

OCTOBER 2015 CROW TRIBAL LEGISLATURE

JOINT ACTION RESOLUTION NO. JAR 15-15

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:

“A RESOLUTION APPROVING THE SAFE HARBOR AGREEMENT BETWEEN THE CROW TRIBE AND THE U.S. FISH AND WILDLIFE SERVICE IN FURTHERANCE OF THE TRIBE’S EFFORTS TO REINTRODUCE THE BLACK FOOTED FERRET INSIDE THE EXTERIOR BOUNDARIES OF THE CROW NATION.”

WHEREAS, the Chairman of the Executive Branch has authority and responsibility pursuant to the “enumerated powers” in Article IV, Section 3 of the Constitution and Bylaws of the Crow Tribe of Indians to represent the Crow Tribe in negotiations with Federal, State and local governments and other agencies, corporations, associations, or individuals in matters of welfare affecting the Crow Tribe; and 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

WHEREAS, pursuant to Article V, Section 2(a) of the 2001 Crow Tribal Constitution, the Crow Tribal Legislature (hereinafter, the “Legislature”) is vested with the power and duty to promulgate and adopt laws, resolutions, ordinances, codes, regulations, and guidelines in accordance with the 2001 Crow Constitution and federal laws, and in 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

WHEREAS, approximately 2,960 acres of black-tailed prairie dog habitat existing on the Crow Indian Reservation, have been identified by the United States Fish and Wildlife Service (the “USFWS”) of the United States Department of the Interior as suitable for the reintroduction of black-footed ferrets, and the preservation and conservation of this native wildlife species is important to the Crow Tribe and the Crow people; and

WHEREAS, since March 11, 1967 the Black-Footed Ferret has been listed by the USFWS as an endangered species under the Endangered Species Act, 16 U.S.C. § 1531, *et seq.*; and

WHEREAS, the Crow Nation has the inherent authority and sovereign power to promote and regulate the reintroduction and conservation of the Black-Footed Ferret within the homeland of the Crow Nation; and

WHEREAS, conservation of the Black-Footed Ferret pursuant to Tribal law and regulation, in cooperation with Federal agencies, will accomplish the objective of reintroducing and conserving the Black-Footed Ferret within the Crow Nation, while also taking into account the importance of economic development that is critical to the Reservation economy and to provide employment for the Crow people; and

WHEREAS, the Crow Tribal Department of Natural Resources, through its Fish and Game Department, is working with the USFWS to develop a “Black-footed Ferret Reintroduction Plan” on the Crow Nation (the “Plan”), whereby the Crow Tribe, in cooperation with the USFWS and the Bureau of Indian Affairs (“BIA”), will have primary responsibility for management and conservation of the species according to the Plan; and

WHEREAS, upon approval of this Joint Action Resolution, the Crow Tribal Department of Natural Resources will work with the above-named cooperating Federal agencies to finalize the Plan and undertake the reintroduction, conservation, and management activities specified in the Plan;

NOW, THEREFORE, BE IT ENACTED BY THE CROW TRIBAL LEGISLATURE:

Section 1. The “Black-footed Ferret Reintroduction Plan” and Safe Harbor Agreement, attached hereto and incorporated by this reference, is hereby approved.

Section 2. The Chairman of the Executive Branch is authorized to effectuate any and all documents necessary to accomplish the intent of this Joint Action Resolution.

Section 3. This Reintroduction Plan and Safe Harbor Agreement does not, and shall not, conflict with any current or future tribal conservation plans, rules, regulations, and/or laws, passed by the Crow Tribe.

Section 4. This Resolution shall be effective immediately upon approval by the Chairman of the Executive Branch; provided, however, that the Plan shall be fully executed when agreed to and signed by the cooperating Federal agencies.

