

MINUTES

**MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Larry Stimatz, on April 17, 1991, at
1:08 p.m.

ROLL CALL

Members Present:

Lawrence Stimatz, Chairman (D)
Cecil Weeding, Vice Chairman (D)
John Jr. Anderson (R)
Esther Bengtson (D)
Don Bianchi (D)
Steve Doherty (D)
Lorents Grosfield (R)
Bob Hockett (D)
Thomas Keating (R)
John Jr. Kennedy (D)
Larry Tveit (R)

Members Excused: none

Staff Present: Deborah Schmidt (EQC).

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion:

HEARING ON SENATE BILL 472

Presentation and Opening Statement by Sponsor:

Senator Joe Mazurek, District 23, told the Committee that SB 472 ratifies the Water Rights Compact between the state and the Northern Cheyenne Tribe of the Northern Cheyenne Reservation. He said the bill represents the effect of many people, working long and hard, to bring the negotiation process to completion.

Senator Mazurek explained that staff members of the Compact Commission, and representatives of the Northern Cheyenne Tribe and the federal government all participated in this process. He stated that the Tongue River and Rosebud Creek Basin Water Users were also involved from the beginning.

Senator Mazurek provided a synopsis of the settlement and maps of the affected areas (Exhibit #1). He said the bill

represents settlement of Indian reservation water rights, and quantifies, for all time, those reservation water rights. Senator Mazurek explained that the bill sets forth administrative terms in the scheme of the rights of non-Indian and other users.

Senator Mazurek further advised the Committee that the Reserved Water Rights Compact Commission deals with overall streams adjudication. He said reservation rights differ from traditional water rights, as they date from the time the reservation is formed. Senator Mazurek explained that there is no loss of rights by non-use, as established in the Winters decision (U.S. Supreme Court). He stated that the Assiniboine-Sioux Tribes' Compact resolution was easy, as it involved the Fort Peck Reservoir.

Senator Mazurek told the Committee this issue is more difficult to address because there is a limited supply of water, and there is even less water on Rosebud Creek. He said it has been a difficult process over the past two years, and would be an historic settlement. Senator Mazurek advised the Committee that the Compact Commission voted on Saturday, April 13, 1991, to give its unanimous approval to this effort. He stated that Compact Commission members are Senator Jack Galt, Chris Tweeten, Carl Davis (Beaverhead County), and himself, and explained that Dennis Iverson also served on the Commission until the last six months.

Senator Mazurek further stated that Tongue River Water Users representatives Herb Mobley and Art Hayes, Jr. also participated in the process, and that the bill does have general support in spite of some concerns.

Senator Mazurek explained the technical applications of SB 427, and said 12,500 acre feet of water would be allocated to the Northern Cheyenne Tribe annually (from the priority date of October 1, 1881), and that water rights dated March 24, 1909 or earlier would be senior to Tribal rights. He stated that 20,000 acre feet of new storage water, or all new storage on the Tongue River, would also be allocated to the Tribe.

Senator Mazurek further explained that the Tribe has agreed that any water over 40,000 acre feet is available for non-Indian users. He said the Rosebud Drainage was more difficult to negotiate, as there is not much water, and that two Tribal rights were created: 1) a phase-in development of water to protect 600 acres of land, or 1800 acre feet of water; 2) a 200-acre foot phase in over the next two years, ending up at 600 acre feet.

Senator Mazurek said there was concern with the number of sub-irrigators downstream from the Reservation, and that 19,530 acre feet of water, or irrigation of 6,510 acres of land, was subrogated to non-Indian users. He further stated that the Tribe agreed to cap protected acre feet at 2,700 (downstream) and 180 acre feet south of the Reservation (upstream).

Senator Mazurek told the Committee that the parties agreed to a moratorium on new permits issued, and the Secretary of the Interior agreed to allocate 30,000 acre feet per year from the Big Horn Reservoir (behind the Yellowtail Dam) to the Tribe. He said he believes the bill sets a good precedent for future negotiation with other tribes.

Senator Mazurek stated that groundwater, if it is alluvial, would count against tribal rights, if it does not exceed 100 gallons per minute. He further stated that this allows the Tribe to market water from the Tongue River Reservoir, but not Rosebud Creek. Senator Mazurek advised the Committee that he believes this is an historic occasion, representing a long, difficult compromise. He said both the Tribe and the state are proud of the treaty which must be approved by the state, the Tribe, and the Congress. Senator Mazurek commented that this alternative is much less costly than litigation, and much more flexible.

Proponents' Testimony:

Chris Tweeten, Vice Chairman, Reserved Water Rights Compact Commission, said he was pleased to present a bill which addresses the administration of Northern Cheyenne water rights. He stated that the Tribal Water Code would govern how the Northern Cheyenne Tribal water rights would be used, and that state water rights law would be administered by the state through the Department of Natural Resources and Conservation (DNRC).

Mr. Tweeten further explained that the bill "creates three levels": 1) storage rights in the Tongue River Reservoir and Rosebud Creek can only be made in conjunction with state law, unless Congress passes other legislation; 2) the Yellowstone Compact prevents water from going outside the basin without the agreement of Montana, South Dakota, and Wyoming, creating an incentive to market water inside the basin (thus, not having to deal with state law); 3) 180-day prior notice is required to market water outside the Reservation, and the Northern Cheyenne Tribe will have to document the effect its marketing proposal will have, as well as comply with public interest criteria. Mr. Tweeten stated that the marketing plan can be challenged by anyone within that 180-day period.

Mr. Tweeten told the Committee that the bill also creates a procedure for transfer of stored water from the Tongue River Reservoir and the Yellowtail Dam, both of which are outside the Reservation. He explained that the Tribe wants to create storage inside the Reservation, if it is deemed feasible, but will abide by state law until this can be done. Mr. Tweeten further explained that Montana would maintain control of the Tongue River Reservoir via a committee-established, long-term operating plan. He said this committee would meet annually to schedule releases of water from the Reservoir, and that once the water is released, DNRC would have control.

Mr. Tweeten further advised the Committee that the Compact Commission followed language in the 1985 Fort Peck Compact for resolution of disputes, and that a three-member Northern Cheyenne Compact Board would be formed to provide initial-level administrative review of problems. He explained that the Board could issue subpoenas and admit evidence, and unresolved issues could go to the courts.

Mr. Tweeten said he objects to quantifying Northern Cheyenne water rights, as several law suits have been filed by the Tribe in U.S. Court. He advised the Committee that the Supreme Court said this should be decided in state court, and said the Tribe agreed that after the Tongue River Reservoir renovation is completed, those federal suits will be dismissed.

Karen Barclay, Director, DNRC, spoke on behalf of Governor Stan Stephens, and thanked those parties involved in the compact. She stated that there are many benefits of compacts, and that the key concern is safety of the Tongue River Reservoir. Ms. Barclay advised the Committee that DNRC has also been involved in cost-share negotiations, and in evaluating the repair of the Reservoir. She further advised that, in 1978, the Reservoir very nearly had to be breached. Ms. Barclay told the Committee that the 140 percent snow-pack this year could also pose a threat to this serious safety problem which will require from \$3 to \$5 million to repair.

Dave Pennington, Chairman, Federal Negotiating Team, introduced Richard Aldrich, James Rawlings (Field Reclamation), and John Graves (Water Rights), U.S. Department of Interior, Billings. He said he believes federal interests are ensured by the Compact, and recommended passage of the bill. Mr. Pennington stated he would work in Washington, D.C. to pass the Compact, and to drop the suits filed at the federal level.

Mr. Pennington advised the Committee that several hundred thousand acre feet of water are contracted for now, and that he would like the Northern Cheyenne to have the 30,000 acre feet of water from Bighorn Reservoir. He explained that this conveyance does not grant the Northern Cheyenne first right, but a contracted right, and that he believes it will set a precedent for other Indian water rights settlements in Montana.

Art Hayes, Jr., Vice Chairman, Tongue River Water Users, said the Users organized in 1937 to operate and maintain the Tongue River Reservoir. He told the Committee he was pleased with the progress of negotiations, and realized the concerns on the part of the state and the Northern Cheyenne Tribe. He stated that on April 4, 1991, the Water Users Board of Directors voted unanimously to support the rehabilitation of the Tongue River water project, and he urged the Committee to support SB 472.

Harley Harris, Assistant Attorney General, specializing in water issues, said he was appearing on behalf of Attorney General

Marc Racicot. Mr. Harris told the Committee that he worked on the Compact, and commended the efforts of Senator Mazurek, Chris Tweeten, the representatives of the Northern Cheyenne Tribe, and the federal people. He said he believes these discussions can, and should, be a model for future negotiations.

Mr. Harris advised the Committee that Indian water rights is a complex issue of law and policy, and that they need to look at the benefits of the Compact, as well as the monetary and social cost to the state. He commented that court costs are often underestimated, and said Wyoming has expended \$10 million without resolving many issues. Mr. Harris said Wyoming has, therefore, no protection for its state water users.

Mr. Harris further advised the Committee that Montana will soon have the opportunity to work with the Blackfeet Tribe, and said he believes the compact is a significant achievement. He urged the Committee to support SB 472.

Calvin Wilson, Tribal Attorney and member of the Northern Cheyenne Tribe, presented the comments of Blaine Small, Secretary of the Crow Tribal Council (Exhibit #2). He urged that the Legislature act favorably on the bill, as it represents two years of intensive negotiations. Mr. Wilson stated that the agreement minimizes the adverse affects to non-Indian water users, and allows the Northern Cheyenne Tribe to develop its water resources (surface, ground, and storage) from the Tongue River Reservoir and Rosebud Creek.

Mr. Wilson told the Committee that repair of the Tongue River Reservoir is vital, and that the Compact is the first step toward this end. He explained that the Compact would resolve issues in administration of water, and said the Wind River, in Wyoming, is a good example of the cost of litigation. Mr. Wilson said a Tongue River advisory committee would be established, and that the Northern Cheyenne Compact Board would work, cooperatively, to resolve disputes.

Mr. Wilson further stated that the Crow Tribe leadership somewhat opposes SB 472, but the federal government has assured them that there is enough water for both the Northern Cheyenne and the Crow Tribes in the future. He urged committee support in making Montana history, by acting favorably on the bill.

Jo Brunner, Executive Secretary, Montana Water Resources Association (of which the Tongue River Water Users are a member), said she supports the compact and rehabilitation of the Tongue River Reservoir.

Opponents' Testimony:

Kayle Howe, Crow Tribe Administrator, read from prepared testimony, and said Article II A. (7) grants 30,000 acre feet of water which flows through the Crow Reservation. He advised the

Committee that first claim on the Yellowtail Reservoir is to the Crow Tribe for 75,000 acre feet of water. Mr. Howe provided amendments with his testimony, and proposed an additional amendment on page 18, line 10 of the bill (Exhibit #3).

Robert Kelly, Crow Tribe Planner and member, said he wondered if the opponents would be the Northern Cheyenne today, if the Big Horn Reservoir were being addressed. He stated that the opposition of the Crow Tribe is nothing personal, and that he believes the Crow will not have an advantageous position in the future. Mr. Kelley read from prepared testimony, and said his ancestors paid for construction of the Big Horn Canal with Tribal money, dating back to the 1880s (Exhibit #4).

Mr. Kelly further advised the Committee that in Arizona v San Carlos Apache Tribe, the state courts have the obligation to follow federal law with regard to water rights on reservations. He stated that the Crow Tribe has had no opportunity to be a party to these negotiations, and believes its interests are being ignored.

Mr. Kelly cited U.S. v Powers (U.S. Supreme Court), and said quantification of water is determined by the use for which it was created on the Reservation. He explained that the 1968 Crow Treaty with the United States allows for development of agriculture for subsistence, and contains provisions for water. Mr. Kelly told the Committee that he believes the bill ignores these rights without the amendments proposed by Kayle Howe.

Mr. Kelly further stated that the Crow Tribe is concerned with one hundred-year floods, and giving the Northern Cheyenne Tribe the first 30,000 acre feet of water, as it could have a detrimental effect on the agricultural planning of the Crow Tribal people. He said the Northwest Power Planning Council has encouraged Montana Power Company to seek energy from facilities such as the Big Horn Reservoir.

Joseph Pickett, Vice Chairman, Crow Tribe, said he represented 8,000 members, and referred to Blaine Small's testimony which was presented earlier by Tribal Attorney, Calvin Wilson.

Senator Towe commented that the first claim statutorily provides water to the Crow Tribe to the Hardin Bench. He said he didn't have the exact figures, but believes this is between 15,000 and 20,000 acre feet. Senator Towe stated that much of this water flows through what is or what used to be the Crow Reservation.

Senator Towe assured the Committee that the Crow Tribe will claim 200,000-300,000 acre feet, and that would leave nothing left to give the Northern Cheyenne. He stated that he does not believe the Northern Cheyenne can take water claimed by the Crow, and that there is no commercial or industrial demand for the

water right now, but the Crow Tribe must prepare for their future.

Senator Towe asked if it is fair to give the first 30,000 acre feet, as well as the right to sell this water, to the neighbors of the Crow, whose reservation is on no part of the Yellowtail Reservoir. He also asked if it is fair that the Crow could be underbid by the Northern Cheyenne, if they both have water rights, and said this is the major objection of the Crow Tribe.

Senator Towe advised the Committee that he has reviewed the Compact, and believes it is good for both Montana and the Northern Cheyenne. He commented that if the problem can be addressed, the Compact should go forward, and that the amendments proposed by the Crow Tribe would do this. Senator Towe further commented that if the amendments are approved, the Compact must go back for review, and said the Crow have contested this process from the beginning.

