

**MEMORANDUM**

TO: Susan Cottingham; Jay Weiner; CSKT Negotiating Team; CSKT Minute Files  
FROM: Sonja Hoeglund  
RE: Draft CSKT Minute Summary from April 28, 2010 Negotiating Session, Polson, Montana 9:00 a.m.  
DATE : May 19, 2010  
Chair: Chris Tweeten

Agendas (Attachment 1) were available as well as a Negotiation Meeting Schedule/Contact Information (Attachment 2) sheet.

**1. Opening Prayer** (Opening Prayers are not recorded)  
An opening prayer was presented by the Tribes.

**2. Introductions**  
Introductions were made around the negotiating table and a sign-in sheet was passed around during the meeting (Attachment 3). Present at the table:

- John Carter, Attorney for the Tribes
- Clayton Matt, Lead Negotiator for the Tribes
- Bud Moran, Tribal Chairman
- Pat Pierre, Tribal Elder
- Joe Durglo, Tribal Council
- David Redhorse, Federal Team
- Ignace Couture, Tribes
- Chuck Courville, Tribes
- Chris Tweeten, RWRCC Chairman
- Jay Weiner, Attorney for the State
- Susan Cottingham, RWRCC Staff Director
- Dorothy Bradley, RWRCC
- Dave McAlpin, RWRCC

**3. Opening Statements**  
Clayton Matt asked for a brief caucus to update the Tribal Council and Tribal Team members.

Bud Moran, Tribal Chairman, thanked everyone for being here and emphasized time is important.

Duane Mecham, Federal Team Chair, met with Interior leadership and had a good discussion about involving the feds on the front end instead of scrambling around on the back end.

Chris Tweeten, Chairman RWRCC, moved to agenda for discussion items.

**4. Technical/Legal Working Group Update**  
Seth Makepeace, Hydrologist for the Tribes, technical working group update:

Hungry Horse supplemental water modeling work is at a draft stopping point because we need other entities in the Columbia River Basin to evaluate this before we can move on.

The State has taken the lead on mapping of existing water use on the reservation including permit verification and Water Court claims exam both of which are nearly complete and hope to get these data sets soon for review.

Tribes mapping includes Tribal revocable permits.

We're studying surface water hydrology to understand how it fits into the logic of the compact and re-direct quantification numbers to meet the needs for a Unitary management system.

Ground water management issues will be presented to public at the next negotiation session by a CSKT consultant.

Chris Tweeten introduces the Legal Working Group update by saying it would be helpful for us to put ideas down in terms of a framework of what a compact might look like. The lawyers have been communicating and reviewing formats of existing compacts and whether they may be adaptable to what we're doing now.

John Carter, Attorney for the Tribes, legal working group update:

Historically the Compact Commission has compacts with logical parts, recitals, definitions, quantification, implementation, etc., but no other tribe has a Stevens Treaty – protection of instream flows for fish – something the State of Montana has not been confronted with in any other compact. So we have a larger dilemma in how to fit aboriginal rights recognized under state law. The problem is quantification issues: What category of water rights in the past got a block of water. But because of a unique treaty how do we plug aboriginal rights and other classes of water rights – consumptive and non-consumptive - into the compact when we have not yet agreed on Article III, quantity.

What is posing a problem for the lawyers is how to work on the quantification because there are strongly held views on the federal, state and tribal side as to what needs to be identified specifically in the compact as far as different categories of tribal water rights.

Historically, these compacts have identified a block of water as a tribal water right and left it to the Tribes to figure out how to apportion that throughout time. The rights that this Tribes has both on and off reservation, both consumptive and non-consumptive use and because of the efforts of the Tribes over the years to protect [*interesting Freudian slip?*] those rights there is some strong views on how to plug those unique classes into a compact as well. Suffice it to say it's been a topic of numerous phone calls over the last couple of weeks and we have not yet reached an accord on how to frame up Article III and it's made more complicated again not only by the unique nature of the Tribal rights but also by exterior considerations that come into how do you quantify a Tribal water right.

