

## MEMORANDUM

TO: Susan Cottingham; Jay Weiner; Sonja Hoeglund; CSKT Negotiating Team; CSKT Minute Files  
FROM: Joan Specking, RWRCC  
RE: CSKT Minute Summary from June 25, 2008 Negotiating Session, Polson, Montana, 9 a.m.  
DATE June 26, 2008

Chair: Chris Tweeten

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

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

Pat Pierre, Tribal Elder, offered an opening prayer.

#### 2. **Introductions**

Chris welcomed people to the meeting. He noted there was a sign-in sheet.

**(Attachment 2)** Introductions were made around the table.

#### 3. **Opening Statements**

James Steele Jr. noted the new Bison Range Agreement with the FWS which they are proud of. In the spirit of cooperation, hopefully they will have something to sign by the end of the day on the issue of water (laughter).

Clayton Matt said that after today he hoped people would see they are making significant progress. There was a new item on the agenda: Question and Answer period.

Duane Mecham highlighted that there has been a lot of activity involving settlement of Tribal water rights this year in Congress – for the southwest and the Montana settlements. He has heard reports that 11 Indian water settlements are active in this last year of the administration. This matter needs to proceed at its own pace and it is obviously not cued up yet for final resolution; however he is heartened by the progress. He is confident that after some other settlements are through Congress there will be plenty of opportunity to work on resolving this settlement in the next few years. He is working on getting Chuck Courville with the BIA Flathead Agency an official position on the federal team. He noted that Norbert Ries of the BOR retired the end of last month. He had hoped to have for this session some of the investigations and modeling they had asked the BOR to do on Hungry Horse. That was delayed because of the transition at Reclamation. He hopes to have a full report on the Hungry Horse proposals at the next meeting.

Chris Tweeten said the Commission is glad to be back at the table. He congratulated the Tribes on the achievement of their agreement with the FWS on the National Bison Range and said they are all pleased those issues could be worked out. They are prepared to have some serious discussions about the Bison Range water rights which should be fairly straightforward in terms of getting them laid out. Hopefully the parties can reach an agreement to assist in the cooperative management between the Tribes and the FWS. Chris addressed the issue of the extension of the Compact Commission raised by the Tribes at the last meeting. The Commission talked to the Governor's office, which did not authorize the Commission to change the State's position against extension. He encouraged the Tribes to contact the Governor's staff and said they would be happy to discuss it with the Tribes. Chris said the Commission is pleased with the pace of the attorney work with respect to administration, and putting the issues in writing. He would like to hear from the Tribe regarding acceleration of the pace of the meeting and said the Commission is open to the possibility of meeting more than once monthly.

#### 4. **Discussion of Unitary Management Proposal**

Chris introduced John Carter to present a report on the status of work on the proposal.

John said the attorneys (Tribal and State) spent most of the previous day discussing and trying to respond to questions about what unitary management is. They are looking at a system that encompasses all water use on the Reservation whether it is used by the Tribe, individual Indians or non-Indian people, to be administered under one set of laws that would be enacted in parallel with the Tribe and the State and would create an on-Reservation management body made up of local people and/or Reservation or nearby residents. The key is to get local support. In other compacts administration has been split up between the State and Tribes depending on land status. The effort is to simplify the whole picture so anyone with a water issue deals with a local management board with authority to address disputes and confusions as well as to enforce existing water rights claims and to issue new use and change of existing use permits in the future. They are looking at a governmental body comprised equally of Tribal and State people which would be housed on the Reservation and staffed equally with State and Tribal people to address, pursuant to a consistent body of law, water use and new appropriations (to the extent there is that water available) on the Reservation. The discussions focused largely on what powers and limits of power the governmental bodies would have; looking at an equally staffed management board to be the decision-maker. The other component of the proposal keys to a system that exists but is not mandated under state law. There is one person they would call a water engineer; essentially a water commissioner, for the entire Reservation who would be the manager; the person who turns headgates on and off; the person who makes sure people's rights are being protected and if they aren't to address the injury through an enforcement action. That gives that one person a lot of power which could become problematic and they talked yesterday about limiting the discretion of that person and that any action to enforce or cause a change in current activity would have to be approved by the board. That was generally the discussion of dual administration and how it would work. The board itself would review allegations of misuse or improper permitting, etc. and then the water engineer would take appropriate steps. The way it is proposed presently is that the water management board would act as the decision maker essentially, and disputes that might arise and not be resolved by the water commission could end up in a federal magistrate court. In every other compact it is a race to the Tribal or State court house. This way, there is no argument of partiality or impartiality and it is placed in federal magistrate court. He asked for Jay's thoughts.

