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FEB 01 2002

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IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
YELLOWSTONE RIVER BETWEEN THE CLARKS FORK YELLOWSTONE  
AND BIGHORN RIVERS BASIN  
BASIN (43Q)

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IN THE MATTER OF THE ADJUDICATION OF THE ) Water Right Case Number  
EXISTING RIGHTS TO THE USE OF ALL THE ) 43Q-016  
WATER, BOTH SURFACE AND UNDERGROUND, )  
WITHIN THE YELLOWSTONE RIVER BETWEEN )  
THE CLARKS FORK YELLOWSTONE AND ) Water Right Claim Numbers  
BIGHORN RIVERS DRAINAGE AREA, INCLUDING ) 43Q-W-208213-00  
ALL TRIBUTARIES OF THE YELLOWSTONE RIVER ) 43Q-W-208214-00  
BETWEEN THE CLARKS FORK YELLOWSTONE ) 43Q-W-208215-00  
AND BIG HORN RIVERS IN STILLWATER, BIG )  
HORN, SWEET GRASS, MUSSELSHELL AND )  
YELLOWSTONE COUNTIES, MONTANA )

Claimant(s): City of Billings

Objector(s): United States of America (Bureau of Indian Affairs and Bureau of Reclamation);  
Crow Tribe of Indians

**STIPULATION**

The City of Billings (hereinafter the City), the United States of America  
(hereinafter the United States), Bureau of Indian Affairs and Bureau of Reclamation (hereinafter  
the BIA and the BOR, respectively), by and through their undersigned attorneys stipulate and  
agree as follows regarding Claim Numbers 43Q-W-208213-00, 43Q-W-208214-00 and 43Q-W-

208215-00.

#### RECITALS

1. The City is a municipal water provider for the current and future citizens of Billings and other customers and seeks to obtain a secure water supply for its citizens and other customers. Pursuant to Mont. Code Ann. § 85-2-221, the City filed Claim Numbers 43Q-W-208213-00, 43Q-W-208214-00 and 43Q-W-208215-00 in the Montana General Stream Adjudication for 3,000.00 cubic feet per second (c.f.s.), 2,000.00 c.f.s. and 648.00 c.f.s., with priority dates of September 27, 1906, August 27, 1906 and June 2, 1885, respectively.

2. The United States, BOR, holds title to the Huntley Irrigation Project (hereinafter the Project), which provides water to approximately 32,500.00 acres of irrigated farmland. The Project water rights are located downstream of the City, and have a priority date of October 26, 1905.

3. The United States, BIA, holds title to tribal and individual Indian trust lands on behalf of the Crow Tribe and its allottees. The United States holds a reserved water right in the Yellowstone River which was quantified for use by the Crow Tribe and its allottees and recognized under the Crow Tribe - Montana Compact (hereinafter the Compact) ratified by the State of Montana on June 22, 1999. The Compact provides protection to water rights recognized under state law within the Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River. See Mont. Code Ann. § 85-20-901, Article III.F.1.a. and III.F.2.a.

4. The City's water rights claims, as filed, threatened the interest of the United States. In order to protect the interests of the Project and the irrigators who are the beneficiaries

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of the Project, and to protect the interests of the Crow Tribe and its allottees, the United States filed timely objections to Claim Numbers 43Q-W-208213-00, 43Q-W-208214-00 and 43Q-W-208215-00. The objections of the United States specifically brought into issue the city's claimed priority dates and flow rates.

5. The parties hereto previously entered into a Stipulation dated May 17, 2004 which Stipulation was rejected by the Water Court by Memorandum and Order dated April 5, 2010. This Stipulation will supersede and replace the Stipulation dated May 17, 2004.

6. This stipulation is based on the results of mediation and post mediation calculation of flow and annual volume. In respect to Claim Number 43Q-W-208215-00, the parties agreed on three use rights. The first has a priority date of January 19, 1887 based on construction of the original water plant. The maximum flow rate was 1.25 mgd (1.93 c.f.s.) based on the plant capacity. (See City of Billings Statement of Claim, Vol. I, p. 15). The annual volume was estimated to be 234 AF based on a use of 250 gallons per day per person for municipal use and an estimated population of 836 based on the 1890 U.S. Census reports for the City's population. (See City of Billings Statement of Claim, Vol. I, pp. 14-17, Exhibit 9 and Table 1). The second has a priority date of January 1, 1895 based on a report confirming the City's expansion of plant capacity to 3.5 mgd (5.4 c.f.s). The additional maximum flow rate was 3.47c.f.s. and the increase in annual volume was estimated to be 336 AF based on a use of 250 gallons per day per person for municipal use and an estimated 1895 population of 2,030 based on prorating the 1890 and 1900 U.S. Census reports for the City's population. (See City of Billings Statement of Claim, Vol. I, p. 23 and Table 1). The third priority date was stipulated to be October 25, 1905. The City continued to grow and the plant capacity reached 5 mgd (7.7 c.fs.).

