

## MEMORANDUM

TO: Susan Cottingham; Jay Weiner; Sonja Hoeglund; CSKT Negotiating Team; CSKT Minute Files  
FROM: Joan Specking, RWRCC  
RE: CSKT Minute Summary from May 28, 2008 Negotiating Session, Pablo, Montana, 1 p.m.  
DATE May 14, 2008

Chair: James Steele Jr. CSKT Tribal Chairman

**Note: Periodically there is static on the recording of the meeting making sections impossible to understand.**

### Agenda (**Attachment 1**)

#### 1. **Opening Prayer**

Patrick Pierre, Tribal Elder, gave the invocation and there was a song.

#### 2. **Introductions**

Clayton Matt started introductions around the table.  
(See sign-in Sheet, **Attachment 2**)

#### 3. **Opening Statements (Bad Static on recording)**

Chris Tweeten: pleased to be there and pleased that the negotiators are back together and making progress.

James Steele, Jr. said he would like to console Susan Cottingham for the loss of the Flyers to the Penguins – said he is glad people are still at the table and they have a lot of work to do and encourages active participation on all sides.

Clayton Matt explained for those new to the proceedings that this is the next in a series of meetings between the Confederated Salish and Kootenai Tribes, the State of Montana Reserved Water Rights Compact Commission and the United States. The negotiations would eventually settle the reserved water rights of the Salish and Kootenai Tribes. Several months ago it became apparent that if the parties are going to meet any deadlines, given that the Commission at present is set to sunset in June 2009, and without an alternative means of negotiating the Tribe would need to be prepared to go to the state Water Court within 6 months and file their claims. During the last legislative session, the legislature did not extend the life of the Compact Commission therefore the United States and the CSKT in addition to negotiating, are preparing for the possibility of having to go to Water Court so they have also been preparing for litigation.

#### 4. **Update on Unitary Management Proposal**

Clayton explained that in recent meetings the CSKT has put on the table a proposal for a Unitary Management Plan or Ordinance and at the last session, the State provided them with a series of reactions or points to the proposal and the Tribe is prepared to discuss their formal response to that. He asked John Carter to explain the issues for the Tribal Council.

John Carter explained that the Tribe several months ago produced a written proposal and the Commission responded with points of question or concern. He said the issues raised by the Commission are issues that are pretty acceptable considerations across the board with some minor qualifications. One of the questions was how to codify the framework of Unitary administration on the Reservation and it is acceptable to the State and the Tribes (and he spoke briefly to someone at the Dept. of the Interior's and it is essentially acceptable to them too, although he said he would speak only for the State and the Tribe). It is agreeable that the administrative framework be codified in State and Tribal law and that it not be at the whim of either government to change unilaterally and that it only be changeable or amendable by consent of all parties. And that the consideration for the body of law to regulate water use on the Reservation, being a joint State and Tribal body of law, be incorporated by reference at least into the federal legislation necessary to implement a settlement for the Tribes' reserved and aboriginal water rights. That was the first question raised and it is perfectly acceptable to have consistent, parallel codified and congressionally acknowledged statutory framework. Another question raised was the status of a central water management board which would be a single body composed of State and Tribal members to manage water on the Reservation and how it would be associated with the State and Tribal governments. The consensus is that it would be a mutually staffed board, independent of decision making by either the Tribal Council or the State government but that for administrative, monetary purposes it would have some sort of attachment to those respective governing bodies but not in a decision making capacity, in a supportive budgetary framework. One issue raised that the Tribal Council has had a little difficulty with is the following: The administrative body proposed by the Tribe for Reservation-wide management was initially proposed to consist of two Tribal people, two State people and one federal officer. The logic behind the federal officer is that this is an Indian reservation and there are lots of trust resources and individual Tribal members to whom the Bureau owes a trust responsibility as well as to the Tribes and the Tribal natural resources. The State of Montana, and he'll have them explain that in more detail, has reasons to oppose a federal player in that team and requests that the team be essentially a State-Tribal team with no federal membership. One of the reasons the Council is having some difficulty with that (having a board is acceptable, the issue is the federal member) is that much of the public comment the Council has received about the question of a federal appointment has been brought up by individual members and allottees who feel that the federal government owes responsibility to individual people to protect their individual trust assets. That is the issue; how they resolve that, they can discuss. Out of all of the issues that is the only one that seems to be a little bit problematic. They need to work on that one. Another point was a desire voiced for an expedited process for authorizing and allowing single-family or small domestic wells. Several years ago there was an effort to come to an interim agreement on that point and the parties did produce one that ultimately did not make it through the public review process. The Tribal Council has looked at the question of an expedited process, and agrees that it is a good idea, particularly however, if there are areas that are scientifically indicated to have water deficiencies or withdrawal could cause problems with other water resources or prior existing uses there would have to be a control mechanism for that type of impact – prior existing uses. The other issue within the body of those domestic wells is the question of the size and capacity of domestic wells. Currently, state law allows a domestic well which can produce up to 35 gpm which for domestic use is a lot of water. It is his understanding that both the Tribe and the State are interested in looking at altering those numbers and the Tribe recommends and suggests that targeting an appropriate volume and acre-foot would be a useful project for the technical teams working on these types of questions as they have a better understanding of hydrology locally and regionally and a better understanding probably of actual necessity as opposed to the black and white