Jay clarified that it is the Tribe's proposal to the State to have appeals from the water management board to the federal magistrate court; which the State has not yet accepted as final jurisdictional recourse. The rest of what John explained was correct. The next step, as they work on this, is to get this reduced to writing so it can be reviewed by decisions makers and the public. He anticipates that they will end up with parallel drafts because the structure of this is that the administrative structure will be codified in parallel state and Tribal law.

Chris clarified the point that Jay made and pointed out that they are in preliminary discussions of unitary management and how it would work; and that by saying there is a point they haven't accepted yet he does not want to imply that everything else has been finally agreed to. They don't have authority at this point to bind their negotiating team until they have seen the shape of the whole proposal. By saying it has been accepted it means it is a point the State has agreed to proceed with while fleshing out the management proposal.

Duane Mecham noted the issue of federal representation on the board. They have been discussing and considering having a federal representative appointed. If the federal person is needed that individual would be notified of the activity of the board and if there were concerns they could be raised with the board. All these points are under active discussion. Chris said the State's concern all along has been the ability of the board to take action on issues in a real-time manner and the point raised by Duane is consistent with the suggestion made by Chris at the last meeting - having a non-voting representative of the United States. The State would be pleased to consider that. Chris asked if someone could summarize where they are in terms of consideration of the management proposal and when they anticipate being able to look at something in writing. John explained that yesterday they agreed to put together a draft and

circulate it for State and Federal review and dissection and would use that as their basis to move forward in a parallel and effort and draw from that the administrative components of the compact. Jay noted that was a draft of the Tribal ordinance and John agreed. Chris asked if it would be something to roll out in July – John said they hope to get it out in the next three weeks, although there are holidays and vacations coming up, to send out to both negotiating teams. Chris noted he is aware of impatience by the public to see some progress in the discussion so that timetable would be good if they could have substantive to discuss by the end of July. Jay said they tentatively hoped to receive the draft from the Tribes on July 18<sup>th</sup> which would give time for some review.

John said there is another outstanding issue on the Reservation, regarding the current DNRC process for examining claims. There is a DNRC system for examining pre-1973 water rights claims that the Tribe, the U.S. and the State are all participating in. There is not a clear and competent system for verifying post-1973 permits and certificates. The parties are working on drafts of a system that would be jointly implemented, although predominantly by DNRC, to evaluate post-1973 certificates and permits. This should be done before July 18<sup>th</sup> so the public will be able to see physical progress before the end of July 2008. Jay said DNRC is doing the internal work necessary to make sure the files are assembled and scanned so that everyone has access to the files electronically.

## **5. Technical and Legal Items for Discussion**

Clayton noted that Seth usually makes the report but is not available. Jay said there have been three technical meetings since the last negotiating session; one having to do with the verification or certification of permits. One critical thing they are looking at is focusing on the certification or verification of larger use permits and deferring for the time being scrutiny of the smaller ground water certificates in order to focus on larger uses. Another item was a Tribal presentation of their Hydross model which is a monthly time-step model looking at water flow on the Reservation. That was a helpful and informative presentation; the Tribes and their technical consultant HKM Engineering put a lot of work into it and the Commission staff appreciated the opportunity to see what will be a valuable tool as they look forward to what infrastructure opportunities might exist to make water go further on the Reservation. A separate technical task which Jay said he considers currently the most critical is the development of Level One Hydrographs. One of the things they have discussed regarding structure of a unitary management proposal is how they would be able to protect existing water users on the Reservation. The primary mechanisms they are using to get to that are the Level One Hydrographs. Basically, the hydrographs are pictures of water use that reflect what current conditions are. The technical teams are very focused on trying to make sure they have all the data that they need to put those hydrographs together. That is the critical technical task they currently face. They are inventorying and identifying data sources they need to see how they can best come up with the hydrographs. There are 130 streams on the Reservation ranging from the main stem of the Flathead to very small tributaries and they are looking to put together hydrographs for all of those streams for wet, average and dry conditions which means 780 hydrographs. That will be a critical resource, if the parties are able to agree on unitary management, for a management board for protecting existing uses. Other technical work is a canal seepage study which the State intends to fund; they are still working to identify a specific site where the measurements will be taken and the bulk of the work will be done next summer to help identify any irrigation project where there might be some opportunities for perhaps canal lining to help achieve water savings. They want to make sure there won't be adverse impacts to late season return flows, etc. The State is also investing money in a "metric project" or evapotranspiration study to use aerial photography and infrared imagery to look at where water is actually going. This will help get the full picture of water use on the Reservation. It will help structure protection for existing users and in an administrative scheme help them make policy planning decisions to authorize future uses.

