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Yellowtail Dam: A Study In Indian Land

William Brooke
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YELLOWTAIL DAM: A STUDY IN INDIAN LAND

Submitted in Partial Fulfillment of the Requirements for Graduation with Honors to the Department of History at Carroll College, Helena, Montana

by

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March 24, 1981
This thesis for honors recognition has been approved for the Department of History.

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March 24, 1981
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CHAPTER I
INTRODUCTION

Under the insightful leadership of Chief Plenty Coups, the Crow nation aligned itself with the white man prior to the campaigns which decimated the Plains Indians in the 1860's and 1870's. Plenty Coups knew that white forces would eventually overwhelm any tribe which resisted "Manifest Destiny."

When the whites invaded the sacred Black Hills of the Sioux in 1875, Plenty Coups said:

I have observed that the yellow metal drives the white man mad. They will swarm into the sacred mountains of the Sioux and that will bring war. The soldiers will need scouts, more scouts than ever before, Crow scouts. And when the war is over, the soldier-chiefs will not forget that the Crows came to their aid. I--Plenty Coups--will not let them forget.¹

Many years later, Plenty Coups admitted that they had aligned themselves with whites not because the Crows liked whites or hated the Sioux or Cheyenne, but because the Crows wanted to protect their own country.²

The Crows' decision proved fruitful as the white man helped to protect the Crows from their traditional enemies, the Sioux, Cheyenne, and Blackfeet, while attempting to honor Crow treaties and treat the Crow people with respect--benefits the Cheyenne, Sioux, and other Plains Indians did not receive.


²Plenty Coups' vision as a young man was instrumental in his belief that the Crows should align themselves with the whites. Ibid., pp. 31-35.
During the 1950's, this amicable relationship between the Crow nation and the United States government was disturbed; the government discovered a different type of "gold" on Crow lands. It was irrigation and hydro-electric power which could be generated by the construction of a dam on the Big Horn River in Big Horn Canyon, thirty-five miles south of Hardin, Montana. The Crow people had dismissed a similar proposal made in 1912 by the Big Horn Canyon Power and Irrigation Company. They wanted their beautiful land preserved and the white man kept out.  

Although their rejection was accepted in 1912, the situation was much different in 1951. This time it was not some private company making an offer for Crow land, but the United States government represented by the Bureau of Reclamation under the Department of Interior.

In order to understand what happened in the 1950's when the government desired Crow land, it is necessary to understand the relationship of the federal government to the Indian, and something of the government bureaucracy. Because the federal government forced wardship upon the Indian, it placed itself in a paternal position. As guardian of the Indian, the government has had as its responsibility the protection of Indian rights and property against any invasion, abuse, or assault. The Bureau of Indian Affairs (BIA), which is a bureau within the Department of Interior, has been directly in charge of guaranteeing the Indian his rights as a ward of the federal government. Overseeing the BIA is the Secretary of Interior, who is to protect Indian land from any

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invasion or use by persons not given consent by the specific Indian tribe. It would have been the Secretary's responsibility to protect the Crows in 1912 had the Big Horn Canyon Power and Irrigation Company ignored the Crows' decision not to disturb their land.

However, when a government office such as the Bureau of Reclamation desires Indian land, the responsibility of the Secretary changes. Because he oversees the Bureau of Reclamation, it is also the Secretary's job to reclaim and develop land whenever possible. If Reclamation decides it needs Indian land, the Secretary is torn by a conflict of interests. This, above all else, was the key to the Yellowtail Dam controversy.

In such conflicts, more often than not, the Secretary sides with the Bureau of Reclamation. One of the primary reasons for this is that the Senate and House Interior and Insular Affairs committees greatly influence the Secretary in his decision. The senators and representatives who sit on these committees are almost always from western states which have the most land to be developed and also the most Indian reservations. These senators and representatives are not elected by Indian votes, but by white votes. Hence, their emphasis in legislation is generally geared toward white interests. One such emphasis, particularly in the 1950's, was resource development, which meant economic development. When a conflict between Indian protection and resource development arises, the Secretary usually decides in favor of the latter due to political

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pressure from the Congress or the president himself. Thus, the Indian finishes last when the government wants his land.

Before turning to the controversy of Yellowtail Dam it may be helpful to review the century and a half of Crow-white relations which greatly affected the handling of the controversy during the 1950's.

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5 For more information see: Ibid, pp. 68-112. See also: Elmo Richardson, Dams, Parks and Politics (Lexington: The University of Kentucky, 1973), pp. 71-114.
CHAPTER II
EARLY CROW-WHITE RELATIONS

The Crow Indians came to the Yellowstone Valley around the late seventeenth and early eighteenth centuries. Although shrouded by much myth, legend, and historical-archaeological confusion, it is thought that they came from the Winnipeg country of southeastern Manitoba, Canada. According to tribal beliefs, they separated from their ancestral tribe, the Hidatsa, around 1530 and migrated south to the Sacred Waters, present-day Devils Lake in North Dakota. It was at this location that two chiefs, No Vitals and Red Scout, fasted in order to receive a vision to direct them in their next journey. Red Scout believed that his vision instructed him to settle there, while the Great Spirit directed No Vitals to go west to the mountains. Around the beginning of the seventeenth century No Vitals' group reached the Mandan village on the Missouri River near the mouth of the Heart River. They remained there until a quarrel arose over a killed buffalo which caused No Vitals to continue his sacred journey to the mountains.\(^1\) Many historians believe that

\(^1\) Also referred to as Gros Ventres by the Crows, or Minnetaree.

\(^2\) According to Edwin Denig, a fur-trapper on the Upper Missouri from 1833 to 1858, the cause for the division was this: "The nation was governed by two factions each headed by a separate chief, both of whom were desperate men, and nearly equal in the number of their followers. Jealous of each other and striving after supreme command many difficulties arose from time to time. ... Therefore, at a hunt where both chiefs were present with their followers and a great many buffalo had been killed, the wives of the two leaders quarreled about ... the stomach of one of the cows. From words they came to blows, from blows to knives, in which one of the women killed the other. Their relations on both sides took part. The nation armed ... and a skirmish ensued in which several were killed on both sides. The result was that about half left those on the Missouri and migrated to the Rocky Mountains. ..." Edwin Denig, Five Indian Tribes of the Upper Missouri, with an introduction by John C. Ewers (Norman: University of Oklahoma Press, 1961), pp. 137-138.
this nameless band then proceeded directly to the country of the Big Horn and Yellowstone River basins to become the Apsaalooke or Crows, as whites refer to them. According to tribal history, however, the band continued to wander, first north to Canada and then south until they came to a large, salty lake. It is not known how long this group remained in the area of the Great Salt Lake but it is thought that they acquired the horse here which further encouraged their nomadic tendencies.

Finally, after several more years of wandering, the Crows came to the vast area of plains and mountains of the Yellowstone country. It was in this country that the tribe began to flourish. Enjoying plentiful game for hides and meat, feed for their horses, and good campsites, the Crows reached a peak in population of about six thousand men, women, and children by 1833. The famous Crow Chief Arapooish told Robert Campbell,

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3 Where they received their name is unclear. Apsaalooke does not translate to "Crow" but means "children of the large-beaked bird." Possibly, during their migrations they began to associate themselves with such a bird for religious reasons. How they came to be known as Crows probably has to do with the sign language used to convey their name which whites misinterpreted.

4 The origin of the Crows, like many Native American tribes, is a contradiction of legends, myths, and facts. The view presented here is that of Joe Medicine Crow, tribal historian for the Crows. Although it was orally handed down from generation to generation and flavored by several imaginations, it follows a generally accepted history of Crow origin. See Charles Bradley, Jr. and Joe Medicine Crow, "The Crow Indians: 100 Years of Acculturation Teacher Information Package" (Wyola, MT: N. P., 1976),

5 The figure varies in number and historical time. Francis LaRoque, a French fur-trader who lived among the Crows for two months in 1855, estimated their population at 2400 people, having been reduced from 16,000 by smallpox. Edwin Denig, Five Tribes of the Upper Missouri, p. 142.
an employee of the Rocky Mountain Fur Company, that Crow country was in "just the right place":

The Crow country is a good country. The Great Spirit has put it exactly in the right place; when you are in it you fare well; whenever you go out of it, whichever way you travel, you fare worse.

If you go to the south, you have to wander over great barren plains; the water is warm and bad, and you meet fever and ague.

To the north it is cold; the winters are long and bitter, with no grass; you cannot keep horses there, but must travel with dogs. What is a country without horses?

On the Columbia they are poor and dirty, paddle about in canoes, and eat fish. Their teeth are worn out; they are always taking fish-bones out of their mouths. Fish is poor food.

