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Montana Water Court

**IN THE WATER COURT OF THE STATE OF MONTANA
CROW TRIBE OF INDIANS - MONTANA COMPACT**

IN THE MATTER OF THE ADJUDICATION
OF EXISTING AND RESERVED RIGHTS
TO THE USE OF WATER, BOTH SURFACE
AND UNDERGROUND, OF THE CROW TRIBE
OF INDIANS OF THE STATE OF MONTANA

CASE WC 2012-06

**THE APSAALOOKE (CROW) TRIBE'S MOTION FOR DISMISSAL OF ALLOTTEE
OBJECTIONS AND RESPONSE TO MOTION TO STAY**

The Crow Tribe respectfully submits this Motion for Dismissal of Allottee Objections pursuant to Rule 12 of the Montana Rules of Civil Procedure, with respect to the objections of the allottees listed in Exhibit A to this Motion ("Allottees"), and also responds to the Motion to Stay submitted on May 15, 2014 by certain Allottees represented by Hertha Lund ("Lund Allottees").

The Allottees' objections fail to state a claim and must be dismissed as a matter of law, for four reasons. First, the United States represented the Allottees as their trustee in negotiating and ratifying the Compact and has already settled and waived their claims, so this Court lacks jurisdiction over their objections, as they freely admit. Nor is a stay appropriate here because the Court will not somehow gain jurisdiction over their objections in the future; the Court does not review collateral attacks on a ratified compact by anyone who was represented in the negotiation and ratification. Second, the Compact preserves Allottees' rights entirely intact, because as a matter of federal law their rights are rights to a distribution from the tribal water right. Allottees'

rights are defined by 25 U.S.C. § 381, which gives each allottee “a just and equal distribution” of water for irrigation purposes; the Compact expressly preserves these rights undiminished. Third, in any event, the benefits and protections provided to allottees by the Settlement Act are substituted for all prior claims and benefits as a matter of federal law. These include additional protections under the tribal Water Code being developed. Fourth, as explained further below, each of the Allottees’ claims fails on its own terms or cannot be heard in the Water Court.

BACKGROUND

The Compact has three parties: the State of Montana, the Crow Tribe, and the United States of America as trustee for the Tribe and its allottees. All three have ratified the Compact. In particular, the United States “authorized, ratified, and confirmed” the Compact in 2010, “for the benefit of the Tribe *and allottees.*” Crow Tribe Water Rights Settlement Act of 2010, Pub. L. No. 111-291, § 404(a)(1), 124 Stat. 3097 (codified at 31 U.S.C. § 1101 note) (emphasis added) (“Settlement Act”). The Preliminary Decree explains that “[t]he State, Tribe, and the United States (the ‘Settling Parties’) have concluded a Compact settling the water right claims of the Tribe, *and the United States on behalf of the Tribe, its members and allottees,* in accordance with Mont. Code Ann. § 85-2-702.” Findings of Fact and Conclusions of Law ¶ 1 (Dec. 21, 2012) (emphasis added).

The objections in Exhibit A were filed by individuals who identify themselves as members of the Tribe and as “Allottees” claiming injury to reserved water rights under *Winters v. United States*, 207 U.S. 564 (1908), and *United States v. Powers*, 307 U.S. 214 (1939). All

elected to adopt one or both of two boilerplate objection forms, respectively dated June and September 2013. Exhibit A lists the Allottees and notes which form or forms each adopted.¹

Each of the forms states that the objecting Allottee is “an enrolled member and citizen of the Crow Nation” and the “owner or part-owner” of some quantum of allotments “within the exterior boundaries of the Crow Reservation.” Each alleges that the allotment includes a federal reserved water right appurtenant to the allotment that allows use of an “unquantified” amount of water on the allotment with a priority date of 1868, citing *Winters, Powers, and Colville Confederated Tribes v. Walton*, 752 F.2d 397 (9th Cir. 1985) (*Walton III*). And each alleges only the following harm: “It is my reserved right to Indian water that will be adversely affected in the event that this Objection, Request for Stay and Request for Extension is not granted.”

STANDARD OF REVIEW

In determining whether to approve a compact or declare it void, this “Court has concluded that a compact is closely analogous to a consent decree and should be reviewed under the same or similar standard.” *In re Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation*, No. WC-92-1, slip op. 4-5 (Mont. Water Ct. Aug. 10, 2001) (hereinafter *Fort Peck*). Under this standard, the Water Court’s review of a fully ratified compact is strictly circumscribed. See *In re Chippewa Cree Tribe of the Rocky Boy’s Reservation*, WC 2000-01, slip op. 5 (Mont. Water Ct. June 12, 2012) (hereinafter *Rocky Boy’s*). The standard requires only that

¹ Seven of the Lund Allottees failed to serve their objections on any of the Settling Parties. We have never received their objections in any manner and do not know their contents, although we assume for purposes of this Motion that they are similar to those of the other Lund Allottees. The Settling Parties hereby further move for dismissal of these seven on the additional ground of failure to serve: Wayne Moccasin, Beatrice Rasmussen, Bobaleen C. RedStar, Olin R. RedStar, Sealmer R. RedStar, Lynna Smith, Mitchell G. Stewart.

