

**CROW TRIBAL LEGISLATURE
MARCH 6, 2013 SPECIAL SESSION**

JOINT ACTION RESOLUTION NO. JAR13-03

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 TRACT I EXPLORATION AGREEMENT AND COAL
LEASE BETWEEN THE CROW TRIBE OF INDIANS AND WESTMORELAND
RESOURCES, INC.”**

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 north of the surface boundary of the Crow Reservation in the “Ceded Area,” which coal resources were restored to the Crow Reservation by the 1958 Indian Restoration Act (Pub. L. 85-420), including the area referred to as “Tract I” located in Big Horn and Treasure Counties, Montana; and

WHEREAS, Westmoreland Resources, Inc. (“WRI”) is a wholly-owned subsidiary of Westmoreland Coal Company, and currently operates the Absaloka Mine in the Ceded Area pursuant to an amended coal mining lease with the Crow Tribe dated November 26, 1974 (“Tract III Lease”) and within the surface boundary of the Reservation pursuant to a coal mining lease dated February 13, 2004 (the “South Extension Lease”); and

WHEREAS, the Tribe's coal resources located in Tract I will be necessary in order for WRI to continue mining at the Absaloka mine past 2020, and the facilities on the Tract III Lease will be necessary for the processing and shipping of coal mined from Tract I; and

WHEREAS, the Chairman and the other Executive Branch Officials and staff, with the participation of the Natural Resources Subcommittee of the Legislature, have negotiated the attached **Exploration Agreement** and Crow Tribal Lands Coal Lease (the "**Tract I Coal Lease**") (together, the "**WRI Tract I Agreements**") with WRI in order to continue operation of the Absaloka Mine and the substantial tax, royalty and other revenues received by the Tribe from the Mine's production of Tribal coal; and

WHEREAS, the **Exploration Agreement** provides among other things for WRI's right, through December 31, 2015, to conduct exploration and related activities on Tract I in order to confirm the quantity, quality and mineability of the Tribal Coal, and for WRI to furnish the data and other results of the exploration activities to the Tribe; and

WHEREAS, the **Tract I Coal Lease**, attached hereto provides among other things for WRI's right to mine and sell Tribal Coal from the Rosebud and McKay seams on Tract I, in exchange \$12.5 million in Bonus and Advance Royalty payments payable over the next 4 ½ years, Royalty payments equal to 12.5% of the sales price of 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 **Tract I Coal Lease** also includes extensive provisions for effectively implementing Indian preference in employment and contracting, including an Employment and Contracting Addendum (Exhibit B to the **Tract I Coal Lease**) that clarifies and modifies certain provisions of the Tribal Workforce Protection Act to adapt them for WRI's operations on the Tract I in the Ceded Area, 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 **Tract I Coal Lease** includes a limited waiver of the Crow Tribe's sovereign immunity from suit, which has been negotiated by the Executive Branch, is reasonable and appropriate under the circumstances and protective of the Crow Tribe's other assets, and is necessary for business purposes; and

WHEREAS, the **Tract I Coal Lease** provides the opportunity for continuation of the substantial economic benefits that the Crow Tribe has realized from the Absaloka Mine since 1974, including potential access to export markets, while providing good-paying skilled jobs, and other economic development opportunities for the long-term benefit of the Crow Tribe and current and future generations of Tribal members; and

WHEREAS, at the time this Resolution was submitted to the Legislature in order to comply with Article V, Section 7 of the Constitution, the parties were in the process of finalizing the WRI Tract I Agreements, which final Agreements attached hereto have been submitted to and reviewed by the Legislature; and

WHEREAS, after approval by the Legislature and Executive Branches of the Crow Tribe, the WRI Tract I Agreements are subject to approval by the Secretary of the Interior or his designee (the “Secretary”), 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 and the Tract I Coal Lease, including all Exhibits, which are attached hereto and incorporated by this reference, including, without limitation, the provisions in the Lease on the applicability of Tribal law, regulations, and taxation, and including the limited waiver 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 Exploration Agreement and Tract I Coal Lease 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 WRI Tract I 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 Tract I Coal Lease, including but not limited to any proposed assignment, sublease or transfer.

