

111TH CONGRESS
1ST SESSION

H. R. 3563

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 2009

Mr. REHBERG introduced the following bill; which was referred to the Committee on Natural Resources

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 2009”.

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 (2009) (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) Bighorn;
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 (2009),
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) JOINT STIPULATION OF SETTLEMENT.—
24 The term “joint stipulation of settlement” means
25 the joint stipulation of settlement relating to the

1 civil action styled Crow Tribe of Indians v. Norton,
2 No. 02–284 (D.D.C. 2006).

3 (12) MR&I SYSTEM.—

4 (A) IN GENERAL.—The term “MR&I Sys-
5 tem” means the municipal, rural, and industrial
6 water system of the Reservation, generally de-
7 scribed in the document entitled “Crow Indian
8 Reservation Municipal, Rural and Industrial
9 Water System Engineering Report” prepared
10 by HKM Engineering, Inc., and dated July
11 2008.

12 (B) INCLUSIONS.—The term “MR&I Sys-
13 tem” includes—

14 (i) the raw water intake, water treat-
15 ment plant, pipelines, storage tanks, pump-
16 ing stations, pressure-reducing valves, elec-
17 trical transmission facilities, and other
18 items (including real property and ease-
19 ments necessary to deliver potable water to
20 the Reservation) appurtenant to the sys-
21 tem described in subparagraph (A); and

22 (ii) in descending order of construc-
23 tion priority—

24 (I) the Bighorn River Valley Sub-
25 system; and

1 (II) the Little Bighorn River Val-
2 ley Subsystem.

3 (13) MR&I SYSTEM OM&R.—The term “MR&I
4 System OM&R” means—

5 (A) any recurring or ongoing activity asso-
6 ciated with the day-to-day operation of the
7 MR&I System;

8 (B) any activity relating to scheduled or
9 unscheduled maintenance of the MR&I System;
10 and

11 (C) any activity relating to replacement of
12 project features of the MR&I System.

13 (14) RESERVATION.—The term “Reservation”
14 means the area identified on the map attached as
15 appendix 4 to the Compact.

16 (15) SECRETARY.—The term “Secretary”
17 means the Secretary of the Interior.

18 (16) STATE.—The term “State” means the
19 State of Montana.

20 (17) TRIBAL COMPACT ADMINISTRATION.—The
21 term “Tribal Compact Administration” means any
22 activity relating to—

23 (A) the development or enactment by the
24 Tribe of the tribal water code;

1 (B) establishment by the Tribe of a water
2 resources department; and

3 (C) the operation by the Tribe of that
4 water resources department (or a successor
5 agency) during the 10-year period beginning on
6 the date of establishment of the department.

7 (18) TRIBAL WATER CODE.—The term “tribal
8 water code” means a water code adopted by the
9 Tribe in accordance with section 7(f).

10 (19) TRIBAL WATER RIGHTS.—The term “tribal
11 water rights” means—

12 (A) the water rights of the Tribe described
13 in article III of the Compact; and

14 (B) the water rights provided to the Tribe
15 under section 8.

16 (20) TRIBE.—The term “Tribe” means the
17 Crow Tribe of Indians of the State of Montana on
18 behalf of itself and its members (but not its mem-
19 bers in their capacities as allottees).

20 (21) YELLOWTAIL DAM OM&R.—The term
21 “Yellowtail Dam OM&R” means the charges levied
22 by the Bureau of Reclamation for operation, mainte-
23 nance, and repair costs in association with storage
24 contracts for water stored in Bighorn Lake.

1 (22) WATER DEVELOPMENT PROJECT.—The
2 term “Water Development Project” means any fu-
3 ture potable water system developed by the Tribe to
4 serve the other portions of the Reservation, or such
5 water development projects as the Tribe determines
6 to be appropriate to fulfill the water needs of its
7 members.

8 **SEC. 4. RATIFICATION OF COMPACT.**

9 (a) IN GENERAL.—Except as modified by this Act,
10 and to the extent the Compact does not conflict with this
11 Act, the Compact is authorized, ratified, and confirmed.
12 To the extent amendments are executed to make the Com-
13 pact consistent with this Act, such amendments are also
14 authorized, ratified, and confirmed.

15 (b) EXECUTION OF COMPACT.—To the extent that
16 the Compact does not conflict with this Act, the Secretary
17 is directed to and shall promptly execute the Compact, in-
18 cluding all exhibits to or parts of the Compact requiring
19 the signature of the Secretary. Nothing herein precludes
20 the Secretary from approving modifications to appendices
21 or exhibits to the Compact not inconsistent with this Act,
22 to the extent such modifications do not otherwise require
23 Congressional approval pursuant to the Trade and Inter-
24 course Act, 25 U.S.C. 177, or pursuant to other Federal
25 statute.

1 (c) NATIONAL ENVIRONMENTAL POLICY ACT OF
2 1969.—

3 (1) ENVIRONMENTAL COMPLIANCE.—In imple-
4 menting the Compact, the Secretary shall promptly
5 comply with all applicable aspects of the National
6 Environmental Policy Act of 1969 (42 U.S.C. 4321
7 et seq.), the Endangered Species Act of 1973 (16
8 U.S.C. 1531 et seq.), and all other applicable envi-
9 ronmental Acts and regulations.

10 (2) EXECUTION OF THE COMPACT.—Execution
11 of the Compact by the Secretary under this section
12 shall not constitute a major Federal action under
13 the National Environmental Policy Act of 1969 (42
14 U.S.C. 4321 et seq.). The Secretary is directed to
15 carry out all Federal compliance necessary to imple-
16 ment the Compact.

17 **SEC. 5. REHABILITATION AND IMPROVEMENT OF THE**
18 **CROW IRRIGATION PROJECT.**

19 (a) IN GENERAL.—The Secretary, acting through the
20 Commissioner of Reclamation, shall carry out such activi-
21 ties as are necessary to rehabilitate and improve the water
22 diversion and delivery features of the Crow Irrigation
23 Project, in accordance with an agreement to be negotiated
24 between 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 rehabilitate or improve the water diversion or delivery
4 features of the Crow Irrigation Project.

5 (c) SCOPE.—The scope of the rehabilitation and im-
6 provement under this section shall be as described in the
7 document entitled “Engineering Evaluation of Existing
8 Conditions, Crow Agency Rehabilitation Study” prepared
9 by HKM Engineering, Inc., and dated July 2008.

10 (d) COSTS.—Costs incurred by the Secretary in car-
11 rying out an agreement under subsection (a) that are allo-
12 cated to the users of the tribal water rights shall be nonre-
13 imburseable.

14 (e) FUNDING.—The Secretary’s obligation pursuant
15 to this section shall not exceed \$160,653,000, except that
16 the total amount of \$160,653,000 shall be increased or
17 decreased, as appropriate, based on ordinary fluctuations
18 from May 1, 2008, in construction cost indices applicable
19 to the types of construction involved in the rehabilitation
20 and improvement.