Representative Angela Russell, District 99, told the Committee she is also a member of the Crow Tribe. She said she is distressed about taking 30,000 acre feet from the Yellowtail Reservoir, and that she did not see how Senator Mazurek sees this as an advantage to the Crow Tribe.

Representative Russell stated that water is the lifeblood of Montana, and the West, and that the Committee needs to look at fairness in this situation. She commented that she believes the Compact Commission is following the adage of "divide and conquer", and urged that the Committee adopt the amendments provided by the Crow Tribe.

Questions From Committee Members:

Senator Doherty asked how many acre feet behind the Yellowtail Reservoir would be available to the Crow Tribe if 30,000 acre feet are given to the Northern Cheyenne Tribe. James Rawlings, Bureau of Reclamation, replied that 300,000 acre feet are available for marketing, and that Montana Power purchases 6,000 acre feet per year now. He commented that, in the mid-60s to mid-70s, about 600,000 acre feet were marketed from Yellowtail and Boyson Reservoirs.

Senator Doherty asked if the Crow claim is superior. Mr. Rawlings replied that Yellowtail Reservoir is a federal facility.

Senator Doherty asked what claim is superior, Crow or Northern Cheyenne. John Graves (federal water rights) replied that irrigation development on the Hardin Bench is involved, and includes 125,000 acre feet for development. He stated that, in addition, one million acre feet are dedicated annually to conservation purposes, of which 300,000 acre feet are available for water marketing. Mr. Graves said he assumes development of

the Hardin unit, and the Crow Tribe, and also assumes that 300,000 acre feet are available to all comers, without that, under the Winters Doctrine.

Senator Doherty asked if a budget proposal would be submitted for the repair of the Tongue River Reservoir. Dave Pennington replied it would be, plus a four foot raise in the Reservoir to benefit the Northern Cheyenne Tribe. John Graves commented that the contract with Montana Power, and the 1960s-1970s contracts specify that they are subject to future quantification of Crow and Northern Cheyenne water rights. He advised the Committee that there is no priority date, except the 1960 Bureau of Reclamation date, and that would be junior to the 1868 water rights date. James Rawlings further stated that the contracts for the 660,000 acre feet marketed in the 1960s-1970s are now terminated. He explained that they were for coal development which did not take place.

Senator Weeding asked if the 125,000 acre feet is part of the Yellowtail Reservoir yield. John Graves replied that non-Indian lands on the Hardin unit may be entitled under the Walton Doctrine (1868). He explained that the Winters Doctrine established reservation water rights for the Tribes, and the Walton Doctrine carved out the rights of non-Indians to share in those water rights.

Senator Weeding asked if 6,000 acre feet goes to Western Energy for Colstrip 3 and 4. John Graves replied that it does.

Senator Tveit asked what the philosophy of the Secretary of the Interior is, in giving the Northern Cheyenne 30,000 acre feet of Crow water when the Northern Cheyenne are not in that basin. Mr. Graves replied that there is no announced policy from the Department of the Interior, and that he felt it was appropriate for the Crow Tribe to obtain water from the Yellowtail Reservoir, as a concession. He commented that agricultural use could be piggy-backed.

Mr. Graves further stated that the Crow concerns were heard in August, during the negotiation process, and that two modifications were made as a result: 1) the water was not identified as the first block of water (to the Northern Cheyenne), and the Northern Cheyenne must pay for the water if they develop a use for it; 2) there is no immediate revenue stream to the Northern Cheyenne.

Senator Weeding asked if, assuming Crow rights would be quantified in the future under the Winters Doctrine, their rights would be senior to those of the Northern Cheyenne. John Graves replied they would be, under aboriginal claims.

Senator Doherty asked if the 30,000 acre feet allocated to the Northern Cheyenne is conditional upon final quantification of the Winters Doctrine to the Crow Tribe. Mr. Graves replied that

the Bureau of Reclamation and the Department of the Interior say the Winters Doctrine goes to natural flow rights.

Senator Stimatz asked what the total storage capacity of the Yellowtail Reservoir is. John Graves replied it is 1.5 million acre feet, of which some is flood-control capacity, and 1 million acre feet is for recreational use, power development, fish and wildlife, etc. James Rawlings advised Senator Stimatz that 576,445 acre feet is a conservation pool of the 1.3 million acre feet total. He explained that 493,000 acre feet is dead storage to run the turbines, plus the exclusive flood space.

Senator Bianchi asked Karen Barclay if signing the Compact will commit the state to a cost-share program for the repair of the Tongue River Dam. Karen Barclay replied that is addressed on page 41 of the bill, and provided the Committee with a breakdown of costs (Exhibit #5). She said the U.S. government would pay \$31.5 million toward repair of the Tongue River Reservoir, and that state could pay \$16.5 million (\$5 million in cash contributions over three bienniums from the Broadwater Hydroelectric Project and the DNRC Rehabilitation Account, and the balance from federal loans).

Ms. Barclay further advised the Committee that the four foot enlargement would cost about \$17.8 million (to be paid for by the federal government), and that the \$30 million cost of repairing the spillway would be split between the state and the general government.

Senator Bianchi asked what the chances are of Congress approving this proposal, with the contentions between the Northern Cheyenne and the Crow Tribes. Senator Mazurek said he believes there is good cooperation in this regard, and that the funding bills are either in drafting or have been introduced.

Closing by Sponsor:

Senator Mazurek told the Committee he believes Representative Russell has a fair question. He stated that the precedential value of this portion of settlement is of benefit to the Crow Tribe, as there is no clear right to claim stored water. Senator Mazurek advised the Committee that he doesn't believe the federal government would say that additional stored water would be given under the Crow claim.

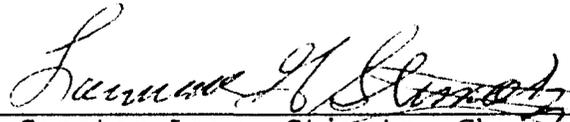
Senator Mazurek further stated that SB 472 is a concession, and was requested by the Northern Cheyenne Tribe. He said he recognizes the political concerns of the Tribes, and understands them, and that the bill does not contain a first block claim. Senator Mazurek told the Committee he was sorry that the focus was not on the benefits of the Compact, but on the 30,000 acre fee from the Big Horn Reservoir.

Senator Mazurek said he believes water users would have been

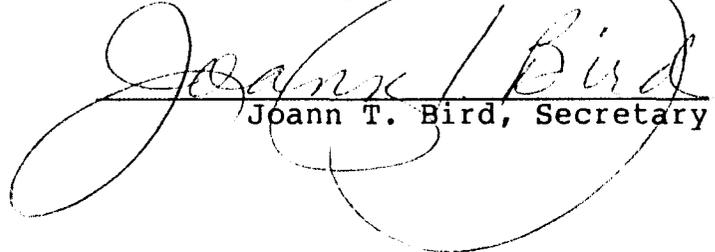
displaced entirely by litigation, and strongly urged that the Committee not adopt the proposed amendments, as they would "derail" the process. He explained that this is a delicate settlement, and that he believes it will end up in litigation, if it is not approved this session.

ADJOURNMENT

Adjournment At: 2:57 p.m.



Senator Larry Stimatz, Chairman



Joann T. Bird, Secretary

LS/jtb

ROLL CALL
Natural Resources
COMMITTEE

DATE 4-17-91

52

LEGISLATIVE SESSION

(present)

NAME	PRESENT	ABSENT	EXCUSED
Senator Anderson	✓		
Senator Bengtson	✓		
Senator Bianchi	✓		
Senator Doherty	✓		
Senator Grosfield	✓		
Senator Hockett	✓		
Senator Keating	✓		
Senator Kennedy	✓		
Senator Tveit	✓		
Vice Chairman, Weeding	✓		
Chairman Stimatz	✓		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE Natural Resources

Date 4-17-91 Bill No. SB 472 Time 4:40 pm

NAME	YES	NO
Senator Anderson	✓	
Senator Bengston	✓	
Senator Bianchi	✓	
Senator Doherty	✓	
Senator Grosfield	✓	
Senator Hockett	✓	
Senator Keating	✓	
Senator Kennedy	✓	
Senator Tveit	✓	
Senator Weeding, Vice Chairman	✓	
Senator Stimatz, Chairman	✓	

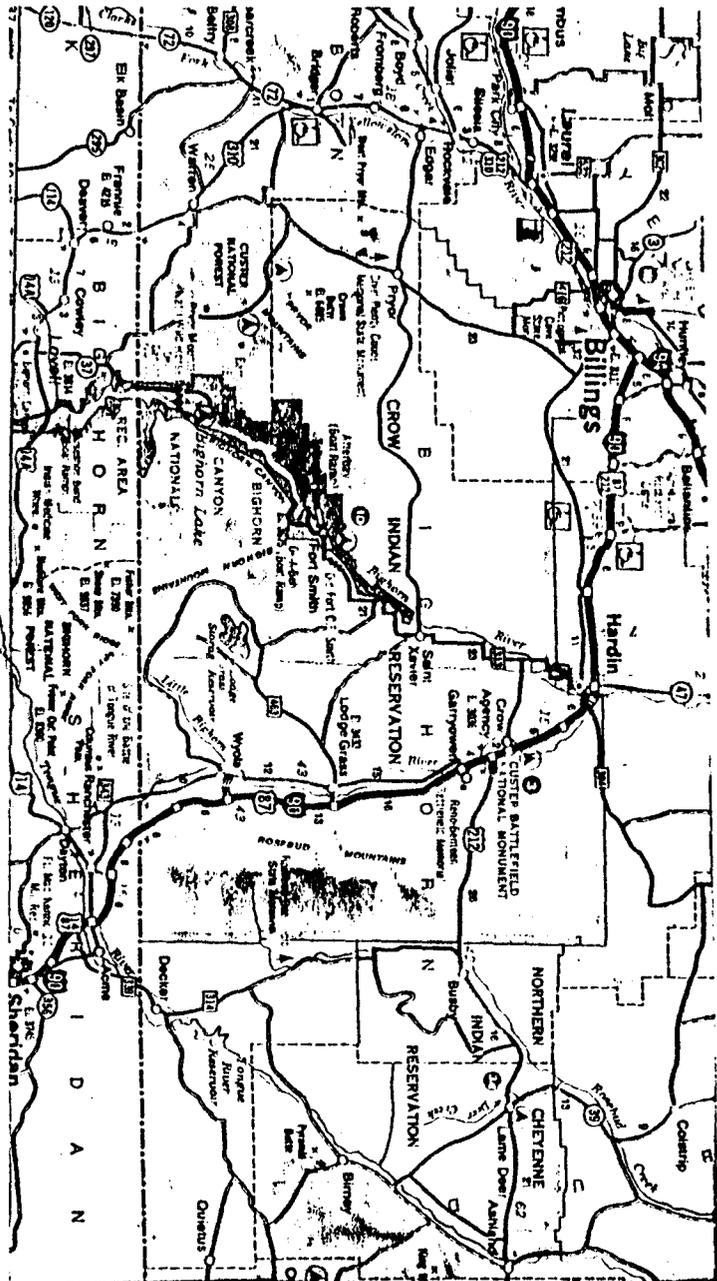
Robert C. Jell
Secretary

Lennore A. Leonard
Chairman

Motion: _____

SENATE NATURAL RESOURCES

EXHIBIT NO. 1
DATE 4-17-91
BILL NO. HB 472



Northern Cheyenne Compact

Tribal Water Right

1. Tongue River Basin. The Tribal water right in the Tongue River basin consists of the right to divert up to 32,500 acre-feet per year (AFY), from a combination of direct flow of the river and storage from the raised and repaired Tongue River Reservoir. Present Tribal uses for irrigation will be subtracted from the 32,500 AFY. An existing Tribal water purchase contract for 7,500 AFY remains in effect, and is in addition to the 32,500 AFY. The two components of the Tribe's 32,500 are as follows:

a. Direct Flow. The Tribe can divert up to 12,500 AFY from the direct flow of the Tongue River, and deplete up to 9,375 AFY, with a priority date of October 1, 1881. The Tribal direct flow right is subordinated to Miles City Decree rights, as finally adjudicated by the Water Court, with a priority date of March 24, 1909 or earlier. The direct flow right is also subordinated to diversion water rights on Tongue River tributaries, as finally decreed. This means that the Miles City Decree rights and tributary rights will be treated as if they're senior to the Tribe's direct flow rights.

b. Storage Right. The Tribe has a right to divert and deplete up to 20,000 AFY from the enlarged Tongue River Reservoir. This right essentially allocates all the new storage to the Tribe. The Tribal storage right is subject to specified shortages, and its availability will fluctuate depending on the schedule the Tribe selects for diversions of its direct flow right. Tribal use of direct flow and storage will not affect existing state storage contracts of 40,000 AFY.

c. Excess Water. The calculations of water availability for both tribal and non-Indian uses have been based on a computer water model which makes certain assumptions about existing Montana and Wyoming water uses. If, in the future, these assumptions change, any "excess" water that is available will be used to "firm up" the Tribe's water allocation of 32,500 acre-feet. Any water over and above this amount will then be available for future non-Indian uses.

