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ADOPTED BY THE COMMISSION

MINUTES

MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION
DECEMBER 3, 1985

CALL TO ORDER

The thirty-first meeting of the Montana Reserved Water Rights Compact Commission was called to order by Chairman Gordon McOmber at 1:30 p.m., December 3, 1985, in the Governor's Reception Room, in the State Capitol, Helena, Montana.

ATTENDANCE

Commission Members Present: Mr. Gordon McOmber, Chairman, Senator Jack Galt, Vice Chairman, Mr. Daniel Kemmis, Senator Joe Mazurek, Mrs. Audrey Roth, and Mr. Chris Tweeten.

Commission Members Absent: Mr. William Day, Mr. Everett Elliott, and Mr. A. B. Linford.

Others Present: Scott Brown, Program Manager; Marcia Rundle, Staff Attorney; Urban Roth, Special Counsel to the Commission; Elsie Armstrong, Commission Secretary; Larry Fasbender, Director of the Department of Natural Resources and Conservation; Gary Fritz and Richard Moy of the Department of Natural Resources and Conservation; Mona Jamison, Legal Counsel to Governor Schwinden; and Clay Smith representing the Attorney General's Office.

ORDER OF BUSINESS

Following introductions, the agenda for the meeting was adopted. Adoption of the minutes of the October 22 Commission meeting was postponed until the next meeting as the members had not had sufficient time to review them.

Chairman's Report

Chairman McOmber reported that the Commission had some serious decisions to make concerning a recommendation to the Legislature for an extension of time for the Commission. He stated that there was only one year left before the next session, and there had not been a compact made in this

biennium. He stated there would have to be some serious scheduling that would allow the Commission and staff to take a serious look at each proposal.

Old Business

Mr. Brown reported that the finalization of the Staff Attorney's upgrade had been completed and had become effective September 28, 1985.

Mr. Brown stated that problems with the timely finalization of transcripts have been corrected and that the transcripts for all the negotiating sessions had been received. There has been up to six weeks between sessions and receipt of the transcripts.

Mr. Tweeten reported on the description of Chairman's duties and responsibilities that the Chairman had requested. He stated that he and Senator Mazurek had reviewed the draft that Mr. Brown had prepared and had added three additional items. Mr. Tweeten reviewed each item.

After a lengthy discussion concerning the supervisory authority of the Chairman and the Program Manager, it was decided that Mr. Tweeten and Mr. Mazurek would review the situation in more depth and make another presentation at the next Commission meeting.

Ms. Rundle reported on the open meetings issue which surfaced during the negotiations with the Confederated Salish and Kootenai Tribes. Both the Tribe and the Commission had agreed to research the issue. She stated that at the November 18 negotiating session with the Tribe, Mr. Roth reported to the Tribes that the Commission was standing by its earlier position that such sessions should remain open, but they could be closed at the request of the other party when necessary to protect the negotiations. Ms. Rundle reported that the Tribal representatives remained adamant that the session be closed. She said the attorney for the Joint Board went on the record opposing closed negotiating sessions. The parties caucused and decided that the remainder of that negotiating session would be closed. She suggested that the Commission consider whether negotiating sessions with the Confederated Salish and Kootenai Tribes should be open or closed as a blanket matter. Or, if the Commission chooses to make that decision on an ad hoc basis, each agenda item would have to be considered on its own merits.

The possibility of a law suit against the Commission, if the sessions are closed, was discussed.

Mr. Kemmis moved that the Commission should maintain its current position of open meetings. In regard to the Confederated Salish and Kootenai Tribes, the Commission should

enter each negotiating session with the presumption that the session will be open to the public, but may be closed as to any agenda item upon the request of the Tribes and agreement by the Commission. The motion was seconded by Mr. Tweeten and it passed without opposition.

Mr. Tweeten moved that the Commission should delegate to the permanent members of the negotiating team--the Chairman, Vice Chairman, Program Manager, Staff Counsel, and Special Counsel--the authority to make the determination as to whether a particular negotiating session with the Confederated Salish and Kootenai Tribes is to be open, closed, or partly open and partly closed. Mrs. Roth seconded the motion and it passed without opposition.

NEW BUSINESS

Senator Galt suggested that the Commission forego reports on the negotiation status of the agencies and tribes listed in Item 6 so that more time could be spent in Executive Session to discuss strategy. Chairman McOmber agreed.

Senator Mazurek said he would like an update in writing or verbally on the agenda issues that were being bypassed. Mr. Brown and Ms. Rundle will brief him with respect to negotiations that have transpired over the past two or three months while he has been in Japan as a representative of the state of Montana.

Chairman McOmber called an Executive Session at 3:15 p.m. and the meeting adjourned at 5:10 p.m.