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THE FORTY-SECOND MEETING OF THE  
MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION  
STATE OF MONTANA

THURSDAY, DECEMBER 10, 1987  
9:30 a.m.  
Governor's Reception Room  
State Capitol  
Helena, Montana

Senator Jack E. Galt, Chairman

CHAIRMAN GALT: The meeting of the Reserved Water Rights Compact Commission is called to order and welcome our last member, Mr. Etchart, just walked in. I would like to drift away from the agenda just a minute and introduce to you Mr. Ross from a law firm in Denver, Colorado who has been hired by the Water Policy Committee to, at the direction of the legislature to give a good look and comment on our adjudication, water adjudication thing as it's going onward. And so, Mr. Ross, would you have anything you'd like to say or...

MR. ROSS: I think so. Thank you, Mr. Chairman. I think I've met many of you as you came in personally and I want to thank you for taking the time to visit with me for a moment. We've had a very interesting time trying to get up on the learning curve with respect to the way things are done in Montana and we don't presume at this stage to know enough to be able to do any more than ask questions and hope that they will be useful and intelligent questions. By the time we get through with it we will be, again, prepared to advise our client, the Water Policy Committee, on what we think about the way the process is going forward, where there may be problems that maybe available to signify legislative action and then to make general recommendations.

That program is scheduled to come into focus with a preliminary report by the first of August of next year. On receipt of that report and after the Committee has evaluated it it will be available for subsequent review and comment by public and I would hope specifically by this Commission. We are especially interested in the views of this Commission, of its staff, on the problems that we need to look at in trying to help the Committee address the questions it has to address. From our experience in looking at what happens to headwater states when they get involved either in interstate water apportionment or when they attempt to deal out with reserved rights claimed by the United States or Indians--if they do it by way of litigation many people who end up benefiting are the lawyers, the engineers who try the case and I say that as a lawyer who enjoys litigating, but our judgement has long been that the best way to go about resolving issues like that is through negotiation and our view so far is that the concept that you people have followed--attempting to negotiate those matters out through a Commission of this type--makes an awful lot of good sense.

I don't know enough about the process yet to know what problems you've encountered and we're here really to soak up all the information we can and any help that you can provide us in getting a better understanding of the

problems you're trying to face, that you're trying to solve, the more we're going to be able to serve the best interests of the state and the Committee. Now, I don't want to burden your time any further this morning, but just to say hello and make you aware of our concerns in our study and to solicit your help in giving us all of the input you can. I would add that under the terms of our agreement, and we would expect this to happen anyway, we expect to treat any communications that are made to us for the benefit of the Committee in strict confidence. So, candor is most appropriate in helping us understand the issues. We will preserve and trust those confidences because it helps us get a better feel for the entire mix of problems that need to be resolved. Mr. Chairman, I don't want to burden you further on it. I know you have a busy agenda and unless the Commission members have questions or other things they'd like to ask me I'll be happy to be excused.

CHAIRMAN GALT: Thank you, Mr. Ross and do any of the Commission members have any questions you'd like to direct to...

MR. DAVIS: I have a question, Mr. Chairman. Were you involved in Jesse, your firm in Colorado?

MR. ROSS: Was I involved in what?

MR. DAVIS: In the Jesse case, the one that just came down?

MR. ROSS: Yes, we're in that case.

MR. DAVIS: Is there going to be an appeal taken?

MR. ROSS: The lawyers are arguing about it at this point.

MR. DAVIS: Pardon?

MR. ROSS: I can't tell you. Some of the lawyers believe it ought to be appealed. Others say let's go back and try the fact case and let...

MR. DAVIS: So, it hasn't been decided whether...

MR. ROSS: It has not been decided.

MR. DAVIS: Thank you.

CHAIRMAN GALT: Any further questions?

MR. McOMBER: One, Mr. Chairman. Mr. Ross, are you going to be soliciting written input from this Commission?

MR. ROSS: Yes, we want to, whatever input this Commission is willing to give us we'll be anxious to receive.

MR. McOMBER: Okay, but we won't be hearing from you officially in regard to that?

MR. ROSS: By officially I'm not sure I understand what you mean. We expect to schedule interviews through the Committee staff with all of those who have a significant involvement in the water adjudication process. We will be meeting with your staff, but with respect to meeting with the Commission members we will be happy to have that done. The schedule of interviews will be coordinated through the Water Policy Committee staff. We simply can't take on the burden of trying to decide who ought to be the people we're going to interview. I would assume that there would be ample opportunity to get the views from individual Commission members.

MR. McOMBER: Well, Mr. Chairman, it's my feeling if there's going to be any interviewing done with anybody on this Commission it should be the Commissioners. Now, I have no objections to interviewing staff, but the legislature in creating this organization was very explicit that the nine Commissioners on the Commission had the decision making authority and I'm suggesting, Mr. Ross, that if you want to get some input from this Commission that you go directly to the Commission members.

MR. ROSS: I'm interested in all the information I can get. We'd be happy to that.

CHAIRMAN GALT: Any, for the benefit of the Commission members, we'll pass this around and let the Commission members read it and we will probably give that to Mr. Ross before he leaves Montana--just a little memorandum addressing the goals of the Commission, etc. But, we'll get that to you through Debbie's office.

MR. ROSS: Very good.

CHAIRMAN GALT: Thank you, Mr. Ross. If there's no further questions.

MR. ROSS: Thank you. Look forward to working with you.

CHAIRMAN GALT: See you tomorrow. That was just a little addition because he wanted to appear and introduce himself to you. You have the minutes of the September 3rd meeting--were forwarded to you. Do you have any corrections or additions to them?

VICE-CHAIRMAN TWEETEN: Mr. Chairman, should we adopt the agenda?

CHAIRMAN GALT: Do we have to do that?

VICE-CHAIRMAN TWEETEN: I don't think so. It's on the agenda as an agenda item.

MS. RUNDLE: I have one question about the agenda.

CHAIRMAN GALT: Every time we adopt it we change it.

MS. RUNDLE: That's true. I do have question with regard to the agenda. We have a list of persons who have requested to be sent Commission agendas on a regular basis and we have done that. This time we have also had a request from a tribal attorney for an agenda. So, when we got that request

we sent the agendas to all the tribal attorneys and I'm just wondering if that shouldn't be done as a matter of course and I wanted to suggest it at this time or solicit input from the Commission members as to whether we should expand that list of persons that we're notifying about Commission meetings.

CHAIRMAN GALT: Does any member object to having the tribes notified of the agenda?

MR. DAVIS: Well, Mr. Chairman, I don't have any objection at all, but I have certainly a reservation about whether you want to expand it to anyone that doesn't request it or need because you get all these things you throw in a waste basket--I get a million of them a week and so does everybody else...

CHAIRMAN GALT: But, if we give it to one tribe I would suggest that we give it to all of them just as a cover.

MR. DAVIS: But, as far expanding it any further unless there's a request, it's open meeting, but instead of mailing to everybody in the world.

MS. RUNDLE: We regularly provide notice to the newspapers and media and then we also have a list of persons who have requested--the Sierra Club in Colorado has requested notice, the Kaleczyc law firm has requested, Washington Water Power has requested. There are some persons like that that we send to regularly and then we just get occasional requests from other people.

CHAIRMAN GALT: Mr. Iverson, did you have...

REPRESENTATIVE IVERSON: I'd agree completely with the categories of people you were just talking about that they should be dealt with on a request basis, but I think it's entirely appropriate--in fact--yeah--it's entirely appropriate that we send it to all the tribes. I mean we're talking about federal reserved rights here. We're talking about tribal negotiations and I think that they should be continually notified when we're meeting and what our agenda is going to be as a matter of courtesy.

CHAIRMAN GALT: Any further comments?

MR. ELLIOTT: Mr. Chairman, with that in regards to the other federal agencies, would the agenda go out to them, the Department of Justice, the Department of Agriculture--all the...

MS. RUNDLE: If that would be appropriate I would certainly include them.

MR. ELLIOTT: Well, I don't know how you'd exclude anybody--if you're going to send them out, just send them--I would think.

MS. RUNDLE: I would propose that we just pick one--the main contact person in each of the agencies for the Solicitor's Office and the Tribes and trust that they will inform whoever would be appropriate within those agencies.

MR. ELLIOTT: Move the agenda.

CHAIRMAN GALT: Agenda has been moved. All those in favor signify by saying Aye?

UNISON: Aye.

CHAIRMAN GALT: Now it's adopted, Chris. Now we can start changing it.

VICE-CHAIRMAN TWEETEN: I'm satisfied.

REPRESENTATIVE MAZUREK: Can we deviate from it, like, can we move things up and down?

REPRESENTATIVE IVERSON: I don't understand that process, adopting agendas.

CHAIRMAN GALT: Are there any corrections or additions to the September 3rd minutes? They were all sent to you. We'll give you a little time if you... If you're satisfied I would accept a motion to adopt them.

MR. DAVIS: So move.

MR. ETCHART: I'll second that motion.

CHAIRMAN GALT: It's been moved and seconded that the minutes of September 3rd be adopted. All those in favor signify by saying Aye?

UNISON: Aye.

CHAIRMAN GALT: Opposed, no? The minutes are adopted. I don't know, this agenda that you just adopted, I don't know what the Chairman's report is, we haven't done a whole lot since we met the last time outside of the individual negotiating teams which would be more informational than any report from me. Mr. Vice-Chairman, do you have a report? I notice you're on the agenda.

REPRESENTATIVE IVERSON: Mr. Chairman? I object. We adopted an agenda so I think therefore you have to give a report.

CHAIRMAN GALT: You just had my report. I have nothing to report.

(Laughter)

CHAIRMAN GALT: Mr. Vice-Chairman?

VICE-CHAIRMAN TWEETEN: I think we have enough on the agenda that we don't need to waste time hearing a report from me, so...

CHAIRMAN GALT: We will now go to the budget report and we will go to our program director to get caught up on the money.

MS. RUNDLE: I will propose to send you at the end of December a six month report which will be in writing and will be more comprehensive, but at this time I would just report that the budget is in fine shape. We have used

a total of 31% of our budget and we're approximately 42% of the way through the year. So, we are under spending at this point. That's not--I think that's good. We need to keep a cushion for unexpected things and to be able to cover travel and negotiating sessions as they arise. I will be talking later on when we discuss the equipment I will talk about some data that we would like to acquire and the approximate cost for that. There is room in the budget, in my opinion, for those purchases.

CHAIRMAN GALT: You are going to have a specific report detailed--when did you say--in six months?

MS. RUNDLE: Well, no, at the end of December, when I get the December's printout that will be half of the fiscal year will have gone and then I will submit a report to the Commission in writing.

CHAIRMAN GALT: Good. Any further comment? We will go to Item No. 6, GIS, and who handles that--Greg, or you?

MS. RUNDLE: Well, to begin with I am happy to report that we have finally gotten the bugs worked out of the memory on the equipment. It is installed and it is fully functional and some of the members of the Commission had asked for a demonstration of the equipment. I would propose that we do that right after lunch. You had mentioned reconvening at 2:00.

CHAIRMAN GALT: Yes, we will reconvene at 2:00 at lunch, so, the staff will be up there at 1:00 to introduce anyone who wants to be introduced to our beautiful machine.

MS. RUNDLE: Also related to the equipment, next week we will be having telephone interviews with the six finalists for the Remote Sensing Specialist position. We are going to ask them essentially technical questions at that time, but I would invite any of the Commissioner's who are interested to let me know and I will let you know the schedule for those. After that time we will invite one or two of the successful candidates to, or the top candidates to come and meet and at that time I would appreciate Commission involvement in making the hiring selection. We had 26 applicants and we are really pleased with the quality of folks who are interested in our position.

In addition, we have two reports from the staff, you will remember that when we were looking at purchasing the equipment Greg and Lynda went to Idaho and talked with the folks in the Water Resources Division there and got some very valuable input with them. Since that time we've been talking with the state of Utah and Lynda spent a day last week in Salt Lake City visiting a number of agencies. Greg and I were at the Utah Center for Remote Sensing workshop a while back. I would ask each of them to just briefly tell you about some of the things we learned in those trips.

CHAIRMAN GALT: Go ahead and, Greg, for the benefit of some of us Commission members that have memory problems, sort of describe briefly the machine and what its capabilities are and what we need it for.

MR. AMES: Okay. On September 26th, Marcia and I drove to Park City, Utah to attend the Remote Sensing workshop sponsored by the Center for Remote Sensing and Cartography which is associated with the University of Utah

Research Institute. The purpose of us attending this workshop was to gain an understanding of the remote sensing applications that would be specific to our project areas. We wanted to gain an understanding about what type of products were being done in the remote sensing field and then correlating those to the projects that we have planned on our specific project areas--more specifically the reservations. What we were instructed in there we had a very--to begin with it was very technically orientated. We learned all the basics and the fundamentals of remote sensing and analyzed some remote sensing information, Landsat satellite and aerial photography imagery. From that classroom instructional period which consisted of approximately 3 days we took those things that we learned and went into the field to see if we could apply what we learned in the classroom to actual conditions that existed out in the field. This is part of the ground truthing portion of the remote sensing analysis. It's important to perform this portion because the information that we receive or that the satellite receives is a reflected image and it cannot tell you what is actually occurring on the ground, but it can differentiate between different spectral signatures that are on the ground. So, what we had to do is identify things in the classroom off the image and go out in the field and see what actually existed out there. For instance, we had an image for various types of vegetation and we had to go out and see actually what type of vegetation it was and the bottom line of that type of analysis was we were very impressed with the ability of the satellite imagery that it could even detect vegetation types, soil types that existed on the ground and it's going to be very applicable to our analysis on the Indian reservations than the projects that we have.

To briefly tell you what Senator Galt wanted me to say is what we have now and what we're putting together is we're going to have a system, we have a system that we can obtain Landsat or satellite imagery with and we have to purchase this satellite imagery, we combine it with cartographic information, say maps and aerial maps that have been published by the United States Geological Service and other sources, we combine all these maps into what they call a geographic information system and this geographic information system allows us to analyze all the geographic and natural resource information of our specific project areas. It's going to enable us to analyze soil types, vegetation types in our analysis of proposed and future irrigation locations within our project areas. It's going to be very, our analysis are now very scientific, they'll be done on a computer, they'll be able to be stored, analyzed, retrieved and we can create all kinds of economic scenarios and what if scenarios to report to you what we feel is a very objective analysis of irrigation potential on the reservation.

CHAIRMAN GALT: Thank you, Greg.

MR. DAVIS: I've got a question, Mr. Chairman.

CHAIRMAN GALT: You bet, Mr. Davis.

MR. DAVIS: You use the word reservation--is it restricted to reservation or how extensive are you using this?

MR. AMES: Our first project area is the Fort Belknap Indian Reservation so that's kind of where our emphasis has been here lately is gathering data and gathering information and we need to gather our work plans for the Fort Belknap Indian Reservation.

MR. DAVIS: Is the DNRC using this as well as you?

MR. AMES: No. We are--so far, all we have done is for our own projects which we are beginning to do now and we've instructed or we have demonstrated the equipment to other people within the Department and other state agencies.

CHAIRMAN GALT: Thank you. Again, I'd remind you that Greg and Lynda will be up there at 1:00 to show anyone who is interested the machine. Lynda?

MS. SAUL: I spent one day last week down in Utah in Salt Lake City and went to the same people that Marcia and Greg had met, to their main office at the University there and it was the Center for Remote Sensing and Cartography and I basically--my main reason why I went was just to meet with these people and make contacts and to discuss how they approached their projects, what maps they found useful, what sort of data bases they found useful and how they proceeded with their projects. So, I got to look at a lot of different project work.

I also went to the state of Utah Automated Geographic Reference System which is a state agency with a twelve staff of members and they're mainly--they have two main functions. One is to do project work for other state agencies that don't have a GIS system, they have the water reservations for the state of Utah and they also spend about 50% of their time making sure that other state agencies who are interested in getting a GIS system that they're consistent state-wide. So, I was really impressed with the capabilities that Utah had and where they are. I met a lot of really good people and some good contacts for us to call if we have questions on our projects. And I would just highly recommend anyone who wants to see our equipment to stop up at 1:00. We're really excited about it.

CHAIRMAN GALT: We've put a lot of money into this equipment and I--doesn't anyone have any questions to ask the...

MR. DAVIS: I interpreted your instruction was we should ask them at 1:00 when we go over and view it.

CHAIRMAN GALT: Okay. Some of us won't be there.

MR. DAVIS: Okay. Reserve them for that.

VICE-CHAIRMAN TWEETEN: Well, Mr. Chairman, also I note that we've got an agenda item for a technical report from Greg on the Ft. Belknap which I understand involves some use of the system and they may have some further inquiries at that time.

CHAIRMAN GALT: Alright, we will--if there's no more questions we will go immediately to the negotiating teams and Mr. Iverson, Representative Iverson has spent some time up on the Ft. Belknap. Do you have anything to report, Dennis?



