

Calendar No. 259

111TH CONGRESS
2^D SESSION**S. 375****[Report No. 111-118]**

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2009

Mr. TESTER (for himself and Mr. BAUCUS) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

JANUARY 21, 2010

Reported by Mr. DORGAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to achieve a fair, equitable, and final settle-
4 ment of claims to water rights in the State of Mon-
5 tana for—

6 (A) the Crow Tribe; and

7 (B) the United States for the benefit of
8 the Tribe and allottees;

9 (2) to authorize, ratify, and confirm the Crow
10 Tribe-Montana Water Rights Compact entered into
11 by the Tribe and the State on June 22, 1999;

12 (3) to authorize and direct the Secretary of the
13 Interior—

14 (A) to execute the Crow Tribe-Montana
15 Water Rights Compact; and

16 (B) to take any other action necessary to
17 carry out the Compact in accordance with this
18 Act; and

19 (4) to authorize the appropriation of funds nec-
20 essary for the implementation of the Compact and
21 this Act.

22 **SEC. 3. DEFINITIONS.**

23 In this Act:

24 (1) **ALLOTTEE.**—The term “allottee” means
25 any individual who holds a beneficial real property
26 interest in an allotment of Indian land that is—

1 (A) located within the Reservation or the
2 ceded strip; and

3 (B) held in trust by the United States.

4 (2) CEDED STRIP.—The term “ceded strip”
5 means the area identified on the map attached as
6 appendix 5 to the Compact.

7 (3) CIP OM&R.—The term “CIP OM&R”
8 means—

9 (A) any recurring or ongoing activity asso-
10 ciated with the day-to-day operation of the
11 Crow Irrigation Project;

12 (B) any activity relating to scheduled or
13 unscheduled maintenance of the Crow Irrigation
14 Project; and

15 (C) any activity relating to replacement of
16 a feature of the Crow Irrigation Project.

17 (4) COMPACT.—The term “Compact” means
18 the water rights compact between the Tribe and the
19 State contained in section 85-20-901 of the Mon-
20 tana Code Annotated (2007) (including any exhibit
21 or part of or amendment to the Compact).

22 (5) CROW IRRIGATION PROJECT.—

23 (A) IN GENERAL.—The term “Crow Irri-
24 gation Project” means the irrigation project—

1 (i) authorized by section 31 of the Act
2 of March 3, 1891 (26 Stat. 1040);

3 (ii) managed by the Secretary (acting
4 through the Bureau of Indian Affairs); and

5 (iii) consisting of the project units
6 of—

7 (I) Agency;

8 (II) Big Horn;

9 (III) Forty Mile;

10 (IV) Lodge Grass #1;

11 (V) Lodge Grass #2;

12 (VI) Pryor;

13 (VII) Reno;

14 (VIII) Soap Creek; and

15 (IX) Upper Little Horn.

16 (B) INCLUSION.—The term “Crow Irriga-
17 tion Project” includes land held in trust by the
18 United States for the Tribe and the allottees in
19 the Bozeman Trail and Two Leggins irrigation
20 districts.

21 (6) CROW SETTLEMENT FUND.—The term
22 “Crow Settlement Fund” means the fund estab-
23 lished by section 11(a).

24 (7) ECONOMIC DEVELOPMENT.—The term
25 “Economic Development” means any activity the

1 Tribe determines to further the economic develop-
2 ment of the Tribe.

3 (8) ENFORCEABILITY DATE.—The term “en-
4 forceability date” means the date on which the Sec-
5 retary publishes in the Federal Register the state-
6 ment of findings described in section 10(e).

7 (9) FINAL.—The term “final” with reference to
8 approval of the decree described in section
9 10(e)(1)(A) means—

10 (A) completion of any direct appeal to the
11 Montana Supreme Court of a decree by the
12 Montana Water Court pursuant to section 85-
13 2-235 of the Montana Code Annotated (2007),
14 including the expiration of time for filing of any
15 such appeal; or

16 (B) completion of any appeal to the appro-
17 priate United States Court of Appeals, includ-
18 ing the expiration of time in which a petition
19 for certiorari may be filed in the United States
20 Supreme Court, denial of such petition, or
21 issuance of the United States Supreme Court’s
22 mandate, whichever occurs last.

23 (10) INDIAN TRIBE.—The term “Indian tribe”
24 has the meaning given the term in section 4 of the

1 Indian Self-Determination and Education Assistance
2 Act (25 U.S.C. 450b).

3 (11) JOINT STIPULATION OF SETTLEMENT.—

4 The term “joint stipulation of settlement” means
5 the joint stipulation of settlement relating to the
6 civil action styled *Crow Tribe of Indians v. Norton*,
7 No. 02–284 (D.D.C. 2006).

8 (12) MR&I SYSTEM.—

9 (A) IN GENERAL.—The term “MR&I Sys-
10 tem” means the municipal, rural, and industrial
11 water system of the Reservation, generally de-
12 scribed in the document entitled “Crow Indian
13 Reservation Municipal, Rural and Industrial
14 Water System Engineering Report” prepared
15 by HKM Engineering, Inc., and dated July
16 2008.

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

19 (i) the raw water intake, water treat-
20 ment plant, pipelines, storage tanks, pump-
21 ing stations, pressure-reducing valves, elec-
22 trical transmission facilities, and other
23 items (including real property and ease-
24 ments necessary to deliver potable water to

1 the Reservation) appurtenant to the sys-
 2 tem described in subparagraph (A); and

3 (ii) in descending order of construc-
 4 tion priority—

5 (I) the Big Horn River Valley
 6 Subsystem; and

7 (II) the Little Big Horn River
 8 Valley Subsystem.

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

11 (A) any recurring or ongoing activity asso-
 12 ciated with the day-to-day operation of the
 13 MR&I System;

14 (B) any activity relating to scheduled or
 15 unscheduled maintenance of the MR&I System;
 16 and

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

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

22 (15) SECRETARY.—The term “Secretary”
 23 means the Secretary of the Interior.

24 (16) STATE.—The term “State” means the
 25 State of Montana.

1 (17) TRIBAL COMPACT ADMINISTRATION.—The
 2 term “Tribal Compact Administration” means any
 3 activity relating to—

4 (A) the development or enactment by the
 5 Tribe of the tribal water code;

6 (B) establishment by the Tribe of a water
 7 resources department; and

8 (C) the operation by the Tribe of that
 9 water resources department (or a successor
 10 agency) during the 10-year period beginning on
 11 the date of establishment of the department.

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

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

17 (A) the water rights of the Tribe described
 18 in the Compact; and

19 (B) the water rights provided to the Tribe
 20 under section 8.

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

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

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

13 **SEC. 4. RATIFICATION OF COMPACT.**

14 (a) ~~IN GENERAL.~~—Except as modified by this Act,
15 and to the extent the Compact does not conflict with this
16 Act, the Compact is authorized, ratified, and confirmed.
17 To the extent amendments are executed to make the Com-
18 pact consistent with this Act, such amendments are also
19 authorized, ratified, and confirmed.

20 (b) ~~EXECUTION OF COMPACT.~~—To the extent that
21 the Compact does not conflict with this Act, the Secretary
22 is directed to and shall promptly execute the Compact, in-
23 cluding all exhibits to or parts of the Compact requiring
24 the signature of the Secretary. Nothing herein precludes
25 the Secretary from approving modifications to appendices

1 or exhibits to the Compact not inconsistent with this Act,
2 to the extent such modifications do not otherwise require
3 Congressional approval pursuant to the Trade and Inter-
4 course Act, 25 U.S.C. 177, or pursuant to other Federal
5 statute.

6 (c) NATIONAL ENVIRONMENTAL POLICY ACT OF
7 1969.—

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

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

22 **SEC. 5. REHABILITATION AND IMPROVEMENT OF THE**
23 **CROW IRRIGATION PROJECT.**

24 (a) IN GENERAL.—The Secretary, acting through the
25 Commissioner of Reclamation, shall carry out such activi-

1 ties as are necessary to rehabilitate and improve the water
2 diversion and delivery features of the Crow Irrigation
3 Project, in accordance with an agreement to be negotiated
4 between the Secretary and the Tribe.

5 (b) LEAD AGENCY.—The Bureau of Reclamation
6 shall serve as the lead agency with respect to any activity
7 to rehabilitate or improve the water diversion or delivery
8 features of the Crow Irrigation Project.

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

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

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

24 (f) AGREEMENT.—At the request of the Tribe, in ac-
25 cordance with applicable Federal law, the Secretary shall

1 enter into an agreement with the Tribe to implement the
2 provisions of this section by which the Tribe shall plan,
3 design, and construct any or all of the rehabilitation and
4 improvement required by this section.

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

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

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

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

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

24 (e) **FUNDING.**—The Secretary’s obligation pursuant
25 to this section shall not exceed \$200,840,000, except that

1 the total amount of \$200,840,000 shall be increased or
 2 decreased, as appropriate, based on ordinary fluctuations
 3 from May 1, 2008, in construction cost indices applicable
 4 to the types of construction involved in the design and con-
 5 struction.

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

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

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

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

20 (2) the availability of funding under this Act
 21 and from other sources;

22 (3) the availability of water from the tribal
 23 water rights; and

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

4 (b) CONFIRMATION OF TRIBAL WATER RIGHTS.—

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

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

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

14 (d) ALLOTTEES.—As specified in and provided for in
15 this Act:

16 (1) APPLICABILITY OF ACT OF FEBRUARY 8,
17 1887.—The provisions of section 7 of the Act of Feb-
18 ruary 8, 1887 (25 U.S.C. 381), relating to the use
19 of water for irrigation purposes shall apply to the
20 tribal water rights.

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

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

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

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

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

19 (7) AUTHORITY.—The Secretary shall have the
20 authority to protect allottees' rights as specified in
21 this section.

22 (c) AUTHORITY OF TRIBE.—

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

1 (A) in accordance with the Compact; and
 2 (B) subject to approval of the Secretary of
 3 the tribal water code under subsection
 4 (f)(3)(B).

5 (2) LEASES BY ALLOTTEES.—Notwithstanding
 6 paragraph (1), an allottee may lease any interest in
 7 land held by the allottee, together with any water
 8 right determined to be appurtenant to the interest in
 9 land.

10 (f) TRIBAL WATER CODE.—

11 (1) IN GENERAL.—Notwithstanding the time
 12 period set forth in article (IV)(A)(2)(b) of the Com-
 13 pact, not later than 1 year after the enforceability
 14 date, the Tribe shall enact a tribal water code, that
 15 provides for—

16 (A) the management, regulation and gov-
 17 ernance of all uses of the tribal water rights in
 18 accordance with the Compact; and

19 (B) establishment by the Tribe of condi-
 20 tions, permit requirements, and other limita-
 21 tions relating to the storage, recovery, and use
 22 of the tribal water rights in accordance with the
 23 Compact.

1 (2) INCLUSIONS.—Subject to the approval of
2 the Secretary, the tribal water code shall provide
3 that—

4 (A) tribal allocations of water to allottees
5 shall be satisfied with water from the tribal
6 water rights;

7 (B) charges for delivery of water for irriga-
8 tion purposes for allottees shall be assessed on
9 a just and equitable basis;

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

13 (D) there is a due process system for the
14 consideration and determination by the Tribe of
15 any request by an allottee, or any successor in
16 interest to an allottee, for an allocation of such
17 water for irrigation purposes on allotted land,
18 including a process for—

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

21 (ii) resolution of any contested admin-
22 istrative decision; and

23 (E) there is a requirement that any allot-
24 tee with a claim relating to the enforcement of
25 rights of the allottee under the tribal water

1 code or relating to the amount of water allo-
2 cated to land of the allottee must first exhaust
3 remedies available to the allottee under tribal
4 law and the tribal water code before initiating
5 an action against the United States or peti-
6 tioning the Secretary pursuant to subsection
7 (d)(6).

