

MEMORANDUM

TO: Susan Cottingham, Jay Weiner, Sonja Hoeglund, CSKT Negotiating Team; CSKT Minute Files
FROM: Joan Specking
RE: Draft CSKT Minute Summary from December 12, 2007 Negotiating Session, Missoula, Montana
DATE December 17, 2007

Chair: Duane Mecham, federal team.

Agenda (Attachment 1)

1. Introduction, Prayer and Opening Statements

James Steele Jr. welcomed everyone to the meeting at the new Salish Kootenai College J.F. McDonald Health and PE Center. He reminded people of the 1855 Treaty and that it is a historical reminder that the Salish, Kootenai and Pondera people have lived in the area for hundreds of thousands of years and that they gave up a huge area in Washington Territory. The Treaty of 1855 went through the process called for in the U.S. Constitution for all treaties with other nations. The Salish Kootenai Pondera people reserved for themselves a reservation which many of them call home. Their homeland was supposed to be for their exclusive use but the U.S. Congress passed a law to open the reservation for settlement in spite of opposition by Tribal chiefs. The Tribes struggle with having other players in the situation. Some of their brethren in Indian country constantly throw up the old wars and battles and the Salish, Kootenai and Pondera do not do that a lot although they may discuss it internally. Today they are negotiating a water rights compact affecting their people and a non-Indian community on their Reservation. Whether they like it or not they have a greater non-Indian population on their Reservation than their Indian community. They have to learn to interact with that community and to also protect their culture, language, history and sovereignty of their Tribes. The Tribe feels they are the scapegoat on their Reservation – if something goes wrong it is the fault of the Tribe. If people look at the Treaty of Hellgate maybe they can get a better understanding of the situation. The Salish, Pondera and Kootenai people have always tried to get along with others and have not taken up arms against the U.S. government. Over the years they have had a difficult struggle with Lake County and Polson but have been able to make a better relationship. The Tribal government and council primary responsibility is to protect the Tribal right over the water they believe they have a right to: surface and sub-surface. It has been a long negotiation and he is hopeful that they can get something worked out before the next legislative session. He believes they can come to a negotiated settlement but if they don't they will see the largest lawyer employment ever. He recognized his fellow council members present at the meeting and the Tribal elders present. He thanked everyone for coming and turned the meeting back to the federal team.

Chris Tweeten said the Commission was pleased to be there in the new building and to sit down and move the process forward. He said he was pleased to say the Blackfeet Tribe and the Commission negotiating team have reached agreement on a compact. The compact will then be

drafted to take to Congress. This will clear the decks so they can devote their resources to the CSKT negotiations.

Duane Mecham recognized two members of the federal team in attendance.

(Someone complained that it was difficult to hear the people at the table.)

The people around the table were introduced. (Attachment 2, Sign-in Sheet)

Clayton Matt welcomed everyone and talked about where the parties are in the process. This is the second meeting in what will be a long series the next couple of years. Part of what is driving this is the sunset of the Commission in 2009 and the goal is to achieve a settlement for that legislature. Generally the Tribes start with the principle that in a claim setting it claims all the water on the Reservation. However it recognizes the existing users and uses on the Reservation. They want to achieve a unitary water administrative system on the Reservation where they don't have multiple administrative authorities making multiple decisions. They think it would be best for everyone's interest to have a unitary water administration system on the Reservation. In a subset of that they have begin to talk about the idea of a single priority date for the Flathead Irrigation Project. There have been technical team discussions about that for some time with the State team and the federal team aware of that idea. There have been written communications with the irrigation districts. If they don't succeed in settlement by 2009 they are faced with the prospect of going to state water court which they want to avoid. However they are preparing for it simultaneously.

2. Report on recent discussions

- Hungry Horse: Duane Mecham said they discussed part of a proposal laid out by HKM in the first meeting last summer to have as part of the solution access to an additional water source. There has been focus in water stored in the federal BOR Hungry Horse. It has water which is not under contract and it was agreed to explore that as a potential source. The BOR hosted a meeting in Boise to explain the current situation with the Hungry Horse facility which is part of, and managed in concert with, the federal Columbia River Power System which is involved in Columbia basin issues such as ESA salmon. BOR has modeling capacity to look at options and scenarios on how the water in the project can be used. With Norbert Reis's assistance funding was provided to do model runs for the CSKT negotiations. Clayton Matt said it is clear to the Tribe that there will be some element of a direct flow claim in Flathead River on and off Reservation but with the short time frame it is important for them to understand the BOR's contracting process and what they can do to assist negotiations. That doesn't mean that they have specific scenarios in mind that would be a final answer as to the role of Hungry Horse at this time but as they proceed they will be able to move toward what role it will play. Chris Tweeten said the State has a number of interests related to Hungry Horse Reservoir also. It is involved in litigation in which the State is a party in dealing with the allocation of water in the lower Columbia system; it is looked to by people as a source for water to solve all kinds of problems. The State has begun internal discussions with other elements in the State of Montana that have interests regarding the operation of Hungry Horse, and they expect those discussions to continue. Jay Weiner agreed the State has a