Terry Pitts noted the Tribes put a lot of money and time into these studies and he asked what the State was doing to help financially. Jay explained that the State is funding the canal

seepage study and the evapotranspiration study out of contracted services money. The State appreciates the resources the Tribes have devoted and the State is matching that commitment.

Chris asked for a response from the Tribe and Clayton said it sounded good and he appreciated the summary.

Clayton said he wasn't certain that at the last meeting they were talking about acceleration of the process by having more meetings. He said if they need to have more meetings the Tribe is certainly willing to consider that. A bigger concern to them was acceleration of the products and getting the products completed. It looks like they have begun to accelerate that process as well as accelerating the drafting. Another piece that will be important is the process having to do with technical information. Over time the Tribes and the United States have spent a lot of time working together looking at baseline data, processes, and methodologies to produce the technical results they have today. As they provide the State with that information they are going to be looking for, as the United States has provided periodically, a sign-off or check-off that the information is acceptable as base information they can all use to proceed with negotiations. As the Tribes have provided information in the past; the hydrograph information will be presented later this month. They hope to have more discussion of a check-off at the technical team level and the negotiating team level. Clayton reiterated that in terms of acceleration the Tribes see it more as process and product but if anyone wants to propose more meetings the Tribal Council will be glad to see what they can do to accommodate that.

Chris said he understands that there is a fair amount of frustration on the part of the public and that they don't always perceive any movement – on anything to show for this. He said it's important to move as fast as they can on technical and legal issues. The sooner they can produce some consequences to their efforts that both Council members and the public will be able to consider, they will be able to deal with some of the concerns **expressed regarding the perception of not making any progress**. He said he feels they are making satisfactory progress as far as the teams are concerned and a lot of work is being done to come up with deliverables as the basis for moving forward. He hopes that will happen this next month.

Duane said the federal team stands prepared to do their best to keep up. They are starting to get a better picture of things and they have talked to John Carter regarding getting Level One hydrographs looked at by their own expert. They will seek to do their best on the settlement front.

Susan said as they discuss the topics that they assume will end up as part of a compact, she has gotten some feed back indicating that it might be useful to come up with a general outline and to give some the public an idea when specific components will be discussed in the months to come. It might be part of the way to start public education - by explaining the pieces the parties expect to address. If they talk about accelerating then technical and legal teams will need some guidance regarding what will be discussed at what time. Clayton said that might not be a bad idea and they should discuss it at the next technical or legal meeting and run it by the Tribal Council to see what they think.

## **6. Question and Answer Period**

Clayton said their thoughts were to make a brief presentation for this new item on the agenda. They would then open it to questions and answers so it becomes part of the education process. An outstanding question is how long to go – they want to give people time to ask questions but not to have unlimited time for this item. Chris said that sounded fine as this is a new idea and they need to take it for a test and find out how it will work before putting time limits on it. Duane proposed that if it gets going and is very productive that's good but if it is still going at 30 minutes they should look at finalizing it – but if everyone still wants to go on they can. Chris noted that people can also send questions in writing, and the State and Tribe could respond to those questions. Clayton agreed and said comments are shared among teams.