Moreover, many of the Allottees on Exhibit A failed to attend a mediation session, and should be dismissed for that reason as well (these are noted by background shading on their names on Exhibit A). A motion to dismiss all those who did not attend a mediation session is being filed separately.

the Court “be satisfied that the settlement is at least fundamentally fair, adequate and reasonable” to unrepresented parties and the public interest, and that it “conform[s] to applicable laws.” *Id.*

The Water Court does not analyze whether the settlement is “fair as between the negotiating parties.” *Fort Peck*, slip op. at 6. That is, “[t]he purpose underlying this judicial review is not to ensure that the settlement is fair as between the negotiating parties or to give the negotiating parties more time, but *to ensure that other unrepresented parties and the public interest are treated fairly* by the settlement.” *Id.* (emphasis added); *accord Rocky Boy’s*, slip op. 6 (“The purpose of this kind of judicial review is *not* to ensure that the settlement is fair or reasonable between the negotiating parties, but that it is fair and reasonable *to those parties and the public interest who were not represented in the negotiation[.]*”) (emphasis added). This makes good sense because water compacts entered into pursuant to Mont. Code Ann. § 87-2-702 are “negotiated and reviewed in open, public forums and approved by the U.S. Department of Justice and Interior, and by the State and Tribal executive and legislative authorities.” *Fort Peck*, slip op. 5.

ARGUMENT

I. THE ALLOTTEES’ OBJECTIONS MUST BE DISMISSED

A. The Allottees Were Represented by the United States as Trustee and Their Objections Are Unreviewable

The United States has in the Compact itself already settled the Allottees’ rights. “The State, Tribe, and the United States (the ‘Settling Parties’) have concluded a Compact settling the water right claims of the Tribe, *and the United States on behalf of the Tribe, its members and allottees*, in accordance with Mont. Code Ann. § 85-2-702.” Findings of Fact and Conclusions of Law ¶ 1 (Dec. 21, 2012). The United States is a party to the Compact on the Allottees’ behalf, as their trustee. Each Allottee must and does admit on the face of his or her objection that the

United States is his or her trustee with respect to the reserved rights claimed. And in their federal district court complaint attached to the Motion to Stay, the Lund Allottees admit that “the Settlement Act is a full settlement and waiver of the Allottees’ water rights and a release of the Allottees’ water rights claims.” ¶ 80.

Because the United States represented the allottees as their trustee and has in that capacity agreed to and ratified the Compact, the Water Court cannot hear dissenting allottees’ collateral attacks even though they are styled as objections.

1. The United States Holds in Trust the Allottees’ Rights to a Distribution from the Tribal Water Right

As the Allottees correctly admit in their objections, the United States is their trustee. It holds in trust not only the Tribal Water Right under the Settlement Act—the preliminary decree lists as the holder of the tribal water right “the United States in trust for the Crow Tribe of Indians”—but also each allottee’s right to “a just and equal distribution” of that water, consistent with 25 U.S.C. § 381. *See* 25 U.S.C. § 407(a), (c). The Allottees misapprehend the nature of their rights of use.

Under the General Allotment Act of 1877, the United States holds allotments in trust “for the sole use and benefit of the Indian to whom such allotment shall have been made.” 25 U.S.C. § 348; *see also id.* § 462 (extending trust period indefinitely). This gives rise to a “limited trust relationship between the United States and the allottee,” *United States v. Mitchell*, 445 U.S. 535, 542 (1980). And under the Allotment Act, allottees are entitled to “a just and equal distribution” of water for irrigation purposes. That is, by definition, allottee rights are derivative of the *Winters* reserved rights to water within the reservation “for the equal benefit of tribal members.” *United States v. Powers*, 305 U.S. 527, 532 (1939) (citing *Winters v. United States*, 207 U.S. 564 (1908)). The Allotment Act defines an allottee’s interest as “a just and equal distribution” of

reserved water for agricultural purposes. 25 U.S.C. § 381. At allotment, “the right *to use some portion* of tribal waters essential for cultivation passed to the owners” of allotted lands. *Powers*, 305 U.S. at 532 (emphasis added). The Lund Allottees articulate a fundamental misunderstanding of this governing law when they incorrectly allege that “[t]he Compact ignores Allottees’ rights and appears to assign the Allottee Objectors’ water rights to the Crow Tribe.” Mot. to Stay at 8. The Allottees’ rights are rights to distribution from the Tribal Water Right, and this right is held in trust by the United States for the benefit of the Tribe and allottees. Under both 25 U.S.C. § 381 and the Settlement Act, the allottees’ “just and equal distribution” of water is governed by federal law.

