

**APRIL REGULAR SESSION 2015 CROW TRIBAL LEGISLATURE**

**CLB No. 15-03**

Introduced by Tribal Chairman Darrin Old Coyote  
For and On Behalf of the Crow Tribal Executive Branch

A Bill for an Act Titled

**THE CROW TRIBAL WATER CODE**

Legislative Findings:

**WHEREAS**, Article V, Section 2(a) of the Crow Tribal Constitution vests the Crow Tribal Legislature (hereinafter “Legislature”) with the power and duty to promulgate and adopt laws, resolutions, codes, ordinances, regulations and guidelines in accordance with the Crow Constitution and federal law for the governance of the Crow Tribe and for licensing of members and non-members for various purposes; and

**WHEREAS**, Article IV, Section 3(g) of the Crow Tribal Constitution vests the Crow Tribal Executive Branch (hereinafter “Executive Branch”) with the power and responsibility, subject to any limitations imposed upon such powers by the statutes and laws of the United states, to enforce all laws, ordinances, resolutions, regulations, or guidelines providing for the licensing of members and non-members for various purposes; and

**WHEREAS**, Article IV, Section 3(j) of the Crow Tribal constitution vests the Executive Branch with the power and responsibility, subject to any limitations imposed upon such powers by the statutes and laws of the United States, to protect and preserve the property and natural resources of the Crow Tribe, including water, in accordance with ordinances adopted by the Legislature; and

**WHEREAS**, Article IV, Section 4(a) of the Crow tribal constitution provides that the “general duties” of the Executive Branch Officials shall include the duty to implement all laws, resolutions, codes, and policies duly adopted by the Legislature; and

**WHEREAS**, the Montana Legislature in special session ratified the *Water Rights Compact Entered Into by the State of Montana, Crow Tribe, and United States of America* (hereinafter “Water Compact”) on June 22<sup>nd</sup>, 1999, and the United States in congress ratified the entire Water Settlement on December 8<sup>th</sup>, 2010 in the overall Claims Resolution Act, and the Crow Tribal General Council via referendum ratified the Crow Water Rights Settlement, including the Water Compact on March 19<sup>th</sup>, 2011; and

**WHEREAS**, Article VII(A)(1) provides that the Effective Date of the Water Compact shall be the date when the State of Montana, Crow Tribe, and United States Congress have each ratified the Water Compact, whichever date is latest; and

**WHEREAS**, Article IV(A)(2)(b) of the Water Compact provides that administration and enforcement of the Crow Tribal Water Right shall be through the Crow Tribal Water Code (hereinafter “Water Code”) which shall be developed and adopted by the Crow tribe pursuant to any requirements set forth in the Crow Tribal Constitution and which shall be adopted by the Crow Tribe within two (2) years of the Effective Date of the Water Compact; and

**WHEREAS**, Section 407(f)(1) of the Crow Tribe Water Rights Settlement Act (hereinafter “Settlement Act”) provides that notwithstanding the time period set forth in Article IV(A)(2)(b) of the Water Compact, not later than three (3) years after the date on which the Crow Tribe ratifies the Water Compact, the Crow Tribe shall enact the Water Code, which must provide for the management, regulation, and governance of all uses of Crow tribal water rights and the establishment by the Crow Tribe of conditions, permit requirements, and other limitations relating to the storage, recovery, and use of the Crow tribal water rights in accordance with the Water Compact; and

**WHEREAS**, Section 407(f)(2) of the Settlement Act provides that the Water Code must include language which establishes as Crow tribal law that Crow tribal allocations of water to allottees shall be satisfied with water from the Crow tribal water rights; that charges for delivery of water for irrigation purposes for allottees shall be assessed on a just and equitable basis; that there is a process by which an allottee may request that the Crow Tribe provide water for irrigation use in accordance with the Settlement Act; that there is a due process system for the consideration and determination by the Crow 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 appeal and adjudication of any denied or disputed distribution of water; and a process for resolution of any contested administrative decision; that there is a requirement that any allottee with a claim relating to the enforcement of rights of the allottee under the Water Code relating to the amount of water allocated to land of the allottee must first exhaust remedies available to the allottee under Crow tribal law, including the Water Code, before initiating an action against the United States or petitioning the Secretary of Interior pursuant to Section 407(d) of the Settlement Act; and

**WHEREAS**, Section 407(f)(3)(B) of the Settlement Act provides that the Water Code shall not be valid unless the provisions required by Section 407(f)(2) of the Settlement Act are approved by the Secretary of the Interior; and

**WHEREAS**, Section 407(f)(3)(c) of the Settlement Act provides that the Secretary of the Interior shall approve or disapprove the Water Code within a reasonable period of time after the date on which the Crow Tribe submits it to the Secretary.

**NOW, THEREFORE, BE IT HEREBY ENACTED AS CROW TRIBAL LAW BY THE  
CROW TRIBAL LEGISLATURE IN REGULAR SESSION:**

**Section 1. Codification Instructions.** The attached and incorporated as if stated herein "Crow Tribal Water Code: shall be made Title 25 of the Crow Law and Order Code.

**Section 2. Effective Date.** The Crow tribal Water Code shall become effective as a matter of Crow tribal law immediately upon being duly adopted by the Crow Tribal Legislature and approved by the Chairman of the Executive Branch, or in accordance with the veto override process established by the Crow Tribal Constitution and CLB 06-98. *Provided that*, all such provisions of the Crow Tribal Water Code which require review and approval by the Secretary of the Interior shall become effective upon such approval in accordance with federal law.

**Section 3. Submittal of Water Code to Interior Department.** Upon the effective date of this Act, the Secretary of the Executive Branch shall immediately submit a certified and complete copy of the Crow Tribal Water Code to the Secretary of the Interior in Washington, D.C.

[Remainder of page left blank intentionally]

### CERTIFICATION

I hereby certify that **THE CROW TRIBAL WATER CODE**, was duly adopted by the Crow Tribal Legislature with a vote of 12 in favor, 2 opposed, and 0 abstained and that a quorum was present on this 20<sup>th</sup> day of April, 2015.



Sen. R. Knute Old Crow, Sr  
Speaker of the House  
Crow Tribal Legislature

ATTEST:



Sen. Conrad J. Stewart  
Secretary Pro Tem  
Crow Tribal Legislature



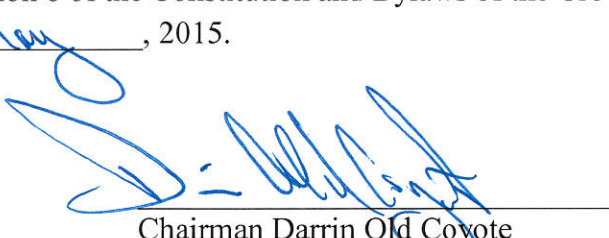
### EXECUTIVE ACTION

I hereby:

X approve

\_\_\_\_\_ veto

**THE CROW TRIBAL WATER CODE**, 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 4 day of May, 2015.



Chairman Darrin Old Coyote  
Crow Tribal Executive Branch



# A BILL FOR AN ACT TITLED: "THE CROW TRIBAL WATER CODE"

**Bill or Resolution:** CLB15-03 **Introduced by:** Chairman Darrin Old Coyote **Date of Vote:** 4/22/2015  
**Number**

<u><b>Representative:</b></u>	<b>Yes</b>	<b>No</b>	<b>Abstained</b>
G. Three Irons	<u>  X  </u>	<u>          </u>	<u>          </u>
B. Rogers	<u>  X  </u>	<u>          </u>	<u>          </u>
P. Hill	<u>          </u>	<u>  X  </u>	<u>          </u>
E. Birdinground	<u>  X  </u>	<u>          </u>	<u>          </u>
A.Coyote-Runs, Sr.	<u>  X  </u>	<u>          </u>	<u>          </u>
V. Nomee	<u>  X  </u>	<u>          </u>	<u>          </u>
T. Gros Ventre	<u>  X  </u>	<u>          </u>	<u>          </u>
P. Alden, Jr.	<u>          </u>	<u>          </u>	<u>          </u>
V. Crooked Arm	<u>  X  </u>	<u>          </u>	<u>          </u>
P. Spotted Horse, Sr.	<u>  X  </u>	<u>          </u>	<u>          </u>
L. DeCrane	<u>          </u>	<u>          </u>	<u>          </u>
C. Goes Ahead	<u>          </u>	<u>          </u>	<u>          </u>
B. Hugs	<u>  X  </u>	<u>          </u>	<u>          </u>
G. Real Bird, Jr.	<u>  X  </u>	<u>          </u>	<u>          </u>
B. Good Luck	<u>          </u>	<u>  X  </u>	<u>          </u>
G. Stewart	<u>          </u>	<u>          </u>	<u>          </u>
C. Stewart <i>Secretary Pro-Tem</i>	<u>  X  </u>	<u>          </u>	<u>          </u>
R. Old Crow, Sr. <i>Speaker of the House</i>	<u>  X  </u>	<u>          </u>	<u>          </u>
<b>Totals:</b>	<u>  12  </u>	<u>    2    </u>	<u>    0    </u>

Result of Vote:

**Passed**

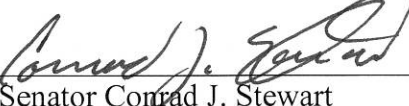
**Not Passed**

**Tabled**

**Veto-Override**

  
 Senator R. Knute Old Crow, Sr.  
 Speaker of the House

4/22/15  
 Date

  
 Senator Conrad J. Stewart  
 Secretary Pro-Tem

5/1/15  
 Date

Crow Tribal Water Code  
Passed by Legislature  
04/22/2015

**CROW LAW AND ORDER CODE  
TITLE 25**



**CROW TRIBAL WATER CODE**

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## **CHAPTER 1: GENERAL PROVISIONS**

**25-1-101. Short Title.**

**25-1-102. Statement of Authority.**

**25-1-103. Statement of Intent.**

**25-1-104. Nature of Tribal Water Right.**

**25-1-105. Definitions.**

**25-1-106. Severability.**

**25-1-107. Amendments to Water Code.**

**25-1-108. Stream Flow and Lake Level Management Plan.**

**25-1-109. Tribal Water Rights Not Affected by Water Rights Outside of Montana**

**25-1-101. Short Title.** This title may be referred to as the “Crow Tribal Water Code” or any short form derived therein.

**25-1-102. Statement of Authority.** The Crow Tribal Water Code is enacted pursuant to the Water Rights Compact Entered Into by the State of Montana, Crow Tribe, and United States of America; the Crow Tribe Water Rights Settlement Act of 2010, the 1993 American Indian Agricultural Resource Management Act, and the inherent sovereign authority of the Crow Tribe of Indians, as acknowledged by the Treaty with the Crow Tribe of August 4, 1825 and the Fort Laramie Treaties of September 17, 1851 and May 7, 1868. The Crow Tribal Legislative Branch of Government, pursuant to the tribal law-making authority delegated from the Crow Tribal General Council through Article V of the 2001 Crow Tribal Constitution to promulgate and adopt codes in accordance with federal law, does hereby enact and establish the Crow Tribal Water Code for the regulation and administration of all uses of the Crow tribal water right.

**25-1-103. Statement of Intent.** The intent of the Legislature is to establish a just, fair, and equitable process by which the Crow Tribal Government may issue and regulate all uses of the Crow Tribal Water Right and to ensure the highest level of due process protections for tribally-regulated water users. The intent of the Legislature is to encourage water conservation and responsible water usage while ensuring full protections of the rights of landowners to a fair distribution of tribal water for beneficial uses. The Crow Tribal Water Resources Department was created, in part, to assure that the Water Code is administered and enforced in compliance with the provisions of the Settlement Act and the Water Compact.

**25-1-104. Nature of Tribal Water Right.** Pursuant to the May 7, 1868, Treaty and the Crow Tribe’s senior priority date, all natural and local waters arising upon, collected from, flowing through, and otherwise found within or upon the Crow Reservation are and shall remain under the ownership of the Crow Tribe and held in trust by the United States. The quantification of the Tribal Water Right shall be as provided for in the Water Compact. All Water Rights recognized under State law as of June 22, 1999, shall be considered fully licensed and lawful unless as otherwise provided for in the Water Compact.



**25-1-105. Definitions.** Definitions in the Water Compact and the Water Rights Settlement Act are incorporated into this Water Code by reference. If definitions of terms in this Water Code are in conflict with definitions in the Water Compact or the Settlement Act, the definitions in the Compact and the Settlement Act shall apply.

“Allottees” means any individual who holds a beneficial real property interest in an allotment of Indian land that is (A) located within the Reservation or ceded strip; and (B) held in trust by the United States.

“Allottee Water Right” means the historical right to beneficial uses of water by a person who holds a real property interest in an Indian allotment that is located on allotted trust lands within the Crow Reservation and the Ceded Strip.

“Beneficial Use” means a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, power generation, cultural and spiritual, and recreational uses.

“Cabinet Head” means the Cabinet Head of the Crow Tribal Water Resources Department.

“Commission” means the Crow Tribal Water Commission, as established by this Water Code.

“Crow Reservation” or “Reservation” means the Crow Indian Reservation as depicted in Appendix 4 to the Water Compact, including all tribal lands and mineral resources in the 1904 Ceded Strip and such other lands as may be designated by future Congressional Act as part of the Crow Indian Reservation.

“Crow Tribal Constitution” means the 2001 Constitution and Bylaws of the Crow Tribe of Indians.

“Crow Tribe” means the Crow Tribe of Indians (also known as the “Apsaalooke Nation”), a federally recognized Indian tribe.

“Department” means the Crow Tribal Water Resources Department.

“Director” means the Director of the Crow Tribal Water Resources Department.

“Executive Branch” means the Crow Tribal Executive Branch of Government and its officers.

“General Council” means the Crow Tribal General Council, as defined in Article I of the Crow Tribal Constitution.

“Ground water” means any water that is beneath the ground surface.

“Judicial Branch” means the Crow Tribal Judicial Branch of Government with such courts as provided for in the Crow Law and Order Code.

“Legislature” means the Crow Tribal Legislative Branch of Government.

“Settlement Act” means Title IV of the Claims Resolution Act of 2010, the “Crow Tribe Water Rights Settlement Act of 2010,” Public Law 111-291.

“Tribal Chairman” means the Chairman of the Crow Tribal Executive Branch of Government.

“Water Code” means the Crow Tribal Water Code.