There are an awful lot of water users on this reservation. There are an awful lot of streams the Tribes want to see protected with some instream flow and quite frankly the area is heavily over-appropriated. So we work with these facts and try to figure out ways to come up with additional water.

You've heard discussion about Hungry Horse. Since that's not solid yet or may never be solid, since it's still in discussion whether the Tribes may be able to tap into some supplemental water – that leaves it uncertain as to how much water may be quantified for instream flow for example or for domestic or commercial use.

So that uncertainty is: is there going to be additional water available from supplemental water to satisfy some of the Tribes' needs which ultimately have been subordinated over time not by tribal use but by increased non-Indian use on the reservation?

So one of the questions that plugs into quantification is will there be supplemental water? We don't know an answer to that yet.

Another question that plugs into quantification of the Tribes' right is what if any improvements in water use can be perfected within the reservation - principally to the irrigation project and by increasing efficiencies – to make available supplemental or additional water to satisfy some of the tribal unmet needs.

A huge category of uncertainty at this stage of the game, Seth alluded to it, is the role ground water might play in satisfying some of those unmet tribal needs. We have spent a fair amount of time in an effort to study, map and identify the ground water resources in the reservation. That's coming together. It's being done by one of the premier ground water consultants in the United States, Popadopolis, and those that show up for next month's presentation will get a discussion by them on how they have looked at, identified and quantified ground water resources on the reservation.

So you're got at least three issues here that we don't have finality on that fit into how to quantify the Tribes' water right. It's all going to come together nicely and neatly and we're all going to be able to sit down and wrap it up cleanly. But that's where we're at right now. Trying to figure out how these all tie in and until we have a higher level of certainty on all of the outstanding issues we have not been able to achieve an understanding on how to go about quantifying the Tribes' rights.

So that's the guts of the compact. We're here to try and settle the water rights. We're getting close on a lot of the mechanical components of it. But that's still an outstanding and complicated issue which will take some time.

And I'd ask Jay Weiner who has been the state's attorney on trying to resolve these things and Duane if you would like to comment as well.

Jay Weiner, Attorney for the State, legal working group update:

I think John gave a pretty good summary but one thing I do want to be clear about is what the lawyers have been asked to do is to try and put together language that might be a viable approach or range of approaches to address some of these issues. And ultimately whatever we are able to produce as a preliminary draft we

expect we will release to the public as soon as we have something we can work from and ultimately what we are trying to do in the drafting phase is to frame the issues as concretely as we possibly can for the negotiating teams so that the political decision makers around this table in a public forum have an opportunity to resolve these issues and I think John gave a very accurate summary of the substance.

I don't want there to be any misimpression that what we're doing is sitting in a dark room as a bunch of lawyers hammering out a settlement because that's not what we're trying to do at this point. So I'd like to be clear on that.

Duane Mecham, Attorney for the United States, legal working group update:

I'd just like to highlight for both teams and everyone here that tribal and federal attorneys have been working the last several weeks together on the evaluation and drafting efforts. I personally am seeing significant progress on some pieces of our template. It's been good having worked on a lot of Indian settlements - but not in Montana - to be able to have a template. I can confirm that Article III and Article IV which I guess in every other compact have dealt with quantification and administration. We haven't changed that. We definitely [*though I wish he'd said "defiantly" - that's so much cooler*] will have the same numbers when we're done.

Just a couple of connections that that have occurred to me, I'm sort of working a dual role in the short term for the federal team and chair of it also as one of the roll-up the sleeves attorneys trying to work through these issues and that is to follow up a bit with what John was explaining on the additional or supplemental water supply.

