

OCTOBER, 2004 CROW TRIBAL LEGISLATURE

BILL NO. CLB04-10

**INTRODUCED BY CARL E. VENNE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH**

**A BILL FOR AN ACT ENTITLED "AN ORDINANCE OF THE CROW
TRIBE CREATING, ESTABLISHING AND ORGANIZING THE
APSAALOOKE WATER AND WASTE WATER AUTHORITY".**

Pursuant to the authority vested in the Legislative Branch of the Crow Tribe by and through its organic document, the Constitution and Bylaws dated July 14, 2001, and particularly Article V Section 2 (a) and (c) and its authority to provide for the health, safety, morals and welfare of the Tribe, the Crow Tribal Legislative Branch of the Crow Tribe hereby establishes a public body to be known as the Apsaalooke Water and Waste Water Authority (hereinafter "Authority"), and enacts this Ordinance which shall establish the purposes, powers and duties of the Authority.

In any suit, action or proceeding involving the validity or enforcement of or relating to any of its contracts, the Authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this Ordinance by the Legislative Branch of the Crow Tribe and approval by the Chairman of the Crow Tribe. A true, accurate and complete copy of this Ordinance duly certified by the Secretary of the Executive Branch shall be admissible in evidence in any suit, action or proceeding.

ARTICLE I

DECLARATION OF NEED

It is hereby declared:

1. That there exists in the towns and communities within the exterior boundaries of the Crow Indian Reservation inadequate water, sewer and other related facilities that directly impact the availability of safe, decent and sanitary water;
2. That these conditions cause an increase in and spread of disease (and crime) and constitute a menace to health, safety, the environment and welfare; and that these conditions necessitate excessive and disproportionate expenditures of public funds for non compliance

with Federal environmental protection standards, public health and safety protection, fire and accident prevention and other public services and facilities;

3. That the inadequacy and shortage of these sanitary facilities cannot be relieved through the operation of private enterprise;

4. That the providing of safe, decent and sanitary facilities and accommodations to persons who dwell and reside within these towns and communities within the exterior boundaries of the Crow Indian Reservation are for public uses and purposes for which money may be spent and private property acquired and are governmental functions of tribal concern; and,

5. That the necessity in the public interest for the provisions hereinafter enacted are hereby declared as a matter of legislative determination.

ARTICLE II

PURPOSES

The Authority shall be organized and operated for the purposes of:

1. Remediating unsafe and unsanitary water, sewer and other related facilities in and to the towns and communities within the Crow Indian Reservation that are inadequate and either injurious to the public health, safety and the environment or potentially injurious to the public health, safety and the environment of these communities; and,

2. Providing employment opportunities through the construction, reconstruction, improvement, extension, alteration or repair and operation of these water, sewer, and other related facilities.

ARTICLE III

DEFINITIONS

The following terms, wherever used or referred to in this Ordinance, shall have the following respective meaning, unless a different meaning clearly appears from the context:

“Area of Operation” - means all the area within the territorial jurisdiction of the Tribe.

“Authority” means the Apsaalooke Water and Waste Water Authority.

“Board” means the Board of Directors of the Authority.

“Executive” means the Crow Tribal Executive Branch.

“Federal government” includes the United States of America, the Indian Health Service, the Environmental Protection Agency, the Bureau of Indian Affairs, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

“Legislature” means the Crow Tribal Legislative Branch.

“Obligation” means any notes, bonds, interim certificates, debentures, or other forms of obligation issued by the Authority pursuant to this Ordinance.

“Obligee” includes the holder of an obligation, agent or trustee for any holder of an obligation, or lessor demising to the Authority property used in connection with a project, or any assignee or assignees of such lessor’s interest or any part thereof, and the Federal Government when it is a party to any contract with the Authority in respect to a sewer and/or water project or other related facility

“Tribe” shall mean the Apsaalooke (Crow) Tribe.

ARTICLE IV

BOARD OF DIRECTORS

1(a) The affairs of the Authority shall be managed by a Board of Directors composed of three (3) persons.

(2) The initial or first Board of Directors shall be:

<u>NAME</u>	<u>ADDRESS</u>
John Doyle	P. O. Box 126, Crow Agency, MT 59022
Larry Kindness	P. O. Box 519, Crow Agency, MT 59022
Jimmy Real Bird	P. O. Box 53, Garryowen, MT 59031

The initial or first Board of Directors shall serve until the regular board members are appointed and/or elected and have been duly qualified provided however that this initial or first Board of Directors shall serve not less two (2) years. The initial or first Board of Directors shall select from its membership a person to act as the Chairperson, the Secretary and the Treasure. In the event a vacancy or vacancies occur on the Board of Directors of

the Authority, the remaining Board member or Board members shall select a person or persons to replace this individual provided however that this person or persons has the interest, concern and can devote sufficient this to the welfare and best interest of the Authority. A Board member who misses three (3) consecutive meetings without a legitimate excuse shall be subject to removal by the other Board members.

