

MEMORANDUM

TO: Susan Cottingham; Jay Weiner; Sonja Hoeglund; CSKT Negotiating Team; CSKT Minute Files
FROM: Joan Specking, RWRCC
RE: CSKT Minute Summary from April 29, 2009 Negotiating Session, Polson, Montana, 9 a.m.
DATE : April 29, 2009

Chair: Chris Tweeten

Agendas (**Attachment 1**) were available.

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

2. Introductions
Introductions were made around the negotiating table. A sign-in sheet was passed around the meeting. (**Attachment 2**)

3. Opening Statements

Bud Moran for the Tribal team welcomed everyone from Helena and noted that they have the Commission extension but that they can't slow down because they are working very hard and that they should go ahead and get it done. Clayton Matt welcomed everyone to the meeting and said that within the next four years they will have completed a compact. The technical teams will be reporting on a lot of good information today and there is a lot remaining to be done.

Duane Mecham for the federal team said he was glad to be there although they do not have a lot to report on the federal appointment front at this time. He reminded people that their deputy secretary designee, David Hayes has a lot of familiarity on these issues and once he is on board they will be fully briefing him.

Chris Tweeten noted that the legislature has left Helena and that the Commission can now concentrate on these other things. He said they were pleased to be back and that the technical teams have a lot to report as they had a productive meeting the previous day.

4. Discussion of Unitary Management proposal

Candy West, chief counsel for DNRC, said the state has been committed for two years in working towards the unitary management proposal. DNRC is committed at this point, now that they have some legislative direction and support for a new permitting process for the State, to moving forward with a new permit and change process for these negotiations. They will see how quickly they can assist the staff of the Commission to put together an ordinance for permitting and appropriation and an ordinance that will allow for the change structure in the uses of water including POU's, PODs and purposes of water uses within the Reservation. There were several water bills in the legislature this year and those were for the most part designed by the

DNRC to address 30 years of experience in water rights permitting that led them to conclude that they needed some changes in the State based process. They have had an opportunity to work with a variety of different stakeholders who have a variety of interests in new water development within the state, interests in protecting environmental resources and interests in designing a compact that is known and understood by applicants and potential objectors for water uses within the state. It is with that understanding that DNRC is ready to move forward with the draft ordinance that has been proposed. They have identified numerous issues between the Tribes and the State that they feel confident that they can move through and address. They hope that when they sit down to do the actual drafting with the Tribes and the Compact Commission staff that they can draft an ordinance that is not inconsistent with a state process. She said there have been concerns that some of their process has not worked well and they have looked at it and hope they have taken a step to correct it. They look forward to working in close step with the Tribes and the Compact Commission staff in putting together a workable Ordinance. In meeting with management at the DNRC they have committed to putting together a tentative draft by July. They will try to make it consistent with the context of the Tribal draft along with a consistent allocation process that the state has proposed. Their goal is to have a UM plan that is accepted by the legislature and by the Tribes and they plan to spend a good deal of time on this. She noted that the new process is now on the DNRC's website. DNRC is currently in an intense process to get a new structure of application process and review for permits and changes. They have training for staff in May. They are working with DNRC regional staff around the state to see how they perceive this process working for applicants in their areas. They hope to see a process which is consistent with the proposed Tribal process.

Clayon Matt asked for the citation of the law, which Candy said is HB 40. It was signed by the governor on the 17th of April and becomes effective on July 1, 2009.

John Carter asked whether the DNRC draft of the unitary management ordinance would be portions of the existing draft or entirely new. Candy said the DNRC interest is in proposing a process that will be consistent with the new legislative process which they see will likely merge into the current unitary management draft. She said they may need to do a separate draft on the permitting process and then merge them as the parties work together. Jay said that would be the area Chapters 2-4 of the current draft proposal covers.

5. Hungry Horse Update

Duane Mecham said for the past several months the BOR has been reviewing a scenario using the Flathead River as an additional source with the Hungry Horse Reservoir as a backup. This is different then the scenario that was presented to the group in fall of 2008. The BOR is writing a report capturing their evaluation of both scenarios and subparts of both scenarios. Their goal is to have a presentation next month of the latest modeling effort. They want to make sure everyone on the technical team is comfortable with how the evaluation is done. Duane said he will verify within a week that the presentation will be ready next month.

