No. 24-5011

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MICHAEL HILL, et al.,
Plaintiffs/Appellants,

v.

U.S. DEPARTMENT OF THE INTERIOR, et al.,
Defendants/Appellees

Appeal from the United States District Court for the District of Columbia
No. 1:22-cv-01781 (Hon. James E. Boasberg)

BRIEF FOR FEDERAL APPELLEES

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and Amici

1. Appellants Michael Hill, Jason Kills Pretty Enemy, Alee Birdhat, Leeya Biglake Hill, Abby Birdhat, Apsáalooké Allottees Alliance, Willis N. Medicine Horse, and Wailes Yellowtail are the Plaintiffs.

2. Appellees United States Department of the Interior, Debra A. Haaland in her official capacity as Secretary of the United States Department of the Interior, Bryan Newland in his official capacity as Assistant Secretary of the Interior for Indian Affairs, and the United States of America are the Defendants.

3. There are no amici.

B. Rulings Under Review

Appellants seek review of the district court's Opinion and Order of October 19, 2023 dismissing the case without prejudice. Joint Appendix 198-239.

C. Related Cases

This case was not previously before this Court or any other court other than the district court below. There are no related cases within the meaning of Circuit Rule 28(a)(1)(C).

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INTRODUCTION

Plaintiffs/Appellants are seven members of the Crow Tribe who own Indian trust allotments on the Crow Reservation in southern Montana and an association of such individuals (the membership of which is unknown) ("Allottees"). In 1999, the Crow Tribe and the State of Montana entered into the Crow Tribe-Montana Water Rights Compact ("Compact"). Through the Crow Tribe Water Rights Settlement Act, Pub. L. No. 111-291, §§ 401-416, 124 Stat. 3097-122 (2010) ("Settlement Act" or "Act"), Congress ratified the Compact and directed the Secretary of the Interior ("Secretary") to execute the Compact to the extent it did not conflict with the Act. In Allottees' view, the water rights they hold under the Compact and Act are less valuable than the unadjudicated (and thus unquantified) water rights they could have claimed based on *Winters v. United States*, 207 U.S. 564 (1908), and its progeny, and less valuable than the water rights held by the owners of fee lands within the exterior boundaries of the Crow Reservation.

The Act provided for the United States to waive and release the Allottees' claims to *Winters* rights and for the waivers to take effect when the Secretary reported that seven required actions had been completed, as required by Section 410(e)(1), 124 Stat. 3112 ("Statement of Findings" or "Statement"). The Act further provided for its own repeal if the Secretary did not publish the Statement by March 31, 2016, "or the extended date agreed to by the Tribe and the

Secretary." Act § 415(1), 124 Stat. 3121. The Secretary published the Statement of Findings in the Federal Register on June 22, 2016, noting that the Tribe had agreed on March 21, 2016 to extend the deadline until June 30, 2016. 81 Fed. Reg. 40720.

Allottees seek to have their pre-Compact water claims restored through declarations that the Statement is void and that the Act itself is void. This is the third suit in which some Crow allottees (including some of the current Plaintiffs) have sought to block the settlement embodied in the Compact and Act. In 2013, some Crow allottees objected to the joint motion filed by the United States, Montana, and Crow Tribe in Montana Water Court for entry of a decree to declare tribal and allottee water rights in accordance with the Compact and Act. And in 2014, some Crow allottees filed a putative class action in the United States District Court for the District of Montana against the United States Department of the Interior ("Interior"), challenging the ongoing Montana Water Court proceedings and the Act. The objections to the proposed decree and the federal court suit were unsuccessful.

Allottees filed this third suit in 2022 against Interior, the Secretary, the Assistant Secretary-Indian Affairs, and the United States (collectively "Interior"). The operative Complaint details Allottees' grievances with the negotiation and terms of the Compact and Act, the Montana Water Court proceedings, and

Interior's actions and asserted inaction implementing the Compact and Act.[1] The Complaint includes four counts.

In Count I, Allottees claim that the Secretary missed the deadline for publishing the Statement because the extension agreement with the Crow Tribal Chairman was assertedly invalid, resulting in the Act's automatic repeal. In Count II, Allottees claim that the Secretary published the Statement before all the required actions had been completed, similarly triggering the automatic repeal provision. In Count III, Allottees claim that the Act is void and unenforceable because Interior breached trust duties to Allottees through various actions and asserted inaction in its implementation. And in Count IV, Allottees claim that the Statement and/or Act is void and unenforceable based on asserted violations of their Fifth Amendment rights to procedural due process, substantive due process, and equal protection.

The district court granted Interior's motion to dismiss all of Plaintiffs' claims for failure to state a claim on various grounds. On appeal, Allottees expressly waive any challenge to the dismissal of Count II (Br. 9) and the substantive due process claim in Count IV (Br. 40). Allottees do not demonstrate any error in the district court's dismissal of their other claims.

[1] The operative complaint is the Amended Complaint (ECF No. 14, filed March 31, 2023), JA9-71 (herein the "Complaint").

STATEMENT OF JURISDICTION

The district court has jurisdiction under 28 U.S.C. § 1331 because the Allottees' claims arise under federal law, including the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706. *See* Joint Appendix ("JA") 9-65.

The district court dismissed Allottees' Complaint on October 19, 2023. JA198. They timely filed a notice of appeal on January 16, 2024. JA8. *See* Fed. R. App. P. 4(a)(1)(B).

This Court has jurisdiction over the district court's dismissal of Allottees' Complaint under 28 U.S.C. § 1291 because the court dismissed all claims against all parties.

STATEMENT OF THE ISSUES

Allottees' appeal presents the following issues:

1. Whether Count I fails to state a claim that the Secretary's publication of the Statement was untimely because the Secretary's extension agreement with the Crow Tribal Chairman assertedly violated tribal and federal law.

2. Whether Count III fails to state a claim that the Secretary's actions and asserted inaction in implementing the Act breached fiduciary duties owed to Allottees.

3. Whether Allottees' express concession in the district court that their Complaint did not include a claim under the Takings Clause of the Fifth

Amendment precludes them from arguing on appeal that they had made a takings claim.

4. Whether Count IV fails to state a claim that the Secretary's publication of the Statement violated Allottees' Fifth Amendment right to procedural due process.

5. Whether Count IV fails to state a claim that the Act's different treatment of water rights for allotments held by the United States in trust for tribal members and those for fee parcels within the Crow Reservation violates Allottees' Fifth Amendment right to equal protection.

PERTINENT STATUTES AND REGULATIONS

All applicable statutes, etc. are contained in Appellants' Addendum, except the Settlement Act (which is the most significant statute) and Crow Constitution Article X, which are included in Appellees' Addendum.

STATEMENT OF THE CASE

A. Factual and statutory background

1. Crow Reservation

The Crow Reservation consists of about 2.3 million acres in southern Montana. JA23 (Complaint ¶ 58). Under the 1868 Treaty of Fort Laramie, 15 Stat. 649, and subsequent statutes, most of the land within the Crow Reservation was allotted to individual tribal members, the allotments to be held in trust by the

United States. JA24 (Complaint ¶¶ 59-60); *see Montana v. United States*, 450 U.S. 544, 548 (1981). When restrictions on alienation were removed, many of the trust allotments were sold and patented in fee to non-Indians. JA29 (Complaint ¶ 73). "A significant amount of fee patented land" has since been acquired, and is now "owned[,] by Crow tribal members." JA29 (Complaint ¶ 75). Currently, about 10% of the Crow Reservation is unallotted tribal trust land, about 46% is trust allotments, and about 44% is patented fee lands, JA29 (Complaint ¶¶ 73-74), including fee lands owned by tribal members.

2. Indian Water Rights

The establishment of an Indian reservation under federal law includes an implied reservation of water necessary to accomplish the purposes of the reservation. *Winters*, 207 U.S. at 576-78. The United States generally holds reservation lands and associated resources, including water rights, in trust for the benefit of the tribe. *See, e.g., United States v. Shoshone Tribe*, 304 U.S. 111, 116-18 (1938); *see also Arizona v. Navajo Nation*, 599 U.S. 555, 561 (2023).

Shortly after *Winters*, in a case involving allotments on the Crow Reservation, the Supreme Court interpreted 25 U.S.C. § 381 to entitle Indian allottees to water: "[W]hen allotments of land were duly made for exclusive use and thereafter conveyed in fee, the right to use some portion of tribal waters essential for cultivation passed to the owners." *United States v. Powers*, 305 U.S.

527, 532 (1939). In a series of decisions involving transferred allotments on the Colville Reservation, federal courts expanded on *Powers* and defined the water rights to which non-Indian successors to Indian allottees may be entitled. *See*, *e.g.*, *Colville Confederated Tribes v. Walton*, 647 F.2d 42, 50 (9th Cir. 1981).

Allottees refer to an allottee's right under this line of cases to use water for irrigation purposes from the Reservation's federal Indian reserved water right as "*Winters*" rights. *Winters* rights cannot be lost for non-use under state-law concepts such as abandonment and forfeiture. *Winters*, 207 U.S. at 577; *Walton*, 647 F.2d at 51. Federal reserved water rights, including *Winters* rights held on behalf of Indian tribes and allottees, are subject to adjudication in state courts as part of comprehensive adjudications to determine all rights in a source. *See Colorado River Water Conservation District v. United States*, 424 U.S. 800, 809-13 (1976) (citing 43 U.S.C. § 666); *see also* JA30 (Complaint ¶¶ 80-81) (describing Montana statutes). Such adjudications often take decades.

3. Compact

In 1999, the Crow Tribe, Montana, and United States negotiated a resolution of disputes over the quantification and administration of water rights on the Crow Reservation through the Crow Tribe-Montana Water Rights Compact (codified, as ratified by the Montana legislature, at Mont. Code Ann. § 85-20-901 (1999)). The Compact was intended to "settl[e] any and all existing water rights claims of or on

behalf of the Crow Tribe of Indians in the State of Montana." Compact Pmbl. It recognizes two categories of water rights: (1) water rights for "land not held in trust by the United States for the Tribe or a tribal member," called water rights "Recognized Under State Law" (referred to herein as "state-law water rights"), Compact Art. II.19; and (2) the "Tribal Water Right," which is "the right of the Crow Tribe, including any Tribal member, to divert, use, or store water *as described in Article III of this Compact*," *id*. Art. II.30 (emphasis added).

Article III specifies the Tribe's right to divert and use water from six water sources: the Bighorn River, Little Bighorn River, Pryor Creek, Rosebud Creek, Youngs Creek and other specified drainages within the Crow Reservation, and water sources within the "Ceded Strip" (former reservation lands, now outside the Crow Reservation, that the United States holds in trust for the Crow Tribe). *Id*. Art.III.A-Art.III.F. Article III also provides for the protection of state-law water rights in each of the six areas, including from priority claims of the Tribal Water Right. *See*, *e.g.*, *id*. Art. III.A.6; *id*. Appendix 3 (listing state-law water rights).

The Tribal Water Right is to be held in trust by the United States. *Id.* Art. IV.A.1. The Tribal Water Resources Department is responsible for administering the Tribal Water Right, *id*. Art. IV.A.2.a, pursuant to a Tribal Water Code to be developed and adopted by the Tribe, *id*. Art. IV.A.2.b. "Pending the

adoption of the Tribal Water Code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of the Interior." *Id*.

The Compact provides for Montana annually to update the list of state-law water rights. *Id*. Art.IV.E.1. And it also provides for the Tribe and the United States to provide Montana with a list of current uses of the Tribal Water Right (the "Current Use List") "[w]ithin one (1) year after this Compact has been ratified by the Montana legislature."[2] *Id*. Art. IV.E.2.

4. Settlement Act

Congress approved the Compact by enacting the Settlement Act. The Act's purposes include: "(1) to achieve a fair, equitable, and final settlement of claims to water rights in the State of Montana for—(A) the Crow Tribe and; (B) the United States for the benefit of the Tribe and allottees[,]" as well as "(2) to authorize, ratify, and confirm the [Compact]." Act § 402(1)-(2), 124 Stat. 3097.

With respect to allottees, the Act confirms Congress's intent "to provide to each allottee benefits that are equivalent to or exceed the benefits allottees possess[ed]" at the time of its enactment, "taking into consideration":

> (1) the potential risks, cost, and time delay associated with litigation that would be resolved by the Compact and [the Act];

[2] Allottees mistakenly refer to the Current Use List as Appendix 1 to the Compact. *See*, *e.g.*, JA33-34 (Complaint ¶ 101).

> (2) the availability of funding under [the Act] and from other sources;
>
> (3) the availability of water from the tribal water rights; and
>
> (4) the applicability of [25 U.S.C. § 381] and [the Act] to protect the interests of allottees.

Id. § 407(a), 124 Stat. 3104.

The Act provides that the tribal water rights described in the Compact "are ratified, confirmed, and declared to be valid" and shall be "held in trust by the United States for the use and benefit of the Tribe and the allottees." *Id*. §§ 407(b)(1) and (c)(1), 124 Stat. 3104. The Act also provides that "[a]ny entitlement to water of an allottee under Federal law shall be satisfied from the tribal water rights," and that "[a]llottees shall be entitled to a just and equitable allocation of water for irrigation purposes." *Id*. §§ 407(d)(2) and (3), 124 Stat. 3105; *see id*. § 407(d)(1), 124 Stat. 3104 (specifying that 25 U.S.C. § 381 "shall apply").

The Act gives the Crow Tribe "authority to allocate, distribute, and lease the tribal water rights in accordance with the Compact." *Id*. § 407(e)(1), 124 Stat. 3105 (formatting and punctuation altered). The Tribe must establish a Tribal Water Code, "not later than 3 years after the date on which the Tribe ratifies the Compact," *id*. § 407(f)(1), 124 Stat. 3105, that must contain specified protections for allottees, *id*. § 407(f)(2), 124 Stat. 3105. The Secretary will "administer the

tribal water rights until the tribal water code is enacted," and will approve the Tribal Water Code only if it includes the specified protections for allottees. *Id.* § 407(f)(3), 124 Stat. 3106.

The Act further authorizes hundreds of millions of dollars in federal appropriations for projects to benefit all users of the Tribal Water Right, including projects to maintain and improve the Crow Irrigation Project and to rehabilitate and improve the Crow Municipal, Rural, and Industrial System. *Id.* §§ 405-406, 411, 414, 124 Stat. 3100-04, 3113-16, 3120-21.

In exchange for the Tribal Water Right, funding for water projects, and other benefits, the Act required a comprehensive release of claims. It specified that the "benefits realized by the allottees" under the Act "shall be in complete replacement of and substitution for, and full satisfaction of[,]" the allottees' water rights claims, including "any claims of the allottees against the United States that the allottees have or could have asserted." *Id.* § 409(a)(2), 124 Stat. 3108; *see id.* § 410(a)(3), 124 Stat. 3110 (describing claims released).

Section 410(a), 124 Stat. 3109, directed the United States to waive and release any claim that the United States, "acting as trustee for the allottees," had asserted or could have asserted on the allottees' behalf. It provided that the waivers and releases would become enforceable on the date the Secretary published the Statement of Findings in the Federal Register, reporting that seven

actions required of the Secretary, Montana Water Court, Secretary of the Treasury, Montana, and Tribe had occurred. *Id*. § 410(b), 124 Stat. 3111; *id*. § 410(e)(1), 124 Stat. 3112. Among other things, the Montana Water Court had to issue a final judgment and decree approving the Compact, *id*. § 410(e)(1)(A), 124 Stat. 3112, and any direct appeals to the Montana Supreme Court had to be completed, *id.* § 403(7), 124 Stat. 3098.

Section 415(1), 124 Stat. 3121, provided that the Act would be repealed if the Secretary did not publish the required findings by March 31, 2016, or by an "extended date agreed to by the Tribe and the Secretary, after reasonable notice to the State of Montana."

5. Crow Tribe approval vote and waiver and release of claims

The Crow Tribe General Council ("General Council") (the body of all adult tribal members) voted to approve the Compact and Act on March 19, 2011. JA41 (Complaint ¶ 127); *see* Act § 410(e)(1)(E) (requiring approval through "a vote by the tribal membership").

On April 27, 2012, the Tribe (through the Tribal Chairman) and the United States (through the Secretary) waived and released the claims of the Tribe and its members (but not allottees) as specified in Act § 410(a)(1). *See* JA42-43 (Complaint ¶ 130). The United States (through the Secretary) also waived and released the allottees' claims as specified in Act § 410(a)(2). *See* JA43 (Complaint

¶ 131); *see also* Act § 410(e)(1)(G) (requiring execution of the waivers and releases "by the Tribe and the Secretary").

6. Montana Water Court proceedings

In accordance with the Compact, the United States, Montana, and Crow Tribe jointly moved the Montana Water Court in 2012 for "entry of a final order issuing the decree of the reserved water right of the Tribe held in trust by the United States as quantified in the Compact." *See In re Crow Water Compact*, 354 P.3d 1217, 1219 (Mont. 2015) (quoting Compact Art. VII.C). The court issued a preliminary decree containing the Compact and served notice on affected parties. *Id*. Some Crow allottees (including some Plaintiffs here) filed objections, alleging that they possess reserved water rights distinct from the rights of the Crow Tribe, that the Crow Compact would impair their rights by subordinating them to the Tribe's rights, that the United States had failed to adequately represent their interests, and that the Montana Water Court lacked jurisdiction over their rights. *Id*. at 1219-20. Some non-Indian objectors argued that the Compact did not sufficiently limit the Tribal Water Right. *See In re Crow Water Compact*, 364 P.3d 584, 588 (Mont. 2015).

The Water Court dismissed the allottees' objections on July 30, 2014. JA52 (Complaint ¶ 165). The Montana Supreme Court affirmed on July 30, 2015. *In re Crow Water Compact*, 354 P.3d at 1218-24. The allottees filed a petition for a writ

of certiorari in the United States Supreme Court on December 14, 2015, No. 15-779, which was denied on April 25, 2016. *Crow Allottees v. United States*, 578 U.S. 945 (2016).

The Water Court separately dismissed all the non-Indian objections and issued an order approving the Compact on May 27, 2015. JA52 (Complaint ¶ 167). Some non-Indian objectors separately appealed to the Montana Supreme Court, which rejected their arguments and affirmed the Water Court's final judgment on December 30, 2015. *See In re Crow Water Compact*, 364 P.3d at 587-91. They filed a petition for a writ of certiorari in the United States Supreme Court on April 27, 2016, No. 15-1327, which was denied on June 13, 2016. *Abel Family Limited Partnership v. United States*, 579 U.S. 904 (2016).