Over the last two years, we've had periodic reports on modeling efforts from the Bureau of Reclamation including a scenario that we hope to present in June which focuses on a mix of potential water supplies from the main stem of Flathead River and Hungry Horse and dealing with existing obligations, priorities, Flathead Lake operations, etc. John did a good job of highlighting a number of things we're working on just to have a legal construct. Ground water, how to quantify generally, and then this third issue, supplemental water supply. I anticipate the tribal and federal government teams will work this issue the next few weeks with the goal of coming back to the state and having this on the agenda in June and giving a full airing of that piece for folks.

The connection that I have also tried to make clear for everyone as we proceeded the last couple of years is how Hungry Horse operations are connected to things downstream. We don't have the luxury of having river systems within state borders and obviously Hungry Horse and Libby are both federal reservoirs, are in the Columbia River power system which has been under close scrutiny from the courts for ESA, Endangered Species Act purposes. We are making significant progress in that case but we're not quite finished. We have one last report to give to the judge on May 20<sup>th</sup> so we will be reporting more on that next month. But assuming that date holds we will have finalized our fence of our current operations and should be more available to look at scenarios for considerations and other uses of Hungry Horse.

Just to highlight Article IV administration, what I'm discovering and what the teams' attorneys are discovering is how that intersects with the draft ordinance that has been out. We're gaining better understanding. Some of those issues addressed in

the ordinance may ultimately have to be embedded in the compact. Jay said it well, talking to him the last couple of days – there is a need for the compact to have Organic Act fundamental legal underpinnings of how the Unitary Management Board would work. The day-to-day stuff would be left for the ordinance. We need to sort through what are the fundamental components for the compact and what are more proper for the ordinance.

So that's a couple of connections, the Hungry Horse and the administration that I'm perceiving the last few weeks

## **5. Unitary Administration**

We have not agreed on a framework for Article IV yet so will wait until we have a written framework.

## **6. Other**

Duane Mecham: My two and half day trip back to Washington, D.C. in March I have reported over the last few meetings that the Department of the Interior, just as a refresher, the federal teams are located within the Interior Department work closely with other departments as needed or other agencies within Interior, BIA, Solicitors Office, Bureau of Reclamation, Fish & Wildlife Service and then the Justice Department. As the team chair I am asked to try and herd these cats forward and also to be on the front lines for checking in with our political leadership. And the political leadership as I reported is in place. David Hayes is the deputy secretary. He has long experience in the Clinton Administration successfully working on water settlements including Rocky Boys. One of his chief staffers, her name is Letty Belin, she's from the southwest. She has had a lot of Indian legal work experience and gaining a lot of experience in the water world is as the department's chair of our Indian water working group. So she's the political leadership slot, she's the one I report to.

The effort here for the department – as I mentioned in the introduction – is to work this settlement from beginning to end and closely with the other two parties with the goal at the end of the day when the federal government can support the solutions that are brought to Congress for Congressional approval. I have worked closely with her give her updates and also to give cue up legal and policy questions that our team will need, calls on how to proceed.

One is the issue of Hungry Horse, given it is a federal reservoir, and given it has other obligations. I perceive our evaluation of Hungry Horse taking two fundamental evaluations. One is what I call water availability and the second is funding availability. I'll get to both of these because I discussed both with political leadership.

Water availability I clump together a number of things. Is the water physically available? Is it legally available? If it is legally available are there other institutional or other legal impediments to making that water source available. Expectations on how that reservoir has been run are obviously been pretty well set so water availability issues is a pretty broad subset of issues that we need to work through among the three teams. I was concerned as I was working through the water availability issues that I would also have to work through the question of how to get that water available to the reservation. There are certainly some potential projects that could be evaluated as part of this settlement which would bring that additional water supply into the reservation boundaries. From what I've gathered, those solutions would take some

money. I was concerned that in working through the water availability questions I don't have yet any evaluations nor assessments or any of the foundational blocks I need to make conclusions on how much funding could be available. What I confirmed with Letty and others within the department is it will be okay to proceed on working through these water availability questions but with the caveat that that doesn't prejudice or lock in a federal position on whether federal funding can be made available. That's always a tough negotiation but we still have to work both of those issues independently and I did get the go ahead to work along which is progress.