John Carter said as the beginning of the public education process he'd like to give a brief analysis of the benefits of negotiating as opposed to litigation. He explained that prior to 50 years ago Indian reserved water rights were dealt with exclusively in federal courts until Congress passed the McCarran amendment which determined that Indian and federal rights would be adjudicated at the state level. He explained that the Tribe was in adjudication with the State of Montana and the Water Court, and then in 1979 the legislature created the Commission to negotiate. While negotiations are ongoing, all the adjudication components are put on stay. No other state has done that and it was a very wise move from the standpoint of saving citizens huge amounts of time and money. It has achieved finality for huge areas of Montana and the Water Court has not done that. He discussed the issues of negotiation vs. litigation and explained that negotiating is less expensive and not as time consuming. Very few tribes have chosen the litigation route. The Shoshone and Arapaho Tribes of the Wind River Reservation in Wyoming chose litigation which started in 1977 and is still ongoing. With the negotiating framework in Montana, it is not costing the citizens of the State to have their water rights claims, permits and certificates protected. The Tribes do not have the ability to tax and they have had to pony up a lot of money over the years. Because of the Commission sunset date the Tribes have additionally been gearing up for litigation. If the Commission sunsets, the Tribes will have six months to file their claims in Water Court. What he thinks is good about negotiation is that the Tribes tend to have local control of their resources on the Reservation. Looking at some of the facts of negotiation vs. litigation, he explained that an individual currently does not have to hire an attorney, etc. Each person has to protect their own water right against anyone who might object to it. There are over 4,000 water rights on the Reservation and the Tribes and all non-Indians would have to go through the same process with lawyers and expert witnesses. As an example in the last 8-10 years through in-house expenses and expert witnesses the Tribe has spent around \$1.5 million a year to produce negotiating and parallel litigation work product. If they end up going to court that number will increase several fold and it gives an idea of how expensive it will be for others also. Negotiation generally ends more quickly than litigation. Rocky Boy's took about six years; some have taken a year. He does not see a chance of a one-year compact on Flathead but they are trying. From a pragmatic standpoint, the Tribe does not have to file water rights claims until negotiations terminate. The Tribe will file massive amounts on and off the Reservation if they have to do so. Thus Tribal staff is split in its duties to work to push to negotiate a settlement and to work on litigation preparation for the Tribe. One beneficial aspect to negotiation outside of the savings of time and heartache is that it can provide for a more flexible system than any adjudicated result would ever produce. If parties go to court they will get a number and a piece of paper and people will be under either State or Tribal control. There is no guarantee those systems will be consistent. In a negotiated framework people have the ability to influence how their water rights will be managed in the future; as they envision it at least, there will be a local body that will be responsive immediately to concerns, questions and potential injuries. A point of interest from the Tribes and the United States predominantly, is that in negotiation there is a provision for the Tribe to acquire a damage claim represented by loss of water that might result in injuries to natural resources of the Tribes' as a result of federal water mismanagement over many years. That can be dealt with in a negotiated settlement and resolved in a water rights compact. If, however, there is no compact, the Tribe would have to reserve a damage claim until after the adjudication and then file a wholly separate law suit in a claims court in order to obtain federal compensation from injuries it suffered. If negotiation works it saves everybody time and money. That is his take on negotiation and litigation.

Chris said one clarifying point he wanted to make is that the Water Court is not completely out of the picture with respect to water rights on the Reservation in the event the parties reach a compact. People have the right to object a final compact and what the Water Court does may be appealed to the Montana Supreme Court. There is an opportunity for folks to bring objections before the Water Court. The other thing not eliminated by a compact is disputes between water users who have rights under State court, i.e., someone could object to their neighbor's water right the same way they would otherwise. The parties have the opportunity to discuss that within the context of the compact and the legislature could decide to change that with respect to the Reservation if that is something the parties want to propose in a compact; none of the

other compacts have foreclosed the rights of neighbors to participate in the adjudication by objecting to each others water rights as long as those rights are existing under State law. Chris opened the floor for questions. Clayton Matt noted that from the Tribal perspective they want to provide answers to questions for educational purposes and they don't want to turn it into a legal or technical debate. Chris pointed out that there is no guarantee that every question can be answered because some information might not be available at that time on a particular issue.

