

**CROW TRIBAL LEGISLATURE
AUGUST 7, 2008 SPECIAL SESSION**

JOINT ACTION RESOLUTION NO. JAR08-07

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:

**“FINAL APPROVAL OF THE MANY STARS CTL PLANT PROJECT AGREEMENT
BETWEEN THE CROW TRIBE OF INDIANS AND
AUSTRALIAN-AMERICAN ENERGY COMPANY, 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 and Bylaws of the Crow Tribe of Indians (the “Constitution”) to represent the Crow Tribe in negotiations in matters of economic development, in Article IV, Section 3(f) to “negotiate and approve or prevent any sale, disposition, lease or encumbrance of Tribal lands, interests in lands or other Tribal assets, including buffalo, minerals, gas and oil with final approval granted by the Legislative Branch,” and in Article IV Section 3(k) to “negotiate and approve limited waivers of sovereign immunity when such a waiver is necessary for business purposes in accordance with Article V, Section 2(f) of [the] Constitution;” 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 Article V, 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 Article V, 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, the Crow Tribe owns coal resources held in trust by the United States of America and located in the northeastern and eastern portions of the Crow Indian Reservation, including in the “ceded area” (which coal mineral rights were restored to the Reservation by Act of Congress in 1958), much of which is not suitable for marketing to existing power plants, and it appears that clean coal conversion technologies (e.g., coal gasification and liquefaction), including capture and sequestration of carbon dioxide produced by the plant, will provide the best market for this Crow-owned coal in the future; and

WHEREAS, Australian-American Energy Company, LLC, a Delaware limited liability company (hereinafter, "AAEC"), has experience and expertise in the development of large industrial and coal conversion facilities, including coal-to-liquids ("CTL") technology, and has funds and access to additional funding necessary to fully evaluate the feasibility of a developing a large CTL plant of at least 50,000 barrels-per-day output capacity and to complete the detailed engineering, environmental studies, and marketing necessary to obtain financing for the construction, start-up and operation of such a plant; and

WHEREAS, the Chairman and the other elected Executive Branch Officials, with the assistance of outside technical consultants and attorneys, have been in discussions since late 2007 with AAEC on the possible development of a CTL plant and associated infrastructure located on the Crow Reservation (the "CTL Plant") and using Tribally-owned coal and other Tribal resources in the northeastern and eastern portions of the Reservation, including the ceded area (referred to collectively as the "Project"), and those confidential discussions have been attended by members of the Natural Resources Subcommittee of the Legislature, representatives of the Bureau of Indian Affairs, and the Division of Energy and Mineral Development (DEMD); and

WHEREAS, in order to further investigate the possibility of developing the CTL Plant Project, the Chairman of the Executive Branch and AAEC entered into a Letter of Intent and Project Evaluation Exclusivity Agreement both dated December 11, 2007, pursuant to which the parties have conducted further preliminary studies of the Tribal resources necessary to support the CTL Plant, preliminary engineering studies and economic models related to the Project, and the Executive Branch has negotiated with AAEC a "**Project Agreement**" and associated documents necessary to commit the Tribal resources sufficient for the development of the CTL Plant Project and, in return, providing for the economic benefits to be received by the Crow Tribe and its members if the CTL Plant Project is successfully developed; and

WHEREAS, the parties to the Project Agreement are AAEC and AAEC Many Stars Investment Group, LLC (a wholly-owned subsidiary of AAEC, together the "AAEC Parties") through which AAEC will conduct its activities on the Project, on the one hand; and, on the other hand, the Crow Tribe, which will lease the Tribal coal, water and land to the CTL Project operating companies, and Apsaalooke Energy Company, LLC (chartered pursuant to the Apsaalooke Limited Liability Company Act and wholly-owned by the Crow Tribe) through which the Crow Tribe will participate in the management and economic benefits of the CTL Plant (through its membership in Many Stars CTL, LLC) and management of the associated coal mine or mines supplying the plant (through its membership in Many Stars Mining, LLC); and

WHEREAS, the Project Agreement provides for commitments of sufficient Tribally-owned coal, water rights, and land to support the development of a CTL Plant of up to 125,000 barrels-per-day output capacity, along with the Tribe's commitment not to develop a competing facility on or within 50 miles of the Reservation during its term which may be extended up to a maximum of 70 years, subject to certain releases of these commitments, including if the CTL Plant is not expanded within the times provided in the Project Agreement; and

WHEREAS, the Project Agreement provides for a period of time of up to 10 years (the “Investment Decision Date”), for AAEC, in close cooperation with the Crow Tribe, to, among other things, complete detailed evaluations of the Tribe’s coal resources (which would commence immediately upon approval of this Resolution pursuant to the Exploration Agreement), determine the optimum site for the CTL Plant and acquire necessary surface lands and rights-of-way, complete detailed engineering feasibility studies and front-end engineering design (FEED) for the CTL Plant, conduct environmental studies and secure necessary permits, secure contracts for the sale of the CTL plant products, and obtain several billion dollars in equity and debt financing for constructing the CTL Plant Project; and