Also related to Reclamation, the department, this administration showed up in January of 2009, faced two or three rather large Indian water settlements, one of them being Crow. And seeing others in the pipeline fairly close to being proposed in Congress, one of those being Blackfeet, many in the southwest also, they were inundated with the need to work with Congress, to work out federal positions on that legislation often in a situation where the federal government hadn't been actively engaged in the negotiation. So one of the tools of the department has developed to evaluate the viability and appropriateness of potential water resource development projects that are part of Indian water settlements is to borrow skills and personnel that the Bureau of Reclamation has for evaluating Indian water projects. It's called the design, estimating and construction review.

The Bureau does that routinely for projects that come through normal Bureau of Reclamation channels. I've not used those tools to evaluate projects that come up through Indian water settlement but have agreed to lend those resources to the department to evaluate potential water projects. This is very much at the early stages of how this tool will be used and I think it will be a helpful tool for this settlement and what I was able to confirm in discussions with folks in DC was that we could start working early with the BOR to customize up front how we will do this design review effort for any potential water supply or water infrastructure projects, rehab projects for FIIP, getting sort of a federal view, a technical view of costs, engineering, etc. So we're kicking that process off over the next month or two so I basically see it unfolding as the federal government working with the top Reclamation staff who run this tech review then coordinating over the next month or two with the tribal folks to try and get this built into our negotiation pathway and from there, ready to lay this out for the state and everyone and how we see this all fitting in. There may be questions about that I would be glad to answer.

Other than that, I think tie this back to how Interior reviews these settlements, we have, Letty Belin is the chair of what we call the Secretary's Indian Water Rights, it's a working group consisting of all of Secretary Salazar's assistant secretary's and their key staff, across the department so we have the budget people, we have Reclamation people, basically the entire political leadership. They began meeting periodically and as we cue up key legal calls or policy calls I confirmed with Letty that this will be the place to bring those issues that I need resolved to this working group so now that she's constituted this working group, it's good to have that in place we should have ready access to that. They are very busy generally, they're still dealing with a lot of fallout on the hill but they are very committed for the negotiations like this one that are in negotiation to have that working group available to make key decisions at the right time.

Dave McAlpin: On the federal side, is there any coordination, when we talk about the federal lawsuits that are pending, is that coordinated with this team, I'm sure they keep in touch with what's going on, do they have any strategy that's coordinated?

Duane Mecham: You're talking about the federal hydropower system litigation? The short answer is yes. I'm the Interior's attorney for all of the – we have a team of attorney's, five of us including Justice attorneys that work day-to-day on federal litigation challenging the ESA compliance. That will hopefully wrap up this summer/fall. Future pending litigation is basically like this – if Judge Redden is given good signals, if he ultimately agrees there will be an appeal. If he agrees and confirms the federal biological opinion, there will be an appeal to the ninth circuit, we can bank on that. Just to highlight, Montana and the Salish Kootenai Tribes are involved in that case. But if we lose either at Judge Redden or the circuit level, what that means is it's probably a do-over yet again where we have to do a new biological analysis. Start over and developing a whole new set of operations. There are about 14 federal facilities that are involved, that comprise this federal hydropower system. If the biological opinion is sent back we will probably be starting from scratch – that's a multi-year process. Our hope is that we run the gauntlet with the courts over the next couple of years and if we do I don't see any litigation on the Columbia side that would impact our settlement.

Dave McAlpin: I'm just trying to gage how that process is involved in the Hungry Horse water.

Duane Mecham: By June I think we'll lay out much more clearly. We have an established operation – let's say Hungry Horse and Libby – what does that operation do. It sets goals for flood control, draw downs but there is also the goal (April and June) to meet refill levels and dedicate portions of the storage that are above certain levels, certain elevations in the reservoir to be used for fish flows down stream below Grand Coulee Dam. So that sets the operation that we currently need to comply with the Endangered Species Act.