21 (f) AGREEMENT.—At the request of the Tribe, in ac-
22 cordance with applicable Federal law, the Secretary shall
23 enter into an agreement with the Tribe to implement the
24 provisions of this section by which the Tribe shall plan,

1 design, and construct any or all of the rehabilitation and
2 improvement required by this section.

3 **SEC. 6. DESIGN AND CONSTRUCTION OF MR&I SYSTEM.**

4 (a) IN GENERAL.—The Secretary, acting through the
5 Commissioner of Reclamation, shall carry out such activi-
6 ties as are necessary to design and construct the water
7 diversion and delivery features of the MR&I System, in
8 accordance with an agreement to be negotiated between
9 the Secretary and the Tribe.

10 (b) LEAD AGENCY.—The Bureau of Reclamation
11 shall serve as the lead agency with respect to any activity
12 to design and construct the water diversion and delivery
13 features of the MR&I System.

14 (c) SCOPE.—The scope of the design and construc-
15 tion under this section shall be as described in the docu-
16 ment entitled “Crow Indian Reservation Municipal, Rural
17 and Industrial Water System Engineering Report” pre-
18 pared by HKM Engineering, Inc., and dated July 2008.

19 (d) COSTS TO TRIBE.—Costs incurred by the Sec-
20 retary in carrying out an agreement under subsection (a)
21 that are allocated to the Tribe shall be nonreimbursable.

22 (e) FUNDING.—The Secretary’s obligation pursuant
23 to this section shall not exceed \$200,840,000, except that
24 the total amount of \$200,840,000 shall be increased or
25 decreased, as appropriate, based on ordinary fluctuations

1 from May 1, 2008, in construction cost indices applicable
2 to the types of construction involved in the design and con-
3 struction.

4 (f) AGREEMENT.—At the request of the Tribe, in ac-
5 cordance with applicable Federal law, the Secretary shall
6 enter into an agreement with the Tribe to implement the
7 provisions of this section by which the Tribe shall plan,
8 design, and construct any or all of the design and con-
9 struction required by this section.

10 (g) CONVEYANCE OF TITLE TO MR&I SYSTEM FA-
11 CILITIES.—

12 (1) IN GENERAL.—The Secretary shall convey
13 title to each MR&I System facility or section of a
14 MR&I System facility authorized under subsection
15 (a) (including any appropriate interests in land) to
16 the Tribe after completion of construction of a
17 MR&I System facility or a section of a MR&I Sys-
18 tem facility that is operating and delivering water.

19 (2) EFFECT OF CONVEYANCE.—The conveyance
20 of title to each MR&I System facility shall not affect
21 the application of the Endangered Species Act of
22 1973 (16 U.S.C. 1531 et seq.) relating to the use
23 of the water associated with the MR&I System.

24 (3) LIABILITY.—

1 (A) IN GENERAL.—Effective on the date of
2 the conveyance authorized by this subsection,
3 the United States shall not be held liable by
4 any court for damages of any kind arising out
5 of any act, omission, or occurrence relating to
6 the land, buildings, or facilities conveyed under
7 this subsection, other than damages caused by
8 acts of negligence committed by the United
9 States, or by employees or agents of the United
10 States, prior to the date of conveyance.

11 (B) TORT CLAIMS.—Nothing in this sec-
12 tion increases the liability of the United States
13 beyond the liability provided in chapter 171 of
14 title 28, United States Code (commonly known
15 as the “Federal Tort Claims Act”).

16 (4) NOTICE OF PROPOSED CONVEYANCE.—Not
17 later than 45 days before the date of a proposed
18 conveyance of title to any MR&I System facility, the
19 Secretary shall submit to the Committee on Natural
20 Resources of the House of Representatives and to
21 the Committee on Energy and Natural Resources of
22 the Senate notice of the conveyance of each MR&I
23 System facility.

24 (5) OBLIGATION OF THE FEDERAL GOVERN-
25 MENT AFTER COMPLETION.—After construction of

1 the MR&I System is completed and the amounts re-
2 quired to be deposited in the MR&I System OM&R
3 account have been deposited under section 11 the
4 Federal Government shall have no obligation to pay
5 for the operation, maintenance, and replacement
6 costs of the MR&I System.

7 **SEC. 7. TRIBAL WATER RIGHTS.**

8 (a) INTENT OF CONGRESS.—It is the intent of Con-
9 gress to provide to each allottee benefits that are equiva-
10 lent to or exceed the benefits allottees currently possess,
11 taking into consideration—

12 (1) the potential risks, cost, and time delay as-
13 sociated with litigation that would be resolved by the
14 Compact and this Act;

15 (2) the availability of funding under this Act
16 and from other sources;

17 (3) the availability of water from the tribal
18 water rights; and

19 (4) the applicability of section 7 of the Act of
20 February 8, 1887 (25 U.S.C. 381) and this Act to
21 protect the interests of allottees.

22 (b) CONFIRMATION OF TRIBAL WATER RIGHTS.—

23 (1) IN GENERAL.—The tribal water rights are
24 ratified, confirmed, and declared to be valid.

1 (2) USE.—Use of the tribal water rights shall
2 be subject to the terms and conditions established by
3 the Compact.

4 (c) HOLDING IN TRUST.—The tribal water rights
5 shall be held in trust by the United States for the use
6 and benefit of the Tribe, and the allottees in accordance
7 with this section.

8 (d) ALLOTTEES.—As specified in and provided for in
9 this Act:

10 (1) APPLICABILITY OF ACT OF FEBRUARY 8,
11 1887.—The provisions of section 7 of the Act of Feb-
12 ruary 8, 1887 (25 U.S.C. 381), relating to the use
13 of water for irrigation purposes shall apply to the
14 tribal water rights.

15 (2) ENTITLEMENT TO WATER.—Any entitle-
16 ment to water of an allottee under Federal law shall
17 be satisfied from the tribal water rights.

18 (3) ALLOCATIONS.—Allottees shall be entitled
19 to a just and equitable allocation of water for irriga-
20 tion purposes.

21 (4) SATISFACTION OF CLAIMS.—The water
22 rights and other benefits granted by this Act shall
23 be considered full satisfaction of any claim of an al-
24 lottee waived pursuant to section 10(a)(2).

1 (5) EXHAUSTION OF REMEDIES.—Before as-
2 serting any claim against the United States under
3 section 7 of the Act of February 8, 1887 (25 U.S.C.
4 381), or any other applicable law, an allottee shall
5 exhaust remedies available under the tribal water
6 code or other applicable tribal law.

7 (6) CLAIMS.—Following exhaustion of remedies
8 available under the tribal water code or other appli-
9 cable tribal law, an allottee may seek relief under
10 section 7 of the Act of February 8, 1887 (25 U.S.C.
11 381), or other applicable law.