(b) To be eligible to serve on the Board of Directors, a person must be an enrolled member of the Apsaalooke (Crow) Tribe. Persons enrolled as descendants are not eligible to serve on the Board of Directors. The exact method of selecting persons to replace the initial or first Board of Directors of the Authority, the duration of the terms of the Board members, the grounds for removal and other matters pertaining thereto shall be decided in the January, 2005, session of the Crow Legislature, and therefore, this matter at this time is deemed **RESERVED**.

(c) If funds are available in the financial budget of the Authority, the Tribal members who are serving as directors shall be entitled to an honorarium for attending meetings of the Board and also for travel expenses incurred in the discharge of their duties. The mileage rate shall be the same as the rate paid by the Tribe and the amount of the honorarium must be reasonable and set forth in the bylaws adopted by the Board of Directors of the Authority.

ARTICLE V

POWERS

1. The Authority shall have perpetual succession in its corporate name.
2. The Legislative Branch hereby gives its consent to allowing the Authority to sue and be sued in the corporate name of the Authority, upon any contract, claim or obligation arising out of its activities under this Ordinance and hereby authorizes the Authority to agree by contract to waive any immunity from suit which it might otherwise have; but the Tribe shall not be liable for the debts or obligations of the Authority.
3. The Authority shall have the following powers which it may exercise consistent with the purposes for which it is established:
 - (a) To adopt and use a corporate seal.
 - (b) To enter into agreements, contracts and understandings with any govern-

mental agency, Federal, State or local (including the Crow Tribe) or with any person, partnership, corporation or Indian tribe; and to agree to any conditions attached to Federal financial assistance.

(c) To agree, notwithstanding anything to the contrary contained in this Ordinance or in any other provision of law, to any conditions attached to Federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or operation of projects; and the Authority may include in any contract let in connection with a project stipulations requiring that the contractor or any subcontractors comply with requirements of minimum salaries or wages and maximum hours of labor, and comply with any conditions which the Federal government may have attached to its financial aid to the project.

(d) To obligate itself in any contract with the Federal government for contributions to the Authority, to convey to the Federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default with respect to the covenants of conditions to which the Authority is subject; and such contract may further provide that in case of such conveyance, the Federal government may complete, operate, manage, lease, convey or otherwise deal with the project and funds in accordance with the terms of such contract: Provided, that the contract requires that, as soon as practicable after the Federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the Federal government shall reconvey to the Authority the project as then constituted.

(e) To lease property from the Tribe and others for such periods as are authorized by law, and to hold and manage or to sublease the same;

(f) To borrow or lend money, to issue temporary or long term evidence of indebtedness, and to repay the same. Obligations shall be issued and repaid in accordance with the provisions of Article VI of this Ordinance;

(g) To pledge the assets and receipts of the Authority as security for debts; and to acquire, sell, lease, exchange, transfer or assign personal property or interest therein;

(h) To purchase land or interests in land or take the same by gift; to lease land or interests in land to the extent provided by law;

(i) To undertake and carry out studies and analyses of water and waste water needs, to prepare water and waste water plans, to execute the same, to operate projects and

to provide for the construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof;

(j) To purchase insurance from any stock or mutual company for any property or against any risk or hazards;

(k) To invest such funds as are not required for immediate disbursement;

(l) To establish such banks accounts as may be necessary or convenient;

(m) To employ a water and waste water Manager, technical and maintenance personnel and such other officers and employees, permanent or temporary, as the Authority may require; and to delegate to such officers and employees such powers or duties as the Board shall deem proper;

(n) To take such further actions as are commonly engaged in by public bodies of this character as the Board may deem necessary and desirable to effectuate the purposes of the Authority;

(o) To join or cooperate with any other public agencies operating under the laws or ordinances of a state or another tribe in the exercise, either jointly or otherwise, of any or all of the powers of the Authority and such other public agencies for the purpose of financing, planning, undertaking, owning, constructing, operating, or contracting with respect to a water and waste water project or projects of the Authority or such other public water and waste water agency or agencies. For such purpose, the Authority may by resolution prescribe and authorize any other public water and waste water agency or agencies, so joining or cooperating with the Authority, to act on the Authority's behalf with respect to any or all powers, as the Authority's agent or otherwise, in the name of the Authority or in the name of such agency or agencies; and,

(p) To adopt such bylaws as the Board deems necessary and appropriate.