6. Other Technical/Legal Items for Discussion

Seth Makepeace said they had a good technical meeting the previous day and said Bill and Stan were out working on the canal seepage study today. He said he would give some background geologic information in preparation for talking about groundwater. Previously they have talked about surface water and Level 1 and Level 2 flows which is a terminology they apply to talk about quantification and management of surface water resources. They now want to introduce groundwater as a topic. Groundwater is a natural resource and a source of water supply on the Reservation. He said the technical team has a fairly large agenda to get through. Yesterday they determined that over the course of the summer they would identify and discuss a set of topics and get them on the table for brainstorming. In the fall they will try to put together a work plan and a way to solve the problems and fit them into the unitary management ordinance. Some of the topics they have are: groundwater; surface water; wetlands; Tribal mitigation lands; Flathead Lake and river system; sometime down the road off-Reservation water rights; and the irrigation project and its water rights. They believe most of these things relate and that they can't tackle the surface water issue until they start to address surface and groundwater connections because they flow into and away from each other. That is a big picture level.

He said those who are aware of this area know the 130,000 irrigated acres on the federal Project represent the largest water user on the Reservation. It is a very old irrigation project authorized in 1904 and it has struggled in recent years to keep up on its water measurement, records, mapping, and things of that nature. The Technical teams have to prepare a lot of background mapping and information and a lot of it is being prepared by Compact Commission staff. The Tribes requested and received from the BIA its assessment data base and are now able to digitally map tract numbers. Now the issue is to identify irrigation turnouts that go to the tracts. There are approximately 2600 irrigation turnouts that serve individual fields on the Project and they haven't had a way to assign turnouts and tracts so they don't have a way to understand what irrigators are using in terms of their water supply. This was one of the more exciting things they saw yesterday. They hope to make significant headway over the summer and have it ready to look at by the fall. The State is meeting with the water masters to try to give each ditch rider a map so they can actually map turnouts to tract numbers. That work is ongoing. The State has tried to understand irrigation crop demand and they contracted with the University of Idaho to do work to try to understand what crop use is on the Reservation and that work is closing out and will be done soon. The Tribes did an immense amount of work with HKM in this area and they had some numbers discrepancies for awhile which they have been able to reconcile and it looks like two completely independent methods to understand crop water demand. They are coming together so that was very positive.

Hungry Horse was summarized by Duane and Seth has seen very little information. They are hoping the next few weeks to have some way to evaluate that model.

The other thing they have gotten going on is groundwater and Seth gave a presentation to illustrate for the negotiating teams a technical and scientific framework from which to understand the groundwater resources. The real message is that the groundwater environment on the Reservation due to geologic history is highly complex. It is not a uniform aquifer system and it changes step by step. They want to make sure everyone understands that. The other issue is that because of the nature of the valleys on the Reservation, groundwater and surface water are highly interactive.

Depletions of groundwater will show up in surface water and those are two big topics they want to bring up. The processes happening in one valley are different than that occurring in another valley. He described the geologic setting in Western Montana and pointed out that bedrock aquifer systems tend to have very low water yield on the Reservation and the water is produced in the secondary fractions. Tertiary is geologic materials deposited on the Reservation between 22 and 2 million years ago. They tend to be gummy, clay, orange colored rocks. The Tribes have a firm under contract to help with the groundwater work. They are doing groundwater modeling and in that, they treat tertiary materials as basically non-groundwater producing materials. There is lots of the sediment in Montana and it tends to not be highly productive for water producing material. Quaternary is the primary material on the Reservation; these sediments are very complex but they are the primary water yielding materials on the Reservation. They break these sediments into 1) deep alluvial – When the ice sheet from Canada sat over the area, there were rivers from the ice that produced these aquifer systems. They are very deep and highly productive aquifer systems that underlie the Little Bitterroot area and that area around Pablo and Ronan. The communities of Ronan and Pablo both rely on this material as their water supply. His conceptual model showed the layers of material of the aquifer. 2) Glacial tills - The area of those are mapped and tends to be moderate and low yielding. 3) Glacial lake sediments. With the domestic wells increasing, they are finding low yield wells and so are drilling into this which produces a couple gpm per well. The Round Butte area west of Ronan has a rural community water supply derived from the deep alluvium because people weren't able to get water out of the glacial lake sediment. 4) Glacial outwash - The Jocko valley and parts of the Mission valley are over this. It is productive material. A hydrogeologist takes the geologic framework, simplifies it and creates groundwater flow models and show the water balance. He showed the Mission Valley groundwater model and a map of the main valley flow aquifers on the Reservation. These are the groundwater watersheds. They talk about water budgets or water balances which are where they have to couple surface and groundwater. They talk about recharge from the mountain highlands; subsurface instream flow into a groundwater system; precipitation on the surface and irrigation applications and canal seepage which if deep can reach a groundwater resources. They have stream beds that lose water also. The groundwater basins discharge water out of the basin; wetlands and riparian lands get a lot of evapotranspiration; pumping and streamflow gains (groundwater discharging back into streams). A storage reservoir can change long term and seasonally. Each valley has its own groundwater budget (inflow and outflow), which he explained. They are linking the output of the HyDROSS model with the groundwater model. He noted that almost all of the groundwater in the valleys, before they reach the Flathead River discharges back into surface water. That is why the Tribes proposed to see water as a unitary resource; because the two can't be separated.

