

CONFEDERATED SALISH & KOOTENAI TRIBES OF THE FLATHEAD RESERVATION
RESERVED WATER RIGHTS COMPACT COMMISSION

September 16, 1980
Tribal Offices, Pablo

Present Tony Rogers, presiding, Attorney for confederated Salish & Kootenai tribes of the Flathead Reservation
Tom Pablo, Tribal Council Chairman
E W Morigeau, Tribal Councilman
Vic Stinger, Tribal Councilman
Evelyn Stevenson, Tribal Attorney
Fred Houle, Jr , Executive Secretary
Bearhead Swaney, Tribal Councilman
Henry Loble, Chairman, Reserved Water Rights Compact Commission
Audrey Roth, Reserved Water Rights Compact Commission
Jack Galt, Reserved Water Rights Compact Commission
A B Linford, Reserved Water Rights Compact Commission
Scott Brown, Program Manager, RWRCC
David Ladd, Attorney, RWRCC
Steve Holnbeck, Hydrologist, Water Resources Division
Ted Meredith, Field Solicitor, Billings Area, USDI
George Jennings, Assistant Area Director, Bureau of Indian Affairs
Mike Zimmerman, Attorney, Montana Power Company

MR ROGERS Mr Baenen was unable to be here He was here for the tribes for the last meeting, as you know. He is in Houston today so I returned to the scene again I was with the meeting, we had a more informal meeting, about a year ago in Helena As I understand the procedures generally agreed upon on the last meeting, chairmanship will alternate from now on I should introduce two new participants in today's proceedings who did not attend before, really representing the third important party of the United States On my right is Mr Ted Meredith who is the Field Solicitor for the Department of the Interior out of Billings, and to his right is Mr George Jennings who's the assistant area director, Bureau of Indian Affairs, Billings area office for resources The other gentlemen here from the tribes in the immediate vicinity are the Chairman of the Tribal Council, Tom Pablo and Vick Stinger who's the Tribal Secretary. Maybe it would be appropriate to enter appearances so it's on the record as to who's here and we're all parties and of course I'm Tony Rogers, Tribal Attorney. So if you all want to introduce yourselves on the record It pays everyone to meet

MR BROWN I'm Scott Brown, Program Manager of the Compact Commission

MR LOBLE And, I'm Henry Loble, I'm Chairman of the Compact Commission

MR LADD I'm Dave Ladd, Attorney for the Compact Commission

MR LINFORD I'm Ave Linford, Member of the Compact Commission

MS ROTH I'm representative Audrey Roth, Member of the Compact Commission.

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MR GALT Jack Galt, Member of the Compact Commission

MR HOLNBECK Steve Holnbeck, Hydrologist for the Department of Natural Resources and Conservation

MR ZIMMERMAN Mike Zimmerman, Attorney for the Montana Power Company.

MR ROGERS I believe we have Fred Houle back there, the Tribal Executive Secretary. Oh, I thought you were leaving. I wasn't going to introduce you, but she stayed Evelyn Stevenson, the Tribal Attorney Mr Loble, would like to make any opening statement for your side? That's the first thing on the generally agreed agenda here.

MR LOBLE I noticed that, but I can't think of anything to do with that, Tony, very much, other than to say we're very pleased to be here During these negotiations I would like to say that I admire your building and this is a very nice room in which to meet, the coffee is good and the choice of rolls is marvelous - the only problem being I couldn't make up my mind which one I wanted. Other than that I don't have any opening statements, Tony

MR ROGERS I would point out that this is reserved rights coffee Does anyone else from the commission have anything to say?

MS ROTH Not yet

MR ROGERS Well, anything in the way of an opening statement?

MR BROWN Excuse me Mr Chairman, I have extra copies of the agenda if anyone should like a copy

MR ROGERS I guess I should say the proposed agenda was submitted in advance of the meeting and everyone's been given opportunities to make additions or deletions to it When Mr Loble, I guess Scott Brown, distributed this earlier it was for an earlier date Originally, this meeting should be August 19th But he submitted it in July, and there were no changes suggested to the agenda at least that I'm aware of So, unless there's objection we'll proceed with what's before you Would anyone from the tribes care to make any opening remarks?

MR STINGER Well, I have nothing to say at this point

MR ROGERS Ted, how about you?

MR MEREDITH Nothing in particular No opening remarks No

MR ROGERS George'

MR JENNINGS Well, I'm pleased to see that everybody safely made it here through the cloud banks and everything else. We got attendance at other meetings across the state and it seems to be working out quite well for all parties concerned We appreciate being kept informed about what's going on Thank you for you all leading the meeting



MR ROGERS We did, Richard Baenen and I, had discussed something that you had discussed at the last meeting, and that was the idea of when will we invite and involve the United States? And, determined that we would go ahead and invite - I called Ted Meredith and asked him to come. I think we discussed having George come along too and they obviously made it. So we're glad they've joined us. Maybe one thing we would want to consider at some point is the role of the United States in terms of the formalities of chairing the meeting or not, integrating you guys and in the process. They're both snaking their heads. Huh? The next agenda item then is adoption of the minutes transcript of the last session. Does anyone have any comments on that? I guess we just formally adopt it. I don't know that we have any-

MR LOBLE I'll move for adoption Mr Chairman.

MR ROGERS I assume a second from someone. I'm not going to let that die for lack of a second. Without objection, that transcript is adopted. It's not a very controversial transcript cause every time everybody said anything controversial it was inaudible.

MR LOBLE There's one thing Mr Chairman.

MR ROGERS Yes sir.

MR LOBLE That I would like to discuss perhaps under Item 7. And that would be the role and involvement of the Department of Justice in these proceedings. On the theory that they may be in a position to make futile all the things we do here.

MR ROGERS Well do you want to hold that for Item 7?

MR LOBLE I think so. Give everyone a chance to think about it a little bit.

MR ROGERS It's not entirely unrelated and I suppose to number 3. But,

MR LOBLE Anyplace you want to put it will be fine with me.

MR. ROGERS Well: I -frankly would be interested to know if we could discuss what the tribes would want in this regard. But I'm curious too if either Ted Meredith or George can throw any light on this. They know of the Justice Department's interest in coming here. Before you start talking I'm going to introduce, E W Moriqueau, who is also a member of the Tribal Council and one of the Tribal Representatives and he's arrived. Ted-

MR MEREDITH I've talked to Myles Flint just after we had our last meeting when we discussed the problem. That was with the Northern Cheyenne and told him of your concern. I'm not sure he was even aware of this meeting. He was going to call me because he planned to be out in this area at some meeting and hadn't. I forgot to get in touch with him again. I'm not sure he knew of this particular meeting but I think from what he said they intend to try to come to the meetings. I think that we've got to work out an agenda so we can notify the people some way better. I didn't know about this one until Tony called me and told me about it, so, there's no way I could've told him about it.



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MR LOBLE You didn't get the notification from our office? Is that right?

MR MEREDITH I don't think I did for this one.

MR LOBLE I think if Scott would make a note of that and make sure that Mr Meredith and Mr. Jennings and who did you say?

MR MEREDITH Myles Flint, probably with the Land and Natural Resources Division, Justice Department, in the Natural Indian Resources Section

MR LOBLE If we could have his name and address we will see that all three of you get notification you need.

MR. ROGERS I think for the tribes it would appropriate to have Justice Department involved in this. It's the kind of thing earlier we've had some discussion among ourselves as to whether or not we could make some progress without involving the government first, but it's also quite clear that nothing significant is going to come out of any of these discussions without some full review and participation by the Federal Government. So, I think on balance - the sooner the better. Getting them all involved and Myles would be the appropriate one to contact in the Justice Department.

MR LOBLE OK

MR ROGERS He's the Section Chief for all of the Indian Resources litigation that the government handles

MR LOBLE And where is he officed?

MR ROGERS He's in Washington. In the main Justice Department. If you just address it to him as Chief of the Indian Resources Section, Land and Natural Resources Division, Washington, D.C, he'll get it Department of Justice

MS ROTH What's that name again?

MR ROGERS Myles Flint Myles is spelled with a "Y" isn't it? M-y-l-e-s, and Flint's with an "I" F-l-i-n-t

MR LOBLE We'll certainly see that he gets notification. Do you think he might come himself?

MR ROGERS I don't know Henry, I'm not sure how they're organized at the moment. Originally his section was handling the trials of federal actions that were filed in the state. Now that it's on appeal it went to another section within the division. But his office obviously maintains an interest in it, so it could be one of his other attorneys might come or they, like Richard and I, might alternate some as well.

MR LOBLE There's no one in the within the confines of the state office here who--



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MR ROGERS NO

MR. LOBLE No.

MR. ROGERS The United States Attorney has at least in these cases today essentially acted more in the role of the local counsel and is not actively involved in the substance of the cases to date And I go back to the original cases that were filed with Northern Cheyenne and Crow It's been true there too. So, anyway, he would be responsible for contacting anyone in Justice and I think notice to him certainly puts the Department of Justice on notice about the meetings

MR BROWN Then we'll place him on the mailing list

MR LOBLE Yes, that would be good

MR BROWN For both.

MR. MEREDITH Yes, for everything he has--

MR ROGERS Actually, I suppose as a matter of form and protocol it would be appropriate to notify the Assistant Attorney General, James Mormon, the same way He'll turn it over to Myles Flint And he would essentially be at the same address I'll give it to you

MR BROWN OK

MR ROGERS We've started on number 3 and the relationship between these negotiations and the pending federal litigation What are the state's thoughts, the commission's thoughts, about this relationship?

