

APRIL 2016 CROW TRIBAL LEGISLATURE

JOINT ACTION RESOLUTION NO. JAR 16-02

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:

**“RESOLUTION APPROVING THE CROW TRIBE’S LIMITED WAIVER OF
SOVEREIGN IMMUNITY IN THE OK-A-BEH MARINA CONCESSION
CONTRACT WITH THE NATIONAL PARK SERVICE”**

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

WHEREAS, since the start of the Yellowtail Dam and Bighorn Lake, the United States Department of Interior National Park Service granted the Crow Tribe the right as Master Concessionaire at the Bighorn Canyon National Recreation Area; and

WHEREAS, the Crow Tribe has negotiated with the United States Department of Interior National Park Service to exercise its right through a temporary contract as the concessioner of the Ok-A-Beh Marina at the Bighorn Canyon National Recreation Area; and

WHEREAS, the United States Department of Interior National Park Service has prepared the attached “Concession Temporary Contract No. TC-BICA007-16” (hereinafter, the “Concession Contract”) for the Tribe to provide fuel sales and slip and boat rentals; and

WHEREAS, the United States Department of Interior National Park Service required a limited waiver of sovereign immunity provision in the Concession Contract in order to enforce the Contract and allow for claims by visitors; and

WHEREAS, the Crow Tribe Department of Economic Development has done extensive research and found the project would be profitable for the Tribe; and

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 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 Chairman of the Executive Branch has negotiated the terms of the limited waiver of the Crow Tribe’s sovereign immunity as set forth in Section 1 of the Concession Contract; and

WHEREAS, the Legislative Branch has authority and responsibility pursuant to its “powers and duties” in Article V, Section 2(f) of the Constitution 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, entering into the Concession Contract is in the best interests of the Crow Tribe and the limited waiver of sovereign immunity is necessary for the business purpose of entering into the Concession Contract;

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

Section 1. That the limited waiver of sovereign immunity in the form set forth in the Concession Temporary Contract No. TC-BICA007-16 Section 1(b), attached hereto and incorporated herein by reference, is hereby approved.

Section 2. That the approval granted herein is effective on the date of execution of the Concession Contract.

CERTIFICATION

I hereby certify that this Joint Action Resolution entitled “**RESOLUTION APPROVING THE CROW TRIBE’S LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE OK-A-BEH MARINA CONCESSION CONTRACT WITH THE NATIONAL PARK SERVICE**” was duly enacted by the Crow Tribal Legislature with a vote of 10 in favor 4 opposed, and 0 abstaining and that a quorum was present on this 11th day of April, 2016.



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

ATTEST:



Brandon Good Luck
Secretary Pro-Tem
Crow Tribal Legislature



EXECUTIVE ACTION

I hereby

X approve or

_____ veto.

This Joint Action Resolution entitled “**RESOLUTION APPROVING THE CROW TRIBE’S LIMITED WAIVER OF SOVEREIGN IMMUNITY IN THE OK-A-BEH MARINA CONCESSION CONTRACT WITH THE NATIONAL PARK SERVICE**” pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 and Article IV, Section 3(k) of the Constitution and Bylaws of the Crow Tribe of Indians, on this 28 day of April, 2016.



Darrin Old Coyote, Chairman
Crow Tribal Executive Branch

April 2016 Session

Resolution Approving the Crow Tribe’s Limited Waiver of Sovereign Immunity in the Ok-A-Beh Marina Concession Contract with the National Park Service

Page 3 of 3

**JAR: RESOLUTION APPROVING THE CROW TRIBE'S LIMITED WAIVER OF SOVEREIGN IMMUNITY
IN THE OK-A-BEH MARINA CONCESSION CONTRACT WITH THE NATIONAL PARK SERVICE.**

Bill or Resolution: JAR16-02 **Introduced by:** Chairman Darrin Old Coyote **Date of Vote:** 4/11/2016
Number