2. Rosebud Creek Basin. The Compact creates two Tribal rights to the water of Rosebud Creek. The first right allows the Tribe to proceed with phased-in development over the next two years. The second right is subordinated to existing non-Indian diversion rights, North and South of the Reservation, as decreed by the Water Court.

a. First Tribal Rosebud Right. This right may be used only for agricultural purposes, and allows the Tribe to develop up to 600 acres of land or divert 1,800 AFY, whichever is less. Approximately 200 of the 600 acres are presently in use. Of the

remaining 400 acres, the Tribe will develop no more than 200 acres before July 1, 1993 by methods that involve pumping of alluvial groundwater. The final 200 acres may be developed after July 1, 1993. The entire 400 new acres can be developed earlier by non-pumping methods, such as water spreading, during higher spring flows.

b. Second Tribal Rosebud Right. This right allows the Tribe to divert up to 19,530 AFY, or enough water to irrigate 6,510 acres of land, whichever is less. This right is subordinated to existing non-Indian diversion rights, as decreed by the Water Court. Again, this means that these rights will be treated as if they are senior to the Tribal rights in this paragraph. They will be junior to the Tribal rights in paragraph 2a. The Compact places a cap on protected off-Reservation acreage, as follows:

- i. North of the Reservation, 8,100 AFY or enough water to irrigate 2,700 acres, whichever is less;
- ii. South of the Reservation, 540 AFY or enough water to irrigate 180 acres, whichever is less.

c. Dams and Impoundments. The Tribe may not construct dams or impoundments to store water naturally arising in Rosebud Creek or its tributaries. The Tribe may import water into the basin for such impoundments.

d. Until such time as the Department of Natural Resources and Conservation finds that there is water available over and above the entire Tribal right to Rosebud Creek water, there will be a moratorium on the issuance of new state water right permits.

3. Big Horn Reservoir (Yellowtail) Storage. As part of the Tribal water right, the Secretary of the Interior will allocate 30,000 AFY to the Tribe from Big Horn Reservoir.

4. Groundwater. The Tribe has a right to use both alluvial and non-alluvial groundwater in lieu of its surface water rights in the Tongue and Rosebud basins; withdrawals of greater than 100 gallons per minute of either kind of groundwater are subtracted from the Tribal right in that basin. The Tribe may also develop deep (non-alluvial) groundwater by either applying to the State for a permit or establishing a special right to it under federal law. This would be over and above the Tribal water right established in this Compact.

5. Stockwater Impoundments. The Tribe may construct stockwater impoundments on the Reservation, if the capacity of the impoundment is less than 15 AFY, and it is constructed on a non-perennial stream.

6. Subirrigation. The Tribe is entitled to take advantage of any natural subirrigation occurring on the Reservation. Where otherwise consistent with State law, persons outside the

Reservation also are entitled to take advantage of natural subirrigation.

7. Water Marketing. The Tribe may not market water naturally arising in Rosebud Creek or its tributaries, although the Tribe may enter into agreements where, for compensation, it defers use of its Rosebud water. The Tribe may market any other part of the Tribal water right for use on or off the Reservation.

Administration of the Tribal Water Right

1. Uses on the Reservation. The Tribe will administer uses of their water right on the Reservation pursuant to a Tribal water code. The Compact requires the Tribe to adopt regulations to ensure that uses of the water right are not wasteful and do not degrade water quality. The State will administer any state water rights on the Reservation pursuant to State law.
2. Uses off the Reservation in the basin. Uses of the Tribal water right off the Reservation, but within the Tongue and Rosebud Creek basins, are subject to special procedures set forth in the Compact. The Tribe must obtain any permits required under State law concerning siting, construction and operation of the off-Reservation facilities. In addition, the Tribe must give 180 days advance notice to the State of the proposed use, and must show, among other things, that the use:
 - a. is a beneficial use under State law;
 - b. has an adequate means of diversion;
 - c. will not adversely affect specified state law water rights; and
 - d. does not cause adverse environmental impacts.

The special procedures allow the proposed use to be challenged by the State or an affected water user in court, where the Tribe would have the burden of proving that the Compact requirements are met.

3. Other Off-Reservation Uses. All other uses of the Tribal water right off the Reservation are administered under State law in effect at the time the use is initiated.
4. Use of Water from Yellowtail Reservoir. When Yellowtail storage water is used on the Reservation, it will be administered under the Tribal water code, except that the Tribe must obtain any permits required under State law concerning siting, construction and operation of off-Reservation facilities. All other Tribal uses of Yellowtail water will be governed by applicable State and federal laws.

5. Trans-Basin Diversions of Storage. The Compact has special provisions for Tribal projects that divert water from Big Horn or Tongue River Reservoirs and transport the water out of the basin for use on the Reservation. The Compact requires 180-day advance notice to the State of such projects, and provides that the project may be reviewed under existing State, federal, or Tribal law.

6. Operation of Tongue River Dam. Tongue River Dam will continue to be owned and operated by the State. The Compact creates a five member advisory committee to assist in drafting reservoir operation procedures that are consistent with the purposes of the Compact. The Committee will have representatives from the State, the Tribe, the Tongue River Water Users Association, the United States, and a fifth member selected by the other four.

Dispute Resolution

Water use disputes between users of the Tribal water right, on the one hand, and users of state water rights, on the other hand, will be reviewed by a Compact Board. The Board has three members: one appointed by the Montana Governor, one appointed by the Tribe, and a third selected by the other two. Rulings of the Board may be appealed to a state, federal, or tribal court that otherwise has jurisdiction over the matter.

Effective Dates

The Compact will be final as between the State and the Tribe when it is ratified by the Montana Legislature and the Northern Cheyenne Tribal Council. However, most provisions of the Compact will not be enforceable until the completion of the repair and enlargement of the Tongue River Dam. The respective state and federal financial contributions to this project are currently being negotiated. It is contemplated that when these negotiations are complete, the agreement will be included in the Compact. Because federal funding is sought for the dam project, the Compact also will be ratified by Congress. After completion of the dam project, the Compact will, pursuant to State law, be entered into the Water Court decrees in the Tongue and Rosebud basins.

COMPACT WATER ALLOCATIONS AND PRIORITIES

TONGUE RIVER

ROSEBUD CREEK

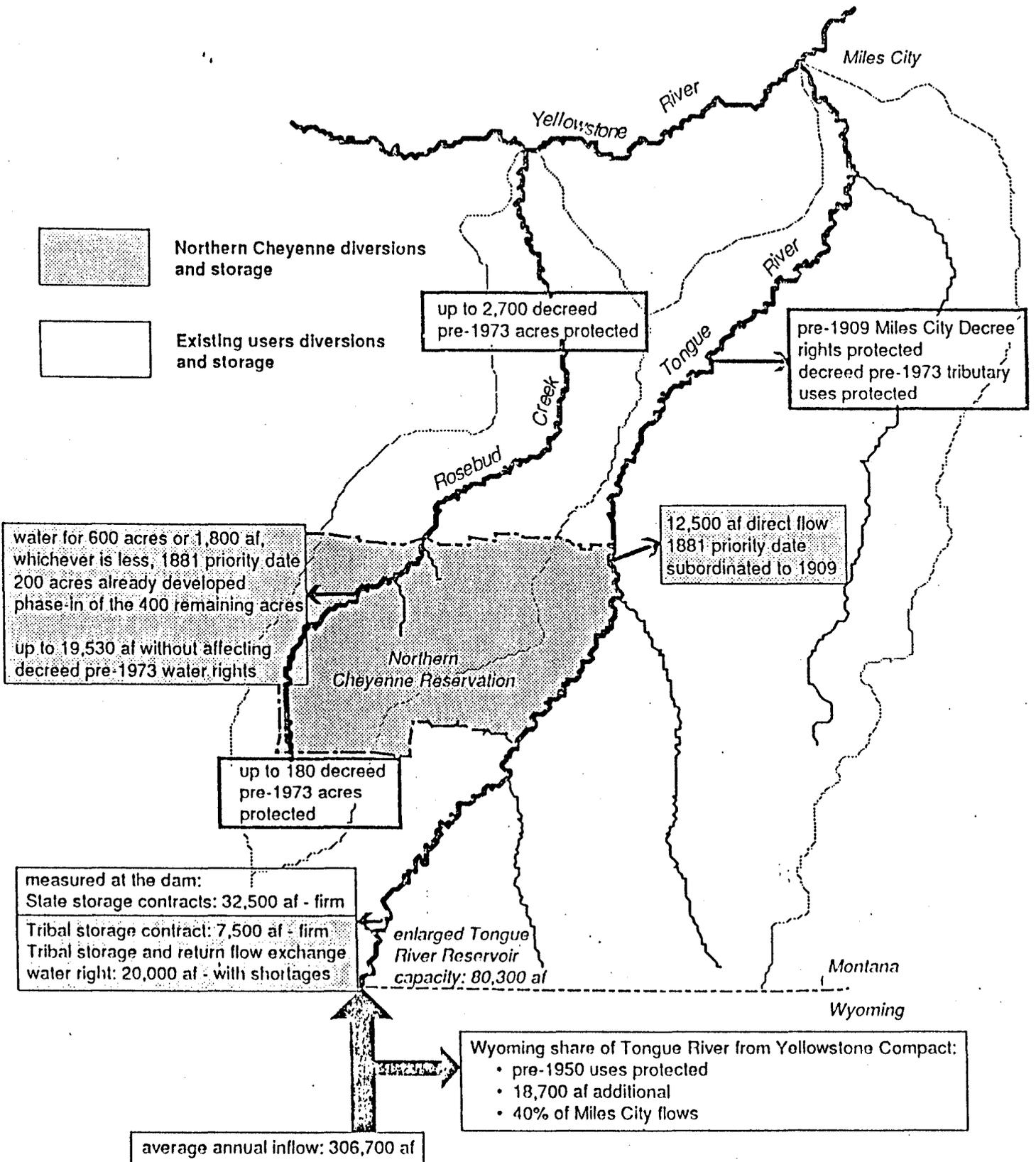
<p>1st Miles City Decree water rights: Priority dates July 6, 1886 to March 24, 1909 as finally adjudicated</p> <p>State diversion rights on tributaries, as finally adjudicated</p> <p>2nd NC Tribe: 12,500 AFY (9,375 AFY depletion) Priority date: October 1, 1881 - Shall not interfere with State contracts</p>	<p>1st NC Tribe: 600 acres/1,800 AFY Priority date: October 1, 1881</p> <ul style="list-style-type: none"> - 200 acres existing - 200 acres May 1, 1991 to July 1, 1993 - 200 acres thereafter, earlier if by nonpumping methods <p>2nd State diversion rights, as finally adjudicated, not to exceed:</p> <ul style="list-style-type: none"> - 2,700 A/8,100 AFY N. of Reservation - 180 A/540 AFY S. of Reservation <p>3rd NC Tribe: 6,510 A/19,530 AFY future use</p> <ul style="list-style-type: none"> - No impoundments of Rosebud natural flow - Moratorium on issuance of State permits unless water available over and above tribal water right
<p>1st State Contracts: 32,500 AFY</p> <p>NC Tribe: 7,500 AFY State Contract firm supply</p> <p>2nd NC Tribe: 20,000 AFY from an enlarged reservoir</p> <p>Subject to shortages</p>	<p>BIG HORN RESERVOIR</p> <p>30,000 AFY to Northern Cheyenne Tribe</p>

DIRECT FLOW

TONGUE RIVER RESERVOIR STORAGE

WATER ALLOCATION

Rosebud Creek and Tongue River Basins



ADMINISTRATION OF THE NORTHERN CHEYENNE TRIBAL WATER RIGHT



On-reservation use of tribal water right pursuant to tribal water code.



Off-reservation use of tribal water right within the Tongue River basin: 180 day notice to State of Montana demonstrating compliance with substantive public interest criteria in compact; off-reservation facilities subject to state siting and construction laws.