He showed groundwater discharge to the Jocko River from Arlee to Ravalli or about 8 to 10 river miles. He showed the groundwater gain in the river and said it adds up to about 30,000 af per year just in that reach which is a tremendous amount of groundwater discharging to a surface water resource and he said they need to respect that process and understand it. He talked about changes in storage and showed some well hydrographs where they measure the depth of water with a period from 1983 to 2008. They see that water levels have been very stable. They change seasonally but they haven't gone down like they are losing water so they have been stable over the

past 30 years. Near the Jocko he showed a well that goes up and down 50 feet per year – that is because it is so interactive with the Jocko River. He showed a well near Dixon that showed a loss of change in storage of about one foot over a 30 year period. He showed a water table map for the Jocko valley. He said he is trying to illustrate that the Tribe has investigated significantly over the years to understand the technical environment of groundwater resources so they have a platform to build from to solve water rights issues. He noted the big groundwater gain area in the Jocko – 50,000 af of groundwater gain in one river system is a very dramatic volume of water. Briefly he showed the Mission valley inflow with mountain front recharge, precipitation and infiltration of irrigation and canal water and seepage out of the streams – and then outflow out of the basin where the National Bison Range is and where Mission Creek and then at Crow Creek – those are the notches between the bedrock basically. They also have a resource called Ronan spring creek which is about a 14,000 af groundwater spring coming up in just one location, so they have a lot of surface water gain. Post Creek in the south half of the valley seems to have the most prevalent groundwater gain in the Mission valley. He showed several well hydrographs, for Sunny Slope, in glacial till and deep alluvium between Ronan and Pablo. The Sunny Slope has a very unusual pattern of groundwater (over a 30 year period of record) where the water level continued to decline, then in the winter of 1996 they had an immense snow pack that recharged the aquifer, and since then it has been declining. There is a lot of home site development pressure in that area and it is not a great groundwater resource area. Some developers there have had water supply issues. He showed a deep alluvial well near the Ronan airport and near an irrigation well that draws out of the deep alluvium. The well used to be artesian in 1974 then it lost artesian pressure and lost 10 feet of storage in the aquifer. When they turn on the irrigation pumps the water level drops about 50 feet almost instantaneously and then it recovers. It is an aquifer where they feel there has been loss of storage. The third well is located south of St. Ignatius, Dry Creek, and it is similar to the well he showed for the Jocko valley in glacial outwash where the water table fluctuates seasonally but has been recovering. He showed two more wells– one in the town of St. Ignatius and one in the Moiese valley – the Moiese hills are extremely dry. 35 years of record show St. Ignatius with wells all drawing from the same aquifer system but they don't see the change in storage and the water levels keep recovering to the 1974 levels. They are in a good position as they have not depleted the groundwater and it would be good to get the compact in place before it is depleted. The Moiese valley well is completely away from groundwater recharge but is near the Moiese “A” canal and the water table goes up when the canals are full and there is seepage. There is not just a water supply and management issue but an entire aquatic ecology that has adapted to the surface-groundwater in the area. He talked about the Little Bitterroot where there is a little loss of groundwater and where irrigation and pumping in the summer draws the water level down. He said, regarding the technical team having a set of larger issues that they are trying to brainstorm, in terms of groundwater there is protecting groundwater quality, which in general is high on the Reservation. Another big issue is the 602 exempt wells which currently draw up to 35 gpm and/or 10 afy. They have to find a number that works in the compact (he said this was his laundry list) for surface and groundwater management. Their groundwater modeling includes scenario modeling which is a model of existing conditions that they can change with different scenarios to see what they would get if something was different. If they shut off canal seepage they get a big response in the aquifers. If irrigators are much more efficient there is a

response in the groundwater system. They will have to work through what process an applicant for a well has to go through also.

Dorothy Bradley asked about pond proliferation and if it goes on in the Flathead. Seth said there are a lot of ponds and in the Little Bitterroot valley people will use wells to fill ponds over the winter months and irrigate or water stock out of those. Most of the ponds are served by surface water. It is not as big an issue as in the Bozeman area.

