

## STREAMFLOW AND LAKE LEVEL MANAGEMENT PLAN BIGHORN RIVER AND BIGHORN LAKE

THIS STREAMFLOW AND LAKE LEVEL MANAGEMENT PLAN FOR BIGHORN RIVER AND BIGHORN LAKE, was developed by the State of Montana, the Crow Tribe, and the Secretary of the United States Department of the Interior pursuant to the Crow Tribe - Montana Water Rights Compact.

WHEREAS, the Legislature for the State of Montana on June 17, 1999, ratified Crow Tribe - Montana Water Rights Compact (hereinafter "Compact"). Mont. Code Ann. § 85-20-901. The Compact, at Section A.7., of Article III, provides authority for the Tribe, the Secretary, and the State to develop a streamflow and lake level management plan (hereinafter, "management plan") for the Bighorn River, from the Yellowtail Afterbay Dam to a point immediately upstream of the Two Leggings diversion, and for Bighorn Lake, and to establish terms and conditions for use of the Tribal Water Right set forth in Section A., of Article III.

WHEREAS, Yellowtail Dam and Bighorn Lake were authorized by the United States Congress under the Flood Control Act of December 22, 1944, as a unit of the Pick-Sloan Missouri River Project to provide water for irrigation, municipal, and industrial uses; to provide power generation and flood control; and to enhance fish and wildlife and recreation in the Bighorn River and Bighorn Lake.

WHEREAS, Yellowtail Dam and Bighorn Lake are operated by the Bureau of Reclamation to meet their authorized purposes as described within the Flood Control Act of December 22, 1944, as amended.

WHEREAS, the Legislature for the State of Montana intends the management plan to provide enforceable mechanisms that protect the long-term biological viability of the blue ribbon wild trout fishery on the Bighorn River from the Yellowtail Afterbay Dam to the Two Leggings diversion.

WHEREAS, the Parties have recognized the shared objectives to provide adequate and reliable instream flows in the Bighorn River for the river fisheries and to maintain lake levels for recreation and lake fisheries, consistent with the need to provide water to meet existing and future needs of the Crow Tribe for purposes authorized under the Compact.

NOW THEREFORE, the Parties hereto do mutually agree as follows:

1. Definitions:

A. "Developed" or "Development" means, for this management plan, water diverted or removed from the Bighorn River above the Downstream Measuring Point or from Bighorn Lake pursuant to the Tribal Water Right for use within or outside the Crow Reservation as authorized by the Compact.

B. "Downstream Measuring Point" means, for this management plan, the point immediately upstream of the Two Leggins diversion further described as a point 500 feet upstream from the Two Leggins diversion facility.

C. "Instream Flow" means, for this management plan, the water flowing in the Bighorn River Released from Yellowtail Afterbay Darn and maintained throughout the reach from the Yellowtail Afterbay Darn to the Downstream Measuring Point to maintain the fisheries resource.

D. "Tribal Water Right" shall be as defined in the Compact, and as further defined for this management plan, means the combined use of the 500,000 AFY of Natural Flow (Section A.1 .a., of Article III of the Compact) as supplemented by the 150,000 AFY of low flow period storage (Section A.1.b.(1).(b)., of Article III of the Compact) and the 150,000 AFY of storage (Section A.1.b.(1).(a)., of Article III of the Compact).

E. Definitions for "AFY," "Bighorn Lake," "Effective Date," "Crow Irrigation Project," "Natural Flow," "Parties," "Release," "Reservation" "Secretary," "State," "Tribe," and "United States" shall be as defined in the Compact.

2. The Crow Tribe shall:

A. Permanently dedicate 250,000 AFY of the Tribal Water Right to Instream Flow in the Bighorn River.

B. Dedicate to Instream Flow such portion of the Tribal Water Right as may be necessary, up to a maximum of 30,000 AFY, to replace any water diverted by the Northern Cheyenne Tribe or its designee from the Bighorn River above the Downstream Measuring Point or from Bighorn Lake pursuant

to Article 11.7. of the Northern Cheyenne Tribe-Montana Compact. Mont. Code Ann. § 85-20-301.

C. Permanently dedicate to Instream Flow no less than 50 percent of any water salvaged as a result of rehabilitation and betterment of the Bighorn Unit of the Crow Irrigation Project.

D. In addition to Sections 2.A. through 2.C. above, dedicate to Instream Flow, on an annual basis, any portion of the Tribal Water Right that is not Developed.

E. Manage those portions of the Tribal Water Right dedicated to Instream Flow under Sections A through D above in accordance with all applicable laws and regulations and Section 4 of this management plan in consultation with the State of Montana and the Bureau of Reclamation.

F. Nothing in this Section restricts Development of the Tribal Water Right dedicated to Instream Flow below the Downstream Measuring Point. The Tribe will consult with the State of Montana prior to any significant Developments above the Downstream Measuring Point to consider ways of minimizing impacts to Instream Flow.

3. The State of Montana shall:

A. Consult with the Tribe concerning management of the Bighorn River fishery.

B. Pursuant to the right to divert provided in the Compact, the State shall grant access to the Bighorn River and Yellowstone River to the Tribe for the Development of its Tribal Water Right, provided that, diversion facilities are designed and constructed to maintain or bypass Instream Flow and comply with any applicable environmental laws.

