

THE FORTIETH MEETING OF THE
MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION
STATE OF MONTANA

Monday, May 11, 1987
9:00 a.m.

Board of Natural Resources Conference Room
Lee Metcalf Building
Helena, Montana

Senator Jack E. Galt, Chairman

CHAIRMAN GALT: With Representative Spaeth we will call the meeting to order. The first item on your agenda is the opening statement. I have none but I'd like to reserve a closing statement. But, I would like to introduce a new member of our Commission, Representative Dennis Iverson from Whitlash, way up next to the Canadian border. Welcome Dennis and we're glad to have you with us. I'm sure you'll contribute a bit, he is a very knowledgeable fellow on water within the state. He's served twice as chairman of the Environmental Committee, whatever that bunch of tree huggers is...

REP. IVERSON: Bark biters.

MR. MCOMBER: Gopher lovers.

LAUGHTER

CHAIRMAN GALT: And the agenda is before you and I'm sure it will be adopted. There is some additions to it as we will add them as we get to them. You also have the, we have to adopt three Committee minutes. I guess we'd better take them one at a time. How about the November 21, 1986?

MR. ELLIOTT: Move the adoption.

VICE-CHAIRMAN TWEETEN: Second.

CHAIRMAN GALT: Any further comment?

REP. SPAETH: Question.

CHAIRMAN GALT: The question has been called, all those in favor signify by saying Aye.

UNANIMOUS: AYE.

CHAIRMAN GALT: The January 17, 1987, that was the beginning of the session. Any comments?

MR. MCOMBER: Move adoption.

MR. ELLIOTT: Second.

CHAIRMAN GALT: Question being called. All those in favor signify by saying Aye.

UNANIMOUS: Aye.

CHAIRMAN GALT: And the January 28th Commission meeting. As I recall that was the one where the Flathead irrigating was here.

MR. McOMBER: I do have some suggestions on the 28th, Mr. Chairman.

CHAIRMAN GALT: And they're in your packet here.

MR. McOMBER: I have some ideas of my own about what should be in minutes. I like them as a ready reference and points that I feel are important maybe someone else doesn't but I do and I'd like to make those here. On page 8 of the minutes which would be on page 21 of the transcript I would like to add that "in response to a question Mr. Delk said the BIA had a handle on the amount and the ownership of Walton Powers rights on the Reservation but that the Anderson case complicated the issue by requiring a complicated trail of ownership.

CHAIRMAN GALT: Excuse me Gordon, where abouts are you on the page?

MR. McOMBER: On page 8 on the minutes, that's where I would have this inserted, but it's taken from page 21 of the transcript.

MR. ELLIOTT: Where would you insert that?

MR. McOMBER: Well, I'd guess I'd leave that up to the powers that be. That question has come up a time or two before as to the Walton Powers rights and Mr. Delk made some other comments in regard to those rights that were included that I felt were very pertinent. But I would suggest the addition of these Mr. Chairman. Let's see, and another one, on page 11 of the minutes and it's taken from page 32 of the transcript and it has to do with a remark that I made down there about one, two, three, four paragraphs from the bottom where it says "Mr. McOmber stated that when the Flathead, etc., etc." Well, I was actually quoting from our researcher's information. The fact of the matter is that I believe that the Reclamation issued that warning as a kind of a 'cover your tail' thing on all the projects. I know up in Fairfield one year a Bureau of Reclamation canal washed out and my Dad and his neighbors lost his crop and he still had to make the payment on the construction charges and the O & M and I think that's kind of standard language in Bureau of Reclamation warnings and I just didn't want to be on the record as having originated the thing. With those two suggestions Mr. Chairman, I have no other questions on those minutes.

MS. RUNDLE: Gordon, could we have your written version of that?

MR. McOMBER: You know you can't read my writing Marcia.

CHAIRMAN GALT: Any further discussion on the additions to the minutes? They have been moved. All those in favor signify by saying Aye.

UNISON: Aye.

CHAIRMAN GALT: Now, could we have a motion on the minutes as amended?

MR. ELLIOTT: So moved.

MR. ETCHART: Second.

CHAIRMAN GALT: Any discussion? Question being called for, all those in favor signify by saying Aye.

UNISON: Aye.

CHAIRMAN GALT: So, we finally caught up with our minutes. I think our next thing. Let's have a report on what happened during the Legislature. We at least survived and everyone has a job for the next six years perhaps. Marcia, you attended every hearing or was there, why don't you...

MS. RUNDLE: Thank you Senator. There were three bills that we were following. Of course the most important one from our perspective is S.B. 92 which extended the authority of the Compact Commission to negotiate for six years until 1993. Senator Stimatz carried that in the Senate and I believe Representative Spaeth carried it in the House. Rep. Iverson carried it in the House. It's convenient to have both of you there. Thank you. Senator Galt and I discussed this morning that it may be appropriate to send a letter of thank you to Senator Stimatz and if you will accept our thanks in person gentlemen, we won't send one to you but also to those organizations that came and supported the legislation, the Water Development Association and a number of the other ones that have consistently supported the Compact Commission. There was no opposition that I'm aware of to the extension of the Compact Commission. Would anyone else care to add anything about those hearings?

MR. McOMBER: Could I ask a question Mr. Chairman? How many votes were cast against it? Does anyone recall that?

REP. IVERSON: I think the final vote in the House, not very many, less than a dozen.

CHAIRMAN GALT: Well, it was very few in the Senate too. I'd say four or five and they were the old die-hards that don't, Pete Story, I'm sure.

MR. McOMBER: But no arguments in either house against it?

SENATOR GALT: No. There wasn't a bit of discussion in the Senate. Was there in the House?

REP. SPAETH: No.

MS. RUNDLE: The other House Bill was 754. We watched this because it included prioritization of the adjudication and specific language that addresses the Compact Commission and that language I will read to you. It says "to the maximum extent possible the Reserved Water Rights Compact Commission established under 2-15-212 should make the negotiation of water rights claimed by the federal government or Indian tribes in or affecting the

basins identified by Section 10 its highest priority". The basins that were identified in the statement of intent include several basins, four or five or six, in each geographical area of the state. When we had discussions with DNRC and with the Water Court and with some of the legislators who were involved, my only caution was that the Compact Commission would find it very difficult to focus on the highest priority in each of these basins because it is just too many. My understanding is that the Milk River prioritization still overrides. That that's the initial priority but that after that in each of these geographical areas there is a list of prioritized basins and I think that it was understood by everyone that the Commission was not going to be able to focus on the Madison River, Rock Creek, the Yellowstone River and all of the others.

CHAIRMAN GALT: There is an escape sentence in there - whenever possible - or...

REP. IVERSON: To the maximum extent possible.

MS. RUNDLE: To the maximum extent possible. So, I guess there is as much room in there as we need to take. Any questions on those? Rep. Spaeth carried that legislation I believe.

REP. IVERSON: It was Bradley though wasn't it? If I could Mr. Chairman I'd just comment that both those bills were products of the Water Policy Committee and were just sort of handed out by rotation where we happened to be sitting at the table. They're both Water Policy bills. And the other comment would be that in determining what the priority basins should be for the list that went in with the statement of intent that was done through a very, very thorough consultation with Judge Lessley and others and I guess that's...

CHAIRMAN GALT: That was the bill that was held up in the Rules Committee for the entire session?

REP. IVERSON: Well, we just put it in there so that it would heal up a little.

REP. SPAETH: That one had some deep wounds.

MS. RUNDLE: Any further question, comments, clarifications? The other legislation that we followed was H.B. 770 which was introduced by the Joint Board of the Flathead Irrigation Districts. That legislation as you know, the Commission did not have a position on. It was tabled in committee and was not brought out after that point. I don't have anything further to say on that one.

CHAIRMAN GALT: Chris, are you the chairman of the Flathead?

VICE-CHAIRMAN TWEETEN: Yes.

CHAIRMAN GALT: Would you like to interject anything now?

VICE-CHAIRMAN TWEETEN: Why don't we wait until Chairman's Reports? I'll do some talking then.

CHAIRMAN GALT: Marcia, would you bring us up to the line on the budget and also not only this biennium's budget but address the next biennium's budget too?

MS. RUNDLE: Okay. I've prepared a summary of expenditures and budget matters for you so that you could tell where we are as of the first of May. The Commission was originally budgeted at \$202,000.00 per year. About half way through the year when the Governor mandated the 2 percent cut you will remember that Gary Fritz spoke to the Commission and the Commission agreed to take a 20 percent cut there so that those monies could be used by Water Resources because they had some shortfalls. The very low expenditures that you see are primarily because of vacancy savings. We also saved quite a bit by not hiring contracted council and the third savings has been on travel. We have used only a fraction of our travel budget. So, at the end of April we had \$83,631.55 in the budget.

VICE-CHAIRMAN TWEETEN: Marcia, how much of that is encumbered for salaries for the next two months?

MS. RUNDLE: About \$24,000, \$22,000, right in there.

VICE-CHAIRMAN TWEETEN: So, we have roughly \$60,000 in unencumbered funds at this point.

CHAIRMAN GALT: Any further comments? That's on this biennium's budget.

VICE-CHAIRMAN TWEETEN: Marcia, is there anything else in that \$60,000 that's earmarked for anything?

MS. RUNDLE: Not at this point.

CHAIRMAN GALT: That will come up a little later on.

VICE-CHAIRMAN TWEETEN: I'm sure it will.

CHAIRMAN GALT: Would you comment then Marcia please on the next biennium's budget?

MS. RUNDLE: Next biennium, 88-89, we submitted a request for \$229,767 for 88 and \$229,479 for FY 89. That reflects personnel, 6 FTE, it reflects a healthy compensation line item for Commission members' salary and per diem. It reflects about \$20,000 in consulting fees or contracted services. All of the other items, well, including those items, this budget, 88-89 is virtually identical to 86-87 with a slightly raised amount for inflation and anticipated greater activity and increased staff. There were no major changes in types of expenditures over the FY 86-87, although there is about a \$30,000 increase in the amount.

CHAIRMAN GALT: Any comments?

MS. RUNDLE: It was in H.B. 2 as a line item this time.

CHAIRMAN GALT: Well, it disappeared from a line item and we got it back in the process.

MS. RUNDLE: Then it came back. So, it will come out as a line item. It's not clear to me if that's a line item in Water Resources budget or just a line item in the Department, but either way it's kind of irrelevant. It was not the subject of any discussions that I heard and was passed as presented.

CHAIRMAN GALT: We wanted it as a line item. I'm sure Gordon could explain. When we were just part of the Department's budget they had a hell of a time keeping care of the books. I remember Gordon was tearing his hair out one year over he couldn't find the money.

MR. McOMBER: That's right Mr. Chairman. After some consideration we got the approval of Larry to get it as a line item and that has eliminated a lot of confusion.

CHAIRMAN GALT: You bet. I think it will be a lot better. Any further remark on task budget or proposed budget? Are these compliments of Davis law firm from Dillon, Montana? (doughnuts)

MR. DAVIS: Yes.

CHAIRMAN GALT: I asked to be informal but let's don't make it too informal. We'll go on to No. 7, the report from the negotiating chairs and Gordon, go ahead and start it out. You've been doing a lot of work on your Forest Service thing I know.

MR. McOMBER: Okay Mr. Chairman. It's interesting I think that there has been four new appointees to this Commission since the last official negotiating session the Commission conducted with the Forest Service and some new staff members so maybe I'll throw in a little history as we go along to try and bring them up to date although I'm sure everyone studied all the information that's been sent to you. That's the case isn't it? That was a facetious remark too. Anyway, to go back to, I think it was in 1985 was the last official negotiating meeting session with the Park Service. About the time of that session an evaluation was done by the Commission on the legality of the claims of the Forest Service, I'm talking about the Forest Service, on the legality of the claims of the Forest Service. The Commission came very close to passing a motion to the effect that they had little, if any, legal standing. However, it was recalled that during previous negotiating sessions the chief negotiator Mr. Urban Roth had stated with the approval of the Commission that we had recognized the Forest Service claim for a federal instream right so that motion, I think it was made by Jack and seconded by Chris as I recall, after some discussion that motion was withdrawn or a substitute motion was made by the same two people in reverse order and a proposition was made to the Forest Service to respond to some specific issues we put forth to see if it would alleviate the Commission's concern. The Forest Service replied that they would do that in, I think in November of 1986 finally they attended a meeting here and hand delivered that proposal. It was the understanding of the Commission that the staff would evaluate the proposition and that we would get back to them. And Lynda has done quite a bit of work on the hydrology and Greg is working on the economics of the evaluation. As soon as that is completed Mr. Chairman, it's my feeling that the negotiating team and the staff and as many other people who can make it that want to should visit those drainages. Now, the drainages in the proposal

were on Big Creek and Savanac Creek in the St. Regis Forest, the Lolo Forest up on the St. Regis drainage plus Elk Creek over out of Augusta at Lewis and Clark County and I believe on the Lewis and Clark Park Forest. We need to make a comparison between the present proposal of the Forest Service and the previous proposal. To do that it's advisable I think to compare a drainage that was studied before and Rock Creek between here and Missoula, extensive work has been done in Rock Creek and we get that into the same field evaluation and soon I think we're going to have a lot of input from the staff who will have reviewed the work on Rock Creek for the basis of comparison.