8 ~~(3) ACTION BY SECRETARY.—~~

9 ~~(A) IN GENERAL.—~~The Secretary shall ad-
10 minister the tribal water rights until the tribal
11 water code is enacted in accordance with para-
12 graph ~~(1)~~ and those provisions requiring ap-
13 proval pursuant to paragraph ~~(2)~~.

14 ~~(B) APPROVAL.—~~The tribal water code
15 shall not be valid unless—

16 ~~(i)~~ the provisions of the tribal water
17 code required by paragraph ~~(2)~~ are ap-
18 proved by the Secretary; and

19 ~~(ii)~~ each amendment to the tribal
20 water code that affects a right of an allot-
21 tee is approved by the Secretary.

22 ~~(C) APPROVAL PERIOD.—~~

23 ~~(i)~~ IN GENERAL.—Except as provided
24 by clause ~~(ii)~~, if the Secretary does not ap-
25 prove or disapprove the tribal water code

1 before the date that is 180 days after the
 2 date on which the tribal water code is sub-
 3 mitted to the Secretary for approval; the
 4 tribal water code shall be considered to
 5 have been approved by the Secretary to the
 6 extent that it is not inconsistent with the
 7 Compact or this Act.

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

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

16 (1) authorizes any action by an allottee against
 17 any individual or entity, or against the Tribe, under
 18 Federal, State, tribal, or local law; or

19 (2) alters or affects the status of any action
 20 pursuant to section 1491(a) of title 28, United
 21 States Code.

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

23 (a) STORAGE ALLOCATION TO TRIBE.—

24 (1) IN GENERAL.—As described in and subject
 25 to article III(A)(1)(b) of the Compact, the Secretary

1 shall allocate to the Tribe 300,000 acre-feet per year
 2 of water stored in Bighorn Lake, Yellowtail Unit,
 3 Lower Bighorn Division, Pick Sloan Missouri Basin
 4 Program, Montana, under a water right held by the
 5 United States and managed by the Bureau of Rec-
 6 lamation, as measured at the outlet works of
 7 Yellowtail Dam, including—

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

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

17 (2) TREATMENT.—

18 (A) IN GENERAL.—The allocation under
 19 paragraph (1) shall be considered to be part of
 20 the tribal water rights.

21 (B) PRIORITY DATE.—The priority date of
 22 the allocation under paragraph (1) shall be the
 23 priority date of the water right held by the Bu-
 24 reau of Reclamation.

25 (C) ADMINISTRATION.—

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

4 (ii) TEMPORARY TRANSFER.—In ac-
 5 cordance with subsection (e), the Tribe
 6 may temporarily transfer by service con-
 7 tract, lease, exchange, or other agreement,
 8 not more than 50,000 acre-feet of water
 9 allocated under paragraph (1)(A) off the
 10 Reservation, subject to the approval of the
 11 Secretary and the requirements of the
 12 Compact.

13 (b) ALLOCATION AGREEMENT.—

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

20 (2) INCLUSIONS.—The allocation agreement
 21 under paragraph (1) shall include, among other
 22 things, a provision that—

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

24 (B) the Tribe, and not the United States,
 25 shall be entitled to all consideration due to the

1 Tribe under any lease, contract, or agreement
 2 the Tribe may enter into pursuant to the au-
 3 thority in subsection (c);

4 (C) the United States shall have no trust
 5 obligation or other obligation to monitor, ad-
 6 minister, or account for—

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

11 (ii) the expenditure of such funds;

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

18 (E) the costs associated with the construc-
 19 tion of the storage facilities at Yellowtail Dam
 20 allocable to the Tribe—

21 (i) shall be nonreimbursable; and

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

24 (F) no water service capital charges shall
 25 be due or payable for any water allocated to the

1 Tribe pursuant to this Act and the allocation
 2 agreement, regardless of whether that water is
 3 delivered for use by the Tribe or is delivered
 4 under any leases, contracts, or agreements the
 5 Tribe may enter into pursuant to the authority
 6 in subsection (c).

7 ~~(c) TEMPORARY TRANSFER FOR USE OFF RESERVA-~~
 8 ~~TION.—~~

9 (1) ~~IN GENERAL.—~~Notwithstanding any other
 10 provision of statutory or common law, subject to
 11 paragraph (2), on approval of the Secretary and
 12 subject to the terms and conditions of the Compact,
 13 the Tribe may enter into a service contract, lease,
 14 exchange, or other agreement providing for the tem-
 15 porary delivery, use, or transfer of not more than
 16 50,000 acre-feet per year of water allocated under
 17 subsection (a)(1)(A) for use off the Reservation.

18 (2) ~~REQUIREMENT.—~~An agreement under para-
 19 graph (1) shall not permanently alienate any portion
 20 of the water allocated under subsection (a)(1)(A).

21 ~~(d) REMAINING STORAGE.—~~

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

1 (2) EFFECT OF SUBSECTION.—Nothing in this
2 subsection prevents the Secretary from renewing the
3 storage contract with Pennsylvania Power and Light
4 Company consistent with the allocation to Pennsyl-
5 vania Power and Light Company in existence on the
6 date of enactment of this Act, or entering into fu-
7 ture agreements with the Northern Cheyenne or
8 Crow Tribes facilitating the Northern Cheyenne and
9 Crow Tribes' use of their allocations of water from
10 Bighorn Lake.

11 **SEC. 9. SATISFACTION OF CLAIMS.**

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

16 (b) SATISFACTION OF CLAIMS RELATING TO CROW
17 IRRIGATION PROJECT.—

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

1 sections (a) and (h) of section 14 any claim of the
2 Tribe or the allottees with respect to the appropria-
3 tion of funds for the rehabilitation, expansion, im-
4 provement, repair, operation, or maintenance of the
5 Crow Irrigation Project shall be deemed to have
6 been satisfied.

7 (2) EFFECT.—Nothing in this Act affects any
8 applicable law (including regulations) under which
9 the United States collects irrigation assessments
10 from—

11 (A) non-Indian users of the Crow Irriga-
12 tion Project; and

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

21 (c) NO RECOGNITION OF WATER RIGHTS.—Notwith-
22 standing subsection (a) and except as provided in section
23 7(d), nothing in this Act recognizes or establishes any
24 right of a member of the Tribe or an allottee to water
25 within the Reservation or the ceded strip.

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

2 (a) IN GENERAL.—

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

23 (2) WAIVER AND RELEASE OF CLAIMS BY THE
24 UNITED STATES ACTING IN ITS CAPACITY AS TRUST-
25 EE FOR ALLOTTEES.—Subject to the retention of
26 rights set forth in subsection (c), in return for rec-

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

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

18 ~~(A) all claims against the United States,~~
19 ~~its agencies, or employees, relating to claims for~~
20 ~~water rights within the State of Montana that~~
21 ~~the United States acting in its capacity as~~
22 ~~trustee for the Tribe asserted, or could have as-~~
23 ~~serted, in any proceeding, including but not lim-~~
24 ~~ited to the Montana stream adjudication, except~~
25 ~~to the extent that such rights are recognized as~~

1 tribal water rights in this Act, including all
2 claims relating in any manner to the claims re-
3 served against the United States, its agencies
4 or employees in section 4(c) of the Joint Stipu-
5 lation of Settlement, Crow Tribe of Indians v.
6 Norton, No. 02-284 (Apr. 7, 2006);

7 (B) all claims against the United States,
8 its agencies, or employees relating to damages,
9 losses, or injuries to water, water rights, land,
10 or natural resources due to loss of water or
11 water rights (including but not limited to dam-
12 ages, losses or injuries to hunting, fishing,
13 gathering or cultural rights due to loss of water
14 or water rights; claims relating to interference
15 with, diversion or taking of water; or claims re-
16 lating to failure to protect, acquire, replace, or
17 develop water, water rights or water infrastruc-
18 ture) within the State of Montana that first ac-
19 crued at any time up to and including the en-
20 forceability date, including all claims relating to
21 the failure to establish or provide a municipal
22 rural or industrial water delivery system on the
23 Reservation and all claims relating to the fail-
24 ure to provide for, operate or maintain the

1 Crow Irrigation Project, or any other irrigation
2 system or irrigation project on the Reservation;

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

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

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

16 (i) the failure to recognize or enforce
17 the Tribe's claim of title to lands that are
18 created by the movement of the Big Horn
19 River; and

20 (ii) the failure to make productive use
21 of those lands created by the movement of
22 the Big Horn River to which the Tribe has
23 claimed title;

24 (F) all claims that first accrued at any
25 time up to and including the enforceability date

1 arising from the taking or acquisition of the
 2 Tribe's land or resources for the construction of
 3 the Yellowtail Dam;

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

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

13 (b) EFFECTIVENESS OF WAIVERS AND RELEASES.—

14 The waivers under subsection (a) shall take effect on the
 15 enforceability date.

16 (c) RESERVATION OF RIGHTS AND RETENTION OF

17 CLAIMS.—Notwithstanding the waivers and releases au-
 18 thorized in this Act, the Tribe on behalf of itself and its
 19 members and the United States acting in its capacity as
 20 trustee for the Tribe retain—

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

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

1 (3) all claims for damages, losses or injuries to
2 water rights or claims of interference with, diversion
3 or taking of water rights (including but not limited
4 to claims for injury to lands resulting from such
5 damages, losses, injuries, interference with, diver-
6 sion, or taking of water rights) arising out of activi-
7 ties occurring outside the State of Montana;

8 (4) all rights to use and protect water rights ac-
9 quired pursuant to state law, to the extent not in-
10 consistent with the Compact;

11 (5) all claims relating to activities affecting the
12 quality of water including but not limited to any
13 claims the Tribe might have under Comprehensive
14 Environmental Response, Compensation, and Liabil-
15 ity Act (including but not limited to claims for dam-
16 ages to natural resources), the Safe Drinking Water
17 Act, the Clean Water Act, and the regulations imple-
18 menting these Acts;

19 (6) all claims relating to damages, losses, or in-
20 juries to land or natural resources not due to loss
21 of water or water rights (including, but not limited
22 to hunting, fishing, gathering, or cultural rights);

23 (7) all rights, remedies, privileges, immunities,
24 and powers not specifically waived and released pur-
25 suant to this Act;

1 (8) all claims against any person or entity other
2 than the United States, including claims for mone-
3 tary damages, with respect to—

4 (A) the Tribe's claim of title to lands that
5 are created by the movement of the Big Horn
6 River; and

7 (B) the productive use of those lands cre-
8 ated by the movement of the Big Horn River to
9 which the Tribe has claimed title; and

10 (9) all claims that first accrued after the en-
11 forceability date with respect to claims otherwise
12 waived in accordance with subsection (a)(3)(B), and
13 (E) through (H), inclusive.

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

16 (1) affects the ability of the United States act-
17 ing in its sovereign capacity to take actions author-
18 ized by law, including but not limited to any laws re-
19 lating to health, safety or the environment, including
20 but not limited to the Clean Water Act, the Safe
21 Drinking Water Act, the Comprehensive Environ-
22 mental Response, Compensation, and Liability Act,
23 Resource Conservation and Recovery Act, and the
24 regulations implementing such Acts;

1 (2) affects the ability of the United States to
 2 take actions acting in its capacity as trustee for any
 3 other Indian tribe or allottee of any other Indian
 4 tribe;

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

6 (A) interpret Federal law regarding health,
 7 safety, or the environment or determine the du-
 8 ties of the United States or other parties pursu-
 9 ant to such Federal law; and

10 (B) conduct judicial review of Federal
 11 agency action.