variety of interests in Hungry Horse which is at the head of a system that has many other interests. He said an opportunity here is for the State and the Tribe to work collaboratively to leverage some changes to the operation of the system in a way that can make more water available to facilitate the settlement and in a way that can assist developing western Montana off the Reservation. One significant issue is the recent decision in the Thompson Falls case, the Avista dam issue, having to do with whether there is new water available for development in western Montana. The Clark Fork Task Force is paying particular attention to this. He talked about partnering with the Tribe to benefit everyone and said the State is interested in getting a handle on the quantity and timing of releases of water the Tribes are interested in seeing. A critical State interest is mitigation water to offset the impact to Avista in the Thompson Falls decision. The State has a fair amount of flexibility as to when it would want to see water releases. He said there are a lot of good opportunities if they look at a State and Tribal cooperative partnership. On the federal front, Duane said federal plans for salmon are being revisited by a federal judge in Oregon as regards a biological opinion. The judge has pushed federal agencies very hard on these issues and a final plan won't come until next year. He noted that it is important to do evaluations from the local perspective.

- Shared Shortages: Duane said they have had good discussions on concepts regarding this topic. Jay agreed that they have had good discussions and thanked the Tribal effort. In terms of sharing shortages, what it means, how it's implemented, and who shares are critical in negotiations. The State has pushed for expanding the joint technical process. One of the pieces of the shared shortage vision has to do with coming up with hydrographs and rule curves showing what would happen in different types of water years, i.e., water distribution patterns in different years. The State would like to look at that by having their technical staff sitting down with the Tribal technical staff rather than doing separate technical work. The time has come to accelerate the efforts and they would be best served by opening up joint technical work and then seeing how it can fit into some of the bigger legal and political questions that they will need to work on. He asked for Tribal approval for a joint technical effort. Clayton said in the big picture they can wrap up a lot of the discussion under the topic of administration. They are aware of how the technical/legal process works and are reviewing the State's request. They are also looking forward to the State's view of shared shortages and it would be a good piece of discussion for the technical team. The existence of the technical team is not in question but how it operates and what they want to achieve in that process, so they will have more discussion on that as they go along. They think it was a successful process when they were negotiating the interim agreement. Soon the Tribes will be ready to discuss where they are in terms of expanding the technical process within the context of discussing shared shortages, administration and other technical issues. That process is what they have been following for most of the issues on the agenda.
- Funding for technical work on groundwater and digitizing projects: Duane said the federal government has constricted agency discretions over their budgets – this technical funding has had no final decision and won't for a couple months after the feds do pass a budget. They have arranged some funding for Hungry Horse studies meanwhile. They are talking about these issues with the BOR; and looking at the Bureau data system as having some important information. Their proposal is that they have a quick session among the Tribes and State to explore existing sources to them. They received a proposal from a litigation expert but with funding not available they need to see if they collectively can use current information. Clayton said the request, with the State's concurrence, was that the irrigation project

constitutes the largest single water user on the Reservation and the size and impact of that is important to understand in all water resource management on the Reservation. As part of that it would be useful for the settlement negotiation process and management to have some basic spatial land use information. Duane said they don't have the details of the Bureau data system yet but they want to discuss this with the Tribe and the State and hone in on what information needs there are. They currently have contracts with firms working on litigation and they may be able to take some steps to move forward. Susan said the Commission staff has a lot of experience with data work in this area and she encouraged another meeting to talk about what they can do. Duane said regarding groundwater there is nothing they can do until the budget comes through. The BOR has a little less of a budget problem and would like to explore in-house resources with the Tribe; modeling...that is a very general proposal but it might be worth exploration. Clayton said as part of the process the Tribe is seeking funding to assist negotiations by developing new groundwater data. The CSKT have hired a contractor and are proceeding. While they are seeking funding they don't have a specific response to the general proposal yet other than to say that they want to learn more about the BOR specifics, capabilities and proposal. They have had some experience with the BOR in the past and in general terms it might be difficult to make that work but the Tribe needs to understand what is being proposed before they issue a response. Susan said at the October meeting they talked about all parties chipping in on this and they were to get a copy of the Tribe's proposal. She asked whether that is still happening or if it would be Tribal and federal? She said the Commission has some money to contribute but they need to know what it will go for. She said the groundwater issue is so critical that the State would want to be part of that – just to encourage that being passed along. Clayton said the Tribes need to get the proposal to the other parties and need to hear a little more from the United States first.

