

MAY 7, 2013 CROW TRIBAL LEGISLATURE

JAR No. 13 -09

Introduced by Chairman Darrin Old Coyote
Crow Tribal Executive Branch

Co-Sponsored by Senator Conrad J. Stewart
Black Lodge District

A Joint Action Resolution Titled:

**A JOINT ACTION RESOLUTION OF THE CROW TRIBE TO ENACT AND
DECLARE OFFICIAL CROW TRIBAL POLICY OF FULLY EXERCISING OFF-
RESERVATION HUNTING RIGHTS PURSUANT TO THE 1868 FORT LARAMIE
TREATY**

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 and resolutions in accordance with the Crow Tribal Constitution and federal law for the governance of the Crow Tribe; 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 and policies duly adopted by the Legislature; and

WHEREAS, the Crow Tribe has always valued hunting and gathering in Crow Country as an activity of the highest cultural importance and the means for survival; and

WHEREAS, the 1851 Fort Laramie Treaty, which is recorded in the United States session laws at 11 Statutes at Large 749, recognized in Article V that the territory of the Crow Nation is recognized as follows: “[C]ommencing at the mouth of Powder River on the Yellowstone; thence up Powder River to its source; thence along the main range of the Black Hills and Wind River Mountains to the head-waters of the Yellowstone River; thence down the Yellowstone River to the mouth of Twenty-five Yard Creek; thence to the head waters of the Muscle-shell River; thence down the Muscle-shell River to its mouth; thence to the head-waters of Big Dry Creek, and thence to its mouth;” and

WHEREAS, Article V of the 1851 Fort Laramie Treaty further provides that the Crow Tribe did not abandon or prejudice any rights or claims to any other lands and, further, that the Crow Tribe not surrender the privilege of hunting, fishing, or passing over any of the tracts of country heretofore described; and

WHEREAS, according to the oral history of the Crow Tribe the traditional territory of the Crow Nation extended all areas within the four teepee poles: to wit, the North Pole at the Bear's Paw Mountains in northern Montana, the West Pole at the Absaroka and Bear's Tooth Mountains in south-central Montana, the South Pole at the Wind River Range of central Wyoming, and the East Pole at the Black Hills of western South Dakota and northeastern Wyoming; and

WHEREAS, upon agreeing to reside on a reservation which reduced the size of their homeland to approximately eight million acres, the leaders of the Crow Tribe secured the Tribe's right to hunt on all unoccupied lands of the United States through Article IV of the 1868 Fort Laramie Treaty with the United States, which is recorded in the United States session laws at 15 Statutes at Large 649 and provides that the Crow Tribe "shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon;" and

WHEREAS, the United States Congress has never abrogated the aforementioned Crow tribal treaty hunting right; and

WHEREAS, in 1995 the Tenth Circuit Court of Appeals ruled in *Crow Tribe v. Repsis*, also known as the "Ten Bear Decision," that the Crow treaty right to hunt in the Bighorn National Forest of Wyoming was abrogated in 1890 by virtue of Congressional passage of the Wyoming statehood act, but in 1999 the United States Supreme Court in *Minnesota v. Mille Lacs Band of Chippewa* reversed the case law which the Tenth Circuit based its decision on in *Repsis*; and

WHEREAS, William Canby, distinguished Senior Judge for the United States Court of Appeals for the Ninth Circuit and author of *Indian Law in a Nutshell* has written that the rule set forth in the Tenth Circuit's *Repsis* decision cannot be relied upon because it was "squarely rejected" by the *Mille Lacs* decision; and

WHEREAS, the State of Montana currently recognizes the Shoshone-Bannock as having an off-reservation treaty right to hunt under the 1868 Fort Bridger Treaty, which contains the same language as the 1868 Fort Laramie Treaty as it pertains to hunting and the State of Montana also recognizes off-reservation treaty hunting rights held by the Salish-Kootenai, Nez Perce, and Warm Springs Umatilla, including in areas that were recognized as Crow Country under the 1851 Fort Laramie Treaty and were part of the Crow Indian Reservation until 1882; and

WHEREAS, the time has come for the Crow Tribe to fully exercise its hunting rights guaranteed by past tribal leaders through the treaties with the United States.

**NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE EXECUTIVE BRANCH
AND LEGISLATURE IN SPECIAL SESSION:**

Section 1. Establishment of Tribal Policy. The policy of the Crow Tribe shall be to exercise fully its treaty right to hunt on all unoccupied lands of the United States which are located within the traditional Crow homeland, as set out in the 1851 Fort Laramie Treaty, along with all such lands as located in traditional Crow territory according to tribal oral history.