Also, I feel that because the claims of the Forest Service are based on the proposition that dewatering a stream infringes on the claimed right of the Forest Service that this Commission should evaluate the effect of dewatering on some of Montana's streams. Irrigation has been going on in Montana for 100 years. We should have some very good examples of what actually has occurred to those streambeds and I should state that the Forest Service claims are based on the proposition that it was the intent of the Congress when the Organic Act was passed that the streambeds should be maintained in their form, in their basic form at the time the water right went into effect which was at the time the Forest was established. So we have in Montana history of over 100 years of dewatering these streams and along with the methodologies that are being proposed and we have the opportunity to look at actual cases where streams have been watered, dewatered to assess the damage and for our experts to compare the computer models to the field, actual field effect. To back up a little, the Forest Service was established just before the turn of the century because of the, well, of the unacceptable logging methods. The forests were literally being destroyed along with the watersheds because of the unsophisticated and irresponsible logging methods of the day and the Forest Service was created to protect those public lands and the two reasons given was to protect the production of timber for the use of the American people and also to protect the reservoir capacity of the soil in effect. There was some question about how far the Forest Service should go in excluding people from the Forest or controlling the people on the Forest. The National Park Service was coming into being about that time and the Park had considerable additional powers to control the use and the access of people to the parks. Some people in the Forest Service felt the forests should be treated like parks and started to impose rather restrictive rules. The Congress at that time then before the turn of the century clarified the intent of their Organic Act by making it very clear that access to the forests to impound and divert water was within the intention of the Organic Act. Then about 1963 or so I guess it was the U.S. Supreme Court ruled that the forests were entitled to the same protection as the Indian reservations were under the Winters Doctrine and it was at that time that the Forest Service come up with a definition of their concept of what the Congress meant when it passed that Organic Act and they've been to court several times since and haven't got a drink of water yet but they are back in again now and each time they feel that they're going to win and I guess from what Marcia tells me even this case in Colorado now it still hasn't been determined but it will probably go clear to the U.S. Supreme Court one way or another and which is an important point to us because I think we're going to have to make a determination are we going to wait until the Supreme Court ultimately rules on this or are we going to go ahead and take the bull by the horns and try to resolve this within the life span of the Commission. The Forest Service has claimed in effect two types of instream flows, one for streambed preservation and the other one under the

Multiple Use Sustained Yield Act which is for fishery protection, recreation and so forth and so it is my understanding Mr. Chairman that the negotiating team will first evaluate this proposal and come back to the entire Commission with some recommendations. The thing that concerns me very much is the type of quantification, the type of evaluation or methodology that this Commission adopts to determine, to quantify that right. It is as Lynda has mentioned in the information she's sent out that these instream flow methodologies are all pretty darn new. The state of the art hasn't advanced to the place where they are an exact science. We're making decisions that are going to be forever and so it's my feeling that we should proceed with caution on the type of methodology that we approve because I think once one methodology, a methodology has been approved for one agency it's going to establish a precedent for the others. So, I feel that due to the magnitude of the requests we had, you know, the state Fish and Game have extensive Murphy's rights, instream rights. The Park Service is claiming them. The Forest Service, the Salish and Kootenai have claimed essentially instream rights through their aboriginal rights on all the drainages in western Montana and I'm sure that once we approve a methodology it is going to be regarded as a, you know, it's going to set a standard, a precedent that we're going to be hard to back off from. So, I do think we should approach this with a great deal of, only after we have reviewed all of the methodologies and evaluated the impact on other water users with state water rights. So, anyway, I guess to polish it off as soon as this evaluation is completed it is my intention to get with Marcia to set up a date to look at the evaluation, to do the field trip and to come back to you from there. There was a provision in that proposition we made to the Forest Service that we were prepared on our own as you probably recall Chris, to come up with a proposition of our own. If the Forest Service's proposition isn't acceptable to us, you know, we're going to have to branch out a little bit and there is a couple of options. One is to look at what Wyoming has done. Wyoming, as I recall, never accepted, never acknowledged that the Forest Service had a federal right, reserved right. But, they did give them a state's right to a very limited amount of water. Wyoming is way ahead of Montana in pre-planning and they have two different types of reserved rights for future use already in place and they've applied these to some of their drainages and the Forest Service didn't do very well with Wyoming I can tell you. That's one option. Another option which might pacify the Forest Service is for the state to set up a kind of a water bank of it's own and say that, you know, the time has come when who gets the water is a decision that should be made by all the people of Montana and therefore this water is going to be in a reserve, in a bank and you are going to have to go through a process with the Department of Natural Resources and then go to the legislature or some other authority to dip in to that reserve. That would, could in effect work to maintain those streams in their natural condition until Montana made a final decision on how they should be used and leave Montana's options open for the future as opposed to giving that right to the Forest in which case we would have a hell of a time ever getting it back. So, that's where we are as of now Mr. Chairman.

CHAIRMAN GALT: So, the question is you are reviewing which of the two methodologies or if there is a whole new one available to...

MR. McOMBER: Right now, we're comparing the proposal they made on Big Creek, Savenac Creek and Elk Creek with the one they made on Rock Creek, we're looking to see if they complied with our request, they answered the

questions we asked them and not come up with some of their own. We should apply this methodology to some other Forest Service drainages to see if that methodology is applicable to another drainage you see, if we're going to use it as some kind of a guide, as a yardstick. The more you look at it the more complicated and difficult it gets but the answer just isn't easy. The only easy answer is to give them what they want and that will solve it in a hurry.

MS. RUNDLE: Mr. Chairman? Gordon, the comparison that Lynda made between the Rock Creek proposal in 1984 and the current methodologies and also the comparison between the Montana method and the current methodology that they've proposed which Lynda completed were mailed out to the members of the negotiating team. Did you want her to discuss anything in those?

MR. McOMBER: I thought in the interest of time that these presentations would be made to the team. Certainly, I'm not adverse to any high spots they'd like to cover or any fill-ins or anything. I think that would be fine.

MS. RUNDLE: No, I just wondered if you wanted anything....

MS. SAUL: Yeah, the only comment I have about that is that after the team has a chance to look through those if they have any questions feel free to call me and we can discuss those.

CHAIRMAN GALT: Gordon, is it, you propose to take your team to physically review these areas, do you intend to take the staff with you?

MR. McOMBER: Absolutely, oh yes, absolutely. And I think any other Commission members that would like to go and I guess I'm asking the Commission's permission or authorization for this at this time.

CHAIRMAN GALT: I think maybe why don't we have a motion authorizing the Forest Service negotiating team and the staff to take a trip to review these proposals made by the Forest Service.

MR. ETCHART: I'll so move Mr. Chairman.

MR. ELLIOTT: I'll second that.

CHAIRMAN GALT: Question being called for. All those in favor signify by saying Aye? Just to get it on the record.

UNISON: Aye.

CHAIRMAN GALT: Thank you Gordon. But, you plan on leaving us I imagine in July or August for your yearly trek to the northwest. Do you anticipate doing this before....

MR. McOMBER: I'd like it as soon as Greg and Lynda finish their work and I should say, with Greg's, a little bit of what Greg is doing is an economic evaluation on these projects to see how much water is left and I think the Forest Service in casual kind of made a loose remark about how much land could be irrigated with the water that was left and we wanted to see if that water is there at the right time of the year and if it's an economically

feasible project and as soon as he and Lynda get through with that and we can work it into this schedule with Marcia. So, I'd like it before the end of this month if it could be done.

CHAIRMAN GALT: Does that sound possible to the staff?

MR. AMES: Yeah.

CHAIRMAN GALT: Very good Gordon, thank you. I lost my agenda in the pile. Dennis, how come you got to be chairman of a negotiating team right off the bat?

MR. IVERSON: I wondered that myself. I don't know anything about this.

CHAIRMAN GALT: Well, we won't put you on the blaze for a report then. But, I'm sure Marcia could comment a little bit about Ft. Belknap. I think she's lost, no that's not the place where you lost your contact?

MR. IVERSON: Mr. Chairman, if I could I would make a very brief review on that because I took the liberty of asking Marcia to do something already. There was a series of meetings that I'm sure Gene is pretty familiar with on the Milk River Basin. They had some informational meetings in Havre, and I think Havre, Malta and Glasgow early this month and it seemed appropriate to me that someone from the Commission monitor those meetings to see what is going on. And I think you're probably all aware that while all the basins are unique there might be some problems on the Milk River that don't exist anywhere else. Specifically, it's probably in the worst shape for over allocation of any of the streams in the state. But that's the reason of course that two years ago the legislature put at the top of the priority list. It's supposed to be the next thing that Judge Lessley and his people complete. There are some real specific internal problems in the basin. One of them is the districts that are down where Gene is are having a real serious problem even coming up with the water they're legally entitled to and own. There is piracy going on up above them. There is, in fact, you're going to see it again this year, two years ago the last drought we had up there, the municipalities along the way that use that water were in fact using their water, water they bought and dumped in up above on St. Mary's. It's a real can of worms there and it seemed appropriate to me that since so many of the people that are involved in those various conflicts were going to be present that we at least monitor the things and find out, we know who the cast of characters I guess but find out if there is anything new that they had to say. One other ingredient that's been thrown into that mix is the Canadian problem. Currently by international treaty the province of Alberta has a right to, I'm not sure, it's somewhere over a third of the annual streamflow of the Milk. It's 30% plus some increments and comes up to 36, 37% of the river. They're currently using about 2.8% of that which means we've been using their water and while it's been pretty handy up to this point it looks like we might not be able to continue to do that. They're considering a water project that I think is almost a certainty. They're going to, I think, build a dam, store their water and start using it and it's going to cause tremendous problems from a legal standpoint as far as the state is concerned. Because we have a legal obligation to provide water that isn't going to exist anymore and it's going to cause some real economic problems to those seven, I think,

irrigation districts downstream not to mention the people in between. Some real problems there that I think we have to be kept well aware of as those things develop particularly the Canadian thing. The irrigation districts are proposing a diversion. They first suggested one that made a lot of sense to me. It has to be rewatered, there is no question about that. The first proposal is to take water out of Tiber and my neighbors up there kiboshed that. I think they were wrong. The second proposal is take some water out of Virgelle, out of the Missouri at Virgelle. That has gotten tangled up in a bitter fight between two different counties. The whole thing is a mess and I just think it's, anytime anybody gets together to talk about that we should be there to hear what they're saying so for that reason, I couldn't attend, I had another commitment and I asked Marcia if she'd monitor to the extent that we'd know what people were saying anyway and maybe Marcia has something to say about it. It was a fairly interesting agenda I think.

MS. RUNDLE: Greg and I did go up last Tuesday night to Havre for the informational meeting. We chose Havre at Dennis's suggestion because we felt that that was the most likely one for the Ft. Belknap Tribes to attend if they were going to attend any. As it turned out they were not there. We did learn some new things about the Milk River proposal, the extent to which the Bureau of Reclamation has identified alternatives and I believe we've got a sense for where they're going. One of the interesting things that has happened up there is that the irrigation districts have hired a consultant out of Wyoming named Bob Fagerberg and he seems to be a gentlemen with a lot of experience and a lot of credentials. He has looked at the situation up there and his recommendations to his clients is that they emphasize first all of the R & B work that is possible to be done and that the Virgelle Diversion be, or any diversion to augment water supply be very low on the priority list. My understanding is that that is intended to give the people up there a chance to assess those benefits or the results of all the R & B work before they get into a massive construction project. They are looking for funding for the proposals, both for the new construction and for the rehab of the existing project and currently what is being proposed is that they go to Congress with requests for authorization under the Pick Sloan Plan. Montana has never received any benefits from that plan. It's been in place since 1944. Essentially the upstream states of Montana, North Dakota and South Dakota were the sites for the dams and lost a lot of valuable river bottom land to flooding for the reservoirs but has never received the benefits of irrigation projects that they're entitled to under the M & M amendment which I never can pronounce.

VICE-CHAIRMAN TWEETEN: It's O'Mahoney-Milliken.

MS. RUNDLE: O'Mahoney-Milliken. Well, some people say O'Mony and some people say O'Mahoney. But, anyway, what they are proposing to do is to go to Congress and say that rehabilitation of an existing project ought to be eligible for funding under the Pick Sloan Plan just as new construction and if they are successful in making that case they want to go for the total ball of wax and put in not just the minimum amount of conservation efforts but go to lining ditches to measuring devices on all diversions to on farm efficiencies and then possibly as the last step construction of some sort of diversion. There was also discussion about the Canadian storage project and the potential benefits of that storage to Montana. If that project is built in Canada and Montana participated in the construction in some way apparently Canada is

willing to talk about increasing the amount of source that would be available and the benefit essentially would be a timing factor that we could store spring flood flows. Sometimes Fresno does not have the capacity to store all the water that is coming down the Milk. This would give some additional storage. There also might be some benefits in terms of siltation. That would act as a siltation trap, catch some of the stuff that's now coming down to Fresno and filling Fresno in quite an alarming rate. It would potentially pull on _____ . Anything else you can think of Greg? It was informative. We will continue to work with the DNRC staff and try to stay up to speed with where they are at. We've discussed a little bit with DNRC the benefits of having a meeting with the Fort Belknap negotiating team and the Department in house so that the state is operating on the same agenda.

CHAIRMAN GALT: Anything further?

REP. IVERSON: I guess the only comment I'd make is that it's probably pretty important that something happen with that federal money because if they can do something to stabilize the available water supply there it's going to make all the difference in the world for what we're doing and I personally think that there ought to be really a good shot at doing it because as Marcia said we haven't received any benefit. The benefits of the 44 Flood Control Act essentially _____ navigation and flood control downstream and we're due for it. And I don't know if there is anything we can do to help encourage that but it is sure in our best interests.