statutory frame. To wrap that up, it agreed that there needs to be an expedited process on interim; they need to protect vulnerable areas; and the technical teams could come up with suggestions for the negotiating teams to look at to alter or amend the capacity and volume of those domestic wells. The next point is that one part of the joint management will be of course the management; a management body staffed equally by Tribal State technical personnel; technical hydrologists, geologists and whoever needs to be involved in day to day water management issues. The State has agreed that it will contribute its fair share and that the staffing would be equal and that it would be an ongoing expense to both governments as long as the management system stays in place. There are a couple other points; the Tribe wants to make absolutely clear that when they are talking Unitary Management on the Reservation that it's surface water and ground water. It is a conjunctive management of those resources; as studies have shown on the Jocko, the interface between surface water and groundwater is pervasive and very sensitive. That is an area he thinks both governments can agree to move forward on. Another point the parties have now agreed upon is that any action taken by the management board be open and transparent to the public. That has been a requirement under State law and under the Tribal Administrative Procedures so there is no disagreement on that point: actions of the board and staff remain open pursuant to open meeting laws of both governing bodies. Finally, and this is a note rather than a comment; they have received from the State recently a conceptual proposal regarding the FWS National Bison Range. In concept there is the quantification of FWS water rights on the Bison Range as a reserved water right; and that the management be incorporated into whatever the final product of joint management on the Reservation is and that they remain and continue to be FWS reserved water rights. Those are the points raised in the last session...he asked anyone from the Tribal side to let him know if there is comment.

Clayton Matt said they want to hear the State's comments or response and then the Council would then like to break for a caucus for a few minutes.

Chris Tweeten said they appreciate the thoughtful consideration the Council gave to the Commission's points laid out in the last meeting. He appreciates the fact that they thoroughly considered everything the Commission put forth and is really please to hear the level of consensus that exists as John described. He said it is a really good platform to move ahead with respect to administration of water rights on the Reservation. He asked to go back to the one point raised with respect to federal participation on the management board. Last meeting he explained that the major reservation the Commission had with respect to a federal member on the board had to do with the ability of the government to act in a timely way. He said they envision this board to have a lot of ongoing responsibilities with respect to considering and issuing permits; resolving water disputes between water user and other things. It did not seem to the Commission that the federal government would have the resources to put a staff member on the board to meet those day to day responsibilities in a way that would allow the board to function. That is not to say that they propose that the government will have no role whatsoever with respect to the board and they would like to explore with the Council ways that the federal government can participate in the board without necessarily being a voting member with respect to all issues that come before the board. He understands the concerns of the allottees with respect to making sure their rights are protected. They have discussed that in some of the other compacts and in the ones in draft right now, the issue of allottees has been taken up in federal legislation and particular direction has been given to the Dept. of the Interior with respect to steps that need to be taken with respect to how allottees are treated regarding to the allocations of water. So there are opportunities to address issues with allottees in ways that don't require