To the east they dwell in villages; they live well; but they drink the muddy water of the Missouri—that is bad. A Crow's dog would not drink such water. About the forks of the Missouri is a fine country; good water; good grass; plenty of buffalo. In the summer it is almost as good as the Crow country; but in the winter it is cold; the grass is gone; and there is no salt weed for the horses.

The Crow country is exactly in the right place. It has snowy mountains and sunny plains; all kinds of climates, and good things for every season. When the summer heat scorch the prairies, you can draw up under the mountains, where the air is sweet and cool, the grass fresh, and the bright streams come tumbling out of the snow-banks. There you can hunt the elk, the deer, and the antelope, when their skins are fit for dressing; there you will find plenty of white bears and mountain sheep.

In the autumn when your horses are fat and strong from the mountain pastures, you can go down into the plains and hunt the buffalo, or trap beaver on the streams. And when the winter comes on, you can take shelter in the woody bottoms along the rivers; there you will find buffalo meat for yourselves, and cottonwood bark for your horses; or you may winter in the Wind River Valley, where there is salt weed in abundance.

The Crow country is exactly in the right place. Everything good is to be found there. There is no country like the Crow country.

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Unfortunately for the Crows, others also believed Crow country was in "just the right place." In 1805, Francis La Rocque of the Northwest Fur Company of Montreal lived and traveled with the Crows for two months. He noted that they were shrewd traders, expert horsemen, and clever hunters. He also made careful observations of their hunting grounds which were abundant in game. The following year, the Lewis and Clark expedition traveled down the Yellowstone River making detailed notes of the area. William Clark was one of the earliest whites to recognize the value and beauty of Crow country. He commented in his journal:

The countrey about its mouth of the Yellowstone River is verry fine, the bottoms on either side is wooded with Cotton Wood, Ash, Elm, etc. . . . Near the high land is generally open rich bottoms. . . . The low plain rises gradually to a high butifull countrey. . . . We saw . . . emence numbers of antelopes in the forks of the river, Buffalo and Elk, and Deer is also plenty. Beaver is in every bend.

According to Meriwether Lewis, Captain Clark believed this area to be an ideal location for a trading post or fort because the river was navigable and there was plenty of timber for building materials. Explorers like La Rocque and Lewis and Clark were not the only ones

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7 La Rocque was not the first white to encounter the Crows. In 1743, the Verendrye brothers were in the area of the Yellowstone and reported a meeting with "Beau Hommes," or handsome men. Later whites often commented on this characteristic of the Crows.

8 Francis La Rocque, Journal of La Rocque (Ottawa: Publication of Canadian Archives, 1911), pp. 1-70.

to describe the rich Crow country. Almost every major expedition to the Upper Missouri in the early nineteenth century was interested in the area and reported on it in detail. The John Jacob Ashley-William Price Hunt expedition cut across Crow country in 1811, and four years later an account of that expedition, *Astoria*, contained a description of Crow land. Soon after the Benjamin Bonneville-Nathaniel Wyeth expedition in 1834, a work about that expedition, the *Adventures of Captain Bonneville*, brought more attention to the Yellowstone country.

The early expeditions were an important catalyst in helping to stir the interest of the great fur companies of that time in the Crow region. The fur-trappers attached to those companies began trapping and trading in this area after 1800, reaching a peak in the 1840's and continuing well into the 1870's. Men like Jim Bridger, Jedediah Smith, Kit Carson, Milton Sublette, and others crossed and re-crossed Crow country in their search for valuable fur pelts. The Crows treated these early whites in a friendly manner, a benefit which the Sioux, Blackfeet, and Assiniboines did not grant to the fur-trappers. Edwin Denig wrote in amazement:

Even the Rocky Mountain trappers, that desperate set of men who imposed upon and ill-treated them / Crows/ on all occasions, were suffered to trap their country of beaver without molestation. Not that they feared them, for the trappers were scattered through their district in small parties, which could at any time be cut off without loss but by some natural formation of their disposition they would not kill them and seldom robbed them.11

11 Edwin Denig, *Five Tribes of the Upper Missouri*, p. 149.
Some of the frontiersmen, like Edward Rose and Jim Beckwourth, even lived among the Crows, taking Crow wives and living in Crow lodges.\textsuperscript{12} There is much speculation as to why the Crows maintained this benevolent attitude even in their early relations with the whites. Some Crows claimed that Edward Rose told them if they kept on friendly terms with the whites they would have "nothing to fear from the Blackfeet and can rule the mountains."\textsuperscript{13} Others believed that when their great chief, Arapooish, lay dying he commanded, "Go back to my people with my dying words. Tell them ever hereafter to keep peace with the whites."\textsuperscript{14} The Crows probably realized that one way to survive their fierce enemies, the Sioux from the east and the Blackfeet from the west, was to align themselves with whites who could supply them with arms, ammunition, and other protection.\textsuperscript{15} In 1825, General Henry Atkinson and Indian Agent Benjamin O'Fallon made the first official treaty with the Crows which recognized the friendship that had existed between Crows and whites, and expressed the desire to continue this friendship.\textsuperscript{16} The early Crow

\textsuperscript{12}For an interesting account of this, see: James Beckwourth, The Life and Times of James Beckwourth (New York: Alfred A. Knopf, 1931).

\textsuperscript{13}Mark Brown, Plainsmen of the Yellowstone, p. 49.

\textsuperscript{14}Ibid., p. 49.

\textsuperscript{15}At the time Edwin Denig was writing his work on the tribes of the Upper Missouri, he firmly believed the Crows could not exist much longer because their enemies, the Sioux and Blackfeet, were decimating them. Edwin Denig, Five Tribes of the Upper Missouri, pp. 204-206.

\textsuperscript{16}The 1825 treaty stated that it was made "for the purpose of perpetuating the friendship which has heretofore existed, as also to remove all future cause of discussion or dissention, as it respects trade and friendship between the United States and their citizens and the Crow tribe of Indians." Wilcomb E. Washburn, The American Indian and the United States: A Documentary History, 4 vols. (Westport, Connecticut: Greenwood Press, 1973), 1:141.
relations with whites appeared to be beneficial. Whites were few, game still was plentiful, and the Crow lifestyle of hunting and roaming across the cherished land continued as before.

But by the late 1830's and early 1840's, a new light could be seen on the horizon in Crow country. The settling of the Oregon territory in the 1830's and the gold rush to California in 1849 caused a great tide of emigration across the plains. These migrations often bordered the southern edge of Crow country. By 1834, the Oregon Trail had become a well-marked corridor to the Pacific Northwest and gave those early pioneers a chance to discover the grassy, well-watered, fertile river basins of Crow country. Whites also discovered hostile Sioux and Blackfeet angered by settlers overrunning their hunting grounds. The United States government, pressured by its citizens to protect them from the Indians, negotiated a treaty in 1851 at Fort Laramie with the important tribes of the Plains through which the vast migrations passed. 17

By the terms of the treaty, the U. S. government would compensate the tribes for the timber, buffalo, and other game destroyed by the emigrants in return for the right of peaceful passage through Indian country and an end to the bloody inter-tribal warfare which had dominated the area. To facilitate this peaceful agreement between the tribes, the negotiators for the government laid out boundaries for each tribe. Superintendent D. D. Mitchell, using a map drawn by Father Pierre-Jean DeSmet, defined

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17 The Sioux, Assiniboins, Arickaras, Gros Ventres, Arapaho, Shoshone, Cheyenne, and Crow met with Father Pierre-Jean DeSmet, Jim Bridger, Indian Agent Thomas Fitzpatrick, and St. Louis Superintendent David Dawson Mitchell to negotiate the terms of the 1851 Fort Laramie Treaty. Ibid., 4:2477.
Crow territory as:

... commencing at the mouth of Powder River on the Yellowstone; thence up Powder River to its source; thence along the main range of the Black Hills and Wind River Mountains to the headwaters of the Yellowstone River; thence down the Yellowstone River to the mouth of Twenty-five Yard Creek; thence to the headwaters of the Muscle-schell River; thence down the Muscle-schell River to its mouth; thence to the headwaters of Big Dry Creek, and thence to its mouth.18

Although the U. S. government never officially recognized the treaty of 1851, it remained in force until the second Fort Laramie Treaty of 1868.19 The 1851 treaty was significant for the Crows, as it was for all of the Plains Indians, for several reasons. It marked the first time an outside force had restricted the great Plains Indian tribes, and set a precedent for future agreements between the government and the Indians. Although the Indians believed that the treaty merely recognized what was already theirs, the U. S. government believed that the Indians were accepting a more limited use of government lands.20

18Ibid., p. 2477.

