

# Native American Rights Fund

## Indigenous Peoples' Rights

<https://www.narf.org/cases/crow-tribe-utility-regulation/>

## Campaign and Advocacy

The Crow Tribe is defending its right and responsibility to protect tribal citizens against a utility company that refuses to follow tribal law.

Status: Active

***In Big Horn County Electric Cooperative v. Alden Big Man, the Native American Rights Fund (NARF) represents the Crow Tribe in its fight to defend its sovereignty and protect vulnerable tribal citizens. In a big win for the Tribe, the Ninth Circuit Court of Appeals affirmed Crow tribal sovereignty in a March 11, 2022, decision. Unable to accept a ruling in favor of tribal sovereignty, the utility cooperative petitioned the U.S. Supreme Court to hear the case in July 2022.***

To protect vulnerable populations, [the Crow Tribe has a statute](#) similar to [laws in place in almost 40 states](#) that regulates whether and how utility companies may disconnect electric energy and service to indigent, elderly and disabled residential customers during winter months. The statute requires proper advance notice and the approval of the Crow Tribal Health Board. Big Horn County Electric Cooperative, the primary provider of electricity on the Crow Reservation in southeast Montana, disputes that it is subject to Crow statute.

Big Horn County Electric Cooperative disconnected service to tribal citizen Alden Big Man in January 2012, allegedly without following the Crow law that requires notification before winter disconnects. Mr. Big Man, who lives on tribal trust land that he leases from the Crow Tribe, sued the utility company in Crow Tribal Court, alleging violations of the Crow statute. The Crow Court of Appeals upheld the application of the statute to Big Horns provision of electric energy and service to Big Man, and held that the tribal court could hear Big Mans claims against Big Horn arising under the statute.

Big Horn County Electric then sought federal court review of the Crow Court of Appeals decision. In addition to naming Big Man, the utility company named the Crow Tribal Court and Crow Tribal Health Board as defendants. NARF represents the Crow Tribe in the federal court proceedings.

After extensive briefing and oral argument, the federal district court in Montana upheld the application of Crows statute to Big Horn County Electrics provision of service to Big Man. The federal district court held that the tribal court could hear Big Mans claims against Big Horn arising from the disconnection.

Big Horn County Electric appealed the federal district courts order to the U.S. Court of Appeals for the 9th Circuit. The court heard oral argument on the appeal on Feb. 8, 2022.

In a big win for the Tribe, the Ninth Circuit Court of Appeals [affirmed Crow tribal sovereignty in a March 11, 2022, decision in \*Big Horn County Electric Cooperative v. Alden Big Man\*](#) From the decision [link to the decision online], In *Big Horn County Electric Cooperative, Inc. v. Adams*, 219 F.3d 944 (9<sup>th</sup> Cir. 2000), we determined that the BHCECs voluntary provision of electrical services on the Tribes reservation and its contracts with tribal members to provide electrical services created a consensual relationship, within the meaning of *Montana*. 219 F.3d at 951. Put simply, the winter electric regulation conditions one aspect of the consensual relationship.

After losing their appeal, Big Horn County Electric Inc. filed a *petition for a writ of certiorari* on July 19, 2022. NARF will file a response by November 7, 2022, on behalf of the Crow Tribal Health Board and the Crow Tribal Court of Appeals, in the case to protect the sovereign jurisdiction of the Crow Tribe. If at least four out of the nine Supreme Court justices decide to hear the case, the Court will review the lower courts decision.

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