4. It is the purpose and intent of this Ordinance to authorize the Authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the Federal government in the undertaking, construction, maintenance or operation of any project by the Authority.

5. Crow Tribe Public Utility Commission **RESERVED**

ARTICLE VI

OBLIGATIONS

1. The Authority may issue obligations from time to time in its discretion for any of its purposes and may also issue refunding obligations for the purpose of paying or retiring obligations previously issued by it. The Authority may issue such types of obligations as it may determine, including obligations on which the principal and interest are payable: (a) exclusively from the income and revenues of the project financed with the proceeds of such obligations, or with such income and revenues together with a grant from the Federal government in aid of such project; (b) exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such obligations; or (c) from its revenues generally. Any of such obligations may be additionally secured by a pledge of any revenues of any project or other property of the Authority.

2. The Authority shall carry errors, omission and liability insurance at all times for Directors, Officers, Managers and Employees. Neither the Directors of the Authority nor any person executing the obligations shall be liable personally on the obligations by reason of issuance thereof.

3. The notes and other obligations of the Authority shall not be a debt of the Tribe and the obligations shall so state on their face.

4. Obligations of the Authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes imposed by the Tribe. The tax exemption provisions of this ordinance shall be considered part of the security for the repayment of obligations and shall constitute, by virtue of this ordinance and without necessity of being restated in the obligations, a contract between (a) the Authority and the Tribe, and (b) the holders of obligations and each of them, including all transferees of the obligations from time to time.

5. Obligations shall be issued and sold in the following manner:

(a) Obligations of the Authority shall be authorized by a resolution adopted by the vote of a majority of the full Board and may be issued in one or more series.

(b) The obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such

manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as such resolution may provide.

(c) The obligations may be sold at public or private sale at not less than par.

(d) In case any of the directors of the Authority whose signatures appear on any obligations cease to be directors before the delivery of such obligations, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the commissioners had remained in office until delivery.

6. Obligations of the Authority shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any obligation of the Authority or the security therefore, any such obligation reciting in substance that it has been issued by the Authority to aid in financing a project pursuant to this Ordinance shall be conclusively deemed to have been issued for such purpose, and the project for which such obligation was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this Ordinance.

7. In connection with the issuance of obligations or incurring of obligations under leases and to secure the payment of such obligations, the Authority, subject to the limitations of this Ordinance, may:

(a) Pledge all or any part of its gross (or rents,) fees or revenues to which its right then exists or may thereafter come into existence.

(b) Provide for the powers and duties of obligees and limit their liabilities; and provide the terms and conditions on which such obligees may enforce any covenant or rights securing or relating to the obligations.

(c) Covenant against pledging all or any part of its (rents,) fees and revenues or against mortgaging any or all of its real or personal property to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property.

(d) Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof.

(e) Covenant as to what other or additional debts or obligations may be incurred by it.

(f) Covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds, thereof.

(g) Provide for the replacement of lost, destroyed or mutilated obligations.

(h) Covenant against extending the time for the payment of its obligations or interest thereon.

(i) Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof.

(j) Covenant concerning the (rents and) fees to be charged in the operation of a project or projects, the amount to be raised each year or other period of time by (rents,)fees and other revenues, and as to the use and disposition to be made thereof.

(k) Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserves and other purposes, and covenant as to the use and disposition of the monies held in such funds.

(l) Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the proportion of outstanding obligations the holders of which must consent thereto, and the manner in which such consent may be given.

(m) Covenant as to the use, maintenance and replacement of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance monies.

(n) Covenant as to the rights, liabilities, powers and duties arising upon the breach by its of any covenant, condition or obligation.

(o) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(p) Vest in any obligees or any proportion of them the right to enforce the payment of the obligations or any covenants securing or relating to the obligations.

(q) Exercise all or any part or combination of the powers granted in these sections.

(r) Make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character.

(s) Make any covenants and do any acts and things necessary or convenient or desirable in order to secure its obligations, or, at the absolute discretion of the Authority, tending to make the obligations more marketable although the covenants, acts or things that are not enumerated in this section. All covenants and any and all acts by or of the Authority shall be at all times lawful and business-like and be based on sound business judgment as well as established current accounting/auditing standards and shall be in compliance with all applicable rules and regulations.

ARTICLE VII

MISCELLANEOUS

1. The Authority shall submit quarterly reports, signed by the Chairman of the Board to the Crow Tribal Chairman and the Speaker of the House of the Legislative Branch showing: (a) a summary of the immediate prior quarter's activities and a summary of the year's to date activities, (b) the financial condition of the Authority, (c) the condition of the properties, (d) the kinds, number and facilities maintained (e) any significant problems and accomplishments (f) plans for the future, and (g) such other information as the Authority or the Chairman or the Speaker of the House deems pertinent.