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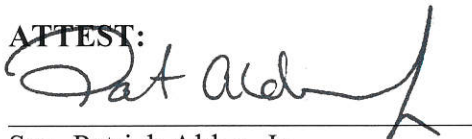
CERTIFICATION

I hereby certify that this Joint Action Resolution entitled "**A RESOLUTION APPROVING THE SAFE HARBOR AGREEMENT BETWEEN THE CROW TRIBE AND THE U.S. FISH AND WILDLIFE SERVICE IN FURTHERANCE OF THE TRIBE'S EFFORTS TO REINTRODUCE THE BLACK FOOTED FERRET INSIDE THE EXTERIOR BOUNDARIES OF THE CROW NATION**" 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 14th day of October, 2015.



Sen. R. Knute Old Crow, Sr.
Speaker of the House
Crow Tribal Legislature

ATTEST:



Sen. Patrick Alden, Jr.
Secretary
Crow Tribal Legislature

EXECUTIVE ACTION

I hereby

X APPROVE

_____ VETO



this Joint Action Resolution entitled "**A RESOLUTION APPROVING THE SAFE HARBOR AGREEMENT BETWEEN THE CROW TRIBE AND THE U.S. FISH AND WILDLIFE SERVICE IN FURTHERANCE OF THE TRIBE'S EFFORTS TO REINTRODUCE THE BLACK FOOTED FERRET INSIDE THE EXTERIOR BOUNDARIES OF THE CROW NATION**" 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 14th day of OCTOBER, 2015.


Darrin Old Coyote, Chairman
Crow Tribal Executive Branch

JAR - "A RESOLUTION APPROVING THE SAFE HARBOR AGREEMENT BETWEEN THE CROW TRIBE AND THE U.S. FISH AND WILDLIFE SERVICE IN FURTHERANCE OF THE TRIBE'S EFFORTS TO REINTRODUCE THE BLACK FOOTED FERRET INSIDE THE EXTERIOR BOUNDARIES OF THE CROW NATION."

Bill or Resolution: JAR15-15 **Introduced by:** Chairman Darrin Old Coyote **Date of Vote:** 10/14/2015
Number

<u>Representative:</u>	Yes	No	Abstained
G. Three Irons	<u> X </u>	<u> </u>	<u> </u>
B. Rogers	<u> X </u>	<u> </u>	<u> </u>
C. Stewart	<u> X </u>	<u> </u>	<u> </u>
P. Hill	<u> X </u>	<u> </u>	<u> </u>
E. Birdinground	<u> X </u>	<u> </u>	<u> </u>
(Vacant)	<u> </u>	<u> </u>	<u> </u>
V. Nomee	<u> X </u>	<u> </u>	<u> </u>
T. Gros Ventre	<u> </u>	<u> </u>	<u> </u>
V. Crooked Arm	<u> </u>	<u> </u>	<u> </u>
P. Spotted Horse, Jr.	<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>
B. Good Luck	<u> X </u>	<u> </u>	<u> </u>
G. Stewart	<u> X </u>	<u> </u>	<u> </u>
P. Alden, Jr. <i>Secretary of the House Pro-Tem</i>	<u> X </u>	<u> </u>	<u> </u>
R. K. Old Crow, Sr. <i>Speaker of the House Pro-Tem</i>	<u> X </u>	<u> </u>	<u> </u>
Totals:	<u> 15 </u>	<u> 0 </u>	<u> 0 </u>


Result of Vote:

Passed

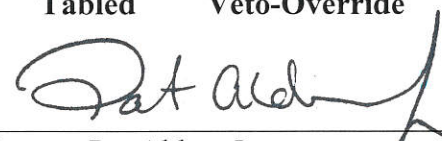
Not Passed

Tabled

Veto-Override


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

10/15/15
 Date


 Senator Pat Alden, Jr.
 Secretary of the House

Date

Crow Tribe Black-footed Ferret Reintroduction Plan
Big Horn and Yellowstone counties, Montana
Agreed to by Cooperator and Permittee, hereinafter "Parties"

Cooperator's Name

Crow Tribe

Permittee:

Pete Gober, USFWS

Certificate of Inclusion (COI)#:

MT-001

- 1.0 Description and map of enrolled lands:** The Conservation Zone for the enrolled property in Big Horn County, Montana consists of approximately 78,853 acres of rangeland. Within this Conservation Zone, approximately 2,960 acres of black-tailed prairie dog habitat currently exist that are suitable for the reintroduction of black-footed ferrets. The Management Zone for the enrolled property in Big Horn and Yellowstone counties consists of approximately 2,285,952 acres of rangeland, cropland, and residential lands. Please see Appendix A for a map delineating the Conservation and Management Zones.
- 2.0 Baseline for the Covered Species:** The baseline for the black-footed ferret on the enrolled property is considered to be zero animals.
- 3.0 Current land use:** The property totals approximately 2,285,952 acres and is designated as a reservation for the Crow Tribe.
- 4.0 Conservation Activities:**
- A. Black-footed Ferret Reintroduction and Management: Upon signature by the Parties, the enrolled lands will be eligible to receive black-footed ferrets. Reintroduction and management activities will be carried out by the Permittee (Black-footed Ferret Recovery Coordinator, U.S. Fish and Wildlife Service/"the Service") or designee(s). Following an initial release of 30 animals, approximately 20 ferrets may be released annually within the Conservation Zone identified on the enrolled lands in the fall. This process will be undertaken over the course of 1-3 days. The Cooperator will be notified 30 days prior to planned release activities.*
- B. Disease Management: Upon signature by the Parties, the enrolled lands will be eligible for disease management activities. These activities may be carried out by the Cooperator, Permittee, or third party designated by the Parties. Disease management activities may include applying approximately 5 grams of DeltaDust™ into prairie dog burrows within the Conservation Zone and/or high priority areas within the Management Zone. Dust is typically applied using ATVs or by foot depending on topography. Applications can take several days to several weeks depending on acreage treated and size of work crews. Alternatively, oral vaccine baits (currently under development) could be distributed from ATVs or possibly

aerially onto a prairie dog colony no more than once per year after emergence of the young. In the event that disease management activities will be undertaken by the Permittee or a third party designee, the Cooperator will be notified 30 days prior to any disease management activities.*

C. Prairie Dog Management:

1. Upon signature by all Parties, the enrolled lands may be eligible to receive assistance in prairie dog management. This will be facilitated by the Permittee or designee and carried out by USDA APHIS-Wildlife Services or other designated party.*
2. Prairie dog management may include lethal control of prairie dogs only outside of the Conservation Zone where identified on the Reintroduction Plan map to keep specific lands free of prairie dogs. Lethal control may be accomplished using shooting and/or application of zinc phosphide. Anticoagulant rodenticides (e.g., Rozol® and Kaput®) cannot be used within the Management Zone or Conservation Zone at any time.

****All conservation management related activities will be coordinated in advance directly with and are subject to the expressed approval of the Cooperator. Every effort will be made to minimize conflicts with the Cooperator's use of the lands. Only in emergency situations will the Permittee request access less than 30 days in advance.***

5.0 Monitoring: The Cooperator will be expected to fill out a questionnaire (example provided in Appendix B) on an annual basis regarding status of ferrets on the enrolled land and ongoing routine grazing and ranching activities; the Permittee will assist the Cooperator in completing this survey if requested. Spotlight surveys for black-footed ferrets will be coordinated by the Permittee (or designee) to determine the success of the ferret reintroduction. Surveys will be conducted between 1 September and 31 October of each year, and will utilize pre-determined routes within the Conservation Zone. While actual survey effort may vary, the Permittee anticipates that a total of 80 observer hours annually will be adequate to determine the status of the reintroduction effort.