REPRESENTATIVE IVERSON: A little bit. I think we're off to a pretty good start. Marcia and Greg and Lynda and I flew the reservation three or four weeks ago on a grid and I think gathered some pretty useful information as it relates to land use and how well that fits with what the maps show and so on. But, prior to that Marcia and I, I guess it was in October, Marcia and I went down, met with the water policy people, the tribal council and found it to be encouraging. In fact, my opinion is that the Fort Belknap Tribe is very, very interested in compacting. I think that we could look toward that pretty optimistically. We established, I think, a pretty good rapport, a pretty good working relationship and got things off to a pretty good start. We had what may have been a minor setback a little later. When they had the tribal elections and you've heard this song before--tribal elections left no incumbents on the council. Now, it's not necessarily something we have to be terribly worried about because a couple of the people that were, I think, the most knowledgeable in the area of reserved water rights weren't running again anyway. And with that in mind we had discussed with them then the idea of establishing a permanent water policy committee adjunct to the tribal council that may include tribal council members and some non council members. They seem to want to do that and apparently they still want to do it. The trouble is that right now we're going to--for the rest of this month, the rest of this year in fact, we're in kind of a lame duck situation so, well, I'll probably go down next week and talk to some of them. Marcia and I probably won't go down to reestablish semi-formal communication until after the first of the year. I think that what we ended up with after the elections though was an excellent council. Three of the people that were elected are people that were formerly on the council. I think we've got three or four of the better minds on the reservation now on the council to work with. They seem to be interested in water and I really don't think that while it sort of depressed me at first I think the upshot of it all is that we're going to end up with really a nice council to work with and I'm terribly encouraged. One other thing that may happen, they also lost the staff person that was doing the work we were interested in. They haven't refilled that position and they're not even going to think about that until after the first of the year, but it appears that one of the council members that was probably the most knowledgeable has considered applying for the job himself. Now, if that happens, I think, that will be to our benefit, too. That's about all I know at this point. I'm going to go down next week. I've talked to a lot of them on the phone. I'll go down next week and just chat with some of them and get something arranged for after the first of the year for us to get rolling again. I'm encouraged.

CHAIRMAN GALT: Did, you said they were--all the council members were replaced, did they all run or did some of them voluntarily?

REPRESENTATIVE IVERSON: No, some of them didn't. Randy Perez is probably the one that knows more about it--about the subject than anyone else there and he'd been on the council for 12 years and just decided not to run again. Well, he's going through that thing you go through when you're a lame duck now, he's kind of missing it already. So, I think he's going to be a tremendous amount of help with the tribal council during transition on two subjects really. One, the permit committee and the other is that he's the person that's thinking about applying for the staff job.

CHAIRMAN GALT: Do you really think that they're eager to--ready to go forward to...

REPRESENTATIVE IVERSON: That's the impression I got. I think there's a tremendous amount of interest in doing it this way rather than the other way. It's hard to say what the attitude of the new council will be, but just looking at the people that are on there they're pretty reasonable. Four of the people in fact are, I think, about as reasonable as anybody you could get.

CHAIRMAN GALT: Gordon, do you remember the name of that fellow that was very hostile to us at a couple of meetings up there?

MR. MCOMBER: No, Randy Perez has been with us right along. As a matter of fact, my understanding that he had a water policy council separate from the other council.

REPRESENTATIVE IVERSON: Yeah, they don't now. I don't know everybody that's on the new council, but four of them are John Allen, John Capture who is an older gentleman that used to be on the council. John Allen is the former chairman. Warren Matt and Joe McConnell. He lives up on Peoples Creek and is highly respected on the reservation. Speculation is that the chairman will either be Capture or probably McConnell.

MR. MCOMBER: As I recall, Mr. Chairman, it was their attorney that exhibited the most signs of non cooperation, kind of a heavy set fellow from Billings. Do you remember who he...

VICE-CHAIRMAN TWEETEN: Was that Frank Lamebull?

CHAIRMAN GALT: Lamebull, yeah. Is he still the attorney?

VICE-CHAIRMAN TWEETEN: I don't know. Marcia?

MS. RUNDLE: No, he isn't.

VICE-CHAIRMAN TWEETEN: Who is representing them?

MS. RUNDLE: Jim Vogel was, the last time that we were there.

VICE-CHAIRMAN TWEETEN: I don't know him at all.

MR. MCOMBER: One more question, Mr. Chairman. We've been up there three times, I think, since I've been here and we had a hard time getting around their--what they perceive to be their problems with the Department of Natural Resources. Is that still a burr under their saddle?

REPRESENTATIVE IVERSON: I don't think it's a problem. I think that--and Marcia can probably tell you more about this--but it seems to me that any of the conflicts they've had, not just with DNRC, but their distrust of various federal agencies and entities all suggest that they'd rather sit down and talk about the problem with us. They're getting kind of tired of fighting with everybody. And maybe I'm too optimistic, but I don't think so.

MR. MCOMBER: Well, their problems with DNRC was over the way the Department handled the, you know, their conflicts.

REPRESENTATIVE IVERSON: I don't think that's significant, Gordon, nobody likes those guys. Everybody is mad at DNRC.

(Laughter)

CHAIRMAN GALT: Any further questions of Mr. Iverson? Mary, have you noted everyone in the room or do you need any help?

MS. BERTAGNOLLI: No, I've got everyone.

CHAIRMAN GALT: Gene, do you have anything to say about the Rocky Boy's?

MS. RUNDLE: Excuse me, Mr. Chairman, there are a couple of other things on Ft. Belknap that we should talk about.

CHAIRMAN GALT: Oh, okay. You bet.

MS. RUNDLE: Greg, did you want to explain just in a little bit more detail about the flyover and what the purpose was?

MR. AMES: I'd be happy to. One of the purposes of the flyover as Dennis mentioned was to identify native vegetative types. We looked at, what we took up with us were some four inch to the mile SCS aerial photographs of this grid system that we flew and we borrowed those from the Water Rights Field Office in Havre. We still have them. We wrote on the maps as we flew around various native vegetative types, grasslands, shrubs, trees, irrigated crops, a lot of geologic features, bare soils, rock \_\_\_\_\_, saline seeps--we noted the hydrologic conditions of the streams and the reservoirs. We looked at the Tribe's primary areas that they've identified for future irrigation development and the reservoir locations and we flew these, we looked at them, we also flew some areas outside the reservation boundary and took some notes on the native vegetation covering those areas and we looked at the stock ponds and reservoirs that were constructed on People's Creek, Box Elder Creek and Snake Creek to the west of the reservation where there have been quite a few conflicts or complaints of tribal--by tribal members of individuals who have built stock reservoirs on these tributaries to these creeks that are precluding them from getting water onto the reservation and we did note that there were quite a few there.

Part of this, well, the primary purpose of this flyover and noting all this information was as I eluded to earlier--the satellite imagery is going to be very detailed and give us very specific spectral images of what is on the ground on the reservation, but it doesn't know that what it's looking at is actually sage brush or it's looking at native grassland. So, we have to go out there and identify these different locations so when we look at the Landsat image we'll say well, what the satellite or what the computer has depicted as different image from the one next to it we can say well, this particular one is grass and this particular image is sage brush. The computer doesn't have the ability to put the title on what it is looking at. However, we have the ability of doing that through our ground truthing. So, we performed a part of the ground truthing with this last flyover. We'll perform some of it and continue during the growing season and the irrigation season next spring and summer.

That pretty much covers everything that we did during the flyover and what we're going to do with it, we'll be tying it in conjunction with our analysis this winter the data that we plan on obtaining. Are there any other questions?

CHAIRMAN GALT: Any questions?

MR. AMES: Thank you.

CHAIRMAN GALT: Thank you, Greg. Did you have anything to add, Marcia?

MS. RUNDLE: Greg and Lynda have gone through and identified all of the remote sense data that is available for the Fort Belknap Indian Reservation. Some data that we want to have, elevation data that will be in digitized form is not available right now, but can be prepared for us by the U.S.G.S. There will be a time factor involved in that and we don't know at this time how long it will be before we can obtain that. Most of the other data is available now. Our task is going to be to choose the data that most fits our purposes and will give us the most information for what we want to do with our projects. The amount will be probably around \$8,000 and I'm not prepared to tell you at this time exactly what it would be, but I would just alert you to the fact that we do need to purchase that data and we will be purchasing it in pieces so that we can get started first on the soils information and getting the Landsat data ahead of time. We may stagger some of those purchases out so that some will come out of next fiscal year, but if we did purchase it all in this year the budget would be able to take it too. What I would like I guess is authorization from the Commission if that's necessary to acquire this data when we decide exactly which we want to get.

CHAIRMAN GALT: I think it's of significance, enough significance to get the gratification from the Commission. Any questions or...

MR. ETCHART: Well, Jack, I'd like to ask Rich a question and that is this--that in picking this information is there a time of the year, are you pretty limited in the time of the year that you can take these readings? Does it have to be in the growing season for example? Or can you do it any time that you don't have snow?

MR. AMES: Okay, that's a good question. Part of the data acquisition is identifying what the purpose of acquiring the data is for and we have identified our purpose and we've consulted with other people that have pursued satellite image analysis with the same purpose that we have and we have identified a two or three week period at the end of July and the first week of August when we would like to obtain that satellite data. It's flown every 16 days. The data is collected by the data center every 16 days and we have identified the dates that we would like to obtain the data, the cloud cover that existed during that particular time frame. So, we're trying to obtain the best data during the exacting time that would be most beneficial for our analysis in terms of the Landsat data. The other data that we're looking at is not so time constrained when we obtain them. We obtain the most current information...

MR. ETCHART: So, then, you're really pretty limited with the amount of time that's available and conditions are just right.

MR. AMES: Yes. And the data that was flown in 1986 is the data that we're looking at presently and it fit the criteria that we needed. The 1987 data is not available yet. It needs to be processed by the data center and then when we receive that information we'll make the decision on 1986 or 1987 data. Even 1985 and 1984 data, some of those years were good also. So far, we've identified we wanted the most current information.

MR. DAVIS: Mr. Chairman? Greg, what is your purpose? To determine whether it's irrigable or non irrigable?

MR. AMES: The purpose of obtaining the Landsat data which is the most expensive portion of it, of the \$8,000 we identified, the Landsat data came out to be \$3,300. The Landsat data enables you to achieve and identify many purposes of our analysis. Simply identifying presently irrigated lands is one small portion of the usefulness of the Landsat data. Our primary purpose that we're most excited about is being able to differentiate different soil types and correlate that with the published SCS soil data that's already existing. That SCS data is more reconnaissance type data and we planned on supplementing the SCS data with the Landsat data. We're also able to differentiate different soil types and we'll be able to use that during our PIA analysis of irrigable lands.

MR. DAVIS: Okay, when you get to your analysis you're really trying to determine whether it's irrigable or non irrigable? Are you trying to determine whether they need water or they don't need water or do you have to go then further and see whether it will raise alfalfa or something else?

MR. AMES: Yes. We'll be looking at those conditions also.

MR. DAVIS: Okay, then you could spend from now until the end of the world trying to figure out exactly how much water each thing then do you have a difference, is the, whether they're going to take 3 acre-foot from one crop or another when you're trying to quantify how much water they're going to get? I mean, how detailed are you really going to get? There's got to be a cut off point some place between each variety of crop or whether it's an acre-foot, 2 acre-foot, 3 acre-foot, is that what you're trying to find out?

MR. AMES: Well, first of all given the size of the reservation, part of our purpose in using this data is going to let us handle the entire reservation on the computer and so that we can physically get to the data in a relatively short period of time.

MR. DAVIS: But you don't need the type of soil do you, Greg, if it's not going to be irrigable? Or do you have to type every soil on the reservation?

MR. AMES: No, we're going to first of all look at the economic pumping corridor in conjunction with the PIA analysis. We'll go from the water source out so, you know, so far looking at lift and distance criteria. So we will not be looking at all the soil types within the reservation. Only those soil types that fall within our economic pumping corridor which was determined through a practical irrigation analysis. But we will concentrate on those areas that we feel like are going to be able to be irrigable.

MR. DAVIS: Will you have to classify all the lands then? Or has the SCS already done it?

MR. AMES: They've already been classified. We'll just enter that in to our analysis.

VICE-CHAIRMAN TWEETEN: How good is that data, the SCS data?

MR. AMES: It's as good as we can get.

VICE-CHAIRMAN TWEETEN: Well, how good is it though.

MR. AMES: Well, we haven't completely analyzed it, Chris, so I haven't gone through it completely, so I couldn't tell you personally how good the data I feel it is. We will be supplementing, you know, it's reconnaissance soils data so it was done rather broadly and we will be supplementing that information with the Landsat soil data that we derived from Landsat.

VICE-CHAIRMAN TWEETEN: You're going to try to cross check it to make sure it's...

MR. AMES: As best we can. Our idea there is to go outside the adjacent quarters of the reservation to get on land that we can get on to do some verification, more actual in field verification if we were unable to actually get the soil data and field verification within the reservation.

VICE-CHAIRMAN TWEETEN: So, you'll have some sort of an idea where the margin for error is on the...

MR. AMES: Yes. And that was part of the analysis that we learned in the training down in Park City remote sensing workshop was accuracy analysis and air analysis. What can we record with the data that we're using and just as you indicated it depends on the data that you're using and it's because it comes to you digitized and it's available doesn't mean that it's good data and we'll have to analyze that. Part of the plan in something that Lynda discovered when she was down in Salt Lake is that we can request that the Soil Conservation certify their soil data that they give to us which we've requested that they do. It just so happens that the publications that we have are already certified because they are published, but once we get it into a digitized format and we transferred it onto our maps we will return it back to the SCS, they will check it and then certify our mylar maps so that we will know that they are true and accurate.

MR. DAVIS: What's your time frame? How long will it take you on this reservation?

MR. AMES: Well, this is our first analysis so we're really sticking our necks out to kind of tell you how long it's going to take.

MR. DAVIS: What's your guess? A week, six months, a year?

MR. AMES: If we simply concentrated on the Reservation for the next 12 months we would be able to, you know, without looking and getting side tracked to far off we would have, I feel, a major portion of the analysis completed within 12 months.

MR. DAVIS: You mean you have to know that before we can negotiate further with them?

MR. AMES: No, I think that we can negotiate along the way as we're doing our analysis. We've already completed step one of our nine steps that we've outlined on the work plan for the Ft. Belknap Indian Reservation. We're well into steps two and three.

MR. DAVIS: And we have to do this on all the other reservations I assume too.

MR. AMES: Yes.

MR. DAVIS: Before you can quantify their water...

MR. AMES: And again, what we did for this reservation was we analyzed what's already been done by the previous staff. We analyzed what needed to be done and what needed to be obtained in terms of data for the reservation. We completed that for this reservation. The other reservation hasn't taken this detailed a look at it except we have reviewed Rocky Boy and we are reviewing a little bit the Blackfeet Reservation. They're all on the Milk River.

MR. DAVIS: And if we have recognized where the law says we have to recognize instream flows on the Forest Service we have to do all this on the Forest Service too, all the forest lands in the state?

MR. AMES: It'll be a different type of analysis, but we'll be able to use our system to form that analysis due to the bulk of the data that's available we will use it to its fullest extent.

REPRESENTATIVE IVERSON: I'd like just to make one comment in response to the question you asked a second ago about the way the negotiating and technical work fit together. Greg indicated that of course negotiations and technical work will go on at the same time. I think you could even take that a step further and say that it's almost necessary that they go on simultaneously and one example I can think of is the economic corridor that Greg was talking about. You've got to establish how far you can practically lift water. Well, that's in part determined by negotiation. We'll eventually negotiate out an elevation that is probably the most practical for that area and in humor we've talked about it a bit already and Holly who is gone, I'm going to kind of miss him, pretty good guy, he said, well, just to start things out he said we want to consider the top of the Bear Paws for the elevation. But, the point is that that's something that will be negotiated in a practical way and it's almost necessary to help establish some of that stuff before they can go on with it.

MS. SAUL: If I might add the equipment that we have we will be able to do 'what if' scenarios and change the elevation lift for what you want to do very simply on this machine as well as change the corridors.

MR. DAVIS: You know you've got a different rule it seems when these apply to the Indians and maybe the Forest and we've got to \_\_\_\_\_ the farmers down in Beaverhead County. If they want to make a claim then they had to file a claim form then they've got to prove their claim. Here it seems like we're going to get all this system together to prove the Indians claim for them and they won't have to buy anything. You know, it's a kind of a different double standard I suppose we got to anticipate. In other words, say Jim Goetz gets on the other side of your case and he says, well, what's your corridor. Indians don't have any corridor, but we're going to share, you can pump water up here and they say gosh that's great, we didn't know that. You provide us some more data and send you back to the table and you can really supply the adversary everything he needs to prove his case against you I suppose.

MR. McOMBER: Mr. Chairman, I have a few questions. Greg, where do you, what comes first, the chicken or the egg in a relationship to your water source and quantification. If you take a look at the water up there available on the stream on the drainage, that pretty well limits the amount of land that you need to survey doesn't it?

MR. AMES: Yes, it does, yeah. Water availability analysis, I didn't say that, but that's right in there with the initial analysis that takes place.

