

September 5, 1985

TRIBE: Confederated Salish and Kootenai Tribes of the Flathead Reservation

DESIGNATED NEGOTIATING REPRESENTATIVES:

August 16, 1984: The Tribe officially designated the following representatives: Council Chairman Joseph Felsman, Councilmen Michael Pablo and Ron Therriault, and attorneys Daniel Decker and James Goetz.

MEETINGS/NEGOTIATING SESSIONS HELD:

June 18, 1980: Introductory session; major topics included discussion of open meetings, public participation, statements to news media, the process of incorporating compacts into the water court proceedings, standards for quantification, and federal involvement.

September 16, 1980: Discussion topics included: federal involvement in the negotiations, proposed Rule 408 agreement on confidentiality, the finality of compacts, the incorporation of compacts into the state's general adjudication process, public notice of meetings, exchange of information list, a future tour of the Reservation, the status of non-Indian water uses on the Reservation, and secretarial water rights

May 1981: The Confederated Tribes filed suit against the State in federal court, seeking an injunction against the State from issuing any permits for water use on the Flathead Reservation, federal court adjudication of all water rights on the Reservation, and tribal jurisdiction over all water on the Reservation. The Tribes simultaneously discontinued negotiations with the Compact Commission.

July 19, 1984: Informal meeting at the Tribal Headquarters in Pablo to discuss the possibility of resuming negotiations.

November 19, 1984: Discussion topics included: the proposed amendments to SB 76, a proposed Rule 408 agreement, the pending litigation and the relationship between a proposed settlement of that litigation and negotiations with the Commission, open meetings, public participation, and aboriginal rights off-reservation as a proposed topic of negotiations.

TYPES OF INFORMATION GATHERED

Historical Background

Important cases regarding the Flathead Reservation include U.S. v. McIntire, 101 F.2d 650 (1939), State v. Stasso, 172 Mont. 242 (1977), and the pending water case, Confederated Tribes v. State, CV-81-147).

Technical information gathered includes soil survey maps and data for Lake County and partial review of land classification maps and data.

POSITIONS TAKEN

The Tribes resumed negotiations in the Fall of 1984 after suspending talks in 1981. They have indicated that they prefer to negotiate but that they intend to proceed with caution. It is not known what effect the approval of the Fort Peck Compact will have on their willingness to negotiate, nor what the effect of the State's proposed action in the pending lawsuit will have.

The Tribes suggested that the technical staff from each party meet and determine what information needs to be developed; and they agreed to develop a general outline of the scope of aboriginal rights they will be claiming off reservation. The Commission agreed to keep the Tribes informed about legislative hearings as they occurred; we also agreed to have the technical staff meet and discuss the information base available and what additional information is needed; and we agreed to provide any memos or research on the questions they raised regarding challenges to compacts in the water court.

UPDATE: JANUARY 15, 1986

Since the last progress report, two negotiating sessions and a technical meeting have been conducted.

September 11, 1985: Discussion topics included (a) the Tribal Council's conclusion that negotiating sessions must be closed to the public and confidentiality strictly enforced, (b) the Compact Commission's position with respect to closed negotiating sessions, (c) briefly, the exchange of technical data, once generated, (d) the Tribes' federal suit challenging state water court

jurisdiction, which had been stayed by Judge Lovell, (e) the Fort Peck-Montana Compact and its possible implications for these negotiations, (f) the federal suit filed by the Tribes against the Flathead Irrigation and Power Project alleging that the Project's operation interferes with instream flow requirements which was dismissed when the United States agreed to provide the flows sought by the Tribes, (g) the operation of the Flathead Irrigation and Power Project, (h) the Tribes' claims for aboriginal instream flow rights off the reservation, and (i) a proposed Rule 408 agreement.

November 18, 1985: Discussion topics included (a) the Tribes' position that negotiating sessions must be closed, (b) the Compact Commission's position that open meetings are encouraged; however, a meeting can be closed if a closed meeting is absolutely necessary in order for negotiations to proceed, (c) the proposed Rule 408 agreement, which is being finalized, (d) joint news releases, (e) a meeting of the two parties' technical advisers on October 7 (summary attached), (f) complicated land ownership on the Flathead Reservation, (g) objection by the Tribes to the Department of Natural Resources' action to certify to the Water Court an individual's application for a change in place of use within the reservation, (h) possibilities for sharing the costs of generating primary data, and (i) another meeting early in 1986.