12 (4) waives any claim of a member of the Tribe
 13 in an individual capacity that does not derive from
 14 a right of the Tribe; or

15 (5) revives any claims waived by the Tribe in
 16 the Joint Stipulation of Settlement, Crow Tribe of
 17 Indians v. Norton, No. 02–284 (Apr. 7, 2006).

18 (c) ENFORCEABILITY DATE.—

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

22 (A) the Montana Water Court has issued
 23 a final judgment and decree approving the
 24 Compact, or if the Montana Water Court is
 25 found to lack jurisdiction, the United States

1 District Court of jurisdiction has approved the
2 Compact as a consent decree and such approval
3 is final;

4 (B) \$44,000,000 has been deposited in the
5 Crow Settlement Fund;

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

9 (D) the State has appropriated and paid
10 into an interest-bearing escrow account any
11 payments then due to the Tribe under the Com-
12 pact;

13 (E) the Tribe has ratified the Compact by
14 submitting the Act and the Compact to a vote
15 by the tribal membership for approval or dis-
16 approval and the tribal membership has voted
17 to approve the Act and the Compact by a ma-
18 jority of votes cast on the day of the vote, as
19 certified by the Secretary and the Tribe;

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

22 (G) the waivers and releases authorized
23 and set forth in subsection (a) have been exe-
24 cuted by the parties and the Secretary.

25 (f) TOLLING OF CLAIMS.—

1 (1) IN GENERAL.—Each applicable period of
2 limitation and time-based equitable defense relating
3 to a claim described in this section shall be tolled for
4 the period beginning on the date of enactment of
5 this Act and ending on the date on which the
6 amounts authorized to be appropriated to carry out
7 this Act are appropriated.

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

12 **SEC. 11. CROW SETTLEMENT FUND.**

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

17 (b) ACCOUNTS OF CROW SETTLEMENT FUND.—The
18 Secretary shall establish in the Crow Settlement Fund the
19 following accounts:

20 (1) The Tribal Compact Administration ac-
21 count, consisting of amounts authorized pursuant to
22 section 14(c).

23 (2) The Economic Development account, con-
24 sisting of amounts authorized pursuant to section
25 14(d).

1 (3) The Water Development Projects account,
2 consisting of amounts authorized pursuant to section
3 14(e).

4 (4) The MR&I System OM&R account, con-
5 sisting of amounts authorized pursuant to section
6 14(f).

7 (5) The Yellowtail Dam OM&R account, con-
8 sisting of amounts authorized pursuant to section
9 14(g).

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

12 (c) DEPOSITS TO CROW SETTLEMENT FUND.—

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

16 (2) DEPOSITS TO ACCOUNTS.—The Secretary of
17 the Treasury shall deposit amounts in the accounts
18 of the Crow Settlement Fund established under sub-
19 section (b) in descending order of priority, with
20 highest priority given to the Tribal Compact Admin-
21 istration account established under subsection
22 (b)(1).

23 (d) MANAGEMENT.—

24 (1) IN GENERAL.—The Secretary shall manage
25 the Crow Settlement Fund, make investments from

1 the Crow Settlement Fund, and make monies avail-
2 able from the Crow Settlement Fund for distribution
3 to the Tribe consistent with the American Indian
4 Trust Fund Management Reform Act of 1994 (25
5 U.S.C. 4001 et seq.) (referred to in this subsection
6 as the “Trust Fund Reform Act”).

7 (2) INVESTMENT OF CROW SETTLEMENT
8 FUND.—Upon the enforceability date the Secretary
9 shall invest amounts in the Crow Settlement Fund
10 in accordance with—

11 (A) the Act of April 1, 1880 (25 U.S.C.
12 161);

13 (B) the first section of the Act of June 24,
14 1938 (25 U.S.C. 162a);

15 (C) the obligations of Federal corporations
16 and Federal Government-sponsored entities the
17 charter documents of which provide that the ob-
18 ligations of the entities are lawful investments
19 for federally managed funds, including—

20 (i) the obligations of the United
21 States Postal Service described in section
22 2005 of title 39, United States Code;

23 (ii) bonds and other obligations of the
24 Tennessee Valley Authority described in

1 section 15d of the Tennessee Valley Au-
 2 thority Act of 1933 (16 U.S.C. 831n-4);

3 (iii) mortgages, obligations, and other
 4 securities of the Federal Home Loan Mort-
 5 gage Corporation described in section 303
 6 of the Federal Home Loan Mortgage Cor-
 7 poration Act (12 U.S.C. 1452); and

8 (iv) bonds, notes, and debentures of
 9 the Commodity Credit Corporation de-
 10 scribed in section 4 of the Act of March 8,
 11 1938 (15 U.S.C. 713a-4); and

12 (D) the obligations referred to in section
 13 201 of the Social Security Act (42 U.S.C. 401).

14 (3) DISTRIBUTIONS FROM CROW SETTLEMENT
 15 FUND.—

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

19 (B) TRIBAL COMPACT ADMINISTRATION
 20 ACCOUNT.—The Tribal Compact Administration
 21 Account shall be used for expenditures by the
 22 Tribe for Tribal Compact Administration, in ac-
 23 cordance with the definition of Tribal Compact
 24 Administration under section 3.

1 (C) ECONOMIC DEVELOPMENT AC-
 2 COUNT.—The Economic Development Account
 3 shall be used for expenditures by the Tribe for
 4 economic development, in accordance with the
 5 definition of Economic Development under sec-
 6 tion 3.

7 (D) WATER DEVELOPMENT PROJECT AC-
 8 COUNT.—The Water Development Project Ac-
 9 count shall be used for expenditures by the
 10 Tribe for 1 or more water development projects,
 11 in accordance with the definition of Water De-
 12 velopment Project under section 3.

13 (E) YELLOWTAIL DAM OM&R ACCOUNT.—
 14 Interest accrued on the funds in the Yellowtail
 15 Dam OM&R Account in the prior fiscal year
 16 shall be used for Yellowtail Dam OM&R costs
 17 in the subsequent year. The interest shall be
 18 used to reduce the Yellowtail Dam OM&R costs
 19 to all tribal water users on a proportional basis
 20 for that year.

21 (F) CIP OM&R ACCOUNT.—

22 (i) IN GENERAL.—Interest accrued on
 23 the funds in the CIP OM&R Account in
 24 the prior fiscal year shall be used for CIP
 25 OM&R costs in the subsequent year.

1 (ii) REDUCTION OF COSTS TO TRIBAL
2 WATER USERS.—

3 (I) IN GENERAL.—Subject to
4 subclause (II), the interest described
5 in clause (i) shall be used to reduce
6 the CIP OM&R costs to all tribal
7 water users on a proportional basis
8 for that year.

9 (II) LIMITATION ON USE OF
10 FUNDS.—The funds from the CIP
11 OM&R Account shall only be used to
12 pay irrigation assessments for the
13 Tribe, tribal entities and instrumen-
14 talities, tribal members, allottees, and
15 entities owned by the Tribe, tribal
16 members, or allottees.

17 (G) MR&I SYSTEM OM&R ACCOUNT.—

18 (i) IN GENERAL.—Interest accrued on
19 the funds from the MR&I System OM&R
20 Account in the prior fiscal year shall be
21 used for MR&I System OM&R costs in the
22 subsequent year.

23 (ii) REDUCTION OF COSTS TO TRIBAL
24 WATER USERS.—

1 (1) IN GENERAL.—Subject to
 2 subclause (II), the interest described
 3 in clause (i) shall be used to reduce
 4 the MR&I System OM&R costs to all
 5 tribal water users on a proportional
 6 basis for that year.

7 (II) LIMITATION ON USE OF
 8 FUNDS.—The funds from the MR&I
 9 System OM&R Account shall only be
 10 used to reduce water charges for
 11 water used by the Tribe, tribal enti-
 12 ties and instrumentalities, tribal mem-
 13 bers, allottees, and entities owned by
 14 the Tribe, tribal members, or
 15 allottees.

16 (4) WITHDRAWALS BY TRIBE.—

17 (A) IN GENERAL.—The Tribe may with-
 18 draw any portion of amounts in the Crow Set-
 19 tlement Fund on approval by the Secretary of
 20 a tribal management plan in accordance with
 21 the Trust Fund Reform Act.

22 (B) REQUIREMENTS.—

23 (i) IN GENERAL.—In addition to the
 24 requirements under the Trust Fund Re-
 25 form Act, the tribal management plan of

1 the Tribe under subparagraph (A) shall re-
2 quire that the Tribe spend any amounts
3 withdrawn from the Crow Settlement Fund
4 in accordance with this Act.

5 (ii) ENFORCEMENT.—The Secretary
6 may carry out such judicial or administra-
7 tive actions as the Secretary determines to
8 be necessary to enforce a tribal manage-
9 ment plan to ensure that amounts with-
10 drawn by the Tribe from the Crow Settle-
11 ment Fund under this paragraph are used
12 in accordance with this Act.

13 (C) LIABILITY.—The Secretary and the
14 Secretary of the Treasury shall not be liable for
15 the expenditure or investment of amounts with-
16 drawn from the Crow Settlement Fund by the
17 Tribe under this paragraph.

18 (D) EXPENDITURE PLAN.—

19 (i) IN GENERAL.—For each fiscal
20 year, the Tribe shall submit to the Sec-
21 retary for approval an expenditure plan for
22 any portion of the amounts described in
23 subparagraph (A) that the Tribe elects not
24 to withdraw under this paragraph during
25 the fiscal year.

1 (ii) INCLUSION.—An expenditure plan
 2 under clause (i) shall include a description
 3 of the manner in which, and the purposes
 4 for which, funds of the Tribe remaining in
 5 the Crow Settlement Fund will be used
 6 during subsequent fiscal years.

7 (iii) APPROVAL.—On receipt of an ex-
 8 penditure plan under clause (i), the Sec-
 9 retary shall approve the plan if the Sec-
 10 retary determines that the plan is—

11 (I) reasonable; and

12 (II) consistent with this Act.

13 (5) ANNUAL REPORTS.—The Tribe shall submit
 14 to the Secretary annual reports describing each ex-
 15 penditure by the Tribe of amounts in the Crow Set-
 16 tlement Fund during the preceding calendar year.

17 (6) CERTAIN PER CAPITA DISTRIBUTIONS PRO-
 18 HIBITED.—No amount in the Crow Settlement Fund
 19 shall be distributed to any member of the Tribe on
 20 a per capita basis.

21 (c) AVAILABILITY.—The amounts in the Crow Settle-
 22 ment Fund shall be available for use by the Secretary and
 23 withdrawal by the Tribe beginning on the enforceability
 24 date.

1 ~~(f) STATE CONTRIBUTION.—~~The State contribution
 2 shall be provided in accordance with article VI(A) of the
 3 Compact.