MS. RUNDLE: That wouldn't be just groundwater though and right now the Tribe is doing, in conjunction with a very extensive study of groundwater on the reservation in which they're drilling, I think, 99 test holes and groundwater could very well expand the amount of soils that we'll have to look at and require much more complete analysis of the reservation.

MR. DAVIS: Can you wait, Marcia, till you get that before you try to examine what their data is or do you have to start drilling your test holes along side of their test holes to test their test holes?

MS. RUNDLE: Well, we can't drill test holes, but we will have--the USGS raw data will be available to us when that's done. We can get access to that. We cannot get access to their final reports and their conclusion which is fine--we would want to look at the data itself. But, I don't think that we can wait on the soils analysis until that groundwater information is available. In terms of timing the tribal contract that was issued last summer requires them to have the technical work done by April of 1989. So, I think the timing that Greg suggested is approximately the same as the Tribes. They're doing somewhat more--their analysis is different because they will be doing a lot of groundwork. They're drilling a lot of test holes, they're doing gaging on streams. So, their analysis will be different, but our analysis will be proceeding on about the same time line.

MR. DAVIS: I think Gordon's probably put it into context better than what I was trying to think is you can analyze so many things that may not be of any benefit. In other words you can analyze how much water we could irrigate if we have the water, but you're never going to have the water, you know, until such time as they had a successful test hole would you analyze whether all the ground was irrigable if there was never any showing that there was water available?



MS. RUNDLE: Well, we're certainly trying to take those factors into account.

MR. MCOMBER: Yeah, Mr. Chairman, I have another question, a couple of questions on this, too. You know, I go back to the time this proposition was first made and the Commission was given a figure which I understood to be a total figure and I know during the meeting it was added upon and it's been added upon since. I'd like to see a total figure on the cost of this. I spent so many sessions on the appropriation committee I just ask those questions without thinking. You know, and that would include time spent, travel and time spent on education, the whole damn thing. I'd like to--I think the Commission should have a number on the total cost of this program.

CHAIRMAN GALT: I would assume that it'd be a--there would be an ongoing cost that could probably not be arrived at.

MR. MCOMBER: Well, my point was that, as I recall there was a total cost given is what I'm saying, when the thing was presented to us. Kind of like old Teddy Roosevelt, you know, he wanted to sail the navy around the world but Congress wouldn't let him so he sailed her half way around the world, ran out of fuel and had to buy him enough coal to get back home.

SENATOR MAZUREK: Which way did he come back, the same way he came?

(Laughter)

CHAIRMAN GALT: The question we're still talking about is approximately \$8,000 for new equipment or...

MS. RUNDLE: No. This is merely for the data. I believe that at the time that we proposed the equipment acquisition we gave some rough estimates on data and I will go back and pull those out certainly.

VICE-CHAIRMAN TWEETEN: Mr. Chairman, I think Mr. Smith has a question or a comment.

MR. SMITH: Actually I have a question. It's sort of a stupid question, I think, but I'll ask it anyway. There was of course an adjudication of the Ft. Belknap Tribe's rights in the Winter's case and basically they got all the natural flow in the Milk River. Is the analysis that you all are doing up there primarily directed to possible claims for underground aquifers of groundwater or are the Tribes going to try to amend the entitlement they received in the Winter's?

MS. RUNDLE: Are you familiar with the, physically with the layout of the Ft. Belknap Reservation? The Milk River is the northern boundary of the Reservation.

MR. SMITH: I knew that.

MS. RUNDLE: I guess my question to you would be would you...

MR. SMITH: Are there any other major streams in the Reservation?

MS. RUNDLE: There are other streams within the Reservation in addition to the groundwater.

CHAIRMAN GALT: Any further comments, suggestions, motions, or anything?

VICE-CHAIRMAN TWEETEN: Mr. Chairman, I would move that we authorize the expenditure of the \$8,000 for the acquisition of the data for GIS system as outlined.

REPRESENTATIVE IVERSON: Second.

CHAIRMAN GALT: It's been moved and seconded that the \$8,000 be authorized for the accumulation of data which compliments our machine, right? What do you call that machine?

MS. RUNDLE: Geographic Information System. We call it Gismo.

VICE-CHAIRMAN TWEETEN: The "Mo" stands for Montana?

MS. RUNDLE: Yes.

CHAIRMAN GALT: Any further comments on the motion? Ready for the question? All those in favor signify by saying Aye?

UNISON: Aye.

CHAIRMAN GALT: Opposed? The authorization has been passed. Is there anything more on the Fort Belknap?

MS. RUNDLE: I have nothing further, Mr. Chairman.

CHAIRMAN GALT: We will now go to Rocky Boy and Mr. Etchart, do you have anything to report?

MR. ETCHART: Well, not very much. I don't think there's been anything going in the nature of negotiations. The Rocky Boy's people did have a problem with the, had to do more with the Department of Natural Resources. I think they were concerned with the red tape requirements of how they complied with the logs and the reporting of water wells and that sort of thing and they seem to be a little bit exercised that they had to fill out these forms when they thought they were in the process of negotiating their water rights. They seemed to think it was an imposition and the fella that was kind of pushing some kind of a solution was their water coordinator, a man by the name of Dennis Wright. Well, anyway, in response to their correspondence, Larry Fasbender and I think Marcia made a trip down there and met with them at the Reservation or at the Rocky Boy headquarters and as I understand it from the correspondence that I've had from Marcia that they've kind of, they're communicating and they're back some how on a solution that's acceptable to the Tribe. But, that's all I have to report.

CHAIRMAN GALT: Would you like to comment if you were there?

MS. RUNDLE: What the difficulty was that the situation on Rocky Boy is a little bit different than on the other reservations in that all of the lands are owned by the Tribe and no individual tribal members have allotments or own any of the land. They can have an assignment of the land that they hold in perpetuity and that can be passed onto their heirs, but they do not ever own the land or any improvements on the land. The state law requires that when water well drillers drill a well they complete a well log and send it to the state and then just as a matter of routine the Department sends out a notice to the person that's listed as the well owner and says please return this form which is the notice of completion for a well along with your \$10 filing fee and we will consider this your application and then you get a state water right. Well, you can see the difficulty on a tribal, on a reservation, they don't want state water rights and they were a little offended by the state sending out a form that suggested they were to apply for state water rights. The agreement that Mr. Fasbender worked out with them was that the Tribe would adopt by resolution a requirement that any water well drillers drilling wells on the reservation would indicate the Tribe as the owner of the water well and then the state would send notice or would send a form to the Tribe indicating that we were aware that they've drilled the well, that they're the owners and that would be the end of it. In addition, he agreed to supply them with notice of all water wells that are drilled in the immediate area around the reservation because they're concerned about the aquifers and they're doing some groundwater tests. This way both the state and the tribal governments would have notice of exactly where all the existing wells are and would give notice as new wells were put in place. It seemed to be one of those things where it was just a communication problem. The last that I heard the Tribe was in the process of drafting that resolution and then the Department will draft a state tribal cooperative agreement to implement what is essentially a bookkeeping arrangement.

VICE-CHAIRMAN TWEETEN: Mr. Chairman? Marcia, did Larry make any sort of a concession or representation to the Tribe that we were acknowledging that they had some sort of a reserved right to the groundwater?

MS. RUNDLE: No, one of the provisions of the agreement will be that nothing in the agreement will be construed as a waiver by the Tribe or the state or will constitute an assertion of jurisdiction.

MR. McOMBER: Mr. Chairman, Chris led up to my question. Has there been any conclusive legal decisions indicating that the tribes are entitled to underground water as reserved rights?

MS. RUNDLE: The law is essentially where it was when the Tribe, when the Commission was negotiating with the Ft. Peck Tribe. There's no definitive answer about groundwater other than the Caparte case which was a national monument.

VICE-CHAIRMAN TWEETEN: And which was essentially an instream flow type of a situation wasn't it?

MS. RUNDLE: A reservoir level, a pool level.

VICE-CHAIRMAN TWEETEN: Yeah, right.

CHAIRMAN GALT: Can anyone tell the Commission is there any chance at all that we'll really get to dealing with the Rocky Boy's?

MR. ETCHART: You'd have to ask Marcia.

MS. RUNDLE: I think so and one of the reasons is that they have done technical work and have a report in on groundwater. I think they're getting prepared for negotiations. When I was at Sundance last week one of the participants in that seminar was John Echohawk from NARF and I was told that NARF is going to be representing Rocky Boy. I think that that would be a real positive step. They have a very reputable team of attorneys, Jeanne Whiteing is one of their former attorneys, Reed Chambers also is and I think that that kind of expertise and stability would really enhance the prospects for negotiations with Rocky Boy.

CHAIRMAN GALT: Any further comments? We'll, let's get over this Ft. Peck thing. I don't know why I'm listed there. All I did was ask Marcia to go up to the Ft. Peck Reservation when two water commissioners that were already assigned was to elect the third member. Would you comment, Marcia?

MS. RUNDLE: I did attend the first meeting of the Ft. Peck/Montana Compact Board on November 6th at Poplar and at that time Margery Brown from the U of M Law School was appointed the third member of the Board. The Board is now in place.

CHAIRMAN GALT: Explain the Board, just get everyone's...

MS. RUNDLE: The Board is the quasi judicial Board that was established by the Ft. Peck/Montana Compact which...

CHAIRMAN GALT: And consists of...

MS. RUNDLE: Which this Commission negotiated and consists of one tribal representative who is Tom Stetson, their engineer that was involved in the Ft. Peck negotiations. Larry Fasbender was appointed by the Governor to be the state's appointee and Marge Brown was appointed by those two members. Their terms have been established. Marge has the longest term of six years. Larry's term is four years and Tom Stetson's term will be two years. Each of those appointments will be made in the same manner as the initial appointment and they adopted a budget of \$5,000 for the rest of this year and the subsequent year. They've requested that Reed Chambers and I draft rules for the judicial hearings and I have made a couple calls to the Human Rights Commission and some other quasi judicial boards to try to get some rules to look at. I was not in a position to say anything at the meeting when that request was made. But I don't believe that it would involve very much of my time to do that.

VICE-CHAIRMAN TWEETEN: Mr. Chairman, Marcia, you may want to look in Volume I of the Administrative Rules of Montana. About ten years ago our office drafted a set of model administrative rules which have been adopted by virtually every agency in the state for use in their contested case hearings and they may be a good place for you to start.

MS. RUNDLE: Okay.

CHAIRMAN GALT: Any further comments? I guess for the benefit of anyone who hasn't been paying attention to the Ft. Peck thing, they have adopted their water code which the compact required them to do and it's been approved by all the approving parties and so I guess you can say that at time the Ft. Peck Compact is complete, that both parties have complied with every one of the demands made and they're in business.

MS. RUNDLE: There are a couple of things that aren't quite complete, Mr. Chairman. The Tribes have completed their instream flow studies, but they have five years to establish those and they've done it two years early so they're going to monitor for two years and see how those instream flows fall out before they set them in concrete because they can't be changed without the consent of the state. The only other thing, but it is a major thing, is the marketing provision that was in the compact. Senator Melcher has been very reluctant to introduce it or at least hasn't introduced it to this point and the Tribes are interested in pursuing that and would appreciate the assistance of the state in seeing that marketing provision introduced.

CHAIRMAN GALT: Does that have to be introduced in Congress?

MS. RUNDLE: Yeah.

CHAIRMAN GALT: Guess I'll have to read the compact over again.

MS. RUNDLE: I think that Mr. Fasbender will probably be in contact with you about that because he had some discussions with him at that time.

CHAIRMAN GALT: If it's alright with everyone let's take about a ten minute break and Gordon, the big thing on this thing, we probably won't go down to, we'll go down as far as number eight this morning, but I think Gordon wants to be here for the...

MR. DAVIS: Number eight?

CHAIRMAN GALT: Well, I think he had some comment. So, that won't come up until 2:00 this afternoon. I hope you can all be here because...

MR. DAVIS: You think it'll be hot and heavy huh?

CHAIRMAN GALT: No, it'll be interesting.

SENATOR MAZUREK: I'll be gone from 12:45 till 2:15 or 2:30.

CHAIRMAN GALT: What time is it?

MS. RUNDLE: It's 10:30.

CHAIRMAN GALT: Well, let's have a cup of coffee before it gets colder.

BREAK

CHAIRMAN GALT: The recess is over and we're back on the record and the first, the next thing up is the U.S. Fish and Wildlife Service and we did have a, I thought, a very good meeting with their representatives. What's the attorney's name?

MS. RUNDLE: Aldrich.

CHAIRMAN GALT: Yeah, Aldrich, whom we all know and a lady from Denver named...

MS. RUNDLE: Cheryl Willis.

CHAIRMAN GALT: And we, I think we made progress and they seem to be very enthusiastic to get a compact or at least was my opinion and we will let the staff go on about the technical report on it. Are you ready Lynda or Greg? Lynda?

MS. SAUL: Let's see, Fish and Wildlife Service.

CHAIRMAN GALT: Yeah, you know, the ones we met with down in Billings.

(Laughter)

MS. SAUL: October 15th, the night before the negotiating session, they presented us with a reformulated claim on Benton Lake and Bowdoin and the other claims we \_\_\_\_\_ were Black Coulee, Bison Range, and CMR. The reformulated claims are now based on storage and evapotranspiration rather than the inflows, the tributary inflows. So, it's going to require some more technical analysis.

VICE-CHAIRMAN TWEETEN: Excuse me, Lynda, can you, just for the idiots on the Commission explain what the difference is between what they were doing before and what they're offering now?

MS. SAUL: Okay. The old way that they had requested, that they had presented their claim to a reserved right were based on inflows. At Benton Lake there is 9 intermittent streams that drain into Benton Lake and there's one rather large stream, Lake Creek, which both have stream runoff and also have water that is pumped from return flows from Greenfield Irrigation into Muddy Creek, from Muddy Creek that goes into Lake Creek. So, their previous claims were based on the inflows, on these tributaries.

VICE-CHAIRMAN TWEETEN: They were basically claiming the natural flow of the tributaries into the reservoir.

MS. SAUL: Right. Yeah, natural flows. They did put a volume on it, they didn't put a flow rate. Now they've withdrawn those claims and are now claiming storage, how much water the basin can store. It's a closed basin so there's no outflows and they're also claiming evaporation. Net evaporation in this area is about 4 feet a year. So, that's how the claims are so it's not drawn back to the tributary.

CHAIRMAN GALT: Lynda or Marcia, one of you, explain that the Water Courts did get into this on something that they'd done.

MS. RUNDLE: Well, we were surprised because they referred at Billings to the fact that they had already been decreed a water right based on this methodology for a reservoir in Basin 39G. The reservoir is Lane's Deer Reservoir and they had initially submitted their own claim and then objected to their claim and Susan, if you could explain what happened in that.

MS. COTTINGHAM: Essentially they were, they applied in their claim for a reservoir, an onstream reservoir, for a particular flow rate and volume. When the Water Court decreed it they decreed it as a beneficial use with a priority date of 1938 for fish and wildlife, but they did not decree any flow rate or volume. The U.S. Fish and Wildlife Service then objected to the fact that it was not quantified and had prehearing conferences with the Water Court. The Water Court then ruled that they were given a volume that they claimed. They still don't have a flow rate, but they were given the volume based on the calculation that they want to make for Benton Lake and Bowdoin. That has gone through all the preliminary decree and all the hearings and my understanding is they are about ready to go to final decree in that basin and so as it stands now the claim is given a volume based on these calculations, but no flow rate.

MS. RUNDLE: Well, because in that basin there are no federal reserved rights it went to preliminary decree with them not having a volume decreed then the objections were to the rights as published in that preliminary decree. They were the only objectors to their own right.

MR. DAVIS: They objected to their own right? Who won? Did they win or lose?

MS. RUNDLE: Yes, they objected to their own right because there wasn't a volume. In the conference call with the Water Court, the Water Court agreed that they could have a volume. So, when the final decree comes out it's my understanding that the Fish and Wildlife Service will be decreed a volume based on evaporation and storage for this reservoir which is new, but nobody else has seen it and nobody knows that it has happened because it hasn't been published and won't be until the final decree comes out which highlights, I think, a major glitch. But, for our purposes we now can't refute what they're saying. I mean, they're saying we have an agreement with the Water Court that we will get a water right for a state water right based on this methodology and how can you object to our using that methodology. Well, we do object and we do have some problems with it and we want to talk it over with the state agencies again and I guess, Mr. Chairman, we're not prepared to make recommendations on that at this time, but we would like to suggest a Fish, and Wildlife Service team meeting early in January when we will have had time to analyze the claims further and will have had time to look at impacts more. We have some serious reservations about this methodology, but we just aren't prepared to discuss it now.

CHAIRMAN GALT: Well, I just wanted the whole Commission to understand that particular problem.

VICE-CHAIRMAN TWEETEN: Mr. Chairman, Marcia, procedurally can anybody take an appeal of that decree once it comes out in final form?

MS. RUNDLE: Well, my understanding is that you can appeal the decree if you object it?