Rory Horning: Montanans are traditionally protective of their personal rights. When controls like a unitary board are added there are a lot of questions. In order to dispel rumors and speculation he is hearing on the street; he would make a suggestion that just making ordinances on the State and Tribal side do not answer questions for the general public. If you put down what you are trying to accomplish for public review then people can understand whether you hit the mark. Presently, he thinks that is what is missing; the public doesn't understand what all of the sides are trying to accomplish. If all three sides were to present their positions to the public and then state where they were going in negotiations then the public might support the process a little more. He said he makes his living in negotiations and he finds when all sides present will place their goals on the table it's a lot easier to come together on negotiations. His question was, whether they could put in writing their goals for unitary management and other issues along with these ordinances they are planning to write. The question is not to be answered at this meeting. Chris said traditionally the Commission has ended the process with extensive rounds of public meetings where they roll out the language they propose to take to the legislature. In almost every case they make changes in the document based on public comment received. Clayton has suggested that the parties begin a round of public meetings at this point and the Commission is receptive to that idea. The Commission has stated its objectives with respect to any administration process at prior public meetings; it has to be flexible and workable in terms of resolving issues as well as fair and perceived as fair by people who are under the system; as economical as possible and adequately funded to have resources to accomplish goals. He said he did not know if they would advance the ball to write those goals down. One of the problems of putting something in writing is that people tend to nitpick. He prefers they express their goals verbally. The Commission feels they have an adequate framework set up to roll these concepts out to the public. They are confident they will have every opportunity to receive people's input and traditionally they work very hard to resolve issues raised by public comment. He said they hear the concern but they have a framework in place.

Council member?: Noted that Chris said he doesn't want to put something in writing -- but this gentleman wondered if the parties could put out something for the media to educate them as to what the unitary management really is. He said at least people could see some of their plans of evaporation plans and existing uses, etc.

Chris said when they get around to public meetings there will be a lot of things in writing for the public to consider. He said it was his understanding that the Tribes have had objections to releasing technical data to the public before the parties have a chance to work through it to make sure it's accurate and represents the information they need. He's not sure there is a consensus on taking that stuff to the public until they have a complete picture of the issues they want to work on. Once that is done, he anticipates there will be plenty of information in writing; the Tribes have put together bullet lists for people to look at. He understands people will want something to look at to show them what the parties have in mind. Chris said the Commission generally provides a bullet point summary for people to look at. Compacts have been drafted in very technical language -- so they also put together a background paper in plain English. Clayton thanked Rory for his question and said things are complicated enough in water rights; if you want to make it more complicated ask another negotiating team to discuss it. A draft is out; please ask questions about that and when they have a new draft it will go out. As they go through the process there will be a lot of education; if they hand people an ordinance there will always be questions. He said Rory's point is right on and they will make efforts to make sure things are put in readable terms and they will make an effort to use the

process to educate the public. Duane Mecham said at a minimum their goal of administration would be to keep these things from turning into arguments and is a process that is understood by everyone and is fair. From his perspective, it's helpful for him to look at the principles of negotiations and the proposal put forth by the Tribes when negotiations first started. Maybe those documents could be redistributed when they distribute the first draft of the administrative proposal because they are helpful guidelines of the goals to be accomplished. Chris noted there is also an MOU that provides a framework for discussions and he has no problem with providing that to the public if it may satisfy some people's concerns and questions. He asked if anyone on his team had anything to add.

Karl Roesch: Likened negotiations to a house one has to put a roof on before it snows – which would be next June. He asked about the old federal secretarial water rights and if they were being worked on and if they will remain the way they were or will different values be put on them? Duane explained that any individual's water or any individual's water use within the Reservation will be verified, confirmed and protected so that would include all categories. Chris suggested an explanation of secretarial rights. Mr. Roesch said the advantage to having something written is that you don't have to keep a whole lot of things in your head. There are a whole lot of things he can't recall from other meetings so it would be nice to have something in writing.

Clayton Matt said in general, secretarial rights can get very complicated. There are Tribal and individual reserved water rights on the reservation and state-based claims and certificates on the Reservation. With regards to the adjudication in general it deals with primarily with the Tribal reserved rights and claims. If a "secretarial" water right is part of the Tribal or individual reserved right it is covered in that claim or that process. If it is covered in a claim it is something that would have to be included or filed in a claim in the State process. As some background, the Reservation was created in 1855 by the Hellgate Treaty and the irrigation project did not begin until about 1909 when first surveys were done. During all the time in between, Tribal members had lived and developed small irrigation systems on their own to irrigate fields, gardens, stock and domestic. In recognition of that fact the U.S. decided those uses had to be protected because of the impending development of the federal irrigation project. As a result they did surveys, interviews, on-the-ground surveys and maps for all of those uses believed to be in existence prior to the irrigation project. The Secretary of the Interior signed off on those reports and that is how they came to be called Secretarial water rights. In today 's process they are either going to be included as part of the Tribal reserved water right or they will have to have been claimed with an existing claim. He said if they were not then they may not be included. While they gained a moniker of Secretarial water rights and were signed off on by the Secretary of the Interior, there is no authority in legislature or statute that authorized them. Years ago when the Tribe posed the question to the Montana Water Court they were told that the Secretarial water rights would be viewed as evidence of existing use. In a general sense that is their understanding of the rights.

