

RESERVED WATER RIGHTS COMPACT COMMISSION

August 12, 1980
Fourth Floor Conference Room
Bureau of Indian Affairs
Billings, Montana

PRESENT:

Jeanne Whiteing, presiding
Attorney for Northern Cheyenne Tribe

Scott Brown, Program Manager, RWRCC
Henry Loble, Chairman, RWRCC
David Ladd, Attorney, RWRCC
Jack E. Galt, member of RWRCC
Audrey Roth, member of RWRCC
Allen Rowland, Chairman of Tribal Council, Northern Cheyenne
Ed Dahle, Chairman of Minerals Committee, Northern Cheyenne
Cal Wilson, Attorney for Northern Cheyenne
Ted Rising Sun, member of Tribal Council Northern Cheyenne
Roger Old Mouse, Business Manager of Northern Cheyenne
Pat Littlewolf, Administrative Aide, Northern Cheyenne
Ted Meredith, Field Solicitor, Interior Department
Tom Acevedo, Solicitor's Office, Interior Department
George S. Jennings, BIA Area Office, Assistant Area Director
Laurence Siroky, Chief, Water Rights Bureau, DNRC
Arnold Vinnard, Montana Department of Natural Resources
Gary Fritz, Montana Department of Natural Resources

MRS. WHITEING: This is our second meeting between the Northern Cheyenne Tribe and the Montana Reserved Water Rights Compact Commission. I think after our first meeting in June, we were all quite encouraged and felt there were some possibilities of getting some things accomplished concerning the issues of water rights between the State and the Northern Cheyenne Tribe. That's why we are here today, to continue that discussion and hopefully we will make further progress.

We have an agenda for the meeting which Scott Brown sent to every one, and that's pretty much the agenda we will be following. I had asked that a couple items be included as well. We can take those up under "matters of special concern," and anyone else who has something to add, we could perhaps take it up at that time also.

in court. And, of course, that wouldn't prevent any otherwise discoverable material from ending up in court.

But we discussed both of these issues, and I think both of those are involved by us characterizing these negotiations as settlement talks.

MRS. WHITEING: I think probably what we could do is just review this and maybe at our next meeting come to some decision.

MR. LADD: That would be fine. I think that would be good, Jeanne.

MRS. WHITEING: On whether this is acceptable.

MR. LOBLE: I suppose the Department of Justice might be interested?

MRS. WHITEING: Yes, they certainly will be.

MR. LOBLE: I wouldn't want them left out.

MRS. WHITEING: We will contact them and review it with them.

MR. LADD: I think it might be appropriate to make sure that Justice is included as a party. I have written it that it was between the Compact Commission, the attorney general and the Tribe. We can easily put Justice on there if that might make a more complete agreement. It's mostly just an agreement of intent, I think.

MRS. WHITEING: We will just discuss this in more detail at our next meeting and take care of it then, legally.

MR. LOBLE: Would we have time for item five?

MRS. WHITEING: We might as well try. The fifth item, the confidentiality and open negotiating sessions, I received a copy of the policy that the Compact Commission adopted concerning confidentiality. Maybe I should read that, and then we could discuss whether it takes care of the whole situation. The policy says:

"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 sessions 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."

Number one is the one that is relevant to the questions the Tribe had, I think, as far as confidentiality. I didn't have a chance to review this, did you, Cal?

MR. WILSON: I just read it from what they put out. I was up here about two weeks ago at a meeting with the DNR and some of the Compact people, and we discussed about open meetings. We sort of thought that to have them open unless there is a reason to keep something confidential and the meeting closed. I didn't see any reason from our part there would be a problem with that.

MRS. WHITEING: I think the major area of concern we have had was when we were discussing any kind of a technical information that was developed for the water rights case, we would prefer to keep that information confidential at this point since there is ongoing litigation and there are defendants other than the state.