MR LOBLE Well, I think this, if I'm not mistaken, is a copy which was suggested by an attorney for another Indian Tribe. The question was whether this commission is in touch with and working with the attorneys for the state of Montana who are handling the federal litigation on water as concerns Indian tribes So that, if a compromise and settlement is entered into through the vehicle of compact, it will be agreeable to, and be implemented by, the attorneys who are handling that litigation And, we would believe the litigation would be dismissed as the product of the settlement And in that regard, Scott, I think, could tell you what he's done in relation to making contact with the Attorney General's office

MR BROWN Well, Dave has handled that

MR LOBLE I can't remember who did. Yes, I guess it was you

MR LADD I spoke with the folks in the Attorney General's office, who of course agreed it was important that we coordinate our activities between the negotiations and the litigation And in that regard, we drafted sort of a rough agreement that stated, basically, that the compact, if concluded and ratified, would indeed resolve the litigation problem It's more of an agreement of intent just to show that the AG's office,

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I think, supports the negotiation of a compact. At the last meeting with the Northern Cheyenne, we gave them that draft of an agreement. They're looking it over now. Our intent with them is to have sort of a four-way agreement. Agreement between the Attorney General's office, who's handling the litigation, The Compact Commission, handling the negotiation, in that case with the Northern Cheyenne Tribe, and as the fourth party, The Justice Department. And that might be something we'd want to consider doing here with the Flathead tribes as well.

MR LOBLE Do you have copies of that?

MR LADD I have a single copy or two. Scott you have copies. Did you bring those?

MR BROWN No.

MR LADD I don't have duplicated copies with me. If you're interested, I can read the one copy I do have.

MR ROGERS Yes, why don't you, just for information.

MR LADD The letter of agreement between Montana Reserve^d Water Rights Compact Commission - I'll read it with the Northern Cheyenne. The Attorney General and the Northern Cheyenne Tribe. In view of the facts that 1) The state of Montana, through the office of the Attorney General, is engaged in federal court adjudication with the Northern Cheyenne Tribe concerning the water rights of the respective parties. 2) The state of Montana through the Reserved Water Rights Compact Commission is engaged in negotiations with the Northern Cheyenne Tribe, to conclude a compact for the equitable division and apportionment of water between the State and its people and the Tribe and its people. 3) The state of Montana through the office of the Attorney General and the Reserved Rights Compact Commission and the Northern Cheyenne Tribe find it to be in the best interests of all parties that a single comprehensive settlement of the water rights of the parties be achieved. Therefore, the office of the Attorney General, the Reserved Water Rights Compact Commission and the Northern Cheyenne Tribe agree to the following, concerning the character and impact of the negotiations presently being conducted between the Reserved Water Rights Compact Commission and the Northern Cheyenne Tribe. The negotiations are considered to be settlement talks, and, accordingly 1) The conclusion and ratification of a compact addressing the reserved water rights of the Northern Cheyenne Tribe as provided under Title 85, the Montana Code Annotated, shall be effective and binding on all parties as provided by Section 85-2-702 of the Montana Code Annotated. 2) As provided in Rule 408, Montana Rules of Evidence, evidence of data, information or statements made in such negotiations shall not be admissible in court.

MR LOBLE I think, Mr. Chairman, it would be appropriate for us to suggest a similar thing be entered into with the Salish and Kootenai tribes.

MR. ROGERS I think it's appropriate to consider that too and I'd like to play with some of that language a little bit if we were to do it. Mr. Morigeau?



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MR MORIGEAU: I was wondering, do you expect the Northern Cheyenne to set out to name the specific uses of the water rights?

MR. LOBLE No, I don't think so

MR MORIGEAU Well, if you'd ask us.. I think we would want in any agreement like this we'd want to name them

MR. LOBLE: I don't see any reason why we couldn't duplicate this here. If you have a copier Do you have a Xerox? It's marked up, but. Dave has a better copy Certainly, any suggestions you might have we'd be very glad to consider the changes you'd like in that agreement, of course.

MR ROGERS. The second main point was to assure the nonuse of any information documents exchanged here The first point was - I didn't quite understand the number of citations Montana --

MR LADD. Well, the first point, just in essence, says that the compact would conclude the dispute over the Indian water rights--that's what it amounts to

MR GALT Mr Chairman, what if the Tribe and the Commission agree to this and the Justice Department say to hell with it?

MR ROGERS: Well, the Justice Department is not a party to this other agreement, obviously, because they haven't been involved in other discussions there have they?

MR. LADD: No, that agreement hasn't been signed. It's just a draft that we proposed

MR ROGERS: I propose that we leave it that way today too, as far as we're concerned. I think its appropriate to-- I don't think I have any problems with either one of those things and especially with regard to documents and potential evidence that are exchanged. I think both points would be understood as settlement negotiation procedures and that it wouldn't be objectionable to use them (documents) that even if we didn't have such an agreement But that only makes it



clearer and I don't, from that point of view have any objection to it. From the tribes' point of view, they may wish to discuss it and they may have some of their own objections to it, but I wouldn't think so

MR ROTH Mr Chairman, I think this is just a starting point It's certainly not binding, but we have to start somewhere.

MR ROGERS I wouldn't think the Justice Department would have any objection to that either. I can't imagine Myles Flint objecting Most information that we would exchange, in any event, once we get hot and heavy on this is going to be discoverable anyway under either the State rules or the Federal rules And, I would also assume if a settlement were reached, in principle or in writing, they would also automatically be part of that agreement that it would dismiss the litigation as well

MR LADD. The idea here, I think, is just to emphasize that both parties wish single comprehensive resolution to the problem rather than pursuing on fragmented fronts and that the compact would finally resolve the problem

MR LOBLE: The time we met with the Montana Legislative Water Oversight Committee, one of the members, Representative Curtis, said to me, "Are you making sure that you involve the Department of Justice so that you don't spend a lot of time and state money getting compact only to find the Department of Justice vetoed the whole thing, and you got nowhere?" I promised her that we take steps to see that the Department was involved so that wouldn't happen So that's why I show so much concern about it.

Eventually the Legislature is going to have to ratify it and this represents the thinking of the legislators.

MR LOBLE We'll have to be sure to do that, just as we have to involve the Attorney General's Office of the State of Montana And, I think, Tony, you remember that was Allen Chronister that we dealt with in the first meeting He was very interested in this matter, as you know

MR. ROGERS: Is this also your intention to have them. Someone from their office join the proceedings at least as an observer?



MR LOBLE We brought it up, but they don't seem too anxious to do it They're short-handed and short of money But there's absolutely ~~no~~ ^{no} problem with them in the sense that there might be with the Department of Justice I think they'd only be too happy to enter into the dismissal of the litigation. It doesn't really sound like they were even thinking about that Why don't you ask them? Will you? If they'll send someone to every meeting

MR ROGERS Let me ask one question about this; bearing on your several references to what the Justice Department would do Is it in your minds that if the agreement could be reached between the tribes, as to their reserved rights, the state, that that could be concluded even though there might not be separate agreement as to the reserved rights of the United States in its own proprietary capacity? I'm not talking about the nontribal rights. I've always had that in my mind that the Tribal Reserved Rights were separable issues. If that's in your mind too

MR LOBLE It is in my mind

MR ROGERS I think that the role of the Department of Justice in my experience with them in this matter and some other matters is that if they felt the tribes were satisfied with the settlement as to the tribal rights, I really don't think you'd have any deep substantial difficulties in getting the Department to approve the settlement. I might be wrong, maybe Ted or George have a different idea, but I don't really think that would be a stumbling block

MR. LOBLE That's very reassuring. I didn't know that Ted.

MR. MEREDITH: I think that's right I think that generally the Tribes are happy with the Interior Department; Justice Department probably wouldn't have any problem with that. I would agree with Tony.

MR ROGERS Thank you The tendency in these things is for the Department, or the government generally, to be a little more on the conservative side as to the measurement of the reserved rights than tribes generally are For that reason if the tribes were willing to sign off on some things, the Department certainly would be willing to sign off on it



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MR. LOBLE That differs from the way it's generally thought of in Montana. I think there's a feeling in Montana, particularly among the legislators, the Department of Justice has its own mind. For various reasons, perhaps, that it might set a precedent in other cases they don't like, they-- we might reach an agreement and would for reasons of their own, having to do only with the Department of Justice only they decide they don't want to go along with it. And they won't dismiss the litigation regardless of what the Tribe wants to do. But I'm pretty pleased to hear you say what you say.

MR. ROGERS I really don't think that would be a problem, but in any case I think if the Justice does start participating in these things next meeting, if they're involved in the process all along it will help smooth it over. But I think you're going to find that for the most part the tribes and the Justice Department will be in pretty close agreement on a number of things. Where there are differences the tribes are going to be a little more or a little less conservative in terms of measuring the rights than the Department would.

MR. ROTH Mr. Chairman, historically has that been true? That the Justice Department will follow along with the tribal agreements? What gives you evidence to say that?

MR. PABLO I think there's a lot of different concepts, Mr. Chairman, with what the tribes self determination. I think they're a lot more responsive to what the tribes want now than what it has been in the past. I don't anticipate any problem with the Justice Department.

MR. LOBLE Good.

MR. ROGERS: You can probably find some, somewhere along the line, but I think you'd be--you've spent an awful long time in the Law Library trying to find very many cases where the United States was taking a more aggressive position about tribal rights than the tribes were. On almost any issue and going back for a long time.

MR. GALT Mr. Chairman, could I have your opinion then, do you think it's possible then that the Department of Justice would let the various tribes negotiate and come to a settlement and agree to it, even if their reserved



rights...would sever the tribes' rights way from their own reserved rights?

MR. ROGERS. Frankly, I hope they would, for at least two reasons which occur to me right off the of my head. One is, that it makes it a little bit more manageable to talk about one thing at a time, and let's talk about the Flathead Indian Reservation rather than a nearby national forest. It's just easier to talk about one thing at a time. The other thing is - there can be some instances in which the tribal interests, the tribal rights, may conflict with the federal rights and the tribes may not support the position of the government with respect to the government's reserved rights either. So for those two reasons, I think they probably should be kept separate.

MR GALT: Oh, so do I, but I was just wondering if the Justice Department would let them stay separate.

MR. MEREDITH. I think they will. They're working on them separately and everybody considers them separate problems.