“Water Compact” means the Water Rights Compact Entered Into by the State of Montana, Crow Tribe, and United States of America codified at the Montana Code Annotated 85-20-901.

“Water Compact Board” means the Crow-Montana Water Compact Board as established by Article IV (F) (1) of the Water Compact.

**25-1-106. Severability.** In the event the Judicial Branch finds and declares any provision of the Water Code to be inconsistent with the Crow Tribal Constitution, the remainder of the Water Code shall remain in full force and effect so long as severing the unconstitutional portion does not render unjust or impractical the enforceability and applicability of the remainder of the Water Code. Provided that, the Judicial Branch must specifically explain in a written order which provision of the Water Code is inconsistent with the Crow Tribal Constitution and which constitutional provisions are specifically violated and, to the extent feasible, what remedial measures the Crow Tribe may take to correct the constitutional issue.

**25-1-107. Amendments to Water Code.** The Water Code may be amended by legislative act of the Legislature or General Council, in accordance with any and all procedural requirements provided for in the Crow Tribal Constitution. As provided for in the Settlement Act, any such amendments shall only take effect upon being reviewed and approved by the Secretary of the Interior, or designee, in accordance with federal law.

**25-1-108. Stream Flow and Lake Level Management Plan.** The Water Code is subject to the provisions of the Bighorn River and Bighorn Lake Stream Flow and Lake Level Management Plan dated June 16, 2000. Tribal approval of modifications to the Bighorn River and Bighorn Lake Stream Flow and Lake Level Management Plan will be in accordance with established Tribal law.

**25-1-109. Tribal Water Rights Not Affected by Water Rights Outside of Montana.** Nothing in the Water Compact shall be construed as subordinating any future development of the Tribal Water Right to being junior in priority to any water rights held by any persons or entities outside of the State of Montana, including but not limited to Indian tribes or individual Indians.

## **CHAPTER 2: CROW TRIBAL WATER RESOURCES DEPARTMENT**

**25-2-101. Authorization, Scope of Authority.**

**25-2-102. Cabinet Head.**

**25-2-103. Director.**

**25-2-104. Department Administrative Duties.**

**25-2-105. Department Rule-Making Authorities.**

**25-2-106. Registry of Tribal Water Uses and Users.**

**25-2-107. Intergovernmental Agreements.**

**25-2-108. Annual Budget.**

**25-2-109. Reports to Executive Branch Officials.**

**25-2-110. Quarterly Reports to Legislature.**

**25-2-101. Authorization, Scope of Authority.** The Crow Tribal Water Resources Department (“Department”) shall be an administrative, cabinet department of the Executive Branch under the supervision and direction of the Executive Branch. The Department shall be headed by a Director, as provided in Section 103 below. The Department shall exercise the fullest amount of independence consistent with the Crow Tribal Constitution.

**25-2-102. Cabinet Head.** The Cabinet Head shall provide policy guidance to the Department to meet goals and objectives of the Executive Branch. The Cabinet Head shall be appointed by the Tribal Chairman in accordance with Joint Action Resolution 02-04 and shall be required to have a combination of education and experience sufficient to capably administer the Department. Removal of the Cabinet Head shall be at the discretion of the Tribal Chairman.

**25-2-103. Director.** The Director of the Department shall be a salaried, full-time employee of the Executive Branch of the Crow Tribe and shall be required to have a combination of education and experience sufficient to capably administer the Department. Appointment and removal of the Director shall be in accordance with Crow Tribal personnel policy. The Director shall administer the activities of the Department including day to day operations of the Department, issuing water permits, overseeing design and construction of the rehabilitation and betterment of the Crow Irrigation Project and the Crow Municipal, Rural and Industrial Project authorized by the Settlement Act, and responsibilities assigned under the Settlement Act and the Water Rights Compact. The Director may delegate any element of his authority, in a signed writing, to any officer of the Department.

**25-2-104. Department Administrative Duties.** The Department shall:

- (1) Enforce and administer this chapter and rules adopted under 25-2-105;
- (2) Prescribe procedures, forms, and requirements for applications, permits, certificates, claims of existing rights, and proceedings under this Water Code and prescribe the information to be contained in any application, claim of existing right, or other document to be filed with the Department under this Water Code;
- (3) Establish and keep in its office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter;

- (4) Cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter; and
- (5) The Department, acting through the Director, is authorized to order immediate corrective actions in the event that the use or development of water poses an eminent threat to life, safety, or property or is otherwise in violation of law.

**25-2-105. Department Rule-Making Authorities.**

- (1) Fees. The Department may prescribe fees or service charges for any public service rendered by the Department under this Water Code, including application filing fees, permit or certificate issuance costs, administrative hearing costs, permit revocation investigation costs, for field verification of issued and completed permits, and for any permit changes. Use of all fees and charges are subject to 25-2-108.
- (2) Rule Making. The Department shall establish fair and equitable rules, regulations, and procedures necessary for the efficient administration and enforcement of the Water Code. These rules may include but are not limited to:
  - (a) Govern the issuance, conditions, and terms of permits under this Water Code;
  - (b) Require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;
  - (c) Require the owner or operator of appropriation facilities to report to the Department the readings of measuring devices at reasonable intervals and to file reports on appropriations;
  - (d) Regulate the construction, use, and sealing of wells to prevent waste, contamination, or pollution of ground water;
  - (e) Govern temporary emergency appropriations, without prior application for a permit, necessary to protect life or property;
  - (f) Enforce the terms and conditions of permits issued by the Department;
  - (g) Prohibit unauthorized use, waste, and contamination of Crow Tribal water;
  - (h) Prohibit or limit use of water likely to cause damage to the property of others; and
  - (i) Identify and protect pre-1999 historic uses.
- (3) Public Notice and Approval. The Department, in coordination with the Legislature, shall allow for public participation and comment in the rulemaking process. All administrative rules shall be published with adequate public notice under written Executive Branch policy as a proposed rule at least thirty (30) days prior to taking effect. The Secretary of the Legislature shall be served with a copy simultaneous with public notice. All rules and regulations promulgated by the Department shall be referred to the Legislature for approval or disapproval. If the legislature does not approve or disapprove the rules and regulations as promulgated will become effective thirty (30) days after the proposed rule has been published.

**25-2-106. Registry of Tribal Water Uses and Users.** The Director shall keep a registry of all beneficial uses and users of the Tribal Water Right, including new development, changes in use, and transfers. It shall be updated at least on an annual basis. The registry shall be a public document and made available by the Director for inspection and copy at a reasonable fee to any person. The Director shall provide a full copy to the Tribal Secretary, Secretary of the Legislature, Chairman of the Infrastructure Committee of the Legislature, and the Director of the Montana Department of Natural Resources and Conservation, or its successor agency, at such time as it is updated. The Director shall prepare and submit an annual report to the Montana Department of Natural Resources Department and the Bureau of Indian Affairs, Rocky Mountain Regional Office, as provided in the Water Compact.

**25-2-107. Intergovernmental Agreements.** The Director may enter into written agreements with federal, state, local, and tribal entities for the exclusive purpose of implementing and enforcing the Water Compact and Water Code consistent with the Constitution of the Crow Tribe of Indians 2001. Such agreements shall not expand the authority of the Director or disparage any users of the Tribal Water Right. An Agreement shall be provided to the Executive Branch and the Legislature immediately upon its effectiveness and shall be considered public documents. Provided, finally, the Director is not authorized to waive Crow tribal sovereign immunity.