7. Allottees' federal court challenge to the Montana Water Court proceedings

On May 15, 2014, the Crow Allottees Association (the members of which were unknown) and a number of individual allottees, including some of the current Plaintiffs, filed a putative class action in the United States District Court for the District of Montana claiming that the Bureau of Indian Affairs and federal officials violated their fiduciary duties and the allottees' rights to procedural due process by failing to provide them independent counsel during the Compact negotiations, waiving their *Winters* rights without adequately consulting them, and failing to ensure that they retained an adequate amount of water. *See Crow Allottees*

Association v. U.S. Bureau of Indian Affairs, 2015 WL 4041303 at *5 (D. Mont. June 30, 2015). The allottees sought an order requiring the federal defendants to provide them with private counsel in the Montana Water Court proceedings and, more broadly, a declaration that the Act (and thus Compact) was unconstitutional and that they retained their individual *Winters* rights. *See Crow Allottees Association v. U.S. Bureau of Indian Affairs*, 705 Fed. Appx. 489, 491-92 (9th Cir. 2017).

The federal defendants moved for judgment on the pleadings, arguing lack of standing, sovereign immunity, and failure to state a claim. *See Crow Allottees Association*, 2015 WL 4041303 at *5. The district court granted the motion on the ground that there was no applicable waiver of sovereign immunity.[3] *Id*.

The Ninth Circuit affirmed on the alternative ground that the allottees had failed to state a claim on which relief can be granted. *Crow Allottees Association*, 705 Fed. Appx. at 491. It held that the allottees had not identified any statute requiring the United States to provide them with private counsel; 25 U.S.C. § 175 did not do so, and the allottees had not identified any other statute that imposed that duty. *Id*. at 491-92. The Court also held that they had not stated a claim for breach of fiduciary duties that entitled them to a declaration that the Act is invalid.

[3] The allottees also sought to enjoin two Montana Water Court judges from issuing a final decree including the terms of the Compact. *See Crow Allottees Association*, 2015 WL 4041303 at *5. The district court dismissed the claims against them in a separate unpublished order issued July 27, 2015.

Id. It noted that "their allegations may support a claim for damages," but expressed no view of the merits of such a potential claim. *Id*. at 492. Finally, the Court held that the allottees' "procedural due process argument fails because the legislative process was the only process to which Plaintiffs were entitled." *Id*.

8. Statement of Findings

As the March 31, 2016 deadline for publishing the Statement approached, and the allottees' petition for review of the Montana Supreme Court's decision was still pending in the U.S. Supreme Court, the Secretary and Tribal Chairman agreed to a three-month extension. JA47 (Complaint ¶ 149). Once that petition was denied, the Secretary reported in the Statement of Findings, published on June 22, 2016, that the seven actions listed in Act § 410(e)(1) had been completed, noting that "[o]n March 21, 2016, after providing reasonable notice to the State, the Secretary and the Tribe agreed to extend the deadline for publication to June 30, 2016." 81 Fed. Reg. 40720.

B. Proceedings below

Allottees filed suit on June 21, 2022, JA4, the day before the six-year statute of limitations would have run on challenging the Statement under the APA. *See* 28 U.S.C. § 2401(a). As noted, the operative Complaint included four counts. JA56-65.

On June 29, 2023, Interior moved to dismiss the Complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), arguing that Allottees lacked standing and that they failed to state any claim upon which relief can be granted. JA72. Allottees filed their brief in opposition to the motion to dismiss ("Opposition") on August 29, 2023. JA113. Interior replied on September 18, 2023. JA166.

The district court granted the motion and dismissed the case without prejudice on October 19, 2023. JA198. In its Memorandum Opinion, the court concluded that Allottees sufficiently established their standing, JA214, but that none of the four counts stated a claim for relief. JA214-39.

The court carefully analyzed each count based on its interpretation of the Complaint, which was a difficult task given the "prolixity of the pleadings." JA200. Each count incorporated all the allegations in paragraphs 1 through 182 without specifying the relevant paragraphs, and some of the relief requested in the Prayer for Relief did not clearly flow from the claims. In addition, where Allottees' characterization of the claims in their Opposition appeared to differ from the Complaint, the court also analyzed the recharacterized claims even though it was under no obligation to do so. *See*, *e.g.*, JA218 (citing *Kingman Park Civic Association v. Gray*, 27 F.Supp.3d 142, 165 n.10 (D.D.C. 2014) (explaining that "it is well settled law that a plaintiff cannot amend its complaint by the briefs in

opposition to a motion to dismiss")). Further, the district court considered Allottees' express concessions in their Opposition and their implicit concessions resulting from their failure to respond to arguments in the motion to dismiss.

Despite "treat[ing] the complaint's factual allegations as true and … grant[ing] plaintiff the benefit of all inferences that can be derived from the facts alleged," JA206 (quoting *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1113 (D.C. Cir. 2000)), the district court was unable to discern a plausible claim for relief in any of the counts.

SUMMARY OF ARGUMENT

I. The district court correctly dismissed Count I for failure to state a claim that the Secretary's March 21, 2016 agreement with the Tribal Chairman for a three-month extension of the deadline for publishing the Statement was invalid. Allottees conceded in their Opposition that the extension agreement was not an agency action that was reviewable under the APA. And the district court correctly concluded that, even if Count I is construed as a challenge to the Statement, Allottees failed to plead a plausible claim that the Secretary acted contrary to law by publishing the Statement within the extended period agreed to by the Tribal Chairman. The Act did not specify that "the Tribe" could agree to an extension only by majority vote of the tribal membership or other specific procedure. And Allottees cited no tribal law provision that clearly precluded the Tribal Chairman,

following the General Council's 2011 vote ratifying the Compact and Settlement Act, from agreeing to a short extension to allow completion of the actions required for the Compact and Act to remain in effect.

II. The district court correctly dismissed Count III for failure to state a claim for breach of trust. In their Opposition, Allottees limited Count III to a claim that the Secretary breached trust duties by publishing the Statement in the absence of a Current Use List and Tribal Water Code. But Allottees conceded in their Opposition that the Act required the Secretary to publish the Statement once the seven required actions listed in Section 410(e)(1) had been completed, and they further conceded that completion of the Current Use List and Tribal Water Code were not among those seven prerequisites. In addition, Allottees failed in the district court—and fail in their Brief on appeal—to identify any treaty, statute, or regulation that establishes a specific trust duty that Interior allegedly failed to perform when it published the Statement.

III. This Court should reject out of hand Allottees' argument on appeal that Count IV included a takings claim. Count IV does not make any reference to the Takings Clause of the Fifth Amendment. And Allottees clearly stated in their Opposition that "there is no Fifth Amendment taking, although there is nonetheless a violation of the Fifth Amendment's requirement of procedural and substantive

due process and equal protection." JA147. On appeal, Allottees provide no basis for relieving them from their concession, but simply ignore it.

IV. The district court correctly dismissed Count IV's procedural due process claim for failure to state a claim. To the extent Allottees claimed that they were deprived of procedural due process in connection with the Act's enactment, their grievance is with Congress, not Interior. To the extent they are claiming that the Secretary deprived them of procedural due process when she published the Statement, the Act provided notice that the waivers and releases would become enforceable when the Secretary published the Statement by March 31, 2016 or an extended date. Allottees failed to allege in the district court—either in the Complaint or in their Opposition—what additional process was due to them. On appeal, Allottees specify for the first time that they were entitled to personal service by mail and a pre-publication administrative hearing. Even if Allottees were allowed to raise these legal arguments for the first time on appeal, they fail to explain what purpose that process would have served given the Secretary's nondiscretionary duty to publish the Statement once the seven specified actions were completed, which Allottees concede.

V. The district court correctly dismissed Count IV's equal protection claim for failure to state a claim. Allottees' claim is based on the premise that the Act distinguishes between Indians and non-Indians when in fact it distinguishes

between water rights that may be used on trust allotments (the owners of which are Indians) and the water rights held by owners of fee parcels (the owners of which include a significant number of Indians as well as non-Indians). Even if it did draw a clear distinction between Indians and non-Indians, the Act—which is comparable to many other tribal water rights settlements—readily survives rational basis review. Under governing precedent of the Supreme Court and this Court, Indian classifications made to fulfill Interior's special obligations to Indians are presumptively subject to rational basis review. Allottees' arguments for strict scrutiny are unpersuasive. And their argument that the classification cannot even survive rational basis review fails because it is based on allegations of various asserted failures in the implementation of the Act. The remedy Allottees seek here—a declaration that the Act is unconstitutional because violative of equal protection—is not the remedy for any such implementation failures.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's dismissal for failure to state a claim. *Western Organization of Resource Councils v. Zinke*, 892 F.3d 1234, 1240 (D.C. Cir. 2018). "To survive a [Rule 12(b)(6)] motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation omitted). A claim "has facial plausibility when the plaintiff pleads

factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* A complaint must provide "more than labels and conclusions"; although it "does not need detailed factual allegations," the factual allegations "must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A "legal conclusion couched as a factual allegation" need not be accepted as true. *Trudeau v. FTC*, 456 F.3d 178, 193 (D.C. Cir. 2006). And a "conclusory allegation" of unlawfulness is insufficient to survive a Rule 12(b)(6) motion to dismiss. *L. Xia v. Tillerson*, 865 F.3d 643, 660 (D.C. Cir. 2017).

This Court reviews for abuse of discretion a district court's application of District Court Local Rule 7(b), which is understood to provide that "if a party files an opposition to a motion and therein addresses only some of the movant's arguments, the court may treat the unaddressed arguments as conceded." *Texas v. United States*, 798 F.3d 1108, 1110 (D.C. Cir. 2015) (quoting *Wannall v. Honeywell, Inc.,* 775 F.3d 425, 428 (D.C. Cir.2014)). "Such a concession acts as [a] waiver, such that a party cannot raise a conceded argument on appeal." *Id.* (internal quotation marks and brackets omitted).

ARGUMENT

In this suit, as in the two prior suits, Allottees express their strong disagreement with a fundamental element of the bargain negotiated by the Crow

Tribe, Montana, and the United States—the inclusion of water rights for trust allotments in the Tribal Water Right. But they failed to plead any plausible claim that would entitle them to the extraordinary relief they seek—a declaration that the Act has been automatically repealed based on the Secretary's asserted failure to timely publish the required Statement, or that the Act is otherwise void and unenforceable.

Allottees also complain in their Brief about other aspects of Interior's implementation of the Act (relating to the Current Use List, Tribal Water Code, and infrastructure improvements), but their Complaint does not specifically seek relief for such implementation failures under the APA to "compel agency action unlawfully withheld or unreasonably delayed" under 5 U.S.C. § 706(1) or "hold unlawful and set aside agency action, findings, and conclusions" under 5 U.S.C. § 706(2). And while they complain in their Brief that the Act—either on its face or as implemented—takes a valuable property right from them, their Complaint does not seek damages under the Tucker Act, 28 U.S.C. § 1491(a). The district court correctly dismissed the Complaint because its factual allegations do not plausibly support the claims Allottees chose to plead or the relief they chose to seek.

I. Count I claiming that the Secretary missed the deadline for publishing the Statement of Findings fails to state a claim.

Count I is most reasonably read to assert a claim, under 5 U.S.C. § 706(2), that the March 21, 2016 agreement between the Secretary and Tribal Chairman

extending the March 31, 2016 deadline for publishing the Statement is invalid. JA56-58 (Complaint ¶¶ 183-191). Specifically, Allottees claimed that "*the Tribe*" did not agree to extend the deadline because the Tribal Chairman assertedly did not have that authority under tribal law. JA57 (Complaint ¶¶ 187-188). They claimed that, under the Crow Constitution, only the General Council had authority to extend the deadline for the Statement. JA57 (Complaint ¶ 189) (specifying no provisions). And they further claimed that Legislative Resolution No. 12-07, passed on May 24, 2012, "unequivocally advised the Defendants" that the "approval authority for the Crow Tribe rested with the [Legislative Branch] and, ultimately, the [General Council]." JA57 (Complaint ¶ 190); JA66-71 (Complaint Ex. 1). Allottees seek a declaration that the Secretary's June 22, 2016 publication of the Statement, 81 Fed. Reg. 40720, is void and unenforceable, thereby repealing the Act in its entirety under Act § 415. JA63-64 (Prayer for Relief ¶¶ A and B).

Reading Count I as a challenge to the extension agreement under the APA, Interior moved to dismiss, arguing that the extension agreement was not a final agency action under 5 U.S.C. § 704. JA97-99. The motion further argued that, even if the extension agreement was a final agency action, it was "committed to agency discretion by law," 5 U.S.C. § 701(a)(2), because neither Section 415 nor any other provision specified a "meaningful standard against which to judge the

agency's exercise of discretion." JA99-100 (quoting *Heckler v. Chaney*, 470 U.S. 821, 830 (1985)).

In their Opposition, Allottees argued that Count I actually challenged the *Statement of Findings* even though they claimed no illegality in the substance of the Secretary's Federal Register notice.[4] JA129-30. They conceded that the extension agreement was not a final agency action, and ignored the argument that entering into the agreement was committed to the Secretary's discretion. JA130-31.

The district court correctly dismissed Count I for failure to state a claim. JA214-19. Noting Count I's allegations that the *extension agreement* was "legally ineffective" (Complaint ¶ 184) and "void ab initio" (Complaint ¶ 191), it rejected Allottees' attempted recharacterization of Count I. JA218. The court held that Count I failed to state an APA claim because Allottees had expressly conceded that the extension agreement was not final agency action. JA217. And it held that they had effectively conceded that the decision to extend the deadline was committed to agency discretion, and thus unreviewable, by failing to respond to that argument in

[4] In contrast, in *Count II*, Allottees challenged the substance of the finding that "the Montana Water Court has issued a final judgment and decree approving the Compact," JA58 (Complaint ¶ 193), claiming that it was incorrect because the federal court challenge to the state court proceedings was still pending in the Ninth Circuit on June 22, 2016, JA58-59 (Complaint ¶¶ 194-195). Allottees have expressly waived on appeal (Br. 9) any challenge to the district court's dismissal of Count II.

their Opposition. *Id*. The district court did not abuse its discretion in holding that Allottees effectively conceded that point. *See Texas v. United States*, 798 F.3d at 1110.

Although that was sufficient reason to dismiss Count I, the court proceeded to explain that, even if it "accepted Allottees' new characterization of Count I, it would still find inescapable the conclusion that they have not stated a claim under the APA … because they have not pled any factual allegations that could lead a reasonable court to conclude that Interior acted contrary to law by publishing the statement of findings on a date agreed to by the Crow Tribal Chairman, as opposed to by the entire Crow Tribal General Council." JA218. The court did not have to accept the Complaint's interpretations of tribal law because a "legal conclusion couched as a factual allegation" need not be accepted as true. *Trudeau v. FTC*, 456 F.3d at 193. Reviewing Legislative Resolution No. 12-07, the court correctly explained that "it says nothing about who has the authority to agree to a deadline extension on behalf of 'the Tribe' pursuant to the Settlement Act." JA219.

On appeal, Allottees fail to show any error in the district court's dismissal of Count I. *See* Br. 17, 21-24. They do not dispute their concession that the *extension agreement* is not reviewable under the APA. This Court can affirm the district court's dismissal of Count I on that basis alone. But even if this Court accepts Allottees' recharacterization of Count I as a reviewable challenge to the

Statement of Findings (Br. 23-24), Count I still fails to state a plausible claim that the Secretary acted contrary to federal or tribal law when entering into the extension agreement with the Tribal Chairman.

Allottees do not argue that the extension agreement violated any provision of the Act. Although Section 410(e)(1)(E) specified the procedure the Tribe had to follow for the Secretary to find that the Tribe approved the Compact and Act—"a majority of votes cast" "by the tribal membership"—no provisions specify what tribal body must act for the Tribe with respect to the various agreements required or authorized to thereafter implement the Act: (1) the agreement under Section 405(a) relating to the Crow Irrigation Project; (2) the agreement under Section 406(a) relating to the Municipal, Rural, and Industrial System; (3) the agreement under Section 408(a) relating to Yellowtail Reservoir; and (4) the extension agreement for the Statement authorized in Section 415. It is not surprising that Congress required a tribal referendum for the critical initial decision whether to approve the Compact and Act, but not for the various implementation agreements. Allottees do not allege that the General Council ever voted to rescind its approval of the Compact and Act.

Allottees instead argue (Br. 21) that the Secretary violated federal law by failing to "defer to tribal law defining a tribe's own governing structures" when entering into the extension agreement with the Tribal Chairman. It is true that

Interior endeavors to respect tribal governance structures in its government-to-government relations with tribes, and ordinarily defers to clear statements of tribal law in the absence of contrary federal law or unusual circumstances calling into question whether the entity purporting to act on behalf of the tribe is actually a valid tribal representative. Allottees cite (Br. 21) *Seminole Nation v. Norton*, 223 F.Supp.2d 122 (D.D.C. 2022), which presented such an unusual circumstance, but Allottees do not allege that the Tribal Chairman who signed the extension agreement was not the valid Tribal Chairman. They claim instead that tribal law provides "unequivocally," JA57 (Complaint ¶ 190), that he did not have the specific authority to agree to an extension for the Statement.

Neither the Tribal Chairman nor Secretary interpreted tribal law to preclude the Tribal Chairman from agreeing to extend the deadline for the Secretary to accomplish the ministerial task of publishing the Statement.[5] Allottees' claim is belied by the Complaint and Allottees' arguments on appeal. Article I of the Crow Tribal Constitution provides that the governing body is the General Council, which established the Executive Branch (Art. IV), Legislative Branch (Art. V), and Judicial Branch (Art. X). Contrary to their assertion that tribal law is

[5] A "ministerial task" is generally defined as an action that does not involve the exercise of discretion. *See*, *e.g.*, *Dep't of Homeland Security v. MacLean*, 574 U.S. 383, 396 (2015). The substance and timing of the Statement were specified by Act §§ 410(e) and 415(1). As explained above (at 11-12), the Statement had to include a report that "the Montana Water Court had issued a final judgment and decree approving the Compact." Act § 410(e)(1)(A)(i).

"unequivocal," it is not even clear whether Allottees are arguing that the General Council, the Legislative Branch, or both of them had to approve the extension agreement.

In support of their assertion in Complaint ¶ 189 that the *General Council* had sole authority for any extension agreement, Allottees point out (Br. 22) that the General Council ratified the Compact and Act "by referendum vote" in 2011. However, as just explained, the Act required a General Council vote for ratification but not for the various implementing agreements. The ratification vote thus sheds no light on the Tribal Chairman's authority to enter into the implementing agreements provided for in the Act. For the same reason, Allottees misplace reliance (Br. 22-23) on the Crow Legislature's enactment of a statute, CLB No. 2011-03, establishing the procedures for that ratification vote in accordance with Act § 410(e)(1)(E). *See* Appellants' Addendum 40-59. When Allottees assert that CLB No. 2011-03 "'provid[es] for a ratification vote process for the Crow Tribal General Council in matters *involving the Crow Tribe Water Rights Settlement Act*,'" they are quoting the Complaint's unduly broad characterization of the legislation, not the legislation itself. *See* Br. 22-23 (quoting JA47-48 (Complaint ¶ 151)). The statute states that the procedures apply to "ratification votes" but does not state that all actions "involving" the Act require a ratification vote. *See* CLB No. 2011-03 § 3(a).