MR ROGERS. I have to indulge the tribes here for a moment. My main experience right now with this is in our case in Wyoming. We represent one of the tribes involved in adjudication there. We're set to go to trial December 1st in that state. We have been working closely all along with the government. I think it's going to be true here to the extent that consultants who work with the tribes in doing the necessary work and measuring the reserved rights and so forth will be involved. They are going to be working probably under government contract to some extent. Now the tribes may get their own. Now, I'm not saying this hasn't happened, in fact, it's happened in Wyoming. The tribes have retained their own consultant there and it can happen here too. But there is so much agreement about a number of things that it only makes sense for the government and tribes to use the same experts up to a point. With that happening, I think we have the seeds for substantial agreement between the tribes and the United States as it is. So the real problem still remains, I think, for us to sell it to you and vice versa.

MR. GALT: Excuse me, in that Wyoming adjudication, is the government an entity and is the tribe an entity too? I mean ..



MR. ROGERS That's right. The tribes were allowed to intervene in the case and there were conflicts of interest between their rights and those of the United States. As the Flatheads have similarly been permitted to intervene in the 9th circuit in the appeal of the Montana cases. But to a large extent the same experts hired by the government are helping to prepare the case for the tribes. The tribes' claim down there, this is partly what I mean by the tribes' position, is less conservative than the government. The parties there have been required to file statements of claim in anticipation of the trial of the case. The tribes supported fully everything the United States claimed as tribal reserved rights, but in addition, supplemented it by an increase where they felt the government had not applied the proper legal standard or factual consideration in certain instances. The tribal claim is above and beyond the government's in that case, and that's why I say I think it will be the same here and anywhere else in the country where it's the tribes, the federal government and the states.

MR. ROTH Mr. Chairman, in other words you'd like to keep them completely separated? The Reserved Rights of the Federal Government and the Tribal Rights and address them separately?

MR. ROGERS: I'm doing a lot of talking here. I don't think the tribes care too much what the federal reserved rights are. I think the interest is in having their own assured, and as I say there will be instances where they may disagree with the federal claim to its own rights, but if they can maintain their priority date it probably isn't going to matter what the federal government's other claims are because they would be junior anyway. But there may be some instances.

MR. LOBLE Well, it certainly seems to me they should be considered separately. The federal reserved rights and the Indian reserved rights should be two separate areas and it seems to me that federal government has always treated them as different. For instance, water policy: The commissioner certainly has treated them different. It has separate task forces and has treated them entirely different. I was not intending to negotiate on them at the same time. Well, maybe at the same time, but not in continuity with each of them. One is not dependent on the other, anymore than the negotiations with this tribe is dependent on negotiations with some other tribe.



MR ROGERS: There's one other element I keep having in back of my mind to say and I'm going to say it now There are two parties here, the tribes and the United States However, the United States does have a trust responsibility toward the tribes The land, for starters, is legal title in the United States for the beneficial use of the tribes, so that the government has a role in the case In this case, and every other case, involving Indian water rights, that they will not relinquish and I don't think they ought to relinquish anyway, but they do have a guardianship concern about it so they will-even though they have interests of their own to protect and even though they will substantially if not completely go along with what the tribes want, there may be some minor items I would think they would be minor items too, where the United States would have a suggestion and we might have to work it out. In their view, to approve part of such an agreement they feel they would be carrying out their trust responsibility or not The ultimate liability for them is that if they failed to carry out their trust responsibilities, the tribes could conceivably turn around and sue them for breach of trust, which has happened before. So, with that kind of liability involved the government will be careful to analyze any settlement before they agree on it But I still think that 99% of it, if not 100% of it, will be done without any problem whatsoever

MR. PABLO Mr Chairman, I don't know the opinion of these other two councilment, but I think they are definitely not the same; the two water rights you've talked about We are definitely not retaining Mr. Tony Rogers to fight the federal government's reserved water rights. He's here representing the tribes So do you have anything to say, Vick?

MR. STINGER: No, I agree with that

MR PABLO: E W ?

MR MORIGEAU: All I can say is that we might claim some water the federal government isn't using at the present time

MR MEREDITH: That's going to be another problem

MR MORIGEAU: Of course, I agree with one thing there They are the tribes' reserved water rights. We keep that in mind. Whether that's the reason or not



MR. LOBLE There has been a committee set up in Water (unintelligible) which has as one of it's functions to consider agreements between the state and the federal government. I noticed that in the news release Were you aware of that Ted?

*Resources
Council*

MR MEREDITH I'd seen something about it, yes, and I'm hoping to find out a little more about it We're trying to have a meeting, oh, the first part of October with some of the federal people involved to see just where they are We're trying to get a better handle on what's going on back there. I'm not sure, about which one you're talking about? Is it the one set up under the Interior Department or a separate one that's set up for negotiation under that bill that's going before Congress?

MR LOBLE The Water Resources Council we got a copy of the news release that I left out in the car. I'll get it and show it to you.

MR MEREDITH I think I did see that and I think I was going to try and contact them and find out about it I forgot about it, so, if you have a copy of the news release.

MR LOBLE I do. Do you know anything about it, Tony?

MR. ROGERS. No, I'd like to see the release too It's a committee to study interstate (pause) among other things? Do you want to take a recess? Let's take a recess

RECESS

MR. ROGERS. Mr. Loble, do you have the news clipping you referred to?

MR LOBLE Yes I'm a member of the Western States Water Council and as such I get their weekly issue of news This one is dated September 5, 1980. The Water Resources Council has established a Federal Interagency Water Rights Coordinating Committee to. 1) coordinate non-Indian federal reserved water rights inventory and modification programs, 2) provide a forum for development of federal-state agreements, and 3) coordinate implementation of recommendations of the non-Indian federal reserved water rights task force The National Governor's Association and the Western States Water



Council have ben invited to designate observers The first meeting of the committee will be September 9th I had aked Scott Brown if he would write to that committee, if we could find out their address, and tell them of this compact commission and acquaint them with what we're doing They seem to be embarked on the same sort of thing that we are That surprised me

MR MEREDITH I did see that, and I was going to contact them and then I forgot about it or lost the note I had or whatever. I'm glad you brought it up again

MR LOBLE: Does this help you?

MR MEREDITH Yes

MR LOBLE The name of the agency, Federal Interagency Water Rights Coordinating Committee, which was established by the Water Resources Council.

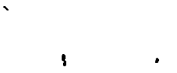
MR ROGERS: They do seem to be focusing on non-Indian reserved rights?

MR LOBLE Yes, entirely.

MR. ROGERS. That was a separate task force under the water policy reform.

MR LOBLE. As an aside, in the same news release, they comment on the Ninth Circuit ruling of the Walton case, which I'm sure you're familiar with. On August 20th, 1980, it ruled on many things that may be of interest to these particular negotiations.

MR ROGERS. We're still on Item 3, the relationship between the negotiations and the pending federal litigation From our part, it is obviously our intention to pursue both in order to preserve our rights in the pending federal case As you no doubt know, we've reached or fully submitted as far as the Tribes and the United States are concerned in that case, now in fact the United States did not file a reply brief. The Ninth Circuit did not intend to There is one more appellea who has been given until next week, I guess, to file his brief and then it will be fully submitted Then we



shall await argument, I guess. But, we will participate in that we're obviously going to continue insisting to the federal court that they should exercise their jurisdiction over the case. That will go on as we continue these negotiations and obviously the state is contesting that also. I assume we all knew that, but just for the record, that's where we are. I think it should be a matter of public record any day now that we have authorized these tribes the joining of a motion by the United States for expedited argument and decision in that case. The government, I thought, would've filed a motion by now but they just haven't gotten the paperwork out. It is their intention to do that. We will join them in that. It seems to me the sooner we clear that away the better off we all are, at least on jurisdictional grounds.

MR. LOBLE. Mr. Chairman, what if the court agrees with the State of Montana that it can be adjudicated in state courts? Are you prepared to go on up the street for it?

MR. ROGERS: Well, we haven't reached any decision on that. In the back of my mind I've always assumed that would be so. It seems to me you don't do anybody any favors by withholding a jurisdictional issue until you are halfway there and you don't resolve it then raise it later. After a man is trialed, and what not, I don't think anyone is particularly served by that. I can't tell you at all what the United States would do.

MR. STINGER. Mr. Chairman, by the same token the state has a right to appeal should they go against them, don't they?

MR. ROGERS. That's correct.

MR. STINGER. So we don't know what's going to happen.

MR. ROGERS. Going back to your agreement that you worked out with the Northern Cheyenne. I see two points in here that I was to go over. One is very minor. It makes reference in here to the fact that there's pending adjudication between the tribes and the state in federal court. And, we close it by saying that we're referred to the rule of evidence, which is the state rule. I assume they have the same thing going on in the state court, might as well match those up. But, point number one is the most obvious one to me. There is no way to resolve it, but I only knew what we



discussed when we met in Helena last year. But, I believe you discussed in the June meeting. About the effect and settlement we have on the state proceedings. How do you treat it? We have a signed, sealed document that the commission agrees with, the Attorney General agrees with, the tribes agree with, the United States agrees with, the United States government agrees with, let's put it that way, the Department of Justice signs off on it. Then, I guess we submit it, maybe simultaneously, the Legislature, the Congress and, not right away, just ultimately, your state court, assuming we were in a state court forum. The language of this agreement says that upon the conclusion of the compact it will be binding on all parties. Of course, it isn't in terms of litigation, because not all the parties in that state litigation will be involved in this agreement. We still have the status of a preliminary decree or part of a preliminary decree to overcome. I just want to remind everybody that we would be an imposter. In other words, anyone could come in and attack it once it goes back to the state court and we all ask that he make it part of his decree.

MR LOBLE: You mean anyone could attack it in the preliminary decree proceedings of the adjudication?

MR ROGERS: Yes.

MR LOBLE: Well you might say..

MR ROGERS: Anyone except presumably any of us who signed the agreement.