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The additional maximum flow rate was 2.3 c.f.s. and an additional volume was estimated to be 1,476.2 AF based on a use of 250 gallons per day per person for municipal use and an estimated population of 7,307 by the beginning of 1906 based on prorating the 1900 and 1910 U.S. Census reports for the City's population. (See City of Billings Statement of Claim, Vol. I, p. 27 and Table 1).

7. In respect o 43Q-W-208214-00, the parties agreed upon a right with a priority date of August 27, 1906 based on a Notice of Appropriation. (See City of Billings Statement of Claim, Vol. I, Exhibit 19). The City acquired the water utility in 1915 and continuously expanded the system over the years as required by demand. The City initiated a major water plant expansion in the spring of 1973 increasing maximum capacity to 111.2 mgd (172 c.f.s.). (See City of Billings Statement of Claim, Vol. 1, p. j and Exhibit 35). At mediation, the parties used that capacity to determine maximum flow. After allocating 7.7 c.f.s. to the use right (Claim Number 43Q-W-208215-00), that left 164.3 c.f.s. as the maximum flow for Claim Number 43Q-W-208214-00. At mediation, the parties agreed to calculate an annual volume for that flow rate based on the City's historical pattern of annual use and an estimated service population at the maximum flow rate. Those calculations were performed after mediation and have been reviewed and approved by all parties. A copy of those calculations is attached as Exhibit A. Those calculations show that based on the City's historical use patterns 70,435 AF is a reasonable estimate of annual volume at maximum flow of 172 c.f.s. After deducting 2,046.2 AF allocated to the use right, that leaves a net annual flow of 68,388.8 AF for Claim Number 43Q-W-208214-00.

**AGREEMENT**

Therefore, in order to resolve the United States' and the Crow Tribe's objections to the City's water right claims, while protecting the rights and interests of the United States, the Crow Tribe, and the City, and in consideration of the mutual promises and covenants set forth in this Agreement, and for other good and valuable consideration, the United States, the Crow Tribe, and the City stipulate and agree as follows:

(1) The parties agree that the Stipulation dated May 17, 2004 filed herein is hereby withdrawn and superseded and replaced by this Stipulation.

(2) The Temporary Preliminary Decree for the Yellowstone River between the Clarks Fork Yellowstone And Bighorn Rivers Basin-Basin 43Q should be changed to read as follows:

Claim Number	43Q-W-208215-00
Maximum Flow Rate:	1.93 c.f.s.
Volume:	234 AF
Priority Date:	January 19, 1887, Use

Claim Number	43Q-W-208215-00
Maximum Flow Rate:	3.47 c.f.s.
Volume:	336 AF
Priority Date:	January 1, 1895, Use

Claim Number	43Q-W-208215-00
Maximum Flow Rate:	2.3 c.f.s.
Volume:	1476.2 AF
Priority Date:	October 25, 1905, Use

Claim Number:	43Q-W-208214-00
Maximum Flow Rate:	164.3 c.f.s.
Volume:	68,388.8 AF
Priority Date:	August 27, 1906, Filed

(3) In consideration of the terms of this Stipulation, upon entry of Preliminary and

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Final Decrees reflecting the changes to Claims Number 43Q-W-208215-00 and 43Q-W-208214-00, Claim Number 43Q-W-208213-00 shall be deemed withdrawn.

(4) Upon entry of Preliminary and Final Decrees reflecting the changes to Claims Number 43Q-W-208215-00 and 43Q-W-208214-00, the objections of the United States, BOR and BIA, and the Crow Tribe shall be deemed withdrawn.

(5) This agreement will also be filed with the 13<sup>th</sup> Judicial District Court Clerk and Recorder for Yellowstone County, Montana.

(6) This Stipulation is the compromise of disputed water right claims and is not to be construed as an admission against the interests of any party, and is binding upon heirs, successors and assigns, representatives, and agents of the parties.

(7) Each party agrees to bear its own costs and attorney fees arising from the negotiation and execution of this Stipulation and in proceedings before the Montana Water Court regarding Water Right Case Number 43Q-016-S.

(8) Each party entered into and executed this Stipulation voluntarily, in good faith, and without any fraud, misunderstanding, misrepresentation, overreaching, duress, or undue influence, whatsoever.

(9) This Stipulation has been reviewed and approved by the United States Departments of Justice and the Department of the Interior. This Stipulation is subject to review by the Billings City Council and will be effective upon a resolution approving the settlement.

(10) This Stipulation may be executed in counter-part and becomes effective on the date of the last signature.



**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was duly served upon the following persons  
by first class mail on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

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By \_\_\_\_\_