19The treaty of 1851, recognizing 38 million acres as Crow territory, was never ratified because of a technical error on the part of the United States government. After the Senate reduced the annuity payments from fifty years to ten years, and all the tribes agreed to the change, the President never signed the treaty. U. S. Congress, Senate, Committee on Indian Affairs, Crow Tribe of Indians of Montana, S. Rept. 463, 77th Congress, 1st Sess., 1941, p. 1.

20Referring to this Indian attitude about the 1851 treaty, the Indian Peace Commission of 1867 stated: "The Indians have never founded the titles to their lands upon the treaty of 1851. They have looked upon that treaty as a mere acknowledgement of a previously existing right in themselves. The assignment of boundaries, they supposed, was merely to fix rights among the tribes to make certain what was uncertain before." Merrill Burlingame, "Historical Background for the Crow Indian Treaty of 1868," prepared for the case before the Indian Claims Commission--The Crow Tribe of Indians v. the United States of America, Docket
Fig. 1. Crow Indian Reservation as established by the treaty of September 17, 1851.
Furthermore, by agreeing to stop inter-tribal warfare, the Crows began to undermine their own culture. At that time, one of the major ways to gain recognition as a man was to "count coup" on the enemy. The denial of this caused identity problems later on for Crow warriors. Even more importantly, the treaty allowed the government access to roadways through Indian country. For the Plains Indians, this was the beginning of the end to their way of life. By accepting this term of the treaty the Indians encouraged white miners and settlers to pass through Indian country.

The ripples of emigrants became waves, and the fertile Yellowstone basin began to attract the interests of more and more whites. In 1864, John Bozeman and John Jacobs led a wagon train through Crow country because it had sufficient feed and water to support stock. In 1866, the U. S. government, exercising the right of the 1851 treaty, marked the Bozeman Road through Crow country and set up the protective forts of Reno, Phil Kearney, and C. F. Smith. But even before that, miners had been entering the Crow area in search of gold. James Stuart led an


Ironically, the Crows protected the road which would help to undermine their way of life. Margaret Carrington, whose husband led an army of seven hundred men into Indian country to establish three forts, commented on the friendliness and helpfulness of the Crows: "Other parties of Crows came to Fort C. F. Smith to hunt and trade in that vicinity, and not only showed uniform friendliness toward the whites and the new road, but offered two hundred and fifty young warriors to engage in operations against the Sioux." Margaret Carrington, ABSARAKA: Home of the Crows, edited and introduced by Milo Quaife (Chicago: The Lakeside Press, 1950), pp. 168-169.
expedition into the Big Horn and Yellowstone river basins in April 1863 and reported good "color" on all the streams. A second expedition noted that "rich mines exist in that country." By 1864, local Montana papers were writing sensational headlines about gold rushes in the Yellowstone valley. On September 24, 1864, the Montana Post (Virginia City) reported:

"Stampede to the Yellowstone"--The news of the discovery of a rich gulch on the Yellowstone, spread through our town like wild fire, and a very extensive stampede has been the consequence. We counted twenty packers in one group. Verily this is a marvelous country, and its riches are only guessed at.

In view of this sudden flux of miners into Crow country, territorial governor Thomas Meagher requested the Commissioner of Indian Affairs to make another treaty with the Crows restricting their territory even more than the 1851 treaty:

That it is more than expedient such a treaty with the Crows shall be made as speedily as possible, must be conceded, in view of the urgent fact that hundreds of miners and others desirous of locating farms and laying out towns are, even now, passing down into the great valley of the Yellowstone and into the country beyond the junction of the Gallatin with the Missouri.

In the typical process of settling the frontier, farmers and cattlemen followed the miners into Crow country. Using the Bozeman

22Merrill Burlingame, "Historical Background for the Crow Indian Treaty of 1868," pp. 18-20.

23Montana Post (Virginia City), 24 September 1866, p. 1, as cited in Mark Brown, The Plainsmen of the Yellowstone, p. 21.

Road, Nelson Story drove 600 Longhorns into the area in 1866 and established a cow camp on the Yellowstone to take advantage of the markets created by mining camps like Emigrant Gulch. As more whites settled in the area, they placed more pressure upon the territorial governor, legislature, and the Commissioner of Indian Affairs to open up the territory of the Crows. Governor Meagher suggested to the Commissioner of Indian Affairs in early 1866 that he "invite the Crows at the earliest possible day . . . to a council for the purpose of having a treaty instituted with them which shall cede their lands (one-third of our territory) to the United States and give them all the usual guarantees and liberality of our government." Two years later, the Commissioner of Indian Affairs, N. G. Taylor, communicated to the Secretary of Interior a request similar to Meagher's:

The Blackfeet and Crow nations claim much the larger portion of the Territory, and there can be no question but that it would be for their interest, as well as for the benefit of the citizens of Montana to yield their title and be restricted to tracts of country of much less extent yet sufficient for their need.27

26 Annual Report of the Commissioner of Indian Affairs for the Year 1866, p. 200.
The Crows had only glimpsed the new light on the horizon in 1851; many did not understand its ramifications. By 1868, that light had become bright and unmistakable in the change which it symbolized. The whites were in Crow country to stay and the Crows had no choice but to accept the second Fort Laramie Treaty of May 7, 1868. This marked a new beginning for the Crows, for their way of life, and for their country. This process of restricting Crow land was a painful and sorrowful experience for the Crows but it seemed inevitable as the white tide pushed westward. The era which followed the 1868 treaty was one which many whites would like to forget, and all Indians will never forget. Many Indians, unable to understand whites, their laws, or the new reservation life, became objects of legitimate prey for fraudulent agents, traders, cattlemen, and others. According to an employee of the early Crow reservation one agent “came here poor but left a rich man a half year later when General Clapp took charge.”

28. The U. S. government reduced Crow land from 38 million to 30 million acres, paying them about five cents per acre in supplies, food, etc. It is interesting to note here the comments of the treaty commissioners concerning the value of Crow land. They stated in an accompanying report: “...if the value of the possessions ceded is to be considered, then for stronger reasons the Government should not hesitate to have the treaties ratified and executed. Mineral lands of exhaustless wealth and inconceivable value extend over thousands of square miles; navigable streams, rivers of hundreds of miles in extent, on the banks of which our capitalists have already invested more than a million dollars in mines of copper that promise to exceed in richness any that have ever before been discovered. Large agricultural tracts, the finest of the eastern slopes of the mountains, are a portion of what these tribes have ceded by these treaties.” U. S. Congress, Senate, Committee on Indian Affairs, Crow Tribe of Indians of Montana, S. Rept. 463, 77th Congress, 1st Sess., 1941, p. 3. Hereafter cited as: Crow Tribe of Indians of Montana.

Fig. 2. Crow Indian Reservation as established by the treaty of May 7, 1868.
In 1894, the U. S. Court of Claims found that an agent for the Crow Indians could not account for $55,129 missing from Crow tribal funds.\textsuperscript{30} Often, supplies which were to be distributed to the Crows were sold to whites. At other times, the supplies were replaced by used or second-rate supplies. Chief Blackfeet of the Crows testified about this problem before Treaty Commissioner Brunot in 1873:

\begin{quote}
The treaty \textit{of} 1868\textit{y}ou say, has bought all our land except on this side of the river. And what do we get for it? We get a pair of stockings, and when we put them on they go to pieces. They get some old shirts and give them to us . . . and our elbows go right through them. That is what we get for our land.\textsuperscript{31}
\end{quote}

Fraudulent agents were not the only problem in those early reservation days.

Traders on the borders of the reservation discovered that they could obtain valuable pelts from the Indians in exchange for whiskey. Before reservation life, Crows would not drink the whiskey which traders offered them, labeling it "fool's water." However, when the young warrior could no longer prove himself in battle with his enemies or by the hunt, he began to turn to the fool's water. Indian Agent George B. Wright wrote to Governor G. C. Smith in 1868 that "king alcohol continually held high carnival last winter, while the admirers were in buffalo robes. It was, indeed, a painful sight to witness the debauchery of the Indians, made so by liquor given them by whites in exchange for their pelts."\textsuperscript{32} At one point, the agency was moved in an attempt to

\begin{footnotes}
\footnotetext[30]{Crow Tribe of Indians of Montana, p. 2.}
\footnotetext[31]{Ibid., p. 2.}
\footnotetext[32]{Indian Agent George B. Wright to Montana Governor G. C. Smith, 1 July 1868, Annual Report of the Commissioner of Indian Affairs to the Secretary of Interior for the Year 1868, p. 205.}
\end{footnotes}
escape from the whiskey traders, but they followed and when the agent attempted to extend the reservation borders to keep the traders away, settlers of the area raised such strong objections that the agent cancelled the extensions.  