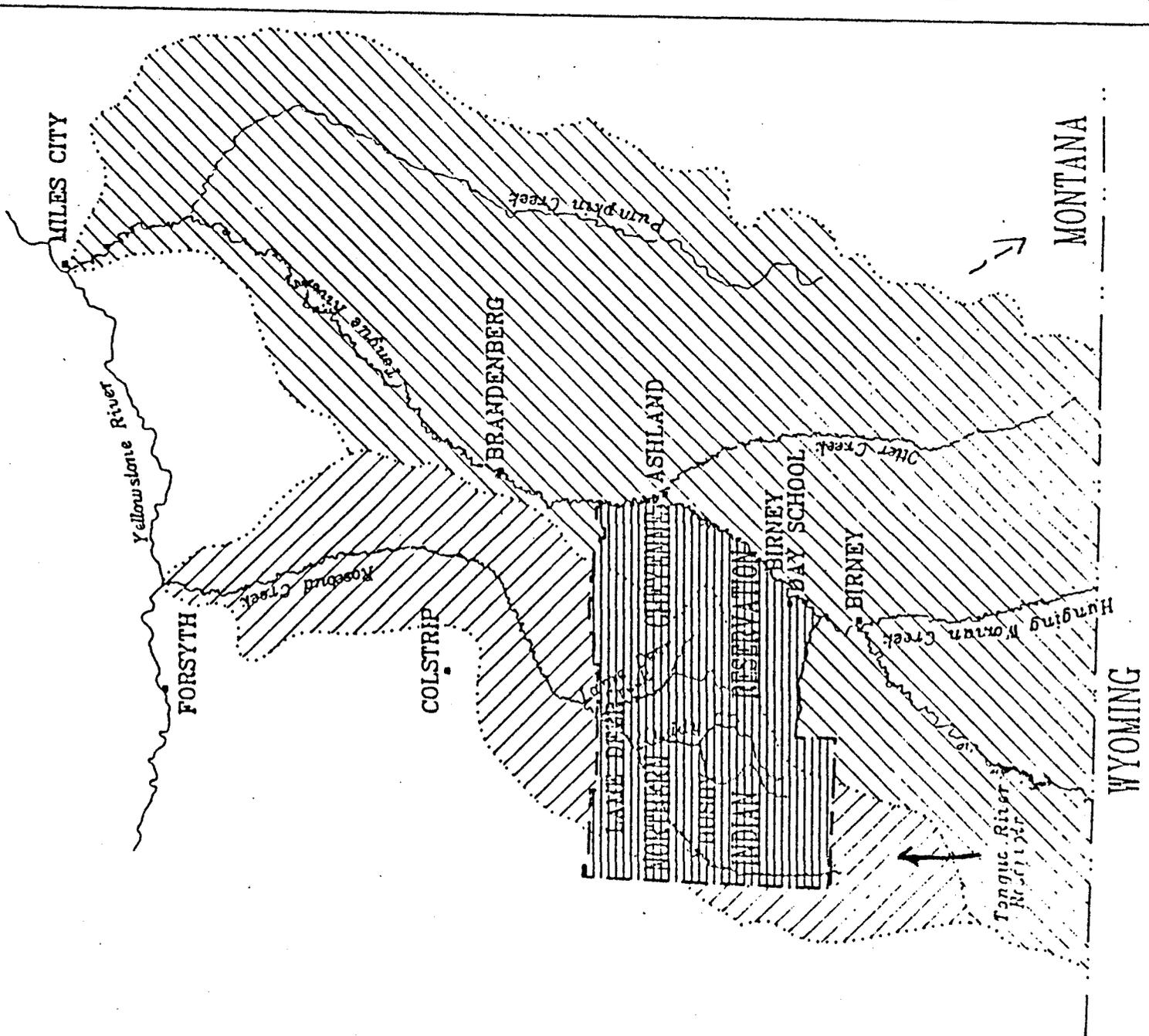
No off-reservation use of Rosebud Creek tribal water right within the Rosebud Basin, except through deferral agreements with water users; no transfers out of basin. Off-reservation use of Tongue River Reservoir water in Rosebud basin with 180 day notice, compliance with substantive public interest criteria and state siting and construction permits.



Transfer of tribal water right from Tongue River Reservoir or Yellowstone Reservoir to Rosebud Basin: 180 day notice to State; Injunctive relief afforded affected parties pursuant to applicable federal, state, and tribal laws.



Off-reservation tribal water use outside of Tongue River Basin pursuant to state law.



*bill
Crow
water*

SENATE NATURAL RESOURCES

EXHIBIT NO. 29
DATE 4-17-91
BILL NO. HB 472

COMMENTS OF BLAINE SMALL,
SECRETARY OF THE CROW TRIBAL COUNCIL,
ON THE PROPOSED WATER RIGHTS COMPACT
BETWEEN THE STATE OF MONTANA AND
THE NORTHERN CHEYENNE TRIBE.

April 1991.

I am here today to offer the preliminary views of the elected officials of the Crow Tribe on the proposed Water Rights Compact (Compact) between the State of Montana and the Northern Cheyenne Tribe. The Crow Tribal Council has not yet had an opportunity to review or take a position on the Compact.

First of all, I would like to congratulate both the State of Montana and the Northern Cheyenne Tribe. Successful negotiation of complex water rights and jurisdictional matters between tribes and states involves a great deal of hard work, good faith and tough bargaining. The Crow Tribal officials are encouraged that the Northern Cheyenne Tribe and Montana have been able to resolve their differences in this way rather than through protracted litigation.

The Crow Tribe was not involved in the negotiations between the Northern Cheyenne Tribe and Montana. The Crow Tribe is negotiating with Montana's Reserved Water Rights Compact Commission although we have not met for several years. The Crow Tribe has been concentrating its efforts on other matters while the time and resources of the Compact Commission have been focused on the reserved water rights claims of the federal government and other tribes. The Crow Tribe does intend to reactivate negotiations with the State when both parties are ready to devote the attention and energy to this issue that will be required to achieve a successful outcome.

I have two comments on the proposed Compact. As you know, there are several creeks which cross both the Crow and Northern Cheyenne Reservations. Since the Crow Tribe was not a party to the negotiations that produced the proposed Compact, a provision should be added to the Compact stating that nothing in the Compact is intended to affect in any way the rights or claims of the Crow Tribe, or of the United States on behalf of the Crow Tribe, to any of the water courses or groundwater basins which are common to the Crow and Northern Cheyenne Reservations.

My second comment deals with Yellowtail Reservoir which is located in the heart of the Crow Reservation and flooded out thousands of acres of Crow tribal lands. The Crow Tribe objects to the allocation of 30,000 acre feet per year from Yellowtail Reservoir to the Northern Cheyenne Tribe. When we were contacted about this issue, we informed the Northern Cheyenne Tribe that we would object to this provision. (Copies of this correspondence are attached.) There is no basis for this allocation because the Big Horn River, on which Yellowtail Dam and Reservoir are located, does not cross or border the Northern Cheyenne Reservation and the Northern Cheyenne Tribe has no possible claim to this water under the reserved water rights doctrine or under any other theory.

Moreover, we believe it is bad policy as well as a dangerous precedent to grant one tribe rights in and to another tribe's reservation. This is particularly true where, as here, the tribe receiving the right, Northern Cheyenne, has no conceivable claim to the water in

question and the other tribe, Crow, was not a party to the negotiations and receives no benefits whatsoever from the proposed Compact.

The Crow Tribe particularly and strongly objects to the provision of the proposed Compact which would enable the Northern Cheyenne Tribe to market the 30,000 acre feet of water from Yellowtail Reservoir for use off the Northern Cheyenne Reservation. This is a sure recipe for future disputes and disaster. Unlike the Northern Cheyenne Tribe, the Crow Tribe does have legitimate and very large, though as yet unquantified, claims to the water stored in Yellowtail Reservoir. The Crow Tribe claims the right to market this water and certainly will seek to include this right in any Compact it negotiates with Montana. By enabling the Northern Cheyenne Tribe to market that same water, the two Tribes inevitably will come into conflict which is something we definitely do not want or need. We should not settle one controversy by unnecessarily creating a new one.

I should add that the right of the Crow Tribe to regulate the water in Yellowtail Reservoir is supported by a recent decision of the State District Court in the Wyoming Big Horn River water rights adjudication. Giving the Northern Cheyenne Tribe property and regulatory rights over the water in Yellowtail Reservoir without the consent and over the objections of the Crow Tribe would be inconsistent with that decision.

There is no justification for giving the Northern Cheyenne Tribe a right to market the Yellowtail water off the Northern Cheyenne Reservation. The only purpose of this right

would be to generate revenue for the Northern Cheyenne Tribe. But that purpose can be achieved in an infinite number of other ways which would not conflict with the rights of other tribes or lay the groundwork for future disputes with other tribes. Why not, for example, give the Northern Cheyenne Tribe the right to market other water from a federal reservoir which is not located on an Indian reservation? Or why not transfer some federal oil and gas or coal or hydroelectric energy to the Northern Cheyenne Tribe? Or add federal land to the Northern Cheyenne Reservation? Or give the Northern Cheyenne Tribe the right to receive royalties that are now being paid to the federal government? All of these ways of generating income, and many more, would be far better than the Yellowtail Reservoir off-reservation marketing provision in the proposed Compact.

Let me end and on a more hopeful and optimistic note. The Crow Tribal officials would be willing to consider an allocation of water from Yellowtail Reservoir for use only on the Northern Cheyenne Reservation to the extent that the Northern Cheyenne Tribe can demonstrate that it has needs for this water under the Winters Doctrine which cannot be met from sources within the Northern Cheyenne Reservation. Perhaps this matter can best be addressed by the two Tribes within the context of the negotiations which both Tribes are seeking (and we think are about to begin) on the Crow 107th Meridian boundary dispute. If there is a desire to address this matter in the proposed Compact, the Crow Tribe would not object to including a provision granting such an allocation to the Northern Cheyenne Tribe subject to the consent of the Crow Tribe. It must be made clear, however, that this

allocation would not encompass any right to use or transfer any Yellowtail water outside the boundaries of the present Northern Cheyenne Reservation.

The Crow Tribal officials have been working successfully with our counterparts in the Northern Cheyenne Tribe on other matters of mutual interest including the Crow-Northern Cheyenne Hospital and the 107th Meridian boundary dispute. We are confident that this same cooperative spirit also will enable us to find a mutually acceptable solution to this Yellowtail water problem too.

I appreciate the opportunity of appearing before you today. Thank you for listening and for considering our views.

RSP/pdd
CROW\BSCMMTSL1.D1



INDIAN
The Morning Star

NORTHERN CHEYENNE TRIBE
INCORPORATED

P.O. Box 128

LAME DEER, MONTANA 59043



INDIAN
The Morning Star

July 24, 1990

Ms. Clara Nomee, Chairperson
Crow Tribe of Indians
Crow Agency, Mt.

Dear Chairperson Nomee:

I am writing to advise you of a matter involved in the water rights negotiations between the Northern Cheyenne Tribe and the Montana Reserved Water Rights Compact Commission which may be of particular interest to the Crow Tribe.

One of the issues which has been especially troublesome is the limited water supply in the Rosebud Creek on the west side of the Northern Cheyenne Reservation. There is not enough water in the stream to satisfy the water needs of the Tribe for agricultural and industrial purposes. It follows, therefore, that non-Indian water users cannot be protected.

In order to address the problem of inadequate water supply, the Northern Cheyenne Tribe has proposed, as part of a settlement, that 30,000 acre feet of water from the Yellowtail Reservoir be earmarked for the Tribe along with the associated power revenues. The Tribe has also proposed that the 30,000 acre feet earmarked for the Tribe be the first block of water available for any purpose.

We want to make clear that the Tribe does not claim any Winters right to the water, but has merely proposed it as an additional supply of water which will significantly assist a resolution of water rights on Rosebud Creek. We also want to make clear that no party has yet agreed to the Tribe's proposal, but we are moving forward quickly on the overall settlement.

We would like the opportunity to meet with representatives of the Crow Tribe to determine if the Northern Cheyenne Tribe's proposal conflicts in any way with the claims or expectations of

Ms. Clara Nance
July 24, 1990
Page 2.

the Crow Tribe. I will be contacting you in the near future to set up a meeting. In the meantime, if I can answer any questions about this matter, please do not hesitate to contact me at 477-8283.

Sincerely,

Edwin Dahle
Edwin Dahle, President
Northern Cheyenne Tribe

cc: David Pennington, Chairman, Northern Cheyenne Federal Negotiating Team

Joseph Mazurek, Chairman, RWRCC Northern Cheyenne Negotiating Committee



CROW TRIBAL COUNCIL

August 20, 1990

Crow Country

Mr. Edwin Dable, President
Northern Cheyenne Tribe
P. O. Box 128
Lane Deer, MT 59043

Dear President Dable:

In response to your letter of July 24, 1990, the Crow Tribe definitely is concerned about the water available for use from the Yellowtail Reservoir. While we are not certain how much of the water from the Yellowtail Reservoir is available for use for electric generation, agriculture, or other commercial use, and how much of that water rightfully belongs to the Crow Tribe because of the location of the reservoir and the water sources for the reservoir, we do not believe it would be appropriate at this time to relinquish any portion of these water rights. It would be especially inappropriate for the first 30,000 acre feet available for any purpose to be given to the Northern Cheyenne Tribe to enable the Northern Cheyenne Tribe to settle its own water cases. We think, therefore, it would be appropriate for you to look elsewhere for a source of water to enable you to settle your water rights question on the Rosebud Creek.

We are, of course, always interested in working with you and your Tribe in addressing questions of mutual interest to our respective Tribes. Thank you for the courtesy shown in your letter.

Sincerely yours,

Clara Nomee

Clara Nomee, Chairman
Crow Tribe of Indians

Senate Bill 472
Water Rights Compact - Northern Cheyenne Tribe

The Crow Tribe of Indians vigorously and strenuously objects to SB 472 and the Compact with the Northern Cheyenne Tribe as drafted. Unless it is amended to take care of the Crows concerns, it is absolutely unacceptable.

Article II A. (7) grants the Northern Cheyenne Tribe 30,000 acre feet of water out of the Big Horn Reservoir (Yellowtail Dam) Storage. The Yellowtail Dam and its reservoir is located on the Crow Indian Reservation and no part of it is located on the Northern Cheyenne Reservation. Furthermore, the water and drainage systems that feed the resevoir are located on or flow through the Crow Reservation and not the Northern Cheyenne Reservation. Furthermore, under the Act of Congress that authorized the construction of the Yellowtail Dam, the first claim on the water from the Dam was to the Crow Tribe.

Thus, the Crow Tribe claims the first 75,000 (we don't have the exact figure - somewhere between 50,000 and 75,000) acre feet. In addition, it claims a yet to be determined amount in addition to this statutory claim as a result of the water originating on or flowing through the Crow Reservation that feeds the reservoir storage. There is only a finite amount of water, and the Crows are not willing to give up the first claim on the water in the Big Horn Reservoir, particularly when it may mean less water available to meet the Crows rightful claim in the same water.