Section 5. That in connection with the bonus payment due upon execution of the Tract I Coal Lease by the Crow Tribe and WRI as provided in Article 6.1 therein, the Chairman of the Executive Branch is hereby authorized to:

(a) Sign and execute an Escrow Agreement with WRI and First Interstate Bank in substantially the same form as attached hereto, providing for the escrow of \$1.2 million until the Tract I Coal Lease is approved by the Secretary; *provided that* a limited waiver of the Crow Tribe’s sovereign immunity for purposes of the interpleader action described in Section 6 of the Escrow Agreement and reimbursement of the Agent’s reasonable costs and attorneys’ fees is hereby approved; and

(b) Sign and execute a letter agreement with WRI in substantially the form as attached hereto, authorizing WRI to recover the \$500,000 that will be paid directly to the Crow Tribe upon execution of the Tract I Coal Lease from Tribal coal production taxes otherwise payable on production from the Tract III Lease and the South Extension Lease in the event that the Secretary does not approve the Tract I Coal Lease.

Section 6. That the Executive Branch shall not expend any funds received from WRI pursuant to the Tract I Coal Lease, except as provided in Section 8 below, unless and until the Legislature has approved an Amended Tribal Budget authorizing such expenditures according to the terms of the budget amendment(s).

Section 7. 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 8. The Fiscal Year 2013 Crow Tribal Budget, as adopted by CLB 12-05 and amended by CLB 13-02, is hereby amended to authorize the expenditure of the five-hundred thousand dollars (\$500,000) received by the Crow Tribe from the initial bonus payment due on tribal approval of the Tract I Coal Lease. The expenditures shall be exclusively as follows:

(a) One-hundred fifty-thousand dollars (\$150,000) shall be added to Budget Account 100L2 "Contracted Services" for the purpose of funding special legal counsel for the establishment of the Apsaalooke National Bank and private consultation on a hydroelectric power project at the Afterbay Dam; and

(b) One-hundred thousand dollars (\$100,000) shall be added to the appropriate Budget Account and Line Item for the purpose assistance in funding the operations of Good Earth Lodges; and

(c) One-hundred thousand dollars (\$100,000) shall be added to the appropriate Budget Accounts and Line Items for the purpose of providing assistance for tribal programs associated with the Crow Tribal Transit Office, Federal Emergency Management Agency, and Bureau of Indian Affairs; and

(d) One-hundred thousand dollars (\$100,000) shall be added to Budget Line Item Code 64130 for the Tribal Land Purchase Program; and

(e) Fifty-thousand dollars (\$50,000) shall be added to Budget Line Item Code 63460 for Emergency Services; and

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CERTIFICATION

I hereby certify that this Joint Action Resolution “**FINAL APPROVAL OF THE TRACT I EXPLORATION AGREEMENT AND COAL LEASE BETWEEN THE CROW TRIBE OF INDIANS AND WESTMORELAND RESOURCES, INC.**” 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 15 in favor, 0 opposed, and 0 abstained and that a quorum was present on this 6th day of March, 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

approve,

veto

this Joint Action Resolution for the Resolution “**FINAL APPROVAL OF THE TRACT I EXPLORATION AGREEMENT AND COAL LEASE BETWEEN THE CROW TRIBE OF INDIANS AND WESTMORELAND RESOURCES, INC.**” 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 12 day of MARCH, 2013.



Darrin Old Coyote
Chairman, Executive Branch
Crow Tribe of Indians

JOINT ACTION RESOLUTION TITLED: "FINAL APPROVAL OF THE TRACT I EXPLORATION AGREEMENT AND COAL LEASE BETWEEN THE CROW TRIBE OF INDIANS AND WESTMORELAND RESOURCES, INC."

Bill or Resolution: JAR13-03 **Introduced by:** Chairman Darrin Old Coyote **Date of Vote:** 3/6/2013
Number

<u>Representative:</u>	Yes	No	Abstained
H. Two Leggins	_____	_____	_____
V. Pretty Paint	<u> X </u>	_____	_____
C. J. Stewart	<u> X </u>	_____	_____
L. Other Medicine	<u> X </u>	_____	_____
A. Coyote-Runs, Sr.	<u> X </u>	_____	_____
L. Not Afraid.	_____	_____	_____
M. 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	_____	_____	_____
G. Stewart	<u> X </u>	_____	_____
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> 15 </u>	<u> 0 </u>	<u> 0 </u>

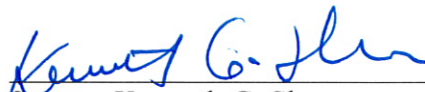
Result of Vote:

Passed


 Not Passed

 Tabled

 Veto-Override



 Senator Kenneth G. Shane Date
 Speaker of the House



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