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

5 ~~(a) STREAMFLOW AND LAKE LEVEL MANAGEMENT~~
 6 ~~PLAN.—~~

7 ~~(1) Nothing in the Compact or the Streamflow~~
 8 ~~and Lake Level Management Plan referred to in Ar-~~
 9 ~~ticle III A.7. of the Compact—~~

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

12 ~~(B) requires the Secretary to give priority~~
 13 ~~to any factor described in section 4F of the~~
 14 ~~plan over any other factor described in that sec-~~
 15 ~~tion.~~

16 ~~(2) Bighorn Lake water management, including~~
 17 ~~the Streamflow and Lake Level Management Plan,~~
 18 ~~is a Federal activity and review and enforcement of~~
 19 ~~any water management decisions shall be as pro-~~
 20 ~~vided by Federal law.~~

21 ~~(3) The Streamflow and Lake Level Manage-~~
 22 ~~ment Plan referred to in and part of the Compact~~
 23 ~~shall be interpreted to clearly reflect paragraphs (1)~~
 24 ~~and (2).~~

25 ~~(b) POWER GENERATION.—~~

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

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

7 (3) Any hydroelectric power generated under
8 this provision shall be used or marketed by the
9 Tribe.

10 (4) The Tribe shall retain any revenues from
11 the sale of hydroelectric power generated under this
12 provision.

13 (5) The United States shall have no trust obli-
14 gation to monitor, administer, or account for the
15 revenues received by the Tribe, or the expenditure of
16 the revenues.

17 (c) CONSULTATION WITH TRIBE.—The Bureau of
18 Reclamation shall consult with the Tribe on at least a
19 quarterly basis on all issues relating to the Bureau's man-
20 agement of Yellowtail Dam.

21 **SEC. 13. MISCELLANEOUS PROVISIONS.**

22 (a) WAIVER OF SOVEREIGN IMMUNITY BY THE
23 UNITED STATES.—Except as provided in subsections (a)
24 through (e) of section 208 of the Department of Justice

1 Appropriation Act, 1953 (43 U.S.C. 666), nothing in this
 2 Act waives the sovereign immunity of the United States.

3 (b) OTHER TRIBES NOT ADVERSELY AFFECTED.—

4 Nothing in this Act quantifies or diminishes any land or
 5 water right, or any claim or entitlement to land or water,
 6 of an Indian tribe, band, or community other than the
 7 Tribe.

8 (c) LIMITATION ON CLAIMS FOR REIMBURSEMENT.—

9 With respect to Indian land within the Reservation or the
 10 ceded strip—

11 (1) the United States shall not submit against
 12 any Indian-owned land located within the Reserva-
 13 tion or the ceded strip any claim for reimbursement
 14 of the cost to the United States of carrying out this
 15 Act and the Compact; and

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

19 (d) LIMITATION ON LIABILITY OF UNITED
 20 STATES.—

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

23 (A) to monitor, administer, or account for,
 24 in any manner, any funds provided to the Tribe

1 by any party to the Compact other than the
2 United States; or

3 ~~(B)~~ to review or approve any expenditure
4 of those funds.

5 ~~(2) INDEMNIFICATION.~~—The Tribe shall indem-
6 nify the United States, and hold the United States
7 harmless, with respect to all claims (including claims
8 for takings or breach of trust) arising from the re-
9 ceipt or expenditure of amounts described in para-
10 graph ~~(1)(A)~~.

11 ~~(e) EFFECT ON CURRENT LAW.~~—Nothing in this sec-
12 tion affects any provision of law (including regulations)
13 in effect on the day before the date of enactment of this
14 Act with respect to preenforcement review of any Federal
15 environmental enforcement action.

16 ~~(f) LIMITATIONS ON EFFECT.~~—

17 ~~(1) IN GENERAL.~~—Nothing in this Act or the
18 Compact—

19 ~~(A)~~ limits, expands, alters, or otherwise af-
20 fects—

21 ~~(i)~~ the meaning, interpretation, imple-
22 mentation, application, or effect of any ar-
23 ticle, provision, or term of the Yellowstone
24 River Compact;

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

3 (iii) any allocation (or manner of de-
4 termining any allocation) of water under
5 the Yellowstone River Compact; or

6 (iv) any present or future claim, de-
7 fense, or other position asserted in any
8 legal, administrative, or other proceeding
9 arising under or relating to the Yellow-
10 stone River Compact (including the origi-
11 nal proceeding between the State of Mon-
12 tana and the State of Wyoming currently
13 pending before the United States Supreme
14 Court);

15 (B) makes an allocation or apportionment
16 of water between or among States;

17 (C) addresses or implies whether, how, or
18 to what extent (if any)—

19 (i) the Tribal Water Right or any por-
20 tion of the Tribal Water Right should be
21 accounted for as part of or otherwise
22 charged against any allocation of water
23 made to a State under the provisions of
24 the Yellowstone River Compact; or

1 (ii) the Yellowstone River Compact in-
 2 cludes or does not include the Tribal
 3 Water Right or the water right of any In-
 4 dian tribe as part of any allocation or
 5 other disposition of water under that com-
 6 pact; or
 7 (D) waives the sovereign immunity from
 8 suit of any State under the Eleventh Amend-
 9 ment to the Constitution of the United States,
 10 except as expressly authorized in Article IV
 11 F.S. of the Compact.

12 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

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

18 (b) **DESIGN AND CONSTRUCTION OF MR&I SYS-**
 19 **TEM.**—There is authorized to be appropriated
 20 \$200,840,000, adjusted to reflect changes since May 1,
 21 2008, under section 6(e) for the design and construction
 22 of the MR&I System.

23 (c) **TRIBAL COMPACT ADMINISTRATION.**—There is
 24 authorized to be appropriated \$4,000,000 for Tribal Com-
 25 pact Administration.

1 (d) ECONOMIC DEVELOPMENT PROJECTS.—There is
2 authorized to be appropriated \$40,000,000 for Economic
3 Development Projects.

4 (e) WATER DEVELOPMENT PROJECTS.—There is au-
5 thorized to be appropriated \$37,594,000 (as adjusted to
6 reflect changes in construction cost indices applicable to
7 the types of construction involved during the period begin-
8 ning on May 1, 2008, and ending on the date of appropria-
9 tion) for Water Development Projects.

10 (f) MR&I SYSTEM OM&R.—There is authorized to
11 be appropriated \$40,513,000 (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 MR&I OM&R.

15 (g) YELLOWTAIL DAM OM&R.—There is authorized
16 to be appropriated \$30,876,000 (as adjusted to reflect
17 changes in appropriate cost indices during the period be-
18 ginning on May 1, 2008, and ending on the date of appro-
19 priation) for Yellowtail Dam OM&R.

20 (h) CIP OM&R.—There is authorized to be appro-
21 priated \$12,736,000 (as adjusted to reflect changes in ap-
22 propriate cost indices during the period beginning on May
23 1, 2008, and ending on the date of appropriation) for CIP
24 OM&R.

1 (i) ENVIRONMENTAL COMPLIANCE.—There are au-
2 thorized to be appropriated such sums as are necessary
3 to carry out all necessary environmental compliance activi-
4 ties undertaken by the Secretary associated with the Com-
5 pact and this Act.

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

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

16 (l) INTEREST ACCRUED FROM CROW SETTLEMENT
17 FUND.—For each fiscal year during the period beginning
18 on the date of enactment of this Act and ending on the
19 enforceability date, there is authorized to be appropriated
20 for deposit into the Crow Settlement Fund an amount
21 equal to the interest that would have accrued during the
22 preceding fiscal year on balances held in the Crow Settle-
23 ment Fund.

24 (m) CALCULATION OF INTEREST.—The interest de-
25 scribed in this section shall be calculated using the appli-

1 cable rate for interest-bearing obligations of the United
2 States.

3 **SEC. 15. REPEAL ON FAILURE TO MEET EFFECTIVE DATE.**

4 If the Secretary does not publish a statement of find-
5 ings under section 10(e) by March 31, 2015—

6 (1) this Act is repealed effective January 1,
7 2015, and any action taken by the Secretary and
8 any contract or agreement pursuant to the authority
9 provided under any provision of this Act shall be
10 void;

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

15 (3) any amounts made available under section
16 14 that remain unexpended shall immediately revert
17 to the general fund of the Treasury.

18 **SECTION 1. SHORT TITLE.**

19 *This Act may be cited as the “Crow Tribe Water*
20 *Rights Settlement Act of 2009”.*

21 **SEC. 2. PURPOSES.**

22 *The purposes of this Act are—*

23 (1) *to achieve a fair, equitable, and final settle-*
24 *ment of claims to water rights in the State of Mon-*
25 *tana for—*

1 (A) *the Crow Tribe; and*

2 (B) *the United States for the benefit of the*
3 *Tribe and allottees;*

4 (2) *to authorize, ratify, and confirm the Crow*
5 *Tribe-Montana Water Rights Compact entered into by*
6 *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 any*
20 *individual who holds a beneficial real property inter-*
21 *est 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 ap-
 3 pendix 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 Crow
 8 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 the
 15 water rights compact between the Tribe and the State
 16 contained in section 85–20–901 of the Montana Code
 17 Annotated (2009) (including any exhibit or part of or
 18 amendment to the Compact).

19 (5) *CROW IRRIGATION PROJECT*.—

20 (A) *IN GENERAL*.—The term “Crow Irriga-
 21 tion 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 of—
 2 (I) Agency;
 3 (II) Bighorn;
 4 (III) Forty Mile;
 5 (IV) Lodge Grass #1;
 6 (V) Lodge Grass #2;
 7 (VI) Pryor;
 8 (VII) Reno;
 9 (VIII) Soap Creek; and
 10 (IX) Upper Little Horn.

11 (B) *INCLUSION.*—The term “Crow Irriga-
 12 tion Project” includes land held in trust by the
 13 United States for the Tribe and the allottees in
 14 the Bozeman Trail and Two Leggins irrigation
 15 districts.

16 (6) *CROW SETTLEMENT FUND.*—The term “Crow
 17 Settlement Fund” means the fund established by sec-
 18 tion 11(a).

19 (7) *ECONOMIC DEVELOPMENT.*—The term “Eco-
 20 nomic Development” means any activity the Tribe de-
 21 termines to further the economic development of the
 22 Tribe.

23 (8) *ENFORCEABILITY DATE.*—The term “enforce-
 24 ability date” means the date on which the Secretary

1 publishes in the Federal Register the statement of
2 findings described in section 10(e).

3 (9) FINAL.—The term “final” with reference to
4 approval of the decree described in section 10(e)(1)(A)
5 means—

6 (A) completion of any direct appeal to the
7 Montana Supreme Court of a decree by the Mon-
8 tana Water Court pursuant to section 85–2–235
9 of the Montana Code Annotated (2009), includ-
10 ing the expiration of time for filing of any such
11 appeal; or

12 (B) completion of any appeal to the appro-
13 priate United States Court of Appeals, including
14 the expiration of time in which a petition for
15 certiorari may be filed in the United States Su-
16 preme Court, denial of such petition, or issuance
17 of the United States Supreme Court’s mandate,
18 whichever occurs last.

19 (10) INDIAN TRIBE.—The term “Indian tribe”
20 has the meaning given the term in section 4 of the In-
21 dian Self-Determination and Education Assistance
22 Act (25 U.S.C. 450b).

23 (11) JOINT STIPULATION OF SETTLEMENT.—The
24 term “joint stipulation of settlement” means the joint
25 stipulation of settlement relating to the civil action

1 *styled Crow Tribe of Indians v. Norton, No. 02–284*
2 *(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 by*
10 *HKM Engineering, Inc., and dated July 2008.*

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

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

21 (ii) *in descending order of construction*
22 *priority—*

23 (I) *the Bighorn River Valley Sub-*
24 *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 ap-
15 pendix 4 to the Compact.

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

18 (16) STATE.—The term “State” means the State
19 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 water
4 resources department (or a successor agency)
5 during the 10-year period beginning on the date
6 of establishment of the department.