The Big Horn Reservoir holds only approximately 1 million acre feet of water. Because of the demands on the water for hydro electric generation and in stream flow, we cannot expect more than 200,000 acre feet available for other use. The Crow Indians claim all of this outside use. To grant 30,000 acre feet to the Northern Cheyenne is to grant water claimed by the Crow Tribe.

It is a little like a man and his son arguing over who owns certain cows. The father then says, "Here, I'll settle this dispute by taking some of your brothers cows and giving them to you." The brother, naturally, is not happy about this settlement. In the same manner, the Crows are not happy about this compact and believe the Yellowtail water should not be taken without their consent.

The Northern Cheyenne Tribe and the State and Federal negotiators have long been aware of the Crow Tribe's concern. Upon being notified on the Northern Cheyenne's intention to deal with Yellowtail water, Chairman Clara Nomee wrote to the President of the Northern Cheyenne Tribe on August 20, 1990, and explained that "it would be appropriate for you to look elsewhere

for a source of water to enable you to settle your water rights question on the Rosebud Creek." Twice representatives and lawyers from the Crow Tribe met with negotiators and related the same position. Last week, at the public hearing on this Compact, the Secretary of the Crow Tribe testified expressing his strong opposition on behalf of the Crow Tribe. The protestations of the Crow seemed to have been ignored.

At the present time there does not seem to be much demand for the water in the Big Horn Reservoir. However, that situation could change. Further, it would be manifestly unfair to the Crows to grant the first claim on the water to the Northern Cheyenne thereby allowing them to market their water before the exact amount of water rightfully belonging to the Crows has been determined. The Northern Cheyenne should not be granted a competitive advantage over the Crows right on the Crow Reservation. Even if the Crow water rights were already determined and ready to market, the existence of that much water in the hands of another tribe could substantially affect the amount of compensation the Crows could obtain for the use of their water.

If the proposed amendments can be accepted, the Crows will withdraw their objections. This would guarantee that the Crows would at least have some say about the water that they are presently claiming.

Senate Bill 472

Amend:

1) Page 16, line 13

Following: "dam,"

Strike: "for use or disposition by the Tribe for any beneficial purpose"

Insert: "to meet the reasonable needs of the Tribe, its members, lessees, co-joint venturers or partners which cannot reasonably be satisfied from the Tribes's allocations from sources of water within or bordering the Reservation"

2) Page 18, line 10

Following line 9

Insert: "(e) Consent of the Crow Tribe. In recognition of the fact that much of the water in the Big Horn Reservoir, Yellowtail Unit as aforesaid, flows through or originates on the Crow Indian Reservation and is claimed by the Crow Tribe and in recognition of the fact that the rights of the Crow Tribe to water from the Big Horn Reservoir, Yellowtail Unit, Lower Bighorn Division, Pick-Sloan Missouri Program, Montana, have not yet been quantified and determined, the rights granted under this subparagraph (7) shall not be effective until and unless the use of such water is first approved and consented to by the Crow Tribe of Indians by a proper adoption of a resolution to that effect by the Crow Tribal Council following a public hearing in which all affected parties have had an opportunity to be heard."

3) Page 40, line 19

Following: "and"

Insert: ", except as provided in Article VI A. (1) herein,"

SENATE NATURAL RESOURCES
EXHIBIT NO 20
DATE 4-17-91
BILL NO 472

STATEMENT OF THE NORTHERN CHEYENNE TRIBAL WATER COMMITTEE

IN SUPPORT OF THE

WATER RIGHTS COMPACT

STATE OF MONTANA
THE NORTHERN CHEYENNE TRIBE
THE UNITED STATES OF AMERICA

HEARINGS BEFORE THE SENATE
NATURAL RESOURCES COMMITTEE
THE STATE OF MONTANA

Presented by
Calvin Wilson, Esq.
Max Small

Members, Northern Cheyenne Tribal Water Committee

April 17, 1991

STATEMENT OF THE NORTHERN CHEYENNE TRIBAL WATER COMMITTEE
IN SUPPORT OF THE WATER RIGHTS COMPACT
NEGOTIATED WITH THE STATE OF MONTANA,
THE NORTHERN CHEYENNE TRIBE AND
THE UNITED STATES OF AMERICA
S. B. 472

My name is Calvin Wilson. I am the Tribal Attorney for the Northern Cheyenne Tribe as well as a member of the Tribe. I am here with Max Small who is a member of the Northern Cheyenne Tribal Council. We are both members of the Northern Cheyenne Tribal Water Committee. As members of this committee, we were delegated authority by the Northern Cheyenne Tribal Council to participate in the water rights negotiations on behalf of the Northern Cheyenne Tribe with the State of Montana and the United States of America. I am here today to urge the Montana State Legislature to act favorably on the S.B. 472.

S.B. 472 is the result of two years of intensive negotiations among the parties to the Compact. Through the efforts of the Montana Reserved Water Rights Compact Commission negotiation team, the Federal Negotiation Team and the Tribe's water committee, we believe that we have arrived at an agreement which will benefit both the Indian and non-Indian water users in the Tongue River and Rosebud Creek Basins. This agreement minimizes adverse effects on non-Indian water users while at the same time confirming the water rights of the Tribe without the necessity of litigation as well as providing the Tribe with the opportunity to develop its water resources.

The Compact quantifies the water rights of the Northern Cheyenne Tribe, and provides that the water rights will be satisfied through a combination of surface water, groundwater, and storage water from the Tongue River Reservoir and Yellowtail Reservoir. Without the additional water from the reservoirs, the Compact would not have been possible.

One of the most important benefits to be derived from this Compact is the repair and enlargement of the Tongue River Dam. As you are well aware, this dam has been unsafe for more than a decade. Every spring both the State and the Tribe fear for the safety of the people living below the dam. Last spring, tribal members lived in fear that the dam was going to break. Individual tribal members have testified to us that they spent many sleepless nights during the spring fearing for the safety of their families. This Compact would provide the first step toward alleviating those fears through the repair of the Tongue River Dam and at the same time provide a stable source of storage water for both Indian and non-Indian users.

Another benefit is that this Compact resolves issues of administration of water. As I'm sure you are well aware, once quantification of Indian federal reserved water rights are decreed through the courts, the issue of administration of the water rights of both Indian and non-Indian water users becomes the next issue for litigation. Wind River is a good example of

the potential for the length and costliness of litigation. These matters have been resolved between the Northern Cheyenne Tribe and the State of Montana through the negotiation process thereby eliminating the uncertainty as to the outcome of these issues.

Under the terms of the Compact, the establishment of the Tongue River Reservoir Advisory Committee and the Northern Cheyenne - Montana Compact Board envisions the Tribe and the State working together in a cooperative arrangement to manage the water resources in the basins to the benefit of all water users. The Compact Board would resolve any disputes regarding the use of water between Indian and non-Indian users. This procedure eliminates the significant jurisdictional issues involved in such disputes.

As I have already mentioned, storage water from the Tongue River Dam and Yellowtail Reservoir is also a major factor in the negotiated settlement. We have been informed by the Crow Tribe that they are opposing the Yellowtail aspect of our negotiated settlement. However, the Federal Government has assured us that there are sufficient supplies of water to allocate 30,000 acre feet to the Northern Cheyenne Tribe and still have enough water for other entities desiring to share in this pool of water.

The Northern Cheyenne Tribal Water Committee urges you to act favorably on S.B. 472. Without the Compact, we are most

assuredly looking at years of costly litigation and uncertainty on administrative issues once the quantification is completed. We would like to have a cooperative arrangement with the State in the administration of water rights in the Tongue River and Rosebud Creek basins and the Compact provides an avenue to that end. Thank you.

1008

TREATY WITH THE CROWS, 1868.

TREATY WITH THE CROWS, 1868.

May 7, 1868.

15 Stat., 649.
Ratified, July 28,
1868.
Proclaimed, Aug.
12, 1868.

Articles of a treaty made and concluded at Fort Laramie, Dakota Territory, on the seventh day of May, in the year of our Lord one thousand eight hundred and sixty-eight, by and between the undersigned commissioners on the part of the United States, and the undersigned chiefs and head-men of and representing the Crow Indians, they being duly authorized to act in the premises.

Peace and friendship.

ARTICLE 1. From this day forward peace between the parties to this treaty shall forever continue. The Government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they hereby pledge their honor to maintain it. If had men among the whites or among other people, subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also re-imburse the injured person for the loss sustained.

Offenders among the whites to be arrested and punished.

If had men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States and at peace therewith, the Indians herein named solemnly agree that they will, on proof made to their agent and notice by him, deliver up the wrong-doer to the United States, to be tried and punished according to its laws; and in case they refuse willfully so to do the person injured shall be re-imbursed for his loss from the annuities or other moneys due or to become due to them under this or other treaties made with the United States. And the President, on advising with the Commissioner of Indian Affairs, shall prescribe such rules and regulations for ascertaining damages under the provisions of this article as in his judgment may be proper. But no such damages shall be adjusted and paid until thoroughly examined and passed upon by the Commissioner of Indian Affairs, and no one sustaining loss while violating, or because of his violating, the provisions of this treaty or the laws of the United States shall be re-imbursed therefor.

Rules for ascertaining damages.

Reservations and sites.

ARTICLE 2. The United States agrees that the following district of country, to wit: commencing where the 107th degree of longitude west of Greenwich crosses the south boundary of Montana Territory; thence north along said 107th meridian to the mid-channel of the Yellowstone River; thence up said mid-channel of the Yellowstone to the point where it crosses the said southern boundary of Montana, being the 45th degree of north latitude; and thence east along said parallel of latitude to the place of beginning, shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons, except those herein designated and authorized so to do, and except such officers, agents, and employes of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article for the use of said Indians, and henceforth they will, and do hereby, relinquish all title, claims, or rights in and to any portion of the territory of the United States, except such as is embraced within the limits aforesaid.

Who not to reside thereon.

Buildings to be erected by the United States.

ARTICLE 3. The United States agrees, at its own proper expense, to construct on the south side of the Yellowstone, near Otter Creek, a

warehouse or store-room for the use of the agent in storing goods belonging to the Indians, to cost not exceeding twenty-five hundred dollars; an agency-building for the residence of the agent, to cost not exceeding three thousand dollars; a residence for the physician, to cost not more than three thousand dollars; and five other buildings, for a carpenter, farmer, blacksmith, miller, and engineer, each to cost not exceeding two thousand dollars; also a school-house or mission-building, so soon as a sufficient number of children can be induced by the agent to attend school, which shall not cost exceeding twenty-five hundred dollars.

The United States agrees further to cause to be erected on said reservation, near the other buildings herein authorized, a good steam circular saw-mill, with a grist-mill and shingle-machine attached, the same to cost not exceeding eight thousand dollars.

ARTICLE 4. The Indians herein named agree, when the agency-house and other buildings shall be constructed on the reservation named, they will make said reservation their permanent home, and they will make no permanent settlement elsewhere, but they shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts.

Reservation to be the permanent home of the Indians.

ARTICLE 5. The United States agrees that the agent for said Indians shall in the future make his home at the agency-building; that he shall reside among them, and keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint, by and against the Indians, as may be presented for investigation under the provisions of their treaty stipulations, as also for the faithful discharge of other duties enjoined on him by law. In all cases of depredation on person or property, he shall cause the evidence to be taken in writing and forwarded, together with his finding, to the Commissioner of Indian Affairs, whose decision shall be binding on the parties to this treaty.

Agent to make his home and reside where.

His duties.

ARTICLE 6. If any individual belonging to said tribes of Indians, or legally incorporated with them, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding three hundred and twenty acres in extent, which tract, when so selected, certified, and recorded in the "land book," as herein directed, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

Heads of families desiring to commence farming may select lands, etc.

Effect of such selection.

Any person over eighteen years of age, not being the head of a family, may in like manner select and cause to be certified to him or her, for purposes of cultivation, a quantity of land not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

Persons not heads of families.

For each tract of land so selected a certificate, containing a description thereof and the name of the person selecting it, with a certificate endorsed thereon that the same has been recorded, shall be delivered to the party entitled to it by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the "Crow land book."

Certificate of selection to be delivered, etc., to be recorded.

The President may at any time order a survey of the reservation, and, when so surveyed, Congress shall provide for protecting the rights of settlers in their improvements, and may fix the character of the title held by each. The United States may pass such laws on the subject of alienation and descent of property as between Indians, and on all subjects connected with the government of the Indians on said reservations and the internal police thereof, as may be thought proper.

Survey.

Alienation and descent of property.

each Indian over the age of four years, who shall have removed to and settled permanently upon said reservation, and complied with the stipulations of this treaty, shall be entitled to receive from the United States, for the period of four years after he shall have settled upon said reservation, one pound of meat and one pound of flour per day, provided the Indians cannot furnish their own subsistence at an earlier date. And it is further stipulated that the United States will furnish and deliver to each lodge of Indians, or family of persons legally incorporated with them, who shall remove to the reservation herein described, and commence farming, one good American cow and one good, well-broken pair of American oxen, within sixty days after such lodge or family shall have so settled upon said reservation.

Cow and oxen to each family.

ARTICLE 10. The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter, miller, engineer, farmer, and blacksmiths as herein contemplated, and that such appropriations shall be made from time to time, on the estimates of the Secretary of the Interior, as will be sufficient to employ such persons.

Physician and teachers, etc.

ARTICLE 11. No treaty for the cession of any portion of the reservation herein described, which may be held in common, shall be of any force or validity as against the said Indians unless executed and signed by, at least, a majority of all the adult male Indians occupying or interested in the same, and no cession by the tribe shall be understood or construed in such a manner as to deprive, without his consent, any individual member of the tribe of his right to any tract of land selected by him as provided in Article 6 of this treaty.

