

**SEPTEMBER 29TH, 2011 SPECIAL SESSION OF THE 2011 CROW TRIBAL
LEGISLATURE**

LR No. 11-15

Introduced by the Crow Tribal Legislature

A Legislative Resolution Titled:

**A Resolution of the Crow Tribal Legislature to Vote Against the Confirmation
of Diane Cabrera, Nominee for Crow Tribal Prosecutor**

Legislative Findings:

WHEREAS, the Crow Tribal Legislature (“Legislature”) has the power and duty under Article V, Section 2 of the 2001 Crow Constitution to promulgate and adopt resolutions in accordance with the 2001 Constitution and federal laws for the governance of the Crow Tribe; and

WHEREAS, prior to 2005 the prosecuting tribal attorney was known as the “Tribal Attorney General;” and

WHEREAS, the Legislature passed CLB 05-01 (“An Act to Amend the Crow Law and Order Code to Provide for a Tribal Prosecutor”) in the January 2005 Regular Session with a vote of 14-0; and

WHEREAS, CLB 05-01 changed the title of Tribal Attorney General to “tribal prosecutor” and required that the tribal prosecutor be confirmed by the Legislature; and

WHEREAS, CLB 05-01 was vetoed by the late Executive Branch Chairman Carl Venne but the veto was overridden during the April 2005 Regular Session with a 17-0 vote; and

WHEREAS, the 2005 Crow Law and Order Code (CLOC), which was adopted the same day as the veto override of CLB 05-01 in April 2005, was not codified with CLB 05-01 despite the publication date of the 2005 CLOC being on August 1st, 2005 and despite the 2005 CLOC including codification of legislation passed during the July 2005 Regular Session; and

WHEREAS, no tribal prosecutor has ever been nominated to the Legislature for confirmation, much less actually confirmed by the Legislature; and

WHEREAS, Diane Cabrera is currently acting as the prosecuting tribal attorney; and

WHEREAS, up until recently it was not clear whether the Executive Branch considered Diane Cabrera the tribal attorney general or the tribal prosecutor; and

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WHEREAS, the Speaker of the House, Senator Manuel Covers Up, Sr., made multiple written inquiries (attached to this resolution and incorporated by reference) with Diane Cabrera earlier this year concerning her job title and function and no response or acknowledgement of the inquiries was made by Mrs. Cabrera; and

WHEREAS, on May 16th, 2011 Executive Branch Chairman Cedric Black Eagle wrote a letter to Speaker Covers Up (attached to this resolution and incorporated by reference) concerning "Crow Tribal Prosecutor Diane Cabrera" and which was copied to "Diane Cabrera, Crow Tribal Prosecutor;" and

WHEREAS, Executive Branch attorney Heather Whiteman informed the Surface Land Committee on Tuesday, June 21st, 2011 that "there is no Crow tribal attorney general;" and

WHEREAS, a legal filing signed by Executive Branch attorney Roger Renville and filed with the Crow tribal court on June 28th, 2011 referred to Diane Cabrera as the "tribal prosecutor;" and

WHEREAS, it has become clear that the Executive Branch of the Crow Tribal Government considers Diane Cabrera to be the Crow tribal prosecutor, despite no lawful confirmation by the Legislature, in violation of CLB 05-01; and

WHEREAS, Mrs. Cabrera has proven to be unaccountable and considers herself to be above Crow tribal law and such attributes are completely contrary to the model Crow tribal prosecutor which the Crow people deserve to represent the Crow Tribe in civil and criminal prosecutions in Crow tribal court; and

WHEREAS, the Rules of Order providing for committee hearings and recommendations concerning nominations is hereby waived for the purpose of this resolution.

**NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CROW TRIBAL
LEGISLATURE IN SPECIAL SESSION:**

That Diane Cabrera has failed to gather a majority of the votes of a quorum of the Crow Tribal Legislature in regular session, are required by CLB 05-01 (Title 3, Chapter 4 of the next edition of the Crow Law and Order Code), and is therefore no longer the nominee for Crow tribal prosecutor and shall immediately cease and desist from taking any and all actions associated with the office of the tribal prosecutor.

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BE IT FURTHER RESOLVED:

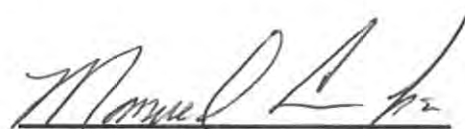
That the Crow Tribal Court is hereby requested to immediately begin a review of all criminal and civil prosecutions carried out by the Crow Tribe during the time Diane Cabrera was thought to be the lawful tribal prosecutor for the purpose of expunging records and files.

BE IT FINALLY RESOLVED:

That a certified copy of this resolution shall be immediately sent to Diane Cabrera, Chief Tribal Court Judge Julie Yarlott, the United States Attorneys Office for the District of Montana, and the four elected Crow Executive Branch Officials.