7 (18) *TRIBAL WATER CODE*.—The term “tribal
8 water code” means a water code adopted by the Tribe
9 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 Crow
17 Tribe of Indians of the State of Montana on behalf of
18 itself and its members (but not its members in their
19 capacities as allottees).

20 (21) *YELLOWTAIL DAM OM&R*.—The term
21 “Yellowtail Dam OM&R” means the charges levied by
22 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 term*
2 “*Water Development Project*” *means any future pota-*
3 *ble water system developed by the Tribe to serve the*
4 *other portions of the Reservation, or such water devel-*
5 *opment projects as the Tribe determines to be appro-*
6 *priate to fulfill the water needs of its members.*

7 **SEC. 4. RATIFICATION OF COMPACT.**

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

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

24 (c) *NATIONAL ENVIRONMENTAL POLICY ACT OF*
25 *1969.*—

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

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

15 **SEC. 5. REHABILITATION AND IMPROVEMENT OF THE CROW**

16 **IRRIGATION PROJECT.**

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

23 (b) *LEAD AGENCY.*—*The Bureau of Reclamation shall*
24 *serve as the lead agency with respect to any activity to reha-*

1 *bilitate or improve the water diversion or delivery features*
2 *of the Crow Irrigation Project.*

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

8 (d) *COSTS.*—*Costs incurred by the Secretary in car-*
9 *rying out an agreement under subsection (a) that are allo-*
10 *cated to the users of the tribal water rights shall be nonreim-*
11 *bursable.*

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

19 (f) *AGREEMENT.*—*At the request of the Tribe, in ac-*
20 *cordance with applicable Federal law, the Secretary shall*
21 *enter into an agreement with the Tribe to implement the*
22 *provisions of this section by which the Tribe shall plan, de-*
23 *sign, and construct any or all of the rehabilitation and im-*
24 *provement required by this section.*

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

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

8 (b) *LEAD AGENCY.*—*The Bureau of Reclamation shall*
9 *serve as the lead agency with respect to any activity to de-*
10 *sign and construct the water diversion and delivery features*
11 *of the MR&I System.*

12 (c) *SCOPE.*—*The scope of the design and construction*
13 *under this section shall be as described in the document en-*
14 *titled “Crow Indian Reservation Municipal, Rural and In-*
15 *dustrial Water System Engineering Report” prepared by*
16 *HKM Engineering, Inc., and dated July 2008.*

17 (d) *COSTS TO TRIBE.*—*Costs incurred by the Secretary*
18 *in carrying out an agreement under subsection (a) that are*
19 *allocated to the Tribe shall be nonreimbursable.*

20 (e) *FUNDING.*—*The Secretary’s obligation pursuant to*
21 *this section shall not exceed \$200,840,000, except that the*
22 *total amount of \$200,840,000 shall be increased or de-*
23 *creased, as appropriate, based on ordinary fluctuations*
24 *from May 1, 2008, in construction cost indices applicable*
25 *to the types of construction involved in the design and con-*
26 *struction.*

1 (f) *AGREEMENT.*—*At the request of the Tribe, in ac-*
 2 *cordance with applicable Federal law, the Secretary shall*
 3 *enter into an agreement with the Tribe to implement the*
 4 *provisions of this section by which the Tribe shall plan, de-*
 5 *sign, and construct any or all of the design and construc-*
 6 *tion required by this section.*

7 (g) *CONVEYANCE OF TITLE TO MR&I SYSTEM FACILI-*
 8 *TIES.*—

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

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

21 (3) *LIABILITY.*—

22 (A) *IN GENERAL.*—*Effective on the date of*
 23 *the conveyance authorized by this subsection, the*
 24 *United States shall not be held liable by any*
 25 *court for damages of any kind arising out of any*

1 *act, omission, or occurrence relating to the land,*
2 *buildings, or facilities conveyed under this sub-*
3 *section, other than damages caused by acts of*
4 *negligence committed by the United States, or by*
5 *employees or agents of the United States, prior*
6 *to the date of conveyance.*

7 *(B) TORT CLAIMS.—Nothing in this section*
8 *increases the liability of the United States be-*
9 *yond the liability provided in chapter 171 of*
10 *title 28, United States Code (commonly known*
11 *as the “Federal Tort Claims Act”).*

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

20 *(5) OBLIGATION OF THE FEDERAL GOVERNMENT*
21 *AFTER COMPLETION.—After construction of the MR&I*
22 *System is completed and the amounts required to be*
23 *deposited in the MR&I System OM&R account have*
24 *been deposited under section 11 the Federal Govern-*
25 *ment shall have no obligation to pay for the oper-*

1 *ation, maintenance, and replacement costs of the*
 2 *MR&I System.*

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

4 *(a) INTENT OF CONGRESS.—It is the intent of Con-*
 5 *gress to provide to each allottee benefits that are equivalent*
 6 *to or exceed the benefits allottees currently possess, taking*
 7 *into consideration—*

8 *(1) the potential risks, cost, and time delay asso-*
 9 *ciated with litigation that would be resolved by the*
 10 *Compact and this Act;*

11 *(2) the availability of funding under this Act*
 12 *and from other sources;*

13 *(3) the availability of water from the tribal*
 14 *water rights; and*

15 *(4) the applicability of section 7 of the Act of*
 16 *February 8, 1887 (25 U.S.C. 381) and this Act to*
 17 *protect the interests of allottees.*

18 *(b) CONFIRMATION OF TRIBAL WATER RIGHTS.—*

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

21 *(2) USE.—Use of the tribal water rights shall be*
 22 *subject to the terms and conditions established by the*
 23 *Compact.*

24 *(c) HOLDING IN TRUST.—The tribal water rights shall*
 25 *be held in trust by the United States for the use and benefit*

1 *of the Tribe, and the allottees in accordance with this sec-*
2 *tion.*

3 (d) *ALLOTTEES.—As specified in and provided for in*
4 *this Act:*

5 (1) *APPLICABILITY OF ACT OF FEBRUARY 8,*
6 *1887.—The provisions of section 7 of the Act of Feb-*
7 *ruary 8, 1887 (25 U.S.C. 381), relating to the use of*
8 *water for irrigation purposes shall apply to the tribal*
9 *water rights.*

10 (2) *ENTITLEMENT TO WATER.—Any entitlement*
11 *to water of an allottee under Federal law shall be sat-*
12 *isfied from the tribal water rights.*

13 (3) *ALLOCATIONS.—Allottees shall be entitled to*
14 *a just and equitable allocation of water for irrigation*
15 *purposes.*

16 (4) *SATISFACTION OF CLAIMS.—The water rights*
17 *and other benefits granted by this Act shall be consid-*
18 *ered full satisfaction of any claim of an allottee*
19 *waived pursuant to section 10(a)(2).*

20 (5) *EXHAUSTION OF REMEDIES.—Before assert-*
21 *ing any claim against the United States under sec-*
22 *tion 7 of the Act of February 8, 1887 (25 U.S.C. 381),*
23 *or any other applicable law, an allottee shall exhaust*
24 *remedies available under the tribal water code or*
25 *other applicable tribal law.*

1 (6) *CLAIMS.*—*Following exhaustion of remedies*
 2 *available under the tribal water code or other appli-*
 3 *cable tribal law, an allottee may seek relief under sec-*
 4 *tion 7 of the Act of February 8, 1887 (25 U.S.C. 381),*
 5 *or other applicable law.*

6 (7) *AUTHORITY.*—*The Secretary shall have the*
 7 *authority to protect allottees' rights as specified in*
 8 *this section.*

9 (e) *AUTHORITY OF TRIBE.*—

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

13 (A) *in accordance with the Compact; and*

14 (B) *subject to approval of the Secretary of*
 15 *the tribal water code under subsection (f)(3)(B).*

16 (2) *LEASES BY ALLOTTEES.*—*Notwithstanding*
 17 *paragraph (1), an allottee may lease any interest in*
 18 *land held by the allottee, together with any water*
 19 *right determined to be appurtenant to the interest in*
 20 *land.*

21 (f) *TRIBAL WATER CODE.*—

22 (1) *IN GENERAL.*—*Notwithstanding the time pe-*
 23 *riod set forth in article (IV)(A)(2)(b) of the Compact,*
 24 *not later than 3 years after the date on which the*
 25 *Tribe ratifies the Compact as set forth in section*

1 10(e)(1)(E), the Tribe shall enact a tribal water code,
2 that provides for—

3 (A) the management, regulation and gov-
4 ernance of all uses of the tribal water rights in
5 accordance with the Compact; and

6 (B) establishment by the Tribe of condi-
7 tions, permit requirements, and other limitations
8 relating to the storage, recovery, and use of the
9 tribal water rights in accordance with the Com-
10 pact.

11 (2) INCLUSIONS.—Subject to the approval of the
12 Secretary, the tribal water code shall provide that—

13 (A) tribal allocations of water to allottees
14 shall be satisfied with water from the tribal
15 water rights;

16 (B) charges for delivery of water for irriga-
17 tion purposes for allottees shall be assessed on a
18 just and equitable basis;

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

22 (D) there is a due process system for the
23 consideration and determination by the Tribe of
24 any request by an allottee, or any successor in
25 interest to an allottee, for an allocation of such

1 *water for irrigation purposes on allotted land,*
2 *including a process for—*

3 *(i) appeal and adjudication of any de-*
4 *nied or disputed distribution of water; and*

5 *(ii) resolution of any contested admin-*
6 *istrative decision; and*

7 *(E) there is a requirement that any allottee*
8 *with a claim relating to the enforcement of rights*
9 *of the allottee under the tribal water code or re-*
10 *lating to the amount of water allocated to land*
11 *of the allottee must first exhaust remedies avail-*
12 *able to the allottee under tribal law and the trib-*
13 *al water code before initiating an action against*
14 *the United States or petitioning the Secretary*
15 *pursuant to subsection (d)(6).*

16 (3) *ACTION BY SECRETARY.—*

17 *(A) IN GENERAL.—The Secretary shall ad-*
18 *minister the tribal water rights until the tribal*
19 *water code is enacted in accordance with para-*
20 *graph (1) and those provisions requiring ap-*
21 *proval pursuant to paragraph (2).*

22 *(B) APPROVAL.—The tribal water code shall*
23 *not be valid unless—*

1 (i) *the provisions of the tribal water*
2 *code required by paragraph (2) are ap-*
3 *proved by the Secretary; and*

4 (ii) *each amendment to the tribal*
5 *water code that affects a right of an allottee*
6 *is approved by the Secretary.*

7 (C) *APPROVAL PERIOD.—*

8 (i) *IN GENERAL.—Except as provided*
9 *by clause (ii), if the Secretary does not ap-*
10 *prove or disapprove the tribal water code*
11 *before the date that is 180 days after the*
12 *date on which the tribal water code is sub-*
13 *mitted to the Secretary for approval, the*
14 *tribal water code shall be considered to have*
15 *been approved by the Secretary to the extent*
16 *that it is not inconsistent with the Compact*
17 *or this Act.*

18 (ii) *MUTUAL EXTENSION OF APPROVAL*
19 *PERIOD.—The tribal water code may not be*
20 *considered to have been approved by the*
21 *Secretary under clause (i) if the Secretary*
22 *and the Tribe agree to extend the approval*
23 *period.*

24 (g) *EFFECT.—Except as otherwise specifically pro-*
25 *vided in this section, nothing in this Act—*

1 (1) *authorizes any action by an allottee against*
 2 *any individual or entity, or against the Tribe, under*
 3 *Federal, State, tribal, or local law; or*

