

SUMMARY DESCRIPTION OF WATER RIGHTS IN THE CROW TRIBE OF INDIANS - MONTANA COMPACT

The United States, the Crow Tribe, and the State of Montana have entered into a Compact settling the water rights of the Crow Tribe (“Crow Compact”). The Crow Compact settles the water rights of the Tribe and its members, 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. § 85-2-901), by the Congress of the United States in late 2010 (P.L. 111-291, Title IV), by the Crow Tribe in 2011, and signed by the Settling Parties on April 27, 2012.

The Crow Compact recognizes water rights for the Crow Tribe in the following basins:

- 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.

Article III of the Crow Compact provides the key water rights provisions:

- The Tribe has a quantified water right of 500,000 Acre Feet per Year (AFY) to the natural flow of the Bighorn River (Basin 43P) and its tributaries, and groundwater for tribal uses, with a Tribal priority date of May 7, 1868, but agrees to share shortages in natural flow with all water rights recognized under state law with a priority date before the June 22, 1999 ratification by the Montana Legislature of the Crow Compact.

- The Tribe is entitled to an allocation of 300,000 AFY of water stored in Bighorn Lake. Of the storage allocation, 150,000 AFY may be put to use in addition to the natural flow right (including 50,000 AFY that may be used outside the Reservation) and 150,000 AFY may be used only to supplement natural flow in times of natural flow shortage.
- The Tribe has rights to all surface flow, groundwater and storage in the other eight basins on the Reservation (43O, 43E, 42A, 42B, 42KJ, 43D, 43N, 43Q) with a Tribal priority date of May 7, 1868, but agrees to share shortages in natural flow with all water rights recognized under state law with a priority date before the June 22, 1999 ratification by the Montana Legislature of the Crow Compact.
- The Tribe may use 47,000 AFY on the Ceded Strip with a Tribal priority date of May 7, 1868, but agrees to share shortages in natural flow with all water rights recognized under state law with a priority date before the June 22, 1999 ratification by the Montana Legislature of the Crow Compact. Authorized uses include all current uses of the Tribal water right and future uses as limited by the Compact.
- The Tribe agrees that any future uses of the Tribal water right cannot adversely affect valid state-based water rights and uses of the Tribal water right in existence before June 22, 1999.
- All basins that include the Tribal water right are closed to the issuance of new water rights permits under state law after June 22, 1999.
- The parties agree to create a streamflow and lake level management plan for the Bighorn River, from the Yellowtail Afterbay Dam to a point immediately upstream of the Two Leggins diversion, and for Bighorn Lake.
- The State will administer all water rights recognized under state law and the Tribe will administer the Tribal water right through a water code adopted by the Tribe and approved by the Secretary of the Interior. A Crow – Montana Compact Board has jurisdiction to resolve disputes between the Tribal water right and water rights recognized under state law.
- A final decree of the Tribal water right in the Montana General Stream Adjudication and the dismissal of related federal court litigation regarding the Tribal water right.

This document summarizes key parts of a lengthy legal document, the Crow Compact; reviewers are urged to read the Compact on any issue of particular interest.