MR LOBLE: It seems to me that if the court should change it or alter it in any way it's no longer a compact. To change the agreement it wouldn't be anything anymore. It would be an annulity. And have to be reviewed and re-executed by all the parties. That would take a pretty bold court to tamper with it. In addition, at the time it is ratified by the Legislature, which would be prior to the time it would be submitted to the adjudication process, Congress could follow the legislative ratification as to the procedures, I would think. At the time it goes through the Legislature, it is the feeling of those concerned with it, particularly the legislators, that the Legislature would be very careful to say that this would be binding on all parties in the State of Montana who might be able to object to it. They wouldn't very likely permit something like that to go through without some expression in the resolution,



ratification, whatever, statute, or whatever they adopt, to resolve that question. Another alternative would be to seek some legislative reformation or amendment of the act under which we're operating to make it very clear that once the compact is entered into and submitted it can't be changed and is binding to all parties. We've been hesitant to do that on the general theory things you submit to the Legislature don't always come out the way you think they ought to, just like they do with Congress. We felt the compact was finally entered into there would be no doubt that legislature would back it up if they were going to ratify it at all. And, assume that they would.

MS ROTH: Mr. Chairman, in other words there will be no amendments to the compact as prepared by the commission?

MR. LOBLE: No.

MS ROTH: Because then it is no longer a compact.

MR LOBLE: That's right.

MS ROTH: And the Legislature, particularly the Senate, is very apt to try to amend anything. I think that should be clearly understood.

MR LOBLE: We're sort of open to any suggestions that the tribes may have that we ought to seek an amendment of the law in which we operate to make it very clear that it is binding upon all parties to the adjudication. We don't feel that is necessary at this time, or even particularly desirable to do.

MR ROGERS: That may be true. Politically, it may not be desirable, but if left unchanged it is a theoretical problem. Congress could seek to change it, but they've certainly changed a number of agreements that have been worked out before between tribes and federal negotiators. It happened all the time decades ago. This would be a little bit different matter, especially with the state involved in it, but it could happen here. It could happen in your own state legislature as well. There is a number of perils, and there's nothing we can do about it. But, that one, about going back to the state court and the effect of a compact ratified by your legislature, agreed upon by us, ratified by your legislature and by Congress, I think at the appropriate



time, your laws should be amended to make it, not so much clear to the state court, but to protect the state court, in a way, from the other parties who might object. At least he could say well, I can't change it under the law.

MR LADD: Mr Chairman, one approach we've discussed that I think may be the best solution to this is just to include a clause in the compact; The compact is only valid and binding as long as it's accepted by the state court as it, without modification. That might avoid the perils of submitting our entire adjudication process of the Legislature ahead of time. That way, when the Legislature is asked to pass, on whether it does bind the state court, it will already have a completed document too, which may carry a few extra votes So just include as a clause in the compact

MR ROGERS It depends too, on our timing of this thing I guess we're under sort of a three-year time period, isn't it? Under your statute? Theoretically, your commission goes out of existence in three years, doesn't it?

MR LADD No

MR ROGERS: Was the three year language removed from the statute before it was passed?

MR LADD. Are you referring to the filings?

MR ROGERS Something happened

MR. LOBLE January 1s of 1982 The chairman of the Legislative Water Oversight Committee thought it might be appropriate to ask the legislature to extend the time for filing claims under the adjudication process for the Tribes and the federal government as well So that you wouldn't be pursuing two independent solutions one at the same time One by negotiation and the other through adjudication So you wouldn't have to be participating adjudication process while you're negotiating. We're certainly considering the submission of such an amendment and I think at the next compact commission we'll decide on that, which should be pretty soon

MR MEREDITH Mr Chairman, is that John Scully you're talking about?



MR LOBLE Yes

MR MEREDITH: You did discuss that with him?

MR LOBLE Yes, he suggested that be done That's what I understood him to say I don't know if he suggested - yes, I guess he did He suggested it.

MR MEREDITH Yes, we discussed it once and I thought that it appeared that you try to change anything the legislature might cause more trouble than it was worth at this point But if he feels that that's a possibility.

MR LOBLE That's something we'll have to weigh

MR. ROGERS: Is the gist of the notion you're talking about the federal government and the tribes would not have to file the claim by '82 if negotiations were on-going?

MR. LOBLE Yes

MR GALT I think that was the intent of the original legislation. I think that it states in there that they're not subject to the adjudication if they are negotiating.

MR MEREDITH: I think the way it reads, though, the cases have to be dismissed Isn't that the way it reads? So, it doesn't help us in this situation.

MR GALT Well, we can take care of that next January

MR. LOBLE It may be that the legislature didn't really intend to say next year.

MR MEREDITH: Well, that's the reason I raised it before at the last meeting. Because we had that same hangup.

MR LOBLE So long as you're reiterating--because you're conducting bonifid negotiations you don't have to file a claim--I think that was what the legislature had in mind even if they may not have said so So we may want to seek an



amendment in the law to that and, that's relatively minor, I think

MR GALT I think so too.

MR ROGERS You're bringing these up at - may bring this up at your next commission meeting, you say

MR LOBLE: We will bring it up

MR. ROGERS. Which is scheduled for when?

MR LOBLE We haven't scheduled it yet, but we will have to do that very quickly

MR BROWN We have a few preparations to make for the legislature.

MR LOBLE I think we'll have a meeting within the next several weeks. Somewhere along the line, we've also discussed the type of agreement we'd enter into Would it be one where you would decide the quantity and priority of the Indian water or would it be like an interstate water compact where we would decide the percentages of water between the parties of th compact? That sort of thing someone will have to be thinking about

MR ROGERS. I agree and I certainly wouldn't want to take any (unintelligible) one way or the other on the best way to do it right now In my mind I've always had the notion that we'd agree in terms of a final decree. .adjudication might come out with There are probably a variety of approaches to it

MR LOBLE I think it might be well if we all started to think about it For instance, the Interstate Water Compact, with which I have the most familiarity is the Yellowstone River Compact The Power River is divided 58% to Montana, 42% to Wyoming. And, the Bighorn and some of the other interstate tributaries to the Yellowstone are divided on that basis and then Wyoming, Montana, but the North Dakota part of it didn't seem to be mentioned in it. Montana takes its 58% of the Powder and allocates it among its citizens and Wyoming does the same with its 42% That's the way an



interstate water compact is handled and every one I've read is like that I haven't read them all, but I've read quite a few of them Is that the way we should do it?

MR ROGERS In the same token, every decree read Arizona to California, whatever talked about absolute acre-feet from particular sources to whatever reservation you're talking about I think all those options we should consider, in order to evaluate them from our position and you all from yours. One of our problems which might as well mention now as well as later, and I think you're aware of anyway-we are in the process of getting new expert consultants to work with for the tribe. Substantant headway isn't really going to be made until that's resolved and they get working. But that's obviously one thing I want their opinion about before we reached any agreement on it

MR LOBLE That's interesting, if we framed the contract anyway, the Water Rights Treaty, the water rights treaties I'm familiar with are state. the court will do something like this. Hereby decreed, John Jones so many acre-feet for use during certain period of time of the year, not only the summer season, but in the winter With the priority being of such and such a day and in such and such a year Then of course, first in title, first in writing, etc. When you administer that why you can have a water right and the rest will yeild in which those are senior to it in priority dates Would that be the way it would be set up or would it be set up on a percentage basis? There may be other ways it could be set up. Anyway, we're going to have to think about how it would be approached

MR. ROGERS Does anyone have any thoughts on this or anything else with respect to Item 3?

MR MORIGEAU I may ask a question The marginal code there on subsection 1, item 3 What -- it's binidng as far as the state law is concerned, whether it's binding along with the Tribal or Trustee provisions of the law also. It seems like it's binding just on one side That way I read it. Just a question I have

MR. LOBLE. Well, I think that that is just simply the law under which we're operating as a commission here That's why it's mentioned.



MR MORIGEAU: THis doesn't mean that the legislature doesn't comply to it, couldn't change it or do I misunderstand it?

MR LOBLE Well, that's our Senate Bill 76

MR. LADD: It's a portion of Senate Bill 76

MR. ROGERS. The ratification of the compact which is provided for in this section shall be binding on all the parties.. Again, they refer to it as provided under the same title. The agreement--the ultimate compact itself would be what would be binding on the parties to the compact rather the state statute In terms of possibly concluding this agreement--If it's allright with you I'd like to take it back to the shop It's probably a thing we could work out and execute for the next meeting. It seems to take a great deal of time and I regard it as you do as preliminary and protective so as anything else. It also may be appropriate to consider whether or not to get the United States to sign it an hour later Maybe the thing to do for linking the agreement is language is for us to sign it and have them sign onto it at a later time.

MR. LOBLE: I noticed that too We proposed it, but it didn't seem to have a place for the Department of Justice to sign.

MR. LADD Well, the last discussion we had of it I think was to make a four way agreement and have justice involved on it. I don't think that'd be any problem and I think it'd be more complete that way if we did have the Justice Department sign it. That would insure that we'd get them actively involved at this point anyway

MR LOBLE: I think we'd like to have it understood that regardless that we may have submitted this form, we do think that any adjustment that the Department of Justice should be a signatory that we need

MR ROGERS. The Secretary has to sign it?

MR JENNINGS I believe so.



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MR. LOBLE. Of the Interior?

MR. JENNINGS: I guess as the trustee. On advice of Consul of Justice but still the Secretary has a legal responsibility

MR LOBLE I have this letter from Mr. Andrus, I'm sure he wouldn't have any objections to signing it if I just sent it to him

MR ROGERS. They always get nice just before they resign Well, I'll undertake for us to review it, run it through the Tribes and send it back to you Perhaps we can go ahead and execute it and I don't mind of sending it on to Myles Flint and telling him what we're reviewing right now and hope that they could sign on it too either, show up or shortly thereafter Give him a little preview of it Anything else on number 3? The number 4, our ability of opening negotiating sessions to the general public, which was discussed to some extent at your last meeting Any fresh thoughts from you about this item?

