

DRAFT BILL  
revised March 9, 2005

108<sup>th</sup> CONGRESS

2<sup>nd</sup> Session

To expand and enhance the Little Bighorn Battlefield National Monument and to transfer and delete lands within Bighorn Canyon National Recreation Area.

**IN THE SENATE OF THE UNITED STATES**

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To expand and enhance the Little Bighorn Battlefield National Monument and to transfer and delete lands within Bighorn Canyon National Recreation Area.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.*

SECTION. 1. SHORT TITLE.

This act may be cited as the “Little Bighorn Battlefield National Monument and Bighorn Canyon National Recreation Area Enhancement Act of 2005.”

SECTION. 2. FINDINGS

- (a) FINDINGS – Congress makes the following findings relative to the Little Bighorn Battlefield National Monument:
- (1) The history of the establishment of the Little Bighorn Battlefield is as follows:
    - (A) On June 25 and 26, 1876, an historic battle between the United States Seventh Cavalry led by General George Armstrong Custer, and an opposing force of Arapaho, Northern Cheyenne, and Lakota Indians, was fought near the Little Bighorn River in southern Montana.
    - (B) On August 1, 1879, the battlefield was officially recognized and designated as a national cemetery under General Order No. 78, Headquarters of the Army.
    - (C) On December 7, 1886, Executive Order No. 337443 established the boundary, approximately one mile square, for the National Cemetery of Custer’s Battlefield Reservation.

- (D) On April 14, 1926, the Reno-Benteen Battlefield was acquired by an Act of Congress (44 Stat. 251), and the Army was ordered to take charge of the site.
  - (E) On April 15, 1930, by an Act of Congress (46 Stat. 168), all rights, title and privileges of the Crow Tribe, from whose reservation the battlefield site was carved, were granted to the United States.
  - (F) On August 10, 1939, a public historical museum was authorized (53 Stat. 1337).
  - (G) On June 3, 1940, Executive Order No. 8428 transferred management of the area to the National Park Service, Department of the Interior.
  - (H) On March 22, 1946, by an Act of Congress (Public Law 79-332), the area was redesignated Custer Battlefield National Monument.
  - (I) On January 3, 1991, by an Act of Congress (Public Law 102-201), Custer Battlefield National Monument was redesignated as Little Bighorn Battlefield National Monument (referred to in this Act as the 'Monument'), and an Indian memorial was authorized.
- (2) The current total size of the Monument is 765.34 acres. This includes the areas immediately surrounding the cemetery and separate area, the Reno-Benteen Battlefield, a few miles from the cemetery. There are additional sites of historical significance related to the 1876 battle, that are specifically identified in Appendix A, that are not contained within the boundaries of the Monument as it presently exists.
- (3) The National Park Service and the Crow Tribe of Indians share an interest in preserving the Little Bighorn Battle sites that are currently not included in the boundaries of the monument.
- (4) All areas of the Monument, as well as the other area of historical interest not currently included in the Monument boundaries, are completely contained within the exterior boundaries of the Crow Indian Reservation.
- (5) Numerous fee land parcels surrounding the Little Bighorn Battlefield have been acquired by the Custer Battlefield Preservation Committee (hereinafter CBPC) in an effort to preserve significant battle sites. The CBPC desires to convey fee lands it currently owns to the United States for the purpose of preserving key battle sites and for inclusion of the lands in the Little Bighorn Battlefield National Monument boundaries. The CBPC desires to acquire

additional lands with historical significance from willing sellers to donate for the Little Bighorn Battlefield Monument purposes.

