellowstone River, however, new small domestic and stock uses as well as changes and transfers can continue. Local conservation districts can also develop their water reservations.
- A management plan was developed by the Tribe, State and United States for instream flows and lake levels.

LITTLE BIGHORN RIVER and PRYOR CREEK

- The Tribe may use all available surface and groundwater on the Reservation not needed to satisfy current water uses.
- In both basins the State will not issue any new appropriations, however, new small domestic and stock uses as well as changes and transfers can continue.

ROSEBUD CREEK

- The Tribe may use all available surface and groundwater on the Reservation not needed to satisfy all current downstream uses provided for in the Northern Cheyenne Compact and certain portions of the Northern Cheyenne Tribal Water Right are protected.
- The basin is closed to new appropriations under State law on the Reservation, however, new small domestic and stock uses as well as changes and transfers can continue.

BITTER CREEK, BLUE CREEK, BLUEWATER CREEK, COTTONWOOD CREEK, DRY CREEKS (TONGUE RIVER BASIN AND YELLOWSTONE BASIN) FIVE MILE CREEK, FLY CREEK, SAGE CREEK, SARPY CREEK, SQUIRREL CREEK, TANNER CREEK and YOUNG'S CREEK

- The Tribe may use all available surface and groundwater on the Reservation not needed to satisfy current water users.
- The portion of these drainages on the Crow Reservation is closed to new appropriations under State law, however, new small domestic and stock uses as well as changes and transfers can continue.

CEDED STRIP

- The Crow Tribe will have the right to use 47,000 AFY from any water source on lands or interests on the Ceded Strip which the Congress restored to the Tribe or on any lands acquired and held in trust for the Tribe. If the water source is the Bighorn River, the amount developed shall be deducted from the on-Reservation water allocated to the Tribe from the Bighorn River. No more than 7,000 AFY can be diverted in any one month.

ADMINISTRATION/DISPUTE RESOLUTION

- The Tribe will administer the Tribal water right. The State will administer water rights recognized under State law. The BIA Project will use part of the Tribal water right and will continue to be administered by the BIA under applicable federal law.
- All Tribal development, either on the Reservation or the Ceded Strip, will be reviewed by the Tribe and the Montana Department of Natural Resources and Conservation to determine if it will impact any current water users. Any unresolved disputes will be referred to the Crow-Montana Compact Board.