**25-2-108. Annual Budget.** The Director shall prepare an annual budget for the Department. The annual budget shall be submitted within a scheduled time period to the Executive Branch for submittal to the Legislature for final approval.

**25-2-109. Reports to Executive Branch.** The Director shall prepare and submit monthly department progress reports to the Tribal Chief Executive Officer. Monthly progress reports will be provided to the Executive Branch by the Chief Executive Officer as required by established Executive Branch policy.

**25-2-110. Quarterly Reports to Legislature.** The Director shall prepare and submit quarterly reports for the Department to the Executive Branch. The Executive Branch shall submit and present the quarterly reports to the Legislature during its regular scheduled Quarterly Sessions.

### **CHAPTER 3: WATER RESOURCES COMMISSION**

**25-3-101. Creation of Water Resources Commission.**

**25-3-102. Composition of the Commission, Appointment and Term.**

**25-3-103. Qualifications of Commission Members.**

**25-3-104. Oath of Office.**

**25-3-105. Compensation of Commission Members.**

**25-3-106. Suspension and Removal of Commission Members.**

**25-3-107. Disqualification of Commission Member in Particular Cases.**

**25-3-108. Rules and Regulations.**

**25-3-101. Creation of Water Resources Commission.** There is hereby established the Crow Tribal Water Resources Commission. Commission members shall attend programs for training



about the Compact, this Water Code and water resources as the Tribal Chairman requires pursuant to 25-2-105. The scope of the Commission's authority is to resolve disputes concerning use of the Tribal Water Right including but not limited to disputes concerning the fair and equitable distribution of water through the Crow Municipal, Rural and Industrial Water System and the Crow Irrigation Project. The Commission will be an impartial body with appeal authority over disputed issuance of permits and revocations by the Department. The Commission shall make findings of fact and rulings which are final for the Department.

**25-3-102. Composition of the Commission, Appointment and Term.** The Commission shall consist of seven (7) members, one from each of the Crow Reservation Districts and one at-large member, appointed for a term of three (3) years each by the Tribal Chairman provided that the initial Commission shall have three (3) members serving for a term of three (3) years, two (2) members serving for a term of two (2) years, and two (2) members serving a term of (1) year, such initial terms as designated by the Tribal Chairman. The Commission shall include at least two (2) landowners on the Crow Reservation or 1904 Ceded Strip. The Commission shall by majority vote designate which member shall serve as Chairman. A quorum shall consist of three (3) members and the Chairman of the Commission.

**25-3-103. Qualifications of Commission Members.** To be eligible to hold the office of Commission member, a person:

- (1) must be at least thirty (30) years of age;
- (2) must have at least a bachelor degree from an accredited college with one (1) year of relevant land or water experience; an associate degree from an accredited college with three (3) years of relevant land or water experience; or a high school diploma/GED with five (5) years of relevant land or water experience;
- (3) must be of high moral character and integrity;
- (4) must have no criminal felony convictions;
- (5) must take training to be knowledgeable about the Water Compact and the provisions of this Water Code;
- (6) must be physically able to carry out the duties of the office;
- (7) must be a Crow Tribal Member; and,
- (8) may not be a current elected official of the Legislature, Executive Branch or the Judicial Branch.

**25-3-104. Oath of Office.** On taking office, each member of the Commission shall take an oath as follows:



“I, \_\_\_\_\_, do solemnly swear that I will administer justice without respect to persons and will truly, faithfully and impartially discharge and perform all the duties incumbent upon me as a member of the Water Resources Commission according to the best of my abilities and understanding. So help me God.”

**25-3-105. Compensation of Commission Members.** The compensation for Commission members shall be fixed by the Executive Branch consistent with other tribal boards and commissions. The rates of compensation may not be decreased during a member’s term of office. Commission members shall receive compensation only for those days they sit as members of the Commission, including meetings they are required to attend as member of the Commission. Compensation and expenses of Commissioners will be paid out of the Department’s budget referenced in 25-2-108.

**25-3-106. Suspension and Removal of Commission Members.**

- (1) Upon written charges of specific misconduct in office or permanent physical or medical disability to carry out the duties of office, the Chief Executive Officer of the Crow Tribe Executive Branch may initiate proceedings to remove the Chairman or any other member of the Commission from office. “Misconduct”, as used in this Section, shall mean:
  - (a) conviction of a felony;
  - (b) abusive or incompetent performance of duties in office, or repeated failure to perform the duties of office;
  - (c) self-dealing or biased decision-making in performing the duties of office; or
  - (d) violations of confidentiality.
- (2) All charges shall be in writing and served on the Commission member personally, or by certified or registered mail return receipt requested, not less than ten (10) days prior to the date of hearing before the Crow Tribal Employment Rights (TERO) Commission on the charges. A member proposed to be removed shall be given an opportunity to answer by written and oral presentation before the Crow TERO Commission. The TERO Commission shall create a record of all proceedings and provide that record to a Board consisting of the Chief Executive Officer of the Crow Tribe Executive Branch, the Chair of the Natural Resource Committee of the Crow Tribal Legislative Branch, and a third person mutually selected by the two other Board members. The Board will decide whether or not to remove the Crow Tribal Water Resources Commission member. The decision of the Board shall be final.

**25-3-107. Disqualification of Commission Member in Particular Cases.** A member of the Commission shall recuse himself or herself in any proceeding in which:

- (1) his or her impartiality might reasonably be questioned;
- (2) he or she has any personal bias or prejudice concerning any party;

- (3) he or she or a member of his or her immediate family might be a witness or has any personal knowledge of disputed evidentiary facts concerning the proceeding;
- (4) he or she or any member of his or her immediate family is a party or has any financial or other interest in the proceeding, has acted or is acting as an attorney in the proceeding; or
- (5) he or she might otherwise appear to be biased or prejudiced.

**25-3-108. Rules and Regulations.** The Commission will promulgate rules for how the Commission operates, including rules for the conduct of hearings and the appeal process.

## **CHAPTER 4: TRIBAL WATER PERMITS**

**25-4-101. Surface, Groundwater, and Storage Permits.**

**25-4-102. Permits Required, Content.**

**25-4-103. Application for Permit or Change in Appropriation Right.**

**25-4-104. Exceptions to Permit Requirements.**

**25-4-105. Notice of Application for Permit or Change in Appropriation Right.**

**25-4-106. Objections.**

**25-4-107. Hearings on Objections.**

**25-4-108. Action on Application for Permit or Change in Appropriation Right.**

**25-4-109. Criteria for Issuance of Permit.**

**25-4-110. Terms of Permit.**

**25-4-111. Allocation of Water to Allottees.**

**25-4-112. Changes in Use and Transfer of Water Rights.**

**25-4-101. Surface, Groundwater, and Storage Permits.** A permit shall be required for new uses and development of surface water, groundwater, or storage of the Tribal Water Right.

