

JANUARY 2013 SESSION

CROW TRIBAL LEGISLATURE

JOINT ACTION RESOLUTION NO. JAR13-01

INTRODUCED BY DARRIN OLD COYOTE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH

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

“FINAL APPROVAL OF THE EXPLORATION AGREEMENT, OPTION TO LEASE AGREEMENT, AND COAL LEASES BETWEEN THE CROW TRIBE OF INDIANS AND BIG METAL COAL CO. 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(d) of the Constitution 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 extensive coal resources held in trust by the United States of America and located in the southeastern portions of the Crow Indian Reservation, namely in the Upper Youngs Creek, Tanner Creek and Squirrel Creek drainages, formerly known as the “White Horse” area (the “Tribal Coal”), that remain undeveloped despite previous efforts to lease the coal over the past 40 years, and the Tribe also owns surface lands held in trust by the United States in the area (the “Tribal Lands”); and

WHEREAS, Big Metal Coal Co. LLC (“Big Metal”) is a wholly-owned affiliate of Cloud Peak Energy Inc. (“CPE”), which owns and operates the Spring Creek mine located off the Crow Reservation near the Tribe’s coal deposits, has extensive experience and expertise in the development and operation of large coal mines in the Powder River Basin, and has financial resources necessary to complete the exploration, mine development, environmental studies, and marketing necessary to develop the Tribe’s coal; and

WHEREAS, the Chairman and the other Executive Branch Officials and staff, with the assistance of outside technical consultants, have been in discussions since late 2010 with CPE on the possible leasing and development of an estimated 1.4 billion tons of Tribal Coal in the Upper Youngs Creek, Tanner Creek and Squirrel Creek areas (the “Project Areas”), and those confidential discussions and related meetings have been attended by members of the Natural Resources Subcommittee of the Legislature, representatives of the Bureau of Indian Affairs, the Division of Energy and Mineral Development (DEMD), and the Bureau of Land Management; and

WHEREAS, because of the close proximity of the Spring Creek mine to the Reservation, it is anticipated that the Tribal Coal can be transported to and shipped from the Spring Creek mine train loadout facilities, and CPE’s recent acquisition of the so-called “CX Ranch” surface property, which extends from the Crow Reservation to the Spring Creek mine area, will facilitate the logistics for shipping Tribal Coal;

WHEREAS, the Executive Branch has negotiated with Big Metal the following agreements and associated exhibits and appendices (the “Big Metal Agreements”) necessary to provide Big Metal with the rights to explore, lease, develop and sell the Tribal Coal and, in return, providing for the economic benefits to be received by the Crow Tribe and its members as further provided in the Agreements:

1. **Exploration Agreement;**
2. **Option to Lease Agreement;** and
3. **Coal Lease(s);** and

WHEREAS, the **Exploration Agreement** provides among other things for Big Metal’s right, for approximately 3 years, to conduct exploration and related activities on Tribal Coal and Tribal Lands in the Project Areas (as more particularly described in Exhibit A thereto) in order to confirm the quantity, quality and mineability of the Tribal Coal, and for Big Metal to furnish the data and other results of the exploration activities to the Tribe; and

WHEREAS, the **Option to Lease Agreement** provides among other things for Big Metal’s exclusive right, for a period of 5 years following approval by the Secretary of the Interior, to elect to exercise options to lease Tribal Coal within any or all of the 3 Project Areas, subject to extensions and/or a right of first refusal if certain conditions are met, in exchange for certain Option payments to the Tribe totaling up to \$10 million through the initial term and, following Big Metal’s exercise of an option, lease Bonus payments ranging from \$0.08 to \$0.15 per ton (adjusted for inflation) for the recoverable Tribal Coal located in the Leased Premises designated within a Project Area when an option is exercised; and

WHEREAS, the **Coal Leases**, one for each of the Project Areas and attached as Exhibits B-1, B-2 and B-3 to the Option to Lease Agreement, provide among other things for Big Metal's right to mine and sell Tribal Coal from the Leased Premises designated from within each Project Area, in exchange for Royalty payments ranging from 7.5% to 15% of the sales price of the Tribal Coal (depending on the Lease, the Tribal Coal within the Lease, and the future sales prices for the Tribal Coal), and Tribal severance and gross proceeds taxes at the same rates as currently levied by the State of Montana on coal outside the Crow Reservation; and

WHEREAS, the Big Metal Agreements also provide for annual \$75,000 scholarships beginning in 2013, and annual \$150,000 scholarships after an Option is exercised and a Coal Lease is finally approved by the Secretary, and training and internship opportunities for Tribal members, and extensive provisions for effectively implementing Indian preference in employment and contracting, including an Employment and Contracting Addendum (Appendix B to the Coal Leases) and Exploration Agreement provisions that clarify and modify certain provisions of the Tribal Workforce Protection Act to adapt them for Big Metal's operations consistent with the fundamental objective of enhancing economic and employment opportunities for Tribal members and other Indians living on or near the Reservation; and