2. Allottees Were Represented by the United States as their Trustee and Are Bound by the United States’ Ratification, So Their Objections Are Outside the Scope of the Water Court’s Review

The United States has already ratified the Compact on behalf of allottees with respect to their rights of use. The United States “authorized, ratified, and confirmed” the Compact in 2010, “for the benefit of the Tribe *and allottees.*” Crow Tribe Water Rights Settlement Act of 2010, Pub. L. No. 111-291, § 404(a)(1), 124 Stat. 3097 (codified at 31 U.S.C. § 1101 note) (emphasis added). The Compact became effective upon ratification, *see* Compact Art. VII A.1; *id.* Art. II.12, and binds “the Tribe, Tribal members, *and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribe’s water right,*” Compact Article VII.D.2 (emphasis added), as well as the United States as trustee for all allottees, *see id.* VII.D.3; *see also id.* Art. VII.E.1 (prohibiting “any individual claiming a right to use water based on or derived from the Tribe” from bringing certain objections and claims). The Allottees through their trustee have already agreed “to defend the provisions and purposes of this Compact . . . from all challenges and attacks” in these proceedings. Compact VII.B.1. The Settlement Act confirms that the “tribal water rights . . . shall be held in trust by the United States

for the use and benefit of the Tribe *and the allottees.*” Settlement Act § 407(c)(1) (emphasis added). And it further states that the United States approved and entered into the Compact “to achieve a fair, equitable, and final settlement of claim to water rights in the State of Montana for . . . the United States for the benefit of the Tribe *and allottees.*” *Id.* § 402(1) (emphasis added).

Review of a ratified water rights compact entered into under Mont. Code Ann. § 87-2-702 is limited to whether those *not represented* in the negotiating process were treated fairly in the settlement. Given the United States’ participation in the negotiation and ratification of the Compact as trustee for the Allottees, the Allottees’ objections fall outside of the narrow standard of review—whether the Compact is fair to “unrepresented parties and the public interest.” *Fort Peck*, slip op. 5. The Lund Allottees correctly admit that if allottees have any relief against the United States for its actions in ratifying the Compact and binding them to its terms, such a suit lies elsewhere. They admit that the Water Court is “a court of limited jurisdiction” that “cannot make any determinations regarding the Allottee Objectors’ claims that their constitutional and statutory rights have been violated; those claims must be resolved by the federal court.” Mot. to Stay at 8. Allottees do not claim to make any objection over which this Court has jurisdiction, and their objections must be dismissed.

B. Allottees’ Interests Are Defined by 25 U.S.C. § 381 and the Settlement Act and Are Not Altered by the Compact

Each allottee alleges that “[i]t is my reserved right to Indian water that will be adversely affected” As a matter of law, the Compact does not and cannot affect, much less harm, any allottee’s legally protected interest in a distribution from the tribal water right. As explained above, the “reserved right to Indian water” that an allottee possesses is defined as a right to a distribution under 25 U.S.C. § 381. The Compact respects this aspect of federal law, expressly protecting “any right, pursuant to 25 U.S.C. 381, to a just and equal portion of the Tribal Water

Right set forth in Article III” for “Indians residing on the Reservation or in the Ceded Strip.” Compact, Art. IV.B.1. This fully preserves allottee rights. The Settlement Act fully recognizes this right and restates the protections afforded thereto. “The provisions of section 7 of the Act of February 8, 1887 (25 U.S.C. 381), relating to the use of water for irrigation purposes shall apply to the tribal water rights.” Settlement Act § 407(d)(1).

C. The Settlement Act Provides Protections and Rights for Allottees that Are Substituted for Any Claims They Might Otherwise Have Raised Here

Congress anticipates possible allottee objections to water compacts and therefore protects allottees with grants of rights and protections that are substituted for and eliminate any claims allottees might otherwise have to object to a compact. Here, Congress ensured that the Crow Compact and the Crow Water Settlement provide these protections, and expressly guaranteed that allottees are afforded benefits that are equal to or that exceed the benefits they would have otherwise possessed. Compact, Art. IV.B.1; Crow Water Settlement, P.L. 111-291, 124 Stat. 3104, § 407(a); *cf.*, *e.g.*, Gila River Indian Water Rights Settlement Act, P.L. 108-451, 118 Stat. 3502, Section 204(a) (“It is the intent of Congress to provide allottees with benefits that are equal to or that exceed the benefits that the allottees currently possess” and that “section 7 of the Act of February 8, 1887 (25 U.S.C. 381)” applies “to protect the interests of allottees”).

In addition to preserving allottees’ rights under § 381, the Settlement Act provides for a Tribal Water Code to protect and regulate Allottee water interests. See Settlement Act § 407(f) (“[T]he Tribe shall enact a tribal water code[.]”).

