

**Statement of Patrick T. Tyrrell  
Wyoming State Engineer, State of Wyoming  
Regarding Enactment of H.R. 3563  
Before the Water and Power Subcommittee of the Committee on Natural Resources  
U.S. House of Representatives, Washington D.C.  
September 22, 2009**

Thank you, Madame Chairwoman and members of the subcommittee. It is indeed a pleasure to be here. I am Pat Tyrrell, Wyoming State Engineer. I will testify today about Wyoming's concerns with the Crow Compact and subsequent federal legislation.

In 1999, when the final discussions occurred that led to the tribal compact that is before you, the Montana Compact Commission Chairman indicated that many of Wyoming's interests could be addressed outside of those negotiations in a different forum [*letter from Chris Tweeten to Gordon W. Fassett, May 12, 1999, page 4*]. The State of Wyoming is not a party to this compact and now, a decade later, that different forum exists, and I am here to present Wyoming's concerns about the Compact and the Stream-flow and Lake Level Management Plan incorporated therein. Our position, as a potentially affected party who was not at the negotiating table for these documents, is akin to nervously watching two neighbors making decisions over the keys to your car. At some point, it is appropriate that you get involved.

By way of geographic description, it is important to understand that the Big Horn River's headwaters and 19,000 of its 23,000 square mile drainage area (83%) are in Wyoming, that Big Horn Lake (formed by Yellowtail Dam) straddles the Wyoming/Montana state line and serves recreational users on both sides, and that the Crow Reservation abuts the state line but is entirely within Montana.

Wyoming has historically supported negotiated Tribal water rights settlements over potentially expensive and lengthy, not to mention often acrimonious, litigation. Therefore, we applaud Montana and the Crow Tribe, and the federal government, for arriving at a solution in the friendlier manner. Although we have concerns about the final product, those in no way diminish our appreciation of the success these parties should enjoy for the hard work they put in.

Wyoming was very concerned about several provisions of the compact as negotiated, and my office provided advice to Senator Barrasso on language that was amended into the enabling legislation in the Senate. I understand this language has now been introduced into the House version. Driving these changes was Wyoming's concern that the State of Montana and its water users might be able to improve their rights to the waters of the Big Horn River as against Wyoming users as a result of a bilateral compact with the Crow Tribe. The amended language from the Senate side does not provide every protection Wyoming sought, but it shores up some language in the original bill, and mutes some effects of the Crow Compact. The Senate report language is also helpful and should remain to memorialize the intent of this legislation.

In 1950, Congress approved the Yellowstone River Compact, designed to allocate between Montana and Wyoming the waters of four interstate tributaries of the Yellowstone River, including the Big Horn River. While Tribal water interests were not to be adversely affected by that compact, neither were they granted their own allocation. In adopting the Yellowstone River Compact, Congress made this allocation the law of the land, and the compact became binding in both states. It is possible to interpret that compact as including Tribal water needs as being satisfied within the allocations provided to each state.

So, in reviewing this Tribal compact, the first protection Wyoming sought was for Congress to state specifically that the Crow Compact would not impair Wyoming's allocations of Big Horn River water under the Yellowstone River Compact. Wyoming is concerned that absent hold harmless assurances in this enabling legislation, the compact between Montana and the Crow Tribe could be misinterpreted to diminish our rights under that earlier law. *[Testimony of Chris D. Tweeten before the Senate Committee on Indian Affairs, September 11, 2008, page 4]*

A second protection we sought arises from subordination provisions in the Crow Tribe's compact with Montana. Under those provisions, Montana non-tribal water users with state rights junior to the tribal right cannot be forced to cease their water use to ease shortages to the tribal rights. Without hold harmless language, this provision could encourage the Tribe, in time of shortage, to seek water from Wyoming users as a first resort. The sanctity of the Yellowstone River Compact requires that Wyoming be protected from the impact of the tribe's decision to subordinate its water right to Montana state rights on the Big Horn.

The third protection we sought involves instream flow rights. The Yellowstone River Compact does not provide for the recognition of instream flow rights in one state as against the other because non-consumptive uses like this are not recognized as beneficial uses in that document. However, the Streamflow and Lake Level Management Plan incorporated in the Crow Compact provides that the Tribe permanently dedicate at least half of its direct flow water right to maintaining instream flows in the Bighorn River from Yellowtail Dam downstream through the Reservation. To prevent this dedication from being extrapolated into a right under which the State of Montana could attempt to seek water from Wyoming users for instream flow purposes, we sought language in this legislation expressly stating that such a betterment of Montana's position cannot occur.

Finally, the Streamflow and Lake Level Management Plan incorporated by the Crow Compact could be read to imply that the Bureau of Reclamation should favor instream flow releases from the dam over other management considerations. This would reverse many years of the Bureau's multiple use management of the dam, in which it gave equal consideration to such things as flood control, flat-water recreation, river flows, and storage. This legislation should clarify the equal weighting of all management needs under the Bureau's discretion.

Language addressing the above concerns now exists in the bill in some form. So, while the amended bill is not perfect in Wyoming's view, it is better than the original, and we appreciate the work that was done.

I thank you Madame Chairwoman and members of the subcommittee for receiving Wyoming's comments and would be pleased to answer any questions you may have.