WHEREAS, the Big Metal Agreements provide for Big Metal's right to use Tribally-owned surface lands in and near the Project Areas for mining and access, at no additional charge to Big Metal, and further provide for Big Metal to convey any Reservation Allotted or Fee surface lands it may acquire in the future to the Tribe at no charge to the Tribe, as well as the Tribe's right to purchase Reservation Fee surface lands that CPE already owns, including the CX Ranch surface lands; and

WHEREAS, the Big Metal Agreements include limited waivers of the Crow Tribe's sovereign immunity from suit, which 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, the Big Metal Agreements provide the opportunity to monetize a substantial portion of the Crow Tribe's vast coal resources and diversify the Tribe's sources of coal revenue, including potential access to export markets, while providing good-paying skilled jobs, training and educational opportunities, and other economic development opportunities for the long-term benefit of the Crow Tribe and current and future generations of Tribal members; and

WHEREAS, after approval by the Legislature and Executive Branches of the Crow Tribe, the Big Metal Agreements 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 CROW TRIBAL
LEGISLATURE AND THE CROW TRIBAL EXECUTIVE BRANCH:**

Section 1. That the Exploration Agreement, the Option to Lease Agreement, and the Coal Leases attached as Exhibits B-1, B-2 and B-3 to the Option to Lease Agreement, including all other Exhibits and Appendices, which are attached hereto and incorporated by this reference (hereinafter, the “Big Metal Agreements”), including, without limitation, the provisions in the Agreements on the applicability of Tribal law, regulations, and taxation, and including the limited waivers of sovereign immunity contained therein, are 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 Big Metal Agreements and such other agreements and documents described therein as are necessary for implementation of the Agreements.

Section 3. 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 Big Metal Agreements; provided that all material amendments to the Agreements shall be subject to the further final approval of the Legislature.

Section 4. That the Executive Branch will keep the Legislature and/or its designated Committee(s) informed on a timely basis of formal notices issued pursuant to the Agreements and other significant actions taken to administer the Agreements, including but not limited to any proposed assignment, sublease or transfer.

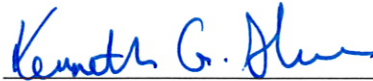
Section 5. That the Executive Branch shall not expend any funds received from Big Metal pursuant to the Agreements, including the Initial Option Payment, the additional Option payment due upon Secretarial approval of the Option Agreement, and the first year’s Scholarship payment, unless and until the Legislature has approved an Amended FY2013 Budget authorizing such expenditures according to the terms of the budget amendment(s).

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.

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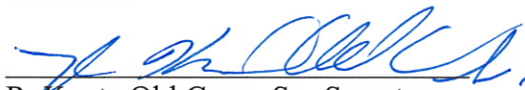
CERTIFICATION

I hereby certify that this Joint Action Resolution **"FINAL APPROVAL OF THE EXPLORATION AGREEMENT, OPTION TO LEASE AGREEMENT, AND COAL LEASES BETWEEN THE CROW TRIBE OF INDIANS AND BIG METAL COAL CO. LLC"** was duly approved by the Crow Tribal Legislature pursuant to Article V, Sections 2(d) and 2(f) of the Constitution and Bylaws of the Crow Tribe with a vote of 13 in favor, 1 opposed, and 0 abstained and that a quorum was present on this 15th day of January, 2013.



Kenneth G. Shane
Speaker of the House
Crow Tribal Legislature

ATTEST:



R. Knute Old Crow, Sr., Secretary
Crow Tribal Legislature

EXECUTIVE ACTION

I hereby

X approve,
_____ veto

this Joint Action Resolution for the Resolution **"FINAL APPROVAL OF THE EXPLORATION AGREEMENT, OPTION TO LEASE AGREEMENT, AND COAL LEASES BETWEEN THE CROW TRIBE OF INDIANS AND BIG METAL COAL CO. 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 17 day of JANUARY, 2013.



Darrin Old Coyote, Chairman
Executive Branch
Crow Tribe of Indians



A JOINT ACTION RESOLUTION OF THE CROW TRIBAL LEGISLATURE AND THE CROW TRIBAL EXECUTIVE BRANCH
ENTITLED: "FINAL APPROVAL OF THE EXPLORATION AGREEMENT, OPTION TO LEASE AGREEMENT, AND COAL
LEASES BETWEEN THE CROW TRIBE OF INDIANS AND BIG METAL COAL CO. LLC"

Bill or Resolution: JAR13-01 **Introduced by:** Chairman Darrin Old Coyote **Date of Vote:** 1/15/2013
Number