Chris noted the sign up sheet going around. He also introduced Rep. McAlpin, a member of the Commission.

7. Question and Answer Period

There were no questions from the public.

8. Other

Susan reviewed some of the issues that came up during the legislature and some of the budget issues that may affect the Compact Commission over the next few years. One of the biggest bills was the Blackfeet water compact which went through the legislature. Last session the state put in \$15 million as its part of the cost share for the settlement; it committed to an additional \$20 million and this legislature put in \$4 million of that using stimulus money. The federal government will also commit money to the settlement when it goes to Congress. The National Bison Range compact was ratified by the legislature and will need be signed by the federal government and go to the Water Court. There was also the extension bill extending the Commission to July 1, 2013. There was a bill passed putting \$1 million into an infrastructure account for Fort Belknap as part of the state's cost share.

The budget issues are a little different. They asked for and did not receive additional contracted services money for technical work. She talked to Duane about possible federal contributions to technical work. The staff will not be able to contract out projects this coming year. The governor's budget was cut by 10% for DNRC and about 7% for the Compact Commission. They are authorized for 6 employees but will have to find cost savings; perhaps less travel and more video conferencing. Sometimes DNRC can help the Commission's budget also. She said it will be a time when people will have to get the same amount of work done with less money.

Bud Moran thanked the school kids that were attending the meeting as he noted that they will be doing this work in the future.

9. Public Comment

Paul Burnham an engineer from the City of Kalispell said he attends the meetings to make sure the water rights of Kalispell are protected. He said he thinks there is a slightly different track now than what the Commission took in earlier meetings which he said were more focused on the development of the Unitary Management program and how people in the region would share water rights. The other approach is to develop science. He said he appreciated what Seth shared today and said he thinks decisions will have to be based on that science. It appears that there is a strong move

to develop that. What he is seeing now is trying to look at more water rights, i.e., can they look at Flathead River to obtain more water rights. There may be some time and resources spent on obtaining additional water rights when those resources should be spent on developing a Unitary Management program. He hopes the Commission would stay focused on that as they did when the sunset was June 2009. Now that they have an additional four years it appears there might be a little relaxation and an opportunity to pursue more water rights but he doesn't think that is a good path to take.

10. Set Next Negotiating Session

Chris said the last Wednesday in May is the 27th. Duane Mecham is the chair of the next meeting; he said he would like to be at the next technical meeting also. Jay said they had talked about a presentation from the U. of Idaho on METRIC evapotranspiration for the technical team or possibly at a negotiating team. Idaho also needs to do a presentation in Helena. They are hoping to have a presentation on Hungry Horse and on wetlands also. They also want time to have the technical team talk about the brainstorming ideas Seth mentioned earlier, as well as the GIS work. There was discussion of a technical/public meeting on June 3rd (Polson) and June 4th (Helena). It would be noticed with the May 24 negotiating session.

11. Closing Comments by the Negotiating Teams

Pat Pierre introduced his class from the immersion school from ages 9 to 14. They are learning about language and about environmental issues, and how everything is connected to Mother Earth. He said it is important for everyone in this area to learn to work together. They have people that continuously fight the Tribes and they have learned to fight back. They are talking about rights and they should be talking about water protection. They need to learn to work together to protect the resources out there. They had a great gathering the day before down at Lolo and they had their drum group and a lot people dancing – they need to learn to dance together. When they come to the table they should have perfect understanding of what is going on there and when they leave they will have their goals set for what to talk about next time. He hopes the 4 years won't all be used up sitting at the table; they need to come to an agreement that is good for everyone on the Reservation. As far as the Bison Range is concerned he would have cut the fence and let the bison roam the Reservation. As for protecting water resources if it was up to him there would be no cattle at all in the mountains as there are hardly any fish in the streams because of them. They need to work together to come to a conclusion and talk about water protection. As Tribes they stand together to protect the small speck of dirt they have left called the Reservation which is all they have left of a great nation. He talked about land that was taken away and stolen. He said they need to have control of all the resources on the Reservation. The word today is learning to work together. They get tired and get tired of not being free. It is far from the land of the free. Representatives of the state, federal and tribal government – what can they do better? There are so many laws that sometimes they are afraid to move. They have to go certain mph in certain areas...some laws aren't being enforced. They take for granted that there will be a river flowing here forever and that the creeks will feed the canals forever; they take too many things for granted. Slow down and take a look and ask how they are doing. If it was up to him they would

sit there until everyone said this is their land, water, resources and they would be the ones to take care of it.