Allottees next appear to argue (Br. 22) that the *Legislative Branch* had authority for the extension agreement, listing a few provisions of the Crow Constitution setting forth the Legislative Branch's authority relating to "sale, disposition, lease, or encumbrance" of tribal lands or assets: Art. III.3.(f) [should be Art. IV.3.(f)], Art. V.2(a), and Art. V.2(c) [should be Art. V.2(d)]. But Allottees do not explain how the agreement for a modest three-month extension of the deadline for publishing the Statement in order to avoid a dispute about whether the Montana Water Court's decree was "final" in light of the pending petition for certiorari, as required by Act § 410(e)(1)(A)(i), is encompassed within those provisions.

Finally, Allottees appear to argue (Br. 23) that *both the General Council and the Legislative Branch* had to approve the extension agreement based on Legislative Resolution No. 12-07 (May 24, 2012). *See* JA57-58 (Complaint ¶¶ 188-190); JA66-71 (Exhibit 1). Once again, Allottees merely quote (Br. 23) the Complaint's characterization of the Resolution, not its text. Allottees do not demonstrate that the text of the Resolution "unequivocally advised" the Secretary that the Tribal Chairman had no authority to agree to an extension. The Resolution is silent on that question and, if anything, is fairly read to suggest the opposite.

The Resolution protested the Tribal Chairman's April 27, 2012 execution of the waivers and releases of the Crow Tribe, required by Act § 410(a)(1), on the

ground that it was premature: (1) a final decree of the Tribe's water rights had not yet been issued, and (2) the Tribe had not yet negotiated a coal severance tax settlement agreement with Montana.[6] JA68. Allottees principally rely on the paragraph asserting that "*future* waivers or releases of Crow tribal claims" would not be authorized without review by the Legislature and General Council, but the Resolution did not purport to invalidate those the Tribal Chairman had just executed. JA69 (emphasis added).[7] And the Resolution did not seek to limit the Tribal Chairman's authority to enter into the other agreements required or authorized by the Act. In particular, as the district court correctly held, JA218-19, the Resolution did not address whether the Tribal Chairman had authority to agree to an extension for publishing the Statement. Apparently the Legislature never

[6] It is unclear why the Legislature was concerned about the Montana Water Court decree because the Act provided that the Tribe's waivers and releases would not become enforceable until the final decree issued. Nor is it clear how the Legislature could tie the waivers and releases to a severance tax settlement with Montana as the Act did not so condition them.

[7] The Resolution had only limited relevance to the Secretary's separate waivers and releases of the *allottees*' claims under Act § 410(a)(2). As to those, the Resolution protested only that the Secretary's waiver was "premature given that no sufficient defense of Allottee water rights has yet been made so as to justify a waiver and release of historic claims to water rights." JA69. The Secretary did not need to take any action in response to that protest as the waivers and releases would not become enforceable until the Montana Water Court issued its final decree. There was no reason for the Secretary to think in 2016 that the Resolution had any bearing on the extension agreement.

passed a similar resolution protesting the Tribal Chairman's 2016 agreement to extend the deadline for the Statement.

Allottees have provided no clear statement of tribal law that would have allowed the Secretary to question the Tribal Chairman's conclusion that he had authority to agree to the modest extension that would allow the Act to remain in effect. Following CLB No. 2011-03 and the General Council's ratification of the Compact and Act, Article IV of the Crow Constitution (including §§ 3(a), 3(j), and 4(a)) is reasonably read to provide authority for the extension agreement. Neither the referendum process set forth in Crow Constitution Article XI nor the ratification process set forth in CLB No. 2011-03 could have been quickly implemented. Allottees do not explain how the Secretary would have better respected tribal law by risking the Act's automatic repeal because of an unanticipated delay in concluding the Montana Water Court proceedings.[8]

[8] It appears that the Crow Judicial Branch has power, under Crow Constitution Article X, to review a claim that the Executive Branch lacked authority for an action. *See* Article X (the Judicial Branch has "no power to review Executive Branch decisions made within the scope of the enumerated powers of the Executive Branch"). Allottees apparently did not challenge in tribal court the Tribal Chairman's execution of the extension agreement as ultra vires, or seek redress through other tribal processes. The fact that they instead filed their claim challenging his authority in federal court undercuts their argument that the Secretary failed to defer to tribal law.

II. Count III claiming that Interior breached its fiduciary duties fails to state a claim.

Allottees acknowledge (Br. 25) that to state a breach-of-trust claim they must allege "that the text of a treaty, statute, or regulation impose[s] certain duties on the United States," *Navajo Nation*, 599 U.S. at 563-64, and that "the Government has failed faithfully to perform those duties," *United States v. Navajo Nation*, 537 U.S. 488, 506 (2003). Allottees' articulation of their breach-of-trust claim has evolved from their Complaint, to their Opposition, to their Brief in this Court in an effort to avoid the deficiencies in their Complaint identified in the motion to dismiss and in the district court's decision. But even if Allottees could permissibly recharacterize the claim through their briefs, they still fail to state any claim for breach of trust that entitles them to the extraordinary relief they seek—a declaration that the Statement of Findings "is void and of no effect," JA62 (Complaint ¶ 209), in order to trigger the Act's automatic repeal, or a declaration that the "Settlement Act [is] void and unenforceable," JA64 (Prayer for Relief ¶ D).

In Count III, Allottees claim that Interior violated its fiduciary duties through: (1) actions and asserted inaction during the Compact negotiations and Montana Water Court proceedings, JA59-62 (Complaint ¶¶ 198, 200-201, 207-208); (2) the asserted failure to prepare the Current Use List required by the Compact and Act, JA60-61 (Complaint ¶¶ 202-203); (3) the Tribe's failure to enact

the Tribal Water Code that the Act required the Tribe to enact by March 18, 2014, and the Secretary's failure to approve that code within a reasonable time thereafter, JA61 (Complaint ¶ 204); and (4) the Secretary's publication of the Statement before completion of a Current Use List and Tribal Water Code, JA61 (Complaint ¶¶ 205-206).

Interior moved to dismiss Count III on the ground, among others, that the Complaint fails to identify any substantive source of law—a treaty, statute, or regulation—that establishes a specific fiduciary duty, as required by *Navajo Nation*, 599 U.S. at 563-64, *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 176 (2011), and other precedent. JA103-06.

In their Opposition, Allottees clarified that the allegations about the Compact negotiations and Montana Water Court proceedings "are merely part of the background of the case" and that they seek no remedies relating to them. JA144. Instead, they explained, this suit "focus[es] … on the untimely publication of the [Statement] and steps Interior was required to complete prior to publication." *Id*. Allottees argued that a general, common-law trust responsibility is a sufficient basis for claims seeking equitable relief rather than money damages, that numerous federal statutes and regulations address water rights of Indian allotments, and that the Complaint alleges specific breaches of the Act, including the duties to assure

the preparation and approval of the Current Use List and Tribal Water Code. JA133-43.

In reply, Interior addressed those arguments and corrected one factual misrepresentation. JA182-88. As explained in the declaration of John S. Anevski, the Tribe and the United States had prepared the Current Use List, and Montana had approved it on July 13, 2016. JA193-97.

After thorough review of the Complaint and Allottees' Opposition, the district court correctly dismissed Count III. JA224-31. It held that Count III failed to state a claim because "Allottees have not identified a treaty, statute, or regulation that establishes a specific trust duty that Defendants allegedly neglected to perform," JA224, as required by *Navajo Nation* and *Jicarilla*, JA225.

The district court rejected Allottees' arguments that it was sufficient to "point[] to the existence of a general trust relationship," JA226-27, and that *Navajo Nation* and *Jicarilla* applied only to claims for money damages, JA227. Allottees do not challenge those holdings on appeal, s*ee* Br. 24-33, thus forfeiting those arguments. *See Al-Tamimi v. Adelson*, 916 F.3d 1, 6 (D.C. Cir. 2019) ("A party forfeits an argument by failing to raise it in his opening brief.").

The district court then turned to Allottees' argument that "they can, in fact, satisfy the *Jicarilla* framework," but concluded that their effort "meets a dead end" because "some of the sources of law Plaintiffs cite are irrelevant to the case at

hand, while the rest do not create trust duties that they plausibly allege Defendants violated here." JA227-28. The court first reviewed "the scattershot citations" to statutes and regulations in the Opposition that were nowhere referenced in the Complaint, JA228, even though it had no obligation to do so. It concluded that none "helps Allottees make out their breach-of-trust claim." JA228. Allottees have abandoned on appeal their reliance on the statutes and regulations they did not reference in the Complaint. *See* Br. 24-33.

The district court next considered 25 U.S.C. § 381, referenced at JA14-15 (Complaint ¶ 13), which provides that the Secretary "is authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equitable distribution [of water] among the Indians residing upon any … reservation" where "irrigation is necessary … for agricultural purposes." JA228. The court concluded that the statute does not help Allottees because it does not clearly *require* the Secretary to promulgate regulations. JA228. And contrary to Allottees' assertion that the Secretary had failed to prescribe such rules and regulations, the court pointed out that "the Secretary has prescribed such regulations." *Id*. (citing 25 C.F.R. Part 171). On appeal, Allottees cite to 25 U.S.C. § 381 and/or Complaint ¶ 13 (Br. 20, 26, 28), but they offer no response to the district court's conclusion that they failed to plead any violation of 25 U.S.C. § 381. They have thus forfeited the argument. *See Gov't of Manitoba v. Bernhardt*, 923 F.3d 173, 179 (D.C. Cir.

2019) (a party forfeits an argument when it mentions an argument in a "skeletal way" in an opening brief but fails to adequately develop it).

Finally, the district court addressed the Settlement Act provisions referenced in the Complaint and concluded that they "have not adequately alleged that Defendants violated any trust duties established in the Act." JA229. As noted, Allottees had whittled down Count III to the claim that the Secretary breached trust duties by publishing the Statement of Findings "in the absence of a Current Use List and Tribal Water Code." JA229. But that theory was "unavailing," JA230, because Allottees had acknowledged in their Opposition that "publication of the [Statement] in the manner and time frame under the Act was a clear and mandatory directive under the Act," *id*. (quoting JA131), and had admitted that "nowhere does the Settlement Act provide that the creation of the Tribal Water Code or preparation of a Current Use List are prerequisites for the publication of the statement of findings," *id*. (citing JA154). Allottees had no choice but to make those concessions. *See* Settlement Act § 410(e)(1) (listing seven actions that had to be completed, not including the Current Use List or Tribal Water Code); *see also In re Crow Water Compact*, 354 P.3d at 1224 (holding that the Current Use List was not a prerequisite to entering a final decree because neither the Compact nor Act impose such a requirement). Allottees make no effort in their Brief to

refute the district court's reliance on their concessions, which completely undermine their breach-of-trust claim. *See* Br. 28-29.

Allottees point to the Complaint's reference to various provisions of the Compact and Act relating to the Current Use List and Tribal Water Code that were supposed to be completed by the time the Statement was published.[9] Br. 28-29; *see also* Br. 17-20. Those allegations might theoretically be relevant to potential other APA claims against Interior, but they are not relevant to Count III—seeking the Act's automatic repeal via a declaration that the Statement was invalid—because neither the Current Use List nor the Tribal Water Code was a prerequisite to publishing the Statement.

The district court did not address whether Interior violated any provision of the 1868 Treaty of Fort Laramie, presumably because Allottees' Opposition referenced the Treaty only as the historical basis for Allottees' *Winters* rights. *See* JA133-45. On appeal, Allottees cite (Br. 26) the Complaint's allegations referencing the 1868 Treaty, JA23-24 (Complaint ¶¶ 57-59), including Article 6 providing for allotment of the Crow Reservation for farming. But Allottees do not allege that the federal government failed to allot the Crow Reservation. They instead invoke (Br. 26-27) their allegation referencing *United States v. Powers*,

[9] Allottees repeatedly claimed that the Current Use List did not exist. JA15 (Complaint ¶ 14); JA33 (Complaint ¶ 95), JA61 (Complaint ¶ 203). They so argued in their Opposition. JA118, JA154. They now acknowledge (Br. 18-19) that the list was compiled and approved in 2016, but argue that it is inadequate.

JA26 (Complaint ¶ 66). The Supreme Court held there that "when allotments of land were duly made for exclusive use and thereafter conveyed in fee, the right to use some portion of tribal waters essential for cultivation passed to the owners." *Powers*, 305 U.S. at 532. Although *Powers* discussed the Treaty and some subsequent statutes, citation of *Powers* does not adequately allege that Interior failed to perform any duty in publishing the Statement.[10]

In Part II.C (Br. 29-32), Allottees argue that the statutory and treaty provisions they discuss in Part II.B (Br. 25-29) are distinguishable from the provisions at issue in several cases where breach-of-trust claims were unsuccessful and are comparable to the provisions supporting successful claims for breach of trust in several other cases. We need not undertake a detailed comparison of these cases because Allottees have not come close to stating a plausible claim for the relief they seek. We briefly note, however, that Allottees fail to show (Br. 29-30) that the Crow Treaty more clearly imposes a relevant trust duty than did the

[10] Allottees' references to allegations describing various "action[s] taken by Interior officials" are plainly insufficient to meet the required pleading standard for a breach-of-trust claim. *See* Br. 27 (citing Complaint ¶ 79 which discusses the 1975 suit seeking a declaration of the Crow Tribe and allottees' water rights, and Complaint ¶¶ 122-26 which discuss legislative history). And Allottees' discussion (Br. 27-28) of a 2001 general guidance memorandum from the Solicitor of the Interior (JA163-65) may be disregarded because they did not reference it in their Complaint. They discussed it in their Opposition as a basis for a trust relationship but did not argue that Interior violated any trust duty. JA135. Even if the memorandum imposed trust duties, which it did not, the Act is consistent with its recommendations.

Navajo Treaty at issue in *Navajo Nation*, 599 U.S. at 564-65. And the cited cases in which tribes prevailed on breach-of-trust claims (Br. 30-32) all sought money damages.

In Part II.D, Allottees explain (Br. 32) that they pled Count III as both an APA claim and a claim "inferred directly from the identified fiduciary duties." *See also* Br. 20 (stating that they pled Counts III and IV under 5 U.S.C. § 706(2)).[11] The district court expressed uncertainty about the nature of the breach-of-trust claim, but concluded that it made no difference: "Because Plaintiffs have not identified a specific provision creating trust duties that they plausibly allege Defendants violated, Count III—whether considered as part of a larger APA cause of action or separately—is infirm." JA231; *see El Paso Natural Gas Co. v. United States*, 750 F.3d 863, 892 (D.C. Cir. 2014). Allottees do not argue on appeal that the characterization makes a difference.

In sum, Allottees fail to demonstrate that the district court erroneously dismissed Count III for failure to state a claim.

[11] Allottees' assertions that they are entitled to discovery (Br. 19) and an evidentiary hearing (Br. 55) are inconsistent with their characterization of Counts III and IV as claims under the APA, which provides for judicial review based on the administrative record, 5 U.S.C. § 706(2).

III. The Allottees did not assert a takings claim in the district court and cannot assert a takings claim for the first time on appeal.

Allottees surprisingly argue (Br. 33-39) that Count IV includes a takings claim despite their failure to mention the Takings Clause in Count IV and their clear representation in the district court that they were not making a takings claim. Their arguments do not call into question the district court's dismissal of the Complaint in its entirety.

Count IV does not reference the Fifth Amendment's Takings Clause ("nor shall private property be taken for public use, without just compensation"), but repeatedly references the Fifth Amendment's Due Process Clause. *See* JA62 (Caption); JA63 (Complaint ¶¶ 212-213); JA64 (Prayer for Relief ¶ F).

Some allegations in Complaint ¶¶ 1-182 could possibly be read as laying the groundwork for asserting a takings claim. *See*, *e.g.*, JA20 (Complaint ¶ 40 referencing the Little Tucker Act, 28 U.S.C. § 1346, which provides for concurrent jurisdiction in district courts for claims against the United States for the taking of property under $10,000). In its motion to dismiss, Interior expressed uncertainty about whether Allottees were asserting a takings claim, explaining that the presumptive remedy for the taking of property is a claim for compensation under the Tucker Act, 28 U.S.C. § 1491(a), or Little Tucker Act, 28 U.S.C. § 1346(a)(2). JA106 (citing *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1019 (1984)). Interior argued that, if Allottees were claiming just compensation, the district court lacked

jurisdiction for any claim exceeding $10,000. *Id*. It further argued that Allottees failed to state a claim because Congress acted in good faith in the Settlement Act to provide Crow allottees with "property of equivalent value." JA107 (quoting *United States v. Sioux Nation of Indians*, 448 U.S. 371, 416 (1980)).

In their Opposition, Allottees stated that they were "not seek[ing] compensation for a taking." JA145. And while they asserted that "[t]his litigation is on all fours with" *Hodel v. Irving*, 481 U.S. 704 (1987), and *Babbitt v. Youpee*, 519 U.S. 234 (1997), in which cases non-monetary relief was sought and awarded for a takings claim, JA145-46, Allottees then more broadly conceded that they were not seeking *any* relief for a taking: "[O]n the face of the Act, and consistent with the *Fort Berthold* [*Reservation v. United States*, 390 F.2d 686 (Ct. Cl. 1968),] and *Sioux Nation* analyses, *there is no Fifth Amendment taking*, although there is nonetheless a violation of the Fifth Amendment's requirement of procedural and substantive due process and equal protection." JA147 (emphasis added). That concession could not be clearer. *See* JA188-89 (reply brief stating that "Plaintiffs' response admits they have no grounds for a Fifth Amendment takings claim"). Allottees' express concession conclusively resolves the question whether Count IV includes a takings claim.

The district court commenced its analysis of Count IV by taking off the table the question whether Allottees were making a takings claim. JA232-33. Quoting

Allottees' "decisive[]" statement that "'[t]his litigation does not seek compensation for a taking,'" the court said that it would "not dip its toe into the takings pond." JA233. It perhaps would have been clearer had the district court quoted the Allottees' broad concession that "there is no Fifth Amendment taking," JA147. But there can be no serious question that Allottees had conceded that they did not assert a takings claim.