MR LOBLE. Yes, there is The commission after a discussion about this particular thing and other things in relation to it has adopted a motion dealing with this and we'd like to give you some copies of it We only have three, give you a chance to read it and then we can discuss it Sorry we should have really, I think it would save alot of time if we'd send you these things ahead of time

MR. ROGERS: Why don't I keep one. Maybe we can go ahead - the secretary of the meeting can go ahead and enter this in the minutes of the meeting at this point because this has been adopted by the commission No action required here as to this particular.

MR LOBLE. Well, other than the fact that on this issue we'd like to have your reaction to it The commission isn't going to insist that every word is sacred there If you have some suggestions that you think ought to be changed we'd be glad to hear about it. Mr Baenan said at the last meeting that these tribes had no objections to things being open in public

MR MORIGEAU: Will our sessions such as this always be held in the Flathead?



MR STINGER: They wouldn't be in Butte or elsewhere?

MR LOBLE Well, I would anticipate that most of them would be right here on this reservation, but for instance the Northern Cheyenne like to meet in Billings because people could get there easier on the airplane We don't care, we don't insist they be anyplace in particular

MR ROGERS I think there was some discussion last time about alternating some and having some in Helena

MR LOBLE: Fine.

MR. ROGERS: Maybe it was easier for some of the tribal people to get work done in Helena than here, rather than being interrupted by local tribal business too Unless they've changed their thinking, you have a strong position on that either do you, on caring where exactly I think the only place that's been ruled out has been Washington, D C If we're carrying around a lot of heavy documents we might want to reconsider. The closest point to the documents That's certainly true, we don't have any objections to public meetings. I think the June meeting discussion about the opportunity from participation from the floor Some of notion battered around were to give 15-20 minutes during the morning or afternoon sessions where the idea would be that we'd be discussing like this, they'd be listening You break that with 15 or 20 minute period where anyone in attendance could speak to something Thereby let the public get its word in too. I don't know if you have any further thoughts on that, but we certainly have no objection to that sort of procedure either.

MR. LOBLE The next topic, unilateral public meetings, is connected with this No, we wouldn't have any objection to this There might be in connection with this Maybe we could combine items 4 & 5

MR. ROGERS: Yes, why don't we do that.

MR. LOBLE The tribe may want to have a public meeting at which members of the tribe will be informed of what's going on and make comments and so forth as an internal matter And, the commission would have a public meeting at which time we'd make a formal presentation to the public, try to bring them up to date and then answer questions sometimes



it's difficult for the public to come in on the middle of something and just hear us discuss it and then ask pertinent, relevant questions. Each side could do that and I think each side ought to be permitted to do that. If it wishes to do so, because surely we all acknowledge that this has to be ratified by the Tribe, it has to be ratified by the legislature and to that end the public has to be in favor of it or it isn't going to happen.

MR ROGERS: That's right.

MRS ROTH Mr. Chairman, as I recall in our discussions with the Northern Cheyenne, they objected to the media probably catching the thread of what we say or taking it out of context and getting the public misinformed, which very often happens as you all know. And, I think that was one of their main objections to public meetings, public participation

MR. LOBLE But, they did go along, Audrey, with our motion that it was alright. I think that's the risk of public life, the media screws up the story, why, I don't know what we can do about it. It just happens, I don't know

MR ROGERS. It seems to me another way to look at this, what you'd be doing differently if you were trying a case instead of having panel discussion or negotiating sessions. If it were a trial it would be debating the merits of this document or that piece of evidence or once we really get into the substance about the measure of reserved rights and whatnot. That's all out in the open, you do retreat occasionally to discuss some things in chambers with the judge or maybe a pretrial conference with the counsel about how they'd like to handle certain things. I think we have in the back of our minds leaving ourselves that option to do that on an occasional basis, but for the most part, the discussions would be in the open. And, like trials, run the risk of public misinformatin, either because the press reports it wrong or somebody sits there and starts a bad rumor. You just have to live with that and it affects the way the thing develops and it has to do that. It's pretty hard to avoid. Your statement here it seems to me pretty good as far as it goes. It doesn't technically allow as I read it anyway, doesn't allow for these kind of informal conferences, executive sessions, pre-trial conference, among us, but if we understand that that thing may be necessary from time to time and then we come back and report. Make evident to the public what we agreed on. I don't have any problem with that. Has everybody seen this?



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MR LOBLE: We are from now on, I assume, for this meeting although any news media, I think the Secretary of the Department of Natural Resources and Conservation, kind of lends us their staff. Along with all the other types of meetings arranged through DNRC release information about this meeting and other meetings to the news media and its put in the paper, in case the public wants to come. In other words, you don't have to, under our law, as we understand, publish a formal public notice. I assume that was done for this meeting.

MR BROWN: No, that's my responsibility and I have not done it for this reason. We had not discussed with this negotiating team, the commission's position in that regard. And, so I just left it alone. I have talked to James Bond, who's the information officer for the DNRC, and I have set up with him arrangements for notifying the United Press International and all of the other sources he is in communication with for subsequent meetings, but I have not done it for this meeting for that reason. We had not yet formally discussed this with you in a meeting. And, it is a requirement that follows the state's open meeting laws that we announce them in the future. So, whether they be held in Helena, or in Pablo, we will in the future announce that the Compact Commission is meeting with the Flathead Tribes in these sessions.

MR LOBLE: Montana Power had written a letter, a Mr Walsh to me or somebody, or Scott, saying they hadn't gotten notice of the last one so I called them, Jack Burke or somebody, and told them about this meeting and Mr. Zimmerman came over from Montana Power to attend this meeting. That's how he happened to be here. But, it seems to me they are entitled to be here if they wanted to be. I told them that.

MR. ROGERS. Just for information, do you understand your laws as requiring the purpose of the meeting be mentioned in the news release that you issue?

MR. BROWN: It can be.

MR. ROGERS. Well, is it required?

MR. LADD: If we wanted to, we could argue that the notice provisions do not apply to this commission, I believe, I think it's the position of the commission though that the meetings would be noticed. The way that be done is by filing



a proposed agenda with Jim Bone, which would then be released to the wire services That is more a policy decision than a legal requirement.

MR. ROGERS I was just curious, so the agenda will be part of the release If it gets down to Commission will decide this morning on the water rights of the Flathead Irrigation Project, between 10 and 11 we might have more people show up

MR. LOBLE: We've had a little incidental press coverage, no very much It said that the Governor's committee on agricultural and I made a presentation That resulted in a news release And, Tom Kotynski, who's a reporter for the the Great Falls Tribune, called me one day and I told him of the (unintelligible) and he put out a little news on it There hasn't been much

MR. ROGERS. I think as we discussed the last time, too, the tribes may want to have their own unilateral meeting to (unintelligible) explain what they have a chance to come here and see for themselves And, that's not going to be crystal clear to everybody what we're doing even if they sat out there. May not be crystal clear to us sometime either

MR. LOBLE: Our active interest in the attention of the public may be groundless We may give it all the publicity in the world and nobody will come at all.

MR. ROGERS: Anything further on items 4 & 5? Number 6 is Mechanism as Scheduled for Exchange and Technical Information.

MR. LOBLE Someone will have to handle that other than me.

MR. BROWN. We think that is a very important part of these negotiations. I have a few questions We learned at the meeting in June in Billings that you had had a consultant and that things hadn't worked out too well, and you're seeking another consultant. We also learned that apparently there was going to be a rather free exchange of information. Naturally, all of the information we have regarding the reservation or areas adjacent to the reservation are open. But, at that time, we didn't know what the tribes' position would be regarding information that's in BIA files or in your



own files. Naturally, in working toward a settlement, from a technical point of view, we want to know as much as we can know about the water uses, we are concerned about learning as much as we can about water uses on the reservation so that we can assess the impact that any number of alternatives might have on water users off the reservation. And for that matter, anyone on the reservation, whether he be an Indian water user or a non-Indian water user, or whatever. It's very complex legal and technical issue, needless to say, but, we have for the last three and a half months been collecting everything we can get our hands on related to water use on and near the reservation. We have run into a little problem getting some information. On two occasions, I had requested some basic information that was formerly available through BIA, but as a result of this federal litigation, they have closed their files. Today I'd like to get a feeling from the tribes if they would be willing to release some of the information that was formerly available and get some kind of an idea of what is available to us and what we might have that you would be interested in obtaining. In that regard, I have a list of the information we collected. It is a very general, short list of what we have. Some of the information is very detailed, other is very general. But the deeper we dig the more we seem to be able to find. I'd be glad to distribute that list so that you see what we have.

MR ROGERS: I appreciate that. Anybody from the tribes wants to speak up, go ahead. They think the flavor of--I can't recall whether you discussed this that much at the last meeting or not, but we certainly discussed it to some extent at Helena a year ago. I drop back always to the process of discovery and litigation for the most part, basic information is going to be made available. The only thing I would request, I don't know how you submitted your research request to the Bureau that didn't respond to positively. But, if you could send us the Tribal attorneys and the Tribe for that matter, a letter requesting the kind of information you want. It gives us a chance to review it. I don't think, for the most part, it would be much difficulty, ironically, we happen to be precisely at the same point with this litigation in Wyoming then, and we're basically giving the state everything it's asking for in terms of information about different aspects of agriculture, whatnot, that's now in education, that's going on with respect to the reservation. Certainly it's all argued with relevant to the whole measure into the future of water requirements of the Tribes. But, I do think it's a more orderly process to identify the best you can the general type of information you're asking for. Because I don't think the tribes would want or the Bureau would want to have you just running through the files, obviously they'd pull out their information and give it to you, assuming it's alright with the Tribe. But they would like the opportunity,



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I think, to review specific requests That's the only caddy I'd put on it. but, I think whatever we only miss, we would both, it would be a two way street, too But if you felt in terms of us getting some information from you, we'd want to play by the same ground rules. I suspect in this instance, though, most of the basic resource information we're dealing with is here and you'd be getting it from us

MR STINGER: Well obvious to say, I think he said that you wouldn't want them on a fishing expedition, looking through the information, just pulling out everything you can drop your hands on. If you ask for something, I think you could probably get it

MR BROWN. One of the things, and I made this request by telephone, which was probably not appropriate, but I didn't realize that at the time As I said, that sort of information was formerly available through the BIA Some of it was demographic information. I was just putting out a little history of the Tribes that are on this reservation, population statistics and things like that, and it was that sort of demographic information that I was unable to get Then later, I was unable to get some of the reports from the Flathead Indian Irrigation Project, we're missing in our files Those are some of the things--I will make a list and formally request them, send the letter to Ted, and Tom and yourself and maybe we can get those reports

MR. MEREDITH: Excuse me, Mr Chairman, Scott, you called me about that. One of the things I said we couldn't furnish are some of the basic things we're using for the law suits and I thought we ought throw Justice in and get them involved in that If you're asking about demographic information I don't remember you asking about that, but some of that probably is not a problem

MR. BROWN: No, when I spoke with you, I had already spoken with Elmer Bohannon about the demographic information Then, when I spoke with you I was more concerned with farm crop yields and some of those things But, we will carry it out in that fashion then

MR. MEREDITH. That will be easier to include Justice and get them involved so they know what's being requested and get their ideas on it

MR JENNINGS: Was this back in July, Scott?



