

SUGGESTED MINUTES
Reserved Water Rights Compact Commission
July 24, 1980

CALL TO ORDER

The fifth meeting of the Reserved Water Rights Compact Commission was called to order at 9:00 a.m., in the BIA Conference Room of the Federal Building in Billings, Montana, on Thursday, July 24, 1980 by Henry Loble, Chairman.

ATTENDANCE

Commission members present were: Henry Loble, Chairman; Steven Brown, Vice Chairman; A.B. Linford; Everett C. Elliott; Jack E. Galt; Audrey G. Roth; William M. Day; Fred A. Johnston; also present were: D. Scott Brown, Program Manager; and David E. Ladd, Legal Counsel; Rich Moy, Caleb Shields, Merle Lucas, Larry Jakub, Ted Meredith, Arnold Vinnard, Gary Fritz, Ron Russell, Peter LaMere, Calvin Wilson, Norman Hollow, Francis Lamebull, Rich Aldrich.

A brief discussion of the minutes of March 18 preceded a motion made by Steve Brown that they be approved. The motion was seconded and approved.

FUNDING

Scott Brown began by mentioning the August 6 meeting of the Legislative Water Resources Oversight Committee. An important issue on the agenda will be a review of the commission's budget. Discussions might also include other issues such as the preliminary decree.

Scott pointed out that the budget has been prepared in coordination with other aspects of Senate Bill 76 and he urged each commission member to attend the review in Butte, if it is at all possible.

David Ladd reported that an opinion of the Attorney General, with respect to the commission's access to Senate Bill 76 funds, may be rendered previous to the review. The opinion was requested about four weeks prior to today's meeting.

William Day stated that it is apparent to him that Senate Bill 76 is being used for political purposes by some legislators. He stated further that he will attend the review in Butte and attempt to dispel some of the misguided notions regarding the 1979 Legislature's intent in establishing the Compact Commission.

A review and discussion of the proposed budget (see attachment) continued.

Scott Brown emphasized that the proposed budget was prepared on the assumption that only two tribes and the federal government will be negotiating over the period covered by the budget. He reported that additional funding would be needed, particularly for the purposes of hiring technical personnel and travel, should more tribes enter into negotiations.

Merle Lucas spoke of his meetings with tribal council representatives of the Fort Belknap and Fort Peck reservations and of his plans to meet with other councils. He is optimistic that other tribes will enter into negotiations.

A.B. Linford suggested that we consider contracted services for collecting much of the technical information required. He recognizes that it might be more costly; however, for the sake of expedience, it is quite often money well spent.

Steve Brown mentioned the possibility of amending the law limiting the filing fee. He believes that some indication of the total cost of satisfying the requirements of Senate Bill 76 is needed. He stated that it would be impossible to collect more money from claimants after they have filed. He warned that we might be forced to face the possibility that the fees are inadequate and we may be wiser to do so early, perhaps in the next session.

Rich Moy added that the number of claims filed to date is far below what was expected.

Fred Johnston moved that Scott Brown prepare an alternative budget based on assumptions as to which tribes and federal agencies are participating in negotiations.

In the discussion of the motion, Chairman Loble suggested that an explanation might be included in order to make clear the fact that the budget is based upon negotiations with only two tribes and the federal government. Mr. Johnston then amended his motion to read as follows: That the proposed budget be accepted by the commission with the following changes: a) the title should state that it is a proposed budget for negotiations with the Northern Cheyenne Tribe, the Confederated Salish and Kootenai tribes and the U.S. departments of Interior and Agriculture; and b) a second budget would be prepared which would estimate the additional funds that would be required in the event that negotiations with additional tribes or federal agencies materialize.

The motion was seconded by Mr. Elliott, put to a vote and passed unanimously.

The announcement was made by Chairman Loble that the next meeting with the Northern Cheyenne Tribe is in Billings, August 12; and with the Confederated Salish and Kootenai tribes in Pablo, August 19.

CONFIDENTIALITY

David Ladd presented information on two aspects related to confidentiality: a) the open meeting statute in Montana, and b) the confidentiality of documents in the files of the Compact Commission.

The point was brought up that the Northern Cheyenne indicated that they have some data but will give this information only if it is kept confidential.

David Ladd continued to describe the law concerning dealings with open meetings. It applies to any governmental bodies that are supported in whole or in part by public funds. He went on to explain the two functions to consider: a) the actual meetings of the Compact Commission and b) the negotiation meetings.

Steve Brown discussed the idea that confidentiality should be discussed with the Oversight Committee at the August 6 meeting.

Chairman Loble feels that the commission meetings should be kept open to the public unless some issue requires confidentiality. He doesn't think the public needs to know when negotiation meetings are being held.

Ladd stated that if a quorum of commissioners is present, then it is called a meeting.

Steve Brown felt that a notice should be given of all meetings, but close those that need to be closed.

Chairman Loble feels the public need not be informed of the negotiations meetings.

Ladd went on to state that if the demand of individual privacy clearly exceeds the merits of public disclosure then documents may be kept confidential.

Steve Brown moved that all meetings and documents submitted to the Commission be open to public scrutiny except as follows: (1) negotiating sessions and documents submitted by a tribe or federal agencies are entitled to confidential treatment when the tribe or federal agency requests that the negotiating session or documents be treated as confidential and indicates that no further negotiations can occur unless the commission agrees to the request for confidentiality. (2) All commission meetings will be open to the public except when the commission is discussing strategy for negotiating with the tribes or federal agencies, personnel matters, or other confidential matters in which the demands of individual privacy clearly exceed the merits of public disclosure.

The motion was seconded, put to a vote and passed unanimously.

TONGUE RIVER DAM PRESENTATION

Arnold Vinnard and Gary Fritz gave a presentation on the state's plans for restoration of the Tongue River Dam. The basic sources of revenue to rebuild the dam are: coal, water sales, participation by the Northern Cheyenne, and tax revenues.

DNRC will send to the Commission a summary of the various operations regarding the Tongue River Dam Restoration Project.

FEDERAL AGENCIES

Ted Meredith and Larry Jakub addressed the meeting on behalf of the departments of the Interior and Agriculture. They stated that each department has officially designated its representative to these negotiations, by action of its respective Secretary (attachment), and that they are pleased to have entered into these important negotiations with the state.

A date will be set before December to meet again with the federal agencies.

ACTIONS TO BE TAKEN--SPECIAL ASSIGNMENTS

Revise Budget - Scott Brown

Send documents to Oversight Committee - Scott Brown

Send letters concerning alternatives and schedules of when we meet - Scott Brown

Set up meeting with federal agencies before December but preferably not in September

MEETINGS

August 6, 1980 Butte, Oversight Committee

August 12, 1980 Billings

August 19, 1980 Pablo

J. Galt made a motion to adjourn the meeting at 2:34 p.m. The motion was seconded and approved.

SB/kdd