So the question becomes is there any flexibility to meet or get close to that operation and to add an additional use or two to Hungry Horse. That's exactly what the modeling is focused on and has helped us perceive that there are some areas that are worth exploring. I propose that we take the modeling and seriously explore those scenarios as potential sources of additional water supply. We will need to circle back with agencies like the National Fisheries Service and the Corps of Engineers and Bonneville Power Administration. That's what hopefully we'll be doing over the next two months to confirm that there is no impact on these down stream operations or that the range of impacts is within a range that can be accepted.

Dave McAlpin: Does the BOR team model worst case and best case scenarios so that we don't have to come back and do this again?

Duane Mecham: Yes, they modeled a likely scenario that would be in the range of – I don't want to speak for the Tribes - the amount of water we would be seeking. It's not exactly best case, worst case but it's zeroing in on a scenario that potentially could satisfy the additional water need.

Clayton Matt: Are you still considering opportunities for the tribal team to meet with the Indian Water Rights Working Group?

Duane Mecham: Yes. I confirmed with Letty that she would welcome a visit from the tribal leadership and her recommendation is something they have been doing with other tribes where we arrange a meeting as best we can and with attendance by as many of the working group people as we can pull together.

## 7. Question and Answer Period

Chris Tweeten chooses to combine agenda items 7 and 8 at this time.

Rory Horning: Are we over-appropriated?

John Carter: I brought you a map put together by DNRC showing closed basins in the area and a map from the Department of Fish, Wildlife & Parks showing chronically dewatered streams. The reasons basins are closed is because of over-appropriation. The reason streams are chronically dewatered is because of over-appropriation of those streams.

Rory Horning: So you're saying you have the information that this basin is over-appropriated?

John Carter: I have information produced by the State of Montana that would support that statement.

Rory Horning: I'm just going to ask you as a business person here, I'm going to ask you if I can take that away because you now have probably 800 other business people in real estate that need to know that there is not enough water to sustain any real estate industry and I'm kinda impressed with that since Seth did not have all of his information so I'm going to ask that you give that to us. So that being understood, I should wait until Hungry Horse water is available.

John Carter: The information I have here for your use is publicly available information and you're welcome to it. As to whether the use of the word over-appropriation has an effect on the real estate industry, only you can respond to that.

Rory Horning: I understand all of the legal and political things but you just gave a legal term that leads to the closing of a basin. When a basin closes it causes tremendous impact on the citizens of the area and it causes tremendous impact on the development and the economy so it isn't myself so please don't give that impression to the press that's sitting here that Rory Horning has made these determinations. The word you're using, over-appropriation, is a legal term that leads to the closing of a basin. So please, I'm just trying to follow along, I'm just a poor county boy so please don't to paint me any smarter than I am.

Chris Tweeten: The only thing I'd say Rory in response to your question and comment is I think it would be really unfortunate that people began arriving at conclusions about what the future looks like post-compact based on discussions that we're having at this point. One of the things that all sides of the table are committed to is the idea that we end up with a situation on the reservation in which there is a water management system in place in which there is some certainty with respect to the ability of people to acquire a water rights and permits and put them to use in which existing water rights and uses are protected. We don't have that framework in place yet and John explained in detail the situation with respect to that. But I really hope that you don't go back to the realtors and John (Sinrud) I hope you don't go back to your principals with the Flathead Realtors and try to tell them that the Commission and the Tribes have arrived at an agreement that closes off any possibility of future development of water on the reservation because that would be a false statement and would mislead people into coming to conclusions about the situation that aren't really accurate. So this is a work in progress. Our objective is a situation where those impacts that you describe don't happen and all of us are confident that we're going to be able to do that. But we're not there yet so predictions of the future that create the kind of dire picture that you are talking about are premature at this point.