Jay said to a large extent his hope is that, in the course of these negotiations they do not have to answer that question. One of the things they are interested in doing particularly in light of the separate negotiations going on between the Tribes and the Flathead Joint Board of Control over transfer of the irrigation project – one of their hopes is that how water would be administered within the irrigation project which is where most of the Secretarial water rights arise would be an issue of project administration rather than rights that have to be decreed or settled in the compact. He said that is a primary goal and goes back to the theme of local control. One of the important pieces of the transfer talks is whether it is possible to stipulate at least between those two entities, what the Project's water right ought to be. Those are ways they get at the big picture issues of what water will be available for use, and then it remains as it currently is - a question of Project administration for people with secretarial water rights. It is an unsettled question as to what the secretarial water rights really are. The Commission hope is to leave it a question of project administration rather than compact negotiations.

Clayton said to the extent they are successful in negotiating a solution to project administration and the water rights associated with the project Jay is correct but there are many of those rights that exist outside irrigation project boundaries. He is trying to provide a simple framework for how to think of them today; those uses existed but they need to have been included in one form or another in some category to be acknowledged; he doesn't think they can stand independently; at least that has been the Tribe's view so far.

## **7. Other**

Chairman Steel said Clayton and John did a wonderful job. He'd like to speak to the extension which he has brought up at previous meetings. He thanked the members of the JBC and said the Tribes appreciate the letter of support they received from Chairman Walt Schock on the extension of the Commission. What they will be doing from the Tribe's point is...he, Councilman Bud Moran, and Councilman Pitts will actively go to the municipalities and county commissions offices in Sanders, Lake, Missoula and Flathead and talk to them about the extension of the sunset of the Compact Commission. They anticipate visiting with Ronan, Hot Springs, St. Ignatius, and one way or another will wind up at the Governor's door. He was a little disheartened with one aspect of interaction with the State; they had the State Tribal Relations Committee visit and it held the committee meeting in the Council chambers. He was a little disappointed in some presentations or their opposition. He is speaking of Rep. Windy Boy making a motion that the Committee vote for a bill that would have extended the Commission. The issue died the following evening. They visited with the Council the next afternoon and he is perplexed by the varying voices of the State when Senator Peterson basically stood up to advocate litigation. He hears the official voice of the State against the extension. On gaming the Governor granted them an extension they did not ask for; on the issue of water they are opposed by every agency except for Montana State Senate. It is concerning and causes consternation for the Tribes to go through budgeting for money for litigation and then they get verbal assurances that at the 11<sup>th</sup> hour there might be an extension. From the Tribe's perspective with the varying voices of the State unofficially and with the official voice saying that they oppose the extension...John (Carter) did a wonderful job explaining reasons why they should not have litigation, but then to have a representative of the State-Tribal Relations Interim Committee shoot down a proposal for an extension – yes they are making progress but it does not give the Tribe a lot of happy feelings. They are feeling already backed into a corner as some of the comments to oppose this were to put the pressure on. As he told the members of the State-Tribal Relations committee, the pressure is on. They are feeling backed into a corner. If the pressure was to back them into a corner and have one hand on their lawyers and one hand on the budget trying to sort out where they are going to come up with litigation costs, then that has been accomplished. He said he was expressing a little bit of frustration. They came out with very difficult negotiations with U.S. Fish & Wildlife Service and it was give and take on both sides. The gentleman was talking about a common purpose; that is what they were doing for the preservation of the bison and the bison range. He is realizing they have a proposal on the table and they are working through unitary management but he needs to let it be known that the council did not see it as happy thoughts from the State-Tribal Relations Committee, and bluntly saying they'd use parliamentary procedure to deep six Rep. Windy Boy's motion. It was disheartening. The State and the feds allowed the other reservations time to negotiate a settlement and the variety of voices of the State just clouds it. To have a State Representative on the State-Tribal Relations Committee saying litigation might be a good idea seems to be contradictory to what the parties have been talking about. He requested that however the State can speak with one voice it would be appreciated whether it's the Governor, Attorney General or whoever. He did not appreciate Rep. Peterson saying let's go to court.