6.0 Changed Circumstances:

Changed Circumstance	Potential Effect to Black-Footed Ferrets	Proposed Response
Drought	Drought can limit forage quantity available for prairie dogs and livestock. Competition for this forage could limit prairie dog reproduction. Limited prairie dog reproduction could lead to limited food availability for ferrets.	Upon identification of a D2 or higher by the Drought Monitor and declaration by State Authorities, the Permittee will determine if adequate habitat is available on the enrolled lands for ferrets. If not, the Permittee may elect to trap any remaining ferrets for reintroduction elsewhere with adequate habitat. Landowner grazing activities will not be limited by the Permittee. Additional ferrets may be reintroduced to the enrolled lands after drought

		conditions have improved.
Fire	Direct effects of fire to ferrets or prairie dogs are unlikely as they can seek refuge within their burrows. However, fire can have short term impacts to the availability of forage for prairie dogs and therefore ferrets as discussed above.	Should a fire impact greater than 50% of the enrolled lands, the Permittee will determine if adequate habitat is available on the enrolled lands for ferrets. If not, the Permittee may elect to trap any remaining ferrets for reintroduction elsewhere with adequate habitat. Additional ferrets may be reintroduced to the enrolled lands after enrolled lands have recovered from the fire.
Disease	There are a number of native and non-native diseases that can impact ferrets. Impacts occur both directly (death of ferret) or indirectly through the loss of their food source, prairie dogs.	In the case where disease other than plague is suspected to have impacted ferrets, the Permittee will coordinate efforts to identify the disease with U.S. Geological Survey's National Wildlife Health Lab and the appropriate State Agency that oversee wildlife disease outbreaks. Potential response to the disease could include trapping and relocating ferrets if adequate habitat exists elsewhere. If disease causes loss of all ferrets at a reintroduction site, additional ferrets may be reintroduced if adequate habitat exists that is not impacted by disease.
Additional Land Uses	Changes in land use include, but are not limited to utility development (e.g., waterlines, power lines), energy development, and associated infrastructure. These changes could result in the incidental take of ferrets through vehicle collision and/or decrease available prairie dog habitat and prairie dogs available for ferrets.	Any additional land uses proposed within the enrolled lands during the term of the Reintroduction Plan will be identified and reviewed by the parties to determine if the proposed use will decrease prairie dogs or ferret habitat. Any significant decreases in prairie dog habitat could be offset by including additional prairie dog habitat contiguous with the Conservation Zone resulting in no net loss of adequate prairie dog habitat. If sufficient additional habitat does not exist, the Permittee may elect to trap any remaining ferrets for reintroduction elsewhere with adequate habitat.
New Species Listing on Enrolled Lands	Conservation activities to benefit the black-footed ferret may have potential impacts to the new species.	If a non-covered species that occurs within the Agreement area becomes a federally listed species, the Service will assess whether the implementation of the Agreement may affect such species. If implementation may result in incidental take of such species, the Service will work with the enrolled landowners to determine appropriate modifications to the Agreement's conservation activities to either avoid or minimize incidental take. If take cannot be avoided, the Service will determine whether amending the Agreement and permit would be necessary to cover such additional species through the Endangered Species Act, Section 7 process. If the landowner wishes to conserve the species and receive assurances for that species, the Service and landowner would mutually amend the Reintroduction Plan to document the baseline conditions for the species; potentially modify or add conservation measures; and the Service would amend the Agreement, Biological Opinion, and any relevant National Environmental Policy Act documents while providing for required public comment. Any Cooperator may withdraw from the Agreement at any time.
Change in Ownership Interest	Withdrawal of Cooperator from the Agreement and termination of Reintroduction Plan may result in loss of site.	Coverage for incidental take will be maintained via the Biological Opinion, provided the former Cooperator notifies the Permittee and allows access to trap any remaining ferrets for reintroduction elsewhere.

7.0 Reintroduction Plan Duration: The duration of this plan will be 10 years from the date of signature. The Certificate of Inclusion will be in effect for as long as the terms of this Agreement and the Reintroduction Plan are met.