(a) It shall be tribal policy to consider the term “unoccupied lands of the United States” as contained in Article IV of the 1868 Fort Laramie Treaty to include all federal lands managed by the United States Forest Service as national forests and national grasslands, all federal lands managed by the National Park Service as national parks and national recreation areas, all federal lands managed by the United States Fish and Wildlife Service as national wildlife refuges, and all federal lands managed by the Bureau of Land Management as national monuments, national recreation areas, and all such other BLM lands managed for multiple-use or resource preservation, and all federal lands managed by the Army Corps of Engineers and Bureau of Reclamation. All federal lands specifically designated by the United States Congress under statute as off-limits to hunting generally shall be honored as such by the Crow Tribe.

(b) It shall be tribal policy to consider the phrase “so long as game may be found thereon” as contained in Article IV of the 1868 Fort Laramie Treaty to include all native species of animals found in the traditional Crow homeland as identified in the 1851 Fort Laramie Treaty. Such species shall include but not be limited to: buffalo, elk, mule deer, white-tailed deer, black bear, grizzly bear, big horn sheep, shiras moose, grey wolves, pronghorn antelope, mountain lion, bobcat, wolverine, badger, beaver, sharp-tailed grouse, ruffed grouse, sage grouse, blue or dusky grouse, prairie chicken, wild turkey, waterfowl, birds of prey, and all fur-bearing animals.

(c) The Crow Tribe intends to enact regulations governing the exercise of all off-reservation treaty hunting conducted by Crow tribal members through an amendment to the Crow Fish and Game Code as contained in Title 12 of the Crow Law and Order Code. Such regulations shall, at a minimum, include procedures for issuance of treaty licenses, the establishment of treaty-hunting seasons, harvest quotas, enforcement procedures including penalties for violations, inter-governmental agreements including cooperative habitat improvement projects, and other conservation-based regulatory measures.

(d) Enrolled members of the Crow Tribe, pursuant to the Fort Laramie Treaties of 1851 and 1868, may take native species of animals, including but not limited to the aforementioned list in Section 1(b), permitted to be taken under Crow tribal law. All animal species federally-listed as endangered or threatened under the Endangered Species Act and all animal species otherwise specifically protected from hunting under federal statutory law shall be honored as protected by the Crow Tribe. Enrolled members engaged in treaty-hunting shall at all times have a current tribal identification card in their possession. It shall be unlawful for any non-member to accompany a tribal member engaged in off-reservation treaty hunting.

Section 2. Notice to Federal Government. Upon the effective date, a certified copy of this Tribal Resolution shall be immediately provided to the following local and regional federal offices: the United States Attorney for the District of Montana in Billings, the United States Attorney for the District of Wyoming in Cheyenne, the Forest Supervisor for the Bighorn National Forest in Sheridan, the Forest Supervisor for the Custer National Forest in Billings, the Forest Supervisor for the Gallatin National Forest in Bozeman, the Forest Supervisor for the Shoshone National Forest in Cody, the Forest Supervisor for the Lewis and Clark National Forest in Great Falls, the Forest Supervisor for the Black Hills National Forest in Custer, South Dakota, the Superintendent for Yellowstone National Park in Wyoming, the Superintendent for Big Horn Canyon National Recreation Area in Fort Smith, the Director of the Montana-Dakotas State Office of the Bureau of Land Management in Billings, the Director of the Wyoming State Office of the Bureau of Land Management in Cheyenne, and the Mountain-Prairie Regional Director of the Fish and Wildlife Service in Denver. Furthermore, a certified copy of this Tribal Resolution shall be immediately provided to the President of the United States Barack Obama, United States Attorney General Eric Holder, Secretary of the Interior Sally Jewell, and Secretary of the Department of Agriculture Tom Vilsack.

Section 3. Notice to Montana state government. Upon the effective date, a certified copy of this Tribal Resolution shall be immediately provided to the following Montana state government offices: the Office of the Governor, the Attorney General's Office, and the Director of Department of Fish, Wildlife, and Parks in Helena.

Section 4. Notice to Wyoming state government. Upon the effective date, a certified copy of this Tribal Resolution shall be immediately provided to the following Wyoming state government offices: the Office of the Governor, the Attorney General's Office, and the Director of Department of Game and Fish in Cheyenne.