MS. RUNDLE: One thing that might help encourage that is if the development is a means of settling a reserved water right claim Congress may be more amenable to those kinds of large expenditures.

REP. IVERSON: It would sure simplify our involvement there.

CHAIRMAN GALT: Does the Tribe still have the same negotiating team that they had?

MS. RUNDLE: And the Tribal Council is going to meet on the 1st. I haven't heard from Bud Musgrove since they met but negotiations was going to be one of the items on the agenda and presumeably they would, my understanding is that what the negotiating team up there was asking was for authority to meet with the Commission and also for consideration of having a permanent policy, water policy team up there. They have had members on the current council each time so as the council changed the membership of the water policy team changed too. My understanding was that Randy Perez was going to propose that the water policy team membership essentially be frozen so that even if some of those people were on or off the council they would stay involved in the water issues. That way they don't have to bring new members up to speed all the time.

CHAIRMAN GALT: That would be great if every tribe would do that.

MS. RUNDLE: I don't know the results of that.

CHAIRMAN GALT: Anything further? Any questions?

MR. McOMBER: Mr. Chairman, on an article in the Tribune day before yesterday and I don't know if all of you saw it in which Mr. Aldrich is pointing out that the Tribes have first right on the Milk River and its tributaries and there's probably going to be warnings and maybe even enforcement activity and so this might develop a little quicker than we had anticipated in light of this dry year.

MS. RUNDLE: The problem with enforcement of course is that there is no decree up there. That's why the legislature said go get on with the Milk and you're done. You can't enforce rights that haven't been decreed. A lot of the discussion that occurred up at that public meeting was pretty interesting to me because there is a question of priority dates on all of those rights. The project is asserting rights, individuals are asserting rights. There are individual pumpers out at the river. Some of them have contracts with BOR, some do not. Presumably all of those rights have different priority dates but the quantity is attached to those rights and the priority dates has not been determined yet from the court decree and therefore the people up there can't even get a water commissioner on line even if they wanted to under state law. There's is nothing to enforce.

REP. IVERSON: One more comment there if I could. The piracy is a big issue there. I think by the time they figure out how many illegal pumps are in there and they estimate there could be as many as 150 between Chinook and where you guys start, nobody really knows how much water that involves and if, as Marcia said, you can't have somebody riding the river declaring the use illegal if there aren't any legal uses and there can't be any legal uses until you get a decree so there you are.

MR. ELLIOTT: I was going to ask a question similar to that. Didn't the article Gordon, mention something about they're going to police this with the use of airplanes and what is the position of the upstream user to the reservation if they are piracing and all of a sudden they discover that, can the Tribes force them to stop?

MR. McOMBER: I think that's just what Dennis was referring to. It's a hell of a difficult situation. We may end up with those pitchfork-shotgun decisions again like the old days. I thought it was interesting that reference is made to Bureau of Reclamation contract pumping.

MR. ELLIOTT: That was in yesterday's paper?

MR. McOMBER: Yes.

CHAIRMAN GALT: Well, that's going to be a mess until we do get the Tribe's water quantified.

MR. ELLIOTT: The Milk River is what, flowing about way down from it normal isn't it?

REP. IVERSON: Snowpack is 25% of normal this year.

MR. ETCHART: What shape is Fresno in? Is Fresno full?

REP. IVERSON: I don't know. Yeah, I'm sure it's full but that doesn't matter much anymore. It's about somewhere over 50% silted up. And Milk River is aptly named. It's a silty river to start with.

MR. ETCHART: I think that Nelson is full. I just drove by it yesterday and to the eye it's full and there was water going in it. It's quite a factor down below whether that's full or not.

REP. IVERSON: If you'll remember two years ago when that happened it was full in the beginning too but by the end of June the water, the municipal water users along the highline had to move their pump.

MR. ETCHART: See, ordinarily they don't leave Nelson full in the fall of water because it has a seepage problem. And the problem with that set up is that if they don't get the normal spring runoff for long enough periods of time then they can't fill it. But, with all the big rains and everything that went through there last summer well it was full and then there was pretty early runoff this year so it's full. And I think, personally, just from experience, I think that that's going to be a positive factor to the lower end because I can remember a few of these years when we started out the same way we are now except we didn't have any water in Nelson.

MS. RUNDLE: Did those floods last fall give you substantial subsoil moisture? I mean, are they irrigating now already or do they, they don't have to irrigate yet?

MR. ETCHART: No, that bottom land is barely dried out enough to be farmed. In fact there is a lot of it isn't yet.

MS. RUNDLE: Up here in the Helena valley and over in Deer Lodge they are already just irrigating like crazy.

REP. IVERSON: Of course this is a rock pile here.

MS. RUNDLE: Well, yeah there are lots of factors. I just wondered if that flood in the fall had...

MR. ETCHART: I don't think there's any irrigation started yet. But shortly I would imagine if this weather keeps on.

MR. McOMBER: Well, the water has been in the Sun River Ditch since the 1st of May or they're irrigating hay have been and winter wheat I think Larry Fasbender is irrigating winter wheat as a matter of fact right now. It's going to be a dry year.

CHAIRMAN GALT: Carl mentioned how much water was being pumped coming up from Dillon this morning.

MR. DAVIS: Well, we're releasing from storage now just like you have a full reservoir but we don't use it. We start releasing from storage the 15th of June or something like that. You get your runoff which fills, satisfies all the requirements. If the water isn't there the inflows aren't there so it won't take long to pull it down without inflows.

CHAIRMAN GALT: Water is going to be very important come August.

REP. IVERSON: A life blood of civilization.

CHAIRMAN GALT: Any further on the Fort Belknap? I don't suppose you wish to mention the Rocky Boy?

MS. RUNDLE: No, I don't think that would be kind at this point.

CHAIRMAN GALT: Within your packet there is a fish and wildlife report drawn up by and very ably I might say by Lynda and Greg indicating to me that if we're going to make a compact in the near future that this would probably be the one that we would come the closest to. Lynda, could I ask you on these places where you were to verify certain things how far are you along in getting those verified?

MS. SAUL: Actually, on most of them we need to discuss with either Cheryl Willis or the technical staff of Fish and Wildlife Service, sit down and ask questions and look over maps and things like that on a lot of these issues.

CHAIRMAN GALT: Do they indicate a desire, a willingness to do that or do they want our answer to these before they'll sit down and talk?

MS. SAUL: Marcia, did you want to respond to that?

MS. RUNDLE: Senator, they want at least a, the last time that we talked with Cheryl after the last Commission meeting she said that she could not see any point in meeting with the Compact Commission unless we could send them in writing at least a general statement of we accept these claims in the main or we reject them or these are the problems we have with them, these are the changes we would suggest. They are interested in having this productive a negotiating session as possible as I know you are but they don't feel that that can occur until they get a statement from the Commission. We could discuss more of the specifics, I would suggest though that we defer that until Executive Session.

CHAIRMAN GALT: Yes, okay. But I again thank you Lynda and Greg for this and I still think we can work something up on this. Anything on the Crow?

MS. RUNDLE: Yes, on the Crow Reservation Senator, I have had a couple of discussions with an attorney out of D.C. He represents a large landowner in Wyoming on the Little Bighorn River. Right now the, well, I should back up a little bit. For several years there has been a group in Sheridan, Wyoming called the Little Horn Group that has proposed a storage project on the Little Bighorn River in Wyoming. That project is currently before FERC for licensing. It's also under consideration by the Forest Service. The Little Bighorn River in Wyoming is being studied for designation as a wild and scenic river. All of this is happening in the absence of any agreement between Wyoming and Montana as to how the Little Bighorn River does or does not fit into the Yellowstone Compact. It also is proceeding despite the fact that the Crow Tribe's reserved water rights on the Little Bighorn River have not been quantified. The attorney from D.C. has contacted me a

couple of times just to find out what's happening with the negotiations. He is also interested in knowing the extent to which the state will participate in the EIS scoping on the wild and scenic river issue and I have offered to get him in contact with a couple of people in the state who presumably would be the ones involved in that issue. He is interested in coming to Montana in the next month or so and if he does do that and I'm able to set up a meeting I would hope that members of the Crow negotiating team would be involved in those meetings because the reserved water rights of the Crow Tribe really are an issue on the Big Horn. It's of course also an issue for the Yellowstone Compact Commission. So those would be the kinds of folks that I would try to put together. Also DNRC.

CHAIRMAN GALT: What attorney are you talking to, are you talking to a government attorney?

MS. RUNDLE: No, he's with a private firm in D.C. and he represents a private landowner on the Little Bighorn River in Wyoming.

CHAIRMAN GALT: Well, I've been up that little Bighorn River in Wyoming and there really, who could be a large landowner in it?

MS. RUNDLE: I can't remember the name of his client, it's something like the double X ranch or the triple X ranch.

REP. IVERSON: That's a movie rating.

MR. McOMBER: Mr. Chairman, a couple of years ago the state of Wyoming put up a substantial amount of money and hired a consulting firm under the leadership of a fellow named Jones. And we had a meeting with Mr. Jones and the Department of Natural Resources, the Commission, Mr. Pelcyger of the Crow Tribe, I think Mr. Jones left the meeting, he threw up his hands and left and we haven't heard from him since. But, he got a very good education in a very short time about the magnitude of that problem and you might find somewhere in the record Marcia a review of that meeting with Mr. Jones and Pelcyger and the Commission and DNRC.

MS. RUNDLE: I think that he still represents the Little Horn group in Sheridan. At these initial public meetings that they had on the EIS scoping for the wild and scenic river question the Big Horn County Commissioners attended and supported wild and scenic designation. The Crow Tribe attended and supported wild and scenic designation. The Sheridan City Council attended and my understanding is that they didn't really oppose designation but they opposed any designation that would preempt the project. The project has changed in scope and magnitude since it was first proposed. It's now a pump storage project that would generate a 100 megawatts of power but they're proposing it in two stages and the initial stage would be a nonconsumptive use. The second stage they are definitely proposing consumptive uses in out-of-basin transfers. Then the Yellowstone Compact issue kicks in again. Can you transfer out-of-basin without the agreement of all three states. Well, can you if the Little Bighorn isn't involved in the compact? There is just all...

CHAIRMAN GALT: I'd like Mr. Moy to comment on...

MR. MOY: Mr. Chairman, we've been working on the Little Bighorn for about 5 or 6 years now. And the Sheridan Little Horn water group are the ones backing this project and Larry Bacari and Dave Palmerly and about 5 years ago, 6 years ago they proposed three reservoirs and store and impound 35,000 acre-feet of water outside of the basin for primarily industrial type of uses. And Governor Herschler set up a negotiating team to work with the Department in negotiating our differences with regard to the Yellowstone River Compact. In fact, the negotiating team just met twice but not too much has been accomplished. Then recently, about a year and a half ago, they upped it to, they added on as Marcia indicated, a 1000 megawatt pump storage facility and they are pursuing that thing through the court. They've got their, they're to the preliminary permit process. The Department did not object. It's in preliminary, the first state, when they go for their license the Department will be objecting on behalf of the state regarding the Yellowstone River Compact. The Department is also, has just written a letter regarding the scoping of the EIS in regard to the inclusion of the upper part of the tributary for wild and scenic rivers designation. Ninety percent of the water originates in Wyoming and ninety percent of the use is on the U.S. side.

CHAIRMAN GALT: You mean on the Montana side?

MR. MOY: On the Montana side. We have done a very extensive modeling effort of the Little Bighorn Basin and from our analysis most of, all summertime flows are used by, most of them on the BIA project in the Little Bighorn Basin in Montana. That project is 50% Indian and 50% non-Indian of which I think there is probably about 26,000 acres of existing irrigation. We figure there is about 60,000 acre-feet of storage that could be stored in the high surplus flows. Our major concern as Marcia indicated is how that correlates with reserved water rights for the Crow Tribe. Quite probably the Crow Tribe, if we want to protect existing non-Indian uses in the state of Montana we want to make sure the Crow Tribe is satisfied and that's our concern. So, the letter that goes to the Forest Service regarding the scoping of the EIS and wild and scenic rivers designation, we didn't make a specific recommendation but we said that most of the flows are now being used for irrigation, there is some high surplus flows, we have concern that we want to make sure that reserved water rights for the Crow Tribe are satisfied and that any wild and scenic rivers designation will preserve the water quality for uses within the state of Montana and the flow and did not make a specific recommendation but it seems to suggest very strongly that that flow protection is to our benefit. I guess our position is we really don't think we should be telling Wyoming what to do with their water or water that originates in Wyoming. However, we want to make sure that Montana uses are protected.

CHAIRMAN GALT: What is it visa vise the Yellowstone Compact as I recall the Little Bighorn wasn't mentioned or wasn't quantified in the compact?

MR. MOY: Well, that is an interesting issue. We have been fighting Wyoming over this issue for about five years. Our position has been is that, and we went back and looked at the historical record for the Yellowstone River Compact and that it took 25 years along to get the compact finalized and they got the four primary tributaries and I think they wanted to compact the Little Bighorn but it couldn't get an apportionment because they didn't know how to handle reserved water rights because most of us in Montana, the Montana

portion of the basin was on the Crow Reservation whereas in Wyoming there was very few uses and most of it was in the Bighorn drainage basin so they said well, put it into the Yellowstone River Compact and all the provisions except for Article V where they actually discuss the apportionment and we'll leave it out there because we don't know how to handle it primarily because of the reserved water rights and Montana said yes because we want to get the other four tributaries apportioned. So, the position in Montana has been yes, it's included under the Yellowstone River Compact but it was not apportioned in Article V because it was too tough to apportion at that time. In 1950 the reserved water rights was a new thing and they didn't want to address it. Wyoming's position is since it was left out of Article V is exclude it from the Compact and there is a real disagreement between the two states and legislatures.