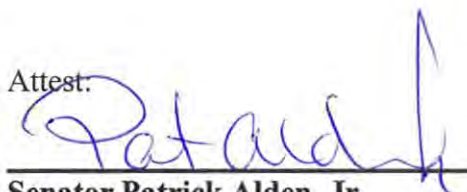
CERTIFICATION

I hereby certify that this **LR 11 -15** was duly approved by the Crow Tribal Legislature with a vote of **16** in favor, **0** opposed, and **1** abstained and that a quorum was present on this **29th** day of September 2011.



**Senator Manuel Covers Up, Sr.
Speaker of the House
Crow Tribal Legislature**

Attest.



**Senator Patrick Alden, Jr.
Secretary
Crow Tribal Legislature**



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**A Resolution of the Crow Tribal Legislature to Vote Against the Confirmation of Diane Cabrera,
Nominee for Crow Tribal Prosecutor**

Bill or Resolution: LR11-15 **Introduced by:** Crow Tribal Legislature **Date of Vote:** 9/29/2011
Number

<u>Representative:</u>	Yes	No	Abstained
H. Two Leggins	<u> X </u>	<u> </u>	<u> </u>
V. Pretty Paint	<u> X </u>	<u> </u>	<u> </u>
C. J. Stewart	<u> X </u>	<u> </u>	<u> </u>
K. Shane	<u> X </u>	<u> </u>	<u> </u>
S. Backbone	<u> X </u>	<u> </u>	<u> </u>
O. Half, Jr.	<u> X </u>	<u> </u>	<u> </u>
W. Plainfeather	<u> X </u>	<u> </u>	<u> </u>
R. Old Crow, Sr.	<u> </u>	<u> </u>	<u> X </u>
M. Not Afraid	<u> </u>	<u> </u>	<u> </u>
V. Crooked Arm	<u> X </u>	<u> </u>	<u> </u>
L. DeCrane	<u> X </u>	<u> </u>	<u> </u>
C. Goes Ahead	<u> X </u>	<u> </u>	<u> </u>
B. Hugs	<u> X </u>	<u> </u>	<u> </u>
G. Real Bird, Jr.	<u> X </u>	<u> </u>	<u> </u>
M. Backbone	<u> X </u>	<u> </u>	<u> </u>
D. Wilson	<u> X </u>	<u> </u>	<u> </u>
P. Alden, Jr. <i>Secretary of the House</i>	<u> X </u>	<u> </u>	<u> </u>
M. Covers Up, Sr. <i>Speaker of the House</i>	<u> X </u>	<u> </u>	<u> </u>
Totals:	<u> 16 </u>	<u> </u>	<u> 1 </u>

Result of Vote:

Passed

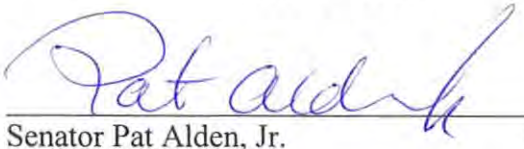
 Not Passed

 Tabled

 Veto-Override



 Senator Manuel Covers Up, Sr. Date
 Speaker of the House



 Senator Pat Alden, Jr. Date
 Secretary of the House

COPY

CROW TRIBAL LEGISLATIVE BRANCH OF GOVERNMENT

Office of the Speaker of the House

144 Makawasha Avenue
Crow Agency, Montana 59022
Phone: (406) 638-2023/2025
Fax: (406) 638-2030
Website: www.CrowLegislature.org



Crow Country

The People's Branch of Government

Diane Cabrera
Attorney General/Prosecutor
Crow Executive Branch
Crow Agency, Montana 59022

March 24th, 2011

Dear Mrs. Cabrera,

Greetings from the Crow Legislature. This letter is intended to inquire as to your understanding on several important issues related to Crow tribal law and the function of your position in Crow tribal government.

The current "Tribal Attorney General"

Under Title 3, Chapter 4 of the 2005 Crow Law and Order Code, there is established the position of Tribal Attorney General. While this "attorney general" position does not have many of the functions of a typical state attorney general, it is the "highest ranking law enforcement official within the Executive Branch" and is charged with the duty of representing the Crow Tribe in all criminal prosecutions in the Crow Tribal Courts. However, there are numerous other Crow tribal laws which recognize that the "Crow tribal prosecutor" is the title of the official whose function is to prosecute civil and criminal cases in Crow Tribal Court. *See, e.g.*, CLB 07-17, Section 15 ("Dog Control Ordinance"); CLB 09-04, Part II, Section 7(c) and Section 9 ("An Act to Establish a Crow Tribal Drug Enforcement Division"); and 2005 CLOC 3-4-405, 2005 CLOC Title 8-A, Title 8E, Title 9, and Title 21.

As you may be aware, in the April 2005 Session the Crow Legislature overrode an Executive veto to pass into law CLB 05-01. CLB 05-01 changed the position of Tribal Attorney General to Tribal Prosecutor and required legislative confirmation of a Tribal Chairman's nominee for this new tribal prosecutor position. Yet, the 2005 Crow Law and Order Code (which was authorized by CLB 05-08, also passed during the April Session) does not make reference to the change in law created by CLB 05-01. Mrs. Cabrera, do you consider yourself the tribal

prosecutor or the tribal attorney general, or both? If you consider yourself the tribal attorney general, do you believe that your position has authority or duty inherent in the title of the office or just strictly what is defined in Title 3 of the CLOC? Do you have a written job description beyond what is contained in the 2005 CLOC? If so, please provide the Legislature with a copy as well as its source (e.g., Executive Branch personnel manual).