Section 5. Notice to South Dakota state government. Upon the effective date, a certified copy of this Tribal Resolution shall be immediately provided to the following South Dakota state government offices: the Office of the Governor, the Attorney General's Office, and the Director of Department of Game, Fish and Parks in Pierre.

Section 6. Executive Branch to Negotiate. The Executive Branch is authorized to negotiate with any and all federal and state governmental authorities regarding any terms or conditions the Legislature should consider in the adoption of treaty hunting regulations in the Tribal Fish and Game Code.

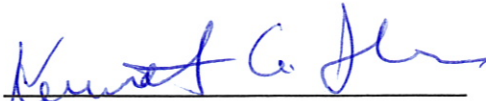
Section 7. Tribal Resolution Not a Limitation of Rights. Nothing contained in this Tribal Resolution shall be considered a limitation on any Crow tribal rights to hunt, fish, or gather pursuant to the 1868 Fort Laramie Treaty or other law.

Section 8. Effective Date. This Act shall become effective immediately upon becoming duly adopted by the Legislature and approved by the Executive Branch Chairman.

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CERTIFICATION

I hereby certify that this Joint Action Resolution titled **A JOINT ACTION RESOLUTION OF THE CROW TRIBE TO ENACT AND DECLARE OFFICIAL CROW TRIBAL POLICY OF FULLY EXERCISING OFF-RESERVATION HUNTING RIGHTS PURSUANT TO THE 1868 FORT LARAMIE TREATY** was duly approved by the Crow Tribal Legislature with a vote of 15 in favor, 0 opposed, and 0 abstained and that a quorum was present on this 7th day of May, 2013.



Senator Kenneth Shane
Speaker of the House
Crow Tribal Legislature

ATTEST:



Senator R. Knute Old Crow
Secretary
Crow Tribal Legislature



EXECUTIVE ACTION

I hereby:

☒ approve
☐ veto

The Joint Action Resolution titled **A JOINT ACTION RESOLUTION OF THE CROW TRIBE TO ENACT AND DECLARE OFFICIAL CROW TRIBAL POLICY OF FULLY EXERCISING OFF-RESERVATION HUNTING RIGHTS PURSUANT TO THE 1868 FORT LARAMIE TREATY** 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 14 day of MAY, 2013.



Chairman Darrin Old Coyote
Crow Tribal Executive Branch

**A JOINT ACTION RESOLUTION OF THE CROW TRIBE TO ENACT AND DECLARE OFFICIAL CROW TRIBAL POLICY OF
FULLY EXERCISING OFF-RESERVATION HUNTING RIGHTS PURSUANT TO THE 1868 FORT LARAMIE TREATY**

Bill or Resolution: JAR13-09 **Introduced by:** Chairman Darrin Old Coyote **Date of Vote:** 5/7/2013
Number Co-Sponsor: Senator Conrad J. Stewart

<u>Representative:</u>	Yes	No	Abstained
H. Two Leggins	<u> X </u>	<u> </u>	<u> </u>
V. Pretty Paint	<u> </u>	<u> </u>	<u> </u>
C. J. Stewart	<u> X </u>	<u> </u>	<u> </u>
L. Other Medicine	<u> X </u>	<u> </u>	<u> </u>
A.Coyote-Runs, Sr.	<u> X </u>	<u> </u>	<u> </u>
L. Not Afraid.	<u> X </u>	<u> </u>	<u> </u>
M. Covers Up, Sr.	<u> X </u>	<u> </u>	<u> </u>
P. Alden, Jr.	<u> </u>	<u> </u>	<u> </u>
M. Not Afraid	<u> X </u>	<u> </u>	<u> </u>
V. Crooked Arm	<u> X </u>	<u> </u>	<u> </u>
L. DeCrane	<u> X </u>	<u> </u>	<u> </u>
C. Goes Ahead	<u> X </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>
M. Backbone	<u> </u>	<u> </u>	<u> </u>
G. Stewart	<u> X </u>	<u> </u>	<u> </u>
R. K. Old Crow, Sr. <i>Secretary of the House</i>	<u> X </u>	<u> </u>	<u> </u>
K. Shane <i>Speaker of the House</i>	<u> X </u>	<u> </u>	<u> </u>
Totals:	<u> 15 </u>	<u> 0 </u>	<u> 0 </u>

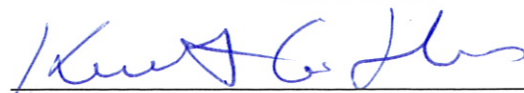
Result of Vote:

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