12 (7) AUTHORITY.—The Secretary shall have the
13 authority to protect allottees' rights as specified in
14 this section.

15 (e) AUTHORITY OF TRIBE.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the Tribe shall have authority to allocate,
18 distribute, and lease the tribal water rights—

19 (A) in accordance with the Compact; and

20 (B) subject to approval of the Secretary of
21 the tribal water code under subsection
22 (f)(3)(B).

23 (2) LEASES BY ALLOTTEES.—Notwithstanding
24 paragraph (1), an allottee may lease any interest in
25 land held by the allottee, together with any water

1 right determined to be appurtenant to the interest in
2 land.

3 (f) TRIBAL WATER CODE.—

4 (1) IN GENERAL.—Notwithstanding the time
5 period set forth in article IV(A)(2)(b) of the Com-
6 pact, not later than 3 years after the date on which
7 the Tribe ratifies the Compact as set forth in section
8 10(e)(1)(E), the Tribe shall enact a tribal water
9 code, that provides for—

10 (A) the management, regulation and gov-
11 ernance of all uses of the tribal water rights in
12 accordance with the Compact; and

13 (B) establishment by the Tribe of condi-
14 tions, permit requirements, and other limita-
15 tions relating to the storage, recovery, and use
16 of the tribal water rights in accordance with the
17 Compact.

18 (2) INCLUSIONS.—Subject to the approval of
19 the Secretary, the tribal water code shall provide
20 that—

21 (A) tribal allocations of water to allottees
22 shall be satisfied with water from the tribal
23 water rights;

1 (B) charges for delivery of water for irriga-
2 tion purposes for allottees shall be assessed on
3 a just and equitable basis;

4 (C) there is a process by which an allottee
5 may request that the Tribe provide water for ir-
6 rigation use in accordance with this Act;

7 (D) there is a due process system for the
8 consideration and determination by the Tribe of
9 any request by an allottee, or any successor in
10 interest to an allottee, for an allocation of such
11 water for irrigation purposes on allotted land,
12 including a process for—

13 (i) appeal and adjudication of any de-
14 nied or disputed distribution of water; and

15 (ii) resolution of any contested admin-
16 istrative decision; and

17 (E) there is a requirement that any allot-
18 tee with a claim relating to the enforcement of
19 rights of the allottee under the tribal water
20 code or relating to the amount of water allo-
21 cated to land of the allottee must first exhaust
22 remedies available to the allottee under tribal
23 law and the tribal water code before initiating
24 an action against the United States or peti-

1 tioning the Secretary pursuant to subsection
2 (d)(6).

3 (3) ACTION BY SECRETARY.—

4 (A) IN GENERAL.—The Secretary shall ad-
5 minister the tribal water rights until the tribal
6 water code is enacted in accordance with para-
7 graph (1) and those provisions requiring ap-
8 proval pursuant to paragraph (2).

9 (B) APPROVAL.—The tribal water code
10 shall not be valid unless—

11 (i) the provisions of the tribal water
12 code required by paragraph (2) are ap-
13 proved by the Secretary; and

14 (ii) each amendment to the tribal
15 water code that affects a right of an allot-
16 tee is approved by the Secretary.

17 (C) APPROVAL PERIOD.—

18 (i) IN GENERAL.—Except as provided
19 by clause (ii), if the Secretary does not ap-
20 prove or disapprove the tribal water code
21 before the date that is 180 days after the
22 date on which the tribal water code is sub-
23 mitted to the Secretary for approval, the
24 tribal water code shall be considered to
25 have been approved by the Secretary to the

1 extent that it is not inconsistent with the
2 Compact or this Act.

3 (ii) MUTUAL EXTENSION OF AP-
4 PROVAL PERIOD.—The tribal water code
5 may not be considered to have been ap-
6 proved by the Secretary under clause (i) if
7 the Secretary and the Tribe agree to ex-
8 tend the approval period.

9 (g) EFFECT.—Except as otherwise specifically pro-
10 vided in this section, nothing in this Act—

11 (1) authorizes any action by an allottee against
12 any individual or entity, or against the Tribe, under
13 Federal, State, tribal, or local law; or

14 (2) alters or affects the status of any action
15 pursuant to section 1491(a) of title 28, United
16 States Code.

17 **SEC. 8. STORAGE ALLOCATION FROM BIGHORN LAKE.**

18 (a) STORAGE ALLOCATION TO TRIBE.—

19 (1) IN GENERAL.—As described in and subject
20 to article III(A)(1)(b) of the Compact, the Secretary
21 shall allocate to the Tribe 300,000 acre-feet per year
22 of water stored in Bighorn Lake, Yellowtail Unit,
23 Lower Bighorn Division, Pick Sloan Missouri Basin
24 Program, Montana, under a water right held by the
25 United States and managed by the Bureau of Rec-

1 lamation, as measured at the outlet works of
2 Yellowtail Dam, including—

3 (A) not more than 150,000 acre-feet per
4 year of the allocation, which may be used in ad-
5 dition to the natural flow right described in ar-
6 ticle III(A)(1)(a) of the Compact; and

7 (B) 150,000 acre-feet per year of the allo-
8 cation, which may be used only as supplemental
9 water for the natural flow right described in ar-
10 ticle III(A)(1)(a) of the Compact for use in
11 times of natural flow shortage.

12 (2) TREATMENT.—

13 (A) IN GENERAL.—The allocation under
14 paragraph (1) shall be considered to be part of
15 the tribal water rights.

16 (B) PRIORITY DATE.—The priority date of
17 the allocation under paragraph (1) shall be the
18 priority date of the water right held by the Bu-
19 reau of Reclamation.

20 (C) ADMINISTRATION.—

21 (i) IN GENERAL.—The Tribe shall ad-
22 minister the water allocated under para-
23 graph (1) in accordance with the Compact.

24 (ii) TEMPORARY TRANSFER.—In ac-
25 cordance with subsection (c), the Tribe

1 may temporarily transfer by service con-
2 tract, lease, exchange, or other agreement,
3 not more than 50,000 acre-feet of water
4 allocated under paragraph (1)(A) off the
5 Reservation, subject to the approval of the
6 Secretary and the requirements of the
7 Compact.

8 (b) ALLOCATION AGREEMENT.—

9 (1) IN GENERAL.—As a condition of receiving
10 an allocation under this section, the Tribe shall
11 enter into an allocation agreement with the Sec-
12 retary to establish the terms and conditions of the
13 allocation, in accordance with the terms and condi-
14 tions of the Compact and this Act.

