

**STATEMENT OF JOE FOX, JR.
VICE PRESIDENT, NORTHERN CHEYENNE TRIBE**

**Before the
HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
On
H.R. 1158, THE MONTANA MINERAL CONVEYANCE ACT**

June 22, 2011

Chairman Young and Committee Members, I am Joe Fox, Jr., Vice President of the Northern Cheyenne Tribe of Montana. I was elected as Vice President for a four-year term by vote of our Tribal membership. Prior to that, I was elected by the people to multiple terms on our Tribal governing body, the 11-person Northern Cheyenne Tribal Council. I am pleased to be here today to testify on behalf of the Northern Cheyenne Tribe in strong support of H.R. 1158, the Montana Mineral Conveyance Act. I am accompanied by Steve Chestnut, who has been the Tribe's principle attorney since 1973, and has represented the Tribe in all of the matters referred to in our submissions to the Committee.

If H.R. 1158 is enacted, several long-standing paramount issues for the Northern Cheyenne will finally be resolved. First, our Reservation will finally be made whole by rectifying an error made by the United States over a century ago. Second, commitments made to the Tribe in 2002 by the Montana Congressional delegation, others and the State of Montana to help mitigate the adverse effects on our Tribe and Reservation of 40 years of coal-related development encircling our Reservation, largely sponsored and facilitated by the Federal government, notwithstanding its trust responsibilities to the Tribe, will be fulfilled. H.R. 1158 will enable the provision to the Tribe by Great Northern Properties (GNP) of a desperately needed revenue stream to help mitigated the many impacts of the encircling development on our Reservation and people. This pattern of development culminated most recently in the Congressionally-directed transfer to the State of Montana in 2002 of the massive federal Otter Creek coal tracks adjacent to our reservation.

Attached to my written statement is a document that summarizes the Northern Cheyennes' dramatic struggles over the past 40 years with that coal-related development, which provides perspective on why the enactment of the Montana Mineral Conveyance Act is just and appropriate. I also have attached copies of a letter signed by each member of the State of Montana's Board of Land Commissioners (consisting of the State's five top elected officials), a resolution of the Montana-Wyoming Tribal Leader's Council, and a resolution of the National Congress of American Indians, each supporting H.R. 1158 and urging its passage. Finally, I have included two maps - - one showing how our Reservation has been encircled by coal-related development projects, and another showing our Reservation, its communities and the network of on-Reservation roads serving those off-Reservation projects. As discussed in greater detail herein, these projects visit extensive unmitigated impacts on our Reservation and people, while

the Tribe and its members are excluded from the compensating benefits (impact funding, employment, and commercial opportunity) of such development.

We Northern Cheyenne cherish our land. To us, our land is everything. It has provided for our families for centuries. After we were forcibly relocated to the Oklahoma Territory in 1878 as retribution for our resistance to White domination and our participation in the Battle of the Little Bighorn (the Custer Battle), we (uniquely among all other tribes so relocated) trekked back to our historic homeland in Montana. This journey came at great cost to the Tribe - - death, imprisonment and other deprivations - - as we were hounded along the way by thousands of hostile military and settlers. We eventually made it back to Montana to reclaim our homeland and the Northern Cheyenne Reservation was later formally established by Presidential Executive Order in 1884.

Today the Northern Cheyenne Reservation is bordered on the west by the much larger Crow Indian Reservation and on the east by the Tongue River. Our Reservation is truly the homeland of the Northern Cheyenne. The Reservation population is approximately 90% Northern Cheyenne. Non-Indian presence on the Reservation is minimal. A majority of our more than 9000 Tribal members reside on the Reservation. Traditional Cheyenne values and culture still thrive on the Reservation and the Cheyenne language is still spoken. The Reservation remains culturally distinct from the surrounding land and communities.

Of its 447,000 acres, 99% of the Reservation surface is owned, controlled and used by the Tribe and its members. The primary land uses are cattle grazing, timber harvesting (entirely suspended for years due to adverse market conditions), and ceremonial and subsistence use. Non-Indian use of Reservation lands is minimal. The entire Reservation mineral estate - - except for the eight sections that are the subject of H.R. 1158 - - is owned by the Tribe as a single entity. Because of the paramount importance to us of our land, we have a sacred duty to pursue ownership of the eight sections. Securing ownership of those eight sections has been a priority of the Northern Cheyenne for decades and H.R. 1158 will finally accomplish that goal.

The eight sections of subsurface are also of great commercial value - - 50 years ago, the then-owner Burlington Northern Railroad - - leased that subsurface to Peabody Coal Company for valuable consideration. Although those leases are no longer in force, we don't want to suffer that experience again. But, without ownership of that subsurface, we at best have limited power over, and would suffer impacts and gain scant benefits from, its development.

We have been continuously deprived of ownership of the eight sections because of a federal error which occurred at the end of the 19th century. Because of hostilities and violence then prevailing between Northern Cheyenne and legal and illegal non-Indian settlers on or adjacent to the Tribe's 1884 Reservation, Congress directed Indian Inspector James McLaughlin to buy out the legal and non-Indian illegal interests on and near the Reservation, so that the Reservation could be enlarged eastward to the middle of Tongue River. McLaughlin proceeded to do so, paying the legal and illegal settlers between \$1500 and \$2000 per claim. In contrast, Inspector McLaughlin paid only \$25 per family to Northern Cheyennes then living on federal land previously allocated to them east of the Tongue River. The Reservation was then expanded eastward to mid-channel of the Tongue River by Presidential Executive Order in 1900.

In performing his duties, Inspector McLaughlin made a critical error. Although he purchased all lands within the Reservation (as expanded) then owned by Northern Pacific Railway, Inspector McLaughlin missed eight sections of subsurface beneath surface the Railway had previously conveyed to others. For 111 years, the United States has failed to remedy this error by buying this valuable mineral estate for the Tribe . Approximately 20 years ago, Great Northern Properties (GNP) purchased the entire inventory of railroad subsurface in Montana and elsewhere, including the eight sections on the Northern Cheyenne Reservation. With the willing cooperation of GNP and the Tribe, the United States is now in a position to remedy that continuing federal omission. The Northern Cheyenne have waited many decades for this opportunity.

The Northern Cheyenne Reservation lies in the heart of Montana's Powder River coal region. As shown in the attached maps, the Reservation is surrounded on all sides by major existing and proposed coal-related projects and includes a network of roads used by these off-Reservation projects to travel through the reservation and the region. This pattern of development produces major influxes of newcomers to the area and leads to undesirable socio-economic effects on the Tribe, including on-Reservation crime, traffic and accidents. Because Tribal government lacks adequate legal authority and resources to deal with these non-Indian incursions, there are heightened tensions between Tribal members and non-Indian intruders.

Public services and facilities on the Reservation have long been grossly inadequate, both in absolute terms and in marked contrast to off-Reservation communities. The surrounding development increases pressures on those public services and facilities. Severe deficits have been documented Reservation housing, water and sewer, solid waste, education, health care, law enforcement, fire protection, and transportation. Those deficits increase as on-and off-Reservation populations increase with development.

With no tax base and minimal on-Reservation economic development , the Tribe thoroughly lacks the financial resources to address these socio-economic impacts and respond to the increased demands. In contrast, the surrounding development produces tremendous public revenues (lease bonuses, rents and royalties, state production taxes, real and personal property taxes, and other exactions) for the United States, the State and the counties and municipalities adjoin the Reservation. The Tribe is privy to none of these public revenues.

Also, although the Northern Cheyenne constitute the largest indigenous community in the immediate area, and suffer chronic unemployment rates averaging 65%, very few Northern Cheyenne are employed in these off-Reservation projects. Indeed, reservation unemployment rates have not improved during the course of this development of coal mines and power plants in the vicinity of the Reservation. Historically, Native Americans employment in Montana's Powder River Basin mines has averaged approximately only 3.5% of the total labor force, absent any special hiring agreement mandates, even though the Northern Cheyenne represent the area's largest, most available and neediest labor pool. State law does not authorize the holders of State mining leases to offer any employment preferences to local Native Americans. Relief in this area occurs only in the few situations where the Tribe, through aggressive legal action, wrests a special employment program from a typically hostile project, with predictable ensuing

enforcement difficulties. The bottom line is that average per capita income on the Northern Cheyenne Reservation is a minor fraction of that in surrounding communities, and the Tribal unemployment rate is many multiples of the off-Reservation rate.