Allottees now argue on appeal (Br. 33-39) that the district court erred in concluding that they are not asserting a takings claim. They disingenuously exploit the court's quotation of the statement in their Opposition that they were not seeking compensation for a taking while failing to mention their clear concession that they were not making *any* takings claim at all. Br. 33-34. Having failed to acknowledge that binding concession, this Court should disregard Allottees' various arguments in Part III of their Brief. None of their arguments allows them to withdraw their concession and belatedly make a takings claim in this Court.

In addition, as Interior pointed out in its reply brief, Allottees' citation of *Hodel* and *Babbitt* did not demonstrate that just compensation was an inadequate remedy in this particular case. JA189 n.7 (citing *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 356 F.Supp.3d 109, 137 (D.D.C. 2019)). Even if Allottees had made a takings claim, the takings claim would have been properly dismissed for this reason.

IV. Count IV claiming violation of procedural due process fails to state a claim.

Allottees fail to show (Br. 40-47) any error in the district court's conclusion that Allottees did not allege a plausible claim that they were deprived of procedural due process. *See* JA233-34.

The Complaint alleged that the Secretary published the Statement in the Federal Register on June 22, 2016 without affording them "notice or due process of law," but they did not specify what procedures the Secretary should have afforded them. JA63 (Complaint ¶ 213). They requested as relief a declaration that the "Enforceability Date" was "void and unenforceable." JA64 (Prayer for Relief ¶ F).

Interior's motion to dismiss argued that the Act provided notice that the waivers of Allottees' claims would become enforceable when the Secretary published the Statement on March 31, 2016 (or an agreed-upon extended date), JA108-09, and that "the legislative process [for the Act] was the only process to which plaintiffs were entitled," JA108 (quoting *Crow Allottees Association*, 705 Fed. Appx. at 492). Allottees' Opposition failed to respond to those arguments. *See* JA150-56.

The district court addressed the procedural due process claim as a challenge to the procedures for both the Act and the Statement. JA233-34. Noting the government's concession that Allottees alleged a deprivation of a "property

interest," the court explained that the question is whether the Complaint alleged facts indicating "that Plaintiffs were denied either 'notice' or an 'opportunity to be heard' before the enactment of the Settlement Act or before the Secretary's publication of the statement of findings." JA233-34 (quoting *English v. District of Columbia*, 717 F.3d 968, 972 (D.C. Cir. 2013)). The court concluded that the conclusory no-notice allegation in Complaint ¶ 213 was belied by the specific allegations acknowledging that the Act provided notice that the waivers would become enforceable when the Secretary published the Statement. JA234. With respect to an opportunity to be heard, the court stated that the Complaint did not specifically allege that Allottees had been excluded from proceedings in connection with the Act or thereafter, and that Allottees offered no response to the government's argument that they were entitled to nothing more than the legislative process. JA234; *see Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271, 283 (1984). In addition, the court pointed out that Allottees do not even "'identify the process that [was] due' to them with respect to either the enactment of the Settlement Act or the Secretary's publication of the statement of findings." JA234 (quoting *Doe by Fein v. District of Columbia*, 93 F.3d 861, 870 (D.C. Cir. 1996)).

Nor can the deficiencies in Allottees' Complaint and Opposition be overcome by new arguments presented in this appeal. *Jones v. Air Line Pilots*

Association, International, 642 F.3d 1100, 1104 (D.C. Cir. 2011) ("legal theories not asserted in the district court ordinarily will not be heard on appeal" (internal quotation marks omitted)). In any event, their new arguments are unpersuasive.

Allottees argue that due process required the Secretary to provide notice by sending all Allottees "personal service" (by mail or better means) "in close temporal proximity" to "the point of deprivation of property," which they identify as the publication of the Statement (Br. 41-42), and to "provide opportunity … to contest the Secretary's defining action, the [Statement] publication," before "a responsible Interior official" "in advance of" the publication (Br. 45-47).[12] The precedent on which Allottees rely does not require either personal notice or an administrative hearing in these circumstances. As Allottees acknowledge, the process that is due depends on "all the circumstances." Br. 41 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

Neither personal notice nor an administrative hearing in early 2016 would have served any purpose as there was no relevant evidence Allottees could present and no relevant argument they could make. As explained, the Secretary's publication of the Statement was a ministerial task. Under Settlement Act § 410(e)(1), the Statement had to be published once the seven actions specified by

[12] It is unclear whether Allottees always intended to limit their claimed violation of procedural due process to the Secretary's publication of the Statement or whether they have dropped on appeal a challenge to the Act itself. In any event, their claim is now so limited.

Congress were completed. Allottees do not now contend that any of the specified actions had not been accomplished. As Allottees have admitted, the Secretary had no discretion to decline to publish the Statement even if other implementing actions had not yet been accomplished. JA131. Congress did not invest the Secretary with any discretion to trigger the automatic repeal of the Act in contradiction of Congress's enactment, the General Council's majority vote, and the Montana Water Court's final decree.

Allottees disagree that they needed to "identify the process that [was] due to them." Br. 45 (quoting JA234). They are incorrect. It was insufficient for them to simply allege that they were afforded no notice or opportunity to be heard in connection with the publication of the Statement because the threshold question is whether *any* process is due in the circumstances. As this Court explained in *Doe by Fein*, claiming a procedural due process violation "necessarily presents the question of what, *if any*, additional process is due," 93 F.3d at 868, because "[p]rocess is not an end in itself," *id*. at 870 (internal quotation marks omitted). As in that case, we cannot "fathom," *id*., what pre-publication procedure could have benefited Allottees.

For all of these reasons, Allottees fail to demonstrate that the district court erroneously dismissed their procedural due process claim.

V. Count IV claiming violation of equal protection fails to state a claim.

Allottees similarly fail (Br. 47-55) to show any error in the district court's conclusion that they did not allege a plausible claim that they were deprived of equal protection in connection with the Act's enactment or the Secretary's publication of the Statement, JA236-39.[13]

Allottees allege in Complaint ¶ 212 (JA63) that their "Winters Doctrine reserved water rights" are protected by the equal protection guarantee of the Fifth Amendment, and they allege in Complaint ¶ 213 (JA63) that the Secretary's publication of the Statement "attempted to cause an expropriation or diminishment of [those] valuable and marketable rights … in favor of non-Indians[.]" As relief, Allottees request that the court "[d]eclar[e] that the Enforceability Date of the 2010 Crow Water Rights Settlement Act is void and unenforceable because it violates Plaintiffs' constitutional right to … equal protection under the Fifth Amendment." JA64 (Prayer for Relief ¶ F).

While Allottees drafted their equal protection claim as a challenge to the publication of the Statement, their argument is reasonably understood to challenge

[13] Count IV included two additional claims: (1) that the Act exceeded Congress's power under the Constitution's Indian Commerce Clause, Art. I, § 8, para. 3, JA63 (Complaint ¶ 211); JA64 (Prayer for Relief ¶ E); and (2) that Allottees were not bound by the Montana Water Court's Final Decree, JA63 (Complaint ¶ 214); JA64 (Prayer for Relief ¶ G). Allottees do not challenge the dismissal of those claims in their Brief on appeal and have thus forfeited them. *See Al-Tamimi*, 916 F.3d at 6.

a fundamental feature of the Act itself—the distinction between water rights for trust allotments and those held by owners of fee parcels. As the district court explained, the equal protection claim "appears as a facial challenge" to the Act, JA237, because "[i]t is anyone's guess … how Plaintiffs think that the Secretary's publication of the statement of findings—which merely stated that seven statutory conditions were met—implicates equal protection," JA236. The district court stated that a facial challenge "would be time barred."[14] JA237. But it "nonetheless consider[ed] the merits." *Id*. The court correctly concluded—whether Allottees' equal protection claim is construed as a challenge to the Act or the Statement—that they "have not alleged facts adequate to convince the Court that any of their Fifth Amendment claims … are conceivable, let alone sufficient to '[]cross the line from conceivable to plausible.'" JA239 (quoting *Twombly*, 550 U.S. at 570).

The district court accepted arguendo Allottees' premise "that the Act draws distinctions between Indians and non-Indians." JA237. In fact, the Complaint alleges that the Act distinguishes between (1) water rights for trust allotments, which are owned by tribal members and other Indians, and (2) water rights held by owners of fee parcels, which include non-Indians and *a significant number of*

[14] Allottees disagree (Br. 50-51) with the district court's characterization of their equal protection claim as a "facial challenge." But this Court need not determine its proper characterization, or whether a facial challenge would have been time-barred, because the district court's dismissal of their equal protection claim for failure to plead any plausible claim for relief can be readily affirmed on other grounds.

Indians. As explained above (at 6), "[a] significant amount of fee patented land" is "owned by Crow tribal members." JA29 (Complaint ¶ 75). For example, Plaintiff Wailes Yellowtail owns "2,500 acres of trust allotments and former trust allotments now held in fee, including 300 irrigated or irrigable acres." JA21 (Complaint ¶ 48). Allottees' equal protection claim may be rejected on the basis of their flawed premise.

But even if one were to conclude that the Act distinguishes between Indians and non-Indians, the district court correctly concluded that rational basis scrutiny applies based on well-established precedent of the Supreme Court and this Court holding that "ordinary rational basis scrutiny applies to Indian classifications just as it does to other non-suspect classifications under equal protection analysis." JA237 (quoting *Narragansett Indian Tribe v. National Indian Gaming Comm'n*, 158 F.3d 1335, 1340 (D.C. Cir. 1998)).

Allottees seek to distinguish *Narragansett* and other cases evaluating Indian classifications under rational basis review, arguing (Br. 51-54) that strict scrutiny applies in this case because (1) the distinction between Indians and non-Indians in this case does not benefit Indians, and (2) a fundamental right is at issue. Neither argument is persuasive.

Allottees' sole authority for their first argument (Br. 52)—that rational-basis review applies only to federal classifications that *benefit* Indians—is *Fallon*

Paiute-Shoshone Tribe v. City of Fallon, 174 F.Supp.2d 1088 (D. Nev. 2001). They misconstrue that decision (which is not binding on this Court). The Tribe there sued the City for refusing to provide municipal services to tribal land, unless the Tribe complied with assertedly inapplicable regulations, when the City did not demand such compliance by other governmental entities for services the City provided to their land. After conducting a *rational-basis review*, the court granted summary judgment to the Tribe on its equal protection claim because neither the mayor nor the city council members could offer *any* explanation for why the Tribe was treated differently. *Id*. at 1094.

In contrast, as explained above (at 9-11), Congress intended the Act to benefit the Crow Tribe and allottees in various ways and decided that including rights to water secured by 25 U.S.C. § 381 for trust allotments in the Tribal Water Right would facilitate settlement. That is the same structure Congress chose in numerous other settlements of tribal water rights.[15] In addition, Allottees' argument that the Act affords them *no benefits* is based on asserted failures in its

[15] *See, e.g.*, Montana Water Rights Protection Act, Pub. L. No. 116-260, §§ 2(1), 5, 134 Stat. 3008-09, 3011-14 (2020) (provisions of Consolidated Appropriations Act, 2021, for Confederated Salish and Kootenai Tribes of the Flathead Reservation); Blackfeet Water Rights Settlement Act, Pub. L. No. 114-322, §§ 3702(1), 3715, 130 Stat. 1814, 1832-33 (provisions of Water Infrastructure Improvements for the Nation Act of 2016); Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act, Pub. L. No. 114-322, §§ 3402(1)-(2), 3405, 130 Stat. 1755, 1759-60 (provisions of Water Infrastructure Improvements for the Nation Act of 2016).

implementation, which may provide a basis for other claims and remedies but are no basis for an equal protection claim seeking to invalidate the Act.

Allottees' second argument (Br. 53-54)—that strict scrutiny is required because they allege deprivation of a "fundamental right"—is no more persuasive. It is true that strict scrutiny applies when a plaintiff claims that a "fundamental right" has been burdened, but Allottees have not alleged deprivation of a fundamental right. Voting was the fundamental right at issue in *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 670 (1966), cited at Br. 53. The Supreme Court employed strict scrutiny in declaring unconstitutional a poll tax because "the right to vote is too precious, too fundamental to be so burdened or conditioned" by the ability to pay a poll tax. *Id*. In contrast, no such fundamental right was at issue in *Kahawaiolaa v. Norton*, 386 F.3d 1271 (9th Cir. 2004), cited at Br. 53, which held that Interior's regulations excluding native Hawaiians from Interior's tribal recognition process for Indian tribes did not violate equal protection. Although "[s]trict scrutiny is applied when the classification is made on … categorizations impinging upon fundamental rights such as privacy, marriage, voting, travel, and freedom of association," *id*. at 1277, the classification for purposes of federal acknowledgment did not implicate any fundamental right, *id*. at 1278. Allottees here assert an economic interest in water rights, which are important to them but which are not among the class of interests deemed so "fundamental" as to require

strict scrutiny of the Act's classification between water rights for trust allotments and those held by owners of fee parcels.

Allottees then argue (Br. 54-55) that the Act fails even rational basis review. Allottees suggest that Congress did not enact the Act pursuant to its "unique obligation toward the Indians." Br. 54-55 (quoting *Morton v. Mancari*, 417 U.S. 535, 555 (1974)). That suggestion can be readily rejected. *See* Act § 402(1) (the statute is intended "to achieve a fair, equitable, and final settlement of claims to water rights in the State of Montana for—(A) the Crow Tribe; and (B) the United States for the benefit of the Tribe and allottees"); *id.* § 407(a) (Congress intends "to provide to each allottee benefits that are equivalent to or exceed the benefits allottees possess as of the date of enactment of this Act"; *id.* § 407(c) (the United States shall hold the tribal water rights "in trust … for the use and benefit of the Tribe and the allottees").

Allottees' further argument (Br. 55) that the Act afforded them substitute water rights that did not actually benefit them and provided "no other compensating benefits" is based on the alleged failures in *implementation* related to the Current Use List, Tribal Water Code, and infrastructure improvements they repeatedly reference (Br. 18-20, 37-38, 51, 55). The district court accepted their allegations about those asserted failures for purposes of the motion to dismiss and acknowledged the "plethora of reasons" Allottees offered "for thinking that the

Settlement Act is poor legislation or has been poorly implemented." JA238. But reviewing the Act under the rational-basis standard, it correctly concluded that Allottees "failed to plead facts that … 'show[] that no reasonably conceivable state of facts could provide a rational basis' for the Act's treatment of allottees." JA239 (quoting *Sanchez v. Office of State Superintendent of Education*, 45 F.4th 388, 396 (D.C. Cir. 2022)). As noted, there may be other claims and forms of relief that Allottees could have sought for the alleged implementation failures, but implementation failures are no basis for their equal protection claim and the relief they seek here—invalidation of the Act contrary to Congress's enactment, the General Council's majority vote, and the Montana Water Court's final decree.

In sum, Allottees fail to demonstrate that the district court erroneously dismissed their equal protection claim.

CONCLUSION

For these reasons, this Court should affirm the district court's Order dismissing Plaintiffs' Complaint without prejudice.

Respectfully submitted,

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August 29, 2024
90-2-4-16608

CERTIFICATE OF COMPLIANCE

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/s/ *Mary Gabrielle Sprague*
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APPELLEES' ADDENDUM
OF PERTINENT STATUTES AND REGULATIONS

APPELLEES' ADDENDUM TABLE OF CONTENTS

TITLE IV—CROW TRIBE WATER RIGHTS SETTLEMENT

Crow Tribe Water Rights Settlement Act of 2010. Montana. 31 USC 1101 note.

SEC. 401. SHORT TITLE.

This title may be cited as the "Crow Tribe Water Rights Settlement Act of 2010".

SEC. 402. PURPOSES.

The purposes of this title are—

(1) to achieve a fair, equitable, and final settlement of claims to water rights in the State of Montana for—

(A) the Crow Tribe; and

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

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

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

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

(B) to take any other action necessary to carry out the Compact in accordance with this title; and

(4) to ensure the availability of funds necessary for the implementation of the Compact and this title.

SEC. 403. DEFINITIONS.

In this title:

(1) ALLOTTEE.—The term "allottee" means any individual who holds a beneficial real property interest in an allotment of Indian land that is—

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

(B) held in trust by the United States.

(2) CEDED STRIP.—The term "ceded strip" means the area identified as the ceded strip on the map included in appendix 5 of the Compact.

(3) CIP OM&R.—The term "CIP OM&R" means—

(A) any recurring or ongoing activity associated with the day-to-day operation of the Crow Irrigation Project;

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

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

(4) COMPACT.—The term "Compact" means the water rights compact between the Tribe and the State of Montana contained in section 85–20–901 of the Montana Code Annotated (2009) (including any exhibit, part, or amendment to the Compact).

(5) CROW IRRIGATION PROJECT.—

(A) IN GENERAL.—The term "Crow Irrigation Project" means the irrigation project—

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

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

(iii) consisting of the project units of—

(I) Agency;

(II) Bighorn;
(III) Forty Mile;
(IV) Lodge Grass #1;
(V) Lodge Grass #2;
(VI) Pryor;
(VII) Reno;
(VIII) Soap Creek; and
(IX) Upper Little Horn.

(B) INCLUSION.—The term "Crow Irrigation Project" includes land held in trust by the United States for the Tribe and the allottees in the Bozeman Trail and Two Leggins irrigation districts.

(6) ENFORCEABILITY DATE.—The term "enforceability date" means the date on which the Secretary publishes in the Federal Register the statement of findings described in section 410(e).

(7) FINAL.—The term "final" with reference to approval of the decree described in section 410(e)(1)(A), means—

(A) completion of any direct appeal to the Montana Supreme Court of a decree by the Montana Water Court pursuant to section 85–2–235 of the Montana Code Annotated (2009), including the expiration of time for filing of any such appeal; or

(B) completion of any appeal to the appropriate United States Court of Appeals, including the expiration of time in which a petition for certiorari may be filed in the United States Supreme Court, denial of such petition, or issuance of a final judgment of the United States Supreme Court, whichever occurs last.

(8) FUND.—The term "Fund" means the Crow Settlement Fund established by section 411.

(9) INDIAN TRIBE.—The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(10) JOINT STIPULATION OF SETTLEMENT.—The term "joint stipulation of settlement" means the joint stipulation of settlement relating to the civil action styled Crow Tribe of Indians v. Norton, No. 02–284 (D.D.C. 2006).

(11) MR&I SYSTEM.—

(A) IN GENERAL.—The term "MR&I System" means the municipal, rural, and industrial water system of the Reservation, generally described in the document entitled "Crow Indian Reservation Municipal, Rural and Industrial Water System Engineering Report" prepared by DOWL HKM, and dated July 2008 and updated in a status report prepared by DOWL HKM dated December 2009.