**25-4-102. Permits Required, Content.**

- (1) All new uses, changes in use, and transfer of water rights of the Tribal Water Right shall be in accordance with water use permits issued by the Director, except as specifically provided for in the Water Compact or the Water Code. The Tribal Water Right may be used by agencies or instrumentalities of the Crow Tribe, Tribal Members, municipalities, schools, non-tribal entities, or other persons authorized by the Department, provided that the Department may not limit or deprive any Indians owning land held in trust by the United States on the Crow Reservation of any right, pursuant to 25 U.S.C. 381 and the Settlement Act, to a just and equitable portion of the Tribal Water Right for irrigation purposes. Tribal water use permits shall state with sufficient specificity each of the following:
  - (a) holder of the right,
  - (b) source of the water, including whether the water is to be delivered through the Crow Irrigation Project, MR&I System, or other means,
  - (c) property upon which the water will be used (if applicable),

- (d) quantified amount of water available,
  - (e) flow rate in cubic feet per second for surface water and gallons per minute for groundwater wells and volume in acre feet,
  - (f) period of use,
  - (g) type(s) of beneficial use,
  - (h) priority date,
  - (i) distinction between judicially decreed water rights and permitted water rights (if applicable),
  - (j) any restrictions on the transfer in use of such water,
  - (k) the duration of the permit, and
  - (l) such other information as may be deemed necessary by the Director.
- (2) Religious or cultural uses of the Tribal Water Right by Tribal Members on the Crow Reservation in *de minimis* amounts as referenced in Article III.G.2 (a) of the Water Compact shall not require any permit.
- (3) The Director shall create applications for permits to the use of the Tribal Water Right and make such permits readily available to the public.

**25-4-103. Application for Permit or Change in Appropriation Right.**

- (1) Except as provided in 25-4-102 and 25-4-104, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works unless the person applies for and receives a permit or an authorization for a change in appropriation right from the Department.
- (2) The Department shall adopt rules that are necessary to determine whether an application is correct and complete, based on the provisions applicable to issuance of a permit under this part or a change in appropriation right pursuant to 25-4-110. The rules must be adopted in compliance with 25-2-105.
- (3) The application must be made on a form prescribed by the Department. The Department shall make the forms available through its office.
- (4) The applicant shall submit a correct and complete application. The determination of whether an application is correct and complete must be based on rules adopted under subsection (2) that are in effect at the time the application is submitted.
- (5) The Department shall notify the applicant of any defects in an application within thirty (30) days. The defects must be identified by reference to the rules adopted under subsection (2). If the Department does not notify the applicant of any defects within thirty (30) days, the application must be treated as a correct and complete application.
- (6) An application does not lose priority of filing because of defects if the application is corrected or completed within thirty (30) days of the date of notification of the defects. The Department may extend the time period for correcting or completing a defective

permit application up to a maximum of sixty (60) days. If the application is corrected within the time period set forth in this subsection, the priority date of the application is the original filing date of the application is made correct and complete.

- (7) An application not corrected or completed within sixty (60) days from the date of notification of the defects is terminated.

**25-4-104. Exceptions to Permit Requirements.** No permit will be required for exempt water uses as identified in Article III.G.2.a of the Water Compact.

- (1) A permit is not required before appropriating groundwater by means of a well or developed spring:
  - (a) when the appropriation is made by a local governmental fire agency and the appropriation is used only for emergency fire protection, which may include enclosed storage; or
  - (b) when in accordance with rules and regulations promulgated by the Department under 25-2-105.
- (2) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:
  - (a) the maximum capacity of the impoundment or pit is less than fifteen (15) acre-feet and the appropriation is less than thirty (30) acre-feet a year;
  - (b) the appropriation is from a source other than a perennial flowing stream; and
  - (c) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is forty (40) acres or larger.

**25-4-105. Notice of Application for Permit or Change in Appropriation Right.**

- (1) Upon receipt of an application for a permit or a change in appropriation right, the Department shall publish notice of receipt of the application on the Department's website within thirty (30) days of receipt.
- (2) Within sixty (60) days of the receipt of a correct and complete application for a permit or change in appropriation right, the Department:
  - (a) may meet informally with the applicant, the persons listed in subsection (3) (b), and persons who may claim standing pursuant to 25-4-106 to discuss the application;
  - (b) shall make a written preliminary determination as to whether or not the application satisfies the applicable criteria for issuance of a permit or change in appropriation right; and
  - (c) may include conditions in the written preliminary determination to satisfy applicable criteria for issuance of a permit or change in appropriation right.

- (3) If the preliminary determination proposes to grant an application, the Department shall, within sixty (60) days of receipt of a correct and complete application for a permit or change in appropriation, prepare a notice containing the facts pertinent to the application, including the summary of the preliminary determination and any conditions, and shall publish the notice on its website and once in a newspaper of general circulation in the area of the source and post the notice in the post office closest to the area of the source.
  - (a) If the preliminary determination proposes to deny an application, the process provided in 25-4-108 must be followed.
  - (b) Before the date of publication, the Department shall also serve the notice by first-class mail upon an appropriator of water or applicant for or holder of a permit who, according to the records of the Department, may be affected by the proposed appropriation.
- (4) The notice must state that by a date set by the department, not less than fifteen (15) days or more than sixty (60) days after the date of publication, persons may file with the Department written objections to the application.
- (5) The requirements of subsection (2) (a) and (3) (b) do not apply if the Department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons.

#### **25-4-106. Objections.**

- (1) An objection to an application under this chapter must be filed within sixty (60) days of the date a notice is published by the Department under 25-4-105. The objection to an application for a permit must state the name and address of the objector and facts supporting the basis for the objection.
- (2) A person or entity, including the Crow Tribe, has standing to file an objection under this section if the property or water rights of the objector on the Reservation and Ceded Strip would be adversely affected by the proposed appropriation.
- (3) An objector to an application under this chapter shall file a correct and complete objection on a form prescribed by the Department within the time period stated on the public notice associated with the application. The Department shall adopt rules in accordance with this chapter delineating the components of a correct and complete objection which will include the name of the applicant whose application is objected to, a description of the water use objected to, a short and plain statement of reasons why a permit should not be issued or should issue in a form different from that applied for, and any suggested conditions or other provisions which should be included in any permit granted. The Department shall notify the objector of any defects in an objection. An objection not corrected or completed within fifteen (15) days from the date of notification of the defects is terminated.

- (4) An objection is valid if the objector has standing pursuant to subsection (2), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under this section and rules of the Department.

**25-4-107. Hearings on Objections.** The Department shall refer the objection to the Commission within thirty (30) days of receipt of the objection for a hearing under Chapters 3 and 5.

**25-4-108. Action on Application for Permit or Change in Appropriation Right.**

- (1) If the Department proposes to deny an application for a permit or a change in appropriation right, unless the applicant withdraws the application, the Department shall refer the matter to the Commission for a hearing under Chapters 3 and 5.
- (2) If valid objections are not received on an application or if valid objections are unconditionally withdrawn and the Department preliminarily determined to grant the permit or change in appropriation right, the Department shall grant the permit or change in appropriation right as proposed in the preliminary determination pursuant to 25-4-105.
- (3) If valid objections to an application are received and withdrawn with conditions stipulated with the applicant and the Department preliminarily determined to grant the permit or change in appropriation right, the Department shall grant the permit or change in appropriation right subject to conditions as necessary to satisfy applicable criteria.
- (4) The Department shall deny or grant with or without conditions an appropriation right within 90 days after the administrative record is closed.
- (5) If the Department proposes to grant a permit or change in appropriation right in modified form, the applicant must be given an opportunity to be heard. The addition of conditions or changes to conditions required for approval does not constitute a modification of the application;
- (6) The Department shall serve notice of a preliminary determination to grant a permit or change in appropriation right in a modified form by first-class mail upon the applicant. The notice shall inform that the applicant may obtain a hearing before the Commission to show cause by a preponderance of the evidence as to why the permit or change in appropriation right should not be preliminarily determined to be granted in the modified form, by filing a request within thirty (30) days after the notice is postmarked. The notice must state that the permit or change in appropriation right will be preliminarily determined to be granted as modified unless a hearing is requested.
- (7) The Department may cease action upon an application for a permit or change in appropriation right and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for either of these reasons must be accompanied by a statement of the reasons for which it was returned, and for a permit application there is not a right



to a priority date based upon the filing of the application. Returning an application pursuant to this subsection is a final decision of the Department.

