

Kelli J. Keegan  
Barnhouse Keegan Solimon & West LLP  
7424 4th Street NW  
Los Ranchos de Albuquerque, NM 87107  
Telephone: (505) 842-6123  
Facsimile: (505) 842-6124  
Email: kkeegan@indiancountrylaw.com

Thomas E. Luebben  
Law Offices of Thomas E. Luebben PC  
21 Star Splash  
Santa Fe, NM 87506  
Phone: 505-269-3544  
Email: tluebbenlaw@msn.com  
*Pro Hac Vice Pending*

*Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Michael Hill, President )  
Crow Allottees Association )  
176 Hill Lane )  
Lodge Grass, MT 59050 )

Senator Jason Kills Pretty Enemy )  
Crow Tribe Legislative Representative )  
Arrow Creek District )  
4106 Pryor Gap Rd. )  
Pryor, MT 59066 )

Alee Birdhat )  
158 High Eagle Ave )  
Crow Agency, MT 59022 )

Leeya Biglake Hill )  
P.O. Box 1132 )  
Crow Agency, MT 59022 )

Abby Birdhat )  
158 High Eagle Ave )  
Crow Agency, MT 59022 )

Francis White Clay )

Cause No. 1:22-CV-01781

**COMPLAINT**

135 Cindy Dr.	)
Crow Agency, MT 59022	)
	)
Plaintiffs,	)
	)
v.	)
	)
THE UNITED STATES DEPARTMENT	)
OF THE INTERIOR; DEB HAALAND,	)
in her official capacity as United States	)
Secretary of the Interior, and BRYAN	)
NEWLAND, in his official capacity as	)
Assistant United States Secretary of the	)
Interior for Indian Affairs	)
1849 C Street N.W.	)
Washington, D.C. 20240	)
	)
Defendants.	)
	)

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# **I. NATURE OF CASE.**

1. This is an action under the Administrative Procedures Act, 5 U.S.C 701 et seq., for declaratory relief to declare the June 22, 2016, publication by the Interior Secretary in the Federal Register of the “Statement of Findings: Crow Tribe Water Rights Settlement Act of 2010,” causing certain waivers and releases of claims to become effective and, as required by the Act (“2010 Settlement Act”), purporting to establish the enforcement date of the Act; premature and void and of no effect as a matter of law, and for injunctive relief against further implementation of the 2010 Settlement Act and the 1999 Crow – Montana Water Compact (“1999 Compact”).

2. The Crow Tribe is a federally recognized tribe in eastern Montana. The Fort Laramie Treaty of 1868 recognized eight million acres of land as belonging to the Crow Tribe and provided for individual tribal member allotments.

3. In 1891, via an act of Congress, the Crow Tribe ceded two million acres of land to

the federal government (“Ceded Strip”). Crow tribal members were permitted to hold allotments on the ceded portion. In 1904, the federal government reduced the size of the Crow reservation to 2.3 million acres, its present size.

4. The 1920 Crow Allotment Act allotted the remaining Crow reservation lands into individual tracts to be held in trust by the United States for every enrolled member of the Crow Tribe.

5. Pursuant to the allotment statutes and the federal common law Winters Doctrine, individual Indian trust allottees were partitioned a portion of the Crow Reservation water right sufficient to irrigate the practicably irrigable acres (“PIA”) on each allotment as an appurtenant, expansive, marketable real property water right with a senior priority of 1868.

6. The 2010 Settlement Act seeks to expropriate and recollectivize the Crow allottees’ individual appurtenant Winters Doctrine Indian water rights under Crow tribal ownership and control without compliance with the United States Constitution’s Fifth Amendment requirements of due process of law, public purpose and just compensation.

7. While the 2010 Settlement Act purports to extinguish the Winters Doctrine Indian water rights appurtenant to Crow individual Indian trust allotments and to abandon the senior Indian water rights priority established by the 1868 Treaty of Fort Laramie, in the 22 years since its passage the Act has failed to deliver its promised benefits to the Crow Tribe and the Crow allottees.

8. The 1999 Compact mandates the preparation of “Appendix I” listing all water uses (exercised water rights) on the Crow Reservation, including the uses of the allottees. It was to be the basis for the current allocation of water among users on the Reservation and for determining which Indian water uses (rights) were developed prior to 1999 and are therefore not

junior to post-1999 developed uses on the Reservation. Appendix I has never been compiled.

9. The 2010 Settlement Act requires the Tribe to adopt a Tribal Water Code, including a licensing and permitting system governing the allocation and distribution of the tribal water right on the Reservation, for approval by the Interior Secretary “within a reasonable period of time.” A Crow Tribal Water Code has never been adopted by the Tribe or approved by the Secretary. Consequently, allottees’ “right” to use a share of the tribal water right remains undefined, whereas the allottees’ marketable Winters Doctrine Indian real property water rights are to have been extinguished by the Act without due process of law, just compensation, or for a public purpose as required by the Fifth Amendment.

10. The federal government has a binding fiduciary responsibility to individual Crow allottees for the protection of their allotments and appurtenant Winters Doctrine Indian water rights held in trust by the United States. At all times relevant to this lawsuit the United States has been subject to egregious conflicts of interest with respect to its trust obligations to the Crow allottees and unable to fulfill its fiduciary duties to them.

11. As a result of its pervasive conflicts of interest, the United States has been and is unable to fulfill its duties to protect the Crow allottees Winters Doctrine Indian water rights and has sought to extinguish those rights without notice to the allottees or lawful adjudication in violation of the Fifth Amendment.

12. As a matter of federal common law, and due to its egregious conflicts of interest, the United States was obligated to provide the Crow allottees with independent legal counsel to assert and protect their rights during litigation of *United States v. Horn Low Line Canal, et al.*, and “*In the Matter of the Adjudication of Existing and Reserved Rights to the Use of Water, Both Surface and Underground, of the Crow Tribe of Indians of the State of Montana*” before the

Montana Water Court, and the negotiation of the 1999 Compact and the 2010 Crow Settlement Act.

## **II. JURISDICTION AND VENUE**

13. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 701 *et seq.* (providing for judicial review of federal agency action under the Administrative Procedure Act) and 28 U.S.C. § 1331 (providing jurisdiction over federal questions). The Allottees have exhausted all administrative remedies available to them.

14. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district.

## **III. PARTIES**

15. Plaintiff Michael Hill is an enrolled member of the Crow Tribe and holds a majority real property interest in Allotment No. 1833, consisting of 720 acres, and several other allotments, including irrigated parcels. Mr. Hill also holds fractional interests in several other allotments on the Crow Reservation. Mr. Hill currently serves as the President of the Crow Allottees Association.

16. Plaintiff Senator Jason Kills Pretty Enemy is an enrolled member of the Crow Tribe and currently serves in the Crow Nation Legislature as a Representative from the Arrow Creek District. Senator Kills Pretty Enemy holds real property interests in several individual Indian trust allotments on the Crow Reservation, including irrigated parcels.

17. Plaintiff Alee Birdhat is an enrolled member of the Crow Tribe and holds real property interests in several individual Indian trust allotments on the Crow Reservation, including irrigated parcels.

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