In summary, because of the very weak economic ties between the Reservation and surrounding off-Reservation communities, the Northern Cheyenne have not shared in the economic gains from regional coal development. The Reservation does not benefit significantly in terms of jobs, construction contracts, general business activity, or increases in Tribal governmental revenues from the regional increase in economic activity generated by additional off-Reservation coal development. Thus, the Northern Cheyenne suffer an array of major adverse impacts from the off-Reservation (largely federally-sponsored or facilitated) coal-related development and enjoy few, if any, of the compensating benefits enjoyed by the United States, the State and surrounding communities and residents.

The Congressionally-directed transfer in 2002 of the massive federal Otter Creek Coal Tracts to the State of Montana perpetuates and exacerbates these inequities. The Otter Creek Tracts comprise about 8,000 acres of coal lands along both sides of Otter Creek south of Ashland, Montana, and just east of the Northern Cheyenne Reservation. The Tracts are estimated to contain 533 million tons of recoverable coal reserves. The surface rights to the Otter Creek Tracts are held by private landowners, the State of Montana and the Bureau of Land Management. Otter Creek is a tributary of the Tongue River, which forms the eastern boundary of the Northern Cheyenne Reservation.

Although outside the boundaries of the Reservation, the Otter Creek Valley is within the ancestral territory of the Northern Cheyenne. Following bloody conflicts between the United States government and the Tribe in the latter part of the 19th century, the United States reserved lands for the Northern Cheyenne both east and west of the Tongue River. With the assistance of the United States, many Northern Cheyenne families homesteaded under federal law east of the Tongue River along Otter Creek. These families were later induced to move by the federal government, for unconscionably low consideration of \$25 per family, onto the Northern Cheyenne Reservation when the final boundaries of the Reservation were established in 1900. Consequently, the Otter Creek area has great legal, historical and cultural importance to the Tribe and its members. Ancestors of current Tribal members are buried in the Otter Creek area.

For the past 40 years, all of the foregoing Northern Cheyenne concerns and issues regarding encircling coal-related development have been very publically and repeatedly raised by the Northern Cheyenne to the United States, the State and industry, as described in the memo submitted contemporaneously herewith. Most recently, the Tribe did so in connection with the plan to transfer the Otter Creek Tracts to the State.

The Otter Creek Tracts contain more than half a billion tons of federal coal and are checkerboarded with more than 700 million tons of private and other State coal. The result is the single largest block of currently available, developable coal reserves in Montana. Those resources have now been entirely leased to a wholly-owned subsidiary of Arch Coal, Inc., the Nation's second largest coal mining company, and Arch is aggressively proceeding toward development.

Out of the above concerns, the Tribe, in extensive correspondence and meetings with all major interests, strongly and repeatedly expressed opposition to the proposed transfer of the Otter Creek tracts to the State, without accompanying mitigation measures. Solely on its own initiative, throughout 2001 the Tribe met separately and extensively with members of Congress, the Governor, the other top elected officials of the State, the Secretary of the Interior, BLM, BIA, industry and other interested parties, while the Secretary honored a commitment sought and obtained by the Tribe to withhold the Otter Creek transfer while the Tribe pursued settlement discussions.

With scant resources for travel, professional assistance and other necessary expenses - - but armed with a long and remarkably successful record of advocating and demonstrating the legitimacy of its concerns - - the Tribe's settlement initiative bore fruit:

1. The Tribe proposed and successfully negotiated and drafted a Settlement Agreement with the Montana Board of Land Commissioners, which committed the State to the following:
 - a. In leasing the Otter Creek Tracts to industry, the State will require that the lessee, in close consultation with the Tribe, adopt special Operating Plans aimed at providing:
 - enhanced Project employment opportunity to Indians (principally Northern Cheyennes), including training at all levels and for advancement;
 - enhanced opportunity to Northern Cheyenne businesses to obtain Project contracts for goods and services;
 - an on-Reservation conduct program designed to encourage Project employees and truckers to behave appropriately while on the Reservation;
 - enhanced environmental protection for the Reservation; and
 - enhanced protection for Northern Cheyenne historic, cultural, religious and burial sites in the conduct of Project operations.
 - b. State Land Board support for the improvement of certain off-Reservation roads in the area.
 - c. State Land Board support for cooperative law enforcement agreements among the Tribe and State and county law enforcement agencies.

- d. State Land Board support for legislation along the lines now before this Committee (including promised federal impact funding for the Tribe, which has now been deleted from the Bill), even though departure of the Bull Mountains tracts and the Bridge Creek tracts from federal ownership will eliminate the State's half-interest in proceeds of federal leasing of those tracts.

In return for the foregoing State commitments, the Tribe agreed to dismiss with prejudice a lawsuit it had filed in Federal District Court in Washington, D.C. to enjoin the Secretary's transfer of the Otter Creek Tracts to the State. The Tribe filed that action on the eve of consummation of the Otter Creek settlement, upon receiving a tip from an informed source that - - notwithstanding her standstill commitment and without notifying the Tribe - - the Secretary was about to convey the tracts to the State. After consummating the Settlement Agreement with the State, as promised the Tribe immediately dismissed the lawsuit with prejudice.

As part of its settlement initiative, the Tribe on its own initiation also approached GNP with a proposal to resolve by agreement the 111-year old federal error which deprived the Tribe of ownership of the eight sections of Reservation subsurface now owned by GNP. The Tribe successfully negotiated and drafted a written agreement with GNP committing GNP to deed its eight sections of Reservation subsurface to the Tribe if GNP receives off-Reservation federal coal reserves in Montana in lieu thereof. Because the eight Reservation sections were encumbered by a royalty interest reserved by the Burlington Northern subsidiary that sold the eight sections to GNP, the Tribe - GNP agreement also provides that the Tribe will receive at least an identical interest in the royalties GNP would receive from leasing the off-Reservation federal coal - - specifically, at least 40% of those royalties if the off-Reservation coal is subbituminous and at least 24% if the off-Reservation coal is lignite. The federal coal tracts which have been identified by GNP and the Tribe for this transaction, and which are described in the Bill, consist of tracts within the Bull Mountains Life of Mine Plan to be mined in the near term, plus tracts at Bridge Creek immediately to the east of the Northern Cheyenne Reservation.

Without these Bull Mountain tracts, the Bull Mountains Mine would have to shut down within approximately three years, and hundreds of jobs and secondary economic development would be lost to that part of Montana. In contrast, the Bridge Creek tracts would be mined - - if at all - - many years from now.

The Tribe's royalty interest in the Bull Mountains tracts would provide sorely needed revenue to the besieged and impoverished Northern Cheyenne Tribe. The Tribe's royalty interest in the Bridge Creek tracts would, if the tracts were ever mined, be the only source of funding available to the Tribe to deal with the impacts of the mining of those tracts on the margins of the Reservation. All of these tracts contain subbituminous coal and the Tribe would therefore hold at least a 40% interest in the royalties derived therefrom.

In negotiating its Otter Creek settlement with all parties from beginning to end, the Tribe worked closely and with the encouragement of the Montana Congressional delegation (Senators Burns and Senator Baucus and Representative Rehberg), Senator Campbell, and the BLM's Montana State Office. In addition to legislation facilitating the coal transfers described above,

the Tribe also negotiated for federal impact funding which, for the first time, would provide public revenues to the Tribe to help mitigate the accrued and projected impacts of the current and projected coal-related development encircling the Reservation. Again, largely sponsored and facilitated by the Tribe's trustee (the United States), the trustee receives major financial returns from this development while visiting a broad range of unmitigated major impacts on the Tribe and Reservation. In addition, uniquely among all other affected jurisdictions (federal and state), the Tribe is frozen-out from any mitigation funding, as well as anything beyond token employment and commercial opportunities.