2. During his tenure and for one year thereafter, no commissioner, officer or employee of the Authority, or any member of any governing body of the Tribe, or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest, direct or indirect, in any project, or in any contract or proposed contract relating to any project, unless prior to such acquisitions, he discloses his interest in writing to the Authority and such disclosure is entered upon the minutes of the Authority, and the commissioner, officer or employee shall not participate in any action by the Authority relating to the facility or contract in which he has any such interest. If any commissioner, officer or employee of the Authority involuntarily acquires any such interest, or voluntarily or involuntarily acquired by such interest prior to appointment or employment as a commissioner, officer or employee, the commissioner, officer or employee shall not participate in any action by the Authority relating to the facility or contract in which he has such interest. Any violations of the foregoing provisions of this section shall constitute misconduct in office. This section shall not be applicable to the acquisition of any interest in obligations of the Authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to water and waste water services

the rates for which are fixed or controlled by a governmental agency, or to membership on the Board as provided in Art. IV, foregoing.

3. Each project developed or operated under a contract providing for Federal financial assistance shall be developed and operated in compliance with all requirements of such contract and applicable Federal legislation, and with all regulations and requirements prescribed from time to time by the Federal government in connection with such assistance.

4. The Authority shall obtain or provide for the obtaining of adequate fidelity bond coverage of its officers, agents or employees handling cash or authorized to sign checks or certify vouchers.

5. The Authority shall not construct or operate for profit.

6. The property of the Authority is declared to be public property used for essential public and governmental purposes and such property and the Authority are exempt from all taxes and special assessments of the Tribe.

7. All property including funds acquired or held by the Authority pursuant to this Ordinance shall be exempt from levy and sale by virtue or an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Authority be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its (rents,) fees or revenues or the right of the Federal government to pursue any remedies conferred upon it pursuant to the provisions of this ordinance.

ARTICLE VIII

COOPERATION IN CONNECTION WITH PROJECTS

1. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of projects, the Tribe hereby agrees that:

(a) It will not levy or impose any real or personal property taxes or special assessments upon the Authority or any project of the Authority.

(b) It will furnish or cause to be furnished to the Authority and the households, governmental agencies or persons served, all services and facilities of the same character and to the same extent as the Tribe furnishes from time to time.

(c) It will do any and all things, within its lawful powers, necessary, convenient to aid and cooperate in the planning, undertaking, construction or operation of projects.

(d) The Tribal government hereby declares that the powers of the tribal government shall be vigorously utilized to enforce collection for nonpayment or other contract violations including service interruption and action through appropriate courts.

(e) The Tribal courts shall have jurisdiction to hear and determine an action for collection from a customer or consumer. The Tribal Government hereby declares that the powers of the tribal courts shall be vigorously utilized to collect for nonpayment or other contract violations.

2. The provisions of this Article shall remain in effect with respect to any project, and said provisions shall not be abrogated, changed or modified without the consent of the other party including governmental, private or other so long as (a) the project is owned by a public body or governmental agency and is used for water and waste water services on the reservation, (b) any contract between the Authority and the other party including governmental, private or other for loans or methods of funding in connection with any such project, remains in force and effect, or (c) any obligations issued in connection with such project or any monies due to the other party including governmental, private or other in connection with such project remain unpaid, which period ends the latest. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development and operation of water, sewer or other water and waste water projects, including the Federal government, the provisions of this section shall inure to the benefit of and be enforced by such public body or governmental agency.

ARTICLE IX

APPROVAL BY THE SECRETARY OF INTERIOR OR HIS OR HER DESIGNEE

With respect to any financial assistance contract or contracts by between or among the Authority and the various agencies of the Federal government, the Authority shall obtain the approval of the Secretary of the Interior or his or her designee if required by law.

CERTIFICATION

I hereby certify that this Bill for an Act approving the Ordinance creating a Apsalooke Water and Waste Waster Authority was duly approved by the Crow Tribal Legislature with a vote

of 14 in favor, 0 opposed, and 0 abstained, and that a quorum was present on this
____ day of _____, 2004.

Benjamin Cloud III
Speaker of the House *pro tem*
Crow Tribal Legislature

ATTEST:

Jonathan O. Stone
Secretary, Crow Tribal Legislature

EXECUTIVE ACTION

I hereby _____ approve, _____ veto this Bill pursuant to the authority vested in the
Chairman of the Crow Tribe by Article V, Section 8 of the Constitution and Bylaws of the Crow
Tribe of Indians, on this ____ day of _____, 2004.

Carl E. Venne, Chairman
Crow Tribal Executive Branch