VICE-CHAIRMAN TWEETEN: Well, I'm asking you. I'm not handy with the Water Court's rules. I would think so.

MS. RUNDLE: So, the problem is that if you didn't object I don't think you're going to be able to appeal it.

MR. DAVIS: And you don't know what's in the decree, the preliminary decree.

VICE-CHAIRMAN TWEETEN: Well, I'm thinking in terms of maybe DNRC having appeared at the preliminary decree stage.

MS. RUNDLE: Well, they didn't as to that right.

CHAIRMAN GALT: The only objector was themselves.

MS. RUNDLE: Was themselves.

MS. COTTINGHAM: So, only people that have objected or during the hearing filed a Notice of Intent to Appear on somebody else's claim have preserved their right to file an appeal the right.

VICE-CHAIRMAN TWEETEN: And no one has done that.

MS. RUNDLE: No.

VICE-CHAIRMAN TWEETEN: Does DNRC or any state agency have any rights in that basin?

MS. SAUL: It's a very small basin on the western or eastern bench.

MS. COTTINGHAM: I couldn't answer that question, Chris. I could certainly check on it.

VICE-CHAIRMAN TWEETEN: Well, I think that's significant because it seems to me that if in fact it is an unappealed final decree in a basin in which the state had no interest that would allow it to take an appeal, then it seems to me that decree isn't binding on us and we're certainly not bound to follow it. It's not an issue that was litigated.

MS. RUNDLE: Well, I think we can make distinctions because even the Water Court agrees that they have a state water right based on use of that reservoir and they're willing to define the right by storage plus evaporation I don't think that that requires that a reserved water right would be based on the same because a reserved water right depends on the amount of unappropriated water available at the time of the reservation which to me conceptually means inflows or related to stream flows.

VICE-CHAIRMAN TWEETEN: Yeah, I think that's right. It seems to me the fact that you can quantify a beneficial use sufficient to support a water right under state law doesn't necessarily mean that there's a reserved right quantified under the same analysis.



MS. RUNDLE: Well, essentially what they're doing is saying that a state water right based on use will be defined by the structure. You have a structure that is this high, it'll store this much water, this much will evaporate. That makes some logical sense, but a reserved water right based on the amount of water that's available shouldn't then be quantified on the basis of whatever structure was in place.

MR. DAVIS: Well, I think the problem is, in a sense, is that say I've got a water right for a, down in my area, it's not an issue. So, you go to someplace else and you get the formula but nobody cares in that place because there are no dependents so you establish a formula, they're going to use it, it's adverse to me, but I'm not a party to that and then you start applying that all over the state see and that's the bad part. That'd be the only reason it might not affect you at all at that particular time, but you've established a legal precedence on how you're going to decide these things.

CHAIRMAN GALT: Well, I agree with you. I think we should have a meeting early in January--it has to be early because I'm going to be gone quite a bit of January.

MS. RUNDLE: Okay.

CHAIRMAN GALT: And we'll report back to the Commission, but I get the feeling that you might not be too thrilled with the storage plus evaporation.

MS. RUNDLE: One of the things we'd like to do is look at, the storage that their claiming is based on the maximum amount that they've stored there in the past and because on Benton Lake the water that had been stored there includes pumped water and because they have six dikes and they can pump water between them it's not necessarily even a reflection of the highest amount of water that came down the creek in any, in that year. Was that perfectly clear?

(Laughter)

CHAIRMAN GALT: You managed to muddy the waters pretty good.

MS. RUNDLE: I'll tell you about it in January.

REPRESENTATIVE IVERSON: Question. What's the surface area in Benton Lake? Is it 300 acres?

MS. SAUL: Offhand I don't know. A couple of square miles?

REPRESENTATIVE IVERSON: You mentioned four feet. A couple of sections, 1200 acres? You mentioned a 4 foot evaporation--that's a lot of water.

MS. SAUL: Yeah, that sure is and it's a closed basin.

REPRESENTATIVE IVERSON: Yeah, that's all it's doing is holding ducks up anyway. I don't think I care how deep it is.

CHAIRMAN GALT: Anything more on the Fish and Wildlife Service? If not, we will go onto the Forest Service and Mr. Carl Davis.

MR. DAVIS: Well, we signed a pact last week with them, I guess...

CHAIRMAN GALT: Well, let's bring it up.

(Laughter)

MR. DAVIS: We'll bring it up for signatures.

VICE-CHAIRMAN TWEETEN: It's alright with me, Mr. Chairman.

MR. DAVIS: Well, guess what, I guess everybody got the good news that the case of Jesse in Colorado that we were all convinced that based on prior decisions that they hold there is no minimum instream flow for the Forest Service. The district court said we were all guessing wrong. And so they reversed the district court and sent it back for them to make a determination as to whether there was a minimum instream flow and gave them, they didn't necessarily grant it, but gave them an opportunity to come in and present their case and argue the minimum. So, bit surprise, but it doesn't really make that much difference I guess. Everyone also guessed and we're probably wrong on that, too, that even if you won the case the other side would appeal it so it would end up in the Supreme Court and settle this issue which is going to have to be settled sometime in history of man and I suppose this is as good a case as any. But now that was the only reason I asked this on that because that seemed to me the most significant question right now was are they going to appeal or not appeal.

CHAIRMAN GALT: Which side was he on?

MR. DAVIS: I don't know.

VICE-CHAIRMAN TWEETEN: You can ask him at lunch?

CHAIRMAN GALT: Yeah, I'll ask him at lunch. Marcia, remember that.

MS. RUNDLE: Well, he represented the city and county of Denver.

MR. DAVIS: You see the city and county of Denver and a lot of people that really are well financed carried this thing out and there are lots of law firms in representing every issue in Colorado and we'll have to see what happens there. So, that's about, I don't know who all got a copy of the opinion or read it and so forth. There are copies available for anybody who hasn't I'm sure. You may want to expand on that a little bit.

MS. RUNDLE: I got essentially the same information from the folks that I talked to in Colorado. There are so many parties involved that anyone of the attorneys for any one of the parties is reluctant to say there will or won't be any deal because there are just so many people involved and no one has decided definitely to appeal it. The position of the Carlson firm, as I understand it, as of a couple days ago was that they were not going to advise their clients to appeal and they gave me some idea about timing.

MR. DAVIS: Is that the city of Denver?

MS. RUNDLE: No. Carlson represents, well, let's see. I thought they were the Twin Lakes Canal Company or, yeah, Twin Lakes Reservoir and Canal Company. Paula Phillips of their office suggested that by next, in the next term in March the case would be called for hearing and they would probably schedule for trial at that time, but they expect to have over a year of discovery. Some discussions have gone on considering attempting to do some kind of consolidation, but the way she explained it to me the City and County of Denver case was as to the water rights in two water districts, Division No. 2 and 5 I think. This is in a different district and one of the theories is that they can limit the impact of this case by not doing any consolidation and so they're willing to go into each water basin, do the facts on each of the streams, do essentially what Wyoming did, go out and look at each water basin case by case, do the hydrology, go into court and fight it on the facts and it wasn't clear to me what they're expecting, what case they're expecting to make on the facts other than they're going to emphasize impacts on existing users if there are any and she wasn't clear that there were any and frankly I'm not sure of the relevance of that anyhow.

VICE-CHAIRMAN TWEETEN: Well, it's a weak point in the favorable flow analysis, I think, remember the legislative history of the Organic Act indicates that the reason why they wanted to preserve the favorable conditions of water flow was so the people downstream would get their water, or one of the reasons was--flood control was a major reason, but they wanted to make sure that there was water passed down to the farmers down on the flat land and it's, I think, at least rhetorically inconsistent to say on the one hand that the purpose of the Organic Act was to get water to the farmers and on the other hand we have an instream flow so the farmers can't have their water.

MR. DAVIS: I'm wondering about that. I don't see how the minimum instream flow prevents the farmers from getting their water.

MS. RUNDLE: It only does if they're upstream.

MR. DAVIS: Well, in our negotiations let's assure that they wouldn't recognize any prior appropriators upstream, it's just for future appropriation. So, trying to figure out exactly how horrible this scenario is if they get an instream flow, of course we've all got this basic thing of not wanting the feds to have anything to do with it which of course I share, but then what's really going to be the impact. I don't know, I tried to fly it down in my county some of those streams up in the Big Hole. If they've got an instream flow all that water is coming out anyway and they pick it up and they irrigate with it. They say, well, what are we going to do if we want some in the future and you say...

CHAIRMAN GALT: That's true, there are a few places in the state though where it rises on the forest, crosses into private land and then goes back into the forest.

MR. DAVIS: Well, you've got a few places, but by in large whether it's a horrendous a thing and whether you've got to take each claim, I don't know.

CHAIRMAN GALT: Well, Carl, one other thing, Carl, I wish to announce that Carl Davis is the new Chairman of the Forest Service negotiating team. Did you know that, Carl?

MR. DAVIS: Well, I think that I stay as Vice-Chairman...

CHAIRMAN GALT: No, you're chairman, let the record show that he's chairman.

MR. DAVIS: Well, I think that's the point. We've got to do some thinking about it.

CHAIRMAN GALT: Have they even got back in contact with us since that last meeting we had?

MS. RUNDLE: Well, no, they're waiting for us.

MR. DAVIS: So, we had the big hassle last two times ago in July about waiting until Jesse got decided or how much dollars you want. So, then I read your minutes last meeting and I guess you just had a lengthy discussion as to the good share of the meeting on the same topic. So, I guess that's what we'll have to decide what you want to do next.

MS. RUNDLE: There is a team recommendation that was adopted by the team that has never come to the Commission.

MR. DAVIS: What was that?

MS. RUNDLE: Well, there were two motions, the first motion was made by Mr. Davis....

MR. DAVIS: Was to determine what other rights needed to be determined.

MS. RUNDLE: Yes. And then Representative Iverson made a substitute motion that I think was the same. And in response to that the staff did take a look at some of those existing, some of the other claims that they had submitted, some of the other two compacts that they had submitted. We have some real reservations about operating on the basis of those claims because they're several years old and we suspect that they would probably change those and that they're incomplete.

MR. DAVIS: But in the mean time the water is running just the same out of the hills.

MS. RUNDLE: You betcha.

MR. DAVIS: Fortunately, it doesn't know about all those things, Mother Nature, she'd be upset.

(Laughter)

VICE-CHAIRMAN TWEETEN: Maybe we should make her a party to the negotiations.

MR. DAVIS: Well, she thought curiously most of the minimum instream flows this year...

CHAIRMAN GALT: I don't believe that's a matter for the Compact... Any further discussion on the Forest Service thing because we are going to break after we're through with this and wait until 2:00. I'm sorry, Joe, I bet I'm imposing on you.

SENATOR MAZUREK: No, that's fine. I have to be on a--from 12:45 till 2:15 I'll be gone, but I'll be back after that.

MS. RUNDLE: You know, I think the staff would like direction if you wish to give us any. Otherwise I wouldn't propose that we do any more analysis on the Forest Service claims at this time.

MR. DAVIS: Well, I think we've got to address this Jesse matter that's now, and I don't know whether the full Commission has to do that in view of all their discussions last week.

SENATOR MAZUREK: This is on another subject if we're done, just briefly. Marcia and I talked earlier this week about some positive indications from both the Northern Cheyenne and the Flatheads and so we will try to follow up on those in hopes that maybe...

MS. RUNDLE: That was Blackfeet.

SENATOR MAZUREK: I mean the, I said the Flathead, I meant the Blackfeet. There may be even some...

CHAIRMAN GALT: Well, I encourage all you chairman to keep nibbling away at any one you're assigned to and you have the Commission's authority to do that, just, you don't have to--we would like to be informed of any contact you've made, but you don't have to have my permission or her permission to get in touch with any of those.

VICE-CHAIRMAN TWEETEN: Mr. Chairman, since we seem to have come to the end of Agenda Item E...

CHAIRMAN GALT: Well, I think he wants to get back to it.

VICE-CHAIRMAN TWEETEN: Oh, alright.

MR. DAVIS: Well, I don't particularly care, but we've got to know what the Commission wants to do on that Forest Service thing--whether you want to do it now or later or...

CHAIRMAN GALT: Well, we have a few minutes, let's...

VICE-CHAIRMAN TWEETEN: Mr. Chairman, would it be appropriate for the negotiating team to take a look at what happened in Jesse and come back with a recommendation as to where we should go from here? I think by the time of the next Commission meeting you will know whether Jesse is going to be appealed or not.

CHAIRMAN GALT: Well, what did the decision say, not in lawyer's work, just a...

MR. DAVIS: Here's what the summary says, it says: the United States claim that the withdrawal of the pipe in San \_\_\_\_\_ National Forest from the public domain implicitly reserved the pertinent water necessary to maintain minimum instream flow.

CHAIRMAN GALT: Is that what the court said?

MR. DAVIS: No, that was what the claimant says and then it says, the court says, recent advances in the science of fluvial geomorphology...

CHAIRMAN GALT: I knew you were going to get into that.

VICE-CHAIRMAN TWEETEN: It's that lawyer talk.

(Laughter)

MR. DAVIS: Now I don't know whether that word has gotten into the mainstream or in the dictionary, someone invented it probably in this case. "According to the United States demonstrated that minimum instream water flows are necessary to achieve the purposes for which the national forests were created under the Organic Administrative Act of 1897. The Water Court entered partial summary judgement against the United States and held that as a matter of law the Organic Act did not implicitly reserve the claimed federal reserved water rights and that the United States was estopped from claiming a reserved water right to maintain a minimum instream flow based on prior decisions. The Supreme Court reversed and remanded the case with directions for further procedures. The Court held 1) prior case law does not foreclose the United States from asserting a claim that the Organic Act implicitly reserved the pertinent water necessary to maintain instream flows in the national forests; 2) the United States is not estopped from claiming instream flow rights to achieve the purpose." It's an interesting...

CHAIRMAN GALT: Well, okay then, what's the process? The decision is there and does it have to go back to a district court?

MR. DAVIS: Yeah, it went back to district court and says that at hearing at the district court level they have a right to put in evidence of fluvial geomorphology, whatever the hell that is...

CHAIRMAN GALT: If they can catch the critter.

(Laughter)

MR. DAVIS: And it says on remand the Water Court should proceed in the manner we approved in Denver one and City and County of Denver for each federal claim of a reserved right the trier of fact must examine the documents reserving the land from the public domain and the Organic Act, determine the precise federal purpose to be served by such legislation, determine whether water is essential for the primary purpose of the reservation and finally determine the precise quantity of water necessary to satisfy such purpose. So, they're going to have a lot more litigation over that, you know.

CHAIRMAN GALT: And that's back in a district court level.

MR. DAVIS: Back to the district court. Let them come in, when they throw you out on a summary judgement you don't get to put in any facts. They say, well, the United States gets to put in and try to prove this is necessary for there....

CHAIRMAN GALT: Mary, why don't you, excuse me, Carl, let's get off the record. This doesn't have to be on the record or do you want it on the record?

MR. DAVIS: No, I sure don't. Not necessary...

OFF THE RECORD

CHAIRMAN GALT: Note that we are back in session and we are at No. 8 on the proposed agenda, Commission's policies and procedures. Did you have this put on Gordon or...

MR. McOMBER: Oh, I think I was maybe guilty of that. You got clear down to No. 8 did you?

CHAIRMAN GALT: Yeah.

MR. McOMBER: Well, what did you do with the Forest Service may I ask?

CHAIRMAN GALT: Uh, what did we do with the Forest Service, Mr. Davis? We appointed him chairman in your place, Gordon.

MR. DAVIS: I resisted it. I think you should stay in there.

CHAIRMAN GALT: Well, explain to him your feelings about last...

MR. DAVIS: Well, you've read the Jesse case and it didn't come out the way we all had projected it would I assume so, right now, I guess, that we've got to have a meeting of the team and make the determination and when we want to do that I don't know, but I would think that we'd advise the Forest Service of what we're doing, whichever way it is.

CHAIRMAN GALT: Well, you as chairman, or Gordon as chairman, whoever, certainly has the Commission's permission to contact the Forest Service and call your team together any time you wish and...

MR. McOMBER: Well, I don't, I'm sorry I got out of here this morning and missed out on that. I guess if it's a matter of going back to the team first is it to make a decision or?

MR. DAVIS: Well, I think that's up to the team to make that decision as to whether it is or not, you know, I think that's up to everybody to decide or whatever the Commission themselves wants to decide, how it should be approached and then we'll go from there.

REPRESENTATIVE IVERSON: I guess as a team member I think I'd, I'm kind of looking for leadership from Carl, give him a few days to think it over, maybe informally talk to the Forest Service or whatever you want to do and come to us with an idea. We kicked it around for a half an hour this morning and, you know, we didn't come out with a solution.

MR. McOMBER: Well, if there's going to be another meeting of that team, Carl, I have a proposal I'd intended to make here and I'll give that to you.

CHAIRMAN GALT: We'll revert back to, if you wish to make a proposal or a thing we can revert back to...

MR. McOMBER: I'm very reluctant to do that.