The understanding reached with Congressional representatives in the settlement discussions, was that federal impact funding of \$10 million per year for seven years would be sought through legislation, structured in a way to assure that that financial resource would be a permanent resource, available to the Tribe to fund on-Reservation public services, facilities and other governmental matters, as new development projects proceeded within 25 miles of the Reservation.

The Tribe, in good faith, relied on all of these commitments in consummating the Otter Creek settlement and dismissing its litigation against the Otter Creek transfer. However, the impact funding has now been withdrawn from the Bill in light of the current prevailing difficulties in securing any direct funding from Congress. Thus, as things currently stand, the proceeds of the proposed Tribal 40% interest in the GNP royalties stands as the only potential source of impact funding available to the Tribe to cope with the accrued and future impacts of surrounding coal-related development, including the massive development envisioned at the Otter Creek tracts.

As it always has, the Tribe has proceeded throughout this episode with integrity and honor. The Bill, if enacted, would achieve the following constructive results:

- (1) Remediate the federal government's 111-year error which has deprived the Tribe of ownership of eight sections of Reservation subsurface. As the Bill provides, in return for the mineral conveyances provided for in the Bill, the Tribe would release any and all claims it may have against the United States for that error.
- (2) Consolidate the Tribe's land base.
- (3) Prevent GNP (or anyone else) from developing the eight sections without Tribal consent or benefit, irrespective of the long-standing Tribal concerns about Reservation coal development.
- (4) At long last, provide revenue to the Tribe to help the Tribe cope with the accrued and future impacts of adjoining off-Reservation coal-related development.
- (5) Address the long-standing injustices suffered by the Tribe from federally-sponsored and facilitated coal-related development in areas near the

Reservation, while the Tribe's trustee financially benefits from such development.

- (6) Reward the Tribe for its self-generated, steadfast and honorable effort to resolve these matters by agreement rather than litigation.

Again, Chairman Young and Committee Members, I want to thank you for your consideration of H.R. 1158, the Montana Mineral Conveyance Act. Enactment of this bill will help address many wrongs that have been done to the Northern Cheyenne by the United States over the centuries. The Tribe did not create the situation we now find ourselves in and we hope Congress and the Administration can do the right thing and enable the Northern Cheyenne to be in control of their own destiny.

MONTANA MINERAL CONVEYANCE ACT – HISTORICAL PERSPECTIVE

1. Since 1900, the United States Secretary of the Interior has Been in Breach of a Congressional Directive and His Trust Responsibility to the Northern Cheyenne Tribe by Continuing to Fail to Acquire the Subsurface Ownership Rights for Eight Sections of Reservation Land.

By Executive Order dated November 26, 1884, President Arthur established a 371,200 acre reservation for the Northern Cheyenne Tribe extending from the eastern border of the Crow reservation to approximately ten miles east of the Tongue River in Montana.¹ The Tongue River Indian Reservation, as it was then known, included within its boundaries homesteaders who had settled in the Territory of Montana while excluding many Tribe members who lived closer to the Tongue River. Because of the resulting conflicts between the Tribe members and early white settlers and in order to more fully evaluate the needs of the Tribe, the Secretary of the Interior withdrew additional lands from settlement by orders dated June 22, 1886 and September 3, 1886, including lands between the existing Reservation boundary and the Tongue River and still further east.² These withdrawals further heightened the hostilities between the Northern Cheyenne and non-Indians living in the area.

In 1898, Congress directed the Secretary of the Interior to report on the conditions of the Tribe and, specifically, to determine whether it was feasible to relocate Tribal members from the Tongue River Reservation to some portion of the adjacent Crow Reservation so as to alleviate the tensions in southeastern Montana.³ On November 14, 1898, U.S. Indian Inspector James McLaughlin reported to Congress that the Tribe was unwilling to move to the Crow Reservation and the Crows were unwilling to receive them. McLaughlin recommended that “if the reservation were cleared of white settlers, who occupied much of the best land on the reservation, and if a sufficient amount of other desirable land could be added to the reservation, many of the difficulties of the Northern Cheyenne could be eliminated.”⁴ McLaughlin also reported on his negotiations with white settlers for the acquisition of “lands and improvements” within the limits of the Reservation and the proposed expansion of the Reservation to accommodate Tribe members living east of the Tongue River who would eventually be relocated.⁵

¹ Exec. Order of Nov. 26, 1884. Seven years earlier the Northern Cheyenne had been forcibly moved by the United States to Oklahoma.

² See Brief for the Northern Cheyenne Tribe as Amicus Curiae Supporting Defendants-Appellees, *Fidelity Exploration & Production Co. v. U.S.*, 506 F.3d 1182 (9th Cir. 2007).

³ *Id.* at 4. See also Opinions of the Solicitor of the Department of the Interior, M-34758, *Validity of Patents Issued to Northern Cheyenne Indians* (September 5, 1947).

⁴ *Id.* at 1469.

⁵ *Id.* See also James McLaughlin, *My Friend the Indian* 302 (Houghton Mifflin Co. 1910). In his biographical novel, McLaughlin noted that in implementing the expanded Reservation he “found it necessary not only to buy out ranchers and individual settlers on a small scale, but actually to buy up the town of Hutton, Montana, which had been located on the reservation lands, through the incorrectness of a map of the portion of Custer County.”

In a second report issued in February 1900, McLaughlin recounted his negotiations with the Northern Pacific Railway Company for the purchase of land situated within the proposed expansion of the Reservation. The Northern Pacific Railway had been granted checkerboard sections of public lands pursuant to 1864 and 1870 Acts of Congress⁶ intended to facilitate the western expansion. Under these Acts, the Northern Pacific received fee title to both the surface and subsurface of its land grants. McLaughlin reported that the railway company still owned 4,656.35 acres out of more than 10,000 acres originally patented to it within the proposed expanded Reservation boundaries. On February 16, 1900, McLaughlin reported that he had reached an agreement with Northern Pacific Railway and two other landowners, who had purchased land from the railway company, to acquire the acreage for \$171,615.44.⁷

On March 19, 1900, President McKinley expanded the Reservation as McLaughlin had recommended. The boundaries of the Northern Cheyenne Indian Reservation were drawn from the Crow Indian Reservation on the West to the middle of the Tongue River on the East.⁸ On May 31, 1900, Congress appropriated funds to pay for the Northern Pacific Railway lands. On December 18, 1900, the Secretary revoked his 1886 orders and released public lands east of the Tongue River for location and settlement.⁹

Unfortunately, when McLaughlin negotiated to reacquire the property previously granted to the Northern Pacific Railway Company within the boundaries of the expanded Northern Cheyenne Reservation, he failed to purchase the subsurface rights Congress had granted to the Railway in eight sections totaling 5,120 acres. In those eight sections, the United States acquired the surface rights for the Northern Cheyenne Tribe. However, it did not acquire the subsurface estate. The mineral rights on the eight sections were eventually purchased by Great Northern Properties. This split estate remains – 111 years after Congressional direction to purchase the private in-holdings within the boundaries of the expanded 444,000 acre Northern Cheyenne Tribe Reservation. These 5,120 acres are the only subsurface rights within the Reservation not owned by the Tribe.

2. The Secretary of the Interior Violated Multiple Federal Laws and Breached His Trust Responsibility to the Northern Cheyenne Tribe 35 Years Ago by Entering Into Improper Coal Leases and This Breach Required a Special Act of Congress to Remedy.

In 1965, coal companies began to express interest in exploring and developing the coal reserves within the Northern Cheyenne Reservation. The Tribe authorized the Bureau of Indian Affairs (“BIA”) to prepare the documents necessary to conduct a public

⁶ Northern Pacific Land Grant Act, July 2, 1864 (13 Stat. 365); Joint Resolution 67, May 31, 1870 (16 Stat. 378).

