

MEMORANDUM

TO: CSKT Minute Files; Susan Cottingham; Jay Weiner; Sonja Hoeglund
FROM: Joan Specking, RWRCC
RE: Draft CSKT Minute Summary from July 22, 2009 Negotiating
Session, Polson, Montana, 9 a.m.
DATE : July 22, 2009

Chair: Steven Lozar

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
(**Attachment 2, sign in sheet**)

3. Opening Statements
Clayton Matt welcomed everyone and asked for opening statements from the negotiating parties.

Chris Tweeten said his team was excited to be there and to hear what the technical teams are doing. He said they need to think about when decision points will be coming up because it will be sooner than later that they need to think about making some decisions about the content of the compact.

Duane Mecham noted the federal Interior department has been putting its team together and there has been appointment of a counselor to the secretary and deputy secretary. He said he is also looking forward to the technical session scheduled next week.

Steve Lozar welcomed everyone and pointed out the importance of the elders and how they set the tone for everything that is done with the CSKT and he said Patrick Pierre's words were particularly inspiring today. Looking at the agenda he sees the issue of discussing water rights from a technical standpoint and his words spoke to the idea that they are looking at water rights in 2009 from a technical standpoint but they are always buttressed by their cultural beliefs and values. He noted the absolute importance of water to them as Tribal members and non-Indians living on the Reservation, so today they get to blend and meld the technical approach with the approach of culture and tradition and they are blessed to be able to do so. He said he is encouraged by Chris bringing up the idea of decision points. As much as they gain with plain knowledge they are charged with reaching a fair and equitable process that brings them to the decision points. He said he is optimistic and hopes that they have a heart of honesty and cooperation.

Clayton Matt said he wanted to pick up on the comment on the decision points and noted the technical team has been working hard to not only do the technical work but to begin the process of identifying] what all of the technical work is that they need to do, get that listed out and to think about it. There will always be flexibility in the exact

scheduling but they are working hard to get a list out and see how that work will meld with the administrative issues.

4. Technical/Legal Working Group Update

Candy West, legal counsel for DNRC, said she wanted to let them know that the Department director and the Water Resources Division administrator are very supportive of the work with the compacting team and stand ready to assist with drafting and consultation to accomplish some of the next tasks ahead. The work the negotiating teams accomplish will lead directly to a process that provides for integrated water management and permitting. In recognition of that she said the technical group working on this from DNRC, and the Tribal Resource people, have all been working hard to identify the technical tasks that need to be done to get to a unitary management structure for the water on the Reservation. The draft ordinance has within it a structure for a permitting process but they have not quite gotten to that process. She brought an outline, summary and flow chart (**Attachment 3**) for the information for permits and changes enacted by the 2009 legislature which provides the opportunity to remove the complexity for new permittees. The distinct change was a preliminary determination by the decision makers for state permits to make a determination as to whether the application met the criteria upfront, and supply applicants with immediate review of the criteria. They foresee this will speed up the process for applicants and potential objectors. They think the new process will be valuable to the water committee for regulatory purposes. The flow chart, the summary of the process and the new applications are available on the DNRC website. Now that HB 40 passed the legislature, the Department is required to review all applications to make sure they have substantial credible information that is sufficient to allow the DNRC to move forward in the analysis and review of the application. The completeness of the application will be the critical first step of review and it would be consistent with the kind of review necessary in unified management. The department, once it determines that all the information that is necessary to begin the review is there, notifies the applicant that the application is correct and complete (within 120 days). The Department will then see if the application meets the criteria that there is: water available; no adverse effect on other water rights; protection of senior and current uses, etc. Once the DNRC determines that the application meets the requirement and environmental review, it will go out for publication to people who have an interest in the water source so people can raise objections. The objection process will allow hearing before the decision makers and both applicants and objectors may present concerns. If the application does not meet the criteria the applicant will have an opportunity to show cause why the application should not be denied. It is anticipated that the process will move more smoothly than in the past. She hopes the Department can offer assistance to the negotiating parties and help address the level of criteria the unified management hopes to weigh in with.

John Carter asked if there was any statutory or regulatory presumption that attaches to the finding of correct and complete. Candy said no. Clayton asked if there was an analysis of the cost of administrating this process versus the old process. Candy said in terms of the fiscal note the Department views their responsibility as the same as they still have the same review process.