CHAIRMAN GALT: Alright, well then, personally I'd rather the team get together and come up to the Commission with something than...

MR. McOMBER: Okay. Whatever you say.

CHAIRMAN GALT: And Joe is a member of the team and he said he'd be here about 2:15 he thought. Alright, then let's revert back to, is that enough, Gordon, or do you want to beat the horse again?

MR. McOMBER: No. I'm not through flogging the issue I want you to know that.

CHAIRMAN GALT: Well, you're still a member of that team?

MR. McOMBER: Yes, yes, very much so.

MR. DAVIS: Will you be staying as chairman or what is your situation?

MR. McOMBER: No.

MR. DAVIS: Well, then you can be the Vice-Chairman, I suppose.

CHAIRMAN GALT: Does anyone wish to volunteer for Vice-Chairman? Dennis, Gary? How about making Mazurek Vice-Chairman?

REPRESENTATIVE IVERSON: I think I heard somebody in this chair say something.

REPRESENTATIVE SPAETH: I was going to say, here's an empty chair right here.

REPRESENTATIVE IVERSON: I heard something come out of this chair.

REPRESENTATIVE SPAETH: Joe was volunteering, I know he was. I was looking right there at him.

(Laughter)



CHAIRMAN GALT: Okay, so Carl, we'll leave it like this that you will get the team together whenever you can and you debate it first and come up with something to bring to the next Commission meeting.

MR. DAVIS: Well, yeah, and then I think everybody should throw in their input. If Gordon has something or anyone else, you know, where should we go from here in view of this decision.

CHAIRMAN GALT: Yeah, okay.

MR. DAVIS: I think we discussed this morning that we don't want to throw a lot more money at it till we know where basically what the legal parameters are that you can work with.

MR. McOMBER: Well, maybe somebody, one of you attorneys would help me out. Now tell me what's going to happen now? What could happen? What kind of a time frame before it can be conclusively resolved?

MR. DAVIS: I don't think anyone can tell you that. We asked the attorney that was here from Denver who represents one of the parties to the Jesse case in Colorado if he knew whether they were going to take that appeal to the U.S. Supreme Court on that and he said that hasn't been decided. They'll have to decide that within the next thirty days I suppose if they're going to appeal. They're going to appeal that to the U.S. Supreme Court and then we can wait till there's a decision from the Supreme Court as to whether they have a reserved water right for instream flow...

MR. McOMBER: Well, that wasn't the issue on that case though was it? Wasn't the issue, excuse me, go ahead.

MR. DAVIS: No, go ahead.

MR. McOMBER: No, I understood that the issue that the state Supreme Court ruled on the question of whether the Colorado court had been proper in saying that the issue had already been dealt with in effect. Was that the wrong, did I get the wrong impression?

MR. DAVIS: I think the issue that went up to the Supreme Court in Colorado was that everyone anticipated the water judge granted a summary judgement in that case on the basis that the Forest Service did not have a minimum instream flow which had been resolved in the New Mexico case in the Denver I and II cases. The Supreme Court reversed that and said that issue wasn't resolved whether they had an instream flow for channel maintenance that in the prior case that issue was framed and that was the reason that they distinguished the first case that said you have to go back and they have the right to present evidence to see if they can justify a minimum instream flow for stream or channel maintenance or whatever you want to call it. Now, if they appeal that Supreme Court they should rule directly on the question of whether they have as a matter of law an instream flow. That was one of...

MR. McOMBER: That's your interpretation, Marcia? What are those two words they used on...

MS. RUNDLE: Fluvial morphology, geomorphology?

MR. McOMBER: No, no...

MR. DAVIS: Collateral estoppel?

MR. McOMBER: Right, collateral estoppel and that it can't be tried again. That was Colorado's position that it couldn't be, that...

MR. DAVIS: That was one of their positions and they reversed that and said we also reverse the Water Court's determination, the United States was collaterally estopped from relitigating the existence of reserved rights to maintain instream flows in the national forests and it says, it recites the rules of collateral estoppel. It said bars relitigation of an issue determined at a prior proceeding if the issue on which the preclusion is asserted is identical to an issue actually litigated and necessarily adjudicated prior proceeding and the parties of this thing and it says in the prior proceeding they didn't have that issue in front of them because that wasn't that they had set the prior proceeding aside because they didn't make a decision as to whether they had instream flows. They've made a decision based on the fact that they didn't have that issue in front of the water judge at the time that he made his ruling and so they only could appeal from that.

MR. McOMBER: Well, was it remanded then back to the Water Court for action?

MR. DAVIS: Yeah, it's all back to the district court, I think. Here's what directions are at the end, it says, "On remand the Water Court should proceed in the manner we approved in Denver I and City and County of Denver vs. United States. For each federal claim of reserved water right the trier of fact must examine the documents reserving the land from the public domain and the Organic Act, determine the precise federal purposes to be served by such legislation, determine whether water is essential for the primary purpose of the reservation and finally determine the precise quantity of water necessary to satisfy such a purpose." It's on that last page there. Now, whether they want to go back and do that or whether they want to appeal on up to the Supreme Court at that point we don't know. I think they're going to have to decide that in the next thirty days. If they go back Marcia said she talked to someone down there and what was the information you had, Marcia that--a year for discovery?

MS. RUNDLE: Yeah, they were looking at probably a year for discovery. They thought that in the next term they would probably, that being next March, they would set a trial date, but that it would be at least a year away.

MR. DAVIS: But if they don't appeal that at this point then they recognize in conceding the fact that the Forest Service has a reserved right for instream flow, I guess, I don't know whether you can appeal that later on.

MS. RUNDLE: Or they're going back in to develop the facts and then present the legal argument in the context of the given facts.

VICE-CHAIRMAN TWEETEN: I think they could appeal that legal issue later on if they wanted to. I don't think they're foreclosing doing that if they don't take it up now.

MS. RUNDLE: I think one of the things that they're looking at now is that they're in the position of a state, the state Supreme Court having a come down on the side of the federal government so they're in a bit of an awkward position to go to the federal court now, to the Supreme Court when their own state Supreme Court has ruled against them and the parties who would be taking it up would be state water districts and city and county of Denver and all of those folks.

MR. DAVIS: And the state of Colorado.

MS. RUNDLE: Yes, but they have not yet decided that. There are so many parties involved in the case that no one of the parties is willing to say that no it won't be appealed because we don't know what everyone else is thinking right now.

MR. DAVIS: What they've find--they've spent literally millions of dollars to get this far in the process to see where they're going to go.

VICE-CHAIRMAN TWEETEN: And that's another factor that they're going to consider in deciding whether to appeal or not. If it's going to cost them a lot of money to try this case in the district court and then they want to roll the dice and try to get it turned back to the Supreme Court and save themselves the time and expense of having to try their case in a lower court.

MR. McOMBER: Well, we're back to frame one where I come on this Commission in 1983 and we were just one case away from solving, having the issue solved.

MR. DAVIS: Oh, I think we'd be in the same position though if we start, if you start today you're looking at five, ten years just like they're doing, I mean there would be no change in ours except we'd be spending the same money to find out the same thing, but they're spending it and they're out in front of us that's all.

MR. McOMBER: Yeah, well, I'm not suggesting that we break off negotiations with them. I never was. We make a fair proposition to them and if it's unacceptable then we'll let the chips fall where they may and from the conclusions or from...

MR. DAVIS: I do feel that we need to give some response to the Forest Service, but I think, I would think we ought to wait for 30 days to see whether it's going to be appealed and take it from there.

MR. McOMBER: Well, I guess after nine years another 30 days isn't going to break anybody, but I think the Forest Service would be getting a little antsy about the answer we promised them going on two years ago. Anyway Mr. Chairman, if there's going to be another meeting I'll pursue that no further at this time.

CHAIRMAN GALT: There will be another meeting of the negotiating team. Correct?

MR. DAVIS: That's fine. But should we schedule or wait until after we know what's happened down there on appeal? I think it would be better.

CHAIRMAN GALT: That's up to the negotiating team.

MR. DAVIS: What do you think on that?

MR. ELLIOTT: Mr. Chairman, is there a time frame that they have to respond?

MR. DAVIS: I, myself, am not aware of any compulsion that we're under to go ahead and do anything as far as the...

CHAIRMAN GALT: I think Mr. Elliott meant does these parties have a time frame that they could...

MR. DAVIS: Well, I don't know, in Montana you have thirty days don't you?

VICE-CHAIRMAN TWEETEN: I think they have sixty because the United States are a part of both parties. I think the time for filing the petition is sixty days in that case. Clay, does that sound right?

MR. DAVIS: Since this decision came out in--what's the date of it?

MR. McOMBER: It's been out some time. August wasn't it?

MR. DAVIS: October 13th. You've got November 13th, December 13th, so there's sixty days that's almost...

CHAIRMAN GALT: Well, there's some conversation with the lawyers back there that it might be ninety days.

MS. RUNDLE: In that case it would be January 13th.

MR. DAVIS: It'd be another month. But I mean you're within a short timeframe of where they have to bite the bullet.

CHAIRMAN GALT: Well, I think you can handle that Forest Service team and come back to us with something. Gordon, due to a motion that you made at our last meeting at the next session of this Commission three items be on the agenda. One is the adoption of policies, standards and guidelines for the Commission. Do you want to pursue that?

MR. McOMBER: Okay, Mr. Chairman. This is an issue that's bugged me for a long while. I mentioned it a few times, but we've never proceeded with it and let me say at the outset that I'm well aware that early in the game a determination was made by the staff counsel that it wasn't necessary to adopt policies and procedures, etc. I'm just as, I guess I'd say if I felt like hiring a lawyer I'm sure I could come up with legal justification why this Commission should have policies and guidelines and procedures and that holds true for the open meeting issue too. Early in the game the Commission concluded that it was in the best interest of the state not to open the meetings and now someone has called our bluff and we've reversed our position. I should tell you that I attended that meeting in Kalispell with Marcia put on on the open meeting law. I'm going to run these all together because they're just about all the same thing.

CHAIRMAN GALT: Okay, now, so everyone knows we'll be talking about No.'s 8 and 9 together.

MR. McOMBER: The whole thing, 8, 9, and 10. Right. And we attended that meeting put on by a former of this organization incidentally, Steve Brown and it was a Montana School Board Association Symposium or meeting on the open meeting law. While the presentation of Mr. Brown left no question in my mind that the apprehension that we're skating on thin ice in closing the meetings is pretty well founded. I also come to the conclusion that the time there wasn't too much future in pursuing the legal justification of opening these meetings or closing them and along with his presentation, Steve handed out a booklet and in the back is a glossary and it's interesting that the three articles in the state constitution that cover the right to participate in open meetings and a right to know, it just took three sentences for you guys in the constitution to write that out, you see. However, the legislature has felt obligated to add to that and as a result there's some 57 sections of law that's been written on those three sentences in the constitution. There have been 27 court cases on the question or questions and there have been 18 attorney generals' opinions on it and since that meeting I know of two more that are on their way out and so I guess it's kind of like reading the Bible you can find anything you want in it and my point is that I think this Commission could take either side it wanted and find justification in doing it, closing the meetings or opening them, writing rules or not writing them and what it boils down to from my point of view is that the Commission make a decision on what it feels now is in the best interest of the Commission and obviously then the people of Montana. Going back to the policies and procedures and again I'm aware that there's a legal interpretation that this Commission doesn't have to come up with that and I'd like to tell you why I think that it's proper and in the best interests of the state of Montana that we do. I think I've spent considerable time discussing what's in Montana's interests when I was chairman of the board, twice I think with the Park Service and once with the Forest Service. And they presumed to tell the Commission what was in the best interest of the state of Montana and considerable staff time has been expended on the same issue. The staff has set down and decided what was good for Montana and developed a program in that line. Well, the Commission has never made a decision on it. It seems to me that our basic position should be that we start out with the assumption that we are part of the adjudication process, we're representing the people of Montana and we have a legal and a moral responsibility to represent the best interests of the people of Montana. Now, I'm well aware as you are that there has to be some give and take, but I don't like to start out giving until I think we've completely sized up the situation. I'd go back, and Mr. Chairman, it's not my intention to sit down here and dictate the policy or procedure right here and now, but I can give you my ideas on what I think it should be based on. With your indulgence I'll quote from the statutes, 85-2-101 which says, "Declaration of Policy and Purpose: 1. Pursuant to Article IX of the Montana Constitution the legislature declared that any use of water is a public use and that the waters in the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses, etc."

MR. DAVIS: Incidentally, I put that article in, too, as long as you're giving me all the other ones.

MR. McOMBER: Good, now I hope you'll remember that. And it goes on to say about encouraging the development of facilities which store and conserve waters for beneficial use for the maximum, etc. etc. And I think we get over to the key words beneficial use, key words: the use of water for the benefit of the appropriator, other person, or the public (this is the definition of beneficial use) including but not limited to agriculture, including stockwater, domestic, fish and wildlife, industrial irrigation mining, municipal powers and recreation. Now, that's the definition of beneficial use and I've served on water committees in the legislature for damn near a quarter of a century and we've attempted to prioritize those beneficial uses and the legislature to my knowledge has never done it. I therefore, don't think it's incumbent upon this Commission to make any decision based on its idea of what has the higher beneficial use. It's my understanding that they're all equal and I take the position then, Mr. Chairman, that this Commission shouldn't by itself conclude that one use has a higher value than the other and should have a senior right over another one. I would include that in my recommendations as basic policy. I think that's where we should be coming from. We should remember that we're representing the people, the Constitution says the water is ours and so forth. I've noticed with some admiration the professionalism of the people we've negotiated with. They've never let us forget for a damn minute they're working for the federal government or an Indian Tribe and they're taking care of those interests and they're going to get every drop they can and I'm sure they're aware that sometime there's going to be some tradeoffs. But, anyway, there's no question in my mind that those professionals know who is paying their wages and that their future is involved and I think we owe the people of Montana no less.

It's my feeling, and I'm going to run through this quickly once more, I did before and when you get back into this, what's the first decree, the preliminary decree, that's bothered me because when Montana undertook to adjudicate its water it provided that all the claims would go into a preliminary decree and I may not use the right legal phraseology here, but once your claim got into a preliminary decree then you were on an equal basis with everyone else that had a claim in that preliminary decree and you were subject, you were entitled to the same notices, the same right of appearance, the same right to examine other claimants in that decree as any of your neighbors. However, this is in a drainage, in a basin, however, if in that drainage basin that you assert a claim the federal government under an Indian Tribe that asserted the claim and they've asked to negotiate then action on that preliminary decree is held up until after, either after a compact has been consummated or one side or the other has rejected it and in our case the result has been that for some eight years the Tribe has come in with its experts, its lawyers and presented its case to us, with some of the top lawyers and experts in the country incidentally, and after we, the Commission, have agreed with the, this is how the law reads, you can correct me if I'm not right on this impression, I think I am, after the Commission and the Tribe have arrived at an understanding that's been okayed by the Department of the Interior, then goes to the legislature, it's ratified by the legislature, signed by the Governor and then and only then does it go into the preliminary decree. And there for the first time under the law does this private water right holder out there get his day in court and when he does he's going to be facing not only the Tribe and the Commission and the Department of the Interior, but the legislature because they've already passed judgement on who owns the damned water. Now, it isn't, the point isn't that maybe his claim

isn't a good claim and it isn't well founded, the point is he's denied his day in court until all these other people have made a decision for him and of course, under the law if the judge thinks he's made a point and he is entitled to that right then the whole compact goes out unless of course the Tribe agrees to compromise with him. His other option is to take a run at it in the legislature and that's what I think this \_\_\_\_\_ will do. He'll marshal his forces and gather up people around other reservations and come back and they'll take a run at it in the legislature. I just, I don't know if the legislature thought that out. I don't think they did. I've reviewed the minutes of the meetings and, Jack, you were chairman of one of those committees in the Senate and Willy Day in the House, and all those people, and I just don't think they've thought this out and that time.

I think that this Commission, as part of the adjudication process, should proceed in much the same manner as the court does. I think the first thing we should do when we go to negotiate with a federal agency or a tribe is to present to them the same list of requirements that the court, give us your claim, and give us your justification of that claim. See, I think we should operate just like the court does. We asked them for their claim and their justification and we've been going eight years with some Tribes and we still don't know what the hell they want and the basis, we know broadly, it's the Winters Doctrine they're claiming on it, but they haven't presented us with justification for their claim. So, #1, I feel that we should proceed the same as the courts do and ask for that same information for someone that wants to come in and negotiate, and #2, I think those claimants, any claimant to the same water that we're negotiating for to a federally reserved right should have the same right as any other claimant in a preliminary decree to the information that we have. I don't think he should be deprived of that information until someone else has in effect made the decision for him. So, in that case, the two points there is that I think we should ask for the information that that Tribe or federal agency would be asked for by the court if it gets to that place and I think that a citizen of Montana who I understand we're supposed to be supporting, working for, I think he should have access to all the information that's in those claims just the same as if all claims had gone into a preliminary decree.