One of the most interesting attempts to take advantage of the Crows and their land began in 1884 when a "syndicate of cattlemen," represented by John Blake and J. C. Wilson, attempted to lease the reservation for ten years at one cent per acre. At one point, Montana newspapers accused the Secretary of Interior William Teller's brother of being a member of the syndicate.  
The method by which the syndicate attained the lease was, at best, questionable. The agent for the Crows received a letter from the Commissioner of Indian Affairs stating that there would be no allowance for beef rations for three months. The syndicate offered $30,000 for the lease shortly after the letter arrived. As soon as the Crows and their agent signed the lease, the Commissioner informed them that an allowance had been granted to cover the three months.  

Throughout the last half of the nineteenth century, whites continually agitated for the removal of Crows from their country so that the land could be utilized for farming, ranching, and mining. In 1871, citizens of the Gallatin valley supported a bill in Congress which

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34 It was thought at that time that the Secretary of Interior, William Teller, was using his position to repay some Colorado stockmen for campaign favors and contributions. Later accusations included a U. S. Senator, a member of the House of Representatives, and a Court of Claims official. Ibid., pp. 438-441.

35 Ibid.; see also the numerous articles in *Billings Post*, 1884-1885.
would accomplish this. In that same year, the Avant Courier (Bozeman) reported false rumors that Crows were preparing to attack and raid settlements in the valley. During the late 1870's, whites, especially miners, pressured the Crows to sell their land west of Boulder Creek which was rich in gold deposits. In 1882, the territory lying west of Boulder Creek and adjacent to the northeastern part of Yellowstone National Park was officially opened to settlement. This, combined with the sale of land to the Northern Pacific Railroad for right-of-way, reduced the Crow reservation from eight million acres to three million acres. The Crows were now confined to those lands in the valleys of Prior Creek, Little Big Horn River, and the Big Horn River.

Despite all the attempts by whites to abuse or remove the Crows, they remained allies to the whites. Captain D. W. Benham, reporting to his commanding officer in May 1877, stressed the importance of retaining the Crows' friendship:

The Crow Indians have in every reasonable way shown themselves to be fast friends of the white man ... and loyal and true to the Government. ... I feel that it is in the interest of the Government to keep them friendly. They are not only a protection to the settlements in the valley against hostile Sioux ... but this whole valley would be at their mercy at any time when the troops are away from Fort Ellis should they be provoked to become hostile toward the whites.

Montana Governor Potts reaffirmed this contention in a letter to Assistant Secretary of Interior, B. R. Cowen:

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36 Ibid., pp. 430-431. See also Avant Courier (Bozeman), 28 April 1871.
37 Merrill Burlingame, "Historical Background for the Crow Indian Treaty of 1868," pp. 56-70.
38 Crow Tribe of Indians of Montana, p. 3.
Fig. 3. Crow Indian Reservation after the Act of Congress of April 11, 1882.
I feel that the Crows are entitled to the thanks of our people for their loyal defense of our eastern settlements and so far as I can, I shall aid them for the protection they have afforded our people.\(^{39}\)

Early reservation life, although tainted by whites of questionable character and by others with misguided intentions, was not intolerable for the Crows. They continued to hunt buffalo, trap for furs, and roam the country of the Big Horn. They were not yet dependent on the U. S. government. But as the buffalo disappeared and inter-tribal warfare stopped, the traditional Crow way of existence was altered. In 1887, the President signed the General Allotment Act in an attempt to induce American Indians to become farmers. By virtue of the act, reservation land was to be divided into 80- or 160-acre units which each Indian legally living on the reservation would receive. The remainder of the land could then be declared surplus and sold to white settlers. The act was designed to accomplish two objectives: civilize the American Indian by teaching him to adopt white values so that he would be absorbed into white society, and open up the valuable reservation lands to white settlement.\(^{40}\) In 1901, the Montana legislature petitioned Congress to open certain Crow lands for settlement. By 1904, Congressman Joseph M. Dixon of

\(^{39}\)Ibid., p. 9.

\(^{40}\)Senator Henry Dawes, author of the General Allotment Act, made this comment concerning assimilation of the American Indian: "Inasmuch as the Indian refused to fade out, but multiplied under the sheltering care of reservation life, and the reservation itself was slipping away from him, there was but one alternative: either he must be endured as a lawless savage, a constant menace to civilized life, or he must be fitted to become part of that life and be absorbed into it. Burton M. Smith, "The Politics of Allotment: The Flathead Indian Reservation as a Test Case," Pacific Northwest Quarterly 70 (July 1979): p. 131.
Montana had pushed through Congress a bill to test allotment on a million acres of Crow land. However well-intentioned allotment was, it failed miserably on the Crow reservation as well as on others. Because Crows had learned to survive by sharing their wealth and depending upon a clan for a sense of identity, the idea of owning individual pieces of land and producing enough for their own families did not succeed. Whites, however, assumed that the Crows would be able and willing to accept Anglo-Saxon values and thus could not understand the importance of Crow customs. In 1884, the government ordered an end to such traditional customs as the sundance, the war dance, and even feasts. Indians caught participating in such events could be placed in prison or have their rations taken away.

The last great attempt to further restrict Crow territory before the U. S. government obtained the land involved in Yellowtail Dam and Reservoir came in 1910 under the direction of Montana's Senator Thomas J. Walsh. Using the homestead act and the Supreme Court's decision in Lone Wolf versus Hitchcock, Walsh attempted to open the Crow Reservation

41 Dixon later passed a bill which called for allotment on the Flathead Reservation. For an interesting and thorough account of this, see: Burton M. Smith, "The Politics of Allotment: The Flathead Indian Reservation as a Test Case," Pacific Northwest Quarterly 70 (July 1979): pp. 131-140.

42 Charles Bradley, Jr. and Joe Medicine Crow, "The Crow Indians: 100 Years of Acculturation, Teacher Information Package."

43 Made in 1903, this decision held that the power of Congress was paramount to Indian right of occupancy. By virtue of this decision, Congress could violate treaties and no redress could be granted to the tribe since Congress held plenary authority over Indians in their tribal relations. Wilcomb E. Washburn, The American Indian and the United States: A Documentary History, 4:2705.
to white settlement. Finally, in 1917, after Robert Yellowtail, Sr. gave an emotional defense of Crow land before the Senate Indian Affairs Committee, Senator Walsh's bill was defeated.\textsuperscript{44}

Although whites misunderstood and mistreated the Crows and their land during the first century and a half of Crow-white relations, the Crows, nevertheless, fared better than many other Plains Indian tribes. Because of the benevolent attitude which the Crows maintained toward the whites, the U. S. government in 1868 gave to the Crows one of the largest reservations in the country. During the military campaigns of the 1870's, the Crows were protected allies rather than attacked enemies. Following the campaigns, the government never removed the Crows from the heart of their reservation which centers around the Big Horn River, where the Crows continue to live presently. The Crows realized that they had received better treatment than most of the Plains tribes, but they also saw their reservation continually shrinking in size and they knew that many of the causes for this loss of their land were questionable ones. It is against this historical context of Crow-white relations that the controversy of Yellowtail Dam is set.

\textsuperscript{44}Robert Yellowtail, Sr., Robert Summers Yellowtail, Sr., 1973, pp. 1-23.
Fig. 4. Crow Indian Reservation, 1937.
CHAPTER III
THE YELLOWTAIL DAM CONTROVERSY

The idea of placing a multi-purpose dam at the mouth of Big Horn Canyon was taken over from the Big Horn Canyon Power and Irrigation Company by the Bureau of Reclamation when Congress authorized a dam as part of the Missouri River Basin Development Project on November 22, 1944.\(^1\) The name was changed from Big Horn Dam to Yellowtail Dam in order to entice the Crows into accepting the dam, as their tribal council chairman at that time was Robert Yellowtail.\(^2\) In 1951, Paul L. Fickinger, Billings area director of the Indian service, under the authority of the Interior Secretary, offered the Crow nation $1,500,000 for "the land, timber, and relinquishment of rights in the dam site."\(^3\) The Crow tribal council rejected the offer eleven days later. Referring to the offer the tribal council said:

The Crow tribe after having received this latest offer from Reclamation and after having considered same offer also rejects same as in nowise approaching the value of the property desired.\(^4\)

The council went on to state that it was "in nowise interested in the construction of the proposed Yellowtail Dam upon their tribal lands."\(^5\)

\(^1\)Hardin-Tribune-Herald, 8 February 1951, p. 1.
\(^3\)Ibid., 8 February 1951, p. 1.
\(^4\)Ibid., 1 March 1951, p. 1.
\(^5\)It is important to note here that the Crow tribal council consists of the entire adult population, not just the elected officials. Ibid.
If political pressure forced them to agree to the construction of the dam, the Crow tribe would agree to "no sale of the tribal lands now requested as needed for the dam construction. Instead, the Crow tribe will agree to lease for a 50-year period."\(^6\) Robert Yellowtail, who proposed the resolution, knew well how the government operated. His resolution protected the Crows by proposing a lease along the same lines as the lease between the Flathead Indians and the Montana Power Company for the rights to Kerr Dam.\(^7\)

Although the tribal council had rejected the dam proposal, whites continued to seek support for the dam. The Montana congressional delegation (Senator James Murray, Senator Mike Mansfield, Representative Wesley D'Ewart and Representative Lee Metcalf) increased its pressure to appropriate funds for the construction of Yellowtail Dam. Private interest groups like the Big Horn County Chamber of Commerce, led by Henry Reugamer, also continued to voice their strong desire for the dam, citing economic, irrigation and power benefits.\(^8\) In 1953, Representative D'Ewart declared that the negotiations with the Crow tribe had been under way for several years and no agreement had been reached. He also pointed out that the Bureau of Indian Affairs and the Bureau of Reclamation had agreed that $1,500,000 was a fair offer.\(^9\)

\(^6\)Ibid., p. 7.