Chris Tweeten asked to offer some different perspectives on the issue. He explained that individual legislators do not speak for the State. The agencies speak with the Governor's voice. Legislators are free to say whatever they want. At this stage, Rep. Peterson is just an individual member of the public and they constitutionally cannot speak for the State of Montana except by adopting legislation. Second, their position with respect to the extension is not that they



oppose it under all circumstances. The Governor's position is flexible on this point. Thirdly, he urged the Tribe to schedule a meeting with the Governor as soon as the Tribe can; the Commission represents the Governor and not the legislature or individual legislatures. The position developed on the extension is a position developed by the Governor and the Tribe is welcome to sit down with the Governor and discuss the concerns that have been raised. Repeating that with respect to the negotiations is not going to achieve the Tribe's objective because the Commission does not make those decisions. The Commission passes the Tribe's comments along to the Governor's office routinely after every meeting so they are doing what they can. He encouraged the Tribe to meet with the Governor as soon as possible.

Senator Tash said he can understand the Tribe's frustration and as a legislator for 16 years there have been a lot comments made that he certainly did not agree with. These are things that cause at times decisions to be made that are not justified by any means; the best decisions come for collective input. That's why it has been a privilege for him to serve on the Compact Commission over the years particularly with Tribal negotiations and seeing some successful conclusions. He is not in favor of the sunset for the Commission and he hopes it continues to whatever point that it can to reach a successful conclusion and that it does so by negotiations which they have done for many years. He sees a good opportunity to see it conclude in a successful decision.

Jesse Laslovich said he agreed with Senator Tash. It is no secret where he stands on extension from last session and his position has not changed. He echoed what Chairman Tweeten said about the Governor and emphasized to the Council that the main focus should be to meet with the Governor as soon as possible so they can put this behind them all and concentrate solely on the negotiations.

Chris said he hopes this discussion helped to clarify the issue of the extension.

## **8. Public Comment**

Al Ashchenbremmer: Regarding public meetings, his understanding was that original negotiations would be about the Jocko but there have been no public meetings scheduled for the Jocko Valley. He said that would be an appropriate place to have a meeting and it is the object of a lot of the technical work being done, as he understands it. Regarding the draft ordinance for a water board, he noted that nimbleness does have its bright side. He does not like the idea that every time someone has a problem that the legislature or the county council or anybody else in charge with administration cannot come up with a reasonable solution and the next think is they have a judge telling them how to live their lives. He urged them to make it as nimble as possible.

Roger Short: His only comment or suggestion is that he requests them to publish a list of acronyms which can be intimidating for people and aren't necessarily understood. John Carter published a thing which helped a lot – a list he handed out in Elmo. If they could publish a small synopsis of things like the McCarran Amendment, etc., it would be helpful to keep people from being intimidated by the process. They would get a lot more participation. In this public setting with the State and the Tribe it could help a lot of people.

Rory Horning: Clarified that if they would like to keep disputes at a minimum information generally helps. They are not asking that they give things in writing that are definitive because they understand that there is a ratification process. By saying they can't give something in writing they are actually demeaning the public because the public understands....the other thing is that they are negotiating a local resource which affects everybody living here. Having been a 10 year legislator in another jurisdiction, no matter what the differences were, they were all neighbors. It does bother him when Chris says they represent the Governor and he is their client. The Governor represents him also so bring it down a couple steps and they will be able to discuss things better. Another thing that bothers him is using the term "successful" conclusion. When they are talking about water rights which are a beneficial use, how about

saying they are looking for a “beneficial” conclusion. Chris explained that the Commission representation of the Governor is in the statutes and was put there by legislators when the Commission was created.

**9. Set next negotiation date**

Wednesday, July 30, 2008 will be the next meeting date, and Duane Mecham’s will chair the meeting.

**10. Closing comments**

Clayton thanked everyone for being there and asking good questions and making good comments and said people will warm up to the Question and Answer section. Someone pointed out, regarding the comments from Roy and Rodger and “talk on the street” – if there are people who want to talk about the water rights let them know the Tribes would like to discuss it. Chris agreed that was a good point and they are more than happy to talk with respect to negotiations. Duane echoed Clayton’s comments about everyone’s participation.

Meeting adjourned.