Cession of reservation not to be valid, unless, etc.

ARTICLE 12. It is agreed that the sum of five hundred dollars annually, for three years from the date when they commence to cultivate a farm, shall be expended in presents to the ten persons of said tribe who, in the judgment of the agent, may grow the most valuable crops for the respective year.

Annual presents for most valuable crops

- W. T. Sherman,
Lieutenant-General.
- Wm. S. Harney,
Brevet Major-General and Peace Commissioner.
- Alfred H. Terry,
Brevet Major-General.
- C. C. Augur,
Brevet Major-General.
- John B. Sanborn.
- S. F. Tappan.

Ashton S. H. White, Secretary.

- Che-ra-pee-ish-ka-te, Pretty Bull, his x mark. [SEAL.]
- Chat-sta-he, Wolf Bow, his x mark. [SEAL.]
- Ah-be-che-se, Mountain Tail, his x mark. [SEAL.]
- Kam-ne-but-sa, Black Foot, his x mark. [SEAL.]
- De-sal-ze-cho-se, White Horse, his x mark. [SEAL.]
- Chin-ka-she-arache, Poor Elk, his x mark. [SEAL.]
- E-sa-woor, Shot in the Jaw, his x mark. [SEAL.]
- E-sha-chose, White Forehead, his x mark. [SEAL.]
- Roo-ka, Pounded Meat, his x mark. [SEAL.]
- De-ka-ke-up-se, Bird in the Neck, his x mark. [SEAL.]
- Me-na-che, The Swan, his x mark. [SEAL.]

Attest:

- George B. Willis, phonographer.
- John D. Howland.
- Alex. Gardner.
- David Knox.
- Chas. Freeman.
- Jas. C. O'Connor.

SENATE NATURAL RESOURCES
 EXHIBIT NO. 2e
 DATE 4-17-91
 BILL NO. HB 472

**TONGUE RIVER REHABILITATION PROJECT
 and
 NORTHERN CHEYENNE TRIBE WATER RIGHTS SETTLEMENT**

The state-owned Tongue River Dam is unsafe and would likely fail during even a moderately large flood. As a high-hazard facility, the potential exists for the loss of life and destruction of property, which would amount to several hundred million dollars if the dam should overtop and subsequently breach during a large flood. While the dam presents a potential danger, it also presents a unique opportunity to resolve water rights issues between non-Indians and the Northern Cheyenne Tribe.

Through negotiation with the Northern Cheyenne Tribe, the Montana Reserved Water Rights Compact Commission has developed a compact that provides a dependable supply of water to the tribe and protects current water use of non-Indians along the Tongue River. The rehabilitation and enlargement of the Tongue River Dam are the cornerstones of this compact (the compact will be presented to the Montana Legislature during this session). The project involves repairing the existing spillway and raising the spillway crest, which would provide for higher-operating reservoir levels and increased water supply. All additional water supplies would be provided to the tribe, while non-Indian water users would be guaranteed a dependable water supply to existing uses. The cost of the spillway repair and spillway crest raise is estimated to be \$48 million. The following table describes how these costs will be allocated between the State of Montana and the federal government.

TENTATIVE COST-SHARE AGREEMENT

ITEM	TOTAL	USA	STATE
Raise Spillway Crest	\$17.8 million	\$17.8 million	-----
Repair Tongue River Dam	\$30.2 million	\$13.7 million	\$16.5 million
Tribal Development Fund	\$ 8.0 million	\$ 8.0 million	-----
TOTALS	\$56.0 million	\$39.5 million	\$16.5 million

As shown in the table above, the cost contribution from the State of Montana is expected to be \$16.5 million. Of this amount, \$5 million is to be cash, while the balance -- \$11.5 million -- will be a federal, zero-interest loan. The table on page 2 describes how Montana could provide this level of funding.

EXHIBIT NO. 4DATE 4-17-91BILL NO. HB 472

SB 472 and particularly sections of Article II:

Summary of Remarks of:

Robert Kelly, Planner
 Crow Indian Tribe
 P.O. Box 159
 Crow Agency, Mt. 59022

Re: Proposed Water Rights Compact Agreement between the Northern Cheyenne Indian Tribe and the State of Montana.

No allocation of water arising or flowing through Crow Indian Reservation lands for any use by any entity should be given priority to the paramount need and historically legal first right of the Crow Indian Tribe. This is to include entitlements of the Crow Indian Tribe through ancestral claims as further emphasized under Winters.

We submit evidence of our ancestral entitlements today dating to 1500 and on through the treaty of 1868 which delineates inclusion of Yellowstone River water rights as well as rights of waters originating on the Crow Indian Reservation and flowing through.

In accordance to the recent Wyoming Supreme Court decision, (1988) it is found that the Crow Tribe also has to determine the rights of allotted land owners and Indian successors, with no regard to successors or interests of no direct entitlement such as the Northern Cheyenne Tribe as it concerns the Crow Reservation.

"This result is supported by the fact that Winters rights were only intended to assist in accomplishing the needs of the Reservation; where the land has been removed from the Tribe's possession and conveyed to a homesteader, the purposes for which Winters rights were implied are eliminated."

As noted above, the Wyoming Supreme Court also addressed the issue of priority dates for purchasers of allotted lands. The court applied the Ninth Circuit's Walton decision and required non-Indian purchasers of allotted land to show that their practicably irrigable acreage was irrigated by their Indian predecessors or put under irrigation within a reasonable time. The court also held that allotted lands reacquired by Indian or tribal purchasers also are entitled to the 1868 Reservation priority date.

The ancestors of the present day Crow Indians paid for with tribal monies and constructed irrigation systems throughout the Crow Reservation dating back as far as the late 1880's and successors have continued usage too date (Big Horn Irrigation Canal). These prior claims are not considered by this compact as presented today.

In *Arizona v. San Carlos Apache Tribe of Arizona*, the United States Supreme Court stated;

"We also emphasize, as we did in *Colorado River*, that our decision in no way changes the substantive law by which Indian rights in State water adjudications must be judged. State courts, as much as federal courts, have a solemn obligation to follow federal law. Moreover, any state court decision alleged to abridge Indian water rights protected by federal law can expect to receive, if brought for review before this Court, a particularized and exacting scrutiny commensurate with the powerful federal interest in safeguarding those rights from state encroachment."

The Crow Indian Tribe has not had the opportunity to be a party to the negotiations between the State of Montana and the Northern Cheyenne Tribe and in relation to the 30,000 acre feet requested by the Northern Cheyenne from the Yellowstone Reservoir, most certainly the Crow Tribes paramount rights are being ignored.

The leading, recent case on these issues is *Walton II (Colville Confederated Tribes v. Walton)*, 9th cir. 1985). First, the court followed *United States v. Powers*, making it clear that a ratable portion of reserved Winters rights passed from the tribe to Indian allottees when allotments were made. The court noted that the quantification of reserved water, but not the use of it, is determined by the purposes for which the reservation was created. Thus, Congress had the power to allot reserved water rights to individual Indians, and that is consistent with the general purpose for the creation of reservation - providing homelands for the survival of Indians and their way of life.

The Treaty of 1868 between the Crow Indian Tribe and the United States set forth conditions requiring the Tribe to develop agricultural means for subsistence and this was accomplished by the above delineated irrigation projects. Further, the Treaty of 1868 contained provisions for the allotment of agricultural acreage for individual tribal members establishing homes there upon with terms consistent with those as set forth by *Walton II v. Colville*. Today we ignore those rights and conditions if this compact were to be approved without amendment providing for the original first claim of water rights by those using the waters of the Crow Indian Reservation historically.

Future developmental needs as documented by attachments need to be given due consideration and allowances must be made, if the visions of Treaty providers are to be full-filled.

Today as condition and needs are improved to enhance the financial viability of same, we move profoundly toward establishing a Hydro-Electric Generation Facility at the Yellowstone Dam Afterbay. The needed hydro flow for this project are not considered in this compact agreement. Construction of this facility is further encouraged by the National Energy Policy released two months past by President George Bush and moreover, by the United States Congress in creation of the 1990 amendments to the Clean Air Act. This project also will enhance the irrigation opportunity of Indian lands including allotments, as foreseen by treaty providers, (see Map Attached).

The North West Power Planning Council, in concurrence with the Montana Power Company advisory committee, (see Attachment), has encouraged Montana Power to seek energy purchases from this type of facility furthermore, the State of Montana itself has set forth a need for this project in the Big Horn River Management Plan (ATTACHED).

Most certainly we cannot determine needs that are so important as to serve the interest of those historically and legally entitled secondary, to those needs not quantified, & possibly more beneficial to other states or other entities. In keeping with the historical spirit of compromise and cooperation that has existed in past dealings and negotiation between the Crow Indian Tribe and our neighbors the Northern Cheyenne Indian Tribe we offer the following amendment as a possible acceptable means to agreement on this compact.

Senate Bill 472

Amend:

1) Page 16, line 13

Following: "dam,"

Strike: "for use or disposition by the Tribe for any beneficial purpose"

Insert: "to meet the reasonable needs of the Tribe, its members, lessees, co-joint venturers or partners which cannot reasonably be satisfied from the Tribes's allocations from sources of water within or bordering the Reservation"

2) Page 18, line 10

Following line 9

Insert: "(e) Consent of the Crow Tribe. In recognition of the fact that much of the water in the Big Horn Reservoir, Yellowtail Unit as aforesaid, flows through or originates on the Crow Indian Reservation and is claimed by the Crow Tribe and in recognition of the fact that the rights of the Crow Tribe to water from the Big Horn Reservoir, Yellowtail Unit, Lower Bighorn Division, Pick-Sloan Missouri Program, Montana, have not yet been quantified and determined, the rights granted under this subparagraph (7) shall not be effective until and unless the use of such water is first approved and consented to by the Crow Tribe of Indians by a proper adoption of a resolution to that effect by the Crow Tribal Council following a public hearing in which all affected parties have had an opportunity to be heard."

3) Page 40, line 19

Following: "and"

Insert: ", except as provided in Article VI A. (1) herein,"

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 17 day of April, 1991.

Name: David W. Pennington

Address: 4015 Conbin Drive
Billings, mt

Telephone Number: 657-6325

Representing whom?
U.S. Govt - Dept of Interior

Appearing on which proposal?
472

Do you: Support? Amend? Oppose?

Comments:
The Fed. Negotiation Team Supports this proposed legislation.
We believe the settlement is beneficial to the N. Cheyenne Tribe, the State of Montana & the U.S. Govt.
The passing & acceptance of this Compact by all concerned parties will settle federal litigation filed in 1975 in U.S. District Court.



United States Department of the Interior



OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

March 19, 1991

SENATE NATURAL RESOURCES

EXHIBIT NO. 4b

DATE 4-17-91

BILL NO. KB 472

Honorable Conrad Burns
United States Senate
Washington, D.C. 20510-2603

Dear Senator Burns:

Secretary Lujan has received your letter of March 15, 1991, recommending that a team be established to negotiate a resolution of the 107th Meridian boundary dispute with the Crow and Northern Cheyenne Indian Tribes. Please be assured that the Department will review and respond to this request as quickly as possible.

Sincerely,

Jeffrey D. Arnold
Deputy Director for Congressional
and Legislative Affairs and Senate Liaison

4-17-91 10:20

United States Senate

WASHINGTON, DC 20510-2603

March 15, 1991

Honorable Manuel Lujan, Jr.
Secretary of the Interior
1849 C Street N.W.
Room 6151
Washington, D.C. 20240

Dear Secretary Lujan:

I am writing to recommend that you establish a team to negotiate a resolution of the 107th Meridian boundary dispute with the Crow and Northern Cheyenne Indian Tribes. I understand that Crow Tribal officials have expressed a willingness to consider relinquishing the Crow Tribe's claim to the 36,000 disputed acres if agreement can be reached with the United States on fair and just compensation. I have also been informed that the officials of the Northern Cheyenne Tribe support this approach.

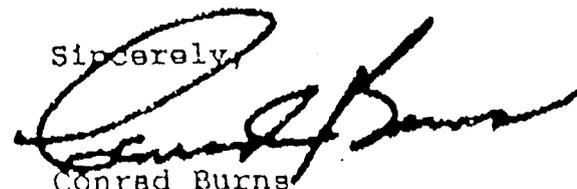
A settlement of the 107th Meridian boundary dispute ultimately requires congressional action. For this reason, I request that representatives of the Montana delegation be invited to observe and participate in the negotiations.

The time for resolving this matter is long past due. There is also a court deadline which requires prompt action. We recommend that the federal government establish its negotiating team within the next 30 days and that every effort be made to complete the negotiations and to submit proposed legislation to Congress by August 1, 1991. That schedule should provide sufficient time for the matter to be considered by the 102nd Congress.

I look forward to working with you to find a practical and fair solution to this longstanding problem which will be acceptable to all concerned parties.