- (b) The following events are important in understanding the relationship between the Crow Tribe and Bighorn Canyon National Recreation Area:
- (1) On October 15, 1996, Congress established Bighorn Canyon National Recreation Area (P.L. 89-664) originally including approximately 64,000 acres along the Bighorn Canyon from north central Wyoming to southeastern Montana. The enabling legislation for the recreation area had authorized the incorporation of tribal lands, if requested by the Crow Tribal Council. In May of 1967, the tribal council passed Resolution 67-59, which approved a draft Memorandum of Agreement (MOA) with National Park Service, to add approximately 56,000 acres of tribal lands to the recreation area.
  - (2) A revised MOA from that passed by the Tribal Council was executed by the Director of the National Park Service, the Crow Tribal Chairman, and finally by the Secretary of the Interior on December 1, 1967. Upon publication of the enlarged Bighorn Canyon National Recreation Area boundary description of October 2, 1968, the park was officially enlarged to 120,000 acres with the inclusion of approximately 56,000 acres of Crow Reservation lands.
  - (3) Over the last three decades, the National Park Service and Crow Tribe have been in dispute regarding numerous MOA issues specifically relating to concession development, construction of the proposed trans-park highway, road rights-of-ways, jurisdictional authority and lack of employment opportunities for Crow Tribal members.
  - (4) The Controversy over the management of the Crow Tribal lands eventually resulted in the Crow Tribe passage of Crow Tribal Resolution No. 76-32 calling for termination of the MOA with the National Park Service on October 10, 1976.
  - (5) The Secretary of Interior rejected the Tribal resolution to terminate the MOA and reaffirmed the legal validity of the MOA in 1979. However, simultaneous to the reaffirmation of MOA, the Secretary issued a moratorium on any further National Park Service development of Crow Tribal lands within the recreation area.
  - (6) As a result of the moratorium, the National Park Service has been restricted from planning, management, and development of the 56,000 acres of Crow Reservation lands included in the Bighorn Canyon National Recreation Area boundaries. The General management plan for the park, completed in 1981, conceded this point and limited park planning to those lands originally

included in the 1966 Act of Congress (P.L. 89-664), which specifically excluded Crow Tribal lands.

- (7) In 1993, the Crow Tribe of Indians filed *Crow Tribe v. Binneweis* after unsuccessful attempt to negotiate with the National Park Service regarding the concession at the Ok-A-Beh Marina. The Crow Tribe further challenged the validity of the 1967 MOA since the revised version had not been adopted by the Crow Tribe attempted to negotiate a revised Memorandum of Agreement.
- (8) The National Park Service and the Crow Tribe had reached agreement on basic concepts of a new MOA including deletion of the Crow Tribal lands and rights of ways over Tribal lands. However finalization of a new MOA has been restricted by statutory requirements regarding alienation of fee lands acquired by the National Park Service within the 56,000 acres of Crow Tribal lands.

### SECTION 3 – PURPOSE – The purposes of this Act are-

- (a) to enhance the protection of significant Little Bighorn Battlefield sites not currently included in the Monument by a transfer of non-Indian fee lands (as specifically described in Appendix A) to the United States to hold in trust for the Crow Tribe of Indians with an encumbrance in perpetuity for use by the National Park Service for Little Bighorn Battlefield Monument purpose;
- (b) to authorize the Secretary of Interior to transfer additional lands acquired by the Custer Battlefield Preservation Committee, other private organizations of the National Park Service within the 1981 General Management Plan proposed boundary from willing sellers into trust status for the Crow Tribe of Indians with an encumbrance in perpetuity for use by the National Park Service for Monuments purposes;
- (c) to delete the Crow Tribal added lands from the Bighorn Canyon National Recreation Area and exchange fee lands purchased by the National Park Service located within the added lands for a specific parcel of Crow Tribal trust land and to grant other rights of use to the National Park Service for the purpose of effective management and development of the recreation area.

## TITLE 1. ACCEPTANCE OF NON-INDIANS OWNED FEE LANDS INTO TRUST STATUS

### SECTION 1. TRANSFER OF NON-INDIAN OWNED FEE LANDS.

- (a) The Secretary shall accept the conveyance of certain non-Indian owned fee lands within the Crow Indian Reservation into trust status for the Crow Tribe of Indians as specifically identified in Appendix A to this Act;

- (b) Simultaneous to the acceptance of such non-Indian owned fee lands within the Crow Tribe of Indians, the Secretary shall grant a permanent right of use for the lands specifically identified in Appendix A to the National Park Service for Little Bighorn Battlefield National Monument purpose.
- (c) This Act shall not authorize the inclusion of trust lands owned by Crow Tribal members into the boundaries of the Little Bighorn Battlefield National Monument. However, Crow Tribal member may change the status of trust lands to fee, which allows their lands to be included through a willing buyer and seller process.