MS. RUNDLE: Rich, is water quality a problem on the Little Bighorn? I mean I know there is a water quality problem on the Powder that you are continually talking with Wyoming about. Is there similar problems on...

MR. MOY: Water Quality is actually pretty darn good on the Little Bighorn.

CHAIRMAN GALT: Anything further on the Crow?

VICE-CHAIRMAN TWEETEN: Just one question as to whether the current upheaval in the tribal government is causing us any problems at this point in terms of who we're talking to. I notice in the news that a bunch of tribal government has been shut down for lack of funds. Is Mr. Real Bird still in charge as far as we know?

MS. RUNDLE: As far as we know Mr. Real Bird is still in charge.

CHAIRMAN GALT: He has no money but he's in charge.

VICE-CHAIRMAN TWEETEN: Have we had any contact with them since their most recent financial problems have arisen?

MS. RUNDLE: No.

VICE-CHAIRMAN TWEETEN: It seems to me we ought to just sort of bide our time and let that one play itself out.

CHAIRMAN GALT: How about the Flathead Tribe?

VICE-CHAIRMAN TWEETEN: I didn't have anything prepared when I came in today but I have a couple of things that I guess we'd like to talk about. One, during the legislative report, Marcia mentioned a bill that the Joint Board of Control had offered to bring the Irrigation district in as a negotiating party in reserved water rights negotiations. That bill was not passed by the legislature. They put us in a very delicate position it seems to me by offering the legislation and we got out of that I think as well as we could have expected to under the circumstances. There is some fallout from that whole experience that I think we're going to have to get cleared up. I think my intention is to convene a meeting with the attorneys for the Joint

Board sometime in the near future, hopefully before the end of the month. We're waiting on a transcript of the hearings on House Bill 770 because we want to make sure that we've got a clear record of what was and wasn't said during those hearings so that if there's any dispute that has to be settled we can settle it at that time and get the air cleared and go on about our business. What I hope to accomplish is to establish some ground rules as to what the Joint Board can legitimately expect us to do and not to do in the process of trying to negotiate a compact with the Flathead Tribes. It seems to me that misunderstandings as to what the Compact Commission's position is persists even after we've, I think, tried extremely hard to make our position clear. I note that Marcia and Susan found a news article quoting Rep. Meyer as stating what the Compact Commission has done in terms of bringing the Joint Board to the negotiating table, in my judgement inaccurately, and I think we've just got to sit down with those people and lay down some ground rules and I plan to set up a meeting hopefully before the end of the month although I'm not sure. It all depends on when we get those transcripts and see if we can't get that accomplished. I think it's very important because I continue to believe that if we do, if we are to get a compact with the Flathead Tribes it is going to be adopted by the legislature that the participation of the Joint Board is going to be critical because if we don't protect or at least accommodate their interest it seems to me that we're going to have a very difficult time getting the legislature to sign off on any compact that we were to negotiate and I think that makes our job more difficult, but I think it also makes their concerns a little less weighty because obviously we're going to have to accommodate them in the process if we're going to be realizing any fruits from our labor, so I'm hopeful that we can lay down some ground rules and get a position developed. The other side of that coin I think is that we've got to make it clear to the Tribe and get some movement from the Flathead Tribes as to their position on where the Joint Board fits into these negotiations. At the meeting on January 28th you recall that Dan Decker took the, I think, completely untenable position that we are responsible for representing the Joint Board's interest but on the other hand we are not authorized to communicate with them on matters of substance regarding a negotiation. That's an intolerable position for them to take and I think they have to understand that and we have to get some movement from them on that position it seems to me before there is going to be any serious negotiation as to those rights.

MR. ELLIOTT: Mr. Chairman? Chris, when they were here on the 28th one of the strong feelings they had the violation of the open meeting law and yet at the same time negotiate with the Tribes at certain times has felt that we should have had the liberty of having some closed meetings. Are they, they threatened suit and not only threatened it but pretty much stated that they would bring an action against the Compact Commission. Where are we sitting with that right now?

VICE-CHAIRMAN TWEETEN: Well, we haven't been sued yet. And that is one of the things I guess I want to talk to Dan Hoven and Leo Berry about and see if we can't short circuit that process. I think we've got more important things to do certainly with our time and effort than to fight an open meetings law suit with the Joint Board, so I guess we're going to talk about that and see if we can't come to some sort of an accommodation that's going to be satisfying to them at least in the short term and keep them from suing us. Marcia told me this morning that Susan has been doing some historical research and she may want to give us a short report about that.

MS. COTTINGHAM: Yeah, real briefly Mr. Chairman, what I've been doing since I started in December was really trying to dig out where a lot of historical research is like over at the Historical Society Library or the State Library and one of the really good leads I found was the National Archives in Seattle. The reason I originally found that source was because all the original documents from the Winters case, which of course involved Ft. Belknap from the district court, are now on file in Seattle and I've spoken on the phone several times with those folks and they have the original court documents and findings of fact and things like that. I had an opportunity to go to Seattle just on a personal trip and I did spend a day in the archives just to see what they had there. It's really sort of an incredible resource and I'm not even sure exactly what all is there. What I did spend time doing was looking a lot at the Flathead Reservation just to see what kinds of things are there. Just to give you an idea of the volume, out of about 600 cubic feet of materials that they have stored on the Flathead, about 100 cubic feet of that is indexed. So, the rest of it is just in boxes. They probably don't even know what a lot of those things are. But, what I could take a look at they have a lot of data that if we were to get into land ownership research or water rights research that go back to the old allotment rolls, the original allotment rolls they had the original report on the secretarial water rights there. They had air ship records and what I've done is just summarized a lot of the information that has already been indexed on that Tribe for Marcia just so that in the future if we do need a lot of detailed legal land status research there are old maps, there are a lot of things that we might be able to use. Interestingly, Fort Belknap Reservation looks like it is completely indexed and they have a lot of the similar type information. They have a lot of old aerial surveys, things of water projects on the reservation. So, I think that that's going to be a really good resource for us if we have to get back into some of that historical data. If anybody is interested I can provide a copy of that.

MR. DAVIS: Where is this?

MS. COTTINGHAM: In Seattle. It's the National Archives and a lot of the tribal records were all gathered together and sent to Seattle as were a lot of the old district court records at the time and so they're sort of a repository of the original documents and you can go through these boxes and see correspondence on water rights, people applying for, for instance Flathead Project water rights in the teens and twenties and what they went through, the formation of the irrigation districts and things like that so there's, from what's been indexed there is a lot of stuff there it's just a matter of really digging at it. I only spent a day there and you know, I got to look at about 3 or 4 boxes including the Winters case box which was very interesting.

MR. McOMBER: Okay, Mr. Chairman, I have a question. Early in the negotiations with the Salish, that is after I come to the Commission, reference was made to a feasibility study in 1907. Both the Tribes and the Commission agreed to take a look at that and I've never seen it since and I've had an occasion to talk to the people, the Joint Board members in reference to this feasibility study of 1907 and they have no copy of it either and it's been suggested that maybe it exists in the library of Congress and we should write a congressman and get it. Have you seen it?

MS. COTTINGHAM: I haven't seen it but I have seen reference to it, Gordon, and what it seems to me to be is the Bureau of Reclamation sent somebody out to actually survey the reservation for the project before the project was actually authorized in 1908 and I think it's maybe like a standard kind of thing that the Bureau of Reclamation would have done to go out and take a once over look and see whether the project had some economic feasibility, maybe sort of a precursor to a lot of the cost benefit stuff they do today. That's my impression of...

MR. McOMBER: Well, I know after the Reclamation Act of 1902 was passed the government did a survey of the entire west to try and locate possible irrigation projects and Mr. Chairman, I've been doing a little reading on my own and the more I read the more I'm inclined to believe that the Indians have a not too bad a case up there and I think the white settlers have a case too and I think that that project was probably, I think the federal government knew when that project was built that there weren't enough Indians there to justify that project and they knew it was going to take white settler to make that project feasible and I believe they created the impression with both the Tribes, with the Tribes as well as the white people that they were going to have some water there and I don't give a damn what they said in their cover their tail small print in their agreements. I think there was an implied obligation there from my point of view that to provide that water and I'm beginning to wonder if maybe the state and the Tribes shouldn't be going to the federal government for a resolution of this problem as opposed to the state fighting out neighbors and the Indians on it and that's in the back in my mind and I'd, you know, I just think that's probably the case and anything you come across that would justify that position I'd be interested in hearing about. I did go down to the library and review the congressional investigation of 1929 that Montana Senator Wheeler was involved in and it indicated to me from the testimony that was given that the Indians didn't want the damn project, they didn't want to irrigate, they never did want to irrigate and it's one of those things when the government decided this is good for and you're going to have a project whether you like it or not.

VICE-CHAIRMAN TWEETEN: Well, Gordon, they still don't want to irrigate. I mean they want the water for something else.

MR. McOMBER: I know. Absolutely. So, that's what I say, I think maybe there is a case there that the resolution of this ultimately lays with the government. You know, this isn't Fort Peck. Fort Peck we took the water, there was enough water for both the whites and the Indians and it was just a question of how much and we took it out of the Missouri and there's still 7 million acre-feet a year running by. That isn't the case over there. It's the same damn water. Those white settlers, that water has been filed for under state law, we're talking about the same water, those white folks have a claim to that water, a legal claim in some cases to that water under state law, the same water that the Indians are claiming in the federally reserved right and it's the same water. And there's no way we're going to be able to, unless we're King Solomon, you know, give them both what they want and my contention, I'm becoming firmer in my conviction right along that eventually Uncle Sam is going to either have to figure out a way to provide that water out of Hungry Horse to the Indians if they want to sell it like the Fort Peck people did or else reimburse somebody for giving the same water to two different people.

MS. COTTINGHAM: Just as one side note, Gordon, in some of the historical research I've come across there is some fascinating old newspaper articles that probably support a lot of what your saying about promoting settlers, white settlers to come up to the Flathead and the Flathead Reservation open, government survey is going to be done soon. It's really fun to read some of those old promotional things making copies of them as I go along if your interested.

MR. McOMBER: Yeah. Well, I've got another question. This question of the open meeting law Mr. Chairman, I thought maybe it would be on the agenda this time and if not the next time was a kind of a special order of business and I trust we're going to deal with that pretty damn soon one way or another. It's kind of a farce in my point of view.

CHAIRMAN GALT: Well, we can add it to the agenda right now.

MR. McOMBER: Well, I, the only thing that concerns me is that, I don't know, some of you people that weren't here, we got in the jackpot with the Fort Peck Compact, it was just about ready to go and we brought it back for review by the Governor and that was the Department of the Interior insisted that the Governor give his stamp of approval on it. The Governor submitted it to the Attorney General's Office and the Department of Natural Resources and they raised some objections and the Commission made a determination then it wasn't politically wise to present a compact to the legislature and which ticked off the Department of the Interior and the Tribes to no end and the fact of the matter is they turned off negotiations for a year and a half until the Secretary of the Department of the Interior had written notification from the Governor of the State of Montana that Attorney General officials, Department of Natural Resource officials and a representative of the Governor's Office be allowed to attend all the negotiating sessions. And now the Tribe is saying, hey, we won't talk to you if those people are there. You know, and it's really a little ridiculous. Of course there's two groups of people that the Indians, this Tribe doesn't want, one is the, or the state officials for fear they might be able to use what is said against them in court and the other one is the general public and we get back to this thing again and here is people, Montana citizens with a law, a state law right to that water and over here with the Indians claiming a reserved right and I am not a lawyer, but I just don't, can't conceive that it was the intent of the drafters of the constitution that a state agency could sit down with the people on one side of an issue and develop a position and exclude these people until a position had been developed and then say now we're going to have a public meeting and let you people make your contribution. It just doesn't seem to me that that was the intent of the people in the constitution. How about that Carl?

MR. DAVIS: Well, on that right to know business it was left, it's pretty vague and ambiguous. There's no question about that. I guess where the right to privacy exceeds the right to know and then it's been expanded by the legislature I don't know what was intended overall.

REP. IVERSON: Actually, I think there are two caveats there. One is the one you mentioned that you can exclude the public when the individual right to privacy clearly exceeds the public right to know and the other is

that I think it was intended for labor negotiations but it's also pretty clear in at least usage that negotiating or a strategy session for the purpose of negotiating is also something that has been allowed.

VICE-CHAIRMAN TWEETEN: Well, Mr. Chairman, that's fairly clear in the statutes. It's not clear at all in the constitution. I mean the constitution....

REP. IVERSON: But, the statutes have at least clarified that for us.

VICE-CHAIRMAN TWEETEN: Yeah, but I think there is a real question as to whether those statutes are constitutional or not and that's again an issue that none of us in state government are all that anxious to litigate.

REP. IVERSON: I wouldn't guess you would be.

VICE-CHAIRMAN TWEETEN: So, I think we're walking a very fine line there in terms of how far we can go without provoking the lawsuit that none of us wants. So,

MR. McOMBER: Well, isn't there a little more justification for excluding the public from strategy sessions than there is from just observing another session?

VICE-CHAIRMAN TWEETEN: Well, it's a very complicated question. I mean, if you look at the open meeting law and compare it with the constitutional right to know they're really not exactly the same. I mean the open meeting law defines what an open meeting, what a meeting is for purposes of the open meeting law. There is nothing in the constitution that defines what the public has a right to know. It just says the public has a right to know something about what the government is doing but it doesn't ever define what the public can see and what it can't see.