\(^7\)This lease has required Montana Power Company to pay the Flathead Indians $225,000 per annum for 50 years at which time ownership is given back to the tribe which re-negotiates the lease.

\(^8\)Hardin-Tribune-Herald, 1 March 1951 - 29 December 1952.

The Crows, refusing to yield to political pressure, reiterated their opposition to the dam in a meeting with Paul Fickinger on October 8, 1953. Adamant in their positions, the council members told Fickinger that they had proposed a bill in Congress which would remove the proposed dam from the list of Missouri River Basin projects.

The Crows' earlier suspicion that they might be forced through political pressure to give up their land was confirmed in April, 1954. Clarence A. Davis, Solicitor for the Department of the Interior, whose job it was to interpret all laws of the Department, re-interpreted a former act made in 1946. According to traditional interpretation, the 1946 act prohibited "further construction work on the Crow Indian reservation without the consent of the Crow tribe and the irrigation districts affected." Davis, however, claimed that in his opinion the 1946 act "in itself and in the reports of the committees and the reports of the previous Secretary of Interior made clear that the act was intended to apply only to the extension of an existing irrigation system on the Crow reservation and had no reference to the construction of Yellowtail Dam."\(^{10}\) Kenneth F. Vernon, special administrative assistant in the Billings regional office of the Bureau of Reclamation, went on to say that the Department's decision "would result in some 'very technical' legal proceedings, including action by the U. S. attorney general."\(^{11}\) The "very technical" legal proceeding to which Vernon referred was a condemnation suit whereby land is condemned by the federal government,

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\(^{10}\) News release by the Department of Interior, 4 February 1954, Senator James Murray Papers, University of Montana Library, Missoula, Montana. Hereafter cited as Murray Papers.

\(^{11}\) Hardin-Tribune-Herald, 11 February 1954, p. 12.
the owner is paid an amount the courts decide as adequate regardless of the owner's wish not to sell, and title is passed to the federal government.

When Davis reinterpreted the earlier decision of 1946 which protected Crow lands, he gave the green light to members of the Senate and House who were previously stalled in getting dam legislation begun. The only way they could legally take Crow lands before Davis' opinion would have been to unanimously reverse earlier legislation by means of a bill which would have to pass both the Senate and House. Calling for a hearing before the House Subcommittee on Irrigation and Reclamation, D'Ewart took immediate advantage of Solicitor Davis' opinion. The hearing was strategically set for one day after the national Chamber of Commerce meeting in Washington which the Billings Chamber of Commerce was to attend. Consequently, men like Henry Reugamer could testify on behalf of the proponents for Yellowtail Dam who were also constituents of influential Congressmen on the subcommittee. The strategic move worked as the subcommittee unanimously recommended immediate construction of Yellowtail Dam.

Shortly after the House subcommittee hearing, a similar hearing was held in the Senate. In a letter to the chairman of that subcommittee, Henry Reugamer stated that the Crow attitude, which was in opposition to the dam during the House hearing, had switched because the tribe

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12 Ibid., 1 April 1954, p. 1.
13 Ibid., 6 May 1954, pp. 1, 8.
had elected a new chairman, William Wall, who represented the majority opinion of the Crows. Reugamer failed to mention in his letter to the chairman of the subcommittee that the Crow people were divided into factions. The River Crow, led by William Wall, tended to be more modern in their emphasis. They desired progress and development while their opposition, the Mountain Crow, led by Yellowtail, emphasized old traditions and preservation of their Indian land. Neither of these two factions ever had a clear majority during the battle over Yellowtail Dam. For Reugamer to say that this new chief represented the majority was to misrepresent the Crow attitude to the Senate subcommittee.

Like the House subcommittee, the Senate Subcommittee on Irrigation and Reclamation unanimously recommended "an appropriation to initiate immediate construction of Yellowtail Dam."

By 1955, Representative Wesley D'Ewart had been replaced by Orvin Fjare, and Montana's Democratic Senator James Murray, chairman of the Senate Interior and Insular Affairs Committee, led the cause for Yellowtail Dam. Like D'Ewart, Murray saw the Yellowtail Dam bill as beneficial to his white constituents in Montana; he was determined not to let anything or anybody prevent the dam from becoming a reality.

14 Copy of letter by Henry Reugamer to Chairman of Irrigation Subcommittee, 19 March 1955, Representative Orvin Fjare Papers, Montana State University Library, Bozeman, Montana. Hereafter cited as Fjare Papers.

15 This division between the Mountain Crow and River Crow is a handy generalization which was used at the time. In fact, tribal divisions and emphases were, and still are, complex and unclear.


When Frank Clinton, regional director of the Bureau of Reclamation, suggested that the Bureau could not begin construction on the dam site even though $4,000,000 had been assured the Bureau by a Senate-House conference committee on July 7, 1955, Senator Murray immediately corrected him. Murray, referring to the 1954 decision of Solicitor Davis, said it gave "the Secretary of Interior authority to proceed with the construction of Yellowtail Dam and to bring such condemnation action as may be necessary under the provisions of the existing reclamation laws to acquire possession and title thereto."\(^{17}\) Murray further stated that the Secretary of Interior is "under an inescapable mandate from Congress to start construction of Yellowtail Dam as soon as the fiscal year 1956 appropriation action is available."\(^{18}\) Senator Mike Mansfield and Representative Lee Metcalf also "expressed concern over reports published that the Bureau of Reclamation intended to delay starting construction of Yellowtail Dam because of lack of agreement of settlement with the Crow Indian Tribe."\(^{19}\)

By July 1955, the Crows had received the report of Barry Dibble whom they had hired to assess their interests in the dam.\(^{20}\) They spent

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\(^{17}\)Ibid., 15 July 1955, p. 1.  
\(^{18}\)Ibid., p. 8.  
\(^{19}\)Ibid.  
\(^{20}\)Barry Dibble was a respected consulting engineer from California who had previously evaluated the land involved in the Kerr dam site on the Flathead Indian Reservation and the Pelton dam site on the Warm Springs Indian Reservation.
much of the summer studying the report and preparing proposals in official tribal meetings. During this time Davis' opinion regarding the 1946 decision was presented to the Crows on five separate occasions by Clarence Davis himself, Senator Murray, Senator Mike Mansfield, Representative Fjare, Representative Metcalf, and officials of the Interior Department, including the Commissioner of the Bureau of Reclamation, Mr. Dexheimer. Senator Murray became even more specific in his pressure by issuing letters to tribal council chairman William Wall and to the tribe in general. These letters were often read at the meetings which the Crows were holding to decide upon a proposal. In one such letter to William Wall in late July, 1955 Murray said:

I desire to impress upon you, and through you to the tribal council, that in my opinion prompt action along the lines I have indicated is essential. If an agreement is not reached promptly on the right-of-way compensation, there is danger that the appropriation for Yellowtail Dam will be lost and never again will funds for its construction be appropriated.

Murray also recommended that the tribe enter into immediate negotiations with the Interior Department and simultaneously give the Reclamation Bureau permission to begin construction:

the tribe should authorize right-of-way entry to the Bureau of Reclamation to construct access roads and limited camp facilities, with the distinct understanding that this right-of-entry shall not be construed as any permanent commitment on the part of the tribe.


The Crows, plagued by intra-tribal diversity, continued to meet, but were unable to agree upon a firm proposal to the Bureau of Reclamation for the land involved in Yellowtail Dam.