15 (2) INCLUSIONS.—The allocation agreement
16 under paragraph (1) shall include, among other
17 things, a provision that—

18 (A) it is without limit as to term;

19 (B) the Tribe, and not the United States,
20 shall be entitled to all consideration due to the
21 Tribe under any lease, contract, or agreement
22 the Tribe may enter into pursuant to the au-
23 thority in subsection (c);

1 (C) the United States shall have no trust
2 obligation or other obligation to monitor, ad-
3 minister, or account for—

4 (i) any funds received by the Tribe as
5 consideration under any lease, contract, or
6 agreement the Tribe may enter into pursu-
7 ant to the authority in subsection (c); or

8 (ii) the expenditure of such funds;

9 (D) if the facilities at Yellowtail Dam are
10 significantly reduced or are anticipated to be
11 significantly reduced for an extended period of
12 time, the Tribe shall have the same storage
13 rights as other storage contractors with respect
14 to the allocation under this section;

15 (E) the costs associated with the construc-
16 tion of the storage facilities at Yellowtail Dam
17 allocable to the Tribe—

18 (i) shall be nonreimbursable; and

19 (ii) shall be excluded from any repay-
20 ment obligation of the Tribe; and

21 (F) no water service capital charges shall
22 be due or payable for any water allocated to the
23 Tribe pursuant to this Act and the allocation
24 agreement, regardless of whether that water is
25 delivered for use by the Tribe or is delivered

1 under any leases, contracts, or agreements the
2 Tribe may enter into pursuant to the authority
3 in subsection (c).

4 (c) TEMPORARY TRANSFER FOR USE OFF RESERVA-
5 TION.—

6 (1) IN GENERAL.—Notwithstanding any other
7 provision of statutory or common law, subject to
8 paragraph (2), on approval of the Secretary and
9 subject to the terms and conditions of the Compact,
10 the Tribe may enter into a service contract, lease,
11 exchange, or other agreement providing for the tem-
12 porary delivery, use, or transfer of not more than
13 50,000 acre-feet per year of water allocated under
14 subsection (a)(1)(A) for use off the Reservation.

15 (2) REQUIREMENT.—An agreement under para-
16 graph (1) shall not permanently alienate any portion
17 of the water allocated under subsection (a)(1)(A).

18 (d) REMAINING STORAGE.—

19 (1) IN GENERAL.—Upon the date of enactment
20 of this Act, water in Bighorn Lake shall be consid-
21 ered to be fully allocated and no further storage allo-
22 cations shall be made by the Secretary.

23 (2) EFFECT OF SUBSECTION.—Nothing in this
24 subsection prevents the Secretary from renewing the
25 storage contract with Pennsylvania Power and Light

1 Company consistent with the allocation to Pennsyl-
2 vania Power and Light Company in existence on the
3 date of enactment of this Act, or entering into fu-
4 ture agreements with the Northern Cheyenne or
5 Crow Tribes facilitating the Northern Cheyenne and
6 Crow Tribes' use of their allocations of water from
7 Bighorn Lake.

8 **SEC. 9. SATISFACTION OF CLAIMS.**

9 (a) IN GENERAL.—The benefits provided to the Tribe
10 and the allottees under the Compact and this Act shall
11 satisfy all claims of the Tribe and the allottees waived and
12 released pursuant to section 10.

13 (b) SATISFACTION OF CLAIMS RELATING TO CROW
14 IRRIGATION PROJECT.—

15 (1) IN GENERAL.—Subject to paragraph (2),
16 the funds authorized to be appropriated under sub-
17 sections (a) and (h) of section 14 shall be used to
18 satisfy any claim of the Tribe or the allottees with
19 respect to the appropriation of funds for the reha-
20 bilitation, expansion, improvement, repair, operation,
21 or maintenance of the Crow Irrigation Project. Upon
22 complete appropriation of funds authorized by sub-
23 sections (a) and (h) of section 14 any claim of the
24 Tribe or the allottees with respect to the appropria-
25 tion of funds for the rehabilitation, expansion, im-

1 provement, repair, operation, or maintenance of the
2 Crow Irrigation Project shall be deemed to have
3 been satisfied.

4 (2) EFFECT.—Except as provided in section 5,
5 nothing in this Act affects any applicable law (in-
6 cluding regulations) under which the United States
7 collects irrigation assessments from—

8 (A) non-Indian users of the Crow Irriga-
9 tion Project; and

10 (B) the Tribe, tribal entities and instru-
11 mentalities, tribal members, allottees, and enti-
12 ties owned by the Tribe, tribal members, or
13 allottees to the extent that annual irrigation as-
14 sessments assessed on such tribal water users
15 exceed the amount of funds available under sec-
16 tion 11(d)(3)(F) for costs relating to CIP
17 OM&R.

18 (c) NO RECOGNITION OF WATER RIGHTS.—Notwith-
19 standing subsection (a) and except as provided in section
20 7(d), nothing in this Act recognizes or establishes any
21 right of a member of the Tribe or an allottee to water
22 within the Reservation or the ceded strip.

23 **SEC. 10. WAIVERS AND RELEASES OF CLAIMS.**

24 (a) IN GENERAL.—

1 (1) WAIVER AND RELEASE OF CLAIMS BY THE
2 TRIBE AND THE UNITED STATES ACTING IN ITS CA-
3 PACITY AS TRUSTEE FOR THE TRIBE.—Subject to
4 the retention of rights set forth in subsection (c), in
5 return for recognition of the tribal water rights and
6 other benefits as set forth in the Compact and this
7 Act, the Tribe, on behalf of itself and its members
8 (but not tribal members in their capacities as
9 allottees), and the United States acting in its capac-
10 ity as trustee for the Tribe and its members (but not
11 tribal members in their capacities as allottees), are
12 authorized and directed, to execute a waiver and re-
13 lease of all claims for water rights within the State
14 that the Tribe, or the United States acting in its ca-
15 pacity as trustee for the Tribe, asserted, or could
16 have asserted, in any proceeding, including but not
17 limited to the Montana stream adjudication, up to
18 and including the enforceability date, except to the
19 extent that such rights are recognized in the Com-
20 pact as amended by this Act.

21 (2) WAIVER AND RELEASE OF CLAIMS BY THE
22 UNITED STATES ACTING IN ITS CAPACITY AS TRUST-
23 EE FOR ALLOTTEES.—Subject to the retention of
24 rights set forth in subsection (c), in return for rec-
25 ognition of the Tribe’s water rights and other bene-

1 fits as set forth in the Compact and this Act, the
2 United States acting in its capacity as trustee for
3 allottees is authorized and directed to execute a
4 waiver and release of all claims for water rights
5 within the Reservation and the ceded strip that the
6 United States acting in its capacity as trustee for
7 the allottees asserted, or could have asserted, in any
8 proceeding, including but not limited to the Montana
9 stream adjudication, up to and including the en-
10 forceability date, except to the extent that such
11 rights are recognized in the Compact or this Act.