**25-4-109. Criteria for Issuance of Permit.**

- (1) The Department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:
  - (a) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and
  - (b) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the Department and other evidence provided to the Department. Legal availability is determined using an analysis involving the following factors:
    - i. identification of physical water availability;
    - ii. identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and
    - iii. analysis of the evidence on physical water availability and the existing legal demands including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.
  - (c) the water rights of a prior appropriator under an existing water right, or a permit, will not be adversely affected;
  - (d) the proposed means of diversion, construction, and operation of the appropriation works are adequate;
  - (e) the proposed use of water is a beneficial use;
  - (f) the applicant is an owner or has the written consent of the majority beneficial ownership interests in the property where the water is to be put to beneficial use; and
  - (g) the water quality of a prior appropriator will not be adversely affected.
- (2) The applicant is required to prove that the criteria in subsection (1) (g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the Commission that the criteria in subsection (1) (g), as applicable, may not be met.
- (3) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the Tribe may not knowingly permit,

aid, or assist in any manner an unauthorized appropriation, diversion impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of the Crow Reservation and the 1904 Ceded Strip except in accordance with this section.

- (4) The Department may adopt rules to implement the provisions of this section, in accordance with the procedure under 25-2-105.

#### **25-4-110. Terms of Permit.**

- (1) The Department may issue a permit for less than the amount of water requested, but may not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The Department may require modification of plans and specifications for the appropriation or related diversion or construction. In accordance with 25-4-102, the Department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 25-4-109 and it may issue temporary or seasonal permits. A permit must be issued subject to existing rights and any final determination of those rights made under this chapter.
- (2) The Department shall specify in the permit or in any authorized extension of time provided in subsection (3), the time limits for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the Department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The Department shall issue the permit or authorized extension of time subject to the terms, conditions, restrictions, and limitations it considers necessary to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit.
- (3) The Department shall by rule or by condition to a permit establish a process allowing for the extension of the time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of water to the proposed beneficial use. If commencement of the appropriation works, completion of construction, or the actual application of water to the proposed beneficial use is not completed within the time limit specified or within an extension of that time limit, the permit is void upon lapse of the time limit.
- (4) The original of the permit must be sent to the permittee, and a copy must be kept in the office of the Department.

**25-4-111. Allocation of Water to Allottees.** Tribal allocations of water to Allottees shall be satisfied with water from the Tribal Water Right.

- (1) Allottees shall be entitled as a matter of law to a just and equitable allocation of the Tribal Water Right for irrigation purposes.
- (2) Charges for delivery of water for irrigation purposes for Allottees shall be assessed on a just and equitable basis.
- (3) An Allottee may request that the Crow Tribe provide water for new irrigation use under Chapters 4 and 5 of this Code.
- (4) An Allottee with a claim relating to the enforcement of rights of the Allottee under the Water Code or otherwise relating to the amount of water allocated to land of the Allottee must first exhaust tribal remedies available to the Allottee under this Water Code and other applicable tribal law before initiating an action against the United States or petitioning the Secretary of the Interior pursuant to Section 407 of the Settlement Act.
- (5) Following exhaustion of remedies available under the Water Code and other applicable tribal law, an Allottee may seek relief under section 7 of the Act of February 8, 1887, codified at 25 U.S.C. 381, or other applicable law.

**25-4-112. Changes in Use and Transfers of Water Rights.** A permit shall be required for a transfer of water right, change in type of use, change in place of use, change in point of diversion, change in name, change in a state-based water right to a tribal-based water right, and change in a tribal-based water right to a state-based water right. Change in use permits may be issued if the change or transfer will not have an adverse effect on an existing water right developed or authorized prior to the date of application for change of use or transfer. Permits for change in use and transfer may be conditioned to insure that they will not adversely affect an existing water right developed or authorized prior to the date of application for change of use or transfer. Administration of the Water Code will comply with the Water Compact.

## **CHAPTER 5: HEARINGS**

**25-5-101. Scheduling of Hearing on Application.**

**25-5-102. Public Notice of Permit Hearing.**

**25-5-103. Comments on Applications.**

**25-5-104. Service List.**

**25-5-105. Interim Authorization to Use Water.**

**25-5-106. Public Hearing on Permit Applications.**

**25-5-107. Consolidation of Hearing.**

**25-5-108. Standards for Granting Permits.**

**25-5-109. Decision.**

**25-5-110. Finality of Decision.**

**25-5-111. Appeal.**

**25-5-101. Scheduling of Hearing on Application.** As soon as practicable after receiving an application for permit and objections from the Department under 25-4-107 or an appeal of the

denial of a permit or proposed conditions on a permit, the Commission shall review the application for adequacy and completeness. If additional information is required, the Commission shall so inform the applicant in writing. The Commission shall then schedule a hearing on that application which hearing shall determine the amount of water authorized to be diverted and used and establish the terms and conditions of diversion and use. The Commission shall notify the applicant of the hearing date, which shall be at least thirty (30) days but not more than sixty (60) days from the date of the notice.

**25-5-102. Public Notice of Permit Hearing.** After a hearing is scheduled as provided in Section 25-5-101, the applicant shall then cause to be publicly posted within the Crow Reservation District in which the permit is being requested, a copy of the application for permit and shall submit satisfactory proof of publication to the Commission. The cost of such publication shall be borne by the applicant. The Commission shall also post a public notice of all scheduled hearings at the Tribal Office and such other public places on the reservation as it shall deem appropriate. The notice shall state the date by which objections are due.

**25-5-103. Comments on Applications.** Any person or entity may comment to the Commission in writing upon any application for a permit under this Water Code, and shall serve any written comment on all persons on the service list provided for in Section 25-5-105. All comments and pleadings filed with the Commission in an appeal shall be personally served or mailed upon all persons on the service list provided for in Section 25-5-4 within ninety (90) days of the publication of the notice pursuant to Section 25-5-102.

**25-5-104. Service List.** The Commission shall establish a service list for each permit application, which includes the applicant, the Director, all objectors and all commentators to the application.

**25-5-105. Interim Authorization to Use Water.** The Commission may grant a temporary, revocable authorization to the use while the application is pending for a project not to exceed one (1) year.

