

APRIL 2008 CROW TRIBAL LEGISLATURE

JOINT ACTION RESOLUTION NO. JAR08-04

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

JOINT ACTION RESOLUTION OF THE CROW TRIBAL LEGISLATURE AND THE
CROW TRIBAL EXECUTIVE BRANCH ENTITLED:

**“APPROVAL OF FINANCIAL ADVISORY AGREEMENT BETWEEN CROW
TRIBE OF INDIANS AND GLEACHER PARTNERS LLC”**

WHEREAS, the Chairman of the Executive Branch has authority and responsibility pursuant to the enumerated powers in Article IV, Section 3(a) of the Constitution of the Crow Tribe of Indians to represent the Crow Tribe in negotiations in matters of economic development, in Section 3(f) to negotiate and approve or prevent any sale, disposition, lease or encumbrance of Tribal lands or other Tribal assets, including minerals, with final approval granted by the Legislative Branch, and in Section 3(k) to negotiate and approve limited waivers of sovereign immunity when such a waiver is necessary for business purposes, subject to final approval by the Legislative Branch; and

WHEREAS, an opportunity arose to bid on and potentially purchase ownership interests in two local coal mines, Spring Creek and Decker, from Rio Tinto Energy America; and

WHEREAS, the Chairman and the other elected officials of the Executive Branch have selected and assembled a team of experts to implement a strategy to bid and potentially purchase Spring Creek and Decker coal mines; and

WHEREAS, the team of experts must include financial experts and therefore members of the Executive Branch have negotiated a proposed Financial Advisory Agreement (a copy of which is attached to and incorporated herein by reference) with an investment banking firm, Gleacher Partners, to evaluate the fiscal issues associated with the coal mines; and

WHEREAS, Gleacher Partners (hereinafter, “Gleacher”), is an investment banking firm with offices in New York, London, and Atlanta, and has substantial experience and expertise with financial matters relating to acquisition of natural resource assets; and

WHEREAS, the Tribe provided a limited waiver of sovereign immunity for enforcement of the Financial Advisory Agreement by commercial arbitration rules of the American Arbitration Association, with a hearing to be held in a neutral forum for both parties (Chicago, Illinois) and possible enforcement of such decision by any court of competent jurisdiction; the Agreement does not allow for the encumbrance of any Tribal trust asset; and

WHEREAS, the Tribal Executive Branch and Gleacher plan to implement the strategy set forth above and expressed in the Financial Advisory Agreement to, among other things: (a) identify potential partners and participants; (b) assemble and evaluate information that will be provided by Rio Tinto Energy America about the coal mines; and (c) advise the Crow Tribe whether or not a bid and purchase of the mines would be in the best interests of the Tribe; and

WHEREAS, the parties' preliminary evaluation of the opportunity is positive and further expenditure of money and effort is justified; as such, the parties have further defined the parties' relationship and their respective contributions, goals and objectives for the Project in the Financial Advisory Agreement; and

WHEREAS, the Financial Advisor Agreement does the following: (a) sets a term of one year; (b) limits the Tribe's present obligation to reasonable monthly expenses, estimated to total approximately \$150,000; (c) sets forth Gleacher's main fee to be paid only if there is a successful outcome (\$3.5 or \$5 million dollars depending on the ownership interest acquired and/or the value of the transaction); and (d) sets a potential fee (\$500,000 if Gleacher provides Crow with a partner or \$250,000 if Gleacher did not introduce a partner) after termination but only if another coal transaction occurs within 18 months of the termination and a transaction has a value of \$150 million dollars or more; and

WHEREAS, the Legislative Branch has authority and responsibility pursuant to its "powers and duties" in Article V, Section 2(c) of the Constitution to charter instrumentalities of the Crow Tribe for purposes of economic development, in Section 2(d) to "grant final approval or disapproval of items negotiated by the Executive Branch of Government pertinent to the sale, disposition, lease or encumbrance of Tribal lands, interests in lands or mineral assets," and in Section 2(f) to "grant final approval or disapproval of limited waivers of sovereign immunity by the Executive Branch when waivers are necessary for business purposes"; and