⁷ Opinions of the Solicitor of the Department of the Interior, M-34758 at 1469.

⁸ Exec. Order of March 19, 1900.

⁹ Opinions of the Solicitor of the Department of the Interior, M-34758 at 1469.

lease sale of its coal reserves.¹⁰ The first lease sale occurred in 1966 with Peabody Coal Company acquiring prospecting rights including lease options on 94,000 acres of Reservation lands. Peabody Coal Company was also the successful bidder at the second lease sale in 1968, acquiring prospecting permits with lease options on another 128,000 acres of Reservation land. A third lease sale in 1971 offered 367,000 acres of Reservation land and attracted the attention of other large coal companies, including Consol and AMAX, as well as speculators and strawmen. In the third sale, Consol acquired 23,400 acres, AMAX acquired 71,500 acres, and the speculators acquired 77,400 acres. The speculators almost immediately sold a 27,800-acre tract (for which the Tribe had received \$175,000) to Chevron for a down payment of \$1.2 million and a 9 cent per ton overriding royalty. By 1972, as a result of the three lease sales, between 53% and 56% of all Reservation land was encumbered by mineral leases and exploration permits.¹¹

In 1973, the Tribe submitted a 600-page petition to the Secretary of the Interior seeking cancellation of the permits and leases encumbering the Reservation. The Tribe argued: (1) the royalty rate of 17.5 cents per ton (reduced to 15 cents per ton if the coal, as some companies later announced, was burned on the Reservation) was well below rates paid for comparable Indian coal; (2) the lease options contained in the exploration permits grossly exceeded the 2,500 acreage limitation established by federal regulation; (3) the permits contained no effective environmental protection or restoration provisions; and (4) the BIA leasing process was littered with regulatory and statutory violations.

The Secretary responded to the Tribe's petition by suspending all further coal development under the transactions, recognizing that the Tribe effectively had lost control of the Reservation. To restore the balance of power to the Tribe, and in the hope that the transactions would be renegotiated, the Secretary declined to cancel the permits and leases outright, and assured the Tribe that "the terms and conditions upon which mineral development may proceed on the Northern Cheyenne Reservation will require [the Tribe's] joint agreement and support prior to any further approval by [the Secretary]."¹² In the ensuing years, the Tribe remained so traumatized and offended by what had been done, that it spurned all overtures of the coal companies involved to renegotiate the transactions.

In approximately 1978, the Tribe approached the companies with a proposal to seek federal administrative or legislative action which would facilitate the companies' voluntary relinquishment of their claims on the Reservation. Recognizing that their development prospects on the Reservation were nil, the companies joined with the Tribe in a cooperative effort to resolve the impasse. At the request of the Tribe and the

¹⁰ See Hearings before the U.S. Senate Select Committee on Indian Affairs on S. 2126 – A Bill Relating to Certain Leases Involving the Secretary of the Interior and the Northern Cheyenne Indian Reservation, 90th Cong. 32-39 ["S. 2126 Hearing"] (testimony of Allen Rowland, President of the Northern Cheyenne Tribal Council).

¹¹ See *id.* at 7-13, Testimony of David Harrison, Acting Director of the Office of Trust Responsibility, Bureau of Indian Affairs, S. 2126 Hearing.

¹² See Report from the Committee on Interior and Insular Affairs on S. 2126 (September 23, 1980).

companies, in 1979 federal legislation was introduced. Senate Bill 2126 entitled “A Bill Relating to Certain Leases Involving the Secretary of the Interior and the Northern Cheyenne Indian Reservation,” (“S. 2126”) authorized the Secretary to enter into cancellation agreements with the lessees and permit holders and pay claims for damages then estimated at \$10 million, including bonus payments and other costs already incurred by the coal companies.¹³

As originally introduced, S. 2126 provided no standards for the Secretary to evaluate claims for compensation. The bill’s sponsor also questioned the speculative nature of damages claims when no active mining had actually taken place.¹⁴ The coal companies suggested that the Secretary be authorized to pay cancellation damages in the form of unique federal noncompetitive coal leases to be included in an existing mining unit or, alternatively, in “bidding rights” that could be exercised in future competitive federal coal lease sales for those parties that were not actively engaged in mining or where lands adjacent to existing operations were found to be not suitable for development.¹⁵

The final bill incorporated the concepts of noncompetitive leases and “bidding rights” as compensation for expenditures on the Reservation. S. 2126 as enacted authorized the Secretary to negotiate with the Tribe and the affected parties to derive a “cancellation agreement” under which the permit or lease would be cancelled in exchange for either (a) a noncompetitive lease for federal coal adjacent to an existing mining unit that was unlikely to be mined separately, or (b) a certificate of bidding rights.¹⁶ The final bill also established the value of the bidding rights at a level equal to the amount of the permit holder’s or lessee’s actual cash investment plus interest.

S. 2126 was enacted on October 9, 1980.¹⁷ Over the next year, separate cancellation agreements among the Department of the Interior, the companies, and the Tribe were entered into, except as to the tracts secured by the speculators, whose claims on the Reservation were therefore cancelled by Congressional fiat as provided in the Act.¹⁸ The speculators then sued the United States for a Fifth Amendment “taking” in the U.S. Court of Claims.¹⁹ That suit was essentially unsuccessful. The Court gave token judgment by ordering reimbursement by the United States of the minimal bonuses they had paid for the permits.²⁰

¹³ *Id.*

¹⁴ See Comments of Senator John Melcher (MT), S. 2126 Hearings.

¹⁵ See Testimony of Jim Haughey, Attorney for Peabody Coal Co., S. 2126 Hearings.

¹⁶ A Bill Relating to Certain Leases Involving the Secretary of the Interior and the Northern Cheyenne Indian Reservation, Pub. L. No. 96-401, 94 Stat. 1707 (1980).

¹⁷ *Id.* at § 4.

¹⁸ The speculators offered to pay the Tribe an initial payment and an overriding royalty on the federal coal (located in the Tongue River Valley) they sought, if the Tribe would sign the necessary cancellation agreement. The Northern Cheyenne Tribal Council rejected that offer.

¹⁹ *NRG Co. v. U.S.*, 24 Cl. Ct. 51 (1991).

²⁰ *NRG Co. v. U.S. (“NGR II”)*, 30 Fed. Cl. 460 (1994).

3. To Protect the Reservation's Resources, including Its Air Quality, the Northern Cheyenne Tribe Adopted a Stringent Air Quality Standard.

In the mid to late 1970's, utilities owning the Colstrip power plants east of Billings sought to greatly expand the size of those plants. The Tribe was very concerned about the likely adverse effects on Reservation air quality and the pattern of exclusion of Northern Cheyenne from employment in the power plants, notwithstanding appalling unemployment rates on the Reservation (the area's largest local community). To address these issues, the Tribe took the bold and unprecedented step of reclassifying the air quality standard above its Reservation to Class I -- the most pristine standard under federal law.²¹ The Tribe was the first governmental entity of any kind in the Country to do so. EPA granted the reclassification and litigation challenging it was unsuccessful.²² The end result was an agreement between the Northern Cheyenne Tribe and the power plant owners providing for the adoption of enhanced air quality control technology for the plant expansion, employment and other commercial opportunities for the Northern Cheyenne, and funding for Tribal government.

4. In the 1980s, the Tribe Successfully Challenged the Powder River Coal Lease Sale which would have Greatly Expanded Coal Development in Areas Adjoining the Reservation While Inflicting Major Unmitigated Impacts on the Northern Cheyenne.

In 1982, Secretary of the Interior James Watt authorized the largest federal coal lease sale in history. The Powder River Basin lease sale included Montana tracts to the north, east and south of the Reservation, as well as tracts in Wyoming. The Montana tracts included so-called "maintenance tracts" for the Colstrip and Decker mines and "new production tracts" in the Tongue River Valley.