(B) INCLUSIONS.—The term "MR&I System" includes—

(i) the raw water intake, water treatment plant, pipelines, storage tanks, pumping stations, pressure-reducing valves, electrical transmission facilities, and other items (including real property and easements necessary to deliver potable water to the Reservation) appurtenant to the system described in subparagraph (A); and

(ii) in descending order of construction priority—

(I) the Bighorn River Valley Subsystem;

(II) the Little Bighorn River Valley Subsystem; and

(III) Pryor Extension.

(12) MR&I SYSTEM OM&R.—The term "MR&I System OM&R" means—

(A) any recurring or ongoing activity associated with the day-to-day operation of the MR&I System;

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

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

(13) RESERVATION.—The term "Reservation" means the area identified as the Reservation on the map in appendix 4 of the Compact.

(14) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(15) TRIBAL COMPACT ADMINISTRATION.—The term "Tribal Compact Administration" means any activity relating to—

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

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

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

(16) TRIBAL WATER CODE.—The term "tribal water code" means a water code adopted by the Tribe in accordance with section 407(f).

(17) TRIBAL WATER RIGHTS.—The term "tribal water rights" means—

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

(B) the water rights provided to the Tribe under section 408.

(18) TRIBE.—The term "Tribe" means the Crow Tribe of Indians of the State of Montana on behalf of itself and its members (but not its members in their capacities as allottees).

SEC. 404. RATIFICATION OF COMPACT.

(a) RATIFICATION OF COMPACT.—

(1) IN GENERAL.—Except as modified by this title, and to the extent the Compact does not conflict with this title, the Compact is authorized, ratified, and confirmed.

(2) AMENDMENTS TO COMPACT.—If amendments are executed to make the Compact consistent with this title, those amendments are also authorized, ratified, and confirmed to the extent such amendments are consistent with this title.

(b) EXECUTION OF COMPACT.—

(1) IN GENERAL.—To the extent that the Compact does not conflict with this title, the Secretary is directed to and shall promptly execute the Compact, including all exhibits to or parts of the Compact requiring the signature of the Secretary.

(2) MODIFICATIONS.—Nothing in this title precludes the Secretary from approving modifications to appendices or exhibits to the Compact not inconsistent with this title, to

the extent such modifications do not otherwise require Congressional approval pursuant to section 2116 of the Revised Statutes (25 U.S.C. 177) or other applicable Federal law.

(c) ENVIRONMENTAL COMPLIANCE.—

(1) IN GENERAL.—In implementing the Compact, the Secretary shall promptly comply with all applicable aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

(2) EXECUTION OF THE COMPACT.—

(A) IN GENERAL.—Execution of the Compact by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) COMPLIANCE.—The Secretary shall carry out all Federal compliance activities necessary to implement the Compact.

SEC. 405. REHABILITATION AND IMPROVEMENT OF CROW IRRIGATION PROJECT.

(a) IN GENERAL.—Notwithstanding any other provision of law, and without altering applicable law (including regulations) under which the Bureau of Indian Affairs collects assessments and carries out CIP OM&R, other than the rehabilitation and improvement carried out under this section, the Secretary, acting through the Commissioner of Reclamation, shall carry out such activities as are necessary to rehabilitate and improve the water diversion and delivery features of the Crow Irrigation Project, in accordance with an agreement to be negotiated between the Secretary and the Tribe.

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

(c) SCOPE.—

Review.

(1) IN GENERAL.—The scope of the rehabilitation and improvement under this section shall be as generally described in the document entitled "Engineering Evaluation of Existing Conditions, Crow Agency Rehabilitation Study" prepared by DOWL HKM, and dated August 2007 and updated in a status report dated December 2009 by DOWL HKM, on the condition that prior to beginning construction activities, the Secretary shall review the design of the proposed rehabilitation or improvement and perform value engineering analyses.

(2) NEGOTIATION WITH TRIBE.—On the basis of the review described in paragraph (1), the Secretary shall negotiate with the Tribe appropriate changes to the final design so that the final design meets applicable industry standards, as well as changes, if any, that would improve the cost-effectiveness of the delivery of irrigation water and take into consideration the equitable distribution of water to allottees.

(d) NONREIMBURSABILITY OF COSTS.—All costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

(e) FUNDING.—The total amount of obligations incurred by the Secretary in carrying out this section shall not exceed $131,843,000, except that the total amount of $131,843,000 shall be increased

or decreased, as appropriate, based on ordinary fluctuations from May 1, 2008, in construction cost indices applicable to the types of construction involved in the rehabilitation and improvement.

(f) TRIBAL IMPLEMENTATION AGREEMENT.—

(1) IN GENERAL.—At the request of the Tribe, in accordance with applicable Federal law, the Secretary shall enter into 1 or more agreements with the Tribe to implement the provisions of this section by which the Tribe shall plan, design, and construct any or all of the rehabilitation and improvement required by this section.

(2) OVERSIGHT COSTS.—The Bureau of Reclamation and the Tribe shall negotiate the cost of any oversight activities carried out by the Bureau of Reclamation for each agreement under this section, provided that the total cost for that oversight shall not exceed 4 percent of the total project costs.

(g) ACQUISITION OF LAND.—

(1) TRIBAL EASEMENTS AND RIGHTS-OF-WAY.—

(A) IN GENERAL.—Upon request, and in partial consideration for the funding provided under section 414(a), the Tribe shall consent to the grant of such easements and rights-of-way over tribal land as may be necessary for the rehabilitation and improvement of the Crow Irrigation Project authorized by this section at no cost to the United States.

(B) JURISDICTION.—The Tribe shall retain criminal and civil jurisdiction over any lands that were subject to tribal jurisdiction prior to the granting of an easement or right-of-way in connection with the rehabilitation and improvement of the Crow Irrigation Project.

(2) USER EASEMENTS AND RIGHTS-OF-WAY.—In partial consideration of the rehabilitation and improvement of the Crow Irrigation Project authorized by this section and as a condition of continued service from the Crow Irrigation Project after the enforceability date, any water user of the Crow Irrigation Project shall consent to the grant of such easements and rights-of-way as may be necessary for the rehabilitation and improvements authorized under this section at no cost to the Secretary.

(3) LAND ACQUIRED BY THE UNITED STATES.—Land acquired by the United States in connection with rehabilitation and improvement of the Crow Irrigation Project authorized by this section shall be held in trust by the United States on behalf of the Tribe as part of the Reservation of the Tribe.

(h) PROJECT MANAGEMENT COMMITTEE.—The Secretary shall facilitate the formation of a project management committee composed of representatives from the Bureau of Reclamation, the Bureau of Indian Affairs, and the Tribe— Establishment.

(1) to review cost factors and budgets for construction, operation, and maintenance activities relating to the Crow Irrigation Project;

(2) to improve management of inherently governmental activities through enhanced communication; and

(3) to seek additional ways to reduce overall costs for the rehabilitation and improvement of the Crow Irrigation Project.

SEC. 406. DESIGN AND CONSTRUCTION OF MR&I SYSTEM.

(a) IN GENERAL.—The Secretary, acting through the Commissioner of Reclamation, shall plan, design, and construct the water diversion and delivery features of the MR&I System, in accordance with 1 or more agreements between the Secretary and the Tribe.

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

(c) SCOPE.—

Review.

(1) IN GENERAL.—The scope of the design and construction under this section shall be as generally described in the document entitled "Crow Indian Reservation Municipal, Rural and Industrial Water System Engineering Report" prepared by DOWL HKM, and dated July 2008 and updated in a status report dated December 2009 by DOWL HKM, on the condition that prior to beginning construction activities, the Secretary shall review the design of the proposed MR&I System and perform value engineering analyses.

(2) NEGOTIATION WITH TRIBE.—On the basis of the review described in paragraph (1), the Secretary shall negotiate with the Tribe appropriate changes to the final design so that the final design meets applicable industry standards, as well as changes, if any, that would improve the cost-effectiveness of the delivery of MR&I System water and take into consideration the equitable distribution of water to allottees.

(d) NONREIMBURSABILITY OF COSTS.—All costs incurred by the Secretary in carrying out this section shall be nonreimbursable.

(e) FUNDING.—The total amount of obligations incurred by the Secretary in carrying out this section shall not exceed $246,381,000, except that the total amount of $246,381,000 shall be increased or decreased, as appropriate, based on ordinary fluctuations from May 1, 2008, in construction cost indices applicable to the types of construction involved in the design and construction of the MR&I System.

(f) TRIBAL IMPLEMENTATION AGREEMENT.—

(1) IN GENERAL.—At the request of the Tribe, in accordance with applicable Federal law, the Secretary shall enter into 1 or more agreements with the Tribe to implement the provisions of this section by which the Tribe shall plan, design, and construct any or all of the rehabilitation and improvement required by this section.

(2) OVERSIGHT COSTS.—The Bureau of Reclamation and the Tribe shall negotiate the cost of any oversight activities carried out by the Bureau of Reclamation for each agreement under this section, provided that the total cost for that oversight shall not exceed 4 percent of the total project costs.

(g) ACQUISITION OF LAND.—

(1) TRIBAL EASEMENTS AND RIGHTS-OF-WAY.—

(A) IN GENERAL.—Upon request, and in partial consideration for the funding provided under section 414(b), the Tribe shall consent to the grant of such easements and rights-of-way over tribal land as may be necessary for the construction of the MR&I System authorized by this section at no cost to the United States.

(B) JURISDICTION.—The Tribe shall retain criminal and civil jurisdiction over any lands that were subject to tribal

jurisdiction prior to the granting of an easement or right-of-way in connection with the construction of the MR&I System.

(2) LAND ACQUIRED BY THE UNITED STATES.—Land acquired by the United States in connection with the construction of the MR&I System authorized by this section shall be held in trust by the United States on behalf of the Tribe as part of the Reservation of the Tribe.

(h) CONVEYANCE OF TITLE TO MR&I SYSTEM FACILITIES.—

(1) IN GENERAL.—The Secretary shall convey title to each MR&I System facility or section of a MR&I System facility authorized under subsection (a) to the Tribe after completion of construction of a MR&I System facility or a section of a MR&I System facility that is operating and delivering water.

(2) LIABILITY.—

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

(B) TORT CLAIMS.—Nothing in this section increases the liability of the United States beyond the liability provided in chapter 171 of title 28, United States Code (commonly known as the "Federal Tort Claims Act").

(3) NOTICE OF PROPOSED CONVEYANCE.—Not later than 45 days before the date of a proposed conveyance of title to any MR&I System facility, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate notice of the conveyance of each such MR&I System facility or section of a MR&I System facility. Deadline.

(4) MR&I SYSTEM OM&R OBLIGATION OF THE FEDERAL GOVERNMENT AFTER CONVEYANCE.—The Federal Government shall have no obligation to pay for the operation, maintenance, or replacement costs of the MR&I System beginning on the date on which—

(A) title to any MR&I System facility or section of a MR&I System facility under this subsection is conveyed to the Tribe; and

(B) the amounts required to be deposited in the MR&I System OM&R Account pursuant to section 411 have been deposited in that account.

(i) AUTHORITY OF TRIBE.—Upon transfer of title to the MR&I System or any section of a MR&I System facility to the Tribe in accordance with subsection (h), the Tribe is authorized to collect water use charges from customers of the MR&I System to cover—

(1) MR&I System OM&R costs; and

(2) any other costs relating to the construction and operation of the MR&I System.

(j) ALIENATION AND TAXATION.—Conveyance of title to the Tribe pursuant to subsection (h) does not waive or alter any applicable Federal law prohibiting alienation or taxation of the MR&I System or the underlying Reservation land.

(k) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to prepare the Tribe for operation of the MR&I System, including operation and management training.

Establishment.

(l) PROJECT MANAGEMENT COMMITTEE.—The Secretary shall facilitate the formation of a project management committee composed of representatives from the Bureau of Reclamation, the Bureau of Indian Affairs, and the Tribe—

(1) to review cost factors and budgets for construction, operation and maintenance activities for the MR&I System;

(2) to improve management of inherently governmental activities through enhanced communication; and

(3) to seek additional ways to reduce overall costs for the MR&I System.

(m) NON-FEDERAL CONTRIBUTION.—

Consultation.

(1) IN GENERAL.—Prior to completion of the final design of the MR&I System required by subsection (c), the Secretary shall consult with the Tribe, the State of Montana, and other affected non-Federal parties to discuss the possibility of receiving non-Federal contributions to the cost of the MR&I System.

(2) NEGOTIATIONS.—If, based on the extent to which non-Federal parties are expected to use the MR&I System, a non-Federal contribution to the MR&I System is determined by the parties described in paragraph (1) to be appropriate, the Secretary shall initiate negotiations for an agreement on the means by which such contributions may be provided.

SEC. 407. TRIBAL WATER RIGHTS.

(a) INTENT OF CONGRESS.—It is the intent of Congress to provide to each allottee benefits that are equivalent to or exceed the benefits allottees possess as of the date of enactment of this Act, taking into consideration—

(1) the potential risks, cost, and time delay associated with litigation that would be resolved by the Compact and this title;

(2) the availability of funding under this title and from other sources;

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

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

(b) CONFIRMATION OF TRIBAL WATER RIGHTS.—

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

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

(c) HOLDING IN TRUST.—The tribal water rights—

(1) shall be held in trust by the United States for the use and benefit of the Tribe and the allottees in accordance with this section; and

(2) shall not be subject to forfeiture or abandonment.

(d) ALLOTTEES.—

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

(2) ENTITLEMENT TO WATER.—Any entitlement to water of an allottee under Federal law shall be satisfied from the tribal water rights.

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

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

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

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

(e) AUTHORITY OF TRIBE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Tribe shall have authority to allocate, distribute, and lease the tribal water rights—

(A) in accordance with the Compact; and

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

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

(f) TRIBAL WATER CODE.—

(1) IN GENERAL.—Notwithstanding the time period set forth in article IV(A)(2)(b) of the Compact, not later than 3 years after the date on which the Tribe ratifies the Compact as set forth in section 410(e)(1)(E), the Tribe shall enact a tribal water code, that provides for— Deadline.

(A) the management, regulation, and governance of all uses of the tribal water rights in accordance with the Compact; and

(B) establishment by the Tribe of conditions, permit requirements, and other limitations relating to the storage, recovery, and use of the tribal water rights in accordance with the Compact.

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

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

(B) charges for delivery of water for irrigation purposes for allottees shall be assessed on a just and equitable basis;

(C) there is a process by which an allottee may request that the Tribe provide water for irrigation use in accordance with this title;

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

(i) appeal and adjudication of any denied or disputed distribution of water; and

(ii) resolution of any contested administrative decision; and

(E) there is a requirement that any allottee with a claim relating to the enforcement of rights of the allottee under the tribal water code or relating to the amount of water allocated to land of the allottee must first exhaust remedies available to the allottee under tribal law and the tribal water code before initiating an action against the United States or petitioning the Secretary pursuant to subsection (d)(6).

(3) ACTION BY SECRETARY.—

(A) IN GENERAL.—The Secretary shall administer the tribal water rights until the tribal water code is enacted in accordance with paragraph (1) and those provisions requiring approval pursuant to paragraph (2).

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

(i) the provisions of the tribal water code required by paragraph (2) are approved by the Secretary; and

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

(C) APPROVAL PERIOD.—The Secretary shall approve or disapprove the tribal water code within a reasonable period of time after the date on which the Tribe submits it to the Secretary.

(g) EFFECT.—Except as otherwise specifically provided in this section, nothing in this title—

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

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

SEC. 408. STORAGE ALLOCATION FROM BIGHORN LAKE.

(a) STORAGE ALLOCATION TO TRIBE.—

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

(A) not more than 150,000 acre-feet per year of the allocation, which may be used in addition to the natural flow right described in article III(A)(1)(a) of the Compact; and

(B) 150,000 acre-feet per year of the allocation, which may be used only as supplemental water for the natural flow right described in article III(A)(1)(a) of the Compact for use in times of natural flow shortage.

(2) TREATMENT.—

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

(B) PRIORITY DATE.—The priority date of the allocation under paragraph (1) shall be the priority date of the water right held by the Bureau of Reclamation.

(C) ADMINISTRATION.—

(i) IN GENERAL.—The Tribe shall administer the water allocated under paragraph (1) in accordance with the Compact.

(ii) TEMPORARY TRANSFER.—In accordance with subsection (c), the Tribe may temporarily transfer by service contract, lease, exchange, or other agreement, not more than 50,000 acre-feet of water allocated under paragraph (1)(A) off the Reservation, subject to the approval of the Secretary and the requirements of the Compact.

(b) ALLOCATION AGREEMENT.—

(1) IN GENERAL.—As a condition of receiving an allocation under this section, the Tribe shall enter into an allocation agreement with the Secretary to establish the terms and conditions of the allocation, in accordance with the terms and conditions of the Compact and this title.

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

(A) the agreement is without limit as to term;

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

(C) the United States shall have no trust obligation or other obligation to monitor, administer, or account for—

(i) any funds received by the Tribe as consideration under any lease, contract, or agreement the Tribe may enter into pursuant to the authority in subsection (c); or

(ii) the expenditure of such funds;

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

(E) the costs associated with the construction of the storage facilities at Yellowtail Dam allocable to the Tribe—

(i) shall be nonreimbursable; and

(ii) shall be excluded from any repayment obligation of the Tribe;

(F) no water service capital charges shall be due or payable for any water allocated to the Tribe pursuant to this title and the allocation agreement, regardless of whether that water is delivered for use by the Tribe or is delivered under any leases, contracts, or agreements the Tribe may enter into pursuant to the authority in subsection (c);

(G) the Tribe shall not be required to make payments to the United States for any water allocated to the Tribe pursuant to this title and the allocation agreement except for each acre-foot of stored water leased or sold for industrial purposes; and

(H) for each acre-foot of stored water leased or sold by the Tribe for industrial purposes—

(i) the Tribe shall pay annually to the United States an amount to cover the proportionate share

Payment.

of the annual operation, maintenance, and replacement costs for the Yellowtail Unit allocable to the amount of water for industrial purposes leased or sold by the Tribe; and

(ii) the annual payments of the Tribe shall be reviewed and adjusted, as appropriate, to reflect the actual operation, maintenance, and replacement costs for the Yellowtail Unit.

(c) TEMPORARY TRANSFER FOR USE OFF RESERVATION.—

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

(2) REQUIREMENT.—An agreement under paragraph (1) shall not permanently alienate any portion of the water allocated under subsection (a)(1)(A).

(d) REMAINING STORAGE.—

Effective date.