WHEREAS, if the Tribe and Gleacher determine that the project is feasible, and prior to obtaining the financing for the project, the Financial Advisor Agreement will be supplemented with further definitive agreements involving the encumbrance of Tribal resources, the chartering of Tribal instrumentalities, and limited waivers of the Tribe's sovereign immunity, and such definitive agreements will be subject to further approval of the Tribal Legislature and the Bureau of Indian Affairs; and

WHEREAS, although the current Financial Advisory Agreement does not commit or encumber the Tribe's land or mineral resources to the Project or require the chartering of any Tribal instrumentality at this time, the Executive Branch requests that the Legislature express its overall support for the project through this Resolution, based on the information currently available, and to approve the fees and limited waiver of sovereign immunity contained in the Financial Advisory Agreement; and

WHEREAS, at the time this Joint Action Resolution was submitted to the Legislature in order to comply with Article V, Section 7 of the Constitution, the Parties had reached agreement on the proposed Financial Advisory Agreement submitted with the Resolution, have set a natural resources subcommittee meeting to review the Agreement before the formal session begins on April 7, 2008, and agree to resubmit the final Financial Advisory Agreement, if changes occur, with this Joint Action Resolution, to the Legislature;

NOW, THEREFORE, BE IT RESOLVED BY THE CROW TRIBAL LEGISLATURE AND THE CROW TRIBAL EXECUTIVE BRANCH OF THE CROW TRIBE:

Section 1. That the "Financial Advisory Agreement" between the Crow Tribe and Gleacher Partners, attached hereto and incorporated by reference, and the fees and limited waiver of sovereign immunity contained therein, is hereby granted final approval pursuant to Article V, Section 2(f) of the Constitution and Bylaws of the Crow Tribe.

Section 2. That the authority of the Chairman of the Executive Branch to enter into the Financial Advisory Agreement, including the fees and limited waiver of sovereign immunity contained therein, is hereby reaffirmed and ratified.

Section 3. That the Chairman of the Executive Branch is authorized to sign and execute the Financial Advisory Agreement on behalf of the Crow Tribe, and to take such further actions as are necessary to implement and administer the Agreement.

Section 4. That the final approval granted herein is effective on the date of approval of this Resolution.

Section 5. The Executive Branch agrees to provide timely reports on progress or lack thereof to the Legislative Branch.

CERTIFICATION

I hereby certify that this Joint Action Resolution, "**APPROVAL OF FINANCIAL ADVISORY AGREEMENT BETWEEN CROW TRIBE OF INDIANS AND GLEACHER PARTNERS LLC**", was duly approved by the Crow Tribal Legislature with a vote of 15 in favor, 1 opposed, and 2 abstained, and that a quorum was present on this 11TH day of April, 2008.

Jonathan Q. Stan
Speaker of the House
Crow Tribal Legislature

ATTEST:

Beverly Shane
Secretary, Crow Tribal Legislature



EXECUTIVE ACTION

I hereby

✓ approve
 Veto

this Joint Action Resolution, "**APPROVAL OF FINANCIAL ADVISORY AGREEMENT BETWEEN CROW TRIBE OF INDIANS AND GLEACHER PARTNERS LLC**", 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 15 day of April, 2008.

Carl K. Kinnel
Chairman
Crow Tribal Executive Branch

Gleacher Partners, LLC

Bill or Resolution Number JAR 08-04 Introduced by Executive Branch Date of Vote 4/11/2008

<u>Representative:</u>	<u>Yes</u>	<u>No</u>	<u>Abstained</u>
L. Plain Bull, Sr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C. Goes Ahead	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
O. Costa	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
V. Crooked Arm	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M. Not Afraid	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
P. Alden, Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. House	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E. Fighter, Sr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C.J. Stewart	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L. Hogan	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
S. Fitzpatrick, Jr.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
O. Half, Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
M. Covers Up, Sr.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
R. Old Crow, Sr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
W. Plainfeather	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D. Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B. Shane <i>Secretary of the House</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J.D. Stone, Sr. <i>Speaker of the House</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>15</u>	<u>1</u>	<u>2</u>

Result of Vote:

Passed

Not Passed

Tabled

Veto-Override

Jonathan D. Stone, Sr.
 Senator Jonathan D. Stone Date
 Speaker of the House

Beverly M. Shane
 Senator Beverly M. Shane Date
 Secretary of the House