8.0 Assurances to the Cooperator: Provided that the Cooperator complies with the provisions outlined in the Reintroduction Plan developed for the enrolled lands, the Service assures that it will not impose conservation measures and/or restrictions for the ferret on the use of the Cooperator's land, water, or resources in addition to those already agreed upon in the Safe Harbor Agreement and the Reintroduction Plan throughout the term of the Certificate of Inclusion. Furthermore, the Certificate of Inclusion will provide the Cooperator with incidental take coverage of the ferret consistent with maintaining the baseline conditions as described in Section 2.0 of this Reintroduction Plan with the following conditions:

- A. When a Cooperator is implementing the conservation activities identified in Section 4.0 of this Reintroduction Plan.
- B. When a Cooperator is carrying out any legal activity, including routine ranching and grazing, on or adjacent to the enrolled lands in concert with conservation activities identified in section 4.0 of this Reintroduction Plan.
- C. When a Cooperator is making any lawful use of Cooperator-owned non-enrolled lands that are adjacent to or in proximity of enrolled lands.
- D. When a Cooperator is returning the enrolled lands to baseline at any time through otherwise lawful means.

9.0 Modifications:

- A. Reintroduction Plan: Any party to this Reintroduction Plan may propose modifications by providing written notice to the other parties explaining the proposed modification and the reasons for the modification. Approval of a modification will require the written consent of the Permittee and Cooperator and must be consistent with the assurances described in Section 8.0 of the Reintroduction Plan. Any proposed modification to the Reintroduction Plan will be considered effective as of the date that all affected parties, including the Natural Resources Committee of the Crow Tribal Legislature, have agreed in writing to the modification.
- B. Certificate of Inclusion: The Certificate of Inclusion may be amended by the Cooperator and/or the Permittee, pursuant to the modification requirements of this Section 9, and in accordance with all applicable legal requirements in force at the time of the amendment, including, but not limited to, the Act, National Environmental Policy Act, and Service permit regulations (50 CFR, Parts 13 and 17). A

request for an amendment of the Permit or Certificate of Inclusion would require, at a minimum: a written explanation of why the amendment is needed; and an explanation of what, if any, effects the amendment would have on the black-footed ferret. An amendment to the Permit would require the Service to publish a notice in the *Federal Register* of a 30-day public comment period for the proposed amendment.

- C. Early Termination of the Reintroduction Plan: As provided for in Part 12 of the Service's Safe Harbor Policy (64 FR 32717), the Permittee may terminate the Reintroduction Plan prior to the expiration date. In such circumstances, the Cooperator may return the enrolled lands to baseline conditions even if the conservation activities identified in the Reintroduction Plan for the enrolled lands have not been fully implemented. Similarly, the Cooperator may terminate the Reintroduction Plan early. A Cooperator who withdraws from the Agreement would subsequently be regarded as a non-participating landowner interest who receives incidental take via the associated Biological Opinion, provided the Cooperator notifies the Permittee and allows the Service access to recapture ferrets during the following fall, prior to carrying out any otherwise lawful activity that may result in take of ferrets on enrolled lands, including a return to baseline. If a Cooperator fails to notify the Permittee regarding possible take or fails to provide access, coverage for incidental take will not be granted.

10.0 Other Measures:

- A. Remedies. No party shall be liable in monetary damages for any breach of this Reintroduction Plan (Plan), any performance or failure to perform an obligation under this Reintroduction Plan or any other cause of action arising from this Plan.
- B. Dispute Resolution. The Parties agree to work together in good faith to resolve any disputes using dispute resolution procedures agreed upon by all Parties.
- C. Succession and Transfer. As provided in 50 CFR 13.25, if a Cooperator transfers his or her interest in the enrolled lands to another non-federal entity, the new owner has the option to accept the original Cooperators responsibilities and assurances. If the new owner chooses to accept the original Cooperator's responsibilities and assurances, the Service will regard the new owner or manager as having the same rights and responsibilities with respect to the enrolled lands as the original Cooperator for the remainder of the term of the agreement. If the new owner chooses not to participate in the Agreement and the activities described in the Reintroduction Plan, he or she will retain authorization for incidental take due to otherwise lawful activities via the Biological Opinion, provided the Service is given an opportunity to trap ferrets currently on the property.