Now, as I said, Mr. Chairman, it's not my intention to try to write out some rules and regulations here and the first question I have is whether or not the rest of the Commission thinks that we should have rules. If you don't we just as well drop the whole damn thing right here, but that's the basic question--do you think we should have rules. Then there's other operational procedural rules too. On that item I'd talk about the open meeting a little later, okay? But I guess, Mr. Chairman, I'd ask the question first, does the Commission feel that the Commission should have, should adopt a policy and procedural rules?

CHAIRMAN GALT: And these one or two or three items that you mentioned, you would want to have that part of the procedural rules, the no prioritization of preliminary decree...

MR. McOMBER: Well, that would be kind of in the policy, we'd...

CHAIRMAN GALT: Alright. Any comments?

MR. DAVIS: Well, I'd have a comment, Mr. Chairman, with the item #2. If the public should have access to the claims submitted then what can they do after that? In other words if they don't have any standing apparently to object unless you have some hearings or some place that they can express their position. See what I mean there?

MR. McOMBER: Yeah, I've got something on that, I've got, I don't know where in the hell it is, would provide that all meetings, sessions would be open to the public, there would be no participation during the sessions, we'd agreed to reserve that strictly between the representatives of the Tribe at the federal government and the Commission. There'd be absolutely no participation during the sessions themselves, but at some time a period would be set aside for input from those people. We don't have to, that's completely unworkable to have them sit down as partners in the proceedings.

CHAIRMAN GALT: Well, I'm not saying Aye or Nay or whatever, but there is somewhere in this pile I read a pretty concise thing that under certain conditions the Commission adopted policy that they would close meetings when it came to negotiations. That came under Judge Loble and even when you were chairman that was discussed.

MR. McOMBER: As long as we got into that, Mr. Chairman, could I do that part on open meetings?

CHAIRMAN GALT: You bet. You bet.

MR. McOMBER: When the Commission was first organized it was the difficulty of negotiating in the public eye was recognized and I've gone back through all of these minutes and transcripts and the Commission fished for a way, and I use that word advisedly, they fished for a way to close the negotiating sessions and some legal positions were developed and if you read the transcripts it's very plain there. They were reaching when they did that. The Cheyenne wanted the meetings open and, or closed, and interestingly enough the Salish wanted them closed, the attorney for the Salish wanted them closed. However, they did arrive at an understanding that was Commission policy which in effect said that the Tribes had the right to make the decision whether the meeting was open or closed. Now those weren't the exact words, but the point was that if the Tribes said either close the meeting or there is no negotiations in the meeting and the Commission agreed to close the meetings you see. That's how it was.

CHAIRMAN GALT: That's right, you're right.

MR. McOMBER: However, the Salish and Kootenai then pulled out for a year, disappeared for, I don't know, for some reason, they apparently never explained, then they come back in with a whole new set of players and at the first meeting, and I just roughly went through our routine and I recited this position of the Commission's, do you insist on having the meetings open or no negotiations, well, we're going to open them. Urban Roth was there and old Urban, I shouldn't say Old Urban, but he wouldn't tolerate that, no way, and he kind of put me down, I was chairman and that was our position, but we went out and had a caucus and we come back in and said nothing doing, we agreed on this in the caucus and Urban's concern was that first it was illegal and second that if we did it anyway it would nullify, the compact could be



nullified and there are some procedures on that see. So, the negotiating team never took a position with the Tribe on it. We said we'll go home and see. This was in, I think, the September meeting, so in September we come back to the Commission and I can't find the minutes of this, where that decision was made, but I know damn well it was made because when we went back to the November meeting with the Tribes Urban presented that position as official Commission policy. In that case, in that policy, we reversed ourselves. We said we want the meetings open, if you insist we'll listen to you, but the Commission reserves the rights to close the meeting and that's our present policy. The Commission now reserves the right to close the meetings, so we reversed ourself on that and, let's see, Dan Kemmis was here then and there were kind of two motions together, Chris made one and one was to the effect that, I think, that Chris made that the decision would be made on an ad hoc basis by the negotiating team and the people that were there on whether or not the meetings would be open, whether the Commission would stand for closing the meetings. So, that's the position now. We reserve the right to have those meetings open.

CHAIRMAN GALT: Or closed?

MR. McOMBER:— Yeah, right, but, yeah, that's right, sure. But the thing of it is we reserve the right to open them and we didn't before. We let the Indians make the decision. Now, the problem of course is that there's a threat of a suit on this and again I hope the hell we don't get into that, but nevertheless there's a threat there and I think a pretty good case could be made, but my biggest concern is how in the hell are we going to write a compact without some input from those people. Now, the Salish are claiming or they've laid claim to every drainage in western Montana which throws a cloud over, probably over every water right in the state of Montana. And another thing I should add is that at that last meeting we agreed to come back and get an opinion, the Salish waived a little on closing the meetings, but they wanted the information kept confidential, see, they wanted all the information kept confidential until the Tribe and the Commission had made a decision which would exclude knowledge of what we were doing from all those other claimants that are jeopardized by the Salish claims see. I just don't see how we can presume to represent the people of Montana and that many people without some input from them and expect to get the damn thing through the legislature. Now there's one more point I've got to make. We got right up to the front door of the church steps of the Ft. Peck Compact and come back with the final draft and submitted it to the AG, the Governor, and the Department of Natural Resources and they turned thumbs down on it or we did because there was a pretty good assumption there that they'd get clobbered in the legislature and so the Commission made the decision that we wouldn't submit that agreement to the legislature. The Department of the Interior turned negotiations off for over a year and directed the Tribes not to negotiate with us until the state of Montana come up with an agreement that the Department of Natural Resources, the Governor's representative, and the AG be represented at these meetings and be privileged to that information. So, Governor, we developed an understanding and the AG signed off on it, the Governor signed on it, and the Department of Natural Resources signed off on it and Interior did, that those people would be there and now the Tribes over there are insisting that they don't be there, you know, we got a problem. Interior says we won't negotiate unless these three state agencies are up to snuff on it and the Tribes said we won't negotiate if they are. So, what I feel is that I've got a motion here

to the effect that the meetings be opened with the exceptions of strategy sessions and the time be set aside for input from those, from anybody afterwards and that the negotiating team go back to the Salish and Kootenai and then try to explain what a hell of a position we're in and I'd suggest that a negotiating team or select committee from this Commission meet with representatives of the Salish and Kootenai, the Joint Board over there and the federal government and see if we can't iron this out in a peaceful way.

CHAIRMAN GALT: Have you made a motion yet, Gordon or do you....

MR. McOMBER: No.

CHAIRMAN GALT: Well, while we're still discussing it and I missed some of the meetings over there, but I don't remember the Kootenai Salish prohibiting the agency participation.

MR. McOMBER: Right here at this table.

CHAIRMAN GALT: Right here? Maybe I wasn't....

MR. McOMBER: And Interior, I pointed that out, we kind of worked our way up to it like one guy thinks of this and another one and another one and it finally dawned on me, I remembered that agreement and that, yeah, they don't want anybody there, they don't want any knowledge to go out of their claims or their justification until we've reached an agreement and when I brought that up and Rich Aldrich then for the Interior said, yeah, that was the case and Interior was going to stick by that and it was at that stage in the game that Goetz and what's his name started to back off a little and they said, well, we'll consider that if you'll promise to keep all this information confidential and not just from the irrigators, but from the Attorney General, they don't want the Attorney General to know about it because he might get in the case if he gets to litigation, see. Which is assinine because Rich Aldrich and Goetz who were negotiating, Dan Decker for the Tribe, were negotiating with us are also going to be, they're preparing for a case to go to court and they're privvy to everything we do, but they want their information insulated from the state Attorney General. It's gotten to the place where it's ridiculous.

CHAIRMAN GALT: Further comments?

MR. ELLIOTT: I have a question, Mr. Chairman. We're blessed with a lot of attorneys among us. Relative to the state law as it applies to the open meeting law and we are acting as agents to the state, would you lend some clarification in relation to what's the position of the Commission under state law?

MR. DAVIS: He was looking at you.

VICE-CHAIRMAN TWEETEN: I thought you were looking at Carl, Everett, I'm sorry.

MR. ELLIOTT: Well, all three of you.

VICE-CHAIRMAN TWEETEN: I guess I'll go first. I don't know that there is an answer to that question. I think Gordon put it quite well that the open meeting law and it's various applications to various kinds of government agencies is just not clear. There are exceptions that are provided for litigation strategy, it's possible that we could take the position that when the Commission is negotiating what we're doing is negotiating a settlement of litigation and that would exempt you from the open meeting. It's not clear that what we do in every instance is a meeting under the open meeting law. There's so many areas in which what we do is so different from what an ordinary government agency does, but it's not clear to me that there is an obvious answer to your question. I think it's an issue that could be argued on either side.

MR. ELLIOTT: One more question then. What is our challenge from the legislature as the purpose of the Commission in the first place? What are we supposed to be doing?

CHAIRMAN GALT: It's right there in the book.

MR. ELLIOTT: Well, I thought, my understanding was that we were to negotiate reserved water rights and that's where we start and stop. Am I right or am I wrong there?

VICE-CHAIRMAN TWEETEN: The answer to your question raises more questions than it answers, you know, we're here to negotiate reserved water rights. What does negotiate mean? I mean does that mean we figure out what the numerical value of those rights are and just give them that many acre-feet of water or does it mean by negotiating are we authorized to make other kinds of compromises in order to reach a settlement of the ultimate issue of how much water they get.

MR. ELLIOTT: Negotiate the matter of quantification.

VICE-CHAIRMAN TWEETEN: Well, is it? I mean the statute doesn't say that.

MR. ELLIOTT: I don't know. My impression...

MR. MCOMBER: Could I ask another question here?

CHAIRMAN GALT: You bet.

MR. MCOMBER: If the statutes say negotiate for an equitable apportionment of water and I talked to Marcia about this a couple of years ago and she sent me something in legaleze and I still don't know what her bottom line was if there was one or is that answerable, Marcia?

MS. RUNDLE: What is the question, Gordon?

MR. MCOMBER: What is an equitable apportionment and how does it apply to the state of Montana? Does it properly apply to the state of Montana? Those are the words in the law.

MR. DAVIS: It's a bad choice of words. That's pretty obvious.

MR. McOMBER: It's what?

MR. DAVIS: It's a bad choice of words. That's pretty obvious. You can't apportion equitably your water and my water if I've got a, you've got a 1985 water right and I've got a 1900 water right. You can't equitably apportion that because our whole system is based on date of priorities.

VICE-CHAIRMAN TWEETEN: I don't think when the legislature used that term it understood that the term equitable apportionment is a term that has a very specific and narrow meaning in federal water law and I don't think the legislature in using the term equitable apportionment meant to incorporate into the state statute what that term means in federal law because it doesn't, it just doesn't translate. You know, I think by saying that we had to reach an equitable apportionment, what the legislature was telling us is come up with a fair solution and a reasonable solution. But I don't think they were using that term to give us a direction that we are to follow the body and case law that's developed in reaching an interstate apportionment of waters that flow from state to state which is what the term means, which is how the term is used in federal law. I don't think that's what the legislature had in mind. I agree with Carl. I just think it's an unfortunate choice of term. I mean the legislators who were on the Commission may disagree with that and may know that there is some legislative history that says that's wrong, but it seems to me that the use of the that term was an unfortunate mistake by the legislature.

MR. McOMBER: Well, Mr. Chairman, on Everett's question, I think we have operated under the assumption that it was our job to determine, identify and quantify federal and Indian rights and I guess maybe we can, if we wanted to take the position we could just go ahead and do that and forget the rest of Montana, but maybe someone else has got an opinion on that, but I just see so damn many practical problems with ignoring those people that, you know, they can come in and clobber our compact if nothing else.

CHAIRMAN GALT: Well, to get it right down to where we're talking about, we're talking about the Salish Kootenai Tribe right? Have we ran into that...

MR. DAVIS: I wonder, Mr. Chairman, I was wondering that, too. There are other reservations where you have non Indian water users on the reservation.

CHAIRMAN GALT: Yes, I know the Blackfoot does.

MR. DAVIS: And then it would equally apply to whether you were off the reservation, but you got water rights, how much of their water rights are going to affect me you could come off the reservation so. I'm not so sure it does just apply to the Confederated Salish. I don't know. I have a reservation in my mind on that and what do you think?

VICE-CHAIRMAN TWEETEN: I agree with you. I think that obviously when you have streams that don't pay any attention to political boundaries and you have water users on either side if you live off the reservation what we negotiate for a compact is going to affect you even though we're only apportioning those waters that are appurtenant to the reservation. And we

faced that to a certain extent in Ft. Peck and I think we're going to face it in every compact that we negotiate looking downstream from the reservation and deciding, and upstream from the reservation for that matter and deciding how, what we're doing is going to impact on those people who live off the reservation. Obviously that's something we have to consider.

CHAIRMAN GALT: Gary?

REPRESENTATIVE SPAETH: Yeah, just as a general comment and I'll probably be longer than I'd like my comments to be, but I think that at least I feel it's clear and I think quite a few other people feel that it's clear that whatever we do here has to ultimately be accepted by the people that's involved in the area. One, we'd get clobbered in the legislature, but I don't think it's our role necessarily to do something that's going to be adverse to the people that's going to be on the Salish Kootenai Reservation or wherever that reservation may be and so I don't think that that's a, to me, anything that we've deviated from that because we're going to have to sell whatever we agree to if we agree to something and in that I think means that the system has to be fairly open and what we do has to be fairly open in order so that suspicions and paranoia doesn't arise and cause problems, but I think on an ad hoc basis and on some types of determinations that there's going to be some times that we may want to ensure that it is open and I think the negotiating, or closed, excuse me, and I think the negotiating team and the Commission is going to almost have to take it on an ad hoc basis because we're dealing with different personalities, we're dealing with different issues and to deal with the Forest Service is different than dealing with the Fish, Wildlife and Parks and sometimes they're the same people at the table. I use those as an example and so you have to, I think, adjust to the situation at hand with the understanding that we have clients out there and our clients are the people that are in the affected area that we have to have them to agree. I'm convinced that we're not going to have compacts on every place. I'm not even sure how many compacts we will ever put together, but I think that it's in the best interests of everyone involved to try to do the compacting simply because of the heartache and the costs if we don't do it with extensive time consuming and extremely expensive legal costs. Look at the Wyoming with the ten million dollars that they've poured into it and I understand that's at the state level and I don't know how much they may have poured into it at the private level for the people out there that are on water rights. If you go to a person and say it's going to cost you ten, twenty, thirty thousand dollars and maybe even more to defend your water rights if it goes into some litigation they may feel that negotiation is the best tactic. And I think that that's what the Commission is constituted to do and I just think that each of the negotiating teams have to respond to the situation in front of them with the understanding that we have to deal and represent a certain constituency and if we forget that then we're going to get clobbered in the legislature. We haven't put together something, you know, if we go to the Salish, that's the one that keeps coming up, that's the one that's the biggest issue, if we're negotiating in secret all the time the non Indian folks up there are going to be very concerned as to what we're going to be doing and may not accept even if we were to come up with a reasonable agreement just because of the tactics and the actions that are involved and I think that that has to be understood by all sides. In fact, it's not unusual and sometimes in negotiating, to spend a fair amount of time to negotiate over the size and the configuration of the table and Carl has spent more time negotiating than I have, but sometimes

negotiations with different parties take different tactics. You may go into negotiating room, jump up and down, holler, scream, slam your books on the table, stomp out of the room, all those sorts of things and the next time maybe with those same parties you're sitting down as reasonable people and working those things out, those are just, I use those to extremes, but it's just different ways that you negotiate and we have to try and avoid the heartache of litigation, time consuming and all that, the uncertainty and that. But, I'm not optimistic that we're going to have compacts with everyone even if we were given the next hundred years to put together those kind of compacts and we may have a compact that we thought was good that we can't sell to the people that we thought because of just some of the different tactics that might be involved. I guess I'm not sure, I guess, Gordon, what we're looking at as far as rules and regulations. I'd like to have you expand on rules and regulations, what you'd like to have us adopt a little more specifically.

MR. MCOMBER: Well, first I feel we should adopt a policy, a basic policy, you know, what our goals are, what our objectives are, and the positions we should take and understanding, you know, eventually you may have to compromise some of them away, but, and especially on this Commission because there are nine of us and we're scattered all over the state. Most of you are busy making a living and involved in other activities and you just don't go off and unload it on a chairman who also is busy making a living and doing other things. I think we should have first a basic policy for the staff to go back to for guidance when they're asked to draft something and then as far as the operating rules and procedures or whatever you call them. Again, I believe when we start out to negotiate with a tribe or an agency if we haven't already that we ask them for the the same information they'd be submitting if they were going to the court and the same justification for it. And I believe also that people who have a claim to the same water that's being negotiated should be treated, should have privy to the claims of the water, of the other claims for their water and to the justification of claims for that water and that, as I said, they shouldn't be allowed to get involved in negotiations, but I think they should be allowed an opportunity for input to express themselves and I think, you know, we're going to have to have the guts to say no to them if they're absolutely wrong, but I, basically those are what I'm thinking about. I see in other agencies you start out there's a policy and purpose. You go through the statutes there's a policy and purpose and there's certain laws they have to abide by.