WHEREAS, during the period prior to the Investment Decision Date, the AAEC Parties and the Project Companies are required to expend substantial sums of money on developing the CTL Plant Project (including delineation of the Tribe’s coal resources) and reimbursing the Tribe’s expenses in assisting with the development, and if AAEC Parties decide not to proceed with the Project, the Tribe will receive all the coal delineation information and the right to purchase the CTL Plant engineering and FEED studies for the Tribe’s non-exclusive use; and

WHEREAS, the Project Agreement provides that, if the Project is successfully completed, the Crow Tribe will receive substantial economic benefits, including royalty and production taxes on the coal supplied to the Project; fees for the Tribal water supplied to the Project; per-barrel Production Payments on the CTL Plant output based in part on the price of crude oil; and 50% of the net profits of the CTL Plant after the equity investors have received a specified return on their investment, which payments could eventually exceed a total of \$1 billion per year under current estimates and assumptions and the current price of crude oil, in addition to Tribal member employment rights, college scholarships and technical training opportunities; and

WHEREAS, the **Project Agreement** is a definitive master agreement for development of the Project and includes, among other things:

- (a) a **Tribal Coal Lease Summary Term Sheet** setting forth the material economic and business terms for a lease from the Crow Tribe to Many Stars Mining, LLC, of the Tribe’s coal resources in the Project Area, of which an estimated 2 billion tons will remain committed to the CTL Plant Project after 5 years of operations, which lease will be finalized promptly after the Tribe’s execution of the Project Agreement;
- (b) a **CTL Plant Site Lease Summary Term Sheet** setting forth the material economic and business terms for a lease from the Crow Tribe to Many Stars CTL, LLC, of Tribally-owned surface lands (including lands to be acquired) for the CTL Plant site and easements and rights-of-way across Tribal lands for roads, pipelines, power lines, and other infrastructure necessary to support the Project as identified and selected pursuant to the Project Agreement;
- (c) a **Water Lease Summary Term Sheet** setting forth the material economic and business terms for a lease from the Crow Tribe to Many Stars CTL, LLC, of up to 50,000 acre-feet per year of Tribally-owned water rights including storage in Bighorn Lake,

subject to ratification of the Crow Tribe's Water Compact with the State of Montana and the United States;

with the foregoing being referred to in this Resolution as the "Resource Lease Term Sheets," and the leases described and defined therein being referred to collectively as the "Tribal Resource Leases;" and

WHEREAS, the Project Agreement also includes an **Exploration Agreement** between the Crow Tribe and Many Stars Mining, LLC, whereby Many Stars Mining will have the exclusive right to conduct coal exploration activities (only) within the Project Area (as defined in the Project Agreement), which the parties intend to submit to the Bureau of Indian Affairs for approval under authorities other than the Indian Mineral Development Act ("IMDA") so that the exploration activities can begin as soon as reasonably practicable pending IMDA approval of the remainder of the Project Agreement; and

WHEREAS, the Project Agreement also includes a **Project Companies' LLC Agreements Summary Term Sheet** setting forth the material economic and business terms of the LLC agreements by which Apsaalooke Energy Company, LLC ("Apsaalooke Energy") shall participate in the management and economic benefits of the CTL Plant through its membership in Many Stars CTL, LLC, including the per-barrel Production Payment and profit-sharing, and in the management of the associated coal mine(s) to supply the CTL Plant through its membership in Many Stars Mining, LLC; and authorization for Apsaalooke Energy to enter into the Project Agreement and the LLC Agreements shall be provided by Member Resolution of the Crow Tribe as sole owner and member pursuant to the Apsaalooke Limited Liability Company Act and the approved Apsaalooke Energy Operating Agreement; and

WHEREAS, the Project Agreement includes a limited waiver of the Crow Tribe's sovereign immunity from suit, and a substantially similar waiver will be included in the Tribal Resource Leases prepared in conformance with the Resource Lease Term Sheets; and the Exploration Agreement also contains a limited waiver of Tribe's sovereign immunity. All of these limited waivers have been negotiated by the Executive Branch, are reasonable and appropriate under the circumstances and protective of the Crow Tribe's other assets, and are necessary for business purposes; and

WHEREAS, as provided in the Project Agreement, the parties intend to develop and operate the CTL Plant Project according to the highest standards of environmental protection, health and safety as required under applicable law, with due regard and priority for the protection of Crow cultural resources, and provision for the capture and sequestration (including in enhanced oil recovery operations) of substantially all the carbon dioxide produced by the CTL Plant; and

WHEREAS, the Project Agreement provides the opportunity to monetize a substantial portion of the Crow Tribe's vast coal resources, for the Tribe and Tribal members to receive a fair share of the value-added from processing the coal and selling the end products for the benefit of the energy independence and national security of the United States, and for the Crow Tribe and Tribal members to participate in the management of the Project and obtain the skills and

education to do so effectively for the long-term benefit of the Crow Tribe and future generations of Tribal members; and

WHEREAS, after approval by the Legislature and Executive Branches of the Crow Tribe, the Project Agreement, the Tribal Resource Leases and the Exploration Agreement are subject to approval by the Secretary of the Interior or his designee, pursuant to the Indian Mineral Development Act of 1982 (25 U.S.C. § 2101, *et seq.*) and/or other applicable Federal law;

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

Section 1. That the Project Agreement among the Crow Tribe of Indians, Apsaalooke Energy Company LLC, Australian-American Energy Company, LLC, and AAEC Many Stars Investment Group, LLC, including the Exploration Agreement and all other Exhibits, and including the limited waivers of sovereign immunity contained therein, attached hereto and incorporated by this reference, is hereby granted final approval pursuant to Article V, Sections 2(d) and 2(f) of the Constitution and Bylaws of the Crow Tribe.