**25-5-106. Public Hearing on Permit Applications.**

- (1) A public hearing shall be held on each application unless there has been no objection to or comment upon the application by the Tribe or any other person and the Commission determines to grant it with conditions accepted by the applicant. At least one (1) member of the Commission shall be present and shall preside over the hearing. The applicant and all objectors shall have the right to participate as parties, to present oral and written testimony of witnesses under oath, and to be represented by counsel at their own expense. A record shall be kept of all proceedings. The Commission shall have power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence. The Crow Tribal Court shall enforce any subpoena issued by the Commission in the same manner as the Court enforces its own subpoenas. The ordinary rules of evidence shall not apply in any hearing, but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfair if admitted, may be

excluded or may be admitted by the Commission only under special conditions or stipulations.

- (2) The Crow Tribe may participate in any hearing as a party and may present oral or written testimony of witnesses under oath.
- (3) The Commission may, in its discretion, request or permit the parties to submit additional materials or briefs after the hearing.

**25-5-107. Consolidation of Hearing.** Hearings concerning applications in a particular basin or area may be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication unless the applicant, and objector or the Crow Tribe files a timely objection.

**25-5-108. Standards for Granting Permits.**

- (1) The applicant for a permit shall be required (1) to prove, by a preponderance of the evidence, that all the data required in the permit application has been provided and is correct, and (2) to respond, to the satisfaction of the Commission, to all relevant objections or comments raised by any person and to all concerns expressed by the Commission regarding any permit application. If these requirements are met, and if the Commission in its discretion determines that issuance of the permit is in the best interest of the reservation community, the permit shall be granted.
- (2) In addition to the above, any applicant for a permit who is a non-Indian successor-in-interest to any Allottee seeking to use water within the Crow Reservation by virtue of a water right arising under the laws of the United States must prove, by a preponderance of the evidence, for the lands for which a permit is sought:
  - (a) that the Indian owner was beneficially irrigating such lands on the date the lands left trust ownership, and that those lands are practicably irrigable and have been continuously and beneficially irrigated by the Indian owner and each successor-in-interest from that time until the date of the application; or
  - (b) for lands not in irrigation at the time the lands left trust ownership, that the first owner after the lands left trust ownership diligently developed the lands, and that those lands are practicably irrigable and have been continuously and beneficially irrigated by the first non-trust owner and each successor-in-interest from the date of such development until the date of the application.

**25-5-109. Decision.** The members of the Commission present at the hearing shall issue a written decision setting forth pertinent findings of fact and an ultimate determination as to whether the application shall be granted, with specific conditions, or denied. This decision shall be adopted by a majority vote of the members of the Commission and delivered to all parties by registered mail, return receipt requested.



**25-5-110. Finality of Decision.** The decision of the Commission shall become final and take effect unless stayed on appeal.

**25-5-111. Appeal.** The decisions of the Commission pursuant to this Chapter and Chapters 4 and 6 shall be appealable as provided in Chapter 13 of this Code exclusively to the Crow Tribal Court.

## **CHAPTER 6: REVOCATION OF WATER USE PERMITS**

**25-6-101. Reasons for Revocation.**

**25-6-102. Procedure for Revocation Hearing.**

**25-6-101. Reasons for Revocation.** A permit may be totally or partially revoked for the following causes:

- (1) failure to comply with any terms and conditions of the permit, a provision of this Code or with any order or decision of the Commission;
- (2) nonuse of water;
- (3) any misrepresentation of a material fact in an application for the permit, or in any other statement made as part of the application process; or
- (4) voluntary relinquishment by any affirmative action manifesting an intention to relinquish a permit.

**25-6-102. Procedure for Revocation Hearing.** The Commission, on its own motion or upon request of the Director or any person holding or applying for a Tribal permit who is adversely affected by a prior permit action of the Commission, may commence revocation proceedings against any permittee by serving upon such permittee, by registered mail, return receipt requested at his or her last known address, a notice scheduling a revocation hearing at least forty-five (45) days from the date of the notice. Such notice shall be published by the Commission in the manner required by Section 25-5-102, and any affected person may participate in the revocation hearing. A public hearing shall be held on the proposed revocation in the manner provided in Chapter 5 of this Code. The decision of the Commission shall be appealable as provided in Chapter 13 of this Code.

## **CHAPTER 7: PRIORITY OF TRIBAL USES IN TIMES OF SHORTAGE AND RESOLUTION OF DISPUTES AMONG USERS OF THE TRIBAL WATER RIGHT.**

**25-7-101. Preferences of Uses by Purpose of Use.**

**25-7-102. Reduction of Use in Times of Shortage.**

**25-7-103. Proceedings to Determine that a Reduction in Use is Necessary.**

**25-7-104. Resolution of Disputes among Tribal Water Users.**



**25-7-101. Preference of Uses by Purpose of Use.** Categories of uses of the Tribal Water Right shall be given preference in times of shortage in the order established in accordance with administrative rules and shall include but not be limited to:

- (1) Domestic and municipal uses and uses for stock watering purposes not in excess of twenty (20) acre-feet per year;
- (2) Uses protected by Article III of the Water Compact and established pursuant to Chapter 4 of this Water Code;
- (3) Agricultural uses post 1999;
- (4) Instream flows for fish and wildlife purposes;
- (5) Industrial uses;
- (6) Power uses; and
- (7) Other beneficial uses.

**25-7-102. Reduction of Use in Times of Shortage.**

- (1) Whenever the Department, in its discretion, determines that water is not or will not be available during a particular period from any surface or ground water source, the Department may order a permittee to reduce or cease entirely his or her use of water. Any such order of the Department shall be enforced by the Director and by the Crow Tribal Court as a matter of the highest importance and without delay on the motion of the Director or any water user.
- (2) In issuing any order to reduce or cease water use, the Department shall, except as provided in subsection (3), give preference to the categories of uses in the order established pursuant to 25-7-101 and regulations promulgated pursuant thereto. Within each of the other categories of use, the Department shall give priority to permits in the order in which they were issued, the earliest having the highest priority.
- (3) The Department, in its discretion, may determine that only a portion of the uses in a particular category, other than uses in Section 25-7-101, shall be satisfied so as to allow some uses in a lower category to be satisfied. Any such determination of the Director shall be governed by due consideration of all factors which result in a just and equitable apportionment of water.

**25-7-103. Proceedings to Determine that a Reduction in Use is Necessary.**

- (1) If the Department determines, in its discretion, that it is practicable to do so, it shall give prior notice of its intent to order a reduction in use of water for a particular period by publication in one regularly published newspaper on the Reservation and posting at the

Tribal Office and such other public places on the Reservation as the Department shall deem appropriate. The Department may in that notice invite written comments to the Department and may announce a date for a public hearing to hear oral comments and consider any relevant evidence or information offered by the Director or any interested person or entity.

- (2) The Department's order for a reduction in use shall be published in the same manner as the notice provided in subsection (1) and shall be final for the Department. The decision may be appealed to Crow Tribal Court as provided in Chapter 13.