CHAIRMAN GALT: I believe Everett is next.

MR. ELLIOTT: Just a short question, Mr. Chairman. Marcia, in relation a policy that would make a statement like all meetings will be open then my question is this, what does that do to you in the way of receiving information from the people we're negotiating with. Does it put a cloud on what they will give you and what they will not give you if say another person can walk in and ask for that information? From my reading of the open meeting law it not only includes the verbal comments that are being made around the table, but also the data that's being presented back and forth. So that's my question.

MS. RUNDLE: Everett, I can't know what effect that would have because all that we know is what the Tribes have said to us and the concerns have been expressed from the beginning that there may be times during the negotiations that tribes will want to submit information that they want to be kept confidential. My understanding of the Commission's position that was taken in 1980 was that it was based on the constitution and that it essentially mirrored the constitutional provision that the Commission would presume that all meetings would be kept open, but that for reasons of the privacy interests of the tribe the Commission reserved or recognized its constitutional, its right under the constitution to close meetings to protect the confidentiality of information. It's my understanding that that's the position that the Commission reaffirmed in 1985. The Commission's attorneys, I believe, in reading the minutes and transcripts have always said that the Commission is subject to the open meetings law. I don't think that anyone has ever suggested that the Commission is not. But the constitution itself sets up a balancing where open meetings interests and the right of the public to participate in the process to observe the deliberations of public bodies is balanced against the individual right of privacy. The Supreme Court in the last two years has affirmed in two separate cases that corporations including Mountain Bell and insurance companies can invoke that right to individual privacy. I have not found any cases directly on point. I have not researched the issue, but it would be my assumption at this point that tribes are no less entitled to invoke that privacy exception than our corporations.

MR. DAVIS: I think probably, Mr. Chairman, off the open meeting law, but in line with what Gordon is saying about the claims within a reasonable length of time, of course hind sight is always better than everything, but if everyone has had to submit their claims on an equal basis a rancher or anyone else, the Tribes, the Forest Service, within a time frame and then you gave your negotiations they'd be cut off and be subject to the same thing as a rancher would be. Now they can keep playing, the rancher he's tied down, if he forgot to file something maybe he can't even get it and now they can just keep going and thinking up new filings just like they have on this instream flows and so forth. So, maybe we can still do that in subsequent legislation.

CHAIRMAN GALT: We could do that very easily. We could dissolve ourselves right now and not negotiate at all and they'd have ninety days to go to the courthouse.

MR. DAVIS: I don't know how much deadline we have authority to give them though as far as you'd say you'd give him a six month deadline to file other than if you give them the deadline then they don't do it then you don't have anything to negotiate. You see, statutorily a rancher has a deadline to file his claim.

CHAIRMAN GALT: If you wanted the claims.

MR. DAVIS: Pardon?

CHAIRMAN GALT: If he wanted the...

MR. DAVIS: But the Forest Service hasn't had to file their claims.

CHAIRMAN GALT: They would have had if it hadn't been, the Compact Commission was...

MR. DAVIS: But at that step.

CHAIRMAN GALT: But right now if we decide that the Forest Service is not negotiating in good faith we could here today just decide not to negotiate with the Forest Service and what is it, ninety days that they have, did we extend, six months, yeah, we extended it the last session, I believe, for six months and they'd have to go to the Water Court.

MS. RUNDLE: Mr. Chairman, could I clarify one thing though? There has only been one three hour segment of one negotiating session that has ever been closed. The Commission has operated under its policy of presuming that all negotiating sessions would be open and in reviewing all the records I can only find one three hour segment that was ever closed.

MR. DAVIS: Well, Mr. Chairman, in your suggestion, Gordon, would it include strategy sessions?

MR. MCOMBER: No.

MR. DAVIS: Just negotiations?

MR. MCOMBER: No, you know, after all if the legislature can caucus I don't see why we can't and the tribes can caucus I don't see why we can't. You know, to me that's pretty good justification. May I comment on this thing that Marcia said. That's very true and I think Urban, about this one meeting being closed and Urban made quite a point of the fact that the Flatheads they let the Fort Peck people never objected, I think only the Cheyenne and the Salish and Kootenai have wanted closed meetings. The reason that meeting was closed, I think if you'll go back and read, Marcia, was that was during the discussion on whether or not it should be opened and the Commission agreed to close it for that one meeting and to come back, the negotiating team agreed to close it for that one meeting and to come back to the entire Commission for a direction on what they'd do in the future.

CHAIRMAN GALT: Mr. Iverson?

REPRESENTATIVE IVERSON: Mr. Chairman, I'm kind of enjoying this discussion, I'm learning something.

CHAIRMAN GALT: Well, let's discuss it as much as you want to, but sooner or later we got to get down to doing things.

REPRESENTATIVE IVERSON: Yeah, that's kind of what I'm doing. I'm trying to focus it in my own mind and it seems to me like we're talking about two separate things at once here. First of all, Gordon's question is whether or not we need rules and mixed in that discussion is a discussion as to what those rules should be. Now, in my opinion, I think, that it might be a good idea to develop some rules and procedures. What worries me about it is that if we do that we got to be pretty careful that we don't mess up a couple of things that I think are important. One of those is probably a little less important is the thing called the prerogative of the chair. I think if we



write rules we want to be careful we don't mess around with that and the second thing I think that's the most important is if we do rules, I think, we've got to be careful that we don't make them so rigid that we may limit our ability to negotiate and I guess that's kind of the core of the issue that we're talking about here in my mind because it seems to me that if we adopt rules that we can't of course force the tribes or the people we want to negotiate with to abide by and if we're bound by those rules then we've pretty well precluded ourselves from discussing what we're charged to discuss with the Tribe. For example, if we decide that all meetings are open and then the Tribe says no, we've decided before the fact that we're not going to talk to those guys. I agree completely with Gordon when he says that we should be worried about those other claimants that may not be heard in a proper way. I'm a little concerned though that if we adopt a policy that closes all the meetings, or excuse me, opens all the meetings and a tribe refuses to deal with us that we're doing them any favors in that regard either. So, I guess, I would hope that we would develop policy if we develop policy that would at least leave us enough flexibility to not get trapped by that. Isn't there a way that we can hear those people, isn't there a way that we can do everything we could possibly do to protect their claims short of precluding ourselves from meeting in camera if the tribe wants it? That worries me a lot and I know of a couple of people that have indicated that negotiations may depend on whether or not the meetings are closed or there's ability to close them.

MR. McOMBER: Well, you know, if I might, Dennis, that's where we are right now. We're at logger heads, the Tribe has said, you know, we're going to close these meetings or in effect they've said forget it unless you're willing to keep the information confidential. If you'll swear to keep the information confidential to me there's a mechanics problem with that with all the people--then we'll let, we might consider letting in the representatives of the AG's Office, etc. But then if you promise to keep that information confidential there isn't a hell of a lot of use in talking to those other claimants because the information they want to know about is the information the tribes want to keep confidential. One of my suggestions was and I've talked to Chris about this a little before we discussed it is if we couldn't sit down with those people, with these four parties, the Commission, the feds, the Tribes and the Joint Board over there and try and come up with some kind of a workable solution.

REPRESENTATIVE IVERSON: So, you're suggesting maybe something short of a rigid declaration that all meetings are open?

MR. McOMBER: Well, our policy right now is and I've got to talk to you about this, Marcia, we have a different interpretation of this policy. My understanding of the policy right now is that we adopted back in 1984 is that we reversed ourselves putting it in blunt plain words previously the tribes had the right, they had the final say in whether the meeting would be open or not and we've reversed that and given this Commission that say on it. So, the way I read it right now the Commission can say, can insist that the meetings be open and the negotiating team makes that decision on an ad hoc basis. So, I think that's where we are now and that was completely unacceptable to the tribes. They don't, because, and there's some debate between Urban and Goetz on that in there in which Urban said, in which Goetz objected and Urban said well, if we give you the right to object then in effect you'll have all the damn meetings closed. And Goetz says, but you're going to have them all open.

REPRESENTATIVE IVERSON: Okay, well then, I've got a question then, how do we solve that problem by adopting a policy that we know they're going to reject or at least some of them will? If we adopt an open meeting policy we know for a fact that there are going to be some tribes that are going to say the hell with you. How does this solve that problem, I guess is my question?

MR. MCOMBER: Well, I guess, I've got some problems with negotiating with that Tribe, you know, they've come up with obstacles to negotiating for nine years and I think what we really need is a professional analysis of their goals. And, I think, one of the first things we need from them is a statement of their entire claims, just what are they claiming?

REPRESENTATIVE IVERSON: That could very well be the case there and I think I agree with you, but there are several other tribes out there that we're going to face the same problem with or a similar problem and I think we may, if we adopt a policy you suggest, if I heard it right we may be deciding ahead of time that we're not going to negotiate.

CHAIRMAN GALT: There's been no motion made or anything. We've got to get around to that to know what we're talking about pretty soon.

REPRESENTATIVE IVERSON: Are we talking about whether to write rules or are we talking about the rules?

CHAIRMAN GALT: Both.

MR. MCOMBER: Just one more thing, Mr. Chairman, and I'll try and drop this. Dennis, I think that's something we've got to face. Now, I've made a couple of cracks here about this Commission getting stuck in two ruts, capitulation or procrastination and I think it's a damn good description of the way we've been operating and I think well, our good learned friend said he didn't think we're, probably weren't get a compact with all of them and I don't either. I think that's something we have to face, but I don't think putting it off and putting it off is ever going to solve the problem. I think we have to get up to the place where we make a judgement on whether a compact is possible or not. I just have to think that this insistence on all meetings being closed is an obstacle. Sorry, Mr. Chairman.

VICE-CHAIRMAN TWEETEN: Mr. Chairman? I'm not sure it's necessarily productive to go back and argue about whether we changed our position in 1985 or that we adhered to what our earlier position is. I mean, I have a view on that, but I don't think it makes a whole lot of difference. I think it's clear from the record what our position is now and that is that the presumption is that negotiating sessions are going to be open to the public and that in the event our negotiating partners want to close them we will consider on an ad hoc basis closing those negotiations if we're convinced that there's a reasonable justification for closing the negotiations to preserve the confidentiality of information, for example, that we will act on that and negotiate in closed session for the purposes of protecting that narrow category of information or whatever that we think is worthy of protecting. I think that's the policy we have now and I think that's been the policy all along essentially although, and I don't think it makes a whole lot of difference how you put it, I mean, it seems to me that that's the policy that

we're following and in fact that policy has only produced a very small portion of one meeting that has been conducted in closed session and I think if you go back and look at the minutes of that particular session there really wasn't a whole lot of reason to do that, nothing that I'd consider to be terribly confidential was placed on the table at that closed session. But, in any event, that's the history that we're dealing with here. Now, writing rules, I think, is fine, I think we have a fair quantity of written policy already on a variety of different things and I see no problem with pulling that together and codifying and adding to it if we think that there's some policy that needs to be changed or a new policy that needs to be adopted. I think if for ease of reference if for no other reason that's probably a good idea. As to what that policy should contain if the Commission can reach a consensus as to the approach that it wishes to take the negotiations as to the goals that it wishes to pursue in negotiation and that can be reduced to writing, that certainly would be appropriate to include that in the policy. If we can reach a consensus on procedures to be followed in dealing with our negotiating partners it obviously would be appropriate to put that in written policy form as well and I have no problem with that. As far as public participation is concerned, I think, I personally have been on record for a long time as saying that obviously if we're going to get a compact that's going to fly through the legislature we're going to have to have the acquiescence if not the outright support of the water users who are going to be affected by that and obviously the only way you can do that is by bringing them into the process, explain to them what you're doing and listening to what they have to say and taking that back to the table and using that as part of your data base if you want to call it that from which you develop the positions that you lay on the table. I haven't gone back and looked at the minutes, but I'm sure that on several occasions I've made it clear that I think it's essential that we develop some sort of a line of communication with the Joint Board on the Flathead Reservation, that we develop similar lines of communication with the non Indian water users who are involved in every reservation that we're negotiating on and make sure that we understand what their concerns are and make sure that they understand to the extent that we can explain it to them what the issues are that we're negotiating about. I don't think, I've never made an issue of that and I don't think there's any dispute about that. I think it's obvious that we have to do that. I don't dispute much of anything that's been said today. The only dispute I would have is with the idea that we should adopt a policy, an inflexible rule that all negotiating sessions are going to be conducted in public and that if a tribe, I think Dennis's observation is absolutely right, if the tribe doesn't want to negotiate in an open meeting we're telling them to take their claims to court because our policy, inflexible, rigid, and without exception is going to be that we're going to negotiate in public or not at all. I think that's a mistake. I think the current policy provides us with the flexibility to at least maintain contact with negotiating partners who are reluctant to negotiate in open session. And, I think, as long as we maintain contact the possibility exists that we can make progress. But, if we take an inflexible position that we're going to negotiate in public or not at all it seems to me that we're not maintaining that flexibility, we're not maintaining that contact and we're essentially abandoning any hope of making any progress with that reservation. I think that's a mistake. I think we're in no position to tell anybody at this point to accept our procedure on open meetings or take your claim to court because I don't think it's any secret that we're not ready to litigate and if we tell them to go to court and they call our bluff we've got a serious

problem to deal with and a problem that's going to cost the state of Montana a lot of money. So, I'm not ready to call their bluff yet it seems to me. So, I guess, if the matter comes to a vote I'm going to vote to adhere to the current policy and maintain the flexibility that we've got now.

MR. MCOMBER: Well, I've got to ask the gentleman a question, Mr. Chairman. That's where we are right now is that the Commission has cited this position to the Tribe, it's the position that we now have, our policy to the Tribe and this one is unacceptable to the Tribe. It's already unacceptable to the Tribe because the minute the negotiating team says no, we insist on this particular meeting being open the Tribe has already thrown down the gauntlet, well, they're going to quit negotiating. They're going home. So, we're already at that place, at that deadlock. Unless we can go over and talk them out of it and get them to see the wisdom of letting those other claimants in.

VICE-CHAIRMAN TWEETEN: I guess I'm not convinced that we're at impasse on that issue right now. Maybe I'm wrong on that, I don't know, but we haven't made any effort to try and sit down and negotiate an acceptance on the part of the Tribe of the policy we have now. And until that effort has been made and we reach an impasse on that point, I guess, I'm not ready to write off what we've got now as a policy that's uniformly going to be rejected by the Tribes. I guess, I keep going back to the history of these negotiations and even with the Flathead Tribes, we've had five or six negotiating sessions and only one small portion of one session has been conducted in a closed meeting, the rest of it's all been out in the open and I guess I don't think that we have to necessarily abandon the hope of conducting any negotiations with the Flathead Tribes in an open meeting simply because one small portion of our most recent negotiating session was conducted in a closed meeting. I don't think history supports that kind of pessimism on that point.

MR. MCOMBER: Well, would you go for inviting them to sit down with the other claimants in talking about it?

VICE-CHAIRMAN TWEETEN: I would be willing to extend that invitation. I wouldn't hold out any hope that they would accept it. The political situation on the reservation being what it is now I think it highly unlikely that the Tribe would be willing to sit down at the table with the Joint Board and negotiate on that issue. Again, I'm not abandoning that as an option, but it seems to me unlikely that they'd be willing to do that. We could certainly extend the invitation. I would think before we did that we would want to enter into our own bilateral discussions with the Joint Board before the Tribe was brought in and I know I've broached that subject with the attorneys for the Joint Board and it's been indicated to me that they're willing to sit down with us, but they're not enthusiastic about it. I guess that's the impression I draw and I've essentially left it at that. But I think before we start getting into any sort of a trilateral discussion with the Tribes and the Joint Board and the Compact Commission, I think, we've got to get our house in order with the Joint Board first and open up some lines of communication and make sure that we're talking to each other and maybe we can eliminate some of the sort of reflexive mistrust that the Joint Board seems to have with the Compact Commission. I'm not sure we've ever done anything to justify that, but it seems to me pretty clear that the Joint Board doesn't think that we're capable of representing their interests and capable of acting

in their best interests and I think we've got to find out why they feel that way and make every effort to make it clear to them that we understand what role they're eventually going to play in this process and that we understand that if we negotiate a compact that they don't like we're wasting our time because it's not going to be ratified by the legislature. Nothing could be clearer to me than that and that if the Joint Board thinks that we're going to sell them down the river just to get a compact, I think, they're mistaken and I guess it seems to me that we've got to get that issue settled and make sure that we realize that we're on the same side essentially before we try and open some sort of a trilateral discussion with the Tribes as to what role the Joint Board is going to play in the negotiations.

MR. McOMBER: Well, one more question, Chris, how would you deal with their objection to attendance at the meetings by representatives of AG's Office, the Governor's and the Department of Natural Resources?