participation on a daily basis of a representative of the Dept. of the Interior. They would like to have the opportunity to discuss and explore those issues with the Tribe; perhaps there is room for compromise with respect to federal participation. The Commission is not dug in with the idea that the government has no role to play with respect to operations of the board and surely there will be some cases where consultation with the federal government is going to be quite important. They look forward to exploring with the Tribe ways that both of their interests can be addressed with regards to federal membership on the board in a way that will work for both sides. Since it appears that there is a high level of consensus he said it might be an appropriate time to make sure the parties are speaking the same language with respect to these matters; he suggested they give some consideration to having the attorneys sit down and put together a written statement of the administrative principles to make sure they are not in a situation where language has different meanings on both sides. It would help to flesh those out in a way that both sides could review where they are on administration and make sure there is the level of consensus talked about.

**\*Static on recording\***

***There was discussion during this period of time regarding the progress of the negotiations and a concern was raised by the CSKT that progress is not enough to guarantee a Commission extension past 2009. CSKT would like to go with the Commission to the Governor's office to request an extension and they would like to hold meetings more frequently. Drafting was discussed by both parties as a way to accelerate negotiations also. The Commission held to the position of not supporting an extension at this time; they agreed to acceleration of work.***

Clayton thanked everyone for their patience during the break. He asked to talk a little more about the proposal by the Commission to begin drafting. He said what they want to talk about is a lot more than whether they can start drafting. **Static.** He hears the Tribal Council leaders are very concerned about a variety of things regarding major deadlines. **Static.** Their large concern is that they need to make progress and they don't know what that is; what that means. Everyone is excited about making progress but is that adequate? **Static.** Will the legislature.... they want to move this forward....**Static.... cannot hear Clayton or next speaker (Chairman Steele?)**

Speaker: The commitment of the Tribes and the Council is that they want to see this done but they don't want see.....interim plan negotiations from the Tribal side....in his mind, true negotiations are where both sides adequately consider the options, give and take...actively engaged with the Tribes to develop an accelerated negotiation timeframe in light of the sunset next year. Would like to see work on the part of the Compact Commission to extending the Commission – ask that governor, attorney general, etc., support that. They can no longer afford to have the leadership of the State of Montana oppose something so important to one of the largest communities in the state. He said it was a shame in the last session seeing the key state officials opposing something very vital to everyone on the Flathead Reservation. If they go to litigation it will affect the budget of everyone on the Reservation....**static**....their commitment is strong to ask for commitment from the State.

John Carter said there have been discussions between the attorneys on moving forward; drafting a compact...

**\*Static.....can't hear any of the rest under this agenda item.\***

## **5. Technical/Legal items for discussion**

Seth Makepeace, Tribal hydrologist, outlined the recent technical work the teams have been progressing on the past month. They have updated their definitions list; at a technical level the definitions list is important. They are continuing to work on defining the DNRC data bases together in GIS or map base so they can bring more power to the data including claims, permits and certificates all together in a data base – they anticipate sharing this with the Tribe. In the next month they will work on Level 1 hydrographs which are the existing uses with the current uses of water. They will focus on that as an initial step and will share data with the State and federal teams. They have an afternoon meeting scheduled to advance technical work. The Tribe has invested heavily in the water planning model, Hydross. They have scheduled a full day to bring the model to the State and the feds to show the integrated knowledge they have. He anticipated they will have one good interim meeting before the next negotiating session to work through some hydrologic issues. They are chugging along on these things. Someone asked him about a time frame. Seth said the technical teams have had to understand Tribal positions on shared shortages and re-craft it in a hydrologic and engineering sense. He said he could not give an answer on times but they are nearing where they will be able to put numbers together to meet the formal teams' needs. He hoped technical work would never be a barrier to progress. Jay Weiner said Seth's point is a good one and it relates to timeframes and one of the reasons they are eager to get to fleshing out concepts on administration is that there is an interrelationship between the technical work that needs to be done and the framework for a successful settlement. One task they will need to do is determine how many things need to be done in a pre-compact universe or how much will be ongoing in a post-compact universe. The Tribes and State share the desire to have a science-based water management plan for the Reservation. They are trying to figure this out. Clayton said there is a need for more public sessions where they can have a dialogue about this.