Rory Horning: Please, please don't misunderstand me, I agreed with you one hundred percent. I don't make it a habit of going around and passing along predictions. What I do is just simply repeat what I have heard so that I can be as



factual as possible. Nobody is saying anything about the future. I can't, as a realtor under state law, can't sell you the future but the thing is what we're trying to figure out and I already know the questions that my fellow business people will be asking is if you already know that you are over-appropriated and you're trying to put in a water management system, what is it you're trying to manage and when you understand how much you have, what will be the process of getting a well on a piece of property because as far as not realtors, farmers, ranchers, residents, if you have a piece of property and you have no water, your piece of property is pretty well limited if not valueless. So you understand that that we're not going to run out and cry Chicken Little. But I will take out the fact that what you have stated here today and be very clear and if you would like you can all come to the realtors and present your sides so that you don't let this poor little old ignorant country boy misrepresent you.

Lloyd Irvin: This question is for Duane with regards to the working water group with the Bureau of Reclamation. What are the key decisions did they made in the past? Did they ever, with regards to negotiations with the state and the tribes?

Duane Mecham: You mean with other past settlements?

Lloyd Irvin: Yes. How does that impact negotiations here?

Duane Mecham: I see a couple of categories. One is from the federal government side, what are we concerned about. We stand as trustee in water right litigation have the ability to defend water rights whether it's state court or federal court where we end up on behalf of the tribe. Over the years, tribes have joined on their own behalf and made those claims. We want to make sure that the current and future water rights and needs of a tribe are adequately met. So it's the same in settlement and as we develop a proposal the folks in DC are going to say is this adequate water for this tribe because it's a one shot deal. Is it enough water for present and future needs and it's based on the treaty language?

We work through an assessment; these settlements that go through Congress have a federal contribution. The Crow settlement was around 500 million dollars. The federal government hasn't bought into that and that's a situation where the federal government did not assess up front what it felt – you have to be clear about the federal government. You have the executive branch with the president then you have Congress and Congress can do what it wants but it will ask and it usually wants to know what the executive branch position is on the right amount of compensation or funding. So that's another big question that I need to be prepared to make a recommendations and get guidance on.

Paul Burnham, City of Kalispell: There has been discussion today on the supplemental water rights and specifically those that involve Hungry Horse and from what I understand today, this is something that is not nailed down. When Seth was speaking he said this is at a stopping point right now and John said this is something that may never be determined, these supplemental water rights. Duane, I think you referred to it as herding cats. The concern I have is that the supplemental water rights issue is something that could be derailed or something that could never be resolved. Are the supplemental water rights on the same track as the Unitary Management? Is this something that will stop the Unitary Management from happening? Or could the supplemental be placed on another track and resolved on its own schedule so that it doesn't hold up the issue of Unitary Management. What is the plan if that is derailed?

The other issue is water from Hungry Horse; the Commission is not dealing with water without a priority date. You are dealing with water that has a priority date and there may be some excess water that would be part of the supplemental water

right but that water may not be available. So on the reservation, you are eventually coming to a plan where there will be one priority date that this chunk of water would be apportioned somehow but now you're dealing with water that has a priority date earlier than the water on the reservation or later. I would just like to understand how that would be resolved.

Duane Mecham: We are working them in tandem. Supplemental water supply is a lynchpin issue for this settlement and needs to be worked parallel with other key issues like administration. I'll interpret a bit what John was saying – if we can't reach agreement on adequate water supply then the Tribes and by extension the United States will have to evaluate whether we can have an adequate settlement or not. If you can't settle one piece, you can't settle the other pieces. But we have to work them all the way through and I'm hopeful that we can reach agreement with all the parties on the water rights issue.

To play out a little more of the process, I mentioned over the next two months, I'm going to work this issue more closely with the state folks, bring in the Reclamation folks hopefully by the June meeting so we will have at least more information about this.

There is also the idea that the water could come from Flathead River. There is a big lake just to the north of us a few feet that has huge issues associated with it. This active joint evaluation negotiation about future water supply will probably leave no stone unturned.