With best wishes,

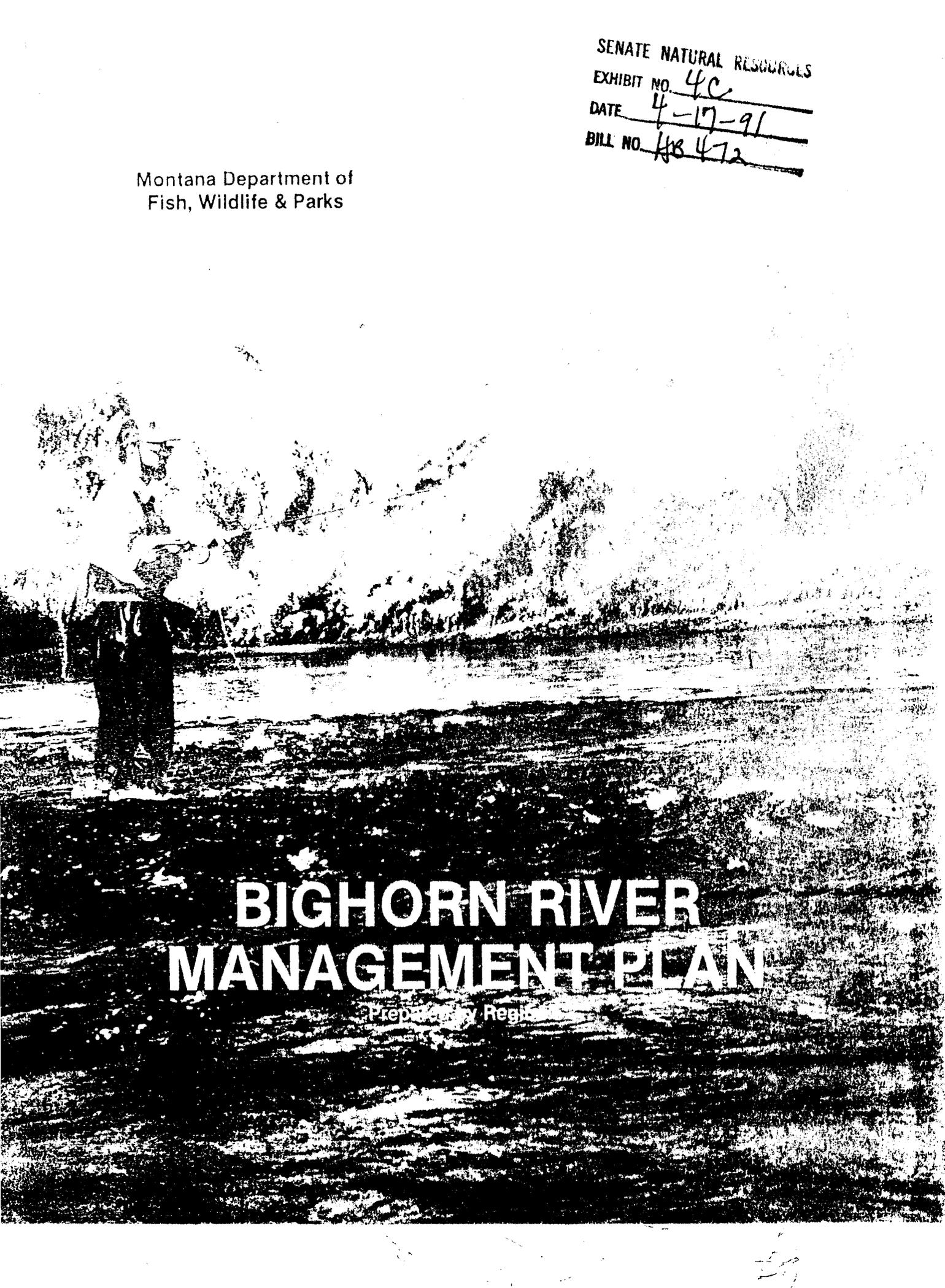
Sincerely,



Conrad Burns
United States Senator

SENATE NATURAL RESOURCES
EXHIBIT NO. 4C
DATE 4-17-91
BILL NO. HB 472

Montana Department of
Fish, Wildlife & Parks



BIGHORN RIVER MANAGEMENT PLAN

Prepared by Region 1

Stocking of four to six-inch rainbow trout will be carried out in areas with poor natural reproduction to supplement recruitment. The high growth rates attained by previous plants make this a highly productive program for supplementing the fishery. DeSmet strain rainbow trout fingerlings will be stocked to try and establish natural spring rainbow trout reproduction in the upper river. These fish will be marked to evaluate the stocking and spawning success.

Flow Monitoring:

Flows will be monitored, correlated and compared to fish population information to determine impacts of various flows on the fishery. Negotiations with the Bureau of Reclamation will continue with the goal to provide increased minimum flows and to provide flows best for the fishery. The Bureau of Reclamation has stated, "We will be pleased to work with you to the extent we can to maintain or improve the downstream fishery; however, other functions such as power generation, recreation, ice conditions, waterfowl and dust problems, plus water availability must all be considered when release rates are set.

Nitrogen supersaturation will be monitored and efforts by the Bureau of Reclamation to solve the problem will be supported. They now are experimenting with metal water deflectors which might reduce the gas bubble disease problem. We will attempt to document the impact of this problem on the fishery.

PUBLIC INFORMATION

General Information:

The FWP Department will follow an open course of communicating to the public what it needs for the river. This will be accomplished best through a public education program.

This program will be carried out by the Region 5 headquarters office located in Billings. The public education program will publicize Bighorn River management decisions and their rationale. In addition, wildlife and fisheries of the area will be described in periodic reports throughout the year. Radio, television and news releases will be the media for these messages.

Publicize Efforts of Each Division:

Public information about fisheries activities will include: an explanation of why the river contains excellent fisheries

SENATE NATURAL RESOURCES
EXHIBIT NO. 40
DATE 4-17-91
BILL NO. HB 4721

YELLOWTAIL AFTERBAY POWERPLANT

**PLAN FORMULATION CHAPTER,
ENVIRONMENTAL ASSESSMENT,
AND
POWER CANAL EVALUATION.**

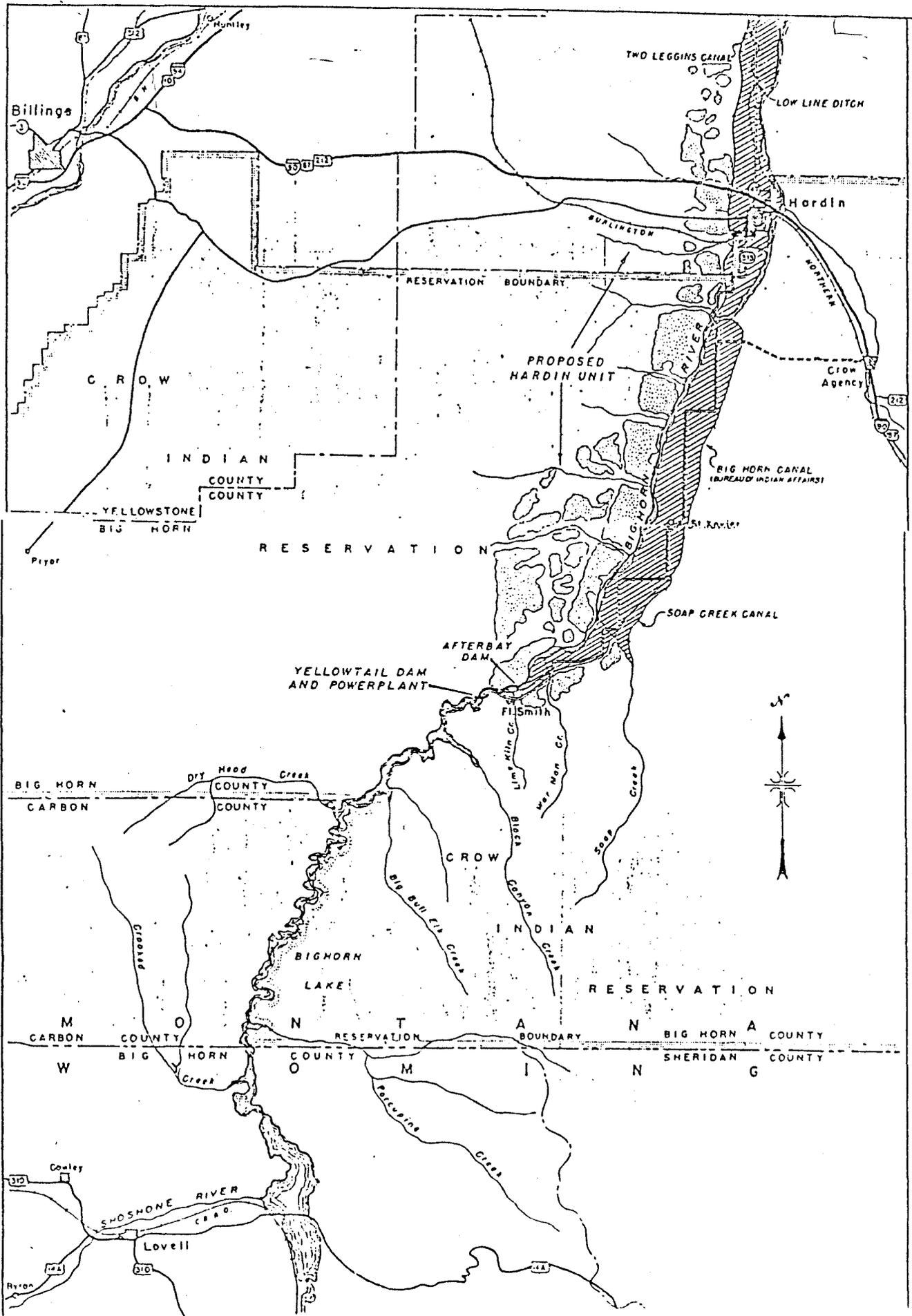
DRAFT FOR REVIEW

by

WASHINGTON OFFICE

and

E & R CENTER



PLAN FORMULATION CHAPTER

INTRODUCTION

Background

The Yellowtail Afterbay Reservoir is located 2.2 miles downstream of Yellowtail Dam in Montana. The afterbay dam regulates the flow into the Bighorn River below the 250-MW peaking powerplant located at the toe of Yellowtail Dam. Discharges through the sluiceway and over the spillway of the afterbay dam have caused a problem with gas (nitrogen) supersaturation in the Bighorn River, which periodically kills some fish and adversely affect others. Seasonally up to 95 percent of the brown trout greater than 14 inches have shown symptoms of gas bubble disease, caused by gas supersaturation. This is of particular concern since the Bighorn River is a nationally known blue ribbon trout stream. The Bighorn River fishery has been featured in every national outdoor magazine and attracts anglers from all over the country. Over 50 percent of the 55,000 angler-days (1983) on the river were out-of-state anglers, making it important to the Montana's tourist industry.

The gas supersaturation problem exists for 20 miles below the afterbay dam, with the most severe conditions occurring 1 to 3 miles below the dam. The Bighorn River is a relatively tranquil river with few rapids and riffles areas. If the river were shallower or more turbulent, gases would have a chance to dissipate, thereby lessening the problem.

Study and Report Objective

The objective of this study is two-fold: 1) to evaluate the potential for a powerplant at the afterbay dam and 2) to solve the gas supersaturation problem. Experts studying the supersaturation problem agree that a powerplant at the afterbay dam would help alleviate this problem. Two other methods have been tried: mixing releases over the spillway and through the sluiceway and installation of deflector plates in the sluiceway. Some reduction of nitrogen supersaturation occurred, but not enough to eliminate the symptoms of gas bubble disease in the fish.

The objective of this report is to document the plan formulation process, selection of the preferred plan, and to establish which NEPA document will be required--EIS or FONSI. A Planning Conference will be held in January 1985 to obtain E&R Center and Commissioner's Office concurrence in these decisions. This Plan Formulation Chapter and Environmental Assessment will be incorporated in the Planning Report/NEPA document.

UPDATED COST ESTIMATE
AND FINANCIAL ANALYSIS
OF THE PROPOSED POWERPLANT
AT THE YELLOWTAIL AFTERBAY DAM

February 6, 1987

Prepared by:
The Bureau of Reclamation
for
The Crow Indian Tribe
and
The Bureau of Indian Affairs
Under MOU No. 6-AG-60-00110



Crow Country

CROW TRIBAL COUNCIL

P.O. Box 159
Crow Agency, MT 59022
(406) 638-2601

OFFICE OF TRIBAL PLANNING

November 15, 1990

Mr. John Rogers
Economic Development Administration
P.O. Box 10074
Federal Building
Helena, Mt. 59626

Dear Mr. Rogers:



Crow Country

CROW TRIBAL COUNCIL

P.O. Box 159
Crow Agency, MT 59022
(406) 638-2601

ADMINISTRATIVE PLAN - ECONOMIC RECOVERY

In order that the Crow Tribal Government may regain integrity and better serve the socio-economic needs of the Crow Indian people, the Crow Tribal Administration must develop and implement an immediate strategy to achieve these goals.

The current Administrative officers of the Crow Indian Tribe hereby adopt the following interim plan outline to provide basic guidance pending the establishment of the Over All Economic Development Plan. The goals and objectives shall remain consistent with the commonly known priority needs of the Crow Tribe and also with those needs as may be prioritized through action of the Crow Tribal Council. This plan shall be ultimately integrated into a Tribally accepted Over-All Economic Development Plan to be completed by the Office of Tribal Planning.

B). SOCIAL NEEDS, CROW PEOPLE:

1. Employment (static at 85% unemployed)

4. Introduction of new Job skill training, and educational assistance, with priority for planned project needs.
 - (d) Research and entertain proposals concerning expansion of coal and or gas and oil resources development.
 - (f) Research all past proposed projects for feasibility and possible development.
 - (g) Expand and initiate job search programs and introduce more assistance in Job search.
 - (h) Complete feasibility for Hydro projects (irrigation, power).
 - (i) Investigate possibility of small coal or natural gas fired power plant and commercial market of power with long term contract.