He asked Bill Schultz, DNRC, to talk about permits. Bill said one task the technical team has been given is to quantify existing verified uses on the Reservation. He said he is talking specifically about permits and changes issued on the Reservation since 1973. The water right claims for pre-1973 are being quantified through the claims examination process based on an agreement the Tribe and the Water Court and the State made several years ago. That work is ongoing. There is in the range of 450 permits and changes granted on the Reservation since 1973. The State has a process by which permits and changes are certified. They use a procedures manual state-wide to do this process. On May 16 the technical teams met in Missoula and talked about the State procedures guidelines as to how they would do the certification/verification project based on their procedures manual. The goal of their effort initially is to agree upon that process to do the verification and certification. The DNRC provided the manual to the parties prior to the meeting and started the meeting by answering questions presented about the manual as a starting point. They used a similar process on the Blackfeet Reservation in the last several years in their compact negotiations. They agreed that John Carter and Rhonda Swaney would draft an MOU that would identify an agreed upon process that the State would use to go about verifying and certifying the permits left on the Reservation. As he understands it, it would identify some differences as to what the procedures might be or ask for clarification on the standard procedures. The State has committed resources to do this; they would like to be out there this field season. They have approximately 100 permits for irrigation that would be a priority. They also have a number of high flow rate or commercial, municipal or fisheries permits they would likely prioritize. They cannot get started on the field work until they solidify the process and make sure they are doing it in a way that satisfies all the

parties. They will discuss this further in a technical meeting to follow the negotiating session.

Clayton suggested expanding the meetings a bit more to have an extra hour or so to answer questions. Chris Tweeten said they are happy at future meetings to have that kind of give and take with the public participants. Clayton said they could propose it for the next agenda.

## **6. Other**

It was noted that orthophotoquads were ready to go forward with Diane Kline.

## **7. Public Comment**

Clayton asked any one who wished to make a comment go to the microphone and state his or her name.

Louise Stasso: Recalled that at the second meeting they had said the technical part was near to being completed. She reminded the Governor that Indian votes got him in and could get him out. She talked about Hilary Clinton being at the Salish Kootenai College. She said she had heard about progress but hasn't seen too much progress and that the State wants an agreement signed and they want it their way or no way. She has always said she is for litigating and regarding the idea that it will spend money for social services, she said she will be 68 soon and that Indians never had anything except for their lands; they are used to not having anything. She talked about protecting what little they have left for their future and said she will do anything she can to do it. She said they won't be sold down the drain like so many people. She has talked to many Tribal members on the other Reservations and they are already having a lot of problems. If it is a question of not wanting the federal government on this board then get a couple \_\_\_ on the board (can't hear). She said she is from the old school and if she wants something done she works twice as hard to do it, and that they will protect what little they have left. She said the Wind River Tribe doesn't seem to be starving because of long-term litigation.

Richard Stevens, Flathead Constitutional Party: He said he comes down hoping to bring good news to the people up north. God put the water on earth for everybody's use. He asked about the minutes of the meetings and said citizens from all sides should be able to sit down and read the minutes – it's better than trying to listen to a tape. He said they are leaving too many people in limbo – get it settled. Nothing has been done.

George Culpepper, Northwest Montana Association of Realtors wondered what time frame they would be looking at for an extension of the Commission. Again he offered his association's office to be available for public meetings. He said their association is one of the largest associations in the state of Montana representing close to 1200 members and they represent their members and the interests of homeowners in Sanders County, Lake County, Lincoln County and Flathead County. With that they are willing and would love to participate in public meetings; they have a facility in Kalispell that holds 130 or 140 people. The general public above the Reservation will be affected as well and needs to know what is going on. They will be happy to provide facilities up in Kalispell and asked negotiators to please take them up on that offer.