<u>Representative:</u>	Yes	No	Abstained
G. Three Irons	<u> X </u>	<u> </u>	<u> </u>
B. Rogers	<u> </u>	<u> </u>	<u> </u>
F. White Clay	<u> </u>	<u> </u>	<u> </u>
P. Hill	<u> </u>	<u> X </u>	<u> </u>
E. Birdinground	<u> X </u>	<u> </u>	<u> </u>
S. Real Bird	<u> </u>	<u> X </u>	<u> </u>
V. Nomee	<u> X </u>	<u> </u>	<u> </u>
T. Gros Ventre	<u> X </u>	<u> </u>	<u> </u>
V. Crooked Arm	<u> </u>	<u> </u>	<u> </u>
P. Spotted Horse, Sr.	<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> </u>	<u> X </u>	<u> </u>
H. Male Bear, Jr.	<u> </u>	<u> X </u>	<u> </u>
P. Alden, Jr. <i>Secretary of the House</i>	<u> </u>	<u> </u>	<u> </u>
R. Old Crow, Sr. <i>Speaker of the House</i>	<u> X </u>	<u> </u>	<u> </u>
Totals:	<u> 10 </u>	<u> 4 </u>	<u> </u>

Result of Vote:

Passed

Not Passed

Tabled

Veto-Override

 4-11-16
Senator R. Knute Old Crow, Sr. Date
Speaker of the House

 4/28/16
Senator Brandon Good Luck Date
Secretary Pro-Tem

IDENTIFICATION OF THE PARTIES**[SOLE PROPRIETORSHIP]**

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Intermountain Region, (hereinafter referred to as the "Director"), and the Crow Tribe of Indians, a Federally-recognized tribe located in the state of Montana (hereinafter referred to as the "Concessioner");

WITNESSETH:

THAT WHEREAS, Bighorn Canyon National Recreation Area is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

WHEREAS, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

WHEREAS, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

WHEREAS, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

NOW, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (54 U.S.C. §§100101 et seq.), and November 13, 1998 (Pub. L. 105-391 54 U.S.C. §§ 101911 et seq.), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

SEC. 1. TERM OF CONTRACT

(a) This Concession Contract No. TC-BICA007-16 ("Contract") shall be effective as of February 1, 2016, and shall be for the term of the remainder of the 2016 calendar year (approximately eleven (11) months) until its expiration on December 31, 2016. As a condition to this term, however, the Concessioner agrees to grant a limited waiver of its sovereign immunity with respect to claims arising out of or in connection with this Contract as provided in subsection (b) below, retroactive to the effective date of the Contract. Should the Concessioner fail to provide documentation establishing such a waiver to the Director in a timely manner, the Contract shall terminate automatically on the 60th day after the effective date.

(b) The Crow Tribe of Indians as Concessioner hereby grants a limited waiver of its sovereign immunity for contract and tort claims arising out of or in connection with the Contract, provided, however that: (i) with respect to contract claims, this limited waiver shall only extend to claims by the United States and visitors for a period until 90 days after the termination of this Contract as necessary to enforce the rights and obligations hereunder, visitor contract claims shall be limited to the amount of \$10,000 and shall only be enforceable in a court of competent jurisdiction located within the State of Montana, and the monetary relief available under this contract waiver shall not include any indirect, consequential, tort, punitive or noncompensatory damages; and (ii) with respect to tort claims, this limited waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the Concessioner's liability insurance policies as specified in Section 11, and shall not extend to any claims for punitive damages; and provided further, that in no event shall any judgment or other relief awarded pursuant to the limited waiver in this subsection (b) result in the encumbrance of any Tribal property or assets which are held in trust for the Crow Tribe by the United States of America, unless required to do so by law. The limited waiver in this subsection (b) shall be subject to approval by the Crow Tribal Legislature as required by the Crow Tribe's Constitution and Bylaws.

This waiver of immunity, and the United States' acceptance of the limits of this waiver, is exclusive to this temporary contract.

SEC. 2. DEFINITIONS

The following terms used in this Contract will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

- (a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.
- (b) "Area" means the property within the boundaries of Bighorn Canyon National Recreation Area.
- (c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this Contract. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.
- (d) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this Contract and all real property improvements assigned to the Concessioner under this Contract. The United States retains title and ownership to all Concession Facilities.
- (e) "Days" shall mean calendar days.
- (f) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.
- (g) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this Contract, each of which is hereby made a part of this Contract.
- (h) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this Contract, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:
 - (1) Intracompany earnings on account of charges to other departments of the operation (such as laundry);
 - (2) Charges for employees' meals, lodgings, and transportation;
 - (3) Cash discounts on purchases;
 - (4) Cash discounts on sales;
 - (5) Returned sales and allowances;
 - (6) Interest on money loaned or in bank accounts;
 - (7) Income from investments;
 - (8) Income from subsidiary companies outside of the Area;
 - (9) Sale of property other than that purchased in the regular course of business for the purpose of resale;
 - (10) Sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;

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