On your second question, I see kind of a technical legal question that we haven't grappled with on what the ultimate priority date of the additional water supply would be. I have seen that in other settlements where BOR reservoirs have been used and I've seen two solutions. One is through federal legislation. A block of water in a federal reservoir was deemed to have the tribe's 1867 priority date on a settlement in Idaho. I believe the settlements here in Montana on the east side have retained the Reclamation priority date.

Paul Burnham: What would the priority date be if the water were taken from Hungry Horse Reservoir?

Duane Mecham: 1954.

John Carter: Just one additional comment on your first question. None of the negotiating parties have tied the life or death of Unitary Management to supplemental water out of Hungry Horse. They are both moving forward. If there is to be supplemental water, it would make other issues easier but to date no one has said do or die.

Chris Tweeten: The tracks may be parallel but the pieces are not all the same distance down the track. Each item we are dealing with is moving at its own pace. Ultimately at the end of this process all of them will come together, which one gets to the finish line first I guess is question we are grappling with right now. Supplemental water is one of the issues we have to talk about. In addition to Hungry Horse, there are other ideas on the table to make that work. The only other comment I have is the negotiators are acutely aware of the concern of the North Flathead valley folks have about what impact a compact would have on water availability up north and we're aware that that issue exists. We want your comments so that we have something we all can live with.

John Sinrud, government affairs director for Northwest Realtors: What are the unmet water rights that the Tribes are seeking?

John Carter, Based on federal case law and on supreme case law specific to Flathead Indian Reservation a long litany of types water rights that the Tribes are

entitled to. Those consist of both consumptive rights, domestic, commercial, industrial and consist of non-agricultural and non-consumptive rights such as instream flows. The Tribes are in a legal position to make claims to all those types of waters based on the homeland concept of Indian reservation. This is all Montana Supreme case law which I would be glad to give you the citation or copy of. Towards a federal contribution to settlement, the types of the things the Tribes are looking at for example are various types of industrial development, commercial development, increased types of agricultural activities based on PIA, domestic uses by tribal and non-tribal people, possibly a regional water distribution system. All of these are concepts some of which will depend on federal contribution some of which are inherent by the tribe such as an instream flow. So those are the types of issues the Tribes are looking to.

John Sinrud: So understanding there is a plethora of water to be used or types of uses for water that the Tribes would therefore have the right to do, has anything ever been quantified or is it completely open-ended because going back to what you said in regards to over-appropriated based upon DNRC and DEQ and everything else then the question is about growth and stuff and working together as a community. It's about trying to get the Tribes needs met for future expansion, future use. If the Tribes want to put say hydro in or maybe even a nuclear power plant, that takes a lot of water. How are we going to work together on those things and is the compact going to say this is what the Tribes have specifically and no more.

John Carter: You're asking all the questions we're grappling with. The last question is this the final quantification for the Tribes' water right by the time the compact is complete the answer to that is yes. We haven't figured out from a negotiated standpoint what those values may be for instream flows for example or for increased agriculture or for ongoing agricultural uses. It's a jigsaw puzzle that we're all grappling with and trying to fit into a system that affords finality and certainty for not only the Indian people involved but also for the non-Indian people involved. The fundamental predicate upon which the tribal council has approached negotiation is to protect all existing verified uses that are ongoing today. That's a position that the Tribes have stood by and supported from the start of these negotiations.

So the dilemma is because of the rights that these Tribes have and have not yet been fully satisfied how to satisfy those without having yet defined and Hungry Horse is certainly one of those options. It's a matrix that we're working through but at some point there will be a final compact that says this will be the final and absolute tribal water right.

John Sinrud: Okay. Duane, when we were talking about Hungry Horse and you talked about dollars for a project, is that to pipe water from Hungry Horse to the reservation and have an outlet here specifically because if it's going to go down the Flathead it's going to get consumed as it goes down, a certain portion of it through seepage and whatever else, evaporation and all that stuff, are the Tribes required to comply with EPA or not the EPA but the ESA with regards to the bull trout and everything else?