12 (3) WAIVER AND RELEASE OF CLAIMS BY THE
13 TRIBE AGAINST THE UNITED STATES.—Subject to
14 the retention of rights set forth in subsection (c), the
15 Tribe, on behalf of itself and its members, is author-
16 ized to execute a waiver and release of—

17 (A) all claims against the United States,
18 its agencies, or employees, relating to claims for
19 water rights within the State that the United
20 States acting in its capacity as trustee for the
21 Tribe asserted, or could have asserted, in any
22 proceeding, including but not limited to the
23 Montana stream adjudication, except to the ex-
24 tent that such rights are recognized as tribal
25 water rights in this Act, including all claims re-

1 lating in any manner to the claims reserved
2 against the United States, its agencies or em-
3 ployees in section 4(e) of the joint stipulation of
4 settlement;

5 (B) all claims against the United States,
6 its agencies, or employees relating to damages,
7 losses, or injuries to water, water rights, land,
8 or natural resources due to loss of water or
9 water rights (including but not limited to dam-
10 ages, losses or injuries to hunting, fishing,
11 gathering or cultural rights due to loss of water
12 or water rights; claims relating to interference
13 with, diversion or taking of water; or claims re-
14 lating to failure to protect, acquire, replace, or
15 develop water, water rights or water infrastruc-
16 ture) within the State that first accrued at any
17 time up to and including the enforceability date,
18 including all claims relating to the failure to es-
19 tablish or provide a municipal rural or indus-
20 trial water delivery system on the Reservation
21 and all claims relating to the failure to provide
22 for, operate or maintain the Crow Irrigation
23 Project, or any other irrigation system or irri-
24 gation project on the Reservation;

1 (C) all claims against the United States,
2 its agencies, or employees relating to the pend-
3 ing litigation of claims relating to the Tribe's
4 water rights in the State;

5 (D) all claims against the United States,
6 its agencies, or employees relating to the nego-
7 tiation, execution, or the adoption of the Com-
8 pact, exhibits thereto, or this Act;

9 (E) subject to the retention of rights set
10 forth in subsection (c), all claims for monetary
11 damages that first accrued at any time up to
12 and including the enforceability date with re-
13 spect to—

14 (i) the failure to recognize or enforce
15 the Tribe's claim of title to lands that are
16 created by the movement of the Bighorn
17 River; and

18 (ii) the failure to make productive use
19 of those lands created by the movement of
20 the Bighorn River to which the Tribe has
21 claimed title;

22 (F) all claims that first accrued at any
23 time up to and including the enforceability date
24 arising from the taking or acquisition of the

1 Tribe's land or resources for the construction of
2 the Yellowtail Dam;

3 (G) all claims that first accrued at any
4 time up to and including the enforceability date
5 relating to the construction and operation of
6 Yellowtail Dam and the management of Big-
7 horn Lake; and

8 (H) all claims that first accrued at any
9 time up to and including the enforceability date
10 relating to the generation of power from
11 Yellowtail Dam or the lack thereof.

12 (b) EFFECTIVENESS OF WAIVERS AND RELEASES.—
13 The waivers under subsection (a) shall take effect on the
14 enforceability date.

15 (c) RESERVATION OF RIGHTS AND RETENTION OF
16 CLAIMS.—Notwithstanding the waivers and releases au-
17 thorized in this Act, the Tribe on behalf of itself and its
18 members and the United States acting in its capacity as
19 trustee for the Tribe retain—

20 (1) all claims for enforcement of the Compact,
21 any final decree, or this Act;

22 (2) all rights to use and protect water rights ac-
23 quired after the date of enactment of this Act;

24 (3) all claims relating to activities affecting the
25 quality of water including but not limited to any

1 claims the Tribe might have under Comprehensive
2 Environmental Response, Compensation, and Liabil-
3 ity Act (including but not limited to claims for dam-
4 ages to natural resources), the Safe Drinking Water
5 Act, the Clean Water Act, and the regulations imple-
6 menting these Acts;

7 (4) all claims relating to damages, losses, or in-
8 juries to land or natural resources not due to loss
9 of water or water rights (including, but not limited
10 to hunting, fishing, gathering, or cultural rights);

11 (5) all rights, remedies, privileges, immunities,
12 and powers not specifically waived and released pur-
13 suant to this Act or article VII(E) of the Compact;

14 (6) all claims against any person or entity other
15 than the United States, including claims for mone-
16 tary damages, with respect to—

17 (A) the Tribe's claim of title to lands that
18 are created by the movement of the Bighorn
19 River; and

20 (B) the productive use of those lands cre-
21 ated by the movement of the Bighorn River to
22 which the Tribe has claimed title; and

23 (7) all claims that first accrued after the en-
24 forceability date with respect to claims otherwise

1 waived in accordance with subsection (a)(3)(B), and
2 (E) through (H), inclusive.

3 (d) EFFECT OF COMPACT AND ACT.—Nothing in the
4 Compact or this Act—

5 (1) affects the ability of the United States act-
6 ing in its sovereign capacity to take actions author-
7 ized by law, including but not limited to any laws re-
8 lating to health, safety or the environment, including
9 but not limited to the Clean Water Act, the Safe
10 Drinking Water Act, the Comprehensive Environ-
11 mental Response, Compensation, and Liability Act,
12 Resource Conservation and Recovery Act, and the
13 regulations implementing such Acts;

14 (2) affects the ability of the United States to
15 take actions acting in its capacity as trustee for any
16 other Indian tribe or allottee of any other Indian
17 tribe;

18 (3) confers jurisdiction on any State court to—

19 (A) interpret Federal law regarding health,
20 safety, or the environment or determine the du-
21 ties of the United States or other parties pursu-
22 ant to such Federal law; and

23 (B) conduct judicial review of Federal
24 agency action.

1 (4) waives any claim of a member of the Tribe
2 in an individual capacity that does not derive from
3 a right of the Tribe; or

4 (5) revives any claims waived by the Tribe in
5 the joint stipulation of settlement.

6 (e) ENFORCEABILITY DATE.—

7 (1) IN GENERAL.—The enforceability date shall
8 be the date on which the Secretary publishes in the
9 Federal Register a statement of findings that—

10 (A) the Montana Water Court has issued
11 a final judgment and decree approving the
12 Compact, or if the Montana Water Court is
13 found to lack jurisdiction, the United States
14 District Court of jurisdiction has approved the
15 Compact as a consent decree and such approval
16 is final;

17 (B) \$197,877,000 has been deposited in
18 the Crow Settlement Fund;

19 (C) the Secretary has fulfilled his obliga-
20 tions to negotiate an agreement with the Tribe
21 in accordance with sections 5(a) and 6(a);

22 (D) the State has appropriated and paid
23 into an interest-bearing escrow account any
24 payments then due to the Tribe under the Com-
25 pact;

1 (E) the Tribe has ratified the Compact by
2 submitting the Act and the Compact to a vote
3 by the tribal membership for approval or dis-
4 approval and the tribal membership has voted
5 to approve the Act and the Compact by a ma-
6 jority of votes cast on the day of the vote, as
7 certified by the Secretary and the Tribe;

8 (F) the Secretary has fulfilled the require-
9 ments of section 8(a); and

10 (G) the waivers and releases authorized
11 and set forth in subsection (a) have been exe-
12 cuted by the Tribe and the Secretary.