The Tribe made extensive efforts to resolve its concerns with this enormous coal lease sale without litigation. Those efforts were spurned by the United States and industry and, on the eve of the Powder River Basin lease sale, the Tribe filed suit against the Secretary asking that any leases issued in the forthcoming sale be voided on the ground that the leasing process essentially ignored or minimized the very adverse effects on the Northern Cheyenne. The Tribe's claims were filed under the federal coal leasing statutes and regulations, the federal trust responsibility, and NEPA. The Tribe based its claims on exclusion of the Tribe from impact funding, the physical on-Reservation impacts such development would engender, and the historic pattern of exclusion of Northern Cheyenne from employment opportunities at existing off-Reservation coal-related projects.

In federal District Court, the Tribe won a sweeping victory on all counts. All leases, including those authorizing new production tracts on the Tongue River, were

²¹ Redesignation of Northern Cheyenne Indian Reservation for Prevention of Significant Deterioration, 42 Fed.Reg. 40695 (August 11, 1977).

²² *Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981).

voided.²³ The United States and the involved companies appealed only the remedial provisions of the District Court decision.²⁴ Ultimately, the new production tract leases in the Tongue River Valley were terminated and the Tribe negotiated a mitigation agreement with the Rosebud Mine at Colstrip (which had initially received maintenance tracts in the 1982 sale) that provided for, among other items, jobs for Tribe members and impact funding.

5. The Northern Cheyenne Continued to Successfully Challenge other Coal Developments including the Montco Mining Project.

In the 1980s, federal mining permits were issued for the proposed Montco Mine project in the Tongue River Valley, adjacent to the Reservation. While the Tribe had concerns about the project from its inception, a lack of resources prevented the Tribe from taking legal action to challenge it, although the Northern Plains Resource Council (“NPRC”) and others tried unsuccessfully to block the project. In the 1990s when the Montco project was applying for yet another renewal of its mining permit (after several prior renewals), the Tribe finally decided to legally challenge the project.

The Tribe was successful in administrative proceedings. The project appealed to the District Court, which reversed the administrative decision. The Tribe then appealed to the Montana Supreme Court. NPRC was also a party to all proceedings. However, the Tribe took the lead in preparing the pleadings, writing the briefs, and advocacy. In a case of first impression, the Montana Supreme Court agreed with the Tribe’s position and denied further renewal of the Montco project.²⁵ Since then, there have been no efforts to legally resuscitate the project.

6. In 2002, Unwanted Coal Development was Again Forced Upon the Northern Cheyenne Tribe by the State of Montana and the United States who Agreed to Proceed with the Development of the Otter Creek Tracts Over the Tribe’s Objections.

A. The New World Mine Buy-Out

In 1989, Crown Butte Mines proposed a precious metals mine – the New World Mine – on private and U.S. Forest Service lands located approximately 3 miles from the border of Yellowstone National Park. During the federal environmental review process for the New World Mine, several issues arose about the impact of mining on the surrounding area, including the Clark’s Fork of the Yellowstone River, and the permitting process for the Mine became extremely controversial.

With this controversy and the increasing likelihood that the New World Mine would never receive the necessary federal permits, negotiations began between Crown

²³ *Northern Cheyenne Tribe v. Hodel*, 12 Ind.L.Rep. 3065 (D. Mont. 1985).

²⁴ *Northern Cheyenne Tribe v. Hodel*, 851 F.2d 1152 (9th Cir. 1988).

²⁵ *Montco v. Simonich*, 285 Mont. 280, 947 P.2d 1047 (1997).

Butte Mines, local environmental groups and the Council on Environmental Quality as to how to buy-out the valid existing rights held by Crown Butte Mines. In August 1996, President Bill Clinton announced an agreement between the United States and Crown Butte Mines which, among other items, committed the United States to pay \$65 million for patented and unpatented mining claims held by Crown Butte Mines.

In April 1997, the United States proposed to fund this \$65 million payment with either a diversion of Federal royalties from currently producing coal, oil, and gas operations in Montana or an exchange of other federal assets. To identify appropriate revenue streams, Montana Governor Marc Racicot commenced the Montana Initiative to identify federal coal and timber lands in Montana.²⁶ Ultimately, for various reasons, none of the revenue streams or exchange property identified by the State of Montana or the United States was workable as payment to Crown Butte Mines.

However, the Fiscal Year 1998 Balanced Budget Agreement entered into by Congressional leadership and President Clinton included \$300 million for “high priority land acquisitions.”²⁷ This total included \$65 million for the purchase by the United States of Crown Butte Mines interests in patented and unpatented mining claims.²⁸ Despite their inclusion in the Balanced Budget Agreement, the Republican Congress did not wholeheartedly endorse the “high priority land acquisitions” identified by President Clinton. The Senate Appropriations Committee included money for “high priority land acquisitions” in the Fiscal Year 1998 Appropriations Bill for the Department of the Interior provided that separate legislation was enacted authorizing the acquisition while the House Appropriations Committee did not include any funding for the acquisitions.

In the fall of 1997, negotiations began in earnest between the White House and Congressional Republicans on the Fiscal Year 1998 Appropriations Bill for the Department of the Interior. Congress eventually decided to fund and authorize the Administration’s “high priority land acquisitions” including \$65 million for the New World Mine property. The authorization for the New World Mine acquisition included a number of terms and conditions insisted upon by the respective authorizing Committees in the House and Senate.²⁹ It also included two items of particular importance to the State of Montana: (1) \$12 million for the maintenance and rehabilitation of the Beartooth Highway through Wyoming into Montana and (2) \$10 million in Federal mineral rights to the State of Montana.

As to the transfer of the Federal mineral rights to the State of Montana, the Act authorized that the Secretary of the Interior:

²⁶ Hearing before the Subcommittee on Energy and Mineral Resources of the Committee on Resources, U.S. House of Representatives, New World Mine Proposed Buyout, H.Rpt. 105-40 (May 20, 1997); CRS Report for Congress, New World Gold Mine and Yellowstone National Park, No. 96-669 ENR (August 27, 1996).

²⁷ The Balanced Budget Act of 1997, Pub. L. No. 105-33 (Aug. 5, 1997).

²⁸ It also included \$250 million for the Headwaters Forest acquisition in northern California.

²⁹ An Act Making Appropriations for the Department of the Interior and Related Agencies for the fiscal year ending September 30, 1998 and for other purposes, Pub. L. No. 105-83 (Nov. 20, 1997).

shall convey to the State of Montana, without consideration, all right, title, and interest of the United States in and to ---

(1) \$10,000,000 in Federal mineral rights to the State of Montana agreed to by the Secretary of the Interior and the Governor of Montana through negotiations in accordance with subsection (b); or

(2) all Federal mineral rights in the tracts in Montana depicted as Otter Creek number 1, 2, and 3 on the map entitled "Ashland Map."

Such transfer was to occur no later than January 1, 2001. The Conference Report accompanying the Fiscal Year 1998 Interior Appropriations Bill indicates Congress was concerned that the New World Mine acquisition would negatively impact revenues of the State of Montana. It directed the Secretary of the Interior to study, with the Governor of Montana, potential mineral resource development in the State.³⁰

B. 2002 Transfer of the Otter Creek Tracts

Over the next four years, as directed by the Appropriations Act, the State of Montana and the Department of the Interior explored federal mineral rights that could be potentially conveyed to the State.³¹ Those discussions did not result in the identification of mutually agreeable properties.

Throughout this time, the Northern Cheyenne Tribe repeatedly expressed concerns to the State of Montana and the Department of the Interior about transferring the Otter Creek tracts to the State of Montana. The Otter Creek tracts are approximately 3 miles from the Tongue River, the eastern boundary of the Northern Cheyenne Reservation. The Tribe was worried that transfer of the property from federal to state ownership would adversely impact the Reservation if the tracts were developed since the Tribe would lose federal trust protections and environmental requirements of the federal coal leasing program would no longer apply. The Tribe met on numerous occasions with the Montana Congressional delegation, representatives of the Department of the Interior, the Governor, other State officials, and Great Northern Properties ("GNP"), to work out a settlement.