Jim Elliot, State Senator from Sanders County: He wanted to introduce himself and make himself available. He is chair of the Legislative Interim Water Policy Committee. They are dealing with some of the same issues, including use of domestic wells. He knows DNRC

is doing work on that but he would make the information of his committee available on request. The issue of education on this issue for Tribal and non-Tribal members alike is critical. He said he is very proud to have been instrumental in pass the hunting and fishing compact between the CSKT and the State in 1989. Former representative Bradley was also instrumental in doing that. It was a tense issue in his district. The State did very little education. One thing is critical is to ignore the legislature because to try to predict what they will do is like herding cats. Each side has to make the best case possible. He reminded the Tribal members and elders that the extension bill did pass the Senate so the whole legislature is not at fault. The governor's influence can vary widely. An agreement negotiated by both parties in good faith is the most important thing to bring before the legislature. He talked about the value of conceding something at times so others won't suffer. He said he believes in the sovereignty of the Flathead Nation and the State of Montana and that the management needs to be there.

Roger Shourds: He said they have to be responsible for decisions that affect future generations and they do not have the right to make decisions for those generations. He has been reading on Indian water rights because water will become like gold, especially with fuel prices they have to be very careful. He came across a paper he wrote from 1996 which he read part of about the Indian belief of a circle of life and they are guests on earth. It said he believes there is a hell and that it would be if one violated or took from mother earth.....he does not want to answer to his kids or grand kids about the Tribe and the State negotiating something they cannot live with. His Tribe has a history of negotiating and talking in fairness – talked about the 1855 Treaty which they came into in good faith. He talked against public law 280, concurrent jurisdiction law. He does not want to see another compact they sign against future generations...the other side put them in a thing they cannot get out of. They remember they are honored guests on earth and it isn't theirs to give away. They share; they do not want to give it all up. They have a responsibility to other Tribal members. The other thing he hears is people say is that the Reservation was given to the Tribe. He said when the Treaty was signed the Tribes gave up 16 million acres and this 1.3 million acres and the water was reserved. He also hears that people don't want the Tribe to run things. He said the Tribe is very fair; so be it if they go to litigation and they run the water – non-Indians live here and should accept the rules. It's not their right to say someone cannot have water if they are non-Indian. He spoke for extending the Commission- he does not know who wants it to expire. You heard the Chairman; it will cost every person here – do you want to pay for litigation plus high fuel?

Louise Stasso: About sovereignty, the Tribes would not have to negotiate if they really had true sovereignty. She agreed with Roger Shourds; they need to protect their lands. Yes, "They" have tried to exterminate the Tribes for centuries. Her brother was incarcerated because he protected their fishing and hunting rights; the Supreme Court ruled in his favor. Now the Tribes do have aboriginal rights. Every time they negotiate with the State they never get the fair treatment; she would rather deal with the federal government; at least they have a little bit of chance there.

Karl Roesch: Lives up Valley Creek. He has never had problems with his Tribal member neighbors. People say there is no progress but he is sure there is a lot of progress behind the scenes. He used building a house as an example; looking for the trees first. He said it is not fair to all the members of the teams to say there is no progress. He commended them for the amount of work done. Other than that, he gave the best wishes to all.

**8. Set Next Negotiation Date**

Clayton said the next meeting would be on June 25<sup>th</sup> 2008 and the State would chair the meeting.

**9. Closing comments**

Chris Tweeten said he does not have anything to add; they will take the issues back to Helena and meet again on the 25<sup>th</sup>; he said regardless of what others think he believes they are making progress.

Chuck Courville for the federal team: He thanked the Tribe, State and public for comments and said he would provide the information to Duane Mecham.

Clayton said they believe there is progress and that there is more to be made and they believe there needs to be enough so they can continue the negotiations past June. The ultimate goal is to have a settlement. He thanked everyone.

Meeting adjourned.