Duane asked if this primed them to have this piece of the discussion for the interim administration - they had shelved the draft pending the DNRC's need to work with the legislature and then prep this for release so this is a template for how any permitting

process should happen within unitary administration. He asked if the parties are ready to discuss that issue. Candy said they have put together all the information so from their perspective they are ready to work with the teams on this. Jay said he wants to sit down with the DNRC staff and the ordinance to see how this process fits with the current draft. Chris said there are pieces of this that might go in unitary management but the legal teams need to take a look at it first. Susan said the unitary ordinance is dependent on the quantification the technical teams are working on and wondered how the timing fit. Jay said quantification and administration are both parts but not dependant on each other and they can move forward on administration independently. Clayton said the attorneys are probably already thinking about those issues. Jay said HB 40 goes to the process for new appropriations and changes and quantification looks at existing water uses, and potential allocations among existing water uses. At the end of the day there will be a process to permit new uses of water and change existing uses – but they can move this piece forward as it is something they will have to have for future development issues.

Seth Makepeace said there was not an extensive technical update. The canal seepage study is trucking along and producing good results and they are interacting with contractors and state staff managing that project. The existing use mapping, which is a fairly significant effort which some technical work is dependent on is moving forward and going along well. They are working on laying out a set of very defined tasks to execute the technical part of water rights work and have individuals assigned to those tasks within the technical work group and deliverables and they are working on a time frame for that. The technical team is meeting next week and the goal is to have that list done by the end of August. They are trying to do the right work, do it objectively and produce a deliverable product to get the facts needed to support the compact. It is a fairly daunting list. Existing uses, wetlands work, groundwater, quantification of Tribal uses, Level 2 streamflows and the desired future conditions of the stream; water conservation measures and water forecasting; establishing new water supplies and Hungry Horse modeling discussions, where the technical team can contribute to administrative rules, etc. The list will have a prioritization scheme, and deliverables that include maps, tables, technical memos, and information that will be digestible and usable. They have an upcoming meeting about finalizing that work and also a meeting to discuss mapping of existing uses on the irrigation project.

Duane said everyone benefits from the efforts to lay out these tasks. He is hoping that a similar type of effort could be brought to bear on the other parts of the negotiations also - just to illustrate there are outstanding issues such as negotiating off-Reservation water claims.

5. Question and Answer Period

None.

6. Other

Duane noted that Hungry Horse issues are involved with the Columbia River basin litigation going on in Portland; he said at the next meeting he should have an update regarding the BOR report. The BOR needs to review the products as well as other agencies.

7. Public Comment

None.

8. Set Next Negotiating Session Date

Susan said August 24-26 is the Indian Water Rights Settlement conference which is the week they normally have the August meeting. She suggested that they skip the August meeting and have the next session on September 30th. The parties decided to have the next meeting Wednesday, September 30, 2009 with the State chairing it.

9. Closing Comments by the Negotiating Teams

Clayton asked for closing comments. Chris said from the public perspective it may seem that the parties tread water and don't get anything done but he emphasized how much is being done by the technical teams, work that doesn't necessarily show up when they get together. It is important work that they need to have before they advance to decision points.

Duane said the federal team is pleased with the considerable progress being made. He said the administration is very busy right now with legislation on Capitol Hill and getting their attention on negotiations is a challenge.

Clayton said they appreciate everyone's patience and anyone with questions can contact any of the team members.

Steve said that sometimes the meetings don't appear on the outside to be filled with substance and said he had been one of those people and he previously asked the other Tribal team members about it. He said he found out it is a fact that a lot is being done between the negotiations and they are laying the foundation for all they do when they talk about specific issues. One hard thing is that he comes from a business background where you take in the facts and decide or otherwise you don't last in business very long. The Tribes look at these issues from all different sides and it takes longer but when they decide it is usually right. He said from a Tribal standpoint they are on a good pace. He thanked everyone for coming to the meetings.

Pat Pierre said in 1935 or 1936 the parents and grandparents said one day they would sit across the table and talk with white men about water - not only water but all the resources on the earth. They hold everything on the earth sacred. When they look around the country and see what people are doing to Mother earth, it's painful. When they come to the table his thoughts are back there as to what they can do and why they are doing it. It's the responsibility of each and every person on earth to protect it. There are a lot of people not doing that. He believes that one day Mother earth will say there is no more to give. He doesn't believe that is too far away. They sit at the table and talk about rights. They want to continue to protect the earth. If they fight over what is out there soon there will be nothing to fight over. Whatever decision are made in this room are about the future of children and generations yet to come. He hopes they use the next four years very wisely. They sit at the table because they want something to come out of this that will work for everybody. He talked about what happens when there is no more water. They will sit at the table until they have say over what goes on, on the Reservation. They have to learn together and give back to Mother earth so she can keep providing. It's about working together. He thanked everyone for listening.

Adjourned.