As the Allottees themselves recognize, any disagreement they may have with the United States’ disposition of their claims must be resolved elsewhere. The Water Court cannot grant them relief when Congress in the Settlement Act has already extinguished any claims of allottees.

D. Allottees Fail to State a Claim as a Matter of Law

Each of the Allottees' objections fails as a matter of law on the merits, largely for reasons already discussed. The Allottees' form objections, taken collectively, raise five distinct arguments. Of those, two allege that the United States as trustee for the allottees breached its trust duties; these claims that fail because, as the Lund Allottees admit, they cannot be addressed here. These are:

- (1) The United States as trustee failed to file individual water rights claims for each Allottee; and
- (2) The United States as trustee is required to provide individual Allottees technical and legal assistance to individually review and approve or reject the Compact.

The United States could not and rightly did not file individual claims for every allottee, because the United States and the Tribe are parties to the adjudication with the right to notice, while allottees have a right to a distribution of water for irrigation *from the Tribal Water Right*. The United States adequately protected this right without filing individual claims on behalf of each allottee. Moreover, this Court cannot address their claims of breach of fiduciary duties because they are not within the scope of the Court's review.

The forms also raise claims that incorrectly characterize allottees' rights as entirely distinct from the Tribal Water Right and make due process or takings arguments, including

- (3) Allottees possess reserved water rights distinct from the Tribal Water Right that will not be made a part of the Compact until these proceedings are concluded, and are not lawfully a part of the Preliminary Decree, and as a result the Water Court lacks jurisdiction to adjudicate Allottees' rights to reserved water;
- (4) the Compact would eliminate Allottees' rights to reserved water and/or alter Allottees' water priority date, effecting an unconstitutional taking;
- (5) incorporating the Compact in the final decree would constitute a taking or otherwise adversely affect Allottee rights because they were not given an adequate opportunity to participate in the listing of current uses of reserved Indian water rights, referenced in Article IVE.2 of the Compact.

These claims fail because the allottees' rights are preserved by the Compact, which was ratified by their trustee. In addition, allottees' rights do not have separate priority dates as such, and the Compact therefore does not deny to Allottees anything they own. They are protected through § 381, the Settlement Act, and the Water Code.

Moreover, Allottees' objections regarding the list of current uses misapprehend the purpose and nature of that list. Allottees argue as though this list were analogous to a definitive and binding statement of Allottees' rights to water; they even cite Mont. Code Ann. § 85-2-234, as though their rights of use were "water rights" within the meaning of that section. They are not, for the reasons discussed above. Rather, under "Reporting Requirements," the DNRC is entitled to a report from the Crow Tribal Water Resources Department and the United States listing current uses of the Tribal Water Right. The list is only a report to DNRC, and does not alter any rights under 25 U.S.C. § 381, *see* Compact IV.B.1. It does not create any rights in Allottees, especially not a right to take a position contrary to that of its trustee in objecting to the Compact's entry in the Final Decree. To the extent the Allottees have any rights to participate in the creation and updating of the list, those rights are governed by the Compact itself and must be resolved by the Crow-Montana Compact Board created by Article IV.F. of the Compact. But in any event the list does not override any rights under 25 U.S.C. § 381 and the Settlement Act, and therefore cannot affect the rights asserted by Allottees.

Instead, the Compact provides that "the Tribe shall have the final and exclusive jurisdiction to resolve all disputes concerning the Tribal Water Right between holders of water rights under the Tribal Water Right," Compact, Art. IV(A)(2), and the Settlement Act recognizes that Allottees may assert their § 381 rights in Federal District Court after they have exhausted tribal remedies. *See* Settlement Act § 407(d)(5).

In any event, the Allottees had ample opportunity to comment on the current uses list even after filing their objections. Although the DNRC was entitled to the report one year after ratification, it agreed to forgo that right and adjust the schedule at the Tribe and United States' urging to ensure that tribal members and allottees were properly accounted for and included in the listing of current uses of the Tribal Water Right. Thus, the fact that the list is not final has worked in Allottees' favor. To that end, the Tribe, United States and the State prepared a "Preliminary List of the current uses of the Tribal Water Right" and provided public notice of the Preliminary List to *all* allottees, tribal members and users of the Crow Irrigation Project (Exhibit B). The Parties published the Preliminary List for public review at easily accessible locations—the Tribal Water Rights Office, the Crow Tribe Legislature, and the Bureau of Indian Affairs office in Billings. Additionally, the Parties held multiple public meetings in all of the six Reservation districts and in Hardin and Billings to accommodate those individuals that do not reside on the Reservation. Individuals had 180 days—more than sufficient time—to submit comments. Comments were due January 21, 2014, well after the objections were filed.