In January 2002, Montana Governor Martz formally requested that the Secretary of the Interior Norton transfer the three Otter Creek tracts identified in the Fiscal Year 1998 Interior Appropriations Act to the State of Montana. The Tribe met with Secretary Norton, to present its concerns and request time to negotiate the complex settlement. Shortly after that meeting, the Tribe was advised that the Secretary would withhold action on the transfer pending such settlement discussions. The Department then

³⁰ Conference Report to Accompany H.R. 2107, Rpt. 105-337 (Oct. 22, 1997).

³¹ The Montana Mineral Exchange: H.R. 2107, Section 503 of the Department of Interior & Related Agencies Appropriations Act, 1998, Briefing & Information Packet (January 1999).

“withheld action of the transfer of any Federal mineral rights to the State of Montana in order to support the discussions between the State of Montana and the Northern Cheyenne Tribe.”³²

On the eve of a public hearing before the State Land Board to consider and consummate the Tribe’s Settlement Agreement with the State, the Tribe learned that, notwithstanding the Secretary’s stand-still assurance, the Otter Creek transfer would go forward virtually immediately. Within two business days, the Tribe filed suit against the Secretary in federal District Court in Washington, D.C. to enjoin the transfer.³³ The Tribe’s settlement discussions with Governor Martz, the Montana State Board of Land Commissioners, the Montana Congressional delegation and Great Northern Properties (the owner of the private coal checkerboard in Otter Creek) to resolve its litigation and objections to the Otter Creek transfer were successful.

Under the settlement, the Land Board and the Congressional delegation agreed to support the enactment of federal legislation which would provide impact funding to the Tribe and resolve the Tribe’s claims against the United States arising from the Otter Creek transfer and the 1900 failure to acquire subsurface rights to the eight sections within the Reservation. The State Land Board agreed to require any lessee of the Otter Creek tracts, in close consultation with the Tribe, to fashion Operating Plans which would provide employment and commercial opportunity to the Northern Cheyenne, ensure appropriate environmental protection for the Reservation, require project workforce and truckers to meet conduct codes while on the Reservation, and protect Tribal historic, cultural and religious interests and values in the Tongue River Valley. The Land Board also agreed to support efforts to improve off-Reservation roads to lessen resulting traffic loads on the Reservation, new cooperative law enforcement arrangements, and Congressional enactment of federal legislation to facilitate the GNP mineral funding to the Tribe. In exchange, the Tribe agreed to dismiss, with prejudice, its judicial challenge to the Otter Creek transfer.

The Settlement Agreement was signed by the President of the Northern Cheyenne Tribe, Governor Martz, Montana Secretary of State Brown, and Montana Director of Natural Resources and Conservation Clinch in February 2002.³⁴ The Bureau of Land Management issued the State of Montana a patent for the Otter Creek tracts on April 10, 2002.³⁵

³² Draft Environmental Assessment for Compliance with Section 503 of the Department of the Interior and Related Agencies Appropriation Act of 1998, Public Law 105-83 at pp. 17 – 19 (Feb. 4, 2002). It is unclear if a final EA was ever issued for the transfer of the Otter Creek Tracts.

³³ *Northern Cheyenne Tribe v. Norton*, Docket # 1:02-cv-00146-TPJ (D.D.C. 2002). The Tribe’s complaint was filed on January 25, 2002.

³⁴ Settlement Agreement by the Montana State Board of Land Commissioners and Northern Cheyenne Tribe (Feb. 19, 2002).

³⁵ State of Montana, Office of the Governor, Executive Order No. 12-02, Executive Order Certifying Transfer of Title to Federal Property Interests (May 28, 2002).

C. 2004 Montana Mineral Conveyance Act

Consistent with the terms of the Otter Creek settlement, in 2004, Senator Burns introduced the Montana Mineral Conveyance Act.³⁶ The 2004 Montana Mineral Conveyance Act was cosponsored by Senators Baucus and Campbell. As introduced, the bill conveyed to the United States the Northern Cheyenne Reservation tracts owned by Great Northern Properties for other coal reserves owned by the United States in Montana. The Northern Cheyenne Tribe agreed to waive its breach of trust claims against the United States. The legislation also authorized a \$70 million impact assistance fund for the benefit of the Northern Cheyenne Tribe. No hearings were held on the 2004 Montana Mineral Conveyance Act.

D. 2011 Montana Mineral Conveyance Act

On March 17, 2011, Senator Baucus introduced in the Senate (S. 647) and Representative Rehberg introduced in the House of Representatives (H.R. 1158), identical versions of the Montana Mineral Conveyance Act.³⁷ On April 5, 2011, Senator Tester cosponsored S. 644. The Montana Board of Land Commissioners had urged such introduction.³⁸

As introduced, the 2011 Montana Mineral Conveyance Act authorizes the Secretary of the Interior to transfer to Great Northern Properties the subsurface ownership rights to eight sections of Federal coal - 5 sections in the Bull Mountains and 3 sections in Bridge Creek. GNP would transfer to the Northern Cheyenne Tribe ownership of the 8 sections of surface rights it owns on the Reservation. The Tribe also would waive any and all claims it would have against the United States arising from the 1900 failure of Indian Inspector McLaughlin to acquire the property now owned by GNP on the reservation.

In contrast to the predecessor 2004 Bill and the negotiated Otter Creek Settlement, the 2011 Bill does not provide impact funding to the Tribe. This provision was removed in light of current federal budget realities and to increase the likelihood of enactment. However, GNP and the Northern Cheyenne have entered into a private agreement to provide a revenue stream for the Tribe consistent with the 2002 Otter Creek Settlement. Under the terms of the agreement, the Tribe would receive at least 40% of the royalties GNP receives from leasing the Bull Mountains and Bridge Creek tracts. It is anticipated that the Bull Mountains tracts, given their location adjacent to an operating subsurface coal mine, could generate much needed revenue for the Tribe

³⁶ S. 2225, 108th Cong., 2d Sess. (2004).

³⁷ S. 647, H.R. 1158, 112th Cong. 1st Sess. (2011).

³⁸ See letters from Montana Governor Schweitzer, Attorney General Bullock, Secretary of State McCulloch, State Auditor Lindeen, Superintendent of Public Instruction Juneau to Senators Baucus and Tester, Representative Rehberg regarding Proposed "Montana Mineral Conveyance and Northern Cheyenne Fund Act" (May 10, 2010) and Revised Draft of Proposed "Montana Mineral Conveyance Act" (March 21, 2011).

within 5 years. Development of the Bridge Creek tracts, on the other hand, would provide a longer term revenue stream for the Tribe.³⁹

7. Precedent Exists for Congress to Resolve Tribal Land Claims, like the Northern Cheyenne's, by an Act of Congress that Authorizes Federal/State/Private Land Conveyances.

Utah Schools Settlement Act. The Utah Schools and Lands Improvement Act of 1992 authorized the Secretary of the Interior to exchange nearly 40,000 acres of State trust land within the boundaries of the Navajo and Goshutes Indian Reservations for federal land in Utah. The Act identifies public lands the Secretary must offer to the State of Utah in exchange for the lands to be added to the reservations, including a telecommunications site and ski resort on federal lands and specific unleased federal coal tracts.⁴⁰

Crow Boundary Settlement Act. In 1994, federal legislation authorized the Secretary of the Interior to transfer more than 20,000 acres of public lands in Montana to the Crow Tribe as redress for a surveying error made by the United States at the end of the nineteenth century. This surveying error deprived the Tribe of 36,000 acres which should have been included within the Crow Reservation for more than a century. The Act established an \$85 million Crow Tribal Trust Fund with moneys from federal coal royalties in Montana.