MR. LOBLE: I think it's pretty well based on legal research, and we felt that we would be on pretty solid ground based upon Dave's research. If that arises, that we have confidential matters, if you requested it be confidential and say that it can't continue unless that request is honored, and then we honored it, then it seems like we are in pretty good shape as far as keeping it confidential despite the constitutional public knowledge provision of our constitution. So those things are based on Dave's legal research that we think would leave us on pretty solid ground and still give the public the access to practically everything, which I think is the way everybody would like to have it if possible. Not that I expect overwhelming attendance at these sessions anyway.

MRS. WHITEING: Did you have a comment, Ted?

MR. MEREDITH: I was just curious that your basic research you concluded that unless--that you have to disclose everything or keep it open unless it's requested by the Tribe to the point that they threaten to break off negotiations? In other words, it has to be a pretty compelling reason?

MR. LADD: Legally, yes, Ted, but also a practical consideration. If there is no compelling reason to keep something confidential, well let's just go ahead and leave it open. That falls short of going ahead and publishing everything and distributing it to everyone, but it just seems in our best interest to keep everything open unless there are strong reasons, technical data for the suit, unless there are strong reasons that it need to be kept confidential.

MR. LOBLE: And the tribes seem to feel that way pretty much, even the Flathead people seem to feel that way, although at first they didn't, but they have changed.

MRS. ROTH: Unless it would be a direct threat to the negotiating process, which could easily be.

MR. LOBLE: I think this policy will mean, as many of you may know this but I thought I would mention that when we schedule a meeting, it will receive the same type of publicity that any other state meeting would. It would go through Norma Smith, I think it is, in the DNRC director's office. She would disseminate the information about the meeting with a copy of the agenda to the press, and the press would presumably publish it. And that would be the way we would get our notice that a meeting was going to occur. And the statute seems to contemplate that can be done in lieu of formal publication of some kind of legal notice advertising, such as you see in the notice of probate or something. That is necessary as long as the media disseminates the news. So that's the way it will be handled from now on, and people will know about it and I suppose we can expect at least some members of the press might drop by and see what's happening.

MRS. WHITEING: My major concern other than the technical information is the degree to which publicity might hinder or inhibit the discussions. And I guess we can wait and see whether it does have any inhibiting effects. I just hate to see some newspaper article taking something out of context or printing something about some preliminary discussions that we may have gone through to reach a certain point. And I hope that doesn't happen, but I can see that might be a factor and that would be a concern

on my part. But I think we certainly can try open meetings. I have no problem except when we get into some of the technical information that I think the Tribe would prefer to keep confidential.

Does everyone agree with that?

(All nodding assent.)

MR. RISING SUN: This was the principal concern, because this has happened in the past. Things have been blown way out of proportion. Sometimes I think that the papers are more interested in stirring up more strife between people than there already is. And that would be my only concern. Otherwise anybody can come in and listen.

But we finally had to quit talking to some newspapers. I have been interviewed several times, and I have yet to see an article that correctly quoted what I said. They have taken a sentence or two and made a story out of it. That's the thing that can blow up. This is negotiations, and I think we have said that it's long due, long overdue negotiations between people here in the state. We are citizens of this state, our land borders this river that we are talking about, and I think that we are, what I hear this morning is that we can resolve some of these things in four years, or we can choose to go another 20 years through the courts, either way. And I really believe we are interested in resolving some of these things that have long been here and will continue to be here so long as there are people.

MRS. WHITEING: Did someone have something over here?

MR. LADD: I was just going to mention, Jeanne, I sent you a copy of that memo on open meetings, and I have here a couple copies of a memo that I prepared and we distributed and discussed at the earlier Compact Commission meeting concerning the confidentiality issue. If you would like, I can give these to you to look at, help you with your research, and I would sure love to hear any comments you have or thought you have on it. It seems an area of mutual concern. We both want to achieve the same purpose in the confidentiality issue. I will give them to you, and we would appreciate anything you might have in return in the way of comments or something.

MRS. WHITEING: Fine. I think we would be interested in seeing this.