VICE-CHAIRMAN TWEETEN: Well, that's unacceptable and they know it and, you know, Goetz acknowledged that in the transcript of that meeting in November of 1985 when I first made that objection and told them that I think it's totally unrealistic for you to expect that the Compact Commission is going to sit down at the table and negotiate without being able to consult with DNRC and the Attorney General and that in light of the history of the Ft. Peck Compact that's just not going to happen and Rich Aldrich weighed in, I think, fairly heavily on our side on that issue and Jim Goetz acknowledged that our position is a position that made some sense to him. So, I don't think the tribes are going to adhere to that as a position.

MR. McOMBER: But their last position with us was that if they backed off on that that the information developed had to be kept privvy from anybody in Montana that might be able to use it against him.

VICE-CHAIRMAN TWEETEN: Well, I don't think that extends to the Attorney General and DNRC and if it does, I guess, that that's unacceptable.

MR. McOMBER: It did, very specifically, it did.

VICE-CHAIRMAN TWEETEN: Yeah, I think that's unacceptable and I think, I don't think that's a non negotiable point on their part. I think they have to understand that we can't operate that way and we, you know, we got into trouble operating that way at one point and we're not going to take the risk of doing it again. And I'm very comfortable sitting down with Jim Goetz and Dan Decker and talking about that and I think, you know, Goetz has acknowledged on one occasion at least that our position is an appropriate one. It seems to me that unless his client is going to overrule him on that which I think is unlikely that that's not going to be a stumbling block.

CHAIRMAN GALT: Now we've had a lot of philosophy put out, do you want to do anything? Does anyone want to make a motion? Do you want to make a motion regarding rules and regulations and the operation of the Commission or do you want to make any motion regarding the open meeting law? Do you want to make a motion to send a negotiating team up to the Salish Kootenai and try to reason with them?

MR. McOMBER: Okay, I'm, okay, Mr. Chairman, we've talked on this about long enough. I guess back to my first question which I don't think has to be a motion and I just put that question, you could ask for a consensus from the Commission if they think that the development of a policy and rules is in the best interest of the Commission.

CHAIRMAN GALT: That is not a form of a motion, but does the Commission feel that it would be beneficial to evidently appoint a subcommittee because nine people can't do it maybe three...

MR. ETCHART: Are we talking about new policy or are you talking about a synopsis of what's in existence or...

MR. McOMBER: Both, both. I think we'd have to go back....

MR. ETCHART: You'd have to summarize first what our policies are and then we'd have to look at them and see what their short comings are, if they're to be amended or improved or enlarged.

MR. McOMBER: Yeah, and in enlarge on them. But the problem is we've made policy and it doesn't show up for six years when something like this happens and somebody does a literature search.

MR. ETCHART: Yeah, well, I think it's hard for me as a relatively new member to fully absorb it, too, because it's buried into a lot of ....

END OF TAPE #1

CHAIRMAN GALT: Any further comments?

MR. ELLIOTT: Mr. Chairman, I think, it would be premature to make a hard and fast rule and step into something we might regret at a later time and maybe the Chair would take the position to go ahead and name a--or ask the staff attorney to review our policies as they are and make a report to us? We sure got to, between the fire and the burner on this issue and a fast decision might get us in a little more or so than we'd want to.

CHAIRMAN GALT: Any further comments?

MR. DAVIS: My only comment would be, Mr. Chairman, would be not as a policy, but where are we right now as for our efforts, are we all over the water front or is there some particular group we're trying to throw our resources at to get a compact out. Is there a priority?

CHAIRMAN GALT: Oh, I think there is, and correct me if I'm wrong, but the Fish and Wildlife Service would be a very high item. I think the Ft. Belknap is probably approaching a stage where they might negotiate.

MS. RUNDLE: By statute the Commission is directed to the maximum extent practical to focus on the Milk River.

MR. DAVIS: That's what I wondered because you can't do them all at once.

MR. ETCHART: Jack, I'd like to ask a question here or maybe a little observation. It seems to me and listening to both sides of this argument that the Commission meetings have been largely opened, but also that there is a mechanism to close them. Now the Salish Tribe says that they won't...

CHAIRMAN GALT: Gene, I hate to interrupt you, but we're going to be at this all night, let's get this one thing out, does the Commission wish to put out a policy statement with the rules and regulations and whatever and then we'll get to that, Gene. I never meant to shut you off, but we've...

REPRESENTATIVE IVERSON: I don't know that there's a problem with the rules being scattered out through the minutes of the last six or eight years, but if they are I think it would be a good idea to codify them and put them in some sort of form so they're easy to find. If that's the question.

VICE-CHAIRMAN TWEETEN: Mr. Chairman, I think, let me make a motion and we can talk about whether that's what we want to do.

CHAIRMAN GALT: Mary, get it right.

VICE-CHAIRMAN TWEETEN: I'll talk slow. I move first that the staff be directed to review the minutes of the Compact Commission's meetings and from those minutes determine which policy positions have been adopted by the Compact Commission in its prior meetings and collect those and be prepared to report on them at the next meeting of the Commission. Second, that a subcommittee be appointed to review those policies once they are isolated and come to the next Commission meeting with a recommendation as to whether additional policies need to be adopted or whether the existing policies need to be changed in any way.

CHAIRMAN GALT: A subcommittee of how many, Chris, three?

VICE-CHAIRMAN TWEETEN: Three sounds like a nice round number.

REPRESENTATIVE IVERSON: I'll second that.

CHAIRMAN GALT: That motion is for three on that subcommittee.

VICE-CHAIRMAN TWEETEN: Did you get that, Mary?

MS. BERTAGNOLLI: Um-hmm.

MR. MCOMBER: Mr. Chairman, I'd like to propose an amendment to that motion that that subcommittee come back with recommendations for additional policy and rules for consideration at the next meeting. Is that acceptable?

VICE-CHAIRMAN TWEETEN: Not only whether there should be additional rules, but if it's decided there should be additional ones that specific proposals be brought? I don't have any problem with that.

MR. ELLIOTT: I'll second that.

CHAIRMAN GALT: Voting on the amendment, all those in favor signify by saying Aye?

UNISON: Aye.

CHAIRMAN GALT: Opposed? Amendment has been adopted. Now we'll revert to the motion as amended. It has been moved and seconded to...

MR. McOMBER: Question, are we going to talk at the same about the open meeting, Chris?

CHAIRMAN GALT: Let's do that...

MR. McOMBER: I mean, was that to be included in this is my question.

VICE-CHAIRMAN TWEETEN: My understanding is that that's an existing policy and it seems to me that the subcommittee could propose changes to that if it wanted to.

CHAIRMAN GALT: Okay, then, fine. Any further comments? Questions? Are you ready for the question? All those in favor signify by saying Aye?

UNISON: Aye.

CHAIRMAN GALT: Opposed? The motion has been adopted so now, Gene, I'm sorry that takes your question out of the hands and puts it in the hands of a subcommittee I suppose the chair has the authority to appoint that subcommittee or do you want to...

VICE-CHAIRMAN TWEETEN: Well, I don't know. Do we have any procedures on that?

(Laughter)

CHAIRMAN GALT: Appointed to the...

VICE-CHAIRMAN TWEETEN: Is that part of the prerogative of the Chair now?

CHAIRMAN GALT: Well, seeing as there's nothing written in black and white I will take that prerogative and appoint Mr. McOmber, Mr. Tweeten, and any volunteers for the other one? If not, I'll appoint, I think Dennis, you, Mr. Iverson, if that's alright. If there's any objections to that let me know. We've got a lawyer, we've got a lay person and we've got a fella, very informed about the Compact Commission, having served as chairman for, I don't see how we could get it scattered out any more. If you put two lawyers on there you fellas will never come up with anything.

(Laughter)

VICE-CHAIRMAN TWEETEN: If we do no one will be able to understand it.



CHAIRMAN GALT: Then I guess we don't have to discuss the open meeting thing then will be presented at the next meeting. Marcia, I'd like to ask you, that first part of that motion asking you to put all this stuff together, how much staff time would that take?

MR. MCOMBER: Hell, you've already done half of it for this session haven't you?

MS. RUNDLE: I don't know. Just a point of clarification, if what you want to be identified and pulled is everything with regard to sort of philosophy about the policy of the Commission and policies that are in place? I mean there is no consistence, to my knowledge there is no consensus that has ever been expressed by this Commission as to the overall policy of what the purpose of the Commission is. That is, its written in the statute in language that has been discussed here as being inappropriate. Within separate negotiations we have talked about what the best interests of the state are in that case or what the goals of the Commission are in a specific case and that's been with regard to any number of specific negotiations. I don't know though if that's what you intend us to look at.

VICE-CHAIRMAN TWEETEN: Well, my intention, Mr. Chairman, was to glean from the minutes those instances in which a specific policy has been placed on the table and voted on by the Commission and adopted in that way. Because it seems to me anything other than that is not a policy. An individual expression of philosophy on the part of one Commission member or on the part of the chairman of the Commission I don't think is a Commission policy. But since I've been here we've done that on several occasions. We've adopted the management policy, we've made policy on the chairman's prerogatives, we've adopted an open meetings policy that's been voted on a couple of times, you know, those are the kinds of things and I'm not sure how frequently that was done prior to the time that I got involved, but I think you can go through and pull those things in which a vote was taken...

MS. RUNDLE: You may already have every instance in which a vote was taken. But we will check.

CHAIRMAN GALT: But I think they want it, I think they would rather have it, Gene, am I right, sort of in front of us in a two or three page thing.

VICE-CHAIRMAN TWEETEN: Well, I guess, what I would suggest, Marcia, is that you pull all that stuff together and produce a cover page for it that says that this is the date, this is the subject, this is what we did for each one of those policies that's been adopted and for the ones like the management memo that are three or four pages long you can attach those and include them by reference. But, you know, what I'm after is sort of codifying the policies that have been adopted so far.

CHAIRMAN GALT: Have you, could you give an idea how much time that will take?

MS. RUNDLE: I don't think it will take long because I don't think that there are very many motions in addition to these. It will take some time to search.

MR. ETCHART: You'd want to meld that with what the law directs and that sort of thing so that you're looking at the whole package.

VICE-CHAIRMAN TWEETEN: Well, I think the subcommittee will do that. We will have a report ready which I think we probably will want to do right away.

CHAIRMAN GALT: Yes, you will have to report actually to the subcommittee and then the subcommittee will come into the whole Commission.

MR. DAVIS: Yeah, don't send it to the rest of us.

MR. MCOMBER: One more thing, Mr. Chairman, I think this Commission has expressed some policy through the job descriptions of the staff people, too. We've solved some controversies over the past years by doing that and I'd suggest that the job description, position description of the attorney be included in that at least. You know, she's the one with the decision making responsibility for the rest of the staff.

MS. RUNDLE: So, pull the motions and my job description?

CHAIRMAN GALT: I guess, is that what you want?

VICE-CHAIRMAN TWEETEN: Yeah, I guess.

MR. MCOMBER: Well, there's some things have been adopted by consensus. Like we use to in the Senate, you know, without objection such and such, that's what you meant, too.

VICE-CHAIRMAN TWEETEN: Well, let's see what you come up the first time, I guess, if we need more than that we can send them back again.

CHAIRMAN GALT: Uh, subcommittee, how much time would you, do you think you would need or, she says it won't take long, maybe it'll take, this is Christmas time, you're getting on into, would you have that done by the end of January?

MS. RUNDLE: Oh, middle of January.

CHAIRMAN GALT: Middle of January, and given to the subcommittee?

MS. RUNDLE: You bet.

CHAIRMAN GALT: You would probably want to meet first of February? I think this is important enough and we're not going to get anything else done until we, the Commission acts on this and so I'm going to push a little bit. Do you think we could consider a meeting of the full Commission by the middle of February to discuss this?

VICE-CHAIRMAN TWEETEN: I don't know, I guess, it seems to me we can meet anytime Dennis comes to town for some legislative business.

REPRESENTATIVE IVERSON: Oh yeah, we can meet whenever she gets her stuff ready.

VICE-CHAIRMAN TWEETEN: Well, as soon as Marcia gets that done we can sit down and sort of decide where we want to go and I would think a couple of meetings of the subcommittee we could probably...

REPRESENTATIVE IVERSON: I don't live for the winter, I'm still struggling.

CHAIRMAN GALT: Okay, I'll still say, would you think around the middle of February would be a nice date to...

VICE-CHAIRMAN TWEETEN: I don't see any reason why we couldn't do that.

MR. McOMBER: Did you designate a chairman?

CHAIRMAN GALT: No, I never, you fellows vote on it.

VICE-CHAIRMAN TWEETEN: Gordon, you've got chairman experience so, I think you should be the chairman.

CHAIRMAN GALT: You're the chairman, Gordon.

VICE-CHAIRMAN TWEETEN: We just voted and Gordon is it.

REPRESENTATIVE IVERSON: We just voted, it's you.

MR. McOMBER: Well, I was looking for another job. Well, Mr. Chairman, if I may, I do thank you for this. It has concerned me. I've been involved in public and private bodies all of my life and I've never seen that had less guidelines for this one and there is a turnover in the staff and there's a turnover in members. Like Gene and these people come in and, when I come in it was quite a problem knowing what's wanting to be done. And so, you've taken that burden off my shoulders and I thank you for it.

CHAIRMAN GALT: Well, that included #10, too, you fellows will address #10. What time is it now?

VICE-CHAIRMAN TWEETEN: It's twenty-five minutes to four.

CHAIRMAN GALT: Twenty-five minutes to four?

MS. RUNDLE: Um-hmm. Did you want to look at dates?

SENATOR MAZUREK: Mr. Chairman, the reason I'm late, speaking of taking time, we had eight panel members who were supposed to take ten minutes a piece and I don't think any of them took less than twenty, so my one hour meeting took two and a half.

MR. McOMBER: How many of them weren't lawyers?

SENATOR MAZUREK: There were only, there was one, there were two lawyers on the panel.

VICE-CHAIRMAN TWEETEN: How many of them were farmers?

MR. McOMBER: Come on.

CHAIRMAN GALT: And that's the date we sort of set it, how about February the 19th, gentlemen, for another full Commission meeting and it will discuss the main thing on the agenda will be...

MS. RUNDLE: By that time we may also have the U.S. Fish and Wildlife Service, meeting may have been in January.

CHAIRMAN GALT: We will attempt other things.

REPRESENTATIVE IVERSON: And I would guess that by February 19th we'll have a pretty good idea of how reasonable it is to assume that we can go to work at Ft. Belknap. I think we'll know by then how it looks.

SENATOR MAZUREK: I don't know that I'll be around then.

CHAIRMAN GALT: I forget, did the Commission at this meeting, did we discuss Fish and Wildlife thing with their and did we take a position on it?

MS. RUNDLE: No, no, we're going to meet.

VICE-CHAIRMAN TWEETEN: The negotiating team is going to meet.

MS. RUNDLE: The negotiating team will meet and that the staff will meet with other agencies.

CHAIRMAN GALT: Okay.

MR. DAVIS: Part of your policies is setting up negotiating teams, isn't it and all that?

VICE-CHAIRMAN TWEETEN: Yeah. Do we want to review what we've got to do between now and February before we adjourn?

CHAIRMAN GALT: Yes, that'd be a good idea. The Fish and Wildlife subcommittee I'm sure will meet. Do you have any idea when?

MS. RUNDLE: I would propose the week of the 11th of January if that looks good for the team.

CHAIRMAN GALT: Couldn't move it up one to...

MS. RUNDLE: Well, sure, that week is fine, too. That's not giving, I mean, that's New Year's Eve, I mean some of us are going to take vacations during Christmas break.

CHAIRMAN GALT: I was going to take one starting here, too.

MS. RUNDLE: How about this week?

CHAIRMAN GALT: No, no, I won't be back. January, what the hell is that date and I haven't got it figured out.

VICE-CHAIRMAN TWEETEN: Why don't you turn it off while we figure this out.

OFF THE RECORD

CHAIRMAN GALT: Is there any objections to Mr. Tweeten contacting the Joint Board to try to get some sort of a meeting to discuss mutual concerns?

MR. ETCHART: I think it's a good idea.

MR. ELLIOTT: I do, too.

CHAIRMAN GALT: Okay, no objections being expressed, please do so.

MR. DAVIS: Anything on Park Service, excuse me, that we should be doing or is there anybody that's got any concerns on that?

CHAIRMAN GALT: Oh, I have great concerns about it and poor Gordon, he thought he had a compact all tied up with one of them and it got blowed out of the water.

MS. RUNDLE: We have not gone looking for things to do because of the directions of the Commission for the staff to focus on Ft. Belknap and the U.S. Fish and Wildlife Service. But those directions are subject to change at your will.

CHAIRMAN GALT: My own opinion that greater Yellowstone Ecosystem down there is going to put, I don't see how we could ever compact around that, do you? If there's nothing more formal to come in I think we'll adjourn the meeting and we can get off the record.

MS. RUNDLE: Could we put on the record those dates though?

CHAIRMAN GALT: What dates?

MS. RUNDLE: January 15th for a meeting...

CHAIRMAN GALT: We did. That's on it.

MS. RUNDLE: It was off.

CHAIRMAN GALT: No it wasn't.

MS. RUNDLE: Was it on? Put it on. You have the dates, just put it on.