YELLOWTAIL AFTERBAY POWERPLANT
SUMMARY SHEET
FEBRUARY 26, 1991

General:

A powerplant at the Yellowtail Afterbay Dam would fulfill the two-fold objective of providing power generation and eliminating the gas supersaturation problem below the afterbay dam. The plan studied by the Bureau of Reclamation (Reclamation) calls for the construction of a two (2) unit powerplant on the left embankment along with a bypass structure for the nitrogen supersaturation problem.

Powerplant Sizing:

Reclamation studies show that an 8-Megawatt (MW), two (2) unit, powerplant and bypass structure would be located in the Left Embankment of the Afterbay Dam. This preferred plan, called the "8-MW (two-unit) Power and Bypass Alternative" was selected based on economic, environmental, and social analyses. This plan provided the greatest net benefits and guaranteed compliance with the States' Water Quality Standard.

A verification of this 8-MW size comes from three (3) FERC applications that have been filed in recent years for the site. The plant capacities for these applications have ranged from 5.72 to 10-MW with one of the plants sized at 8-MW. Estimated power generation numbers for these plants also correspond to Reclamation's estimates as presented below.

Power Generation:

In 1984 Reclamation performed a power analysis for Yellowtail Afterbay Dam for the calendar years 1960-1983.

The table below illustrates the average annual power generation and design flow for several size plants based on a design head of 25 feet.

<u>Power Plant</u>	<u>Design Flow (Cubic Ft/Sec)</u>	<u>Adjusted Average Annual Power Generation (Kilowatt-Hours)</u>
5-MW	2,750	36,200,000
6-MW	3,300	41,800,000
7-MW	3,850	45,300,000
8-MW	4,400	46,900,000
9-MW	4,950	48,000,000
10-MW	5,500	48,400,000
11-MW	6,050	48,500,000

Power generation was calculated on a monthly basis and adjusted according to an hourly and monthly study performed for a two year period (1977 & 1978) which reflected a low flow year and a high flow year. The average annual adjusted power generation for the record analyzed is approximately 47,000,000 Kilowatt-Hours (KWH) for the 8-MW powerplant.

Please note that since this 1984 power analysis study, a new critical flow period (low flows) may be occurring which could cause the average annual power generation estimate to drop. Therefore, an updated power analysis should be performed to include the last several years to confirm the proper size of powerplant and the expected power generation.

Cost:

The 1991 cost estimate for the powerplant/bypass facility is \$29,700,000 -- \$24,000,000 for the powerplant and \$5,700,000 for the bypass. These amounts are based on appraisal-grade estimates prepared in the early 1980's and indexed to January 1991. A feasibility-grade study would produce a more reliable estimate.



CROW TRIBAL COUNCIL

P.O. Box 159
Crow Agency, MT 59022

(406) 638-2601

Clara Nomee, Madame Chairman
Joe Pickett, Vice-Chairman
Blaine Small, Secretary
Sylvester Goes Ahead, Vice-Secretary

Crow Country

March 22, 1991

Mr. Jim Wedeward, Regional Director
U.S. Bureau of Reclamation
P.O. Box 30137
Billings, Mt. 59107

Dear Mr. Wedeward:

In regard to our ongoing discussion, concerning a potential Bureau of Reclamation-Crow Tribe joint co-operative effort in the creation of a Hydro-Electric facility on the Yellowtail Afterbay Dam, we are submitting this letter of our intentions relative to the project.

First we would like you to know that we are anxious to proceed with the project. We feel that this project addresses several important areas of concern not only to the Crow Indian Tribe, but also the concerns of State, Federal agencies and private environmental interests as well. We are also very much aware of the years of study and discussions that have gone into this project, both by the Bureau of Reclamation and the Crow Tribe. It is of keen interest to us that there has been a wide fluctuation of opinion concerning the project, demonstrated by utilities, planning agencies, State and Federal Inter-agencies and Congressional Representatives as well.

Currently, we have not found any opposition to the project based on values and needs of the 1990's and the future. What we need to know is what are the steps that need to be taken to get this past a discussion stage, and into a positive planning stance.

This long term hydro-electric generation facility will provide the Crow Tribe with needed short term employment, limited long term employment, and an ongoing predictable source of income, that perhaps could be used to offset rising utility costs plaguing our people. It is heartening to note that construction of this facility has also been indirectly blessed by recent U.S. Congressional action pertaining to amendments of the "Clean Air Act" (1990), and it fits comfortably within the framework of the recently announced National Energy Policy from President Bush.

We also have been keeping abreast of the Northwest Power Planning Council's projections of future demand, sources and planning. It is obvious to us that projections dictate a need for the power we would generate from this plant. It is paramount however, that we insure ourselves of this prior to full development and financial dedication for the project.

We feel that the following concerns and actions need to be addressed in the near future:

- 1). the Crow Tribe must meet with Montana Power Company and other concerned entities regarding the marketing and transmission of new generated power, and establish assurances for same,
- 2). the Bureau of Reclamation will be expected to establish a definite cost analysis at today's dollars and provide definitive projections and/or assurances of generation potential, maintenance overhead, and enter a contract with the Tribe providing conditions for same,
- 3). on financial aspects; the Crow Tribe needs to research available avenues to provide financing for the project; also, more exact figures on cost sharing or financial participation by the Bureau of Reclamation are needed; the total amount of investment capital that will be required of the Tribe and a joint effort strategy by and between two entities will be required to secure needed funding.
- 4). the Crow Tribe has all needed elements of governmental approval to proceed with the project through administrative offices, but will need to enlist support from the Congressional level and also more technical assistance from the Department of the Interior.
- 5). possible funding may be sought through the combined efforts of the Bureau of Reclamation and Tribe through settlement in part, of unrelated outstanding issues between the United States government and the Crow Tribe requiring possible monetary settlement. This arrangement would have to be thoroughly negotiated and no doubt, the Bureau of Reclamation would have to advocate the merits of the facility installation. A Federal appropriation sought for project funding in this manner may be more readily acceptable to Congress, given present budget limitations. We feel that this scenario may be a more logical alternative than full, direct monetary settlement of a disputed issue.

We would like to meet again in the near future to discuss these items and other issues concerning this project. We have concerns about the FERC, Montana Power, WAPA, NPS, and BIA current positions toward this facility.

Most importantly, we would like to maintain an ongoing, and productive dialogue with the Bureau of Reclamation to see this project through to a completion. We would also recommend that any further study of the issue be limited to absolute levels in order to expedite it and keep costs reduced.

Advise us of your thoughts and recommendations as to any legislative needs and suggested meetings that may be in order with any of the above named entities.

Thank you for your continued interest and assistance in this endeavor.

Respectfully,

Clara Nomee

Clara Nomee, Chairperson, Crow Tribal Council

Blaine Small

Blaine Small, Secretary

Joe Pickett

Joe Pickett, Vice-Chairman

Sylvester Goes Ahead

Sylvester Goes Ahead, Vice-Secretary

Montana collaborative coaxes utility toward least-cost resources.

by John Hines

Montana Power Company officials and an advisory committee recently reached agreement on a least-cost planning process to guide future energy decisions at the utility. Calling it a "great step into the new era of power planning," Stan Grace, one of Montana's two Northwest Power Planning Council members and chairman of the Council's power committee, applauded the effort, noting that Montana's utilities, unlike those of Idaho, Oregon and Washington, are not required by state regulators to develop least-cost plans.

Montana's planning process also is significant because it was designed cooperatively by the utility, energy experts from outside the company and citizens groups, some of them longtime adversaries of the company. The committee, known formally as the Conservation and Least-Cost Planning Advisory Committee, was formed in October 1988, as part of a settlement between Montana Power and two advocacy groups: Montana's Human Resource Council and the Natural

BIG SKY LEAST COST

Resources Defense Council, a national organization.

The groups agreed to not challenge Montana Power's sale of electricity from the company's Colstrip Unit No. 4 coal plant to the Los Angeles Department of Water and Power. In return, Montana Power agreed to expand its conservation programs and establish the advisory committee to make recommendations on future electric power resource acquisitions. The settlement also spelled out tentative conservation expenditures through 1993.

Through its consensus, the advisory committee was able to settle controversial issues and limit future contentious battles in

court or during rate-making. In addition, the committee's work improved the company's process for resource planning and acquisition, reduced the number of resources that must be used in rate cases and improved customer relations.

The committee's report contained recommendations for both the company and for the Montana Public Service Commission, which approves electricity rates in the state. Briefly, the committee recommended:

Resource acquisition rule

This rule would incorporate a number of criteria into resource acquisition decisions to minimize long-term costs to society. The rule seeks to balance factors including risk and uncertainty, service reliability, social and environmental costs, and equitable distribution of costs and benefits.

Such rules, which shape what are called multiple-attribute decisions, also seek to minimize the revenue requirements of the util-

ity. In contrast, single-attribute decision rules focus on one impact, such as only minimizing costs for the utility.

Integrated planning

Conservation and generating resources should be analyzed consistently, equitably and simultaneously. This allows an integrated planning process in which all types of resources compete equally.

Marketing goals

Marketing goals and programs should be evaluated in the context of resource planning. Utility goals sometimes differ from the goals of least-cost planning. Because corporate goals can affect resource choices, they need to be analyzed in terms of least-cost resources.

Resource acquisition

Competitive acquisition should be a component of least-cost planning, not a substitute for it. The company should immediately begin a process to acquire 25 to 50 megawatts and consider all possible resources in the search.

Resource and market barriers

The company should continue to evaluate regulatory and market barriers to least-cost planning and acquisition, including conservation resources. Ideally, regulatory and market factors should enable the company to achieve its greatest profits by following a least-cost planning process.

Montana's utilities, unlike those of Idaho, Oregon and Washington, are not required by state regulators to develop least-cost plans.

Therefore, a broad-based collaborative effort is needed to address regulatory and market hurdles and develop recommendations for rules that encourage least-cost planning by utilities.

The committee made its recommendations to Montana Power officials last October. Presentations also were made to the public service commission, the office of the Montana Consumer Counsel and state energy officials to make the point that utilities need incentives in order to be successful at least-cost planning.

"This report gives us a process for evaluating power supply options and conservation from many points of view: we are ready to see where it goes," said Bob Gannon, Montana Power utility company president.

Montana Power officials are studying the recommendations, which are not binding. Meanwhile, an expanded advisory committee is meeting to address regulatory and market barriers.

The original advisory committee included energy experts from Montana Power and representatives of the Human Resource Council, the Natural Resources Defense Council, the Montana Environmental Information Center, the Northern Plains Resource Council, the Montana Power Company Large Users Group, the Montana Department of Natural Resources and Conservation, and the Northwest Power Planning Council. Gerald Mueller, a former Power Planning Council member from Montana, was the committee's coordinator. ■■

John Hines is an economist with the Northwest Power Planning Council's Montana office and a member of Montana Power Company's Conservation and Least-Cost Planning Advisory Committee.

Major new power plant eyed

HELENA (AP) — The Northwest Power Planning Council is eyeing the possibility of another Colstrip-sized coal-fired generating plant in Montana to meet an expected increase in demand for electricity in the Pacific Northwest over the next decade.

A Montana member of the council, however, doubts that such a plant is in the state's future.

The council recently released the draft of a long-range plan that council President Jim Goller called the agency's most important project in its 10-year history.

A council economist, John Hines of Helena, said the draft plan calls for:

- Immediate licensing of three new coal-fired generating plants in coal-producing areas of the four-state region. Montana produces the cheapest coal in the region and may be picked

- A study to see if it is feasible to complete two mothballed nuclear reactors in Washington as a possible cheaper alternative to Montana coal.

- Upgrading power plants at reservoirs in Montana and other states to increase their efficiency and generating capacity. Montana Power Co. will be upgrading some of its facilities in the state as part of the plan.

- Making natural gas a backup source for electricity generation.

- Taking immediate steps to conserve 1,200 megawatts of current uses of electricity.

- And fostering new small hydropower projects and co-generation facilities, and investigating possible sites for geothermal energy in Montana and other states.

The draft power plan has been released for public inspection and comment, and written testimony will be accepted until March 15. The final plan is expected to be released in March.

"We see the potential for the development of coal in Montana, but it depends on load growth (how much electricity is used)," Hines said. "If there is medium-high load growth, Eastern Montana is the cheapest source of coal in the Northwest."

Over the past four years, Goller said, the region's growing demand for additional electricity has been the equivalent of adding a new city the size of Portland, Ore., every year.

"We have just enough electricity to meet our needs now," he said. "If the load draw continues to increase, we will need to acquire additional generating capacity."

Hines said the council wants to identify sites for three new coal plants and begin the process of designing and licensing because those steps account for half the total time required to build a new plant.

He said the plan calls for a decision to start

construction of a coal-fired plant within years, but that high-load growth could stop that up.

While Eastern Montana has the cheapest coal in the region, Hines said, "Washington Oregon also have sites that are very competitive."

Stan Grace of Darby, a Montana representative on the NPPC, said Washington Power already has obtained required licenses to build a new coal-fired plant at Creston, Wash., that has a capacity of 500 megawatts.

Grace said the plan identifies a need for increased capacity of 1,500 megawatts, which would represent a plant "slightly larger than Colstrip" and about three times as big as the Creston plant.

Grace said he doubts that a coal-fired plant will be built in Montana because of opposition to new power transmission line