It also authorized the Secretary of the Interior to exchange State trust lands and private lands within the Crow Reservation for federal lands in Montana. According to the environmental assessment prepared for the Settlement Act, 11,685 acres of private lands were located within the exchange area.⁴¹ The mineral estates underlying the private lands were already in federal ownership; however, privately held water rights were to be acquired for the Tribe as part of the exchange.⁴² The Crow Tribe agreed to waive any claims and release the United States from liability arising from the original surveying error or subsequent occupation and use of the land.⁴³

Hoopa Valley Settlement Act. Congress, in 1996, passed the Hoopa Valley Reservation South Boundary Adjustment Act, which authorized the Secretary of Agriculture to transfer 2,600 acres of national forest land in California to the Hoopa Valley Tribe to remedy an illegal 1870 surveying error. The legislation specifically provides that the transfer of lands into trust for the tribe extinguishes the Hoopa's claim

³⁹ The 2002 Otter Creek Settlement envisioned the 40% royalty payment to the Tribe to be in addition to the \$70 million in federal impact assistance funding (7 annual payments of \$10 million each).

⁴⁰ Utah Schools and Lands Improvement Act of 1992, Pub. L. No. 103-93 (1992).

⁴¹ Environmental Assessment for the Crow Boundary Settlement Act Phase 4 Land Exchange, at pp. 7 – 13 (July 2011).

⁴² *Id.* at 82.

⁴³ Crow Boundary Settlement Act of 1994, Pub. L. No. 103-444 (1994).

for breach of trust arising from the original 1870 survey error, along with any takings claims arising from the surveying error.⁴⁴

Colorado River Indian Reservation Boundary Correction. In 2005, the Colorado River Indian Reservation Boundary Adjustment Act transferred approximately 16,000 acres of federal land, subject to valid existing rights, to the Colorado River Indian Tribe to correct a surveying error from the nineteenth and twentieth centuries.⁴⁵

Expansion of Fallon Paiute-Shoshone Reservation. In 1978, Congress added 2700 acres of federal land to the Fallon Paiute-Shoshone Reservation of Nevada to remedy a historic wrong in the 19th Century when the Federal Government induced the Indians to relinquish their lands to make way for development of the Newlands Reclamation Project, in return for a much lesser amount of land promised to be good, irrigable land to be fully served by the Reclamation Project. However, those substitute lands turned out to be of poor quality and were not adequately served by the Project.⁴⁶

Expansion of Moapa Indian Reservation. In 1980, Congress added 70,000 acres of federal land to the Moapa Indian reservation of Nevada to rectify the United States' unilateral stripping the Tribe of all but a small portion of its Reservation in the 19th Century.⁴⁷

⁴⁴ Hoop Valley Reservation South Boundary Adjustment Act, Pub. L. No. 105-110 (1997).

⁴⁵ Colorado Indian Reservation Boundary Adjustment Act, Pub. L. No. 109-47 (2005). Other boundary adjustments authorized by Congress include: Fallon Indian Reservation Adjustment Act, Pub. L. No. 95-337 (1978); Moapa Band of Paiute Adjustment Act, Pub. L. No. 96-491 (1980); and Makah Indian Tribe Act, Pub. L. No. 98-282 (1984).

⁴⁶ 92 Stat. 456 (1978)

⁴⁷ Pub. L. No. 96-491 (1980).

BOARD OF LAND COMMISSIONERS



BRIAN SCHWEITZER, GOVERNOR

STATE OF MONTANA

LAND BOARD SECRETARY (406) 444-2074
FAX: (406) 444-2684
www.dnrc.mt.gov/about_us/meetings.asp#lb

PO BOX 201601
HELENA, MONTANA 59620-1601

March 21, 2011

Honorable Max Baucus, Senator
United States Senate
511 Hart Senate Office Building
Washington, D.C. 20510

Honorable Jon Tester, Senator
United States Senate
724 Hard Senate Office Building
Washington, D.C. 20510

Honorable Dennis Rehberg, Representative
United States House of Representatives
2448 Rayburn House Office Building
Washington, D.C. 20515

Re: Revised Draft of Proposed "Montana Mineral Conveyance Act"

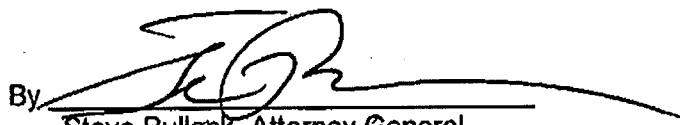
Dear Senator Baucus, Senator Tester, and Representative Rehberg:

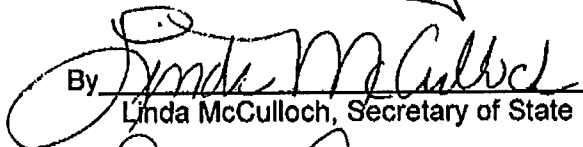
At the request of the Northern Cheyenne Tribe, we have reviewed the enclosed Discussion Draft of the "Montana Mineral Conveyance Act." We affirm our support for the introduction and enactment of legislation substantially in the form of the attached Bill, and join the Tribe in requesting that the Montana delegation move forward expeditiously to introduce and pursue enactment of such legislation, to fulfill a key component of the Tribe's Otter Creek Settlement. This action will serve the State's goal of ensuring that any development of its Otter Creek coal tracts will be pursued in a manner sensitive to interests of the Northern Cheyenne Tribe. We are advised that Great Northern Properties Limited Partnership and Signal Peak Mining, each of which also has a stake in this proposed legislation, fully support introduction and enactment of the proposed Bill.