II. THE ALLOTTEES' MOTION FOR STAY MUST BE DENIED

The Lund Allottees renew a Motion to Stay that was previously denied by this Court on November 6, 2013. Many of the Lund Allottees included in their objections this same Motion to Stay—it was part of one of the two forms (those of the Form 2 objectors). The previous motion was made on the same grounds that the Lund Allottees are now asserting, including that "Additional time is needed to litigate in federal court the duty of the United States to provide allotment landowners with technical assistance and legal counsel." Nov. 6, 2013 order at 2. The Motion to Stay is even less well-taken at this late date, more than six months after Court first denied it. The Lund Allottees give no basis for such a stay. The Lund Allottees admit that they have no claim or objection that would allow this Court to disapprove the Compact at this time,

See Mot. to Stay at 8, and their federal lawsuit cannot change that. The precise harm that the Lund Allottees allege in their federal lawsuit is that “the Settlement Act *is a full settlement and waiver* of the Allottees’ water rights and a release of the Allottees’ water rights claims.” ¶ 80 (emphasis added). They admit that the settlement and waiver has already occurred and is effective; they allege only that some of the United States’ actions in that regard are a breach of trust for which they are entitled to relief in district court. Whether they are entitled to breach-of-trust relief against the United States in that court is immaterial to their objections here. Indeed, they do not and cannot even hypothesize how their federal lawsuit could have any effect on this Court’s review of their objections to a ratified compact where the allottees admit that they have already been represented and bound by the United States.

The Lund Allottees vaguely argue that their federal lawsuit “may have a significant impact on the validity of the Compact” and may “undermine the very foundations of the Crow Compact.” Mot. to Stay at 9. They do not explain how that could possibly be the case when the Lund Allottees have no pending objection that could be a basis for disapproving the Compact. Indeed, their federal complaint mirrors their objections here, and they freely admit that this Court lacks jurisdiction to grant them any relief on those objections. *See* Mot. to Stay at 8. Regardless of how their federal lawsuit is decided, it will not somehow bring issues that are admittedly outside the limited scope of the Court’s review within that narrow scope, and it will not give the Allottees the right to file belated objections.

The Motion for Stay seeks delay without any end point and without any justification. But even if there were any justification, staying this case at this late date would be a gross violation of equity, in light of the Lund Allottees’ delay, the Court’s prior orders, and the statutory deadline for compact review. This Court held seventeen months ago that “time is of the essence in this

matter” because the Settlement Act provides that “if Water Court approval of the water rights in the Compact is not final by March 31, 2016, the approval, ratification, and confirmation of the Compact and the Act shall be repealed.” Findings of Fact and Conclusions of Law at 4 (Dec. 21, 2012) (citing Settlement Act §§ 415(1), 410(e)(1)). Correspondence attached to the Lund Allottees’ federal complaint shows that they have been fully engaged in this matter for years and have been seeking to have the United States appoint them separate counsel since 2009. They offer no explanation for why they waited until mid-2014, years after the Settlement Act was passed and the Compact was fully ratified and seventeen months after this Court ordered that “time is of the essence,” to seek the relief in federal court that they admit is not available here. Such delay should not be allowed to inflict the substantial prejudice of jeopardizing this Court’s review of the Compact. *See Chippewa Cree*, Slip Op. at 21-22 (denying and dismissing objections where pro se objector failed to respond to discovery in a timely manner due to the death of his wife; “To grant further latitude would . . . prejudice[] the Settling Parties’ effort to have the Compact judicially reviewed within the Congressionally mandated three year deadline.”). To stay this case for the duration of a federal lawsuit that could last years would needlessly and unjustly endanger an agreement negotiated over thirty years.

CONCLUSION

The objections in Exhibit A should be dismissed, and the Lund Allottees’ Motion to Stay should be denied.

DATED this 23rd day of May 2014.

/s/ Nathan A. Espeland
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by first-class mail to each of the parties set forth below this 23rd day of May 2014.

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1279 Whistling Water Loop
PO Box 144
Garryowen, MT 59031

Elizabeth A. Woodson
3815 Mesa Road
Billings, MT 59102



Merrill C. Godfrey

EXHIBIT A

Edwina Beaumont (FORM 2)
PO Box 793
Lodge Grass, MT 59050

Philip Beaumont, Jr. (FORM 1)
PO Box 171
Pryor MT, 59066

Claudia D. Bernardis (FORM 1)
PO Box 291
Hardin, MT 59034

Leeya Big Lake-Hill (FORM 2)
PO Box 711
Lodge Grass, MT 59050

Alee Ann Birdhat (BOTH)
Box 308
Crow Agency, MT 59022

Darwyn C. Bull Shows (FORM 1)
21069 Pryor Road
PO Box 98
Pryor, MT 59066

Iva E. Bull Shows (FORM 1)
2601 Phyllis Lane #43
Billings, MT 59102

Erma Jane Fighter Moccasin (FORM 2)
PO Box 504
Crow Agency, MT 59022

Claudia E. Flatmouth (FORM 1)
Kathleen L. Flatmouth (FORM 1)
PO Box 222
Lodge Grass, MT 59050