13 (f) TOLLING OF CLAIMS.—

14 (1) IN GENERAL.—Each applicable period of
15 limitation and time-based equitable defense relating
16 to a claim described in this section shall be tolled for
17 the period beginning on the date of enactment of
18 this Act and ending on the date on which the
19 amounts authorized to be appropriated to carry out
20 this Act are appropriated.

21 (2) EFFECT OF SUBSECTION.—Nothing in this
22 subsection revives any claim or tolls any period of
23 limitation or time-based equitable defense that ex-
24 pired before the date of enactment of this Act.

1 **SEC. 11. CROW SETTLEMENT FUND.**

2 (a) ESTABLISHMENT.—There is established in the
3 Treasury of the United States the Crow Settlement Fund,
4 consisting of such amounts as are deposited in the fund
5 under subsections (c) through (h) of section 14.

6 (b) ACCOUNTS OF CROW SETTLEMENT FUND.—The
7 Secretary shall establish in the Crow Settlement Fund the
8 following accounts:

9 (1) The Tribal Compact Administration ac-
10 count, consisting of amounts authorized pursuant to
11 section 14(c).

12 (2) The Economic Development account, con-
13 sisting of amounts authorized pursuant to section
14 14(d).

15 (3) The Water Development Projects account,
16 consisting of amounts authorized pursuant to section
17 14(e).

18 (4) The MR&I System OM&R account, con-
19 sisting of amounts authorized pursuant to section
20 14(f).

21 (5) The Yellowtail Dam OM&R account, con-
22 sisting of amounts authorized pursuant to section
23 14(g).

24 (6) The CIP OM&R account, consisting of
25 amounts authorized pursuant to section 14(h).

26 (c) DEPOSITS TO CROW SETTLEMENT FUND.—

1 (1) IN GENERAL.—The Secretary of the Treas-
2 ury shall promptly deposit in the Crow Settlement
3 Fund any amounts appropriated for that purpose.

4 (2) DEPOSITS TO ACCOUNTS.—The Secretary of
5 the Treasury shall deposit amounts in the accounts
6 of the Crow Settlement Fund established under sub-
7 section (b) in descending order of priority, with
8 highest priority given to the Tribal Compact Admin-
9 istration account established under subsection
10 (b)(1).

11 (d) MANAGEMENT.—

12 (1) IN GENERAL.—The Secretary shall manage
13 the Crow Settlement Fund, make investments from
14 the Crow Settlement Fund, and make monies avail-
15 able from the Crow Settlement Fund for distribution
16 to the Tribe consistent with the American Indian
17 Trust Fund Management Reform Act of 1994 (25
18 U.S.C. 4001 et seq.) (referred to in this subsection
19 as the “Trust Fund Reform Act”).

20 (2) INVESTMENT OF CROW SETTLEMENT
21 FUND.—Upon the enforceability date the Secretary
22 shall invest amounts in the Crow Settlement Fund
23 in accordance with—

24 (A) the Act of April 1, 1880 (25 U.S.C.
25 161);

1 (B) the first section of the Act of June 24,
2 1938 (25 U.S.C. 162a);

3 (C) the obligations of Federal corporations
4 and Federal Government-sponsored entities the
5 charter documents of which provide that the ob-
6 ligations of the entities are lawful investments
7 for federally managed funds, including—

8 (i) the obligations of the United
9 States Postal Service described in section
10 2005 of title 39, United States Code;

11 (ii) bonds and other obligations of the
12 Tennessee Valley Authority described in
13 section 15d of the Tennessee Valley Au-
14 thority Act of 1933 (16 U.S.C. 831n-4);

15 (iii) mortgages, obligations, and other
16 securities of the Federal Home Loan Mort-
17 gage Corporation described in section 303
18 of the Federal Home Loan Mortgage Cor-
19 poration Act (12 U.S.C. 1452); and

20 (iv) bonds, notes, and debentures of
21 the Commodity Credit Corporation de-
22 scribed in section 4 of the Act of March 8,
23 1938 (15 U.S.C. 713a-4); and

24 (D) the obligations referred to in section
25 201 of the Social Security Act (42 U.S.C. 401).

1 (3) DISTRIBUTIONS FROM CROW SETTLEMENT
2 FUND.—

3 (A) IN GENERAL.—Funds from the Crow
4 Settlement Fund shall be used for each purpose
5 described in subparagraphs (B) through (G).

6 (B) TRIBAL COMPACT ADMINISTRATION
7 ACCOUNT.—The Tribal Compact Administration
8 Account shall be used for expenditures by the
9 Tribe for Tribal Compact Administration, in ac-
10 cordance with the definition of Tribal Compact
11 Administration under section 3.

12 (C) ECONOMIC DEVELOPMENT AC-
13 COUNT.—The Economic Development Account
14 shall be used for expenditures by the Tribe for
15 economic development, in accordance with the
16 definition of Economic Development under sec-
17 tion 3.

18 (D) WATER DEVELOPMENT PROJECT AC-
19 COUNT.—The Water Development Project Ac-
20 count shall be used for expenditures by the
21 Tribe for 1 or more water development projects,
22 in accordance with the definition of Water De-
23 velopment Project under section 3.

24 (E) YELLOWTAIL DAM OM&R ACCOUNT.—
25 Interest accrued on the funds in the Yellowtail

1 Dam OM&R Account in the prior fiscal year
2 shall be used for Yellowtail Dam OM&R costs
3 in the subsequent year. The interest shall be
4 used to reduce the Yellowtail Dam OM&R costs
5 to all tribal water users on a proportional basis
6 for that year.

7 (F) CIP OM&R ACCOUNT.—

8 (i) IN GENERAL.—Interest accrued on
9 the funds in the CIP OM&R Account in
10 the prior fiscal year shall be used for CIP
11 OM&R costs in the subsequent year.

12 (ii) REDUCTION OF COSTS TO TRIBAL
13 WATER USERS.—

14 (I) IN GENERAL.—Subject to
15 subclause (II), the interest described
16 in clause (i) shall be used to reduce
17 the CIP OM&R costs to all tribal
18 water users on a proportional basis
19 for that year.

20 (II) LIMITATION ON USE OF
21 FUNDS.—Interest accrued on the
22 funds in the CIP OM&R Account
23 shall only be used to pay irrigation as-
24 sessments for the Tribe, tribal entities
25 and instrumentalities, tribal members,

1 allottees, and entities owned by the
2 Tribe, tribal members, or allottees.