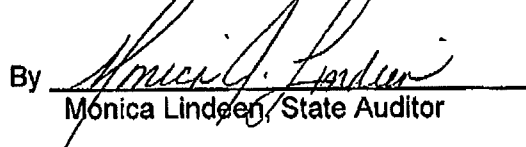
Sincerely,


Montana's Board of Land Commissioners

By 
Brian Schweitzer, Governor

By 
Steve Bullock, Attorney General

By 
Linda McCulloch, Secretary of State

By 
Monica Lindén, State Auditor

By 
Denise Juneau, Superintendent of
Public Instruction

BRIAN SCHWEITZER
GOVERNOR
(406) 444-3111

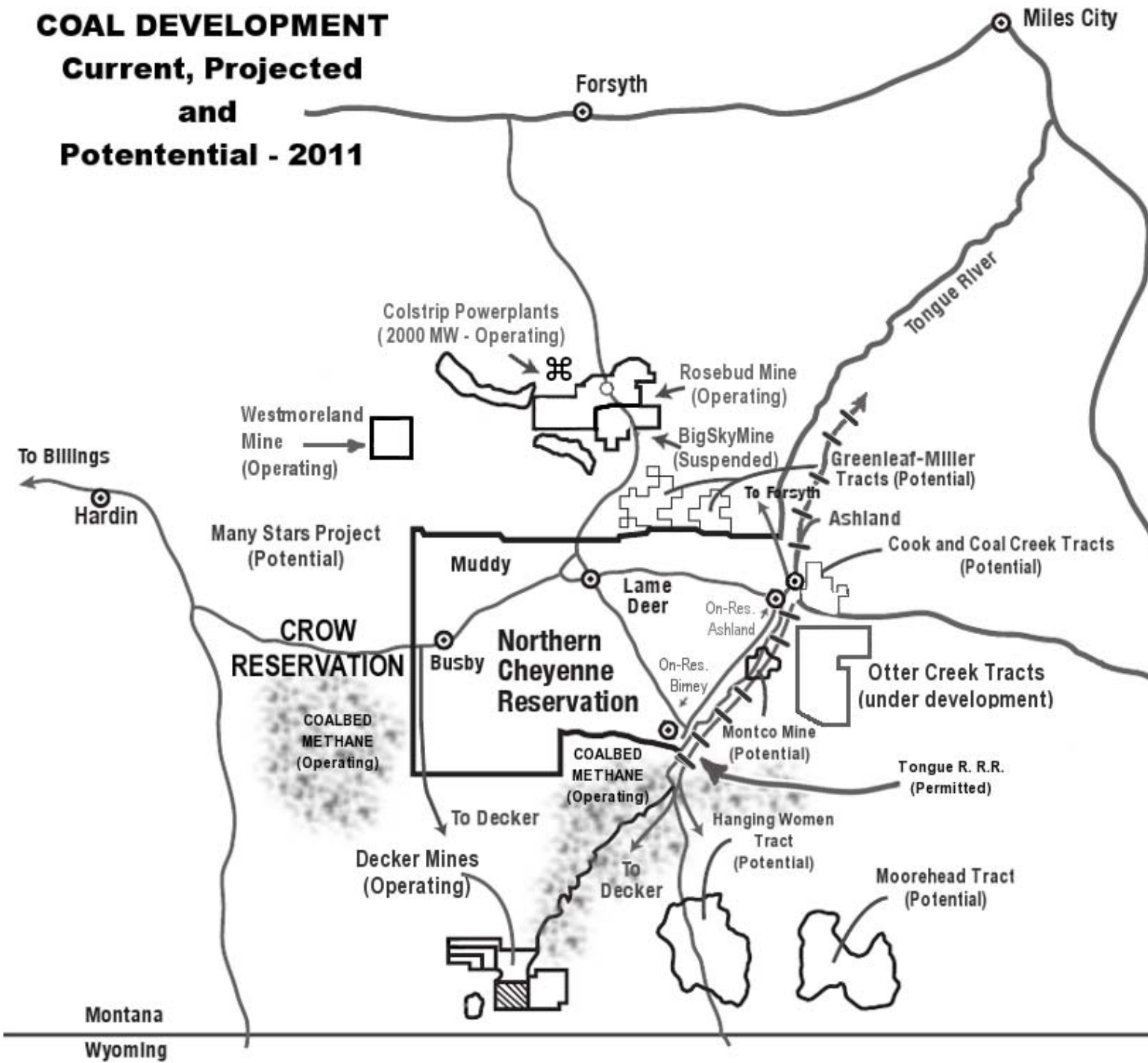
STEVE BULLOCK
ATTORNEY GENERAL
(406) 444-2026

DENISE JUNEAU
SUPERINTENDENT OF PUBLIC INSTRUCTION
(406) 444-3095

MONICA LINDEEN
STATE AUDITOR
(406) 444-2040

LINDA MCCULLOCH
SECRETARY OF STATE
(406) 444-2034

COAL DEVELOPMENT Current, Projected and Potential - 2011





Montana-Wyoming Tribal Leaders Council

175 North 27th St, Suite 1003 Billings, MT 59101 Ph: (406) 252-2550 Fax (406) 254-6355
Website: www.mtwytlc.org Email: belcourt@mtwytlc.com

RESOLUTION # 2011-05-19-01

A RESOLUTION TO URGE THE MONTANA CONGRESSIONAL DELEGATION TO PURSUE ENACTMENT OF S. 647 AND HR. 1156 AS PROMPTLY AS POSSIBLE

WHEREAS, the Montana-Wyoming Tribal Leaders Council (Tribal Leaders Council) has been created for the express purpose of providing a unified voice for Tribal governments and a collective organization to address issues of concern to member Tribes and their peoples; and

WHEREAS, duly elected Tribal Chairs, Presidents and Council Members of the Tribal Governments make up the membership of the Montana-Wyoming Tribal Leaders Council and as such are fully authorized to represent their respective Tribes; and

WHEREAS, by acting in unison to direct the formation of national, regional and local policy elected Tribal Leaders succeed in providing leadership on all issues that may affect the Tribes and reservation communities; and

WHEREAS, the Tribal Leader Council strives to advance and to safeguard the sovereign authority and cultural integrity of each member Tribe; and

WHEREAS, for years the Northern Cheyenne Tribe has very publically expressed deep concerns about the effects on the Tribe of existing and proposed coal development in areas surrounding the Northern Cheyenne Reservation to the north, south and east; and

WHEREAS, in 2002, a major escalation in that development scenario was initiated via a Congressionally-directed conveyance to the State of Montana of approximately 533 million tons of mineable federal coal in the Otter Creek area, which lies just east of the Northern Cheyenne Reservation; and

WHEREAS, the State of Montana has now leased that 533 million tons of Otter Creek coal to Ark Land Company (a subsidiary of Arch Coal, Inc.); and

WHEREAS, Great Northern Properties, LLC ("GNP") has leased to Ark Land Company approximately 731 million tons of coal it privately owns, which is checker boarded with the State's 533 million tons of State coal leased to Ark Land Company; and

WHEREAS, over the past 14 years, the Northern Cheyenne Tribe has sought to address its deep concerns about the Congressionally-directed transfer to the Otter Creek coal to the State, by initiating and engaging in extensive and complex negotiations with the Montana Congressional delegation, the State of Montana, the Department of the Interior, GNP, Signal Peak Energy, environmental groups and others; and

WHEREAS, 112 years ago, to resolve hostilities (including violence) that had broken out between the Northern Cheyenne and non-Indian interests legally (and illegally) then located on or near the Northern Cheyenne Reservation, Congress directed that a federal agent be sent to the Northern Cheyenne Reservation to investigate and recommend an appropriate solution to those hostilities, and that agent's investigation resulted in a recommendation to Congress that the best solution would be to buy-out all non-Indian interests on or near the Reservation to facilitate extending the eastern boundary of the Northern Cheyenne Reservation to mid-channel of the Tongue River; and

WHEREAS, in executing that Congressional directive, the federal agent failed by oversight (or otherwise) to purchase 8 sections of subsurface (coal and iron ore) within the expansion area, which subsurface was then owned by Northern Pacific Railway and is now owned by GNP; and

WHEREAS, to help resolve the foregoing matters, identical companion Bills -- S. 647 and H.R. 1158 -- have been introduced in the Senate by Senator Max Baucus, co-sponsored by Senator Jon Tester, and in the House by Congressman Denny Rehberg; and

WHEREAS, those Bills would:

- Facilitate transfer of title from GNP to the Northern Cheyenne Tribe of the 8 sections (approximately 5000 acres) of Reservation subsurface owned by GNP;
- In return, convey to GNP approximately 5000 acres of federal coal in two areas within Montana -- at Bridge Creek just east of the Tongue river and within the Bull Mountains Mine area near Roundup, Montana; and
- Facilitate the Tribe's acquisition from GNP of a 40% interest in the royalties that would be paid to GNP for its leasing of the Bull Mountains tracts to the mine operator, Signal Peak Energy, and a 40% interest in the royalties that would be paid to GNP from any future lease GNP may issue covering the Bridge Creek tracts; and

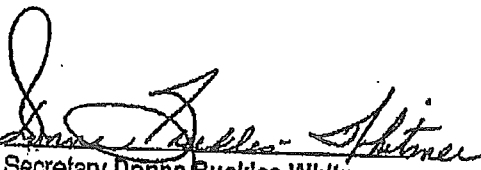
WHEREAS, the Montana-Wyoming Tribal Leaders Council strongly, fully and unanimously supports the efforts of the Northern Cheyenne Tribe described above and requests that S. 647 and H.R. 1158 be passed by Congress as promptly as possible.

NOW, THEREFORE BE IT RESOLVED that the Tribal Leaders Council does hereby urge that Senator Baucus, Senator Tester and Congressman Rehberg do all within their power to achieve enactment of S. 647 and H.R. 1158 as promptly as possible.

CERTIFICATION

We, the undersigned, as the Chair and the Secretary of the Tribal Leaders Council, do hereby certify that the foregoing Resolution was duly presented and unanimously approved, at the Board Meeting of the Montana-Wyoming Tribal Leaders Council, which was held on the 19th day of May 2011 in Billings, Montana with seven member Tribes present to constitute a full Quorum.


 Chairman Jay St. Goddard
 MT WY Tribal Leaders Council


 Secretary Donna Buckles-Whitmer
 MT WY Tribal Leaders Council