4 (2) *alters or affects the status of any action pur-*
 5 *suant to section 1491(a) of title 28, United States*
 6 *Code.*

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

8 (a) *STORAGE ALLOCATION TO TRIBE.—*

9 (1) *IN GENERAL.—As described in and subject to*
 10 *article III(A)(1)(b) of the Compact, the Secretary*
 11 *shall allocate to the Tribe 300,000 acre-feet per year*
 12 *of water stored in Bighorn Lake, Yellowtail Unit,*
 13 *Lower Bighorn Division, Pick Sloan Missouri Basin*
 14 *Program, Montana, under a water right held by the*
 15 *United States and managed by the Bureau of Rec-*
 16 *lamation, as measured at the outlet works of*
 17 *Yellowtail Dam, including—*

18 (A) *not more than 150,000 acre-feet per*
 19 *year of the allocation, which may be used in ad-*
 20 *dition to the natural flow right described in arti-*
 21 *cle III(A)(1)(a) of the Compact; and*

22 (B) *150,000 acre-feet per year of the alloca-*
 23 *tion, which may be used only as supplemental*
 24 *water for the natural flow right described in ar-*

1 *ticle III(A)(1)(a) of the Compact for use in times*
 2 *of natural flow shortage.*

3 (2) *TREATMENT.—*

4 (A) *IN GENERAL.—The allocation under*
 5 *paragraph (1) shall be considered to be part of*
 6 *the tribal water rights.*

7 (B) *PRIORITY DATE.—The priority date of*
 8 *the allocation under paragraph (1) shall be the*
 9 *priority date of the water right held by the Bu-*
 10 *reau of Reclamation.*

11 (C) *ADMINISTRATION.—*

12 (i) *IN GENERAL.—The Tribe shall ad-*
 13 *minister the water allocated under para-*
 14 *graph (1) in accordance with the Compact.*

15 (ii) *TEMPORARY TRANSFER.—In ac-*
 16 *cordance with subsection (c), the Tribe may*
 17 *temporarily transfer by service contract,*
 18 *lease, exchange, or other agreement, not*
 19 *more than 50,000 acre-feet of water allo-*
 20 *cated under paragraph (1)(A) off the Res-*
 21 *ervation, subject to the approval of the Sec-*
 22 *retary and the requirements of the Compact.*

23 (b) *ALLOCATION AGREEMENT.—*

24 (1) *IN GENERAL.—As a condition of receiving an*
 25 *allocation under this section, the Tribe shall enter*

1 *into an allocation agreement with the Secretary to es-*
2 *tablish the terms and conditions of the allocation, in*
3 *accordance with the terms and conditions of the Com-*
4 *pact and this Act.*

5 (2) *INCLUSIONS.—The allocation agreement*
6 *under paragraph (1) shall include, among other*
7 *things, a provision that—*

8 (A) *it is without limit as to term;*

9 (B) *the Tribe, and not the United States,*
10 *shall be entitled to all consideration due to the*
11 *Tribe under any lease, contract, or agreement the*
12 *Tribe may enter into pursuant to the authority*
13 *in subsection (c);*

14 (C) *the United States shall have no trust*
15 *obligation or other obligation to monitor, admin-*
16 *ister, or account for—*

17 (i) *any funds received by the Tribe as*
18 *consideration under any lease, contract, or*
19 *agreement the Tribe may enter into pursu-*
20 *ant to the authority in subsection (c); or*

21 (ii) *the expenditure of such funds;*

22 (D) *if the facilities at Yellowtail Dam are*
23 *significantly reduced or are anticipated to be*
24 *significantly reduced for an extended period of*
25 *time, the Tribe shall have the same storage rights*

1 *as other storage contractors with respect to the*
 2 *allocation under this section;*

3 *(E) the costs associated with the construc-*
 4 *tion of the storage facilities at Yellowtail Dam*
 5 *allocable to the Tribe—*

6 *(i) shall be nonreimbursable; and*

7 *(ii) shall be excluded from any repay-*
 8 *ment obligation of the Tribe; and*

9 *(F) no water service capital charges shall be*
 10 *due or payable for any water allocated to the*
 11 *Tribe pursuant to this Act and the allocation*
 12 *agreement, regardless of whether that water is*
 13 *delivered for use by the Tribe or is delivered*
 14 *under any leases, contracts, or agreements the*
 15 *Tribe may enter into pursuant to the authority*
 16 *in subsection (c).*

17 *(c) TEMPORARY TRANSFER FOR USE OFF RESERVA-*
 18 *TION.—*

19 *(1) IN GENERAL.—Notwithstanding any other*
 20 *provision of statutory or common law, subject to*
 21 *paragraph (2), on approval of the Secretary and sub-*
 22 *ject to the terms and conditions of the Compact, the*
 23 *Tribe may enter into a service contract, lease, ex-*
 24 *change, or other agreement providing for the tem-*
 25 *porary delivery, use, or transfer of not more than*

1 50,000 acre-feet per year of water allocated under
2 subsection (a)(1)(A) for use off the Reservation.

3 (2) *REQUIREMENT.*—An agreement under para-
4 graph (1) shall not permanently alienate any portion
5 of the water allocated under subsection (a)(1)(A).

6 (d) *REMAINING STORAGE.*—

7 (1) *IN GENERAL.*—Upon the date of enactment of
8 this Act, water in Bighorn Lake shall be considered
9 to be fully allocated and no further storage allocations
10 shall be made by the Secretary.

11 (2) *EFFECT OF SUBSECTION.*—Nothing in this
12 subsection prevents the Secretary from renewing the
13 storage contract with Pennsylvania Power and Light
14 Company consistent with the allocation to Pennsyl-
15 vania Power and Light Company in existence on the
16 date of enactment of this Act, or entering into future
17 agreements with the Northern Cheyenne or Crow
18 Tribes facilitating the Northern Cheyenne and Crow
19 Tribes' use of their allocations of water from Bighorn
20 Lake.

21 **SEC. 9. SATISFACTION OF CLAIMS.**

22 (a) *IN GENERAL.*—The benefits provided to the Tribe
23 and the allottees under the Compact and this Act shall sat-
24 isfy all claims of the Tribe and the allottees waived and
25 released pursuant to section 10.

1 **(b) SATISFACTION OF CLAIMS RELATING TO CROW IR-**
2 **RIGATION PROJECT.—**

3 **(1) IN GENERAL.—***Subject to paragraph (2), the*
4 *funds authorized to be appropriated under subsections*
5 *(a) and (h) of section 14 shall be used to satisfy any*
6 *claim of the Tribe or the allottees with respect to the*
7 *appropriation of funds for the rehabilitation, expan-*
8 *sion, improvement, repair, operation, or maintenance*
9 *of the Crow Irrigation Project. Upon complete appro-*
10 *priation of funds authorized by subsections (a) and*
11 *(h) of section 14 any claim of the Tribe or the*
12 *allottees with respect to the appropriation of funds for*
13 *the rehabilitation, expansion, improvement, repair,*
14 *operation, or maintenance of the Crow Irrigation*
15 *Project shall be deemed to have been satisfied.*

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

20 **(A)** *non-Indian users of the Crow Irrigation*
21 *Project; and*

22 **(B)** *the Tribe, tribal entities and instru-*
23 *mentalities, tribal members, allottees, and enti-*
24 *ties owned by the Tribe, tribal members, or*
25 *allottees to the extent that annual irrigation as-*

1 *sessments assessed on such tribal water users ex-*
 2 *ceed the amount of funds available under section*
 3 *11(d)(3)(F) for costs relating to CIP OM&R.*

4 *(c) NO RECOGNITION OF WATER RIGHTS.—Notwith-*
 5 *standing subsection (a) and except as provided in section*
 6 *7(d), nothing in this Act recognizes or establishes any right*
 7 *of a member of the Tribe or an allottee to water within*
 8 *the Reservation or the ceded strip.*

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

10 *(a) IN GENERAL.—*

11 *(1) WAIVER AND RELEASE OF CLAIMS BY THE*
 12 *TRIBE AND THE UNITED STATES ACTING IN ITS CA-*
 13 *PACITY AS TRUSTEE FOR THE TRIBE.—Subject to the*
 14 *retention of rights set forth in subsection (c), in re-*
 15 *turn for recognition of the tribal water rights and*
 16 *other benefits as set forth in the Compact and this*
 17 *Act, the Tribe, on behalf of itself and its members (but*
 18 *not tribal members in their capacities as allottees),*
 19 *and the United States acting in its capacity as trust-*
 20 *ee for the Tribe and its members (but not tribal mem-*
 21 *bers in their capacities as allottees), are authorized*
 22 *and directed, to execute a waiver and release of all*
 23 *claims for water rights within the State that the*
 24 *Tribe, or the United States acting in its capacity as*
 25 *trustee for the Tribe, asserted, or could have asserted,*

1 *in any proceeding, including but not limited to the*
2 *Montana stream adjudication, up to and including*
3 *the enforceability date, except to the extent that such*
4 *rights are recognized in the Compact as amended by*
5 *this Act.*

6 (2) *WAIVER AND RELEASE OF CLAIMS BY THE*
7 *UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE*
8 *FOR ALLOTTEES.—Subject to the retention of rights*
9 *set forth in subsection (c), in return for recognition*
10 *of the Tribe’s water rights and other benefits as set*
11 *forth in the Compact and this Act, the United States*
12 *acting in its capacity as trustee for allottees is au-*
13 *thorized and directed to execute a waiver and release*
14 *of all claims for water rights within the Reservation*
15 *and the ceded strip that the United States acting in*
16 *its capacity as trustee for the allottees asserted, or*
17 *could have asserted, in any proceeding, including but*
18 *not limited to the Montana stream adjudication, up*
19 *to and including the enforceability date, except to the*
20 *extent that such rights are recognized in the Compact*
21 *or this Act.*

22 (3) *WAIVER AND RELEASE OF CLAIMS BY THE*
23 *TRIBE AGAINST THE UNITED STATES.—Subject to the*
24 *retention of rights set forth in subsection (c), the*

1 *Tribe, on behalf of itself and its members, is author-*
2 *ized to execute a waiver and release of—*

3 *(A) all claims against the United States, its*
4 *agencies, or employees, relating to claims for*
5 *water rights within the State that the United*
6 *States acting in its capacity as trustee for the*
7 *Tribe asserted, or could have asserted, in any*
8 *proceeding, including but not limited to the*
9 *Montana stream adjudication, except to the ex-*
10 *tent that such rights are recognized as tribal*
11 *water rights in this Act, including all claims re-*
12 *lating in any manner to the claims reserved*
13 *against the United States, its agencies or em-*
14 *ployees in section 4(e) of the joint stipulation of*
15 *settlement;*

16 *(B) all claims against the United States, its*
17 *agencies, or employees relating to damages,*
18 *losses, or injuries to water, water rights, land, or*
19 *natural resources due to loss of water or water*
20 *rights (including but not limited to damages,*
21 *losses or injuries to hunting, fishing, gathering*
22 *or cultural rights due to loss of water or water*
23 *rights; claims relating to interference with, di-*
24 *version or taking of water; or claims relating to*
25 *failure to protect, acquire, replace, or develop*

1 *water, water rights or water infrastructure)*
2 *within the State that first accrued at any time*
3 *up to and including the enforceability date, in-*
4 *cluding all claims relating to the failure to estab-*
5 *lish or provide a municipal rural or industrial*
6 *water delivery system on the Reservation and all*
7 *claims relating to the failure to provide for, op-*
8 *erate or maintain the Crow Irrigation Project,*
9 *or any other irrigation system or irrigation*
10 *project on the Reservation;*