Leon B. Flatmouth (FORM 1)
PO Box 103
Lodge Grass, MT 59050

Rebecca K. Flatmouth (FORM 1)
PO Box 645
Lodge Grass, MT 59050

Ronald J. Flatmouth (FORM 1)
PO Box 38
Lodge Grass, MT 59050

Donald R. Gardner (BOTH)
Susan B. Gardner (BOTH)
PO Box 760
Lodge Grass, MT 59050

Manford L. Gardner, Sr. (FORM 2)
PO Box 193
Lodge Grass, MT 59050

Mary L. Gayton (FORM 1)
PO Box 124
Pryor, MT 59066

Carlson E. Goes Ahead (FORM 1)
Ginger L. Goes Ahead (FORM 1)
PO Box 314
Pryor, MT 59066

Elias M. Goes Ahead (BOTH)
Box 211
Pryor, MT 59066

Karen J. Goes Ahead (FORM 2)
PO Box 242
Pryor, MT 59066

Jaris Goes Ahead (FORM 2)
Rhea D. Goes Ahead (FORM 2)
PO Box 204
Pryor, MT 59066

Agnes J. Hill (FORM 2)
PO Box 397
Lodge Grass, MT 59050

Michael L. Hill, Sr. (BOTH)
PO Box 711
Lodge Grass, MT 59050

Floyd F. Horn (BOTH)
PO Box 633
Lodge Grass, MT 59050

Ramona E. Howe (FORM 1)
PO Box 352
Lodge Grass, MT 59050

Beverly B. Huber (BOTH)
Jonathan I. Huber (FORM 1)
Stephen D. Huber (BOTH)
PO Box 30434
Billings, MT 59107

John Jefferson (FORM 1)
PO Box 79
Lodge Grass, MT 59050

Carmen Laforge (FORM 1)
PO Box 735
Lodge Grass, MT 59050

Constance F. Moccasin (BOTH)
PO Box 866
Crow Agency, MT 59022

Nelle Vette Moccasin (FORM 2)
Box 15
Crow Agency, MT 59022

Wayne Moccasin
PO Box 504
Crow Agency, MT 59022
†DID NOT SERVE PARTIES

Loretta Moccasin Johnson (BOTH)
724 5th Street W # 10
Hardin, MT 59034

Bridgette L. Old Elk (BOTH)
PO Box 258
St. Xavier, MT 59075

Cheryl D. Old Elk (BOTH)
PO Box 294
Crow Agency, MT 59022

Christine Old Elk (FORM 1)
PO Box 175
Crow Agency, MT 59022

Christine Good Luck Old Elk (FORM 2)

Dale Good Luck Sr. (FORM 2)
PO Box 175
Crow Agency, MT 59022

Mary SharLynn Old Elk (BOTH)
PO Box 567
Crow Agency, MT 59022

Sharone (Curly) Old Elk, Jr. (FORM 1)
PO Box 243
Crow Agency, MT 59022

EXHIBIT A

Sharron Old Elk Jr. (FORM 2)
PO Box 243
Crow Agency, MT 59022

Henry B. OldHorn (FORM 1)
531 Oldhorn Road
PO Box 711
Crow Agency, MT 59022

Henry B. OldHorn, Sr.
(FORM 1)
PO Box 711
Crow Agency, MT 59022

Sharon S. Peregoy (BOTH)
PO Box 211
Crow Agency, MT 59022

Dusty J. Plainfeather (BOTH)
PO Box 525
Lodge Grass, MT 59050

Brenda J. Pretty Weasel
(FORM 1)
PO Box 661
Crow Agency, MT 59022

Edward D. Pretty Weasel
(FORM 1)
Howard K. Pretty Weasel
(FORM 1)
PO Box 535
Crow Agency, MT 59022

Harold E. Pretty Weasel
(FORM 1)
PO Box 61
Crow Agency, MT 59022

Kathryn J. Pretty Weasel
(FORM 1)
821 N. 27th P.M.B. 332
Billings, MT 59101

William C. Pretty Weasel
(FORM 1)
PO Box 9401
Missoula, MT 59087

Beatrice W. Rasmussen
PO Box 237
Lodge Grass, MT 59050
†FAILED TO SERVE
PARTIES

Kennard Real Bird (FORM 2)
PO Box 373
Crow Agency, MT 59022

Bobaleen C. RedStar
†FAILED TO SERVE
PARTIES
Olin R. RedStar
†FAILED TO SERVE
PARTIES
PO Box 793
Crow Agency, MT 59022