MR. BROWN: I think it was A little more than a month ago At the time, I thought perhaps, it would have done me some good to familiarize myself with what is available for this reservation and the Northern Cheyenne Reservation Just to come down and make available to the Commission anything that has been available over the last five or ten years That's been my experience, I've run into things I haven't been anticipating, there would be a report on, or information on, and I find that sometimes it's valuable to know

MR. MEREDITH. It might actually be possible, too, that you might have information that don't have then, things that have been published and distributed that are no longer available to us, but you may have in your library. So it's possible alot of things you have we can't even get ourselves.

MR BROWN. Yes, we would be very happy--for example, like right now, our soils scientists and Steve, our hydrologist, who's becoming a soils scientist, too, now are working on the ongoing Soil Concservation Services' soils survey of this reservation and areas around the reservation We really haven't determined what's going to be available to us and what is not, but we suspect that because it's being done through SCS, it will probably be available to us Naturally, if the tribe has any objections to that we would want to know But, that might be information that you aren't directly involved in and that you might also like to have access to. We'll be talking that information, transforming it into our own land classification system, the DNRC's land classification system, and estimating irrigable lands and crop requirements and things like that.

MR. ROGERS: Well, I don't think--Well, I think it's in both of our interests to have our various consultants working with the same base information Things like soils studies and so forth, probably offer the most likely prospects for mutual agreement For that reason, I don't see any real concern But we would like to know what you're asking, and give us a clue to what is being given out so we are apprised of it at the same time, too. Keep each other mutually informed about what we're exchanging

MR BROWN Ok, let me hand this general list out so that you have some kind of an idea..

MR. ROGERS What is this list of again?



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MR BROWN: Just some of the technical information that Steve and I, and Glenn Smith, the soils scientist, have been able to collect over the last three and a half months or so that we have been collecting technical information on Just researching everything that we have on hand Everything that we have on hand and in case we're engaged in an effort to determine what we know about the geohydrology of the Flathead Basin.

MR STINGER Mr Chairman?

MR. ROGERS Yes, sir

MR. STINGER On this exchange of information I would hope you'd weigh what you get and where you get it, because we in the Tribes feel--I think that's why we had a falling out over the consultants and one thing or another. The Bureau of Reclamation here, the irrigation project, whatever you wish to call it has information We feel it's only part of the picture you know We need some experts here to tell us more So, if you use any of their information we'll weight it in that light. They don't show true water usage on the reservation They just use the information on their irrigation system. Which doesn't show the whole picture

MR. BROWN Well, granted, for example, I recognize that the tribe has a lot of concern for instream flows, and yet if I were to search through any of the information that I've yet been able to uncover, there's no way that can be quantified by our own means. That's something we're going to have to work with technical consultants on

MR ROGERS Again, I think we'll be working a program later for the likely exchange of the information that is developed by the consultants That's why we need the new blood in this evaluation that's going on on your side and on our side

MR LOBLE We were given the opportunity on the Northern Cheyenne Reservation to visit the reservation and go on tour of the areas that might be of interest in these negotiations. Whether Scott would want to do the same here and make the request that we be permitted to do so, accompanied, of course, by an official of the tribes such as you may designate. What do you think, Scott?



MR BROWN: Oh yes, Dave and I and Audrey, spent two days on the Northern Cheyenne last week. I agree it was very worthwhile. Well, we had the Tribal attorney, Cal Wilson with us. He has grown up there. Everyone we ran into was a relative of his. We spoke with one farmer and irrigator, had a nice conversation with him. We had on BIA representative with us there that knows the reservation well and it was very informative. Something I think we benefited by greatly by doing. We'd like to set up something similar here if we may. It familiarizes us with the area. It gives us a real close look at what's being done.

MR. ROGERS: Did you have with you on that particular trip, any of the consultants that the Tribe's been working with?

MR. BROWN: No, that would be helpful, if possible. We had somewhat hoped that would be possible, that someone from HKM would have been there, but he wasn't.

MR LOBLE: But I guess we'd appreciate if you'd let us know if similar things could be done here.

MR ROGERS. I think your full council might want to discuss that. I don't care.

MRS. ROTH. Mr. Chariman, Mr. Chairman..

MR ROGERS. Yes, ma'am

MRS ROTH: We were accompanied, of course, as Scott said by Cal Wilson, who's the legal consultant for the Tribe, and it's a very small reservation so we were able to go. But, we only went where we were asked to go and what we wanted to see. It was most informative, I see how else we can get a good handle on this thing unless we do see and do talk to some of the people who are water users.

MR ROGERS: Same thing again, this kind of thing is basic information. The only difference between us and them at this point is that even though HKM wasn't present at this thing, their involvement out there, or the other consultants too, for that matter, materially intense, at one time or another, recently. So the key areas are more obvious to the Tribes too. The Tribe obviously knows its own reservation.



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very well, but its what (unintelligible) in the future look upon as important areas aren't that evident t us right now. It might not be as informative a tour at this point either It's just not as keyed in I think maybe something the Tribes might want to wait getting a consultant on board with before they went ahead with Ultimately, I think that has got to be part of it, consider it as part of the exchange of information.

MR. BROWN It's just a good education

MR. ROGERS: And I understand it's just a general tour But, that is one item that appropriate for the council to consider.

MR JENNINGS: Mr Chairman?

MR. ROGERS: Yes?

MR JENNINGS· In items one and two on this list, I don't see any problems with that, but we could provide that information we do have. either here at the agency or, or. .

MR ROGERS: Are you looking at this list?

MR JENNINGS· Yes.

MR. ROGERS: I think they already have that information

MR BROWN This is the information we already have, but ther's a good question as to how accurate it is Some of it is very brief. When I submit to you a request for information it might overlap and ask for any updated material For example, we learned last week that on the Northern Cheyenne Reservation some of our land ownership and acreage figures were incorrect. Perhaps there's an updated report or something like that We're talking about a significant amount of land, 30,000 acres in error We sure like to know where we stand.

MR. JENNINGS· I'd like to point out Scott, that of course, the request didn't come though me. I was gone at the time, but I left standing orders with my staff that inquiries



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from other than the Tribes, the attorneys, the people involved with the litigation for the Tribes were to be deferred to me or to the solicitor's office. And, of course, I happened to be on vacation at that time. I apologize, but my staff was carrying out their orders

MR BROWN Oh, no, even before I called I knew there would be certain information I should only request through this forum, but again, here was information that had formerly been available and I thought there would be no harm. But, I can understand and will request information under these circumstances now

MR JENNINGS. But summary of ownership, I think, we can supply that. We might have some problems correcting the figures for you or getting an update. Summaries of land uses as they exist in the last couple of years I don't see any problems with providing that kind of information for you or find out for you. Precipitation records and maps those are a matter of public record through the state. Whoever handles that.

MR BROWN We have good information on that

MR JENNINGS: Same way with length of prospering season, evaporation. We would have some problems identifying commercial and industrial firms near the reservation. We'd have to make a survey, even on the reservation, to get that information. Water requirements, that's something that we don't have available at the moment.

MR BROWN Item 6, and I might point out again, George, that this list is information that we have. Again, we might want to add to it by covering it again but, a man who works for the state's Water Quality Bureau, I'm sorry I don't remember his name, in Kalispell, just provided us with a lot of information regarding municipal and community water all through the Flathead Basin

MR JENNINGS. Was this part of the 208 study they did?

MR BROWN Some of it was taken from the 208, some of it is just their records that are kept routinely on water quality and water quantity from municipal and community use. So there's a source of that. We'd be very happy to provide you with that information if you don't have that



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MR ROGERS. That's one thing I'd like to arrange once we get somebody on Board is to appropriately have them take a look at what you've got and what you've got from us too, so, right now if you have a lot of information and you were to turn it over to us we really wouldn't have anybody appropriate to review it all

MR. LOBLE Well, I think, Tony, when we had that meeting a year ago you expressed some thought that you didn't want information to be just one way In other words, not that Tribe does. I think one of the purposes of what we're presenting here is to show you that we don't consider it to be one way This is information that we have which we're telling you about or making available to you and really I think it's all the information we had We're just throwing open to you

MR. ROGERS: I appreciate that

MR LOBLE To show you our good faith

MR ROGERS I appreciate that

MR JENNINGS: Your soil survey, now is that a county survey?