11 *(C) all claims against the United States, its*
12 *agencies, or employees relating to the pending*
13 *litigation of claims relating to the Tribe's water*
14 *rights in the State;*

15 *(D) all claims against the United States, its*
16 *agencies, or employees relating to the negotia-*
17 *tion, execution, or the adoption of the Compact,*
18 *exhibits thereto, or this Act;*

19 *(E) subject to the retention of rights set*
20 *forth in subsection (c), all claims for monetary*
21 *damages that first accrued at any time up to*
22 *and including the enforceability date with re-*
23 *spect to—*

24 *(i) the failure to recognize or enforce*
25 *the Tribe's claim of title to lands that are*

1 *created by the movement of the Bighorn*
 2 *River; and*

3 (ii) *the failure to make productive use*
 4 *of those lands created by the movement of*
 5 *the Bighorn River to which the Tribe has*
 6 *claimed title;*

7 (F) *all claims that first accrued at any*
 8 *time up to and including the enforceability date*
 9 *arising from the taking or acquisition of the*
 10 *Tribe's land or resources for the construction of*
 11 *the Yellowtail Dam;*

12 (G) *all claims that first accrued at any*
 13 *time up to and including the enforceability date*
 14 *relating to the construction and operation of*
 15 *Yellowtail Dam and the management of Bighorn*
 16 *Lake; and*

17 (H) *all claims that first accrued at any*
 18 *time up to and including the enforceability date*
 19 *relating to the generation of power from*
 20 *Yellowtail Dam or the lack thereof.*

21 (b) *EFFECTIVENESS OF WAIVERS AND RELEASES.—*
 22 *The waivers under subsection (a) shall take effect on the*
 23 *enforceability date.*

24 (c) *RESERVATION OF RIGHTS AND RETENTION OF*
 25 *CLAIMS.—Notwithstanding the waivers and releases author-*

1 *ized in this Act, the Tribe on behalf of itself and its members*
2 *and the United States acting in its capacity as trustee for*
3 *the Tribe retain—*

4 *(1) all claims for enforcement of the Compact,*
5 *any final decree, or this Act;*

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

8 *(3) all claims relating to activities affecting the*
9 *quality of water including but not limited to any*
10 *claims the Tribe might have under Comprehensive*
11 *Environmental Response, Compensation, and Liabil-*
12 *ity Act (including but not limited to claims for dam-*
13 *ages to natural resources), the Safe Drinking Water*
14 *Act, the Clean Water Act, and the regulations imple-*
15 *menting these Acts;*

16 *(4) all claims relating to damages, losses, or in-*
17 *juries to land or natural resources not due to loss of*
18 *water or water rights (including, but not limited to*
19 *hunting, fishing, gathering, or cultural rights);*

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

23 *(6) all claims against any person or entity other*
24 *than the United States, including claims for mone-*
25 *tary damages, with respect to—*

1 (A) the Tribe's claim of title to lands that
2 are created by the movement of the Bighorn
3 River; and

4 (B) the productive use of those lands created
5 by the movement of the Bighorn River to which
6 the Tribe has claimed title; and

7 (7) all claims that first accrued after the enforce-
8 ability date with respect to claims otherwise waived
9 in accordance with subsection (a)(3)(B), and (E)
10 through (H), inclusive.

11 (d) *EFFECT OF COMPACT AND ACT.*—Nothing in the
12 Compact or this Act—

13 (1) affects the ability of the United States acting
14 in its sovereign capacity to take actions authorized by
15 law, including but not limited to any laws relating
16 to health, safety or the environment, including but not
17 limited to the Clean Water Act, the Safe Drinking
18 Water Act, the Comprehensive Environmental Re-
19 sponse, Compensation, and Liability Act, Resource
20 Conservation and Recovery Act, and the regulations
21 implementing such Acts;

22 (2) affects the ability of the United States to take
23 actions acting in its capacity as trustee for any other
24 Indian tribe or allottee of any other Indian tribe;

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

1 (A) interpret Federal law regarding health,
2 safety, or the environment or determine the du-
3 ties of the United States or other parties pursu-
4 ant to such Federal law; and

5 (B) conduct judicial review of Federal agen-
6 cy action.

7 (4) waives any claim of a member of the Tribe
8 in an individual capacity that does not derive from
9 a right of the Tribe; or

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

12 (e) *ENFORCEABILITY DATE.*—

13 (1) *IN GENERAL.*—The enforceability date shall
14 be the date on which the Secretary publishes in the
15 Federal Register a statement of findings that—

16 (A) the Montana Water Court has issued a
17 final judgment and decree approving the Com-
18 pact, or if the Montana Water Court is found to
19 lack jurisdiction, the United States District
20 Court of jurisdiction has approved the Compact
21 as a consent decree and such approval is final;

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

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

4 (D) the State has appropriated and paid
5 into an interest-bearing escrow account any pay-
6 ments then due to the Tribe under the Compact;

7 (E) the Tribe has ratified the Compact by
8 submitting the Act and the Compact to a vote by
9 the tribal membership for approval or dis-
10 approval and the tribal membership has voted to
11 approve the Act and the Compact by a majority
12 of votes cast on the day of the vote, as certified
13 by the Secretary and the Tribe;

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

16 (G) the waivers and releases authorized and
17 set forth in subsection (a) have been executed by
18 the Tribe and the Secretary.

19 (f) *TOLLING OF CLAIMS.*—

20 (1) *IN GENERAL.*—Each applicable period of
21 limitation and time-based equitable defense relating
22 to a claim described in this section shall be tolled for
23 the period beginning on the date of enactment of this
24 Act and ending on the date on which the amounts au-

1 *thorized to be appropriated to carry out this Act are*
2 *appropriated.*

3 (2) *EFFECT OF SUBSECTION.—Nothing in this*
4 *subsection revives any claim or tolls any period of*
5 *limitation or time-based equitable defense that ex-*
6 *pired before the date of enactment of this Act.*

7 **SEC. 11. CROW SETTLEMENT FUND.**

8 (a) *ESTABLISHMENT.—There is established in the*
9 *Treasury of the United States the Crow Settlement Fund,*
10 *consisting of such amounts as are deposited in the fund*
11 *under subsections (c) through (h) of section 14.*

12 (b) *ACCOUNTS OF CROW SETTLEMENT FUND.—The*
13 *Secretary shall establish in the Crow Settlement Fund the*
14 *following accounts:*

15 (1) *The Tribal Compact Administration account,*
16 *consisting of amounts authorized pursuant to section*
17 *14(c).*

18 (2) *The Economic Development account, con-*
19 *sisting of amounts authorized pursuant to section*
20 *14(d).*

21 (3) *The Water Development Projects account,*
22 *consisting of amounts authorized pursuant to section*
23 *14(e).*

1 (4) *The MR&I System OM&R account, con-*
2 *sisting of amounts authorized pursuant to section*
3 *14(f).*

4 (5) *The Yellowtail Dam OM&R account, con-*
5 *sisting of amounts authorized pursuant to section*
6 *14(g).*

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

9 (c) *DEPOSITS TO CROW SETTLEMENT FUND.—*

10 (1) *IN GENERAL.—The Secretary of the Treasury*
11 *shall promptly deposit in the Crow Settlement Fund*
12 *any amounts appropriated for that purpose.*

13 (2) *DEPOSITS TO ACCOUNTS.—The Secretary of*
14 *the Treasury shall deposit amounts in the accounts of*
15 *the Crow Settlement Fund established under sub-*
16 *section (b) in descending order of priority, with high-*
17 *est priority given to the Tribal Compact Administra-*
18 *tion account established under subsection (b)(1).*

19 (d) *MANAGEMENT.—*

20 (1) *IN GENERAL.—The Secretary shall manage*
21 *the Crow Settlement Fund, make investments from*
22 *the Crow Settlement Fund, and make monies avail-*
23 *able from the Crow Settlement Fund for distribution*
24 *to the Tribe consistent with the American Indian*
25 *Trust Fund Management Reform Act of 1994 (25*

1 U.S.C. 4001 et seq.) (referred to in this subsection as
2 the “Trust Fund Reform Act”).

3 (2) INVESTMENT OF CROW SETTLEMENT FUND.—

4 Upon the enforceability date the Secretary shall invest
5 amounts in the Crow Settlement Fund in accordance
6 with—

7 (A) the Act of April 1, 1880 (25 U.S.C.
8 161);

9 (B) the first section of the Act of June 24,
10 1938 (25 U.S.C. 162a);

11 (C) the obligations of Federal corporations
12 and Federal Government-sponsored entities the
13 charter documents of which provide that the obli-
14 gations of the entities are lawful investments for
15 federally managed funds, including—

16 (i) the obligations of the United States
17 Postal Service described in section 2005 of
18 title 39, United States Code;

19 (ii) bonds and other obligations of the
20 Tennessee Valley Authority described in sec-
21 tion 15d of the Tennessee Valley Authority
22 Act of 1933 (16 U.S.C. 831n-4);

23 (iii) mortgages, obligations, and other
24 securities of the Federal Home Loan Mort-
25 gage Corporation described in section 303 of

1 *the Federal Home Loan Mortgage Corpora-*
 2 *tion Act (12 U.S.C. 1452); and*

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

7 *(D) the obligations referred to in section*
 8 *201 of the Social Security Act (42 U.S.C. 401).*

9 (3) *DISTRIBUTIONS FROM CROW SETTLEMENT*
 10 *FUND.—*

11 *(A) IN GENERAL.—Funds from the Crow*
 12 *Settlement Fund shall be used for each purpose*
 13 *described in subparagraphs (B) through (G).*

14 *(B) TRIBAL COMPACT ADMINISTRATION AC-*
 15 *COUNT.—The Tribal Compact Administration*
 16 *Account shall be used for expenditures by the*
 17 *Tribe for Tribal Compact Administration, in ac-*
 18 *cordance with the definition of Tribal Compact*
 19 *Administration under section 3.*

20 *(C) ECONOMIC DEVELOPMENT ACCOUNT.—*
 21 *The Economic Development Account shall be*
 22 *used for expenditures by the Tribe for economic*
 23 *development, in accordance with the definition of*
 24 *Economic Development under section 3.*

1 (D) *WATER DEVELOPMENT PROJECT AC-*
 2 *COUNT.—The Water Development Project Ac-*
 3 *count shall be used for expenditures by the Tribe*
 4 *for 1 or more water development projects, in ac-*
 5 *cordance with the definition of Water Develop-*
 6 *ment Project under section 3.*

7 (E) *YELLOWTAIL DAM OM&R ACCOUNT.—In-*
 8 *terest accrued on the funds in the Yellowtail*
 9 *Dam OM&R Account in the prior fiscal year*
 10 *shall be used for Yellowtail Dam OM&R costs in*
 11 *the subsequent year. The interest shall be used to*
 12 *reduce the Yellowtail Dam OM&R costs to all*
 13 *tribal water users on a proportional basis for*
 14 *that year.*

15 (F) *CIP OM&R ACCOUNT.—*

16 (i) *IN GENERAL.—Interest accrued on*
 17 *the funds in the CIP OM&R Account in the*
 18 *prior fiscal year shall be used for CIP*
 19 *OM&R costs in the subsequent year.*

20 (ii) *REDUCTION OF COSTS TO TRIBAL*
 21 *WATER USERS.—*

22 (I) *IN GENERAL.—Subject to sub-*
 23 *clause (II), the interest described in*
 24 *clause (i) shall be used to reduce the*
 25 *CIP OM&R costs to all tribal water*

1 *users on a proportional basis for that*
 2 *year.*

3 (II) *LIMITATION ON USE OF*
 4 *FUNDS.—Interest accrued on the funds*
 5 *in the CIP OM&R Account shall only*
 6 *be used to pay irrigation assessments*
 7 *for the Tribe, tribal entities and in-*
 8 *strumentalities, tribal members,*
 9 *allottees, and entities owned by the*
 10 *Tribe, tribal members, or allottees.*

11 (G) *MR&I SYSTEM OM&R ACCOUNT.—*

12 (i) *IN GENERAL.—Interest accrued on*
 13 *the funds from the MR&I System OM&R*
 14 *Account in the prior fiscal year shall be*
 15 *used for MR&I System OM&R costs in the*
 16 *subsequent year.*

17 (ii) *REDUCTION OF COSTS TO TRIBAL*
 18 *WATER USERS.—*

19 (I) *IN GENERAL.—Subject to sub-*
 20 *clause (II), the interest described in*
 21 *clause (i) shall be used to reduce the*
 22 *MR&I System OM&R costs to all trib-*
 23 *al water users on a proportional basis*
 24 *for that year.*

(II) *LIMITATION ON USE OF*

FUNDS.—The funds from the MR&I System OM&R Account shall only be used to reduce water charges for water used by the Tribe, tribal entities and instrumentalities, tribal members, allottees, and entities owned by the Tribe, tribal members, or allottees.