- D. Availability of Funds. Implementation of this Plan is subject to the requirement of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Plan will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required under the Plan to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.
- E. No Third-Party Beneficiaries. This Plan does not create any new right or interest in any member of the public as third-party beneficiary, nor shall it authorize anyone not a party to this Plan to maintain a suit for personal injuries or damages pursuant to the provisions of this Plan. The duties, obligations, and responsibilities of the parties to this Plan with respect to any third-party shall remain as imposed under existing law.
- F. Notices and Reports.
Any notices and reports, including monitoring and annual reports required by this Agreement shall be delivered to the persons listed below, as appropriate:

Cooperator:

Crow Tribe
Attn: Director, Tribal Fish and Game
P.O. Box 340
Crow Agency, MT 59022
(406) 638-2059

Permittee:

Pete Gober
Black-footed Ferret Recovery Coordinator
U.S. Fish and Wildlife Service
P.O. Box 190
Wellington, CO 80549
(720) 626-5260

Cc:

Crow Tribe-Executive Legal
P.O. Box 340
Crow Agency, MT 59022
(406) 638-2059

Crow Tribal Legislature
Attn: Chairman-Natural Resources Committee
P.O. Box 309
Crow Agency, MT 59022
406-638-2023

11.0 Signatures:

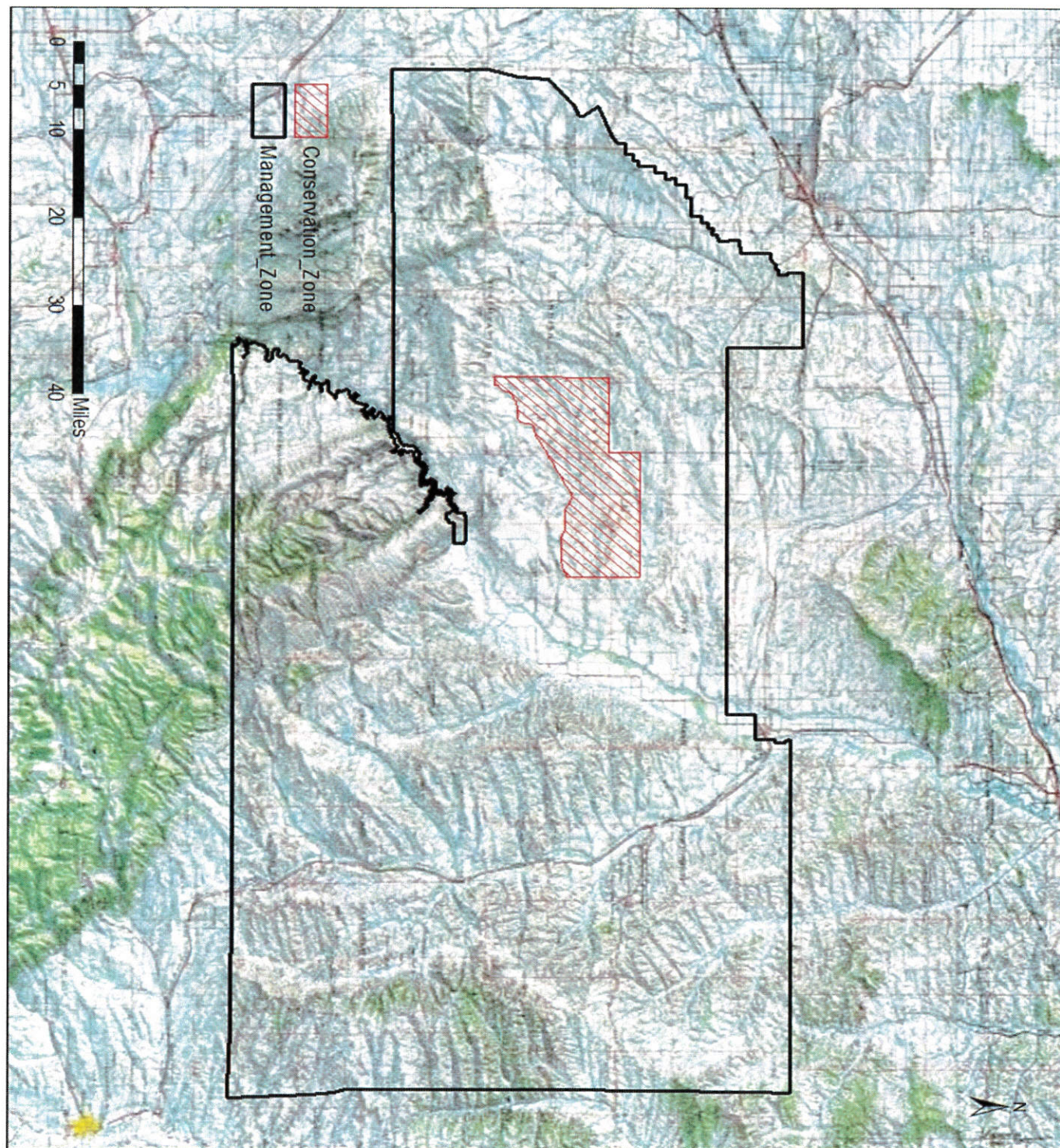
CHAIRMAN, CROW TRIBE

DATE

BLACK-FOOTED FERRET RECOVERY COORDINATOR

DATE

Appendix A – Map of Enrolled Lands



Appendix B – Cooperator Questionnaire

ANNUAL REPORT FROM COOPERATOR TO PERMITTEE

Certificate of Inclusion #:

Name:

State:

County:

Date (covering past year):

Ferrets

1. Have you seen ferrets or any sign of live ferrets? If so, give approximate location.

2. Have you seen any dead ferrets? If so, how many?
Please provide approximate location.

3. Please describe what circumstances resulted in the dead ferret, if known.

Prairie Dogs

4. What changes have you noticed in prairie dog densities? Die-offs? If any, describe the extent of the die-off.

Grazing

5. Are you actively grazing the enrolled lands?