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

(2) EFFECT OF SUBSECTION.—Nothing in this subsection prevents the Secretary from—

(A) renewing the storage contract with Pennsylvania Power and Light Company consistent with the allocation to Pennsylvania Power and Light Company in existence on the date of enactment of this Act; or

(B) entering into future agreements with either the Northern Cheyenne Tribe or the Crow Tribe facilitating either tribe's use of its respective allocation of water from Bighorn Lake.

SEC. 409. SATISFACTION OF CLAIMS.

(a) IN GENERAL.—

(1) SATISFACTION OF TRIBAL CLAIMS.—The benefits realized by the Tribe under this title shall be in complete replacement of and substitution for, and full satisfaction of, all claims of the Tribe against the United States under paragraphs (1) and (3) of section 410(a).

(2) SATISFACTION OF ALLOTTEE CLAIMS.—The benefits realized by the allottees under this title shall be in complete replacement of and substitution for, and full satisfaction of—

(A) all claims waived and released under section 410(a)(2); and

(B) any claims of the allottees against the United States that the allottees have or could have asserted that are similar in nature to those described in section 410(a)(3).

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

(1) IN GENERAL.—Subject to paragraph (3), the funds made available under subsections (a) and (f) of section 414 shall be used to satisfy any claim of the Tribe or the allottees with respect to the appropriation of funds for the rehabilitation,

expansion, improvement, repair, operation, or maintenance of the Crow Irrigation Project.

(2) SATISFACTION OF CLAIMS.—Upon complete transfer of the funds described in subsections (a) and (f) of section 414 any claim of the Tribe or the allottees with respect to the transfer of funds for the rehabilitation, expansion, improvement, repair, operation, or maintenance of the Crow Irrigation Project shall be deemed to have been satisfied.

(3) EFFECT.—Except as provided in section 405, nothing in this title affects any applicable law (including regulations) under which the United States collects irrigation assessments from—

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

(B) the Tribe, tribal entities and instrumentalities, tribal members, allottees, and entities owned by the Tribe, tribal members, or allottees, to the extent that annual irrigation assessments on such tribal water users exceed the amount of funds available under section 411(e)(3)(D) for costs relating to CIP OM&R.

(c) NO RECOGNITION OF WATER RIGHTS.—Notwithstanding subsection (a) and except as provided in section 407, nothing in this title recognizes or establishes any right of a member of the Tribe or an allottee to water within the Reservation or the ceded strip.

SEC. 410. WAIVERS AND RELEASES OF CLAIMS.

(a) IN GENERAL.—

(1) WAIVER AND RELEASE OF CLAIMS BY THE TRIBE AND THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE TRIBE.—Subject to the retention of rights set forth in subsection (c), in return for recognition of the tribal water rights and other benefits as set forth in the Compact and this title, the Tribe, on behalf of itself and the members of the Tribe (but not tribal members in their capacities as allottees), and the United States, acting as trustee for the Tribe and the members of the Tribe (but not tribal members in their capacities as allottees), are authorized and directed to execute a waiver and release of all claims for water rights within the State of Montana that the Tribe, or the United States acting as trustee for the Tribe, asserted, or could have asserted, in any proceeding, including the State of Montana stream adjudication, prior to and including the enforceability date, except to the extent that such rights are recognized in the Compact or this title.

(2) WAIVER AND RELEASE OF CLAIMS BY THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR ALLOTTEES.—Subject to the retention of rights set forth in subsection (c), in return for recognition of the water rights of the Tribe and other benefits as set forth in the Compact and this title, the United States, acting as trustee for allottees, is authorized and directed to execute a waiver and release of all claims for water rights within the Reservation and the ceded strip that the United States, acting as trustee for the allottees, asserted, or could have asserted, in any proceeding, including the State of Montana stream adjudication, prior to and including the enforceability date, except to the extent that such rights are recognized in the Compact or this title.

(3) WAIVER AND RELEASE OF CLAIMS BY THE TRIBE AGAINST THE UNITED STATES.—Subject to the retention of rights set forth in subsection (c), the Tribe, on behalf of itself and the members of the Tribe (but not Tribal members in their capacities as allottees), is authorized to execute a waiver and release of—

(A) all claims against the United States, including the agencies and employees of the United States, relating to claims for water rights within the State of Montana that the United States, acting as trustee for the Tribe, asserted, or could have asserted, in any proceeding, including the State of Montana stream adjudication, except to the extent that such rights are recognized as tribal water rights in this title, including all claims relating in any manner to the claims reserved against the United States or agencies or employees of the United States in section 4(e) of the joint stipulation of settlement;

(B) all claims against the United States, including the agencies and employees of the United States, relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights, claims relating to interference with, diversion or taking of water, or claims relating to failure to protect, acquire, replace, or develop water, water rights, or water infrastructure) within the State of Montana that first accrued at any time prior to and including the enforceability date, including all claims relating to the failure to establish or provide a municipal rural or industrial water delivery system on the Reservation and all claims relating to the failure to provide for, operate, or maintain the Crow Irrigation Project, or any other irrigation system or irrigation project on the Reservation;

(C) all claims against the United States, including the agencies and employees of the United States, relating to the pending litigation of claims relating to the water rights of the Tribe in the State of Montana;

(D) all claims against the United States, including the agencies and employees of the United States, relating to the negotiation, execution, or the adoption of the Compact (including exhibits) or this title;

(E) subject to the retention of rights set forth in subsection (c), all claims for monetary damages against the United States that first accrued at any time prior to and including the enforceability date with respect to—

(i) the failure to recognize or enforce the claim of the Tribe of title to land created by the movement of the Bighorn River; and

(ii) the failure to make productive use of that land created by the movement of the Bighorn River to which the Tribe has claimed title;

(F) all claims against the United States that first accrued at any time prior to and including the enforceability date arising from the taking or acquisition of the land of the Tribe or resources for the construction of the Yellowtail Dam;

(G) all claims against the United States that first accrued at any time prior to and including the enforceability date relating to the construction and operation of Yellowtail Dam and the management of Bighorn Lake; and

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

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

(c) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.—Notwithstanding the waivers and releases authorized in this title, the Tribe on behalf of itself and the members of the Tribe and the United States, acting as trustee for the Tribe and allottees, retain—

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

(2) all rights to use and protect water rights acquired after the date of enactment of this Act;

(3) all claims relating to activities affecting the quality of water, including any claims the Tribe may have under—

(A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), including for damages to natural resources;

(B) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

(D) any regulations implementing the Acts described in subparagraphs (A) through (C);

(4) all claims relating to damages, losses, or injuries to land or natural resources not due to loss of water or water rights (including hunting, fishing, gathering, or cultural rights);

(5) all rights, remedies, privileges, immunities, and powers not specifically waived and released pursuant to this title or article VII(E) of the Compact;

(6) all claims against any person or entity other than the United States, including claims for monetary damages, with respect to—

(A) the claim of the Tribe of title to land created by the movement of the Bighorn River; and

(B) the productive use of that land created by the movement of the Bighorn River to which the Tribe has claimed title; and

(7) all claims that first accrued after the enforceability date with respect to claims otherwise waived in accordance with subparagraphs (B) and (E) through (H) of subsection (a)(3).

(d) EFFECT OF COMPACT AND TITLE.—Nothing in the Compact or this title—

(1) affects the ability of the United States, acting as sovereign, to take actions authorized by law, including any laws relating to health, safety, or the environment, including—

(A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(B) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

(D) any regulations implementing the Acts described in subparagraphs (A) through (C);

(2) affects the ability of the United States to take actions acting as trustee for any other Indian tribe or allottee of any other Indian tribe;

(3) confers jurisdiction on any State court—

(A) to interpret Federal law regarding health, safety, or the environment;

(B) to determine the duties of the United States or other parties pursuant to Federal law regarding health, safety, or the environment; or

(C) to conduct judicial review of Federal agency action;

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

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

(e) ENFORCEABILITY DATE.—

Federal Register, publication.

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

(A)(i) the Montana Water Court has issued a final judgment and decree approving the Compact; or

(ii) if the Montana Water Court is found to lack jurisdiction, the district court of jurisdiction has approved the Compact as a consent decree and such approval is final;

(B) all of the funds made available under subsections (c) through (f) of section 414 have been deposited in the Fund;

(C) the Secretary has executed the agreements with the Tribe required by sections 405(a) and 406(a);

(D) the State of Montana has appropriated and paid into an interest-bearing escrow account any payments due as of the date of enactment of this Act to the Tribe under the Compact;

(E)(i) the Tribe has ratified the Compact by submitting this title and the Compact to a vote by the tribal membership for approval or disapproval; and

(ii) the tribal membership has voted to approve this title and the Compact by a majority of votes cast on the day of the vote, as certified by the Secretary and the Tribe;

(F) the Secretary has fulfilled the requirements of section 408(a); and

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

(f) TOLLING OF CLAIMS.—

Time period.

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

the amounts made available to carry out this title are transferred to the Secretary.

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

(g) EXPIRATION AND TOLLING.—In the event that all appropriations authorized by this Act have not been made available to the Secretary by June 30, 2030—

(1) the waivers authorized in this section shall expire and be of no further force or effect; and

(2) all statutes of limitations applicable to any claim otherwise waived shall be tolled until June 30, 2030.

(h) VOIDING OF WAIVERS.—If the waivers pursuant to this section are void under subsection (g)—

(1) the United States' approval of the Compact under section 404 shall no longer be effective;

(2) any unexpended Federal funds appropriated or made available to carry out the activities authorized in this Act, together with any interest earned on those funds, and any water rights or contracts to use water and title to other property acquired or constructed with Federal funds appropriated or made available to carry out the activities authorized in this Act shall be returned to the Federal Government, unless otherwise agreed to by the Tribe and the United States and approved by Congress; and

(3) except for Federal funds used to acquire or develop property that is returned to the Federal Government under paragraph (2), the United States shall be entitled to set off any Federal funds appropriated or made available to carry out the activities authorized in this Act that were expended or withdrawn, together with any interest accrued, against any claims against the United States relating to water rights in the State of Montana asserted by the Tribe or in any future settlement of the water rights of the Crow Tribe.

SEC. 411. CROW SETTLEMENT FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as "the Crow Settlement Fund", to be administered by the Secretary for the purpose of carrying out this title.

(b) TRANSFERS TO FUND.—The Fund shall consist of such amounts as are deposited in the Fund under subsections (c) through (h) of section 414.

(c) ACCOUNTS OF CROW SETTLEMENT FUND.—The Secretary shall establish in the Fund the following accounts:

(1) The Tribal Compact Administration account, consisting of amounts made available pursuant to section 414(c).

(2) The Energy Development Projects account, consisting of amounts made available pursuant to section 414(d).

(3) The MR&I System OM&R Account, consisting of amounts made available pursuant to section 414(e).

(4) The CIP OM&R Account, consisting of amounts made available pursuant to section 414(f).

(d) DEPOSITS TO CROW SETTLEMENT FUND.—

(1) IN GENERAL.—The Secretary of the Treasury shall promptly deposit in the Fund any amounts appropriated for that purpose.

(2) PRIORITY OF DEPOSITS TO ACCOUNTS.—Of the amounts appropriated for deposit in the Fund, the Secretary of the Treasury shall deposit amounts in the accounts listed in subsection (c)—

(A) in full; and

(B) in the order listed in subsection (c).

(e) MANAGEMENT.—

(1) IN GENERAL.—The Secretary shall manage the Fund, make investments from the Fund, and make amounts available from the Fund for distribution to the Tribe consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

Effective date.

(2) INVESTMENT OF CROW SETTLEMENT FUND.—Beginning on the enforceability date, the Secretary shall invest amounts in the Fund in accordance with—

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

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

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

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

(ii) bonds and other obligations of the Tennessee Valley Authority described in section 15d of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4);

(iii) mortgages, obligations, and other securities of the Federal Home Loan Mortgage Corporation described in section 303 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452); and

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

(3) DISTRIBUTIONS FROM CROW SETTLEMENT FUND.—

(A) IN GENERAL.—Amounts from the Fund shall be used for each purpose described in subparagraphs (B) through (E).

(B) TRIBAL COMPACT ADMINISTRATION ACCOUNT.—The Tribal Compact Administration account shall be used for expenditures by the Tribe for Tribal Compact Administration.

(C) ENERGY DEVELOPMENT PROJECTS ACCOUNT.—The Energy Development Projects account shall be used for expenditures by the Tribe for the following types of energy development on the Reservation, the ceded strip, and land owned by the Tribe:

(i) Development and marketing of power generation on the Yellowtail Afterbay Dam authorized in section 412(b).

(ii) Development of clean coal conversion projects.

(iii) Renewable energy projects other than the project described in clause (i).

(D) CIP OM&R ACCOUNT.—

(i) IN GENERAL.—Amounts in the CIP OM&R Account shall be used for CIP OM&R costs.

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

(I) IN GENERAL.—Subject to subclause (II), the funds described in clause (i) shall be used to reduce the CIP OM&R costs to all tribal water users on a proportional basis for a given year.

(II) LIMITATION ON USE OF FUNDS.—Funds in the CIP OM&R Account shall be used to pay irrigation assessments only for the Tribe, tribal entities and instrumentalities, tribal members, allottees, and entities owned by the Tribe, tribal members, or allottees.

(E) MR&I SYSTEM OM&R ACCOUNT.—Funds from the MR&I System OM&R Account shall be used to assist the Tribe in paying MR&I System OM&R costs.

(4) WITHDRAWALS BY TRIBE.—

(A) IN GENERAL.—The Tribe may withdraw any portion of amounts in the Fund on approval by the Secretary of a tribal management plan in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(B) REQUIREMENTS.—

(i) IN GENERAL.—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan of the Tribe under subparagraph (A) shall require that the Tribe spend any amounts withdrawn from the Fund in accordance with this title.

(ii) ENFORCEMENT.—The Secretary may carry out such judicial or administrative actions as the Secretary determines to be necessary to enforce a tribal management plan to ensure that amounts withdrawn by the Tribe from the Fund under this paragraph are used in accordance with this title.

(C) LIABILITY.—The Secretary and the Secretary of the Treasury shall not be liable for the expenditure or investment of amounts withdrawn from the Fund by the Tribe under this paragraph.

(D) EXPENDITURE PLAN.—

(i) IN GENERAL.—For each fiscal year, the Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts described in subparagraph (A) that the Tribe elects not to withdraw under this paragraph during the fiscal year.

(ii) INCLUSION.—An expenditure plan under clause (i) shall include a description of the manner in which, and the purposes for which, amounts of the Tribe remaining in the Fund will be used during subsequent fiscal years.

(iii) APPROVAL.—On receipt of an expenditure plan under clause (i), the Secretary shall approve the plan if the Secretary determines that the plan is—

(I) reasonable; and
(II) consistent with this title.

(5) ANNUAL REPORTS.—The Tribe shall submit to the Secretary annual reports describing each expenditure by the Tribe of amounts in the Fund during the preceding calendar year.

(6) CERTAIN PER CAPITA DISTRIBUTIONS PROHIBITED.—No amount in the Fund shall be distributed to any member of the Tribe on a per capita basis.

(f) AVAILABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amounts in the Fund shall be available for use by the Secretary and withdrawal by the Tribe beginning on the enforceability date.

(2) EXCEPTION.—The amounts made available under section 414(c) shall be available for use by the Secretary and withdrawal by the Tribe beginning on the date on which the Tribe ratifies the Compact as provided in section 410(e)(1)(E).

(g) STATE CONTRIBUTION.—The State of Montana contribution to the Fund shall be provided in accordance with article VI(A) of the Compact.

(h) SEPARATE APPROPRIATIONS ACCOUNT.—Section 1105(a) of title 31, United States Code, is amended—

(1) by redesignating paragraphs (35) and (36) as paragraphs (36) and (37), respectively;

(2) by redesignating the second paragraph (33) (relating to obligational authority and outlays requested for homeland security) as paragraph (35); and

(3) by adding at the end the following:

"(38) a separate statement for the Crow Settlement Fund established under section 411 of the Crow Tribe Water Rights Settlement Act of 2010, which shall include the estimated amount of deposits into the Fund, obligations, and outlays from the Fund.".

SEC. 412. YELLOWTAIL DAM, MONTANA.

(a) STREAMFLOW AND LAKE LEVEL MANAGEMENT PLAN.—

(1) IN GENERAL.—Nothing in this title, the Compact, or the Streamflow and Lake Level Management Plan referred to in article III(A)(7) of the Compact—

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

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

(2) BIGHORN LAKE MANAGEMENT.—Bighorn Lake water management, including the Streamflow and Lake Level Management Plan, is a Federal activity, and the review and enforcement of any water management decisions relating to Bighorn Lake shall be as provided by Federal law.

(3) APPLICABILITY OF PARAGRAPHS (1) AND (2).—The Streamflow and Lake Level Management Plan referred to in and part of the Compact shall be interpreted to clearly reflect paragraphs (1) and (2).

(4) APPLICABILITY OF INSTREAM FLOW REQUIREMENTS IN PLAN.—Notwithstanding any term (including any defined term) or provision in the Streamflow and Lake Level Management Plan, for purposes of this title, the Compact, and the Streamflow

and Lake Level Management Plan, any requirement in the Streamflow and Lake Level Management Plan that the Tribe dedicate a specified percentage, portion, or number of acre-feet of water per year of the tribal water rights to instream flow means (and is limited in meaning and effect to) an obligation on the part of the Tribe to withhold from development or otherwise refrain from diverting or removing from the Bighorn River the specified quantity of water for the duration, at the locations, and under the conditions set forth in the applicable requirement.

(b) POWER GENERATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Tribe shall have the exclusive right to develop and market power generation on the Yellowtail Afterbay Dam, provided that this exclusive right shall expire 15 years after the date of enactment of this Act if construction has not been substantially completed on the power generation project of the Tribe. Expiration date.

(2) BUREAU OF RECLAMATION COOPERATION.—The Bureau of Reclamation shall cooperate with the Tribe on the development of any power generation project under this subsection.

(3) AGREEMENT.—Before construction of a power generation project under this subsection, the Tribe shall enter into an agreement with the Bureau of Reclamation that contains provisions that—

(A) allocate the responsibilities for the design, construction, and operations of the project;

(B) assure the compatibility of the power generation project with the operations of the Yellowtail Unit and the Yellowtail Afterbay Dam, which shall include entering into agreements—

(i) regarding operating criteria and emergency procedures, as they relate to dam safety; and

(ii) under which, should the Tribe propose any modifications to facilities owned by the Bureau of Reclamation, the proposed modifications shall be subject to review and approval by the Secretary, acting through the Bureau of Reclamation;

(C) beginning 10 years after the date on which the Tribe begins marketing power generated from the Yellowtail Afterbay Dam, the Tribe shall make annual payments for operation, maintenance, and replacement costs in amounts determined in accordance with the guidelines and methods of the Bureau of Reclamation for assessing operation, maintenance, and replacement charges, provided that such annual payments shall not exceed 3 percent of gross annual revenue produced by the sale of electricity generated by such project; and Effective date. Payments.