Section 2. That the Chairman of the Executive Branch is authorized to sign and execute on behalf of the Crow Tribe: the above-referenced Project Agreement and the Exploration Agreement; the Tribal Resource Leases when they are prepared pursuant to the Project Agreement, provided that their material terms substantially conform to those set forth in the Resource Lease Term Sheets in the Project Agreement; and such other agreements and documents described in the Project Agreement as necessary and applicable for the implementation of the Project.

Section 3. That the Chairman of the Executive Branch is authorized to sign and execute on behalf of the Crow Tribe such amendments to the Project Agreement (including the Tribal Resource Leases, the Exploration Agreement and other agreements) provided that such amendments are consistent with the Project Agreement and do not materially reduce or diminish the rights or economic benefits of the Crow Tribe from those contained in the Project Agreement, including the Resource Lease Term Sheets.

Section 4. That the Chairman of the Executive Branch is authorized to take all such further actions on behalf of the Crow Tribe as are necessary to implement, administer and enforce the Project Agreement and all associated agreements.

Section 5. That the Executive Branch will keep the Legislature and/or its designated Subcommittee(s) informed on a timely basis of formal notices issued pursuant to the Project Agreement (including the Tribal Resource Leases and the Exploration Agreement) and other significant actions taken to administer the Project Agreement, including but not limited non-material amendments authorized by Section 3 of this Resolution, and any proposed assignment, sublease or transfer; and all amendments to the Project Agreement (including the Tribal Resource Leases and the Exploration Agreement), except for those

authorized by Section 3, shall be subject to the further final approval of the Legislature.


Section 6. That the final approval granted herein is effective on the date of approval of this Resolution, and is subject only to such further approvals as are required by Federal law.

Section 7. That promptly following execution of the Project Agreement as hereby approved, the Executive and Legislative Branches intend to work together intensively to implement the operations of Apsaalooke Energy, by selecting a Board of Managers and adopting policies for their employment, capitalization of the company, and establishing such procedures, accounts and offices as are necessary for it to carry out its responsibilities under the Project Agreement; and the Branches further intend to work together to enact an amended TERO.

Section 8. That no monies received by the Crow Tribe pursuant to the Project Agreement prior to the Effective Date shall be expended or drawn against unless approved by the Crow Tribal Legislature pursuant to it's budget approval power under Article V, Section 2 (e) of the Tribal Constitution, and all expenditures from such approved budget shall be reported to the Legislature.


CERTIFICATION

I hereby certify that this Joint Action Resolution “**FINAL APPROVAL OF THE MANY STARS CTL PLANT PROJECT AGREEMENT BETWEEN THE CROW TRIBE OF INDIANS AND AUSTRALIAN-AMERICAN ENERGY COMPANY, LLC**” was duly approved by the Crow Tribal Legislature with a vote of 16 in favor, 1 opposed, and 1 abstained and that a quorum was present on this 7th day of August, 2008.



Speaker of the House
Crow Tribal Legislature

ATTEST:



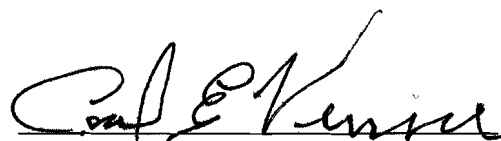
Secretary, Crow Tribal Legislature



EXECUTIVE ACTION

I hereby
 approve,
 veto

this Joint Action Resolution for the Resolution “**FINAL APPROVAL OF THE CTL PROJECT AGREEMENT BETWEEN THE CROW TRIBE OF INDIANS AND AUSTRALIAN-AMERICAN ENERGY COMPANY, LLC**” pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 and Article IV, Sections 3(f) and 3(k) of the Constitution and Bylaws of the Crow Tribe of Indians on this 7 day of Aug, 2008.



Chairman, Executive Branch
Crow Tribe of Indians

Many Stars CTL Plant Project

Bill or Resolution Number JAR08-07 Introduced by Executive Date of Vote Aug. 7, 2008
Branch

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

Result of Vote:

Passed

Not Passed

Tabled

Veto-Override

Manuel Covers Up, Sr.
 Senator Manuel Covers Up, Sr. Date
 Speaker of the House

Beverly M. Shane 8-7-08
 Senator Beverly M. Shane Date
 Secretary of the House