(4) *WITHDRAWALS BY TRIBE.—*

(A) *IN GENERAL.—The Tribe may withdraw any portion of amounts in the Crow Settlement Fund on approval by the Secretary of a tribal management plan in accordance with the Trust Fund Reform Act.*

(B) *REQUIREMENTS.—*

(i) *IN GENERAL.—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan of the Tribe under subparagraph (A) shall require that the Tribe spend any amounts withdrawn from the Crow Settlement Fund in accordance with this Act.*

(ii) *ENFORCEMENT.—The Secretary may carry out such judicial or administrative actions as the Secretary determines to*

1 *be necessary to enforce a tribal management*
2 *plan to ensure that amounts withdrawn by*
3 *the Tribe from the Crow Settlement Fund*
4 *under this paragraph are used in accord-*
5 *ance with this Act.*

6 (C) *LIABILITY.*—*The Secretary and the Sec-*
7 *retary of the Treasury shall not be liable for the*
8 *expenditure or investment of amounts withdrawn*
9 *from the Crow Settlement Fund by the Tribe*
10 *under this paragraph.*

11 (D) *EXPENDITURE PLAN.*—

12 (i) *IN GENERAL.*—*For each fiscal year,*
13 *the Tribe shall submit to the Secretary for*
14 *approval an expenditure plan for any por-*
15 *tion of the amounts described in subpara-*
16 *graph (A) that the Tribe elects not to with-*
17 *draw under this paragraph during the fis-*
18 *cal year.*

19 (ii) *INCLUSION.*—*An expenditure plan*
20 *under clause (i) shall include a description*
21 *of the manner in which, and the purposes*
22 *for which, funds of the Tribe remaining in*
23 *the Crow Settlement Fund will be used dur-*
24 *ing subsequent fiscal years.*

1 (iii) *APPROVAL.*—*On receipt of an ex-*
2 *penditure plan under clause (i), the Sec-*
3 *retary shall approve the plan if the Sec-*
4 *retary determines that the plan is—*

5 (I) *reasonable; and*

6 (II) *consistent with this Act.*

7 (5) *ANNUAL REPORTS.*—*The Tribe shall submit*
8 *to the Secretary annual reports describing each ex-*
9 *penditure by the Tribe of amounts in the Crow Settle-*
10 *ment Fund during the preceding calendar year.*

11 (6) *CERTAIN PER CAPITA DISTRIBUTIONS PRO-*
12 *HIBITED.*—*No amount in the Crow Settlement Fund*
13 *shall be distributed to any member of the Tribe on a*
14 *per capita basis.*

15 (e) *AVAILABILITY.*—

16 (1) *IN GENERAL.*—*Except as provided in para-*
17 *graph (2), the amounts in the Crow Settlement Fund*
18 *shall be available for use by the Secretary and with-*
19 *drawal by the Tribe beginning on the enforceability*
20 *date.*

21 (2) *EXCEPTION.*—*The amounts made available*
22 *under section 14(c) shall be available for use by the*
23 *Secretary and withdrawal by the Tribe beginning on*
24 *the date on which the Tribe ratifies the Compact as*
25 *provided in section 10(e)(1)(E).*

1 (f) *STATE CONTRIBUTION.*—*The State contribution*
2 *shall be provided in accordance with article VI(A) of the*
3 *Compact.*

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

5 (a) *STREAMFLOW AND LAKE LEVEL MANAGEMENT*
6 *PLAN.*—

7 (1) *Nothing in the Compact or the Streamflow*
8 *and Lake Level Management Plan referred to in Arti-*
9 *cle III A.7. of the Compact—*

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

12 (B) *requires the Secretary to give priority*
13 *to any factor described in section 4F of the plan*
14 *over any other factor described in that section.*

15 (2) *Bighorn Lake water management, including*
16 *the Streamflow and Lake Level Management Plan, is*
17 *a Federal activity and review and enforcement of any*
18 *water management decisions shall be as provided by*
19 *Federal law.*

20 (3) *The Streamflow and Lake Level Management*
21 *Plan referred to in and part of the Compact shall be*
22 *interpreted to clearly reflect paragraphs (1) and (2).*

23 (4) *Notwithstanding any term (including any*
24 *defined term) or provision in the Streamflow and*
25 *Lake Level Management Plan, for purposes of this*

1 *Act, the Compact, and the Streamflow and Lake Level*
2 *Management Plan, any requirement in that Plan that*
3 *the Crow Tribe dedicate a specified percentage, por-*
4 *tion, or number of acre feet of water per year of the*
5 *tribal water rights to instream flow means, and is*
6 *limited in its meaning and effect to, an obligation on*
7 *the part of the Crow Tribe to withhold from develop-*
8 *ment or otherwise refrain from diverting or removing*
9 *from the Bighorn River the specified quantity of*
10 *water for the duration, at the locations, and under the*
11 *conditions set forth in the applicable requirement.*

12 ***(b) POWER GENERATION.—***

13 *(1) Notwithstanding any other provision of law,*
14 *the Tribe shall have the exclusive right to develop and*
15 *market power generation as a water development*
16 *project on the Yellowtail Afterbay Dam.*

17 *(2) The Bureau of Reclamation shall cooperate*
18 *with the Tribe on such project.*

19 *(3) Any hydroelectric power generated under this*
20 *provision shall be used or marketed by the Tribe.*

21 *(4) The Tribe shall retain any revenues from the*
22 *sale of hydroelectric power generated under this provi-*
23 *sion.*

24 *(5) The United States shall have no trust obliga-*
25 *tion to monitor, administer, or account for the reve-*

1 *nues received by the Tribe, or the expenditure of the*
 2 *revenues.*

3 *(c) CONSULTATION WITH TRIBE.—The Bureau of Rec-*
 4 *lamation shall consult with the Tribe on at least a quarterly*
 5 *basis on all issues relating to the Bureau’s management of*
 6 *Yellowtail Dam.*

7 *(d) AMENDMENTS TO COMPACT AND PLAN.—The pro-*
 8 *visions of subsection (a) apply to any amendment to—*

9 *(1) the Compact; or*

10 *(2) the Streamflow and Lake Level Management*
 11 *Plan.*

12 **SEC. 13. MISCELLANEOUS PROVISIONS.**

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

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

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

1 (1) *the United States shall not submit against*
 2 *any Indian-owned land located within the Reserva-*
 3 *tion or the ceded strip any claim for reimbursement*
 4 *of the cost to the United States of carrying out this*
 5 *Act and the Compact; and*

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

9 (d) *LIMITATION ON LIABILITY OF UNITED STATES.—*

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

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

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

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

24 (e) *EFFECT ON CURRENT LAW.—Nothing in this sec-*
 25 *tion affects any provision of law (including regulations) in*

1 *effect on the day before the date of enactment of this Act*
2 *with respect to pre-enforcement review of any Federal envi-*
3 *ronmental enforcement action.*

4 (f) *LIMITATIONS ON EFFECT.—*

5 (1) *IN GENERAL.—Nothing in this Act, the Com-*
6 *pact, or the Streamflow and Lake Level Management*
7 *Plan referred to in Article III(A)(7) of the 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 Yellowstone*
23 *River Compact (including the original pro-*
24 *ceeding between the State of Montana and*

1 *the State of Wyoming currently pending be-*
 2 *fore the United States Supreme Court);*

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

5 *(C) addresses or implies whether, how, or to*
 6 *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 Yellowstone*
 12 *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 tribe*
 16 *as part of any allocation or other disposi-*
 17 *tion of water under that compact; or*

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

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

1 (F)(6)(a)(1) and (2) of the Compact that provide pro-
2 tections to certain water rights recognized under the
3 laws of the State do not affect in any way, either di-
4 rectly or indirectly, existing or future water rights
5 (including the exercise of any such rights) outside of
6 the State.

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

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

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

17 (c) *TRIBAL COMPACT ADMINISTRATION.*—There is au-
18 thorized to be appropriated \$4,776,000 for Tribal Compact
19 Administration.

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

23 (e) *WATER DEVELOPMENT PROJECTS.*—There is au-
24 thorized to be appropriated \$44,889,000 (as adjusted to re-
25 flect changes in construction cost indices applicable to the

1 *types of construction involved during the period beginning*
2 *on May 1, 2008, and ending on the date of appropriation)*
3 *for Water Development Projects.*

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

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

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

19 (i) *ENVIRONMENTAL COMPLIANCE.—There are author-*
20 *ized to be appropriated such sums as are necessary to carry*
21 *out all necessary environmental compliance activities un-*
22 *dertaken by the Secretary associated with the Compact and*
23 *this Act.*

24 (j) *BUREAU OF RECLAMATION COSTS FOR CROW IRRI-*
25 *GATION PROJECT.—There are authorized to be appro-*

1 *priated such sums as are necessary for the Bureau of Rec-*
 2 *lamation to carry out its role as lead agency for the reha-*
 3 *bilitation and improvement of the Crow Irrigation Project.*

4 *(k) BUREAU OF RECLAMATION COSTS FOR MR&I SYS-*
 5 *TEM.—There are authorized to be appropriated such sums*
 6 *as are necessary for the Bureau of Reclamation to carry*
 7 *out its role as lead agency for the design and construction*
 8 *of the MR&I System.*

9 **SEC. 15. REPEAL ON FAILURE TO MEET ENFORCEABILITY**

10 **DATE.**

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

15 *(1) this Act is repealed effective January 1,*
 16 *2016, and any action taken by the Secretary and any*
 17 *contract or agreement pursuant to the authority pro-*
 18 *vided under any provision of this Act shall be void;*

19 *(2) any amounts appropriated under section 14,*
 20 *together with any interest on those amounts, shall im-*
 21 *mediately revert to the general fund of the Treasury;*
 22 *and*

23 *(3) any amounts made available under section*
 24 *14 that remain unexpended shall immediately revert*
 25 *to the general fund of the Treasury.*

Calendar No. 259

11TH CONGRESS
2^D SESSION

S. 375

[Report No. 111-118]

A BILL

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

JANUARY 21, 2010

Reported with an amendment