4. The Bureau of Reclamation shall:

A. Hold an annual coordination meeting with the Tribe and the Montana Department of Fish, Wildlife and Parks.

B. Coordinate monthly plans for providing Instream Flow Releases from the Afterbay Dam to the Bighorn River with the Tribe and the Montana

Department of Fish, Wildlife and Parks. These plans shall be based on the best available science, in an effort to make the most effective use of those resources committed to protection of the Bighorn River fishery.

C. Release water from Yellowtail Afterbay Dam to the Bighorn River, as measured at the St. Xavier gaging station, in accordance with monthly plans and available water supply under the following operating criteria:

1. Optimum Instream Flow: A minimum flow target of 2,500 cubic feet per second. Under current conditions, this flow level provides good spawning, rearing and cover conditions for fish in all major side channels. Optimum Instream Flow shall be provided as consistently as possible as determined by the monthly plans.

2. Standard Instream Flow: A minimum flow target of 2,000 cubic feet per second. Under current conditions, this flow level provides adequate spawning and rearing conditions for fish in most side channels but cover for adult fish is limited. Standard Instream Flow shall be provided when water is not available to meet Optimum Instream Flow as determined by the monthly plans.

3. Minimum Instream Flow: During low flow periods, the minimum flow target of 1,500 cubic feet per second. Under current conditions, this flow level protects main channel habitat for fish but not important side channels. Fish populations will decline at this flow level. Minimum Instream Flow shall be provided when water is not available to meet Optimum Instream Flow or Standard Instream Flow as determined by the monthly plans. In the event of emergency, dam safety inspection, or when the forecasted water supply indicates that maintaining the Minimum Instream Flow presents a serious risk of fully depleting available storage, Releases may be reduced below 1,500 cubic feet per second.

D. Release water from Yellowtail Afterbay Dam to the Bighorn River in the amount equal to all new Development within the reach from the Yellowtail Afterbay Dam to the Downstream Measuring Point. This Release shall be made in addition to the Releases set forth in Section 4.C. above and shall be measured at the St. Xavier gaging station.

E. Provide Bighorn Lake levels to meet fishery and recreation needs in accordance with monthly plans and available water supply.

F. Make decisions on Releases to meet Instream Flow to the Bighorn River and provide desired lake levels in Bighorn Lake in accordance with the following: (1) criteria set forth in Section 4.C. above; (2) fishery and recreation needs for Bighorn Lake; (3) management directives from the Tribe under Section 2.E.; (4) flood control needs as determined by the Corps of Engineers; (5) available and forecasted water supply; and (6) actual and forecasted demands for the authorized uses of natural flow and water stored in Bighorn Lake.

G. Be responsible for Releases as provided in this Section but shall not be responsible for maintenance and enforcement of the Instream Flow below the St. Xavier gaging station.

5. The State agrees that this management plan shall be considered part of the Compact. The State agrees that this management plan is not binding on the Crow Tribe or the United States until the Effective Date of the Compact. To become effective, the Compact must be ratified by Congress and must also be ratified by the Crow Tribe. This management plan will not be implemented until the Effective Date of the Compact.

6. This management plan may be modified, consistent with Federal, Tribal and State law, at any time upon agreement of the State of Montana, the Crow Tribe, and the Secretary of the United States Department of the Interior.

7. The Parties agree that Sections 2.A through 2.D. of this management plan are terms of the Compact pursuant to Section A.1., of Article III of the Compact, and are valid and enforceable conditions on the use of the Tribal Water Right. Enforcement shall be in accordance with Section F., of Article IV and all other relevant provisions of the Compact or as provided by Congress. The State reserves the right to propose alternative or additional terms, conditions, or enforcement provisions in Congressional legislation and to withdraw its agreement to the management plan and to exercise its right under Section A.4.d., of Article VII.

This management plan is agreed to this 16th day of June, 2000.

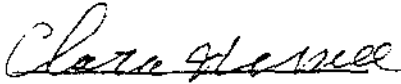
STATE OF MONTANA



Marc Racicot, Governor

The Crow Tribe agrees that this management plan shall be considered part of the Compact. As with the Compact, this management plan is not binding on the Crow Tribe until the Effective Date of the Compact. To become effective, the Compact must be ratified by Congress and must also be ratified by Crow Tribal referendum vote.

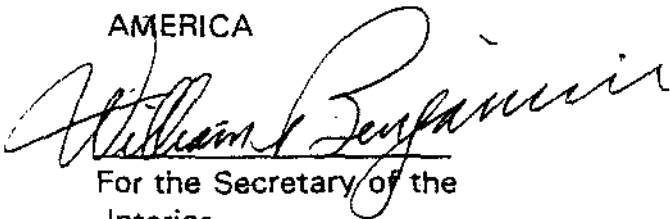
CROW TRIBE



Clara Nomee, Chairman

The United States of America agrees that this management plan shall be considered part of the Compact. As with the Compact, this management plan is not binding on the United States of America until the Effective Date of the Compact. To become effective, the Compact must be ratified by Congress and must also be ratified by the Crow Tribe, and is contingent on proper authorization and sufficient appropriations.

UNITED STATES OF  
AMERICA



For the Secretary of the  
Interior