MR. McOMBER: Well, I think it's interesting that a gentleman named Goetz is going to court on behalf of Jim Murray to support his contention on the Union's right to know.

VICE-CHAIRMAN TWEETEN: He's also representing the Flathead Tribes in arguing that we can't give the Joint Board the right to know.

MR. McOMBER: The only thing that bothers me, Mr. Chairman, about us addressing this is that at the last meeting with the Flathead we, with the Flathead agreed to come home and take a look at this and take a look at this and evaluate it and if we arbitrarily, you know, did something at this stage in the game conceivably they could make a breach of faith with them.

VICE-CHAIRMAN TWEETEN: Well, Mr. Chairman, along those lines, I think we have a really two-stage process that we have to go through. First of all, we've got to mend our fences with the Joint Board and once that's done and if we can reach a consensus with the Joint Board as to what kind of a process they would like to see then our next step is obviously to turn to the Tribes and try and get some movement from them through their attorneys on that issue. I think it's important when we do that that we deal with them and you

know, put our proposal on the table and explain to them what's behind it and see if we can't make it clear to them that if they want to negotiate a compact with us they've got to move on that question. I wouldn't suggest that we turn around and give them an ultimatum, you know, saying we've decided that this is what the open meeting policy is going to be, obviously it's going to require some sort of a negotiated settlement of that issue. It's got to be something that they're going to be able...

CHAIRMAN GALT: Do you do the negotiation away from the open meeting law or, I think you're in a catch 22 here.

VICE-CHAIRMAN TWEETEN: Well, obviously if somebody wants to give us trouble on that issue they can cause us a lot of problems.

CHAIRMAN GALT: So, what you're saying that you as chairman of the negotiating team would like to talk with the Joint Board's and also the Tribes and see if you can come to some accommodation to where we could proceed with negotiations.

VICE-CHAIRMAN TWEETEN: That's right. I want to see if I can't negotiate some sort of an agreement on that question that's acceptable to all sides.

REP. IVERSON: I think you can too.

VICE-CHAIRMAN TWEETEN: I hope so. I think it's real important, I think, that...

CHAIRMAN GALT: It's a catch-22, they'll be negotiating in secret.

VICE-CHAIRMAN TWEETEN: Yeah, but I think it's helpful to us that the Tribe has retained Jim Goetz as their counsel because obviously he is someone who is very familiar with this issue and I think to the extent that he has the ear of the tribal leaders he can explain to them what the situation is.

CHAIRMAN GALT: Well, I remember though when Gordon was holding a meeting up there and it was Goetz that wanted to throw the people out to make a closed hearing. Am I correct Gordon?

VICE-CHAIRMAN TWEETEN: A lot, a lot of what goes on up there is theater I think though to a certain extent. I think a lot of statements are made and positions are taken in public that are taken for public consumption that aren't necessarily written in stone. At least we have to hope so. I mean if they are written in stone then we're obviously not going to get anywhere. Then we may want to recognize that early on in the process. You know, if there's no room for movement on this issue then it seems to me that it may be an insurmountable obstacle at reaching a compact.

MR. McOMBER: Well, Mr. Chairman, if I might, in that survey, that review that was done by one agency of the federal government prior to this new proposition they come forth with on managing that project, the fellows put that together, made a statement to the effect that the big, very big problem up there was that the animosity was because the animosity had developed

between the tribes and the non-Indians and in effect he said it's out of control but we're going to have to deal with that if we ever expect to have a compact and, you know, I think reasonable people should understand that and that eventually they're going to have to get together with those people and talk to them or there is going to be no compact because as I said before we don't have any Missouri River to dip into to satisfy those people. We're talking about the same water and once this comes to a head there are people around other reservations that have the same problem and those water users they could mount quite a political force. We're just going to have to deal with it.

VICE-CHAIRMAN TWEETEN: I think that's right and I think that's why I think we have to settle this problem now rather than waiting until we've got some sort of substantive negotiation ongoing because if we can't settle this problem now it seems to me we may be wasting out time.

MS. RUNDLE: Mr. Chairman, there are a number of other things that are happening up on the Flathead Reservation that directly affect the work of the Compact Commission although water rights may not be explicitly involved in all of them. In the mailing immediately prior to this last one I sent a summary of the briefing memo that I had prepared for the Governor's Office. I would like John North to talk a little bit about the other things that are going on up there if he'd like to.

CHAIRMAN GALT: John, would you care to do it, could you, five, ten minutes enough?

MR. NORTH: I think so. I could do it three times in that amount of time. There's the question of jurisdiction for fishing on the south half of the lake...

CHAIRMAN GALT: Excuse me John, could you get a little closer to the microphone?

MR. NORTH: There are several questions that I'm aware of. One is the question of jurisdiction to regulate fishing on the south half of the lake. Another is the question of regulation of fishing on the reservation itself and that divides into questions of on tribal land and off tribal land and there's the question of regulation of hunting on the reservation and again that divides into separate questions based on land ownership and then there's the question of whether or not the state has authority to regulate, to apply a streambank preservation law and that again divides based on property ownership. The Department of Fish, Wildlife and Parks is currently negotiating with the Tribe on the questions of fishing and hunting jurisdiction. At the present the conservation districts I believe on the Flathead Reservation are maintaining that off tribal or tribal members land those conservation districts have the right to apply their streambed preservation law, streambank preservation laws. Then finally there's the question of management of the game resource up there and of course the game goes between the state and the tribal lands assuming that there is some state jurisdiction and so Fish, Wildlife and Parks Department is negotiating with the Tribe to see if they can't come to some agreement on management of the resource and as I understand it things are heating up quite rapidly up there. A number of, two of the county, three county commissioners went on to the Nine

Pipe Reservoir about ten days ago, went fishing and of course they did not get a tribal permit except that the Tribe, to avoid the issue, issued them complimentary three day permits which they refused but the Tribes said that that didn't matter, they'd been issued anyway. And we're getting a number of calls in the Governor's Office and I imagine the AG's Office is getting a number, too, and so the issue appears to be heating up up there and with the dry weather it will probably get worse before it gets better.

CHAIRMAN GALT: Thank you John.

MS. RUNDLE: There is a positive side to it though. To the extent that Fish, Wildlife and Parks is able to negotiate agreements with the Tribe for some kind of joint management or joint permitting process on the reservation it can only make, in my opinion, the Commission's job easier because it establishes kind of a framework for making those kinds of agreements, it also might convince the people up there that those kinds of things are possible.

VICE-CHAIRMAN TWEETEN: I think that's very important because I think there's a widely held perception on the part of the non-Indians on the reservation that the tribal government is and always will act unreasonably toward the non-Indians in their attempts to regulate and to the extent that that perception exists it makes these kinds of compromises extremely difficult to implement and it seems to me that if Fish, Wildlife and Parks can negotiate a settlement of this issue with the Tribe and they can put it in place and the people up there can understand that it can work and not be terribly burdensome to them that perception of the tribal government as this unreasonable bureaucratic entity can certainly, I think, be broken down to an extent anyway, and that certainly helps us.

CHAIRMAN GALT: I suggest we take about a ten minute break.

VICE-CHAIRMAN TWEETEN: Mr. Chairman, I have one other item that I would like to discuss regarding the Flathead and then maybe we can leave this entire area. It's a matter that's been discussed at the meeting January 28th. It involves a letter that we received from Mac Cole asking that the Compact Commission designate a representative to a task force that the United States and the Flathead Tribes have wanted to put together to review and evaluate instream flow methodologies for fisheries. This was not on the agenda of the January 28th meeting but we did discuss it and the Compact Commission did take a position on the issue that's raised by this letter and it seems to me that what we have to do is get some sort of a response back to the United States as to what we are going to do or not do on this question. I guess my problem is I'm not entirely clear on what we're doing or what we've decided to do as far as the request that's purported in this letter. The letter suggests that a task force be put together involving a representative designated by the BIA, a representative designated by the Tribe, a representative to be designated by the Compact Commission and an independent biologist. I gather that it is contemplated that all of these people are going to be fisheries biologists by training and that their function is going to be to advise the firm that's been retained by the United States to perform the instream flow studies on the Flathead Reservation as to the relative merits of the methodologies that exist for quantifying instream flows for fisheries. At the meeting on January 28th we discussed the advisability of

seeing if the state wanted to designate someone from Fish, Wildlife and Parks. That suggestion was rejected and the Commission decided to take no action on this request until we've had an opportunity to evaluate the methodologies for ourselves. I guess my question is what does that mean? What are we supposed to be doing and what response can we make to this letter to let them know what we're doing?

CHAIRMAN GALT: I believe Mr. McOmber had quite a few words to say January 28th.

MR. McOMBER: I always have quite a few words. I had the same concern and I thought maybe it would be on the agenda. As I recall the motion which was a substitute motion was that we'd take no action on their proposal until we'd had the time to review all of the methodologies. I think Chris is right though that you know it's just common courtesy to get back to those people with a response. Just by strange coincidence I happen to have one here, a suggestion. And I would say in effect that Dear So and So, in regard to your request for appointment of whatever, due to the number and the magnitude, and this is what I'm suggesting we'd say, you'd say Mr. Chairman, due to the number and the magnitude of claims for instream flows, let's see, the potential impact on rights established under state law as well as the precedent to be set the Compact Commission regards adoption of a methodology of establishing instream rights a major policy issue and has the matter under consideration at this time. We will get back to you when we have developed a position on your invitation.

CHAIRMAN GALT: That's really dodging the bullet.

MR. McOMBER: Well, we haven't. I think it's important, excuse me, I do think it's important that we evaluate all of these methodologies. They are the state of the art but I do think Chris is right, we should respond to it. Excuse me Gary.

REP. SPAETH: Yeah, I was just wondering when we're going to be moving towards that and what we're going to be doing. I'm not sure, as I indicated before, that there is any one methodology that is acceptable. And I don't think anyone will find that there's any one methodology acceptable, and I guess I just, I went back and looked through the minutes and I find that this Commission makes more motions to take no action than it makes motions to take action and that's, if you'll go back and look, that's exactly what we have in our minutes, no action motions and I guess that I wonder when we can get back to them and let them know for sure what we're going to be doing. I'm not sure if we're ever going to compact with those or even have serious negotiations but I think when they're asking us to sit down and at least do some work in one area that we've got to respond in some positive fashion in a relatively quick manner or it's going to appear that we're dragging our feet and I think that they're the ones that maybe dragging their feet and I guess I just want to know what kind of guidelines, if we're going to have something ready to go by July 1 or in a couple of months then I don't have any problems with that but if we're going to have something to go in a couple of years then I think that we have some problems. We wouldn't be dealing in good faith with them and I just kind of wonder what kind of guidelines, what kind of schedule and how we're going to go about doing it. Those are questions I think we have to answer and have to answer quickly.

VICE-CHAIRMAN TWEETEN: Mr. Chairman? It seems to me that at the risk of revisiting the issue that we debated and decided in January, it seems to me that what we've decided to do is reject the offer that's in Mac Cole's letter of January 21, 1987 and go off and do the same kind of a parallel study on our own. What the letter from BIA asks us to do is to engage in a joint study of this issue with the United States and the Flathead Tribes. Now, we've had requests for joint studies and things like that in the past and we've never really gotten into that kind of a process before and this is another one along those lines. What we decided, I gather, in January is that rather than engaging a joint study with the United States and the Tribes we would make an individual study of that issue, evaluate the instream flow methodologies and advise the Tribes and the United States as to which one we think is the appropriate methodology to use. My understanding of the letter that they sent us is that they want to engage in then, inquire on a joint basis involving experts from the United States from the Tribes with the understanding I gather that we would not be locked into accepting any sort of a recommendation that this committee proposed in this letter were to make and still would be free to arrive at whatever conclusion we wanted. So, it seems to me just to sum up that if we decide to go off on our own and evaluate these methodologies on our own what we ought to be doing is advising the United States in response to Mr. Cole's letter that we don't want to engage in any sort of a joint investigation of that issue.

REP. IVERSON: Mr. Chairman, I'm not only the newest member of this little group, I'm quite obviously the most underinformed. I guess just for my own help I'd like somebody to tell me why it is that it's not a good idea to engage in a joint project to determine this methodology. I've looked through the minutes but the decision or it seemed to be a debate between primarily Gordon and Gary and there isn't enough in the minutes to indicate what the real issues are and I guess that it would be of help to me to have somebody tell me why it's not a good thing to do.

MR. DAVIS: Mr. Chairman, in speaking of instream flow methodologies the United States through the Forest Service has submitted us a methodology that we're now reviewing and then we've got a methodology which we call the state methodology and now they're going to have on the Indian reservation, the United States through and independent consulting, come up maybe with a different methodology. Do you think that is correct, is that what they're talking about - a methodology that they're going to try to determine and as you said earlier we may find our methodology, the United States methodology or maybe some other methodology since the state of the art is not well defined. I'm not too sure in this discussion and I'm not too old on the Commission either but have we, is the Commission committed at this time to instream flows and all these things. Are we studying these methodologies now before we're committed or whether we're going to be using instream flows? I can't find that in my minutes but they're incomplete.

MS. SAUL: Mr. Chairman, if I can comment a little bit about instream flow methodology. Currently, there is probably fifty different methodologies out there for determining instream flows and one of the big issues is what do you need to determine instream flows for. Is it for channel maintenance which is the Organic Act of the Forest Service or is it for fisheries which Fish and Wildlife Service or some of the Indian Reservations or the Multiple Use Sustained Yield Act of the Forest Service?