(D) the Secretary—

(i) shall review the charges established in the agreement on the date that is 5 years after the date on which the Tribe makes the first payment described in subparagraph (C) to the Secretary under the agreement and at 5 year intervals thereafter; and Review. Deadlines.

(ii) may increase or decrease the charges in proportion to the amount of any increase or decrease in the costs of operation, maintenance, and replacement

for the Yellowtail Afterbay Dam, provided that any increase in operation, maintenance, and replacement costs assessed to the Tribe may not exceed—

(I) 5 percent in any 5 year period; and

(II) 3 percent of the gross annual revenue produced by the sale of electricity generated by such project.

(4) USE OF POWER BY TRIBE.—Any hydroelectric power generated in accordance with this subsection shall be used or marketed by the Tribe.

(5) REVENUES.—The Tribe shall retain any revenues from the sale of hydroelectric power generated by a project under this subsection.

(6) LIABILITY OF UNITED STATES.—The United States shall have no trust obligation to monitor, administer, or account for—

(A) the revenues received by the Tribe under this subsection; or

(B) the expenditure of the revenues received by the Tribe under this subsection.

Deadline.

(c) CONSULTATION WITH TRIBE.—The Bureau of Reclamation shall consult with the Tribe on at least a quarterly basis on all issues relating to the management of Yellowtail Dam by the Bureau of Reclamation.

Applicability.

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

(1) the Compact; or

(2) the Streamflow and Lake Level Management Plan.

SEC. 413. MISCELLANEOUS PROVISIONS.

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

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

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

(1) the United States shall not submit against any Indian-owned land located within the Reservation or the ceded strip any claim for reimbursement of the cost to the United States of carrying out this title and the Compact; and

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

(d) LIMITATION ON LIABILITY OF UNITED STATES.—

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

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

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

(2) INDEMNIFICATION.—The Tribe shall indemnify the United States, and hold the United States harmless, with respect to all claims (including claims for takings or breach of trust) arising from the receipt or expenditure of amounts described in paragraph (1)(A).

(e) EFFECT ON CURRENT LAW.—Nothing in this section affects any provision of law (including regulations) in effect on the day before the date of enactment of this Act with respect to preenforcement review of any Federal environmental enforcement action.

(f) LIMITATIONS ON EFFECT.—

(1) IN GENERAL.—Nothing in this title, the Compact, or the Streamflow and Lake Level Management Plan referred to in article III(A)(7) of the Compact—

(A) limits, expands, alters, or otherwise affects—

(i) the meaning, interpretation, implementation, application, or effect of any article, provision, or term of the Yellowstone River Compact;

(ii) any right, requirement, or obligation under the Yellowstone River Compact;

(iii) any allocation (or manner of determining any allocation) of water under the Yellowstone River Compact; or

(iv) any present or future claim, defense, or other position asserted in any legal, administrative, or other proceeding arising under or relating to the Yellowstone River Compact (including the original proceeding between the State of Montana and the State of Wyoming pending as of the date of enactment of this Act before the United States Supreme Court);

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

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

(i) the tribal water rights, or any portion of the tribal water rights, should be accounted for as part of or otherwise charged against any allocation of water made to a State under the provisions of the Yellowstone River Compact; or

(ii) the Yellowstone River Compact includes the tribal water rights or the water right of any Indian tribe as part of any allocation or other disposition of water under that compact; or

(D) waives the sovereign immunity from suit of any State under the Eleventh Amendment to the Constitution of the United States, except as expressly authorized in Article IV(F)(8) of the Compact.

(2) EFFECT OF CERTAIN PROVISIONS IN COMPACT.—The provisions in paragraphs (1) and (2) of article III (A)(6)(a), paragraphs (1) and (2) of article III(B)(6)(a), paragraphs (1) and (2) of article III(E)(6)(a), and paragraphs (1) and (2) of article III (F)(6)(a) of the Compact that provide protections to certain water rights recognized under the laws of the State of Montana do not affect in any way, either directly or indirectly, existing or future water rights (including the exercise of any such rights) outside of the State of Montana.

(g) EFFECT ON RECLAMATION LAW.—The activities carried out by the Bureau of Reclamation under this title shall not establish a precedent or impact the authority provided under any other provision of Federal reclamation law, including—

(1) the Rural Supply Act of 2006 (Public Law 109–451; 120 Stat. 3345); and

(2) the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 991).

SEC. 414. FUNDING.

(a) REHABILITATION AND IMPROVEMENT OF CROW IRRIGATION PROJECT.—

(1) MANDATORY APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary $73,843,000, adjusted to reflect changes since May 1, 2008, in construction cost indices applicable to the types of construction involved in the rehabilitation and improvement of the Crow Irrigation Project, for the rehabilitation and improvement of the Crow Irrigation Project.

(2) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amount made available under paragraph (1), there is authorized to be appropriated to the Secretary for the rehabilitation and improvement of the Crow Irrigation Project $58,000,000, adjusted to reflect changes since May 1, 2008, in construction cost indices applicable to the types of construction involved in the rehabilitation and improvement of the Crow Irrigation Project.

(b) DESIGN AND CONSTRUCTION OF MR&I SYSTEM.—

(1) MANDATORY APPROPRIATION.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary $146,000,000, adjusted to reflect changes since May 1, 2008, in construction cost indices applicable to the types of construction involved in the design and construction of the MR&I System, for the design and construction of the MR&I System.

(2) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amount made available under paragraph (1), there is authorized to be appropriated to the Secretary for the design and construction of the MR&I System $100,381,000, adjusted to reflect changes since May 1, 2008, in construction cost indices applicable to the types of construction involved in the design and construction of the MR&I System.

(c) TRIBAL COMPACT ADMINISTRATION.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary $4,776,000, adjusted to reflect changes in appropriate cost indices during the period beginning on the date of enactment of this Act and ending on the date of the transfer, for Tribal Compact Administration.

(d) ENERGY DEVELOPMENT PROJECTS.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary $20,000,000, adjusted to reflect changes in appropriate cost indices during the period beginning on the date of enactment of this Act and ending on the date of the transfer, for Energy Development Projects as set forth in section 411(e)(3)(C).

(e) MR&I SYSTEM OM&R.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall

transfer to the Secretary $47,000,000, adjusted to reflect changes in appropriate cost indices during the period beginning on the date of enactment of this Act and ending on the date of the transfer, for MR&I System OM&R.

(f) CIP OM&R.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary $10,000,000, adjusted to reflect changes in appropriate cost indices during the period beginning on the date of enactment of this Act and ending on the date of the transfer, for CIP OM&R.

(g) USE.—In addition to the uses authorized under subsections (a) and (b), such amounts as may be necessary of the amounts made available under those subsections may be used to carry out related activities necessary to comply with Federal environmental and cultural resource laws.

(h) ACCOUNT TRANSFERS.—

(1) IN GENERAL.—The Secretary may transfer from the amounts made available under subsection (a) such amounts as the Secretary, with the concurrence of the Tribe, determines to be necessary to supplement the amounts made available under subsection (b), on a determination of the Secretary, in consultation with the Tribe, that such a transfer is in the best interest of the Tribe.

(2) OTHER APPROVED TRANSFERS.—The Secretary may transfer from the amounts made available under subsection (b) such amounts as the Secretary, with the concurrence of the Tribe, determines to be necessary to supplement the amounts made available under subsection (a), on a determination of the Secretary, in consultation with the Tribe, that such a transfer is in the best interest of the Tribe.

(i) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under subsections (a) through (f), without further appropriation.

SEC. 415. REPEAL ON FAILURE TO MEET ENFORCEABILITY DATE.

31 USC 1105 and note.

If the Secretary does not publish a statement of findings under section 410(e) not later than March 31, 2016, or the extended date agreed to by the Tribe and the Secretary, after reasonable notice to the State of Montana, as applicable—

Deadline. Notification.

(1) this title is repealed effective April 1, 2016, or the day after the extended date agreed to by the Tribe and the Secretary after reasonable notice to the State of Montana, whichever is later;

Effective date.

(2) any action taken by the Secretary and any contract or agreement pursuant to the authority provided under any provision of this title shall be void;

(3) any amounts made available under section 414, together with any interest on those amounts, shall immediately revert to the general fund of the Treasury;

(4) any amounts made available under section 414 that remain unexpended shall immediately revert to the general fund of the Treasury; and

(5) the United States shall be entitled to set off against any claims asserted by the Tribe against the United States relating to water rights—

(A) any funds expended or withdrawn from the amounts made available pursuant to this title; and

(B) any funds made available to carry out the activities authorized in this title from other authorized sources.

SEC. 416. ANTIDEFICIENCY.

The United States shall not be liable for any failure to carry out any obligation or activity authorized by this title (including any such obligation or activity under the Settlement Agreement) if adequate appropriations are not provided expressly by Congress to carry out the purposes of this title in the Reclamation Water Settlements Fund established under section 10501 of Public Law 111–11 or the "Emergency Fund for Indian Safety and Health" established by section 601(a) of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (25 U.S.C. 443c(a)).

Taos Pueblo Indian Water Rights Settlement Act.

TITLE V—TAOS PUEBLO INDIAN WATER RIGHTS

SEC. 501. SHORT TITLE.

This title may be cited as the "Taos Pueblo Indian Water Rights Settlement Act".

SEC. 502. PURPOSES.

The purposes of this title are—

(1) to approve, ratify, and confirm the Taos Pueblo Indian Water Rights Settlement Agreement;

(2) to authorize and direct the Secretary to execute the Settlement Agreement and to perform all obligations of the Secretary under the Settlement Agreement and this title; and

(3) to authorize all actions and appropriations necessary for the United States to meet its obligations under the Settlement Agreement and this title.

SEC. 503. DEFINITIONS.

In this title:

(1) ELIGIBLE NON-PUEBLO ENTITIES.—The term "Eligible Non-Pueblo Entities" means the Town of Taos, the El Prado Water and Sanitation District, and the New Mexico Department of Finance and Administration Local Government Division on behalf of the Acequia Madre del Rio Lucero y del Arroyo Seco, the Acequia Madre del Prado, the Acequia del Monte, the Acequia Madre del Rio Chiquito, the Upper Ranchitos Mutual Domestic Water Consumers Association, the Upper Arroyo Hondo Mutual Domestic Water Consumers Association, and the Llano Quemado Mutual Domestic Water Consumers Association.

(2) ENFORCEMENT DATE.—The term "Enforcement Date" means the date upon which the Secretary publishes the notice required by section 509(f)(1).

(3) MUTUAL-BENEFIT PROJECTS.—The term "Mutual-Benefit Projects" means the projects described and identified in articles 6 and 10.1 of the Settlement Agreement.

(4) PARTIAL FINAL DECREE.—The term "Partial Final Decree" means the Decree entered in New Mexico v. Abeyta and New Mexico v. Arellano, Civil Nos. 7896–BB (U.S.6 D.N.M.) and 7939–BB (U.S. D.N.M.) (consolidated), for the resolution

CONSTITUTION

AND BYLAWS

OF THE

CROW TRIBE OF INDIANS

CROW INDIAN RESERVATION, CROW AGENCY

PREAMBLE

We, the adult members of the Crow Tribe of Indians located on the Crow Indian Reservation as established by the Fort Laramie Treaties of 1851 and 1868, in an effort to enforce and exercise our treaty rights, our inherent sovereign rights, to secure certain privileges and retain inherent powers do hereby adopt this Constitution to create a governing body to represent the members of the Crow Tribe of Indians, to promote the general welfare of the Crow Tribe and to provide for the lawful operation of government.

ARTICLE I — GOVERNING BODY

The traditional name of the government of the Crow Tribe of Indians of the Crow Indian Reservation shall be the Apsaalooke Nation Tribal General Council hereinafter known formally as the Crow Tribal General Council. The Crow Tribal General Council as governing body of the Crow Tribe of Indians hereby establishes three branches of government, the Executive, Legislative and Judicial Branches, which shall exercise a separation of powers. The Crow Tribal General Council shall consist of all adult enrolled members of the Crow Tribe of Indians eighteen (18) years of age or older who are entitled to vote. Descendant members of the Crow Tribe shall not be included in the Crow Tribal General Council of the Crow Tribe. The Crow Tribal General Council shall meet biannually for the purpose of receiving information from the Executive and Legislative Branches. The Crow Tribal General Council shall vote, by secret ballot, on all petitions forwarded by the Executive or Legislative Branches for removal of a Tribal Official or an Executive Branch member or to vote on a referendum or initiative in accordance with Article IX of this Constitution.

Any rights or powers heretofore vested in the Crow Tribe of Indians but not expressly referred to in this Constitution shall not be lost by reason of their omission from this Constitution but may be exercised by the Crow Tribal General Council through the adoption of appropriate amendments to this Constitution.

ARTICLE II — TERRITORY

The jurisdiction of the Crow Tribal General Council shall extend to all lands within the exterior boundaries of the Crow Indian Reservation including those lands within the original boundaries of the Crow Indian Reservation as determined by federal statutes and case law and to such other lands as may hereafter be acquired by or for the Crow Tribe of Indians.

ARTICLE III — MEMBERSHIP

Section 1. Membership Criteria. The Crow Tribal General Council shall have the inherent authority to determine membership of the Crow Tribe of Indians. Membership shall be determined as follows:

a) all persons who possess one-quarter (1/4) Crow Indian blood or more; or

b) all those persons who are enrolled as Crow Indians on the date of passage of this Constitution; or

c) all descendants of such Crow Indians referred to above with the enrollment status and benefits of such descendants determined by the Crow Tribal Enrollment Ordinance.

Section 2. Dual Membership Prohibited. No person who is or becomes a member of another tribe, band or group of Indians shall be eligible for enrollment in the Crow Tribe of Indians unless he/she shall first relinquish in writing all rights to membership in such other tribe, band or group of Indians.

Section 3. Enrollment Ordinance. The Crow Tribal General Council shall have the power to adopt ordinances, consistent with this Constitution, governing future membership and loss of membership of members of the Crow Tribe of Indians.

ARTICLE IV — EXECUTIVE BRANCH OF GOVERNMENT

Section 1. Executive Officers. The Crow Tribal General Council shall elect from its membership by secret ballot an Executive Branch of Government which shall consist of a Chairperson, Vice-Chairperson, Secretary and Vice-Secretary. Each Executive Officer shall be elected by the qualified voters in an election held in accordance with an Election Ordinance duly adopted by the Crow Tribe. The Executive Branch of the Crow Tribe shall operate as a separate and distinct branch of the Crow Tribal Government and shall exercise a separation of powers from the other branches of the Crow Tribal Government. Members of the Executive Branch shall serve a four (4) year term or until their successors are duly elected and installed. No person may serve as Tribal Chairman, Vice-Chairman, Secretary or Vice-Secretary for more than two (2) four (4) year terms. A person may not serve in other Executive Branch positions after serving two (2) four (4) year terms as Tribal Chairman. A person may serve two (2) four (4) year terms in the positions of Vice-Secretary, Secretary and Vice-Chairman and still serve in the

other Executive Branch positions of a higher level for up to two (2) terms. A person may not serve in lower level positions after completing terms in a higher level position.

Section 2. Executive Officer Compensation. The Executive Branch Officials shall serve the Tribe on a salaried, full-time basis with salaries commensurate with services and hours provided. Tribal Officials shall also be entitled to compensation for travel and expenses. Further, all Executive Branch Officials will receive no additional or personal benefits for their service to the Tribe.

Section 3. Enumerated Powers. The Executive Branch shall exercise the following powers and responsibilities herein provided, subject to any limitations imposed upon such powers by the statutes and laws of the United States:

a) represent the Crow Tribe of Indians in negotiation with Federal, State and local governments and other agencies, corporations, associations, or individuals in matters of welfare, education, recreation, social services and economic development affecting the Crow Tribe of Indians;

b) administer and oversee all functions of the Executive Branch of the Crow Tribal Government including the hiring, firing, and staffing of all agencies, departments, and instrumentalities of the Executive Branch in accordance with established written policy;

c) engage in any business that will further the economic well-being of the members of the Tribe and undertake any economic development activity which does not conflict with the provisions of the Constitution;

d) administer any funds within the control of the Tribe and make expenditures from available funds for tribal purposes, including salaries and expenses of Tribal Officials or employees and prepare an annual budget for the operation of the Tribal Government, including separate budgets for the Legislative and Judicial Branches, for approval by the Legislative Branch of the government and the Secretary of the Interior;

e) employ legal counsel for the protection and advancement of the rights of the Crow Tribe and its members;

f) negotiate and approve or prevent any sale, disposition, lease or encumbrance of Tribal lands, interests in lands or other Tribal assets, including buffalo, minerals, gas and oil;

g) enforce all laws, ordinances, resolutions, regulations or guidelines passed by the Legislative Branch providing for the levying of taxes and licensing of members and non-members for various purposes;

h) exclude from the restricted lands of the Crow Tribe of Indians persons not legally entitled to reside therein, under ordinances which shall be adopted by the Legislative Branch;

i) purchase, under condemnation proceedings in courts of competent jurisdiction, land or other property needed for public purposes, under ordinances which shall be adopted by the Legislative Branch;

j) protect and preserve the property, wildlife, and natural resources including air and water of the Tribe in accordance with ordinances adopted by the Legislative Branch; and

k) negotiate and approve limited waivers of sovereign immunity when such a waiver is necessary for business purposes in accordance with Article V, Section 2 (f) of this Constitution.

Section 4. General Duties. The general duties of the Executive Branch Officials shall be:

a) to implement all laws, resolutions, codes and policies duly adopted by the Legislative Branch;

b) to provide for the fiscal management of the Executive Branch and prepare complete financial reports for the Crow Legislative Branch on a quarterly basis and biannual reports for the Crow Tribal General Council. The Executive Branch shall set the financial budget for the Legislative and Judicial Branches.

Section 5. Chairman's Duties and Authorities. The specific duties and authorities of the Chairman shall be:

a) to appoint Cabinet members including a Comptroller who shall be bonded, Chief Executive Officer and other such Cabinet positions adopted by Tribal Ordinance, Resolution or Policy who shall all serve in subordinate positions to the Tribal Officials;

b) to appoint committee members to Executive Branch committees;

c) to delegate, at his prerogative, his authority, in writing, to the Vice-Chairman when the Chairman is unavailable due to illness or death in the family. The Tribal Chairman may also, at his prerogative, delegate his authority to the Vice-Chairman in writing from time to time for specific purposes or projects and for specific periods of time. An automatic delegation of authority from the Chairman to the Vice-Chairman shall occur if the Chairman is unavailable or absent for a period of five working days.