Up to this time, pressure on the Interior Secretary, Douglas McKay, had been indirect and subtle. But the Montana congressional delegation, frustrated with the Crows holding up the dam, sent a letter to McKay. Murray, Mansfield, and Metcalf stated in their joint letter:

We feel sure you are aware of the exhaustion of efforts at negotiation with the Crow Indian tribe for the necessary rights-of-way. Under the circumstances, it is our belief that the Congress will assure the Crow Indian tribe full and just compensation for such rights-of-way as may be required in the construction and operation of the dam.24

The letter strongly "urged Interior Secretary McKay to take 'immediate steps' to initiate construction of Yellowtail Dam near Hardin."25 The entire argument was based on Solicitor Davis' 1954 decision which confirmed "authority in the Department to proceed with the construction" of Big Horn Dam.26

Shortly following the letter to McKay, federal officials announced plans to file a condemnation suit. Davis, who was now undersecretary of the Interior Department, reminded senators that the Crows had rejected the $1,500,000 offer by the Bureau of Reclamation in 1951. He stated

24U. S. Congress, Senate, Committee on Interior and Insular Affairs, Memorandum of the Chairman to the Senate Interior and Insular Affairs on Construction Program for Yellowtail Dam, S. Rept. 5, 84th Congress, 1st Sess., 1956. Murray Papers.


26Ibid., 5 August 1955, p. 1.
that there was precedence for the courts following the naked value of the land in such cases. Under this ruling the Crows would receive only the assessed value of the land, which was $50,000 according to Davis, and no amortized amount based on the revenue the dam would bring. Davis also stated that although negotiations with the Crows seemed unlikely, the Department would be receptive to any negotiations, as he preferred them over legal action.27

The River Crow and the Mountain Crow were now involved in heated meetings in which proposals from both sides were approved, rescinded, and approved again. The Mountain Crow, directed by Robert Yellowtail, proposed Resolution No. 56, which asked for $1,000,000 per year for fifty years at which time title would pass to the Crows for re-negotiation. They knew this proposal would be unacceptable to the Bureau of Reclamation, and hoped it would insure preservation of their land.28 The River Crow attempted to pass Resolution No. 63 which asked for $5,000,000 and mineral rights only. They sought to negotiate with the Bureau of Reclamation but could not gain enough tribal support to pass Resolution


28 Although this proposal was considered unacceptable by the Bureau of Reclamation, there were those who believed that the request was not unreasonable especially in view of the Kerr and Pelton dam site settlements. The Flatheads received $1.56 per kilowatt of rated capacity for Kerr dam while the Warm Springs Indians received $.78 per kilowatt of rated capacity for Pelton dam. The Crows would receive $.75 per kilowatt of rated capacity if they were given $5,000,000 for their land involved in Yellowtail Dam. However, the Crows would not retain title to the land like the Flathead or Warm Springs Indians, but would pass the title to the federal government. Statement by Barry Dibble, Consulting Engineer, 15 June 1956, Fjare Papers. See also: T. V. Speech by Leroy Anderson, 13 September 1956, Murray Papers.
No. 63. At that time a frustrated Henry Reugamer wrote in a letter to the Commissioner of the Interior Department that:

The impact among many of the Indians of their unreasonable offer is rapidly becoming a very unpopular character. This is to the advantage of the Government as it is going to be very difficult for the tribe to appropriate any of their funds for the purpose of resisting construction of the dam. The thinking of the people here is that the Government should invoke the lawful means necessary to begin the construction of the Big Horn Dam.\(^{29}\)

A short time after Reugamer sent his letter to the Interior Department, the federal government announced plans for condemnation action, and many Crow Indians became concerned that legal fees and the naked value offer would leave them with little, if any, compensation. At a Crow meeting in early January, 1955, Edward Whiteman, a River Crow, said, "the government is giving us just one more chance to negotiate and this is it."\(^{30}\) According to Robert Yellowtail this belief was reinforced by two separate telegrams from Senator Murray and Secretary McKay which were read during the meeting. Yellowtail claimed the telegrams "threatened court action in condemnation proceedings if the Crows did not vote to sell their lands heretofore demanded for the proposed Yellowtail Dam."\(^{31}\) The River Crows defeated the Mountain Crows' resolution by fifty-six votes. A week later, on January 11, after a heated thirteen-hour meeting, the River Crow passed their own


\(^{31}\)Ibid., 19 January 1956, p. 12.
Resolution No. 63 by less than sixty votes.\textsuperscript{32} The Crows would sell the requested land for $5,000,000 plus retention of mineral rights, and free irrigation rights.\textsuperscript{33} Before the Crows even began to negotiate with the Bureau of Reclamation over their newly passed resolution, Senator Murray wrote a letter to Interior Secretary McKay requesting him to "proceed without delay to carry out your expressed plan to initiate condemnation proceedings to secure right-of-way for Yellowtail Dam." Murray feared that the Bureau would not accept the $5,000,000 offer, or if it did, the Mountain Crow might gain enough support to rescind the resolution again. In the same letter Murray pointed out to Interior Secretary McKay:

> In light of this difference between the $1,500,000 offer by the Bureau and the $5,000,000 request of the Crow[ and the narrow vote by which the resolution was adopted, the condemnation proceedings to which Interior is committed ... is the only alternative in order to get construction of the dam under way promptly.\textsuperscript{34}

When Murray's request was made public, William Wall, Crow tribal chairman, complained:

> He \textsuperscript{}/Murray should have waited until he'd received our proposal. After all we're the owners of the land and he's been requesting the Crow tribe to submit a proposal to the Bureau of Reclamation.
> Now that we do he orders the Secretary of Interior to order condemnation.\textsuperscript{35}

\textsuperscript{32}Ibid., 12 January 1956, p. 1.

\textsuperscript{33}The report of the engineer they hired, Barry Dibble, to assess the value of their land plus dam-site value.

\textsuperscript{34}Letter from Senator Murray to Interior Secretary Douglas McKay, 13 January 1956, Murray Papers.

\textsuperscript{35}Hardin-Tribune-Herald, 19 January 1956, p. 1.
Two weeks later, Secretary of Interior Douglas McKay ordered papers filed with the Department of Justice to condemn the Crow land for Yellowtail Dam and Reservoir. In a letter to William Wall, McKay explained his actions:

I wish to advise you that the tribe's proposal is not acceptable . . . the tribal council's action of January 11 is of course evidence of a more constructive approach on the part of the tribe. . . . However, the Department has no choice at this time but to request the attorney general to institute condemnation proceedings.36

McKay's letter stressed that if the Crows entered into reasonable negotiations, court proceedings might be deferred. He also noted a recent Supreme Court decision (Twin City Power Co.) which held that power site value could not be placed on the land and then applied it to the Crows' case.37

The Crows went back to their meetings in an attempt to formulate a new proposal. After two weeks of struggling between the two factions, the tribe emerged with the same Resolution No. 63 asking for $5,000,000 for their land. The congressional delegation of Murray, Mansfield, and Metcalf, realizing the Crows were going to abide by their resolution, began working to pass legislation that would pay them the $5,000,000. In a joint press release, the three Democrats stated:

When we introduced these resolutions it was our judgment then as now that $5,000,000 was a fair and equitable price to pay the Crow Indians. We are steadfast against a compromise of any nature.38

36Ibid., 2 February 1956, p. 7.
37Ibid.
38Ibid., 17 May 1956, p. 1.
On May 24, 1956 the House-Senate conference committee approved a $5 million tax-free payment to the Crows for compensation of their land. The following week, the resolution passed the Senate and the House, needing only President Eisenhower's signature to make it law. The Eisenhower Administration, concerned with public opinion on government spending, rejected the resolution on the grounds that it was extravagant and set a dangerous precedent. Eisenhower stated:

General principles of constitutional law exclude power site values in determining "just compensation" as the Supreme Court recently reiterated in United States vs. Twin City Power Company, January 23, 1956. 39

Representative Fjare, who had warned the president that the $5 million was excessive, immediately proposed legislation in the House which was based on the Bureau of Reclamation's original offer of $1.5 million. Initially, Fjare had been agreeable to the payment of $5 million to the Crows for their land involved in Yellowtail Dam. But he supported the proposal only because he believed that it was better than taking the land through the proposed condemnation suit. In a letter to a constituent in early 1956, Fjare commented:

I agree that this is a hold-up of the government however it is the lesser of two evils as compared with condemnation proceedings to obtain the right-of-way. 40

By May of the same year, Fjare had come to oppose the payment of $5 million. He believed that the payment was excessive and would set


40 Letter from Fjare to Archie Benson, 22 February 1956, Fjare Papers.
a dangerous precedent in future negotiations with Indians. He also thought that the per capita payments which would be made to members of the Crow tribe would destroy any ambition which they had, making the Crow Indians even more dependent on the federal government.\(^4\) When Fjare decided to oppose the appropriations to the Crows for Yellowtail Dam many people warned that he was committing political suicide.\(^5\) Constituents flooded the Congressman's office with mail pleading, demanding, and even threatening him to change his position on the dam. Others, like Henry Reugamer, began to undermine Fjare's political base back home.\(^6\) Through much media exposure of the Congressman's opposition to the payment to the Crows and his opponent's support for the dam, Fjare had little chance of re-election. In a post-election letter to Senator Murray, a Billings lawyer wrote:

> Well, election is over and you and I are still here but no dirt flying in the Canyon. However, we took care of Feearie /sic/. Big Horn County gave him /Leroy Anderson, Fjare's opponent/ a bigger /sic/ majority than Ike got. Am inclosing /sic/ clipping from the Hardin paper showing copy of letter I wrote him. This

\(^4\) Letter from Fjare to Raymond Smith, 13 May 1956, Fjare Papers. Also, interview with Orvin Fjare, Helena, Montana, 8 May 1980.