VICE-CHAIRMAN TWEETEN: Or is for recreation or aesthetics?

MS. SAUL: Or recreation, floating flows, yeah, there is a lot of different types of methodology out there to determine different instream flow needs and it looks like what they're requesting here is instream flows for fisheries which would require a fisheries biologist to determine those needs.

MR. DAVIS: Have we adopted, are we committed to any instream flow for fisheries? I mean, I don't know.

CHAIRMAN GALT: Well, I personally think that's not a position we should take to establish instream flows for fisheries. That's my personal thing.

MR. DAVIS: Well, then it wouldn't make sense to me to commit any time and resources to study instream flow for fisheries unless that's a commitment we have where we're going.

VICE-CHAIRMAN TWEETEN: We're a long way it seems to me, Mr. Chairman, from taking an official position as to whether the Flathead Tribes do or do not have an instream flow right for fisheries. It's a substantive issue that we haven't studied enough to reach a conclusion. I think there's certainly support in the treaty for the Tribe's position that they claim an instream flow for fisheries but they...

CHAIRMAN GALT: What they claim and what we do, we don't have to designate it for fisheries. If we ever compact with them they'll have a quantified amount of water and they can dedicate that water any way they want to. I don't think we should get into the thing. Say, here's a compact and you've got so much for fisheries. You've got so much for whatever they want to do with it.

VICE-CHAIRMAN TWEETEN: Mr. Chairman, I guess we haven't gotten around to responding to Dennis's question yet. It seems to me if I could make an effort to summarize both sides of the argument. Gordon's position was that what we did not want to do is get locked in to a particular methodology decided on by technicians without the understanding and affirmative action of the Compact Commission and that that's something that we ought to be taking in-house and making a decision on in-house before we take part in any sort of a joint study to reach that kind of a conclusion. Is that a fair summary Gordon?

MR. McCOMBER: Well, there's a little more to it but go ahead.

VICE-CHAIRMAN TWEETEN: Okay, I guess I viewed the letter as a request for a joint study and my motion at the January 28th meeting was that we'd make an inquiry among the suitable agencies of state government namely Fish, Wildlife and Parks as to whether they would like to designate a fisheries biologist to participate in a study like this and that was the motion that I made and Gordon's substitute motion was adopted in its place.

MR. ELLIOTT: Mr. Chairman, in this letter is their suggestion that we become involved in the thing in a financial way too?

CHAIRMAN GALT: Well, if we have a representative on the study thing, yes, we'd be involved financially I'm sure.

MR. ELLIOTT: I don't know why we can't take a position and just say that at this time we're not ready to be involved in a joint study.

CHAIRMAN GALT: Rep. Spaeth did you have?

REP. SPAETH: You know, I'm not sure whether we're going to find that instream flows are going to be a consideration in every instance or in any instances. But, I think that, you know, I guess how I view our role is that we have to look at their position and how strong they are. We're negotiating with anticipation that if we don't complete our negotiations we're going to go to court and I think that when you're negotiating under those circumstances, which I think that we have to, you have to know the strengths and weaknesses of their case, if the party on the other side has a very strong case for instream flows then I think that we have to deal with that issue in some way, form or another. If we don't they're not going to be in a, I don't think they're going to really deal with us upfront then if we don't understand that position and where they're coming from. Maybe they haven't fully evaluated their position, but I think that with the Flathead they will have, because I think they're very sophisticated. I guess if they're, I think that we have to approach it on a case by case basis on the legality that's on the other side and react accordingly and I guess I don't know, on the Flathead, if there is a basis for an instream flow we'd have to look at the legal grounds, but if there is just by showing up or if there isn't by showing up and taking a look at determining what the facts are or what, we could agree on a set of facts to negotiate as to water levels, I don't see that as a real stopping block. I guess I really don't. I don't want to get involved in instream flow. Some people feel strongly about instream flow, but I think that we have to put instream flow as well as the other issues out there on the table and see where we stand and I don't think that we can necessarily ignore it and maybe we don't need to take a position, but I think we have to put a, set some scheduling here by when we're going to do something because, again, I've looked through our minutes and we take no action more times than we take action and we got six years and I think we've got to start pushing ourselves a little bit if we're going to expect to push the Tribes.

MR. DAVIS: Mr. Chairman, a concern of mine as to whether the Compact Commission should become involved in other advisory committees. In other words it seems to me that we should be neutral and not involved in any of these because we're going to have to make the decision and it's always difficult when you're the fact finder, the judge and the jury all at once. That would be the thing that I think we should give some consideration to. Now, for instance, you're talking about some of the problems on the Flathead. I don't think that the Joint Board of Control would feel that we're maintaining the necessary neutrality if we're going to be on a committee that's recommended by the Tribes. It seems to me that we should maintain a more impartial or neutral position on these kind of things. In other words their various studies are submitted and we make our own, but I don't know whether you should become a member of a committee that's established by the Flathead by resolution of the Flatheads to put some of our people on that committee. It seems to me then you lend some weight to it. It says the purpose of it is to come up with, produce a study that can be accepted by all

interested parties as factually correct. I don't know that we should be on that type of thing. It seems to me that we may lose a little bit of our neutrality for considering the question.

MR. McOMBER: Mr. Chairman? There's a little more to this than meets the eye. There's a hell of a lot more to it than meets the eye and in response to the question of our new member, Mr. Iverson, I think it's appropriate that this Commission be caught up on that. To begin with, Gary, I think you made a hell of a good point. The motion here was that Jack asked for me to restate before it was foot and the motion was that the Commission postpone action on this letter until it's had time as the Commission to review the methodologies not known, now known. Now, I guess, in most of the organizations I've been in there's an assumption at that point that would be addressed and it certainly would be on the agenda for the next meeting and I'd expected to see it on the...

CHAIRMAN GALT: Well, it's my fault. I forgot it then.

MR. McOMBER: Well, we used to, we had a, there was a time here when we went through the minutes and summarized the actions that were taken and the assignments that were made for ready reference so we could keep up on those and they wouldn't be missed. But, let me back up a little bit and take a little time. But, for you new members I think this is important. One of the first things this Commission did when it was established was to adopt motions to the effect that the program manager was not a negotiator, was not a policy maker, would not speak for the Commission without specific authorization. When the former chairman retired, his last suggestion was that the program manager be given a raise and the Commission approved heartily and he had to take on some other assignments and was doing a good job and at that stage in the game the Commission went home and forgot about it. Now, I don't know if you members know it or not, you do Gary, but the Commission employees are technically and legally employees of the Department of Natural Resources. Their job assignments, I mean their position descriptions, which determines their salary level, is determined by the Department of Natural Resources. So, the program manager then went with this proposition to the Department of Natural Resources and acquired for himself a position description that authorized him to do exactly what this Commission had by motion said he shouldn't do, to negotiate, to speak for the Commission, and etc. The gentleman then went to the Forest Service with that written authorization to do these things, sat down with the Forest Service officials and out of that came a proposition to this Forest Service, or back to this Commission that recommended adoption of a methodology you see. Well, I was chairman then and he talked to me about going and talking to these people and I said sure you can talk to them, but just understand that you have no authority to commit this Commission. When that proposal then was submitted to the Commission and that became the main issue in negotiations with the Forest Service, we didn't start with the legality of the Forest Service claim and we didn't assess the impact of this methodology on other holders of water rights under state law. We commenced right away to negotiate with the Forest Service in regard to this methodology. After a review of the law, the enabling legislation and a few other things, as I told you, the Commission then started to backwater, but we got ourselves out on a corner because we started looking at a methodology, not at the other factors in negotiation. And I was Chairman then and I got burnt. I was accused of intellectual dishonesty, I was placed in a position,

I was advised if you don't agree with your own man then come up with another plan and a few other things and that's my point. When we send, when we endorse anyone to sit down with the other side and develop a methodology we are in fact, in effect endorsing the results of that methodology, we're endorsing a standard and we're going to end up with a quantification and if later we decide that we don't like that quantification then we're unfortunately in the position of disagreeing with our own expert and we can fall back on what happened before to, I can, to justify that position and so that's why I think that if we endorse, if we appoint someone especially a fisheries biologist to go over there, we've got ourselves out on a limb. If we disagree with him later we're going to be in trouble and we're going to be subject to the same charges that this Commission was subject to before when we got in a bind with the Forest Service. So, I think if we do send this person over there it should be as an observer, there should be some very strict qualifications in writing before he goes there, they should understand that in no way, shape or form are we going to be bound by what he says and if we do change our mind then we're still going to be faced with coming up with another methodology to override that. Now, one more thing Mr. Chairman, as Lynda said here, there are many methodologies and they represent the state of the art, but it isn't an exact science and we're making decisions here that are going to last forever and if we let someone else do that, make that choice for us I think we're surrendering our responsibility and my feeling has been ever since that fiasco I got into with the Forest Service is that the Commission itself should regard that as a policy decision and, you know, we send our technicians, our specialists to view and to recommend to us but the Commission maintained that decision, that decision as a major policy decision that this, for this Commission to make. And I think, so therefore, I think, Mr. Chairman, as I did before, that we should perhaps, as I said before out of courtesy, you tell those people that we have it under advisement, tell them something, but I think that this Commission should as a special order of business at a meeting very close in the future go have our experts go over this in detail and we decide what methodology we're going to use but only as part of the overall negotiations with the Salish. They haven't given us their claims. We're part of the adjudication process, assumably we're to act on their claims, they haven't given us their claims yet. We do know that they filed on essentially all of the water in western Montana and we may find ourselves in the position here of, you know, of having giving them complete control of all the water in western Montana and so I think eventually we're going to sit down with them, I hope we are, and we're going to talk about a PIA standard along with an instream standard but first we've got to know the extent of their claims and what they intend to do with it. Lengthy speech.

MR. DAVIS: Mr. Chairman, one more response. It says the purpose of the study is to quantify the instream flow needs for the reservation and we're supposed to request to put some, a technical advisory committee, we're supposed to furnish someone to quantify the instream flow needs of the reservation and I don't think we should have someone on a committee to quantify anything for the reservation until we know whether we're going to have instream flows are going to be part of our obligation.

VICE-CHAIRMAN TWEETEN: Mr. Chairman?

CHAIRMAN GALT: I believe Mr. Etchart was first.

MR. ETCHART: Well, the thing I was wondering about is whether or not this letter was addressed to the proper entity and maybe it should have gone to the DNRC and as such maybe then that person would be independent to the extent that the study could go forward and still we would have, we wouldn't in effect be part of it. It's just a thought that listening to you people talk that came to my mind and maybe the DNRC doesn't want to be part of it, but I can sure see the logic to the argument that we don't want to be. We could, that man could be outvoted three or four to one and we're still party to it. So, I just think it would be poor politics to...

VICE-CHAIRMAN TWEETEN: Mr. Chairman, it really wasn't my intention to revisit this issue again. You know, we voted on it ...

CHAIRMAN GALT: Well, we have it on the table so let's resolve it now, so.

VICE-CHAIRMAN TWEETEN: And we made our decision and I'm not suggesting that we ought to reconsider that decision. I mean, Gordon's motion was carried and that decision has been made. We're not going to participate in this study at this time. The issue that's on the table now is what response do we make to the letter. And my suggestion is that we write a very short and direct letter to Mr. Cole advising him that we've reviewed the matter and we've decided that we are not going to participate in your study at this time, we would appreciate being advised of its project and we look forward to seeing its results in the course of our negotiations with the Flathead Tribes. Sincerely yours, Jack Galt.

MR. DAVIS: Excellent.

VICE-CHAIRMAN TWEETEN: I think anything other than that would be misleading.

CHAIRMAN GALT: Can you make that in the form of a motion?

VICE-CHAIRMAN TWEETEN: Because I think we've taken the position that we're not going to engage in a joint study and so I think telling them that we're still considering participating in a joint study is really not accurate because the decision has been made not to do that. So, I would move that we make a letter to Mr. Cole containing essentially the statements that I've just put in the record and that that be the end of it.

MR. ELLIOTT: I'll second that.

CHAIRMAN GALT: Any further discussion? Are you ready for the question?

MR. McOMBER: Question.

CHAIRMAN GALT: Question has been called for. All those in favor signify by saying Aye?

UNISON: Aye.

CHAIRMAN GALT: Opposed?

VICE-CHAIRMAN TWEETEN: I just happen to have that in writing and I'll give it to Marcia and she can take the appropriate action.

CHAIRMAN GALT: I would like to read that before I sign it. Let's take a ten minute break.

BREAK

CHAIRMAN GALT: Greg has been down on the Cheyenne Reservation, we subletted him out to the Department of Natural Resources to do some work and I think it would be interesting to remind you all of what the Cheyenne Reservation is. Some of us has spent some time down there, but a lot of you, I know, haven't. Go ahead, Greg.