Sealmer R. RedStar
†FAILED TO SERVE
PARTIES
PO Box 272
Pryor, MT 59066

Elma L. Reed (BOTH)
PO Box 22582
Billings, MT 59102

Shannon C. Rock Above
(FORM 2)
PO Box 1193
Crow Agency, MT 59022

Angela Russell (FORM 2)
Box 333
Lodge Grass, MT 59050

Colleen M. Simpson (BOTH)
808 North 22nd Street
Billings, MT 59101

Jay S. Simpson (BOTH)
Marilyn R. Simpson (BOTH)
Box 255
Pryor, MT 59066

Lachelle B. Simpson (FORM 1)
706 Nottingham Circle Apt. 3
Billings, MT 59105

Myrna Small (FORM 2)
PO Box 1016
Lame Deer, MT 59043

Bernadette C. Smith (FORM 1)
Pryor, MT 59066

Lynna Smith
Box 243
Pryor, MT 59066
†FAILED TO SERVE
PARTIES

Donna Jean Spotted Jefferson
(FORM 1)
Box 627
Crow Agency, MT 59022

Abby Lynn Stewart (BOTH)
PO Box 308
Crow Agency, MT 59022

Alvin H. Stewart, Jr. (FORM 1)
PO Box 837
Crow Agency, MT 59022

Albert G. Stewart (FORM 1)
Courtney L. Stewart (FORM 1)
Michael B. Stewart (FORM 1)
PO Box 211
Crow Agency, MT 59022

Mitchell G. Stewart
Crow Agency, MT 59022
†FAILED TO SERVE
PARTIES

Bradford C. Takes Enemy
(FORM 1)
PO Box 191
Crow Agency, MT 59022

Michael D. Takes Enemy
(FORM 1)
109 Wellknown Bear Ave
PO Box 1057
Crow Agency, MT 59022

Karen Sue Takes Horse
(FORM 1)
Karolya Lee Takes Horse
(FORM 1)
707 West Railroad, #40
Hardin, MT 59034

Lucy Marie Takes Horse
(FORM 1)
P.O. Box 1171
Crow Agency, MT 59022

Billie K. Tall Bull (FORM 1)
PO Box 661
Crow Agency, MT 59022

EXHIBIT A

Isaac Russell Teeter (FORM 1)
1122 Nutter Blvd.
Billings, MT 59105

Leonard Teeter (FORM 1)
PO Box 20132
Billings, MT 59102

Peggy White Wellknown Buffalo
(FORM 1)
PO Box 71
Garryowen, MT 59031

Borrry M. White Clay
(FORM 1)
PO Box 291
Hardin, MT 59034

Francis J. Whiteclay (FORM 1)
Fran J. Whiteclay (FORM 1)
135 Cindy Drive
PO Box 705
Crow Agency, MT 59022

Nicole D. Whiteclay (FORM 1)
PO Box 721
Crow Agency, MT 59022

Angeline L. Whiteman
(FORM 1)
Norman C. Whiteman
(FORM 1)
2235 Avenue B
Billings, MT 59102

Lucy L. Whiteman Runs Him
(FORM 1)
Preston J. Whiteman Runs Him
(FORM 1)
1279 Whistling Water Loop
PO Box 144
Garryowen, MT 59031

PUBLIC NOTICE RE:
THE LIST OF CURRENT USES OF THE TRIBAL WATER RIGHT
CROW TRIBE-MONTANA WATER RIGHTS COMPACT

The United States, the Crow Tribe, and the State of Montana have entered into a Compact settling the water rights of the Crow Tribe ("Crow Compact"). The Crow Compact settles the water rights of the Tribe and its members, and the United States on behalf of the Tribe, its members and allottees, in accordance with Mont. Code Ann. § 85-2-702. The Crow Compact was ratified by the Montana Legislature in 1999 (codified at Mont. Code Ann. § 85-2-901), by the Congress of the United States in late 2010 (P.L. 111-291, Title IV), by the Crow Tribe in 2011, and signed by the Settling Parties on April 27, 2012.

Article IV.E.2 of the Crow Compact provides that the Crow Tribal Water Rights Department and the United States will provide the Montana Department of Natural Resources with a list of all current uses of the Tribal Water Right. Pursuant to this provision, the Crow Tribe, the United States, and the State of Montana (collectively "the Parties") have agreed upon a process to finalize the list of current uses of the Tribal Water Right and have been working together to compile the list. The Parties agreed to prepare a Preliminary List of the current uses of the Tribal Water Right and provide public notice of the Preliminary List. This Notice constitutes such public notice of the Preliminary List and provides information as to where you may view the Preliminary List and how you may submit questions or concerns that you may have regarding the Preliminary List.

The purpose of your review of the Preliminary List, should you choose to review the Preliminary List, is to determine if the Preliminary List is accurate. For example, has a use been omitted, is the stock pond in the right place, or is the irrigated field the right size. You will then have an opportunity to file a Comment form if the Preliminary List is inaccurate from your perspective.