<u>Representative:</u>	<u>Yes</u>	<u>No</u>	<u>Abstained</u>
H. Two Leggins	_____	_____	_____
V. Pretty Paint	<u>X</u>	_____	_____
C. J. Stewart	<u>X</u>	_____	_____
(Vacant)	_____	_____	_____
A.Coyote-Runs, Sr.	_____	_____	_____
L. Not Afraid.	<u>X</u>	_____	_____
Covers Up, Sr.	_____	<u>X</u>	_____
P. Alden, Jr.	<u>X</u>	_____	_____
M. Not Afraid	<u>X</u>	_____	_____
V. Crooked Arm	<u>X</u>	_____	_____
L. DeCrane	<u>X</u>	_____	_____
C. Goes Ahead	<u>X</u>	_____	_____
B. Hugs	<u>X</u>	_____	_____
G. Real Bird, Jr.	<u>X</u>	_____	_____
M. Backbone	<u>X</u>	_____	_____
(Vacant)	_____	_____	_____
R. K. Old Crow, Sr. <i>Secretary of the House</i>	<u>X</u>	_____	_____
K. Shane <i>Speaker of the House</i>	<u>X</u>	_____	_____
Totals:	<u>13</u>	<u>1</u>	<u>0</u>

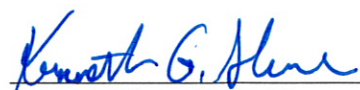
Result of Vote:

Passed

Not Passed

Tabled

Veto-Override



Senator Kenneth G. Shane
Speaker of the House

Date



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

Date

1/17/13



Crow Country

Legislative Branch

Pryor:

Arrow Creek

Carlson Goes Ahead
Bryce Hugs
Lawrence DeCrane

Big Horn:

Valley of the Give Away

Vincent Crooked Arm
Martin D. Not Afraid
Pat Alden, Jr.

Dunmore:

Black Lodge

Conrad J. Stewart
V. Jeannie Pretty Paint
H. Noel Two Leggings

Reno:

Center Lodge

(Vacant)
Kenneth G. Shane
Speaker of the House
Arnold Coyote-Funs, Sr.

Lodge Grass:

Valley of the Chief

Manuel Covers Up, Sr.
R. Knute Old Crow, Sr.
Secretary of the House
Leroy Not Afraid

Wyola:

Mighty Few

(Vacant)
M. Tye Backbone
Gordon Real Bird, Jr.

Staff

Gerald Jay Harris
Legal Counsel

Leslie Plain Feather
Legal Assistant

Jackie Blacksmith,
Administrative Officer

William Old Crow
Finance Officer/Admin. Assist.

Sheri Chandler
Office Assist./Receptionist /Editor

Kenny Pretty On Top
Maintenance/Custodian
Sergeant at Arms

LEGISLATIVE BRANCH OF THE CROW TRIBAL GOVERNMENT

P.O. Box 309 – MAKAWASHA Avenue

Crow Agency, Montana 59022

Phone: (406) 638-2023/2025/2238

Fax: (406) 638-2030

OFFICIAL CERTIFICATE OF DELIVERY

I, Rudolph K. Old Crow, Sr., Secretary of the Legislative Branch of the Crow Tribal Government hereby this Transitional Action do deliver a True and Correct Official copy Of the Final Approval for the following Bill:

INTRODUCED BY DARRIN OLD COYOTE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH

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

**“FINAL APPROVAL OF THE EXPLORATION AGREEMENT, OPTION
TO LEASE AGREEMENT, AND COAL LEASES BETWEEN THE
CROW TRIBE OF INDIANS AND BIG METAL COAL CO. LLC”**

JAR13-01 To

Tiller C. Nott

in the Position of:

Exec A Harney

for the

Crow Executive Branch.

Done and dated this

17th

day of

Jan

, 2013 @

10:30

a.m./p.m.

R. Knute Old Crow, Sr.

Senator R. Knute Old Crow, Sr.
Secretary of the House
Legislative Branch of the
Crow Tribal Government

Served by:

Legislative Branch Staff

Cc: file





Crow Country

Legislative Branch

Pryor:

Arrow Creek

Carlson Goes Ahead
Bryce Hugs
Lawrence DeCrane

Big Horn:

Valley of the Give Away

Vincent Crooked Arm
Marlin D. Not Afraid
Pat Alden, Jr.

Dunmore:

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Conrad J. Stewart
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CROW TRIBE OF INDIANS AND BIG METAL COAL CO. LLC”**

JAR13-01 To

Dean Bin

in the Position of:

Comb Clerk Court Office

for the

Crow Judicial Branch.

Done and dated this 17th day of Jan, 2013 @ 2:41pm a.m./p.m.

[Signature]

Senator R. Knute Old Crow, Sr.

Secretary of the House
Legislative Branch of the
Crow Tribal Government

Served by:

Jackie M. Blacksmith

Legislative Branch Staff



Cc: file