MR. AMES: Approximately two months ago the Department was involved with scheduling a repair on the Tongue River Reservoir. At that time, they had prepared this repair project about January or February of this year and they came down fairly close to going down there and doing the repair on the dam or the reservoir itself and approximately a week before they were going to begin construction and do their repair work, some other agencies were expressing concerns about shutting the Tongue River down for a specified number of days and not having any flows go over the reservoir itself while they were doing those repairs. These different state and federal agencies were concerned about the wildlife habitat and the fish habitat and the river downstream. Historically in the past they had shut it down three times previous for similar repairs and that they weren't involved with, they just shut the reservoir off, they didn't have to supply any pumping or any additional flows over the reservoir to keep the fish alive or keep the wildlife happy with water in the stream. So, approximately a week before they had planned this they were put into the position that they should probably pump water out of the reservoir and supplement the water flows downstream. So, we had about three or four days to put together a pumping project to pump water out and accomplish this so that we could continue with out repairs. At that time through Marcia they requested that I put together the pump units and the piping and all the means that were necessary to accomplish this task. So, what I have here is some slides of what we did and some other slides of the Tongue River and to kind of give you an idea of the lay of the land, the river, the project that we were involved with. This is river itself. Approximately five miles downstream from the Tongue River Reservoir. The river at this point was flowing about 63 cfs and this was before the scheduled shut-down of the dam. This is a slide where immediately below the spilling basin or the spillway of the reservoir, we're probably just about 200 yards downstream, this is giving you an idea of the amount of water that was in the river at that time. The project, it's a state project, and it's currently being operated by the water users downstream on the Tongue River including the Tribe. This is a slide of the first half mile stretch of the river below the reservoir before the shut-down. We were in there. There was ice on the banks, snow on the ground and the Department had determined that this was the best time to perform the repairs in the outlet structure or the outlet tunnel of the dam. I'll show pictures of that later. Here's the same slide giving you an idea of the lay of the land, the amount of water in the river and the characteristics of the river itself.

MR. ELLIOTT: Excuse me, you say it's about 63...

MR. AMES: Yeah, it was 63 cfs gauged, gauging station. This is a slide about 4 miles downstream. Some cattle down there using the river for drinking purposes. This is before the shut down. This is approximately 6 miles downstream. The Department went up and down the river before the shut down and made some measurements. We took some slides, took some pictures so we could get an idea of the impact of the shut down before it actually occurred. This is the spillway and the outlet structure on the reservoir. You can see on the right hand side in the past when they had shut this down for repairs it was off for three days at one time, for five days at another time and for seven days on another occasion with no pumping involved from the reservoir down the spillway to augment the flows. What they had done in the past or relied on secession flows or water coming out of the banks and tributaries to supply flows for the fish and for the wildlife in the area. On the right hand side of this you can see some frozen water or some frozen ice crystals flowing out of the coal seams in the area and this is part of the secession that they were talking about hoping to improve the amount of water during the shut down.

VICE-CHAIRMAN TWEETEN: Is that the same thing as seepage?

MR. AMES: Yeap.

MR. DAVIS: Is that a state project, a state water, state dam?

MR. AMES: Yes it is. It's about 48 years old when it was initially installed. This is the outlet tunnel. That tunnel is 16 feet in diameter to kind of give you an idea of the size. That spillway is so inclined or so steep that you wouldn't even think about trying to walk up or down it. When we, some slides later on, when we went into the tunnel we had to park our vehicle on the top and use a rope to go down the spillway to enter the tunnel. This tunnel is approximately 400 feet long and at the dam itself there's the operator gate and the safety gate that controlled the outlet or the amount of water that comes through this tunnel and the spillway itself is just used for spilling water over the top during flood routing purposes.

MR. ETCHART: Question. That spillway is not also the dam? The dam is at a different location.

MR. AMES: No. The dam is 300 feet behind what we're looking at here. They've done a number of repairs in the past to the spillway and to the outlet tunnel itself. What you're, the light gray concrete on the steep portion of the spillway was repaired, how long ago Rich did they repair that, I think it was about 6 years ago? They poured new concrete on the spillway. The spillway itself has only spilled water once. It's another slide of the seepage coming out of the coal seams. Picture of the tunnel and the toe drain. That amount of water is 63 cfs as it was gauged downstream. Okay, now this, I'm standing on the dam taking a picture of the area that the water would cover entering the spillway if the water was to rise that high. It had to rise approximately another 18 feet to be able to spill the spillway at this location. Our assignment was to pump water out of the reservoir on the left and run pipe across approximately where that truck is parked and spill water down the basin, down the spillway. To do that I'd contacted Decker Coal and quite a few other companies in the area for obtaining some pumps to pump the water out that we determined the amount that we would need to augment the

flows downstream and Decker Coal had some pumps that were approximately 18 miles away that we rented from them to pump the water out of the reservoir with and there was a skidder here preparing a pad or a location for the pumps to actually set. Now the dam is right behind the skidder. You can see the orange material that they had used to rip rap the front of it. It's not very long. It's about a half a mile long or not even that long. It's about a quarter of a mile long so that the dam is actually what's behind the pump and the pickup and the skidder there. We're unloading these pumping units off the trucks that Decker Coal had brought in and supplied to us. We skidded them into place. Here is three in position. We needed six pumps to supply the amount of water that we were interested in pumping to augment those flows downstream, three are in place right here. As you can see, it is still pretty cold out. There is ice on the reservoir at this time. You can see the Big Horn Mountains in the background there. The project at spillway elevation will hold 80,000 acre-feet of water. Normal operating is approximately 60,000 acre-feet. All six pumps are in place and we're starting to string 12 lines of six-inch aluminum pipe to the spilling basin or the spillway right there. It was approximately 340 feet that we ran 12 lines of six inch pipe. We're kind of in the construction phase of getting everything all set up. At this point we have not, the reservoir or the dam had not been shut off. The flows are still going downstream. Another view of the same. The pumps are all in place now. There is six of them. They were Detroit diesels. Each one pumps approximately 1400 gallons per minutes, 12 to 1400 gallons per minute. They had fuel tanks on them, discharge hoses that were about 20 feet long. They ran into steel wise and we ran two six inch lines off of each pump and they were approximately 95 horsepower. Our initial intent was to run them about five days continuous operation after we'd been shut down for approximately 3 to 5 days while the construction was being taken place. This is a picture of the spillway. We erected a small retaining wall down the spillway to keep the water on one side so that it would not flow back in that outlet tunnel that we were working in that the contractors and the Engineering department had proposed to repair. So we had to keep water to one side so it wouldn't come back in. So we just constructed this little wall out of three-quarter inch plywood that was about a foot high and braced it up there to keep the water from fanning out over the entire spillway itself. Well, at this point when everything was all set up they went ahead and closed the operator and closed the safety gate, shut the flow off downstream and they went into the tunnel to repair approximately 2 yards of concrete that had been eaten away by cavitation just below the operator and the safety gate inside the tunnel. It was approximately 300 feet from the opening that you saw on the spillway. There was a contractor and Engineering department had figured out all the repairs that were necessary prior to that. They go into the dams and inspect them on a periodic basis annually or semi-annually and this area had been cavitated away previously in the past and it was time for another repair. So, they shut that off and they went inside the tunnel and started jackhammering the old concrete out in preparation for pouring new concrete. So, we went ahead and after it was shut down we went downstream to kind of get an idea of what the effect would be and I've got some before and after slides. This is before the shut down in the same area and this is after the shut down. We're approximately half a mile downstream. The little white building on the right is the gauging station.

MR. DAVIS: Are you pumping now in the spillway?

MR. AMES: No, we're not. We just simply shut it down and we were hoping to buy some time before we had to start the pumps because they ran around \$1200 a day to operate the pumps and we were going to try to keep the costs down and see what kind of seepage or accretion we were getting from the bank.

MR. ELLIOTT: How much did you get?

MR. AMES: Not very much. At this point we got about 3 cfs at the gauging station and we were hoping for around 10 cfs. This is about, this is at the same location just looking downstream, we're half a mile down. This is before we shut down and this is nine hours after we shut down. There's a USGS person gauging the amount of water that was flowing and it was approximately 3 cfs. This is about a mile downstream before the shutdown. This is 6 hours after the shutdown. And this is 9 hours after the shutdown on the same stream location. We moved downstream a little further, we're about a mile and a half. This is before the shutdown and this is after 9 hours of shutdown. We're about 3 miles downstream before the shutdown. A couple of geese in the water there. You might note the size of the island and where the water is on the bank and the snow is on the bank on the left hand side. This is before the shutdown and this is 9 hours after the shutdown. Approximately 3 miles downstream. There is still plenty of water in the river. Well, at that point...

VICE-CHAIRMAN TWEETEN: Greg? Are there any tributaries that enter the river downstream from the dam between the dam and the site where you took those photos?

MR. AMES: None. Well, there are some but they were dry. There were no flows. No additional flows. Well, 9 hours after the shutdown the people that were involved with making the decision as to when to start the pumps to begin the real expensive portion of augmenting the flows, the decision was made at that 9 hour period to go ahead and turn the pumps on to save the fish habitat downstream. They did find one dead bullhead after 9 hours. I don't know if someone stepped on it or what the deal was but there were quite a few concerned people so the pumps did turn on. We constructed a little bridge across there so we could go across our mainline to access either side of the river at this point. And this is an idea of the amount of water that we were pumping. I think we were in the neighborhood of 15 cfs with these 6 pumps running.

MR. ELLIOTT: How many?

MR. AMES: Six. Okay, 15 cfs. It wasn't all the water that they wanted but it was later determined after we began pumping one day, two days, three days later that none of the fish habitat were severely impacted by the flow of 15 cfs. So, those pumps I think ran for 11 days, about twice as long as we had originally anticipated them running but the repairs were made successfully. The concrete cured, it's all in place and the last thing we noted were a bunch of wild turkeys running around. That kind of concluded Tongue River repairs down in Carbon County.

MR. ELLIOTT: How many days did you say?

MR. AMES: Eleven days of pumping.

MR. ELLIOTT: During that time you were using these 6 pumpers, did that adequately take care of downstream needs?

MR. AMES: For fisheries purposes and wildlife purposes, yes.

MR. ELLIOTT: And that would be about 25 percent of the normal or about 63 feet...

MR. AMES: Yes.

MR. DAVIS: Is this part of the minimum streamflow requirement study?

MR. MOY: Mr. Chairman, one thing is that when we were thinking about doing this on the project, no one inhouse could have done it like Greg Ames as regarding the expertise, who he called, how he organized it, how he got the thing going. We could have not done it without Greg Ames and we really want to thank him for doing an outstanding job and you've got a very good professional right here.

CHAIRMAN GALT: Thank the Commission for letting you have him.

MR. MOY: Thank you.

MR. AMES: Thanks Rich.

CHAIRMAN GALT: Is there anything further on the Cheyenne? Does any member of the, do you have anything at all, have you talked with Whitehead or whatever her name is?

MS. RUNDLE: No, the last time that I talked with Jeanne she said that she was still working with Al Kersich on the proposal. When I was in Salt Lake I talked with John Echohawk, who is the executive director for NARF, and he said that they expect another staff attorney will take over as negotiator for the Northern Cheyenne after Jeanne gets a proposal put together. At least, that's their plan now and I haven't heard further.

CHAIRMAN GALT: Let's go right on to...

MR. McOMBER: Could I ask just one question? Greg, was there any indication where those increased downstream flows originated? Were they out of a reservoir or were they just natural seepages from out of the prairie?

MR. AMES: Right below the spillway there were some seepages out of the reservoir and that was in those coal seams but the amount at the gauging station a half mile downstream we only had 3 cfs. Further down the accretion or the seepage became a much bigger factor. I'd say 10, 15 miles down.

VICE-CHAIRMAN TWEETEN: Coming from groundwater?

MR. AMES: Groundwater, tributaries and just the amount of water that is just stored in the bank.

VICE-CHAIRMAN TWEETEN: So, that wouldn't be their long-term then?

MR. AMES: No.

CHAIRMAN GALT: BLM? Anything to report?

MR. ELLIOTT: Nothing.

MS. RUNDLE: Gene, I have one thing. On the memo that we sent that Susan had prepared the summary of that negotiation it referred to attached handouts and although all of you might have gotten those before they weren't attached this time and should have been, so the members of the team I will just give those to Dennis and Everett and we'll send one to Joe. We have not had any contact with BLM other than the last letter that they sent was kind of what's happening with the Commission, are you ever going to get back to us and respond. The Don Brown case is still before Judge Bennett. It hasn't been decided and I think when the negotiating team met with DNRC that was kind of where it was left that until Judge Bennett came down with a decision DNRC didn't want to get into more substantive negotiations with BLM. So, I guess we're waiting. You and I talked briefly once before about the possibility of floating that stretch of the river. If you want to pursue to please let me know because I'll sure set it up.

VICE-CHAIRMAN TWEETEN: We may want to do that this week.

MR. ETCHART: I think the full Commission would want to take part in that.

VICE-CHAIRMAN TWEETEN: The water may not be there later on. There may not be water after June.

CHAIRMAN GALT: Let's go to number 8 on the agenda and the staff will take over to explain what they want. There is some material in your packet describing this and this will take committee action.

MS. RUNDLE: I think, Mr. Chairman, the cover letter that I attached to the requisition request pretty well explains the benefits that I see resulting from this kind of acquisition. What we're talking about essentially is a increased capacity to deal with large amounts of information. The Commission now is 7 years old. The equipment that was used initially was perhaps state of the art at the time it was acquired but the revolution that has occurred in computer management of information of this nature over the last 7 years is really phenomenal and we find ourselves at a position where we are not able to utilize all of the information that's out there that is available. We may be on a parody now with some of the tribes but we are certainly not on parody with the contractors that they contract with or with the federal agencies who are all in the process now of acquiring this kind of equipment. There are 6 systems similar to the one that the Commission now owns, or the Commission and DNRC together own on Indian Reservations in Montana. This would be a substantial change. Greg and Lynda have prepared some slides that they would show you just to give an idea of the kind of input that goes into evaluations on this kind of machinery, the kind of manipulations that you can do and the output that we could expect to have.