3 (G) MR&I SYSTEM OM&R ACCOUNT.—

4 (i) IN GENERAL.—Interest accrued on
5 the funds from the MR&I System OM&R
6 Account in the prior fiscal year shall be
7 used for MR&I System OM&R costs in the
8 subsequent year.

9 (ii) REDUCTION OF COSTS TO TRIBAL
10 WATER USERS.—

11 (I) IN GENERAL.—Subject to
12 subclause (II), the interest described
13 in clause (i) shall be used to reduce
14 the MR&I System OM&R costs to all
15 tribal water users on a proportional
16 basis for that year.

17 (II) LIMITATION ON USE OF
18 FUNDS.—The funds from the MR&I
19 System OM&R Account shall only be
20 used to reduce water charges for
21 water used by the Tribe, tribal enti-
22 ties and instrumentalities, tribal mem-
23 bers, allottees, and entities owned by
24 the Tribe, tribal members, or
25 allottees.

1 (4) WITHDRAWALS BY TRIBE.—

2 (A) IN GENERAL.—The Tribe may with-
3 draw any portion of amounts in the Crow Set-
4 tlement Fund on approval by the Secretary of
5 a tribal management plan in accordance with
6 the Trust Fund Reform Act.

7 (B) REQUIREMENTS.—

8 (i) IN GENERAL.—In addition to the
9 requirements under the Trust Fund Re-
10 form Act, the tribal management plan of
11 the Tribe under subparagraph (A) shall re-
12 quire that the Tribe spend any amounts
13 withdrawn from the Crow Settlement Fund
14 in accordance with this Act.

15 (ii) ENFORCEMENT.—The Secretary
16 may carry out such judicial or administra-
17 tive actions as the Secretary determines to
18 be necessary to enforce a tribal manage-
19 ment plan to ensure that amounts with-
20 drawn by the Tribe from the Crow Settle-
21 ment Fund under this paragraph are used
22 in accordance with this Act.

23 (C) LIABILITY.—The Secretary and the
24 Secretary of the Treasury shall not be liable for
25 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.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amounts in the Crow Settlement
10 Fund shall be available for use by the Secretary and
11 withdrawal by the Tribe beginning on the enforce-
12 ability date.

13 (2) EXCEPTION.—The amounts made available
14 under section 14(c) shall be available for use by the
15 Secretary and withdrawal by the Tribe beginning on
16 the date on which the Tribe ratifies the Compact as
17 provided in section 10(e)(1)(E).

18 (f) STATE CONTRIBUTION.—The State contribution
19 shall be provided in accordance with article VI(A) of the
20 Compact.

21 **SEC. 12. YELLOWTAIL DAM, MONTANA.**

22 (a) STREAMFLOW AND LAKE LEVEL MANAGEMENT
23 PLAN.—

1 (1) Nothing in the Compact or the Streamflow
2 and Lake Level Management Plan referred to in ar-
3 ticle III(A)(7) of the Compact—

4 (A) limits the discretion of the Secretary
5 under the section 4F of that plan; or

6 (B) requires the Secretary to give priority
7 to any factor described in section 4F of the
8 plan over any other factor described in that sec-
9 tion.

10 (2) Bighorn Lake water management, including
11 the Streamflow and Lake Level Management Plan,
12 is a Federal activity and review and enforcement of
13 any water management decisions shall be as pro-
14 vided by Federal law.

15 (3) The Streamflow and Lake Level Manage-
16 ment Plan referred to in and part of the Compact
17 shall be interpreted to clearly reflect paragraphs (1)
18 and (2).

19 (4) Notwithstanding any term (including any
20 defined term) or provision in the Streamflow and
21 Lake Level Management Plan, for purposes of this
22 Act, the Compact, and the Streamflow and Lake
23 Level Management Plan, any requirement in that
24 Plan that the Crow Tribe dedicate a specified per-
25 centage, portion, or number of acre feet of water per

1 year of the tribal water rights to instream flow
2 means, and is limited in its meaning and effect to,
3 an obligation on the part of the Crow Tribe to with-
4 hold from development or otherwise refrain from di-
5 verting or removing from the Bighorn River the
6 specified quantity of water for the duration, at the
7 locations, and under the conditions set forth in the
8 applicable requirement.

9 (b) POWER GENERATION.—

10 (1) Notwithstanding any other provision of law,
11 the Tribe shall have the exclusive right to develop
12 and market power generation as a water develop-
13 ment project on the Yellowtail Afterbay Dam.

14 (2) The Bureau of Reclamation shall cooperate
15 with the Tribe on such project.

16 (3) Any hydroelectric power generated under
17 this provision shall be used or marketed by the
18 Tribe.

19 (4) The Tribe shall retain any revenues from
20 the sale of hydroelectric power generated under this
21 provision.

22 (5) The United States shall have no trust obli-
23 gation to monitor, administer, or account for the
24 revenues received by the Tribe, or the expenditure of
25 the revenues.

1 (c) CONSULTATION WITH TRIBE.—The Bureau of
2 Reclamation shall consult with the Tribe on at least a
3 quarterly basis on all issues relating to the Bureau’s man-
4 agement of Yellowtail Dam.

5 (d) AMENDMENTS TO COMPACT AND PLAN.—The
6 provisions of subsection (a) apply to any amendment to—

7 (1) the Compact; or

8 (2) the Streamflow and Lake Level Manage-
9 ment Plan.

10 **SEC. 13. MISCELLANEOUS PROVISIONS.**

11 (a) WAIVER OF SOVEREIGN IMMUNITY BY THE
12 UNITED STATES.—Except as provided in subsections (a)
13 through (c) of section 208 of the Department of Justice
14 Appropriation Act, 1953 (43 U.S.C. 666), nothing in this
15 Act waives the sovereign immunity of the United States.

16 (b) OTHER TRIBES NOT ADVERSELY AFFECTED.—
17 Nothing in this Act quantifies or diminishes any land or
18 water right, or any claim or entitlement to land or water,
19 of an Indian tribe, band, or community other than the
20 Tribe.

21 (c) LIMITATION ON CLAIMS FOR REIMBURSEMENT.—
22 With respect to Indian land within the Reservation or the
23 ceded strip—

24 (1) the United States shall not submit against
25 any Indian-owned land located within the Reserva-

1 tion or the ceded strip any claim for reimbursement
2 of the cost to the United States of carrying out this
3 Act and the Compact; and

4 (2) no assessment of any Indian-owned land lo-
5 cated within the Reservation or the ceded strip shall
6 be made regarding that cost.