#### **25-7-104. Resolution of Disputes among Tribal Water Users.**

- (1) Any person permitted to use a portion of the Tribal Water Right may file a petition with the Commission challenging another person or entity for using water in a manner that infringes upon the petitioner's permitted use.
- (2) If the challenged person or entity claims the right to use water under state law, the Commission shall proceed no further but shall forward the petition to the Director for submission to the Crow-Montana Compact Board. Otherwise, the Commission shall serve a copy of the petition upon any person or entity named in it and upon the Director, post the petition on its website, and shall hold a public hearing on the petition in the manner provided in Sections 25-5-101 through 25-5-112 after reasonable notice to all parties.
- (3) In any proceeding before it, the Commission may enter an order after a hearing granting temporary or preliminary injunctive relief, or any other relief it deems appropriate, including revocation of the water permit.
- (4) Final decisions of the Commission may be appealed as provided in Chapter 13 of this Water Code, but shall remain in effect and shall be enforced by the Director and by the Crow Tribal Court unless the decision is modified or set aside by a final decision on appeal. The Crow Tribal Court shall review the Commission's Orders using an arbitrary and capricious standard. The Crow Tribal Court shall enforce orders of the Commission, including orders granting temporary or preliminary injunctive relief, in the same manner in which the Court enforces its own orders and on such terms as to bond or otherwise as it deems proper for the security of the rights of the enjoined party, except that in no event shall the Crow Tribe be required to post any bond.

### **CHAPTER 8: GROUNDWATER**

#### **25-8-101. Tribal Water Right.**

#### **25-8-102. Groundwater Permits.**

#### **25-8-103. Rules and Regulations.**

**25-8-101. Tribal Water Right.** The Crow Tribe has a right to use and authorize the use of groundwater, within the Crow Reservation, in accordance with the Water Compact and confirmed in Section 407 of the Settlement Act.

**25-8-102. Groundwater Permits.** Permits shall be required for development of groundwater as set forth in Chapter 4 of this Code.

**25-8-103. Rules and Regulations.** The Department shall exercise its authority under 25-2-105 to promulgate rules and regulations relating to groundwater development and protection.

## **CHAPTER 9: LEASES OF CROW TRIBAL WATER**

**25-9-101. Purposes of Water Lease.**

**25-9-102. Administrative Leases Authorized.**

**25-9-103. Final Approval by Legislature, When Required.**

**25-9-101. Purposes of Water Lease.** The Crow Tribe and Allottees are authorized to lease tribal and Allottee water rights as provided for in the Settlement Act and Water Compact for all beneficial use purposes as provided under the Water Code.

**25-9-102. Administrative Leases Authorized.** The Director shall promulgate rules and regulations for the administration of leases of the Tribal Water Right, in accordance with the procedure under 25-2-104.

**25-9-103. Final Approval by Legislature, When Required.** The Tribal Chairman shall negotiate all proposed off- Reservation leases of the Tribal Water Right, subject to final approval by the Legislature.

## **CHAPTER 10: CROW TRIBE-MONTANA WATER COMPACT BOARD**

**25-10-101. Qualifications, Conflict of Interest.**

**25-10-102. Terms of Appointment.**

**25-10-103. Appointment Authority.**

**25-10-104. Removal by Legislature.**

**25-10-101. Qualifications.** The Crow Tribe's representative on the Water Compact Board shall meet the following qualifications:

- (1) a bachelor's degree from an accredited college or university,
- (2) a sound understanding of the Settlement Act, Water Compact, and the Water Code,
- (3) no felony convictions; and
- (4) have no conflict of interest as provided for under the current tribal policy.

**25-10-102. Terms of Appointment.** The term of the Crow Tribe's representative on the Water Compact Board will be as provided under the Water Compact Article IV (F) (1).

**25-10-103. Appointment Authority.** The Tribal Chairman shall appoint the Crow Tribe's representative on the Crow-Montana Compact Board as provided in the Water Compact Article IV (F) (1).

**25-10-104. Removal by Legislature.** The Crow Tribe's representative on the Water Compact Board shall only be removed pursuant to the process that applies to judges of the Judicial Branch in accordance with Section 3-3-306 of the Crow Law and Order Code, provided that the removal must be for cause based upon the same standards as applies to the elected tribal officials under Article VIII of the Crow Tribal Constitution.

## **CHAPTER 11: ADMINISTRATION OF CROW IRRIGATION PROJECT**

**25-11-101. Bureau of Indian Affairs to Administer, Operate, and Maintain CIP.**

**25-11-101. Bureau of Indian Affairs to Administer, Operate, and Maintain CIP.**

- (1) Administration, operation and maintenance, and delivery of the Tribal Water Right on the Crow Irrigation Project shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs, in accordance with the Water Compact and any applicable federal laws, including the Settlement Act.
- (2) It shall be the policy of the Crow Tribe to maximize all opportunities for tribal self-determination contracts in the administration, operation and maintenance, and delivery of the Tribal Water Right through the Crow Irrigation Project and related services. Accordingly, the Executive Branch is hereby authorized to apply for and execute any available self-determination contracts with the Secretary of the Interior and/or agencies of the Department of the Interior for the purpose of carrying out this policy. The Tribal Chairman shall be considered the authorized signatory and the Director shall be the project manager.

## **CHAPTER 12: ADMINISTRATION OF MUNICIPAL, RURAL, INDUSTRIAL WATER SYSTEM**

**25-12-101. Establishment of Crow Tribe Rural, Municipal, and Industrial Water System.**

**25-12-102. Rules and Regulations.**

**25-12-103. Commission Duties.**

**25-12-101. Establishment of Crow Tribe Municipal, Rural, and Industrial Water System.**

The Crow Tribe is authorized to design, construct and administer a Crow Tribe Municipal, Rural, and Industrial Water System to serve the Crow Reservation as described in Section 406 of the Settlement Act.

**25-12-102. Rules and Regulations.** As authorized in 25-4-105 of the Water Code, the Director shall promulgate rules and regulations for the fair and equitable delivery of safe drinking water to the Crow Reservation, including but not limited to hook-up, service, and operation and maintenance fees, policies, and procedures.

**25-12-103. Commission Duties.** As authorized in Chapter 3 of the Water Code, the Commission shall also be authorized to resolve disputes related to the Municipal, Rural, and Industrial Water System.

## **CHAPTER 13: JUDICIAL REVIEW**

**25-13-101. Jurisdiction.**

**25-13-102. Notice of Appeal.**

**25-13-103. Appeal Procedures.**

**25-13-104. Costs and Attorney's Fees.**

**25-13-101. Jurisdiction.** The Crow Tribal Court shall have exclusive jurisdiction to hear appeals from final decisions of the Commission.

**25-13-102. Notice of Appeal.** Any party may appeal any final decision of the Commission by filing a notice of appeal with the Commission within thirty (30) days after the decision becomes final. The Commission shall thereafter serve the notice of appeal on all parties to the proceeding by registered mail; return receipt requested and shall promptly file the full record of the proceeding with the Crow Tribal Court.

**25-13-103. Appeal Procedures.** The appeal shall thereafter proceed in the same manner as civil cases before the Crow Tribal Court. In all appeals, the Court shall give proper deference to the administrative expertise of the Commission. The Crow Tribal Court shall not set aside, modify or remand any determination by the Commission unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law. The Crow Tribal Court shall issue a written decision on all appeals, which shall be final unless the Tribal Court decision is appealed to the Crow Tribal Appellate Court. After receiving a final decision from the Court of Appeals, all tribal remedies shall be deemed exhausted.

**25-13-104. Costs and Attorney's Fees.** The Judicial Branch may, in its discretion, award costs and attorney's fees to the Commission against any appellant whose appeal was frivolous, malicious, or in bad faith. Unless authorized by a specific limited waiver of sovereign immunity approved by the Tribal Legislature, costs and attorney fees may not be awarded against the Crow Tribe.