Duane Mecham: In very general terms the concept for infrastructure for moving Hungry Horse water or diverting additional natural flow out of the Flathead River would be on-reservation infrastructure. We do have to deal with transporting water from Hungry Horse to that delivery point on-reservation but those sorts of things the modelers and operators do understand. They can put stored water into a system as a different color and bring it down through the river at some point below the facility and then divert it out of the river. They deal with issues like seepage or those sorts of things in their calculations. There would not be a need to have infrastructure all the way to Hungry Horse.

As to the last question, to re-frame it, it is more of a question of federal funding for a project. Whether the Tribes do it or the BIA does it or the BOR does it or a contractor does it, because it's federal funding, usually there are strings attached that require ESA compliance. Reclamation will continue to operate Hungry Horse so it has to insure its operations regardless of where that water is here or elsewhere comply with ESA, NEPA and other environmental laws. So that's the short answer and that is part of the evaluation we will need to do.

John Sinrud: And that will be within the compact?

Duane Mecham: For the most part. We'll have to have the best understanding we can of what those requirements are before we can agree to something.

John Sinrud: I would request on behalf of the realtors that Chris and Susan and Rep. McAlpin and Jay send a letter to the respective bodies within the legislature that you re-appoint other individuals to represent the house and the senate that will actually show up. I've been here for several meetings and I have never seen Senator Laslovich, Senator Brueggeman or Representative Wellborn and I would make that request to at least have them from the area whether it be Hamilton in the Bitterroot or Sanders or Flathead or some other county asked to be represented from the state legislature so that the legislature itself can be well-informed in regards to negotiations because I do not believe at this point that the people of this area and the people of Montana are being well represented through the legislature. So please send a letter to the respective leadership in the house and the senate. I would appreciate that, thank you.

Chris Tweeten: The Flathead Realtors ought to send that letter as well. It's been our experience and it's probably been your experience in the legislature as well that requests that you get from individual constituents carries a greater weight than requests that are made from government agencies. So I think if you were to send a letter like that representing your clients it would probably have more influence on the process than anything we could do. Having said that, I'd be happy to pass your concern along and we'll do that in writing and we'll send you a copy.

John Sinrud: We'll bring this to the board and we'll draft a letter as well.

Dick Erb: The discussion of the matrix of the quantity, to what extent does that discussion include the possibility of change over time. Suppose agriculture declined as a source of water requirements in this area, could some other use be substituted?

John Carter: One of the things that shows up in the draft ordinance is the concept of unitary management involves the management body but one of its powers of authority is to review and approve or disapprove changes in existing uses. So your question should agriculture decline in the future, you would have the right to come to that unitary management board and seek to change your existing use to another use which generally speaking would be allowed as long as it did not adversely affect other prior rights. To the extent there is a time element that is analogous to the framework that is presently in place off the reservation in the State of Montana where a person can change their use over time based upon changing economics or climate for that matter so that is anticipated in that respect.

Rory Horning: Since we're all talking this way, you gentlemen, some of you are new but I've known from the beginning support everybody's water rights, tribal or non-tribal. There has not been a moment that I would try to derail everybody's water rights because I firmly believe land without water rights is useless.

The other thing is before you ever say again in your concern about how I will carry out into the community what is said in this room, I would like to remind you

gentlemen that I came to all of you and I asked to put together a radio broadcast that would allow each side to speak directly to the community and give the community its individual views uncensored by anybody like myself and that did not happen because everybody was not going to do that. So please, be real careful when you say to me that you're concerned about how I will carry out what you say within these negotiations. This is my community. I believe in it 100% and I will do nothing but I will not allow anything to be done that will damage this community. Thank you.

Chris Tweeten: Any other comments or questions?

**8. Public Comment**

Combined with agenda item seven.

**9. Set Next Negotiating Session Date**

Next negotiation session will be May 26<sup>th</sup>, 2010.