- Proposal to merge with U.S. Fish & Wildlife Service Settlement discussions: This was tabled previously and the Tribes and the State are interested in having these negotiations in some fashion merged or closely coordinated with the federal reserved water rights for the National Bison Range. Megan Estep called Duane and updated him that the FWS is deliberating over this and is prepared to endorse a merging. The details are to follow. Jay said that is good news. Clayton said the FWS operates the Bison Range and several other Refuges and that the Tribes appreciate the work on that and they look forward to the proposal on how to do that.
- Other: None

3. Timeframe for proceeding with negotiations in 2008

Duane said there has been reference to the need to go forward considering the Commission's sunset date in 2009. This might be a good juncture to evaluate how best to proceed; how well have tasks been defined; how well have they defined some of the processes. From a federal perspective he outlined how proactive they will need to be with the goal of a 2008 agreement. The June meeting was a good start with a good proposal and since that they have had a good opportunity among the parties to take some of the key items like Hungry Horse and shared shortage, evaluate them and explore potential opportunities to reach resolution on those matters. In discussing this with the federal team and others, he started to identify key junctures next year they ought to be looking at. One is based on experience with the Nez Perce tribe; federal legislation is something that has to be done for every tribal settlement. There are some instances

where the federal government does not support a settlement and then the State and the Tribe are free to seek federal legislation from the delegation. Backing up from 2008, he concluded they would need to finalize key pieces of the settlement mid-year at the latest, in a series of steps. It would allow the federal team to fully vet settlement and funding proposals with the federal administration so parties could proceed from there. The parties may find this is too ambitious but he said it might be a worthy juncture to test whether 2008 is a valid timeframe to shoot at. Chris said the objective of trying to plot through step by step is a very worthy task to undertake and it will be helpful to work through a list of steps they need to follow and provide an outline containing items they can strike off as they are completed. It has not been the State objective to get this compact done for purposes of Congressional approval in 2008. They talked in terms of timeframes for completing an agreement that can be submitted to the Montana legislature in 2009. Ideally if they had an agreement that was finished by this fall they could have public meetings and agree to take an agreement to the legislature. The drop dead date for that could be as late as April in 2009 – rules suspended, etc. The State objective has never been to work through a process to culminate in a compact proposal in 2008. It is problematic as they will have three (Crow, Ft. Belknap, Blackfeet) seeking federal funding in the 2008 cycle. Those proposals are unlikely to get support from the current administration. Rather than focus on coming up on those timelines it seems to the State better to use the planning process to make sure they have a comprehensive outline of tasks needed and they proceed to get them finished as soon as they can. They understand the U.S. has to follow the Criteria and Procedures and expect the federal team will do what they have to get done under that. He said they really appreciate and support a “to do” list, without deadlines or expectations for submission to Congress given the reception a settlement is likely to receive there. Clayton said they have been developing a running list and there are some major things that need to be on the list. They have been working with the Commission sunset date in mind; however they have not forgotten the possibility that maybe the State legislature would consider extending the Compact Commission a little longer. He said they are proceeding down the path Chris described generally and it would be very difficult to have something to Congress by 2008. Duane said the comments were helpful to the federal team to understand the timeframe and expectations and they are not pushing a specific timeframe and would endorse doing it right over doing it fast. He said they should have a dedicated session among the parties to identify their work plans, goals on timeframes and they are prepared to do that.

Susan suggested if they start laying out the work plan and looking at the tasks and having some deadlines for mid-year; they should have these kinds of meetings every month and have legal/technical meetings in between. Duane said that was a worthy proposal. Clayton said they recognize the need to speed this up but can't say whether they can do monthly meetings at this time. They could set a tentative monthly date at this time. It was proposed for the last Wednesday of each month and Clayton said they would take that back for the Council and get a response. They tentatively scheduled the next meeting for Wednesday, January 30, 2008.

4. Public Comment

Duane invited members of the audience to give comments or ask questions.

Someone asked why Hungry Horse is being considered as an alternate source of water and not Flathead Lake. Duane said the exploration of Hungry Horse as a potential source is not intended to preclude any other resource. In his experience in Indian water settlements the parties almost always need to look to an additional water source in the basin, either newly developed or transferred to accommodate both existing water use and ensuring adequate water supplies for present and future water for the Tribe. Hungry Horse as a federal reservoir, lends itself as a worthy initial water resource for exploration.

George Culpepper, Northwest Montana Assn. of Realtors: He noted that no one wants to go the litigation route. The association looks at the interests of all the homeowners in northwestern Montana. It may be in the best interest to try to get the Commission extended until 2010 because next year there will be a new administration at the federal level; there could be a change in the State legislature and in the Governor's mansion. If litigation is not the answer then he suggested trying to get this extended until 2010. Hungry Horse is a concern for the association and they want what's beneficial for all people of Montana. If there are meetings that regard Hungry Horse, whether in Boise or elsewhere, he asked that they be kept updated so they can attend as it's their view as they are representing the interests of all homeowners, not only on the Reservation. It is their goal to be able to ensure that their local association, their state association and the national association support this. They want to go to Congress with that support of the national association as long as it benefits all Montana and doesn't go against the interest of the homeowners. He recommended the parties take their time and reinstate the Commission until 2010.

Rory Horning: said he appreciates that the people want to get it right and has seen them sitting there for many years so far – and that there are many people out there, owners of property, and that until the parties complete their work their land rights are not complete. As the parties take their time, please understand that they are impacting the communities.

Duane thanked everyone for their questions and comments.

Meeting adjourned.