7 (d) LIMITATION ON LIABILITY OF UNITED
8 STATES.—

9 (1) IN GENERAL.—The United States has no
10 trust or other obligation—

11 (A) to monitor, administer, or account for,
12 in any manner, any funds provided to the Tribe
13 by any party to the Compact other than the
14 United States; or

15 (B) to review or approve any expenditure
16 of those funds.

17 (2) INDEMNIFICATION.—The Tribe shall indem-
18 nify the United States, and hold the United States
19 harmless, with respect to all claims (including claims
20 for takings or breach of trust) arising from the re-
21 ceipt or expenditure of amounts described in para-
22 graph (1)(A).

23 (e) EFFECT ON CURRENT LAW.—Nothing in this sec-
24 tion affects any provision of law (including regulations)
25 in effect on the day before the date of enactment of this

1 Act with respect to preenforcement review of any Federal
2 environmental enforcement action.

3 (f) LIMITATIONS ON EFFECT.—

4 (1) IN GENERAL.—Nothing in this Act, the
5 Compact, or the Streamflow and Lake Level Man-
6 agement Plan referred to in article III(A)(7) of the
7 Compact—

8 (A) limits, expands, alters, or otherwise af-
9 fects—

10 (i) the meaning, interpretation, imple-
11 mentation, application, or effect of any ar-
12 ticle, provision, or term of the Yellowstone
13 River Compact;

14 (ii) any right, requirement, or obliga-
15 tion under the Yellowstone River Compact;

16 (iii) any allocation (or manner of de-
17 termining any allocation) of water under
18 the Yellowstone River Compact; or

19 (iv) any present or future claim, de-
20 fense, or other position asserted in any
21 legal, administrative, or other proceeding
22 arising under or relating to the Yellow-
23 stone River Compact (including the origi-
24 nal proceeding between the State of Mon-
25 tana and the State of Wyoming currently

1 pending before the United States Supreme
2 Court);

3 (B) makes an allocation or apportionment
4 of water between or among states;

5 (C) addresses or implies whether, how, or
6 to what extent (if any)—

7 (i) the tribal water rights or any por-
8 tion of the tribal water rights should be ac-
9 counted for as part of or otherwise charged
10 against any allocation of water made to a
11 state under the provisions of the Yellow-
12 stone River Compact; or

13 (ii) the Yellowstone River Compact in-
14 cludes or does not include the tribal water
15 rights or the water right of any Indian
16 tribe as part of any allocation or other dis-
17 position of water under that compact; or

18 (D) waives the sovereign immunity from
19 suit of any state under the Eleventh Amend-
20 ment to the Constitution of the United States,
21 except as expressly authorized in Article
22 IV(F)(8) of the Compact.

23 (2) EFFECT OF CERTAIN PROVISIONS IN COM-
24 PACT.—The provisions in article III (A)(6)(a) (1)
25 and (2), (B)(6)(a) (1) and (2), (E)(6)(a) (1) and

1 (2), and (F)(6)(a) (1) and (2) of the Compact that
2 provide protections to certain water rights recog-
3 nized under the laws of the State do not affect in
4 any way, either directly or indirectly, existing or fu-
5 ture water rights (including the exercise of any such
6 rights) outside of the State.

7 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

8 (a) **REHABILITATION AND IMPROVEMENT OF CROW**
9 **IRRIGATION PROJECT.**—There is authorized to be appro-
10 priated \$160,653,000, adjusted to reflect changes since
11 May 1, 2008, under section 5(e) for the rehabilitation and
12 improvement of the Crow Irrigation Project.

13 (b) **DESIGN AND CONSTRUCTION OF MR&I SYS-**
14 **TEM.**—There is authorized to be appropriated
15 \$200,840,000, adjusted to reflect changes since May 1,
16 2008, under section 6(e) for the design and construction
17 of the MR&I System.

18 (c) **TRIBAL COMPACT ADMINISTRATION.**—There is
19 authorized to be appropriated \$4,776,000 for Tribal Com-
20 pact Administration.

21 (d) **ECONOMIC DEVELOPMENT PROJECTS.**—There is
22 authorized to be appropriated \$47,762,000 for Economic
23 Development Projects.

24 (e) **WATER DEVELOPMENT PROJECTS.**—There is au-
25 thorized to be appropriated \$44,889,000 (as adjusted to

1 reflect changes in construction cost indices applicable to
2 the types of construction involved during the period begin-
3 ning on May 1, 2008, and ending on the date of appropria-
4 tion) for Water Development Projects.

5 (f) MR&I SYSTEM OM&R.—There is authorized to
6 be appropriated \$72,256,000 (as adjusted to reflect
7 changes in appropriate cost indices during the period be-
8 ginning on May 1, 2008, and ending on the date of appro-
9 priation) for MR&I OM&R.

10 (g) YELLOWTAIL DAM OM&R.—There is authorized
11 to be appropriated \$12,987,000 (as adjusted to reflect
12 changes in appropriate cost indices during the period be-
13 ginning on May 1, 2008, and ending on the date of appro-
14 priation) for Yellowtail Dam OM&R.

15 (h) CIP OM&R.—There is authorized to be appro-
16 priated \$15,207,000 (as adjusted to reflect changes in ap-
17 propriate cost indices during the period beginning on May
18 1, 2008, and ending on the date of appropriation) for CIP
19 OM&R.

20 (i) ENVIRONMENTAL COMPLIANCE.—There are au-
21 thorized to be appropriated such sums as are necessary
22 to carry out all necessary environmental compliance activi-
23 ties undertaken by the Secretary associated with the Com-
24 pact and this Act.

1 (j) BUREAU OF RECLAMATION COSTS FOR CROW IR-
2 RIGATION PROJECT.—There are authorized to be appro-
3 priated such sums as are necessary for the Bureau of Rec-
4 lamation to carry out its role as lead agency for the reha-
5 bilitation and improvement of the Crow Irrigation Project.

6 (k) BUREAU OF RECLAMATION COSTS FOR MR&I
7 SYSTEM.—There are authorized to be appropriated such
8 sums as are necessary for the Bureau of Reclamation to
9 carry out its role as lead agency for the design and con-
10 struction of the MR&I System.

11 **SEC. 15. REPEAL ON FAILURE TO MEET ENFORCEABILITY**
12 **DATE.**

13 If the Secretary does not publish a statement of find-
14 ings under section 10(e) by March 31, 2016, or such ex-
15 tended date as agreed to by the Tribe and the Secretary
16 after reasonable notice to the State—

17 (1) this Act is repealed effective January 1,
18 2016, and any action taken by the Secretary and
19 any contract or agreement pursuant to the authority
20 provided under any provision of this Act shall be
21 void;

22 (2) any amounts appropriated under section 14,
23 together with any interest on those amounts, shall
24 immediately revert to the general fund of the Treas-
25 ury; and

1 (3) any amounts made available under section
2 14 that remain unexpended shall immediately revert
3 to the general fund of the Treasury.

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