

110TH CONGRESS  
2D SESSION

# S. 3355

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

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## 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

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## 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 Leggings 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-

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

(2) CLAIMS FOR WATER RIGHTS BY THE UNITED STATES ON BEHALF OF ALLOTTEES.—Subject to the retention of rights set forth in subsection (c), the United States on behalf of allottees, as consideration for the benefits granted under the Compact and this Act, is authorized and directed to execute a waiver and release of any claims for water rights, including claims based on aboriginal title, within the Reservation and the ceded strip arising from time immemorial and, thereafter, forever, except to the extent that such claims are recognized in the Compact or this Act.

(3) WAIVER AND RELEASE OF CLAIMS AGAINST THE UNITED STATES.—Subject to the retention of rights set forth in subsection (c), the Tribe, on behalf of the Tribe and tribal members (but not members in their capacities as allottees), as consideration for the benefits granted under the Compact and this Act, is authorized to execute a waiver and release of 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-



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

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

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

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

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

(B) ECONOMIC DEVELOPMENT AC-  
COUNT.—The Secretary shall disburse funds  
from this account to the Tribe upon the Tribe's  
presentation of an economic development  
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.

○