Assistant United States Attorney

While we are pleased to see your participation in the U.S. Attorney's Office as a special assistant prosecutor (not to mention your recent appointment to the Attorney General's Violence Against Women Tribal Prosecution Task Force), reports have been made to various legislators concerning dismissed criminal cases in Crow Tribal Court which have been attributed to your absence from the court during certain stages of pre-trial proceedings. This is a major concern of ours. How many hours do you spend each week, on average, as a special assistant U.S. Attorney? Please verify as to whether or not any criminal cases filed in Crow Tribal Court have been dismissed because of your absence. Please keep firmly in mind that your first responsibility is to the Crow Tribe.

Prosecution of all Civil Violations

We have also received reports from various individuals that you have declined prosecution of civil violations, particularly the civil traffic code and the fish and game code. Please verify in writing whether or not you have declined any such cases and, if so, please explain your reasoning for doing so. In addition, please indicate in writing to my office as soon as possible if there are ANY provisions of Crow tribal law for which you feel you do not have law enforcement authority.

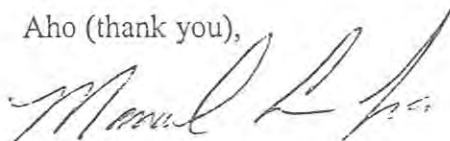
Staff of Tribal Prosecutor

How large is your staff? How many assistants/deputies do you have? What is your caseload like? Do you have criminal and civil divisions? How many assistants do you need in order to ensure the time invested in each case is adequate?

Please respond to these questions in writing within seven (7) days, if possible, to both my office and the Judicial Committee of the Legislature. I look forward to your response.

If you have any further questions, please feel free to contact me at (406) 638-2023 or ManuelCU@CrowLegislature.org.

Aho (thank you),



Senator Manuel Covers Up, Sr.
Speaker of the House
Crow Tribal Legislature

CC: Legislative Branch Legal Office; Judicial Committee; Crow Executive Branch Officials

CROW TRIBAL LEGISLATIVE BRANCH OF GOVERNMENT

Office of the Speaker of the House

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Crow Country

The People's Branch of Government

Diane Cabrera
Attorney General/Prosecutor
Crow Executive Branch
Crow Agency, Montana 59022

COPY

April 8th, 2011

Dear Mrs. Cabrera,

On March 24th, I wrote you a letter requesting clarification on various issues associated with your position as Crow tribal attorney general/prosecutor. This letter requested a response within seven (7) days but no response has been made by you or your office and, in addition, no acknowledgement of receipt of the letter has been made by yourself or your office.

Please respond, in writing, to this follow-up letter by addressing the questions posed in the first letter as soon as possible. If you are unable or unwilling to respond to the inquiries, please let my office know, in writing, as soon as possible.

I am copying the Chairman of the Judicial Committee of the Legislature to this correspondence and am including the March 24th letter.

Thank you.

A handwritten signature in black ink, appearing to read "Manuel Covers Up, Sr.", written over a faint, larger version of the same signature.

Senator Manuel Covers Up, Sr.
Speaker of the House

cc:
Legal Office of the Legislature
Senator Marlin Not Afraid, Chairman of the Judicial Committee
Executive Branch Officials

EXECUTIVE BRANCH OF THE APSÁALOOKE NATION

Post Office Box 159 –BACHEEITCHE Avenue

Crow Agency, Montana 59022

P: 406.638.3700/3715 F: 406.638.3881



Crow Country

Cedric Black Eagle, Chairman
Calvin Coolidge Jefferson, Vice-Chairman
Scott Russell, Secretary
Darren Old Coyote, Vice-Secretary

Manuel Covers Up
Speaker of the House
Crow Legislative Branch
Makawasha Avenue
Crow Agency, MT 59022

May 16, 2011

Dear Speaker Covers Up:

I am writing in response to your recent correspondence to Crow Tribal Prosecutor Diane Cabrera. Your letters raised a number of important issues. We want to respond fully and responsibly to the questions raised, and to that end, I am writing to inform you that we are researching the current requirements under Crow Tribal Law for the function of the Crow Tribal Prosecutor's office.

In addition, I believe it would be beneficial for the Crow Legislative Branch's Judicial Committee to schedule time to meet with Ms. Cabrera to hear about the challenges that the Prosecutor's office faces, as well as the noteworthy accomplishments achieved by the Crow Tribal Prosecutor's office recently.

We all share the duty for ensuring and increasing public safety on the Crow Reservation. I thank you for voicing your concerns and I look forward to working with you to promote and build the important programs and opportunities we as the elected officials of the Apsaalooke Nation have available to us to protect our communities.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Cedric Black Eagle".

Cedric Black Eagle
Chairman, Crow Tribe

Cc: Marlin Not Afraid, Chairman, Crow Legislative Branch Judicial Committee
Diane Cabrera, Crow Tribal Prosecutor