MR BROWN: Our own Yes, the one that was done in this area about twelve years ago

MR JENNINGS: And, they're updating that

MR. BROWN It's being updated by using any information available thorough Water and Power Resources Service and Soil Conservation Service. We're concentrating on, or course, this area because we're in negotiations and we recognize that determination of irrigable lands is very important to the process. So, we're concentrating on this reservation and the Northern Cheyenne and of course, all the drainage that is above or below or adjacent to the reservation. It's something Steve is working on right now

MR JENNINGS. These will have the new aerial photographs, or whatever they call it, maps, in there. Soils laid out on the maps and uses laid out on the map, too, or



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symbols indicating which is best management average. Management of what those soils can be used for Is that correct? A typical county report that they've been working on for the last fifty or sixty years across the nation

MR MORIGEAU Before George flips over to page two here Number five Industrial Commerical Enterprises-that includes the Tribal Hydroelectric Site?

MR BROWN I'm sorry I'm not with you, which one?

MR MORIGEAU That would be on page one, number 5, I just asked on Industrial and Commercial Enterprises-that incudes Tribal Hydroelectric Site?

MR BROWN Yes, we have a little bit of information through our Energy Division on Kerr Dam, its operations since it's existed, very limited information on the contracts existing between the tribes and Montana Power But, there, on Item 5, Industrial and Commercial, we have only a little information Simply, a lit, in some cases, of the commercial developments. So there we will need to obtain much more information.

MR JENNINGS. I assume your hydrology information right at the moment, is coming out of USGS reports.

MR BROWN. Most of it Although the state maintains some gaging stations, none of them on the reservations All of the state's own gaging stations, well, most of them are on the upper end of the drainage Of course, that's important to us, because it would seem at some point we might want to determine the amount of water that arises on the reservation, that's going to be a pretty good trick, here, because the Flathead Lake acts as a collecting basin for so much ground water and the gaging stations north of the lake, and then the next one at Kerr Dam, leave an awful lot of space There's an awful lot of water that arises that, I think, at this point only speculation tells you where the water comes from.

MR STINGER: Well, I could show you on the map right back there, if you want to look there There's a map of the reservation and all the green is about the watershed on the fringes around there with the exception of the water comes in from the north on Flathead Lake All the Tribal land is the green and the white is individual allotments and the red



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being the state. And all the watershed except the Flathead Lake is on Tribal land

MR LINFORD Does that map, are those boundaries, on the watershed boundaries on top of the mountain, sort of thing? Surrounding the valley?

MR STINGER Now there's two cases where the irrigation project gets water off the reservation, that's one on the west side and one down in the Jocko there, are the two I know about They pick a little bit of water up to come (unintelligible) that's only two places

MR MORIGEAU: You take a considerable amount of water out of the lake, too

MRS. ROTH: You mean that the lake fluctuates so that makes the ..

MR MORIGEAU Well, what I was referring to was other water that arises on the reservation and used in the project. But, under (unintelligible) they can only pump so much water. This also depends on the fluctuations and conditions of the water. So it's pretty hard to measure all the water coming into the project.

MR. ROGERS George, did you have any more questions about the three pages here?

MR JENNINGS: No

MR LOBLE. At some appropriate time, we'd be interested in knowing the tribes' position as to non-Indian water. That is, what amount is being used by non-Indians. We'd like to review that, whether that's your reserved water right or whether it isn't. Once it's transferred to a non-Indian, it no longer has the classification of a reserved water right and its date of priority is as of the date of first beneficial use and once it's transferred the status of the reserved water right is extinguished, that's the way I understand the Walton case. The ninth circuit interpretation of that (unintelligible) and on this reservation, particularly, that is going to be important. to know what the position of the tribe is on this.



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MR. ROGERS Well, I can anticipate Tribe's position is based on a look to the future. At least to some extent the reacquired lands the tribes might ultimately one day take back into trust would be entitled to the tribe's reserve non-Indian hands. That's the position we're taking in other litigation. I've heard nothing from these tribes to indicate they want to argue any differently so that's the position that I'm going to take. Now, I don't think the Walton case has gone that far to answer that question, because it really didn't have to deal with the reacquisition situation. We do have the Anderson case. Spokane Reservation dealt with that and there unlike here.. There they had a restoration problem and an acquisition problem. There was a portion of the reservation that was open to homesteading. It was on the market for a period of time and a lot of the land was not sold ever. It never left federal ownership, federal, Tribal ownership and the court held that Anderson at that. And, then there was a special order or series of orders to restore the land clearly to Tribal ownership. And, the court held that the restoration, the restored lands held the priority of the original reservation and at the reserved price. As to land, several sections of land that had left Indian ownership completely. The Tribe wanted to reacquire that. The court held the acquisition date would be the new priority date with that land simply because they said it was a break in Indian title. That's the law, in that case we agree with the first part, and don't agree with the second part. Our reasoning is that within the exterior boundaries of the reservation. The purpose of the reservation is still there to be met. If the Tribes do reacquire land in the future then the purpose of the reservation is still there to be met. If the Tribes do reacquire land in the future then the purpose of the reservation applies those parcels as well. I think we'll also take the position. I'm sure how much of this there is on this reservation. That land which is owned by Indians, is also entitled to a reserved right. Now, simply because an Indian owns it and that's part of the reservation purpose.

MR. LOBLE. What is an Indian, according to the Tribal rules? Is there a percentage of Indian blood?

MR. STINGER It depends on the reservations. Everybody has different enrollment regulations.

MR. ROGERS There's two questions as to what's an Indian and what's a tribal member. The qualifications for becoming a member-any more stringent than becoming an Indian Quarter blood requirement is the blood quantity requirement presently here and I guess on most reservations. The BIA



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recognizes someone who may not be a Tribal and has a series of other qualifications

MR. LADD It seems associated with what we're talking about here, to discuss just who each side represents The problem arises mostly in land that's now out of trust ownership, held by a non-Indian, as to whether the tribes' negotiation teams are going to represent those persons, or whether it's proper the State represent those folks who are kind of caught in the middle

MR. ROGERS A non-Indian owning fee land on the reservoir? I would expect the tribes, I don't think the counsel considered this, to some extent they can speak for those individuals and therefore the Tribal attorneys can't really speak for those individuals I don't think these Tribes have any problem with the Walton holding that a non-Indian owning fee land doesn't have a reserve right itself That's there a (unintelligible) quality of the land when it's out of Indian ownership if it's within the reservation boundaries. If it's ever reacquired in trust by an Indian or by the Tribe it's entitled to a reserve right then, but it's not when it's owned by an Indian, we don't disagree with that part of the Walton holding So to that extent, those individuals are like any other state users in the rest of the state They got their own counsel, or go pro-say or talk to your guys about it I would think Likewise, it's optional with a Tribal member. There may be some Tribal members that don't want to be represented by the Tribe You can't dictate what their own individual positions would be. Take the position that the reserve right we're talking about is a Tribal right. The reservation of the right, flows from the Tribe. There's obviously legal disagreement about that, between leaving some suggestion about it and Walton as to whether or not it's a Tribal right or have an Indian allottee it becomes his right with no connection to the Tribe, but you've got the confusion in there that the Tribes regulate reserve rights on the reservation. I don't think the court made it clear how the two concepts mesh in Walton. But it may be the allottee may not agree that the Tribe had regulatory authority over him So, they may not take the same position in each case

MR. LADD: And, further indication in Walton that the State would have authority over non-Indian owned land on the reservation and the concern that raises You try to fashion a compact, the time the compact is entered into that land is held by a non-Indian then you wouldn't assume there would be any reserve right that you have to The water right that then would be with that land would only be that acquired



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under statutory proceeding Yet you start talking of reacquisition of those lands and this I'm sure would be a point we'd discuss in length in the future Reacquisition of that land you're talking about restoring the reserve right, so, it seems to make a little bit of confusion for that particular portion of land Sort of being represented twice or not at all.

MR ROGERS It's a question of regulatory sequence, seems to me If it's in Indian ownership its, the Tribe can regulate, if it's non-Indian owned, the state regulates, but there's a shift in time there at some point There's going to be trust land certainly on every reservation that's trust today and will be free tomorrow At that point Walton is right and the state assumes control, so that's confusing and the next step you're suggesting is also confusing If it goes back into trust again, then the Tribe resumes

MR STINGER I could make it even more confusing We get in some real situations here Some gets inherited and somebody dies and we've got some case where the Tribes are in and an individual Indian is in it and then we've got a non-member who's got an undivided interest in it also So, there's three different categories there. That happens pretty regularly

MR. ROGERS: There's another lawyer down at the end of the table

MR MORIGEAU I was just thinking about the secretarial water rights Certainly we have one on this reservation, I guess it's the only reservation in the United States that has a secretarial water right plus the Secretary of the Interior, plus a BIA representative, that knows more about it than I do. These rights transfer back and forth between Tribal members and non-Tribal members (unintelligible) water right transfers Take their water right right back again That's one water right, the other water right in the irrigation project as much as I understand about it, is that people don't have a water right They get just what they pay for. They pay for just what they get

MR. GALT: Excuse me Go through that secretarial water right again. Does that give it to the tribe or to the individuals?



MR PABLO I would like to ask a question if I can. I though probably this was alluding to secretarial water rights, somebody was concerned and this has been a question and concern. Now this was trust with a secretarial water right on it, I'll ask a gentleman down here what water right they were asking apparently went with the land. If it went from trust status to fee What kind of water rights are we talking about?

MR LADD We were talking about in the Walton decision the fact that any reserved right to be extinguished and that the only water right that would pass would really be equivalent to a regular appropriation right. In other words, priority date of the date it was applied to beneficial use and the quantity that was being used at the time land passed out of trust.

MR. ROGERS. Walton held that the non-Indian took with him state right with a priority date when water was first applied to that land

MR PABLO. When did the state right go into effect? The day that he bought it? Because it couldn't have been a state water right on it

MR. LADD It wasn't acutally a state water right. It in essence amounts to the same thing as a state water right I believe in Walton it's involved with the Dawes Act It's supposed to give the individual Indian the same right to sell his land as a non-Indian would have In other words, Judge Neill thought it inequitable to have the right totally extinguished, so they were allowed to pass the same right as if it had been a state water right. So in essence, you could say a state water right came into being at the time we passed that of the trust.