Section 6. Secretary's Duties. The specific duties and authorities of the Secretary of the Executive Branch shall be:

a) to keep records of all actions of the Executive Branch, insure proper reports in accordance with this Constitution are forwarded to the Crow Tribal General Council; and

b) to delegate, at his prerogative, his authority, in writing, to the Vice-Secretary when the Secretary is unavailable due to illness or death in the family. The Secretary may also, at his prerogative, delegate his authority to the Vice-Secretary in writing from time to time for specific purposes or projects and for specific periods of time. An automatic delegation of authority from the Secretary to the Vice-Secretary shall occur if the Secretary is unavailable or absent for a period of five working days.

ARTICLE V — LEGISLATIVE BRANCH OF GOVERNMENT

Section 1. Membership. The Crow Tribal General Council shall elect three members from each of the established districts within the Crow Reservation known as Valley of the Giveaway or Big Horn, Black Lodge, Valley of the Chiefs or Lodge Grass, Arrow Creek or Pryor, Center Lodge or Reno, and Mighty Few or Wyola, to serve as legislators comprising the Legislative Branch of the Crow Tribal government. The Legislative Branch of the Crow Tribe shall operate as a separate and distinct branch of the Crow Tribal Government and shall exercise a separation of powers from the other branches of the Crow Tribal Government. The initial election of the Legislative members shall be held within sixty (60) days of approval of this Constitution. Thereafter, the members of the Legislative Branch shall be elected by qualified voters in an election held in accordance with an Election Ordinance duly adopted pursuant to Article VI, Section 5 of this Constitution. One (1) representative from each district will serve an initial term of two (2) years and two (2) representatives shall serve initial four (4) year terms. After completion of the initial terms, election for members of the Legislative Branch shall occur after four (4) years from the commencement of each initial term, resulting in staggered terms for the Legislative Branch members.

Section 2. Powers and Duties. The powers and duties of the Legislative Branch shall be:

a) to promulgate and adopt laws, resolutions, ordinances, codes, regulations, and guidelines in accordance with this Constitution and federal laws for the governance of the Crow Tribe of Indians and for providing for the manner of the sale, disposition, lease or encumbrance of tribal lands, interests in land, or other assets of the Crow Tribe of Indians; for providing for the levying of taxes, licensing of members and non-members for various purposes; for the exclusion of persons not legally entitled to reside or remain within the exterior boundaries of the Crow Indian Reservation;

b) to adopt legislation, not inconsistent with this Constitution, which is necessary in exercising the duties conferred upon the three branches of government;

c) to adopt legislation chartering instrumentalities of the Crow Tribe for the purposes of economic development, housing, education or other purposes not inconsistent with this Constitution;

d) to grant final approval or disapproval of items negotiated by the Executive Branch of Government pertinent to the sale, disposition, lease or encumbrance of Tribal lands, interests in lands or mineral assets provided that a process for such approval or disapproval may be established by legislation;

e) to grant final approval or disapproval of an annual budget prepared by the Executive Branch of Government; and

f) to grant final approval or disapproval of limited waivers of sovereign immunity by the Executive Branch of Government when waivers are necessary for business purposes provided that a process for such approval or disapproval may be established by legislation.

Section 3. Meetings. The Legislative Branch of the Crow Tribal Government shall meet quarterly during the second week of January, April, July and October at the Crow Tribal Administration Offices. The Legislative Branch shall be compensated on an hourly rate basis for their services and entitled to expenses in accordance with Tribal policy. The meetings of the Legislative Branch shall be conducted in accordance with the most current version of the Robert's Rules of Order and any rules of conduct duly adopted by the Legislature. A quorum for the Legislative Branch shall be twelve (12) members plus the Speaker of the House. Legislators may not vote by proxy. Upon a tie vote of the legislators, the Vice-Chairman of the Executive Branch shall vote to break the tie.

Section 4. Speaker of the House. At the initial session of the Legislature, the members shall select a Speaker of the House to serve until the following January. Thereafter elections for Speaker of the House shall be each January. The Speaker of the House shall be entitled to vote. The Speaker of the House shall conduct all sessions of the Legislative Branch. Upon the unavailability or absence of the Speaker, the members may select a Speaker of the House pro tem for the one session, or a portion of the session, only.

Section 5. Secretary of the Legislature. At the initial session of the Legislature, the members shall select a Secretary of the Legislature to serve until the following January. Thereafter elections for Secretary of the Legislature shall be each January. The Secretary of the Legislature shall be entitled to vote. The Secretary of the Legislature shall provide notices of meeting times, dates and location to all other members of the Legislative Branch in accordance with rules established and adopted by the Legislative Branch. The Secretary of the Legislature shall keep

minutes of all meetings and official records of the Legislative Branch. The Secretary of the Legislature shall prepare all proposed legislation for distribution to all members of the Legislative Branch.

Section 6. Proposed Legislation. Each member of the Legislature shall bring any proposed legislation to the legislative body for consideration at the initial session of the Crow Tribal Legislature. Thereafter, Members of the Legislature shall hold a District meeting at least thirty (30) days prior to the commencement of each legislative session. The District Representative shall provide notice of district meetings at least ten (10) days prior to the meeting and in accordance with policy established by the Legislature. At least fifteen (15) days prior to the commencement of the legislative session, each member may submit proposed legislation, with a petition bearing signatures, addresses and enrollment numbers of at least ten percent (10%) of the District's eligible voters, as recorded in the voter registration roles of each District, to the Secretary of the Legislature. The Secretary of the Legislature shall provide notice to all members of the Legislature, ten (10) days prior to the commencement of the session, with a list of proposed legislation for consideration by the Legislature as duly submitted by the members of the Legislature.

Section 7. Executive Branch Chairman's Proposed Legislation. The Chairman of the Executive Branch shall submit proposed legislation to the Secretary of the Legislature at least fifteen (15) days prior to the commencement of the Legislature.

Section 8. Approval and Veto of Legislation. All legislation passed by the Legislature must be approved by the Chairman of the Executive Branch to become effective. The Chairman has a right to veto any legislation passed by the Legislature. Upon a veto of any proposed legislation by the Chairman, the Legislature has the power to override the veto if the proposed legislation is approved by two-thirds (2/3) of the members of the Legislature. Upon an override of the Chairman's veto, the Chairman may submit the subject legislation to the Crow Tribal General Council for a referendum vote in accordance with Article IX, Section 1 of this Constitution.

Section 9. Conflict of Interest. Any member of the Legislature who stands to gain a personal benefit from any proposed legislation shall remove himself from all discussion and the vote on the legislation. Upon a member's recusal from consideration of proposed legislation due to a conflict of interest, the member shall not be counted for purposes of establishing a quorum.

ARTICLE VI — ELECTIONS

Section 1. Executive Branch Elections. The current Tribal Officials, constituting the Executive Branch of the Crow Tribal Government, in office at the time of approval of this Constitution by the Secretary of the Interior or his authorized representative, shall remain in office until their successors are duly elected in November, 2004 and seated in December, 2004. Thereafter, elections for all Executive Branch positions shall be held every four (4) years in the month of November with inauguration into office in December.

Section 2. Legislative Branch Elections. The Crow Tribal General Council shall hold an election

of members of the Legislative Branch within sixty (60) days of approval of this Constitution by the Secretary of Interior or his authorized representative. The initial election of the Legislative Branch shall occur after eligible candidates file a written notice of candidacy with a $250.00 filing fee with the Secretary of the Executive Branch within thirty (30) days of approval of this Constitution and after proper notice is posted in each Crow Reservation District. The election of members of the Legislative Branch of government shall be by secret ballot voting in each of the Crow Reservation Districts. The duly elected members of the Legislative Branch shall be officially seated thirty (30) days after election. Thereafter, all elections for members of the Legislative Branch of the Crow Tribal Government shall be in accordance with a duly adopted election ordinance.

Section 3. Eligible Voters. Crow Tribal General Council members who are eighteen (18) years of age or older at the time of election shall be entitled to vote in any election of the Executive Branch, Legislative Branch, committee elections and referendum votes. Descendant members of the Crow Tribe shall not be entitled to vote.

Section 4. Candidate Requirements. All candidates for all branches of the Crow Tribal Government must physically reside within the exterior boundaries of the Crow Reservation for at least one year and must be thirty (30) years of age for any Executive Branch position and twenty-five (25) years of age for any Legislative Branch position. Candidates must further possess a high school diploma or a General Equivalency Diploma, unless over 55 years of age and all candidates shall have no felony convictions. Candidates for the Legislative Branch cannot be employed by the Executive Branch and members of the Legislature are prohibited from employment by the Crow Tribe. No person elected into any position in any branch of the Crow Tribal Government may be employed by the United States Government Bureau of Indian Affairs, Indian Health Service or other federal agencies.

Section 5. Election Ordinance. The Legislative Branch of the Crow Tribal Government shall adopt a comprehensive election ordinance within six (6) months following the effective date of this Constitution. Such ordinance shall prescribe procedures for the conduct of elections, nominations, secret balloting, and resolving election disputes. Provisions shall also be included regarding the conduct of recall and referendum elections. Elections to amend this Constitution shall be conducted in accordance with Article XII of this Constitution.

ARTICLE VII — VACANCIES

Section 1. Executive Branch. If an officer of the Executive Branch of the Crow Tribal Government shall die, resign, be removed or recalled, or be convicted of a felony while in office, the Chairman of the Executive Branch, or his official designee, shall immediately declare the office vacant and direct the Secretary of the Executive Branch, or his official designee, to hold an election within sixty (60) days of the declaration of vacancy to elect a successor to fill the unexpired term. The election shall occur in accordance with the duly adopted election ordinance. If the position of Chairman shall become vacant, the Vice-Chairman shall act as Chairman until the election of a new Chairman. If the position of Secretary shall become vacant, the Vice-Secretary shall act as Secretary until the election of a new Secretary.

Section 2. Legislative Branch. If an officer of the Legislative Branch of the Crow Tribal Government shall die, resign, be removed or recalled, or be convicted of a felony while in office, the Speaker of the House of the Legislative Branch, or his official designee, shall immediately declare the office vacant and direct the Secretary of the Executive Branch, or his official designee, to hold an election in the appropriate district within sixty (60) days of the declaration of vacancy to elect a successor to fill the unexpired term. The election shall occur in accordance with the duly adopted election ordinance.

ARTICLE VIII — REMOVAL AND RECALL

Section 1. Executive Branch. An Executive Branch Official may submit a petition to expel any other member of the Executive Branch who is suspected of improper conduct or of gross neglect of duty as specifically defined by the Crow Tribal General Council, by its Legislative Branch, in adopted policy. Such policy shall include the following:

a) indictment or charged with a felony crime;
b) serious illness which interferes with the ability to fulfill Council responsibilities;
c) misuse of tribal funds;
d) abuse of authority; and
e) abuse of drugs and/or alcohol.

The petition may not be submitted to the Crow Tribal General Council without the unanimous vote of the remaining officials not named in the petition. The properly submitted petition by the Executive Branch, with a complete statement of the charges against him/her, shall be provided to the subject Official at least ten (10) days before a scheduled hearing on the petition before the Crow Tribal General Council. The hearing before the Crow Tribal General Council on the removal petition shall be conducted by the Chairman of the Executive Branch or his designee. The hearing shall allow the Official named in the petition full opportunity to address allegations against him/her. Following the hearing, the Crow Tribal General Council shall vote upon the removal petition by secret ballot. The removal petition must pass by a two-thirds (2/3) majority vote. A removal petition election shall not be valid unless at least twenty-five percent (25%) of the Crow Tribal General Council vote in the removal petition election. The decision of the Crow Tribal General Council shall be final. No member of the Executive Branch shall preside over the meeting at which his removal is being considered.

Section 2. Legislative Branch. A Legislative Branch Official may submit a petition to expel any other member of the Legislative Branch who is suspected of improper conduct or of gross neglect of duty as specifically defined by the Crow Tribal General Council, by its Legislative Branch, in adopted policy. Such policy shall include the following:

a) indictment or charged with a felony crime;
b) serious illness which interferes with ability to fulfill Council responsibilities;
c) misuse of Tribal funds;
d) abuse of Authority; and
e) abuse of Drugs and/or Alcohol.

The petition may not be submitted to the Crow Tribal General Council without a two-thirds (2/3) majority vote of the remaining legislators not named in the petition. The properly submitted petition by the Legislative Branch, with a complete statement of the charges shall be provided to the subject Legislator at least ten (10) days before a scheduled hearing on the petition before the Crow Tribal General Council. The hearing before the Crow Tribal General Council on the removal petition shall be conducted by the Chairman of the Executive Branch or his designee. The hearing shall allow the Legislative Member named in the Petition full opportunity to address allegations against him/her. Following the hearing, the Crow Tribal General Council shall vote upon the removal petition by secret ballot. The removal petition must pass by a two-thirds (2/3) majority vote. A removal petition election shall not be valid unless at least twenty-five percent (25%) of the Crow Tribal General Council vote in the removal petition election. The decision of the Crow Tribal General Council shall be final.

Section 3. Recall. Upon receipt of a petition signed by at least twenty-five percent (25%) of the Crow Tribal General Council demanding a recall of any member of the Executive or Legislative Branches of government, it shall be the duty of the Secretary of the Executive Branch to call a special election at a Crow Tribal General Council meeting on the question of the recall within thirty (30) days from the date of the filing of a valid petition. The person subject to the recall petition shall be provided ten (10) days notice of the petition prior to the Crow Tribal General Council meeting called to vote upon the recall petition. At the Crow Tribal General Council meeting, the officer or member subject to the recall petition shall be given an opportunity to answer any or all charges prior to the vote of the petition. The recall petition must pass by a two-thirds (2/3) majority vote. A recall petition election shall not be valid unless at least twenty-five percent (25%) of the total number of members of the Crow Tribal General Council vote in the recall petition election. The election shall be held in the manner prescribed by tribal ordinance.

ARTICLE IX — REFERENDUM AND INITIATIVE

Section 1. Referendum. The Tribal Secretary of the Executive Branch shall, upon receipt of a petition signed by not less than twenty-five percent (25%) of the qualified voters, submit any enacted or proposed tribal legislation to a referendum of the Crow Tribal General Council. The Tribal Secretary also shall submit any legislation vetoed by the Chairman of the Tribe that has been overridden by the Legislature to a referendum of the Crow Tribal General Council only upon the Chairman's request. The decision of a two-thirds (2/3) majority of the voters voting in the referendum shall be final and binding, provided that at least twenty-five percent (25%) of the total number of members of the Crow Tribal General Council have voted in such election. The Tribal Secretary shall call the referendum within thirty (30) days from the date of receipt of a valid petition. The vote shall be by secret ballot.

Section 2. Initiative. Members of the Crow Tribal General Council reserve the power to independently propose tribal legislation. Any proposed initiative measure shall be presented to the Secretary of the Executive Branch accompanied by a petition signed by not less than twenty-five percent (25%) of the total number of members of the Crow Tribal General Council. Upon receipt of such a petition, the

Secretary of the Executive Branch shall call a special election for the purpose of allowing the Crow Tribal General Council to vote on the initiative measure. The election shall be held within thirty (30) days from the date of receipt of a valid petition. The decision of a two-thirds (2/3) majority of the voters voting in the initiative shall be final and binding, provided that at least twenty-five percent (25%) of the total number of members of the Crow Tribal General Council have voted in such election.

ARTICLE X — JUDICIAL BRANCH OF GOVERNMENT

A Judicial Branch of the Crow Tribal Government shall consist of all courts established by the Crow Law and Order Code and in accordance with this Constitution. The Judicial Branch shall have jurisdiction over all matters defined in the Crow Law and Order Code. The Judicial Branch shall be a separate and distinct branch of government from the Legislative and Executive Branches of Crow Tribal Government. The election process for the Judicial Branch judges shall be in accordance with the Crow Law and Order Code. Qualifications for the Judicial Branch Judges shall be established in the Crow Law and Order Code. The Judicial Branch shall have no power to review Executive Branch decisions made within the scope of the enumerated powers of the Executive Branch. The Judicial Branch shall have a limited review of legislation passed by the Legislative Branch to determine whether the subject legislation is consistent with or in conflict with this Constitution.

ARTICLE XI — BILL OF RIGHTS

Section 1. The rights to freedom of worship, conscience, speech, press, assembly and association of members of the Crow Tribe of Indians shall not be abridged or hindered without due process of law.

Section 2. This Constitution shall not in any way alter, abridge, or otherwise jeopardize the rights and privileges of the members of the Crow Tribe of Indians as citizens of the United States.

Section 3. The individual property rights of any member of the Crow Tribe of Indians shall not be altered, abridged or otherwise affected except as specifically provided in this Constitution.

Section 4. In accordance with Title II of the Indian Civil Rights Act of 1968 (82 Stat. 77), the Crow Tribe of Indians in exercising its powers of self-government shall not:

a) make or enforce any law prohibiting the full exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

b) violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizure, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

c) subject any person for the same offense to be twice put in jeopardy;

d) compel any person in any criminal case to be a witness against him/herself;

e) take any private property for a public use without just compensation;

f) deny to any person in a criminal proceeding the right to a speedy trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, to have the assistance of counsel for his defense at his/her own expense;

g) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one (1) year or a fine of $1000 or both;

h) deny to any person within its jurisdiction the equal protection of its law or deprive any person of liberty or property without due process of laws;

i) pass any bill of attainder or ex post facto law;

j) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

ARTICLE XII — AMENDMENTS

This Constitution may be amended by a two-thirds (2/3) vote of the Crow Tribal General Council provided that at least thirty percent (30%) of the Crow Tribal General Council vote in an election called for the purpose of amending the Constitution. The process to propose amendments to this Constitution shall be defined by the Legislative Branch in legislation which complies with the requirements of this Article of the Constitution. No amendment shall become effective until approved by the Secretary of the Interior or his duly authorized representative.

ARTICLE XIII — ADOPTION

This Constitution, when adopted by a majority vote of the qualified voters of the Crow Tribal General Council voting at an election called for that purpose shall be submitted to the Secretary of the Interior for his approval, and shall be effective from the date of his approval.

ARTICLE XIV — SEVERABILITY

If any provision of this Constitution shall in the future be declared invalid by a Court of competent jurisdiction, the invalid portion shall be severed and the remaining provisions shall continue in full force and effect.

ARTICLE XV- APPROVAL

I, Secretary of the Interior, or designee, do hereby approve this Constitution of the Crow Tribe of Indians in accordance with Article XV of this Constitution. It is effective as of July 14, 2001 provided, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to federal law.

Secretary of Interior or Designee
Washington, D.C.

Date: DEC 0 4 2001