The Preliminary List contains information for four different types of water use: Irrigation, Springs, Stock ponds, and Wells. The four types of water use are found in nine different drainage basins located on the Crow Reservation and the Ceded Strip area north of the Reservation that have names, as well as numbers used in the Montana Water Court. The nine basins with their more popular names and associated Water Court basin numbers are:

- Basin 42A, Rosebud Creek;
- Basin 42B, Tongue River;
- Basin 42KJ, Yellowstone River between Bighorn River and Tongue River;
- Basin 43D Clarks Fork Yellowstone River;
- Basin 43E, Pryor Creek;
- Basin 43N, Shoshone River;
- Basin 43O, Little Bighorn River;
- Basin 43P, Bighorn River, below Greybull River; and
- Basin 43Q, Yellowstone River between Clarks Fork Yellowstone River and Bighorn River.

The Preliminary List contains legal descriptions by Section, Township, and Range of the locations of the uses and allotment numbers associated with the uses, which can be viewed by corresponding maps.

The Preliminary List is available for review at the following locations:

1. Crow Tribal Water Rights Office
316 Araopush Rd.
Crow Agency, Montana 59022
Hours: Monday-Friday, 8:00 a.m.-12:00 p.m., 1:00 p.m.-5:00 p.m.
2. Crow Legislature
144 Makawasha Ave.
Crow Agency, Montana 59022
Hours: Monday-Thursday, 9:00 a.m.-12:00 p.m., 1:00 p.m.-4:00 p.m.
3. Bureau of Indian Affairs
Branch of Water Resources, Suite 300
2021 Fourth Avenue North
Billings, Montana 59101
Hours: Monday-Friday, 8:00 a.m.-12:00 p.m., 1:00 p.m.-4:00 p.m.
Optional—call to set up an appointment—(406) 247-7998

There will be individuals at each of these locations during the hours listed above who can assist you in reviewing the Preliminary List and answer any questions you may have with respect to finding your existing use(s)/parcel(s) and filling out any subsequent forms should you find an error on the Preliminary List with respect to your parcel(s) or use(s).

Additionally, the Preliminary List is available and can be viewed at the following website:
<https://ftp.entrix.com>

Username: **crowgis** Password: **team487**

The Tribe and the United States will be holding public meetings to assist individuals review the Preliminary List and answer questions:

August 26

Mighty Few District (Wyola) Community Building
9:00 a.m.-11:00 a.m.

Valley of the Chiefs District (Lodge Grass) Community Building
2:00 p.m.-4:00 pm.

August 27

Center Lodge District (Reno) Community Building
9:00 a.m.-11:00 a.m.

Black Lodge District
Multi-Purpose Building
2:00 p.m.-4:00 p.m.

Hardin - Hardin Chamber of Commerce, 10 East Railway
7:00 p.m.-9:00 p.m.

August 28

Big Horn District (St. X) Community Building
9:00 a.m.-11:00 a.m.

Arrow Creek District (Pryor) Community Building
2:00 p.m.-4:00 p.m.

Billings – Billings Hotel, 1223 Mallowney Lane
7:00 p.m.-9:00 p.m.

You have 180 days from the date of the publication of the Public Notice to provide information or comments to the United States and the Tribe. After reviewing the Preliminary List, if you determine that the location, acreage associated with an irrigation use, or the type of use is not correct, or if you have other related problems with the Preliminary List, you will need to fill out the Comment form (Attached to this Notice). In the form, you will need to explain who you are and what change you seek in a specific water use that is on the Preliminary List or is not on the Preliminary List. The properly and completely filled out form must be postmarked by **January 21, 2014** and mailed to the Bureau of Indian Affairs, Branch of Water Resources, Suite 300, 2021 Fourth Avenue North, Billings, Montana, 59101.

The properly and completely filled out form will be reviewed by the Tribe and the United States to determine if there is a good-faith basis to request that the State agree to make adjustments to the Preliminary List for the Final List. The State will then have 180 days to review the proposed Final List and specifically accept or reject each specific use. If the State does nothing after the 180 day time period, the proposed Final List is deemed accepted and becomes the Final List.

COMMENT FORM ON CROW PRELIMINARY CURRENT USE LIST

Name: _____

Address: _____

Phone: _____

Best time to call: _____

Email: _____

Describe Water Use Challenged

Basin Number: _____

Water Use ID: _____

Type (Spring, Irrigation, etc.): _____

Please draw correct location of water use:

Section Approx. 640 Acres:

Description of Location of Water Use Challenged:

Allotment No.: _____

Township: _____

Range: _____

Section: _____

QT QT: _____

Map No. that needs changing: _____

Please describe the change you request:

What information do you have to support your requested change:

Please attach any documents that support your requested change.

COMMENT FORMS MUST BE SUBMITTED BY U.S. MAIL TO THE BUREAU OF INDAIN AFFAIRS.

COMPLETED COPIES OF THIS FORM **MUST BE POSTMARKED BY JANUARY 21, 2014 AND**

ADDRESSED TO: Bureau of Indian Affairs
Branch of Water Resources, Suite 300
2021 Fourth Avenue North
Billings, Montana 59101