\(^5\) In fact, at one point during the dam controversy, Senator Murray, informed of Fjare's sudden opposition to the dam, stormed into Fjare's office to ask if he (Fjare) were crazy. Murray later called Fjare "reckless" in the area newspapers. Interview with Orvin Fjare, Helena, Montana, 8 May 1980.

\(^6\) Reugamer had good reason to help campaign against Fjare. Mr. Reugamer was a Ford truck and car dealer at that time. When it appeared as though the Crows would receive per capita payments for the land involved in Yellowtail Dam, he increased his car and truck inventory substantially. Fjare's opposition to the dam, which helped to influence President Eisenhower to veto the payment to the Crows, was not forgotten by Reugamer when election time came. Reugamer, formerly a Republican, crossed party lines to become a Democrat and worked to elect Fjare's opponent, Leroy Anderson. Ibid.
and a T.V. talk by Henry Reugamer helped put the skids in place.\textsuperscript{44}

While Fjare was fighting what he thought was an excessive payment to the Crows for the land involved in Yellowtail Dam, Senator Murray and Senator Mansfield continued to voice their support for the dam. In a meeting with the Big Horn Chamber of Commerce, Mansfield told members a new resolution for $5 million would be introduced at the next session of Congress. He stated that he "must do what is best for the country."\textsuperscript{45} Murray, in a meeting with the same chamber a week later told members he would make every effort, as chairman of the Senate Interior and Insular Affairs Committee, to have the dam constructed.\textsuperscript{46}

In 1957, the Crows, angered by the rejection of their $5 million proposal, rescinded Resolution No. 63 and replaced it with Robert Yellowtail's proposal for $1,000,000 per year for fifty years. Local and government proponents of the dam were quick to pressure the Crows. Henry Reugamer, still chairman of the Big Horn County Chamber of Commerce, warned the Crows they were fighting the federal government and would have little chance of winning:

Good thinking has always prevailed and carried the warning to stay out of the courts and protect the interests of the Crow people by negotiating amicable agreements as was done by the traditional chiefs of the old Crow tribe.\textsuperscript{47}

\textsuperscript{44}Letter from Bunston to Senator Murray, 10 November 1956, Murray Papers.

\textsuperscript{45}Hardin-Tribune-Herald, 4 October 1956, p. 4.

\textsuperscript{46}Ibid., 26 October 1956, p. 1.

\textsuperscript{47}Ibid., 17 January 1957, p. 1.
An Oklahoma Indian warned the Mountain Crows in "Letters to the Editor" in the Hardin-Tribune-Herald that they would lose what was justly theirs if they did not give up their old traditions:

This is white man's civilization we are living in and the sooner the Indians learn to think as white men the better off they will be. This old stuff of trying to go back centuries to the old ways is no good in this atomic age.48

An anonymous U. S. district attorney also warned the Crows they would have no chance of winning in court against the federal government:

Even if the Crow tribe should contest this case all the way to the Supreme Court of the United States, the government would prevail and could take this land by condemnation. It would cost the tribe thousands of dollars to oppose the government's actions and . . . the Crow tribe would have to pay out of its tribal funds the cost as well as attorneys' fees.49

He also stated that "the United States government . . . would pay only the market value . . . which would probably run somewhere between $15,000 and $35,000."50 The district attorney based his claim, as had the president, and the government attorneys in the condemnation suit against the Crows, on the Supreme Court ruling in the Twin Cities Power Company case.

The combined pressure helped the River Crows to reinstate the more acceptable Resolution No. 63 before the Senate subcommittee hearing met in January, 1957 to re-introduce a bill to Congress for the $5 million the Crows desired for their land. Senator Murray,

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50 Ibid.
anxious to present the president with a more acceptable bill, rushed the resolution for $5 million through the subcommittee and committee hearings. By April, 1957 the bill was ready for a Senate vote and Murray requested that it be given top priority. The Senate passed the bill which then had to wait for a matching resolution from the House.

Representative Leroy Anderson, who defeated Fjare by promising Billings voters that the Crows would be given their $5 million and that the dam would be constructed, proposed a resolution for that amount. Behind the scenes, however, the Montana delegation, legislating as a team, knew that the administration would reject another bill for what the president had previously called "an extravagant amount." The Interior Department was already objecting to the Senate bill, but said it might accept a lesser offer of $2.5 million. Upon this advice, Representative Metcalf amended Anderson's bill to $2.5 million which then passed the Interior subcommittee and committee. By May, 1958 the bill was in the Senate-House conference committee where it was approved and sent back to the House and Senate Floors for a vote. The Senate and House approved S. J. Resolution 12, which offered the Crow Indians $2.5 million plus the right to sue in court for additional compensation, and it was signed by President Eisenhower on July 15, 1958. U. S. Attorney Krest Cyr ordered the condemnation suit dropped the following day.

51 In his letter to Murray, Assistant Secretary of Interior Aandahl stated that even if legislation to appropriate funds for the Crows did not pass, the Bureau of Reclamation would still receive the land because the condemnation suit, in his opinion, was going to proceed successfully. Letter from Assistant Secretary Aandahl to Murray, 29 March 1957, Murray Papers.

The Crows, initially opposed to the $2.5 million offer, accepted it because of the amendment which provided them with the right to sue for additional payment, and because the Montana congressional delegation pointed out that it would be impossible to pass a $5 million resolution under the Eisenhower Administration. Edward Whiteman, elected tribal council chairman in 1957, stated:

The remedy of the Crow tribe under the present bill which specifically provides that an action may be commenced by the tribe for the purpose of determining just compensation to the Crow tribe in an amount over and above the $2,500,000 is a clear indication from the Congress that the Crow tribe is in fact entitled to additional compensation. . . .

Four years later the Crow Indians received additional compensation of $2 million, of which half was taken for attorneys’ fees.

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54 Ibid., 17 July 1958, p. 12.
CHAPTER IV

CONCLUSION

The Mountain Crows battled to defend tribal land while the River Crows fought for adequate compensation for Crow land. Neither faction was successful because each faced subtle and blatant pressure, which even united, they could not have overcome.

The local pressure from the area chambers of commerce was easy enough to recognize with men like Henry Reugamer threatening the Crows to either sell their land or lose it in the condemnation suit. Even Reugamer's letters and visits to Washington were understandable because, as president of the Big Horn County Chamber of Commerce, it was his responsibility to seek the economic development which the whites greatly desired. But the pressure was not always so easy to recognize or justify. On November 5, 1956 a television program aired on local stations showed many poor Crow families and created the impression that their poverty could be eliminated by the receipt of money for Yellowtail Dam. Eloise Pease, a Mountain Crow, said, "The pictures were degrading and embarrassing to many fine Crow Indian families, who are self-supporting and have tribal pride."¹

The local pressure angered the Crows more than it changed their opinions. The effective pressure came from Washington under the direction of Senator Murray. His telegrams and letters to the tribal

¹"Letters to the Editor," Hardin-Tribune-Herald, 29 November 1956, p. 6.
meetings, chiefs, and local newspapers had a formidable influence on many of the Crows. When this was not enough, Murray used his position as chairman of the Interior and Insular Affairs Committee to compel Secretary McKay to file a condemnation suit. Political pressure was a powerful influence to McKay and many others in the Interior Department; the BIA, which is supposed to represent the Indian, actually supported the Bureau of Reclamation, claiming the Bureau's offer for $1,500,000 was "just compensation." Murray was directly responsible for the condemnation suit which was a continual threat to the Crow tribe. The Crows' fear of receiving only naked value for their land was often instrumental in getting them to pass a resolution acceptable to Congress. Henry Reugamer acknowledged this fact in a letter to a friend in the spring of 1958:

The condemnation suit here is causing the Indians to look at this program in a realistic manner. It was my advice to them . . . at their council meeting to say nothing or cause to be brought to the floor any conversations or resolutions concerning the most recent act of the House of Representatives.²

Although the Crows saw the suit as a threat, it was seldom pointed out publicly that its legal validity was open to dispute. The attorneys for the government based their argument on two questionable presuppositions. First, they claimed there was no law which prevented the government from exercising eminent domain³ over Crow lands following


³Eminent domain refers to the condemning of one or more individuals' land for the good of a larger number. For a better understanding and more detailed study see: "Brief for the Crow Tribe on Yellowtail Dam," by Robert Yellowtail, Coordinator of Indian Affairs Papers, Montana State Historical Society, Helena, Montana. Hereafter cited as Coordinator of Indian Affairs Papers.
Davis' re-interpretation of the 1946 law. This belief contradicted that of Mastin G. White, solicitor for the Interior Department during the Truman Administration. White, replying to a request of the Interior Secretary in 1949 on whether the Secretary had the authority to acquire land within the Crow Indian Reservation, said there were no laws which gave the Interior Secretary that authority. White pointed out that there was an act in 1910 which gave the Secretary the power to reserve Indian land valuable for reservoir sites, but not to acquire title to any such site. White also noted that there was a 1948 act which authorized the Interior Secretary to grant "rights-of-way for all purposes"; however, White explained this was limited in its power:

A grant under this Act can only cover a right-of-way. . . . It would certainly be stretching the statute beyond reason to hold that a reservoir site covering thousands of acres is a right-of-way.5

White did not mention the 1946 act because the language clearly stated that "no further construction work on the Crow Indian Reservation shall be undertaken by the United States without the prior consent of the Crow Tribe. . . ."6 B. K. Wheeler7 and Bert W. Kronmiller, attorneys

5 Memorandum from the Solicitor to the Interior Secretary, 28 March 1949, Coordinator of Indian Affairs Papers.
6 Memorandum from the Solicitor to the Interior Secretary, 3 February 1954, Murray Papers.
7 Wheeler was the once-powerful Senator Wheeler for Montana during the Franklin Roosevelt Administration. He was the author of the 1934 Wheeler/Howard Reorganization Act which placed all Indian land in a trust and also permitted each reservation to adopt a constitution and request a charter from the Interior Secretary, thus becoming an administrative entity unto itself.
for the Crows, pointed out that Davis used the ambiguous language in the law to say it prevented construction without Crow consent only on irrigation projects. Even if Davis' re-interpretation was correct, the law should have protected Indian land because whenever Bureau of Reclamation constructs a dam, its primary purpose is to supply irrigation and flood control, while the secondary purpose is to produce power.

The government's second basis for arguing condemnation was the Supreme Court decision in the Twin Cities Power Company case. In this case, the government paid only naked value to the Twin Cities Power Company of Georgia which claimed it should be compensated for the land after the government built the power site which greatly increased the value of the land. The Supreme Court upheld the lower courts' decision that the government pay only naked value. The attorneys applied this to the Crow suit, saying it set a precedent for payment of naked value to the Crows. However, this premise was dismissed in federal court by federal judge W. J. Jameson who stated the case did not apply. Wheeler and Kronmiller succeeded in dismissing the government's arguments and further substantiated the Crows' case by citing a federal court decision of March 10, 1958 which protected the Sioux from eminent domain by referring to the Sioux treaty of 1868. The attorneys reminded the

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8 Ibid., 19 September 1957, p. 2.

9 Interview with Mel Adams, Superintendent of Yellowtail Dam, Bureau of Reclamation, 10 November 1979.

court that the Crow treaty, signed eight days later, contained the same provision.

Unfortunately, the condemnation suit had already achieved its purpose by April, 1958. Wheeler and Kronmiller pleaded with the Crows not to accept the $2.5 million offer as it would set a dangerous precedent for the government to take other tribal land on the same basis, but the Crows had already decided to accept the offer.\textsuperscript{11}

The Yellowtail Dam controversy of the 1950's is but one classic example of the federal government taking Indian land through political pressure. Since the establishment of the Crow Indian Reservation by the Fort Laramie Treaty of 1851, the Crows have seen their reservation of 38,530,000 acres reduced to an area of 1,730,000 acres. Much of the land was taken by the federal government with little or no compensation given to the Crow Indian tribe.\textsuperscript{12} In 1953, the Fort Berthold Indians lost 188,000 acres of their reservation when the Army Corps of Engineers completed the Garrison Lake and Reservoir Project. The Corps, in collusion with the Interior Department, deceitfully obtained the land by misrepresenting their intentions. The Northern Paiutes, located in Nevada, suffered a similar loss of their land when the Interior Department dammed the Truckee River which supplied the Indians' sacred Lake Pyramid. In the name of resource development the Department, this time conspiring with the BIA, constructed Derby Dam

\textsuperscript{11}Ibid., 3 April 1958, p. 1.

\textsuperscript{12}"The Laws and Treaties Affecting Crow Indians." A report prepared for the Department of Interior, Murray Papers.
to irrigate white land, and the lake dried up. The examples are many, but they share one common point: when there is a conflict between government interests and Indian rights, the view of the government prevails and Indian rights suffer. It is unfortunate that the whites too often fail to understand Indian attitudes toward their land. Senator Wayne Morse of Oregon stated the situation well on the Senate floor while chastising President Eisenhower for not accepting the proposal of $5 million for Crow land:

... the veto message does not contain a word which indicates that the president recognizes an understanding on his part of the value of tribal land to an Indian tribe. To talk about tribal land from the standpoint of commercial value to the white man overlooks the whole history of Indian problems.

Ironically, Morse himself, by accepting the proposal for $5 million, underestimated the role of land in Indian culture.

Some observers might ask how the United States government and whites in general could be so insensitive to the Crows concerning the land involved for Yellowtail Dam and Reservoir, especially since the Crows had had a long history of friendship with whites. However, looking back over the last century and a half of Crow-white relations, it becomes clear that the Yellowtail Dam controversy was not an atypical situation. Since the earliest relations, white have sought the resources of Crow land, from furs to gold, from grazing land


14 U. S., Congress, Senate, Senator Morse speaking against the presidential veto, S. J. Resolution 12, 84th Congress, 2nd Sess., 2 February 1956, Congressional Record 102: 1894.
to hydro-electric power. And the Crows have seen whites use their laws, which the Crows did not always understand, to obtain these resources. Now, Indian tribes all across the nation are using whites' laws to sue the federal government, big business, and other whites for past injustices. In 1961, the Crows received 10 million dollars for the land taken by the 1868 Fort Laramie Treaty. During the 1970's, the Crow, Northern Cheyenne, and Navajo threatened to sue their trustee, the Department of Interior, for permitting the Bureau of Indian Affairs to sell leases on coal, gas, and oil reserves, at exceptionally low royalty figures. The Department of Interior, realizing the tribes had solid legal grounds, quickly renegotiated the leases at more reasonable levels.15

Today, Yellowtail Dam generates two thousand kilowatts which are transmitted to South Dakota and Wyoming. The 44,000-acre irrigation unit has never been completed. Finished in 1967, the dam is like an ominous monument designating the loss of Indian land which has diminished from 138 million acres in 1887, to 55 million in 1966.16 If whites would recognize what Yellowtail Dam symbolizes to the American Indian, the red man and the white man might be able to take one more step toward living in harmony rather than opposition.

15 For more information on this, see: Alvin M. Joseph, Jr., "The Historical and Cultural Context of White-Native American Conflicts," The Indian Historian 12 (Summer 1979), pp. 6-15.

16 Cahn, Our Brother's Keeper, p. 69.
Fig. 5. Bighorn Canyon before the construction of Yellowtail Dam and Reservoir. (Courtesy of Bureau of Reclamation, U.S. Department of Interior.)

Fig. 6. Bighorn Canyon after completion of Yellowtail Dam. (Courtesy of Bureau of Reclamation, U.S. Department of Interior.)
Fig. 7. Block construction of Yellowtail Dam. Photo taken at night from west abutment. (Courtesy of Bureau of Reclamation, U.S. Department of Interior.)

Fig. 8. View of Yellowtail Dam and Reservoir from above. (Courtesy of Bureau of Reclamation, U.S. Department of Interior.)
Fig. 9. Dedication of the dam. Left to right: Interior Secretary Stewart Udall, Crow Indians Henry Old Coyote, Edison Real Bird, Reclamation Commissioner Floyd Dominy, Miss Indian America Thomasine Hill and Sen. Lee Metcalf.

Fig. 10. Dedication of the dam. Crow Indians in their tribal regalia chant a tribute to Interior Secretary Stewart Udall. (Both photos courtesy of Bureau of Reclamation, U.S. Department of Interior.)
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