6. Please describe any changes in your grazing practices in the past 12 months.

General

7. Has the reintroduction of ferrets caused any hardship to your operation? If so, please describe.

8. Other comments or suggestions

Certificate of Inclusion
Black-footed Ferret Programmatic Safe Harbor Agreement
MT-001

This certifies that the lands shown on the attached map owned by the Crow Tribe and its members (Cooperator) are included within the scope of Permit Number TE18695B-0, held by the U.S. Fish and Wildlife Service, Black-Footed Ferret Recovery Coordinator (Permittee), issued on October 23, 2013 and expiring on December 31, 2063 under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(A). The Permit authorizes incidental take of black-footed ferrets from all lawful activities by the Cooperator as part of the Black-footed Ferret Programmatic Safe Harbor Agreement (Agreement) to reintroduce and establish new populations of the black-footed ferret. Pursuant to the Permit, this Certificate of Inclusion authorizes incidental take of the black-footed ferret that may result from any otherwise lawful activity on the above described lands, subject to the terms and conditions of the Permit, the Reintroduction Plan, and the Agreement. This Certificate of Inclusion becomes binding upon the Cooperator upon the date of the last signature below and continues for as long as the terms of this Agreement and the Reintroduction Plan are met. The attached Reintroduction Plan is incorporated as part of this Certificate of Inclusion for the enrolled lands.

It is understood that any ownership interest in these lands that is not addressed via an appropriate signature below (e.g., mineral interest) is not constrained by this agreement and will not be limited in any way from the exercise of such interests, except when related to the deliberate take of a listed species and any already extant legal obligations.

COOPERATOR, CROW TRIBE

DATE

BLACK-FOOTED FERRET RECOVERY COORDINATOR

DATE

**Lands Owned by the Crow Tribe Included Within the Scope of Permit TE18695B-0
in Big Horn and Yellowstone counties, Montana**