MR GALT: I still don't know what a Secretarial Water Right is.

MR PABLO Neither does the secretary

MR MEREDITH At one time up here when they were doing some work and digging ditches and so on They gave people ditches that had water rights already and changed them or converted, did some different things, so the issued had to be called Secretarial Water Rights to people covering certain



land I think before we fully know what they're going to do, we're going to have to do a lot more research ourselves and try and find out what it's all about. It's kind of confusing at the present time

MR GALT: Did they go to individuals or to irrigation district?

MR STINGER Individuals One more thing I've noticed in the ones I've seen in the secretarial right they'd only cover maybe a portion of your land If you had an 80 maybe only 20 was irrigated from a stream that was in existence before the canals come thorough and stuff, and so you've got that water I've often wondered what you do on a later date when it comes sprinkler time and you could irrigate the whole 80, but you only had a 20 acre water right. I don't know those things

MR. MEREDITH: I think it's something that we'll have to when we get into this, do all our research and get it figured out. Trying to find out just how it fits in and just what their purpose was. Under the general (unintelligible) that Dave was talking about the secretary was given authority to regulate water on the reservation and it may be an offshoot of that. We'll have to see how it fits into the scheme of what they were doing at the times

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MR. MORIGEAU: These secretarial water rights that were issued to Indians and non-Indians alike .

MR. MEREDITH: I think in event, they were trying to pay people for what they had already done in developing water rights and giving them a paid water right of some kind and what is coming afterwards. So we're going to have to figure out a way and see how they fit into the whole scheme

MR. ROGERS It adds another issue or two to the whole pie

MR MEREDITH: Right That makes it more confusing up here than it is in other places.

MR GALT: Is this the only reservation that that applies to?



MR STINGER That's what the BIA told us.

MR. ROGERS. It doesn't apply to that I've had anything to do with. .because of this statute.

MR ROGERS: Trying to perceive where we were with the agenda. I don't know if we're in 6 or whether we've merged into 7. I'm sure stressing theory Maybe want to continue My own values might want to hold a lot of this substance until later, but everyone wants to continue that's fine with me too.

MR. LOBLE Do you mean after lunch?

MR ROGERS No, I meant later. I was thinking of other meetings.

MR LOBLE I can't think of anything else. We do have a meeting with Ted Meredith and Larry Jakub in Missoula on October 22nd. It's on federal reserved water rights It has nothing to do with this I was just going to tell you about it.

MR ROGERS Alright.

MR. LOBLE: There's a meeting of-I had a letter from Senator Baucus..

MR. MORIGEAU Another councilman just came in, Bearhead Swaney.

MR. SWANEY: I was just trying to put who on what side.

MR GALT. We're all together.

MR SWANEY. I'll bet Where Indian water is concerned, nobody's with us.

MR. LOBLE: I just mentioned this so it may be helpful. The letter came from Senator Baucus in which he told me that the meeting will be at the University of Montana Law School.



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He says I am sponsoring a symposium of the federal preemption of state's rights on October 21st, 9 00 a m to 5 00 p.m., University of Montana Law School, and they will tak about rights We were thinking about maybe going to it, but I thought I'd tell you about it in case you hadn't heard it.

MR ROGERS. What are those dates, again?

MR LOBLE. October 21st, 9.00 a.m to 5 00 p.m , University of Montana Law School in Missoula, and if you want to go you should contact Mrs Nimlos, Symposium Coordinator, 728-2043. If you want to have lunch .

MRS. ROTH And the following day October 22nd, is the federal rights in Missoula? We're going to have a meeting with the federal people and the next day we thought we were going to go to this symposium on the 21st just to see what happens. It has more to do with fast track legislation than it does with this. I mean fast track Congressional Legislation

MR. ROGERS. This isn't just related to water rights then?

MR. LOBLE No It's just a small part of it

MR. ROGERS: It was Federal Preemption of State Rights, was the title of it.

MR LOBLE That's right Symposim of the Federal Preemption of State Righths

MR ROGERS Are there any other matters of special concern then? You might say for budgetary reasons it's not likely we'll have a consultant starting before October We're trying to get that done as soon as we can so we can get reorganzied here Make future sessions a little more meaningful for us Does anybody have any ideas about preparation for subsequent sessions?

MR BROWN I think as far as we're concerned we are at a stage now where exchange of technical information and an



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understanding of what kinds of data will be needed, is necessary. I guess we'll wait until .

MR ROGERS I think, basically we'll have to wait until we get our consultant and see where we go I don't know if it's productive to have another meeting before we do that

MR LINFORD Mr Chairman?

MR ROGERS Yes, sir?

MR LINFORD Would it be advisable for the tribes and the Department of Natural Resources to sit down together, when you get your consultant on board, to sit down together and agree on the types of information you're going to need, and possible sources you could get it from, to exchange information. Seems to me that you might save a little duplication and as well as one's effort in this area

MR ROGERS I think that will be true I think the way most of these things work, that's pretty much, on a more informal basis, pretty much what the tribal consultants normally do anyway

MR. LINFORD. Sort of a working committee type thing.

MR. ROGERS: Right, yes. These people tend to be a little bit more tied in and have better contacts in state government than the tribes do anyway. Certainly more than the tribal attorneys do anyway So, they can develop this thing but since we do have a formal structure here that seems to be an obvious thing for the consultant to use It's not that-- It's not ture, actually that most of this probably hasn't been pulled together already It's not like the work that Mr. Criddle did is forgotten Basically I think he did collect all of the basic material and maybe some new information that's developed, a few crannies here and there that may have been missed, but basically I thik it's been gotten together too. Whoever else comes along to pick up where he left off it going to want to know what he did and be sure he's covered the ground I think your suggestion's a good one to that end Yes, sir?

MR. HOLNBECK Just from the technical standpoint, I guess it's kind of important that people are aware of their



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approaches, criteria that each group sets. I might just be reiterating something, but since I would be involved with that aspect, it's better to know where each person is going, from the technical standpoint, so that you don't produce a figure and then have it subject to question from other parties

MR ROGERS I don't think this is going to have to delay our keeping in touch with one another Even having meetings like this, but we have to be realistic, too, that our situation with consultants is just simply not as advanced as Northern Cheyenne's has been There's going to be a little more delay while these people get up to the same speed the other reservations has already got They've been at it for three or four years over there, more or less, not on an intensive basis, but the consultant has been there for that long. I'm not suggesting three or four years here, but getting information together is one thing, and then putting together useful, meaningful for us, that we can deal with you-all about is obviously a major next step It will take some time Maybe toward that end it may not be a bad idea to plan another meeting like this, at some point, even though we know we aren't going to have lag time here just to keep in touch Maybe Richard could come sometime in mid-December If we get a consultant in advance of that, that's not going to forestall doing the kind of thing you suggested, but a formal meeting of the commission may not need to occur again in as little as a month's time, in view of our posture

MR LOBLE I think mid-December would be fine with us.

MR ROGERS I've got this trial I mentioned in Wyoming that's going to start December 1st, if it starts then it will go for a couple weeks, so whether I can get here or not, but if I'm not here, Richard can certainly come In terms of keeping each other informed It's worth continuing this operation.

MR LOBLE Two things we have to immediately set up and then we can sort of target for. the thing won't just lag and stop and people forget about it.

MR ROGERS: It seems to me that the way it's going to work is that the exchange of the basic information has already started, especially where you're concerned, although we've had a delay. Criddle's already started it for us too, but we have to pick it up again. The next most meaningful thing that's ever really going to happen is after our two



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consultants sides have done our work and basically ass we're going to be able to discuss in the mean time seems to me, preliminary stuff, and even our discussions today about what Walton says and means and so forth doesn't really further the object of getting the facts developed and this is basically what we've got to do I don't think we should regard the delay that we're doing it, but at the same time when you start taking additional steps, as you're talking about your soils study review the purpose of any meetings like this we can get an idea what everybody is doing and further the exchange

MR. BROWN Would you like to choose a date, tentatively in December, and a place then? Right now?

UNKNOWN: 25th. Trying to cancel Christmas this year

MR ROGERS What is three months? December 16th?

MR. LOBLE That would be alright with me.

MR BROWN. December 16th, would you like to come to Helena? Would you like us to come here?

MR ROGERS: I asked the chairman of our council, which he preferred He said he really didn't care. What's easier to get in and out of in terms of weather that time of the year? It doesn't make any difference as long as its near an airport

UNKNOWN It's easier for us to do it here

MR LOBLE Helena is served, occasionally, by Frontier and Northwest.

MR. BROWN We might consider Missoula. I'm sure Missoula has a better flight schedule than does Helena They have direct flight from Salt Lake City or Denver that doesn't go thorough Helena.

MR. ROGERS It saves a little cost probably to have it, as long as you're coming that far, we might as well have it here.



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MR LOBLE Yes, why don't we tentatively make it in Helena, for a change, and then if you decide it doesn't fit your schedule or something, then we won't have it there We'll have it someplace else.

MR ROGERS Ok

MR. LOBLE: Tentatively, we could have it at the DNRC in the conference room on Ewing, what's?

MR BROWN 32 S Ewing - E-W-I-N-G

MR LOBLE: In Helena?

MR. BROWN: In Helena

Mr Loble At 9 00 a m ?

MR. ROGERS. Does anyone have any closing statements?

MR LOBLE. I was wondering does the tribe have a published constitution of by-laws? A copy of which we could take?

MR STINGER Sure.

MR. ROGERS Does anyone hae anything they'd like to say in terms of any remarks, closing statements, or whatever?

MR. MORIGEAU Well, I think we ought to continue I guess we are, the second one is planned, so we ought to keep on talking, so I can conclude with that

MR. LOBLE Well, we fully agree with that

MR MORIGEAU: We might have a little more information for you too, on the water that (unintelligible) and arises on the reservation We'll have to talk to some BIA people on that, I think.



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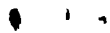
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MR ROGERS Anything further? Without objection, we're
adjourned



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