TITLE II. AUTHORIZATION FOR FUTURE NATIONAL PARK SERVICE LAND ACQUISITIONS

SECTION 1. ACCEPTANCE OF LANDS PURCHASED FROM WILLING SELLERS.

- (a) The Secretary is hereby authorized to:
  - (1) accept the conveyance of lands located within the 1981 General Management Plan acquired by the Custer Battlefield Preservation Committee, the National Park Service or other private organization acquired from willing sellers into trust status for the Crow Tribe of Indians; and
  - (2) simultaneously grant a permanent right of use for such lands to the National Park Service for the Little Bighorn Battlefield Monument purpose.

TITLE III. EXCHANGE FEE LANDS ACQUIRED BY THE NATIONAL PARK SERVICE WITH FEE TITLE TO TRIBAL LANDS AND A PERPETUAL RIGHT OF WAY OVER TRIBAL LANDS.

SECTION 1. DELETION OF CROW TRIBAL ADDED LANDS FROM THE BIGHORN CANYON NATIONAL RECREATION AREA.

- (a) The Secretary of Interior is hereby authorized to
  - (1) with draw Crow Tribal lands added to the Bighorn Canyon National Recreation Area in 1968 and restore the Recreation Area to its original boundaries in accordance with the 1966 enabling legislation effectively terminating the 1967 MOA between the Crow Tribe and the National Park Service, and specifically
    - (A) deleting 56,000 acres of Crow Tribal lands, specifically described in Appendix B, which were added in 1968 to the Recreation Area

consistent with the Crow Tribe's request that these lands be withdrawn from the park boundaries, in 1976, 1992, and most recently in 1995.

- (B) transferring 200 undeveloped acres located above Box Canyon, specifically described in Appendix C, to the Crow Tribe.
- (C) The Box Canyon fee lands were acquired as part of the preliminary planning for Recreation development. After development of a Marina at the Ok-a-Beh location, the National Park Service dropped development plans for the Box Canyon lands. The Box Canyon lands are located within the Crow Indian Reservation.
- (D) transferring three small tracts totaling 0.86 fee acres at Frozen Leg, specifically described in Appendix D, to the Crow Tribe. The park has no future development plans for these acquired lands.
- (E) transferring 340 acres at Lind Ranch, specifically identified in Appendix E, including 3-Mile Boat Ramp and parking area to the Crow Tribe. The recreation area acquired these lands from a private landowner in 1976. The Lind Ranch is located approximately 3 miles northeast of Fort Smith and within the Crow Indian Reservation.
- (F) granting a perpetual right of public access to the Bighorn River at the Lind Ranch access site specifically totaling 10 acres including the access road, parking area, launch ramp, and a 50' corridor along the Big Horn River. Crow Tribe would assume management and maintenance of the site, as identified in Appendix E.

The Crow Tribe will charge an equivalent recreational fee as Bighorn Canyon National Recreation Area. The Tribe and the Park will honor each other's fee access to Bighorn Canyon National Recreation Area and 3-Mile access. In the event the Park eliminates its fee, the Tribe reserves the right to charge a reasonable fee comparable to fees assessed by the National Park Service at other recreational areas.

- (G) granting in perpetuity a 200' right-of-way to the National Park Service across tribal lands along a three-mile stretch of the Ok-A-Beh Road, as specifically identified in Appendix F. The right-of-way would guarantee continued unrestricted access to park recreation facilities, preserve the scenic value along the Ok-A-Beh Road and allow for proper maintenance of the road and recreation area facilities.

- (H) Transferring right, title and interest of 90 acres of tribal trust lands at Ok-A-Beh Marina facility to the National Park Service in fee simple, as specifically identified at Appendix G. The Ok-A-Beh Marina facility parking area, water system, leach field, septic tank and approach road are situated upon these 90 acres of tribal lands.