MR. AMES: How much time do we want to spend on these slides?

MS. RUNDLE: We have half an hour before we break for lunch and we need to have action.

MR. AMES: Okay. It gives us an idea of how fast we're going to look at slides. I guess how we got started on this assignment was, or where we're at today was to, the assignment was made to the staff to take a look at how we're going to use our existing system and to what degree of accuracy we could report the results of the, that we get from our reports with using our existing equipment. At the same time we wanted to take a look and see what other agencies, federal and consulting agencies were using in putting together and analyzing and processing their resource management information. So, that's kind of where we're at today as a result of taking a look at what we have and determining what other people are using and what the state of the art is currently. This is a, if you haven't been in our room upstairs, our LMS room, this is what the LMS looks like. It's driven by an Apple II computer, the LMS box sits on top of the computer and then the peripheral equipment is off to the left and off to the right. Lynda is pictured here at the Apple computer working on a bar graph. The reason we put these in is if you haven't seen the equipment we want to let you know what it kind of looks like and what we're capable of doing with it. Currently we can do two functions somewhat accurately with our existing system. One is we can calculate areas off of soils maps, off of topography maps, and do area and line calculations. The second thing that we can do is we can overlay, there is two cameras, one on the left and one on the right. The one on the right is just above Lynda's head, we can overlay the image of one map onto another map. So, if we wanted to put the soil polygons onto a topo map to find out if that land is capable, say if that good soil is capable of being irrigated on a particular slope that's indicated on a topo map we can do that with this particular system. The third function that the LMS has been used for in the past or at least has been looked into was to be able to take an area off of the, this is a TV screen that's off to the right that you couldn't see in the previous slide, we'd like to take this image and have the computer calculate how many acres are in that particular dark area right in the center. That could be an irrigated parcel and there's a feature in the computer that lets this image which is in video tape that was flown over the Big Sandy area I believe on the Rocky Boy Tribe, take this image and put it in the computer so we could calculate the numerous acres that exist, the numerous irrigated acres that might exist on a particular drainage pertaining to that reservation. This feature of taking the image and putting it in the computer is called density slice. And this feature of the LMS currently is what is perhaps the most least accurate. At least we couldn't density slice this image, put it in the computer and report this technically to you people without including an error of 20 to 30 percent. So, what we determined is we have two capabilities with this current LMS system, overlay and area calculations. This was used extensively for the Fort Peck compact. There was numerous acres, they were concerned about protecting existing uses and many hours of work was used and many maps were utilized in putting together that Fort Peck compact information from a technical standpoint and we've reviewed the information that was done and it's extensive. At the time it was done this was equipment being used by the Tribes and by other agencies and it was at that time the state of the art. We have determined now that state of the art has moved on. There is other equipment available and we don't feel comfortable in reporting the

degree of error that we have to with this equipment in comparison to what other agencies are using. So, we took a trip down to Boise, Idaho and we visited the USDA Soil Conservation Service office and looked at one of their state of the art systems and we also had the opportunity to go to Water Resources Department of the Idaho state program and we viewed two separate systems down there and kind of got an idea of the input that they were using and the type of the output and the degree of error that they had with their technical analysis. This is the most current LMS system that is being used down by the Soil Conservation Service in Boise, Idaho. It looked similar to our setup excepting that there's numerous other equipment that they've added to their system and they've also got upgrades and we're going to kind of go through those a little bit. I guess one of the most important things we want to take a look at is their system is run on an IBM rather than an Apple system and most technical reports and analysis that we're interested in working with and software that we're interested in utilizing is written for an IBM computer. What is written for an Apple is not compatible with an IBM. So, these new systems are now IBM driven rather than Apple driven. The images that we're looking at are also much clearer because of the resolution of the screens. The image, we're going to try and get a close up of it right here. The image that we're looking at here is probably has 3 or 4 times the resolution of the image that we were looking at on our old screen and that's just due to the increased technology that's been used in some of the equipment. They've also incorporated map plotters to plot out maps or plot out the information that you use in your reporting in your presentations. And that's kind of a picture of that. There's a real close up picture of this particular drainage that they were interested in using. Now, what we've done here or what this system basically has done is taken a map and it's entered into the computer system via those cameras and the computer now sees this particular image and we can, the new systems can take and process this new image and determine irrigated acres for protecting existing uses, we can look at elevation, we can look at soil types, soil polygons, there's a wide variety of information that is utilized on these new systems that we were not able to take a look at on our existing system. The input of the new systems is greatly improved of what we had over our old one and that's probably one of the main reasons that we're interested in taking a look at and proposing replacing our existing system with one of the new ones. This is a picture of a LANDSAT image and LANDSAT has been around for a number of years, the state's been looking at it for probably ten years and one of the reasons that we like using LANDSAT scenes was we were looking at those for purposes of our work was that they're flown every 16 days, you can get up to date information, our current LMS is not capable of handling these LANDSAT scenes. It's only capable of looking at hard copy aerial photographs or videotapes or slides and we were interested in utilizing this information as the State of Idaho has done for their resource management processes. The windowed area and all the red areas are showing irrigated vegetation. Now, this is the raw image as you look at, you can window out that area on the left hand side. You can take a closer look at it which is what we've done here. These are center pivot irrigation systems with varying degrees of intensity and crop cover. This is what the human eye would see and we probably see 25 percent of what the LANDSAT scene has available because there is so much information there that only the computer can see it and process it.

VICE-CHAIRMAN TWEETEN: Greg, just for background, generally the redder the area the more vegetation right?

MR. AMES: Or the greener, yeah.

VICE-CHAIRMAN TWEETEN: Well, it just shows here the more red it is you can assume more vegetation.

MR. AMES: That's correct. This particular scene has been processed by the computer. This is what the computer sees and remembers as opposed to what our human eye remembers. These different colors indicate different types of crops on these center pivot systems. Now you can get in there a little closer and you can window on your screen and maybe you want to take a look at a particular center pivot to find out whatever the amount of acres, the amount of water, farming practice. There's quite a few uses, some that we wouldn't be interested in, but there's quite a few that we would be. But, anyway, you can zero in on a single center pivot and LANDSAT is being used by a number of other agencies for a wide variety of purposes, some that we really won't be using, but the degree of detail I guess is the point here. This is a 145 acre pivot in Nebraska and from this LANDSAT image from the satellite sitting way up above the earth's surface they can take a look at what area underneath that pivot is not currently irrigated. They were interested in canopy here, there is no canopy at the top. They identified the best canopy and they've even gone to the extent of detail where they can determine weed encroachment on this particular center pivot field. You can see it on the left and a little bit on the right. This is what our eye would see and this is what the computer would see. The yellow area is the area that's been infested by weeds and the blue areas I think were the no canopy cover areas and the green area is probably the best canopy cover. This LANDSAT scene, each pixel is approximately unprocessed 70 meters square and processed it's about 57 meters square and a pixel is a unit of ground that the image is received by the satellite. Here's another satellite image of an area in Nebraska. Again, the red areas are center pivot irrigated areas or areas that are receiving water and plant growth is occurring. The computer now has, is overlaying soils information onto those center pivot irrigated areas. The soils information is stored within the computer and you can create layers of information that you can overlay on various areas. So, for instance, up at the Ft. Belknap Tribe we could have an area of presently irrigated acres and then we could overlay a layer of information pertaining to soil data or soil information. The computer has got the, assign these colors to these various soil types and we can determine which areas would be, say, good areas for a development for an irrigation projects or any type of scenario that we felt would be necessary to take a look at.

MS. SAUL: This picture here is a picture of canopy coverage. It's also a LANDSAT scene. In addition to using LANDSAT there is a number of different data inputs that we can use with this new system that our current system is unable to handle. One thing about the new systems is they can handle these digitized information. This information comes via a tape that you load into the computer system so you do not have to hand digitize all the information. The new systems can also use hard photos and video images or regular hard copies and pictures in addition to this digitized information. But, besides LANDSAT which this is a scene, there is also high altitude photography, work that can be entered into the new systems. That will be useful for getting into more detailed analysis beyond the baseline data of the LANDSAT information. We can also use some digitized information that the USGS has put together in the forms of orthophoto quads and just topographic maps.

We will be able to enter elevational data and we can use that in a scenario of trying to determine for example a quarter is practical irrigable acres of lift elevations along a certain river channel and do some what ifs scenarios using some of these topographic lines and maps that can be entered into this system. We can change some of the aspects if we want to only raise lift its economically feasible at 200 feet then we can do that. But, we can just by punching a few buttons and because all the data is entered, we can change a scenario and say what if we want to lift the elevation up to 400 feet and irrigate that corridor. We'll be able to do that with the new computer system and with some of this data that can be inputted into a new type of computer system.

MR. AMES: This is a high altitude aerial photograph. I think it was a U2 flight or something similar flown above the earth's surface. We just want to show the degree of detail that can be involved in analyzing irrigated acres from this high altitude. We could input, we could take a look at this kind of information with our existing system but we are unable to process it because of limited capabilities of our existing equipment. The new state of the art equipment can fully process this information, determine irrigated acres, we can overlay soil information and start to permanently store and retrieve this information as needed.

MS. RUNDLE: Isn't that the one where I'm supposed to point out the John Deere tractor?

MR. AMES: Yeah.

MS. RUNDLE: One of the things about this system that I'm convinced is superior to the one that we have is the input, the quality of the input. Largely what we're talking about using are infrared photographs, high altitude photographs, digitized soils information, digitized stream flow information, all information that is generated by federal agencies or I don't think there are any state agencies but by federal agencies primarily. So, our beginning input would be irrefutable in a sense. The credibility cannot be questioned whereas what we're working with on existing equipment are video tapes that we've flown ourselves. There have been problems with the onboard camera system. There have been problems with the interpretation of it in the system. This is particularly important this use of remote information or already existing information is particularly important because we do not have access to tribal reservations. We can't go on the reservation, do soils analysis, drill test wells, or do any of that kind of thing. In addition, we've been told by the BIA that the Department of Justice has total control of the 12 million dollars worth of studies that have already been done for the tribes. They consider that work product for litigation and they're keeping that under caps. It is not available for us to even analyze. If we cannot go on reservations then we need to do as good a job as we can by using information that we can acquire without being on the ground and I think this is a real credible way to go about doing that. It maybe the only way that we can go about doing that.

VICE-CHAIRMAN TWEETEN: So, where's the tractor?

Laughter

MR. AMES: This is a soils map, soil information that might have been put together by Soil Survey, SCS. This information is currently being put on computer tape throughout the United States on the SCS program called Camps. Within two years they've estimated that soils information for the state of Montana will be on computer tape and we'll have access to it. They've initiated that project. There's been thirty some odd soil scientists hired in the state of Montana and they're currently out in eastern Montana or are going to be out in eastern Montana this summer doing a soil survey. Right now we've got to calculate all these areas by hand if they haven't already previously been summarized by previous staff or other individuals and do our soils analysis by hand and there is a number of polygons as you can see that need to be, the area needs to be determined, we need to overlay those on maps. What other departments have used with their new systems, they enter this information either by hand in the computer or else they have purchased or have used the Camps computer information and they downloaded on the computer system and it is already there. It saves countless manhours of trying to determine all the areas of different soil polygons, soil series and soil types. This might be what the computer would see. It draws lines and shades colors and adds up areas for you after you do the initial manwork of putting it into the computer. This is...

MS. RUNDLE: If I could mention one other thing that I think is particularly important that sort of shows up on those soils maps. In analyzing the technical data, one of the things that I assume that the Commission is going to want to take a look at would be alternative scenarios. You can input the soil types on that previous one Greg, you can input all these soil types presumably LA is different from LW in some degree. Once all of this information is in the computer you can tally up areas say of 6 of these soil types then if you want to see what adding two more soil types would do you can do that very readily. If you want to drop off 2 soil types and see what impact that has on the ultimate quantification you can do that very easily too. So it's a way of being able to manipulate the data very quickly to look at alternative scenarios and what the bottom line comes out with given different assumptions.

MR. AMES: This is results of some 3-D software used on the computer system and what this is really going to be useful for is if you need to get an idea of the lay of the land for PIA purposes to see if this area would support irrigation you've got your topog maps to take a look at, but a 3 dimensional view would just give you that better idea of the lay of the land without actually having to be there and if you're talking about covering thousands of acres of land and you can do it here in the office with your topo software as opposed to going out in the field, not saying that it's going to directly replace it but it's going to, don't want to replace field verification by any means but you want to, you can cover quite a bit of ground in the office without actually having to be out there. You can get an idea of the lay of the land, where the drainages are and this type of software is included with a proposal that we included in your package. We're going to take a look at two examples. This is the Navajo Indian Reservation and this information was presented by the Navajo Tribe for the Little Colorado River Basin Water Rights Adjudication and we're going to go through some examples of what they did with a system very similar, I guess it's the same software, similar hardware that we proposed to the Commission. Now first, this is the boundaries of the Navajo Indian Reservations in those four states and the dark areas is the

study area and the white area in the center is the Hopi Indian Reservation in the center of the Navajo Indian Reservation. So, these maps are printed on that plotter that I showed earlier and they created layers of data, plotted it on maps so that they could use it in their presentation to justify their final results. They have a map here of climatic zones, a map of watershed information, very useful in the hydrology analysis, they've indicated watersheds, square miles, acres, you could also indicate stream gauging information, runoff information, probably a few other. This is evaporative zones in the particular study area and this is average unit runoff. Going a little fast, we're coming across our deadline here, time. This is stockponds. They printed this all out. This is all on computer and they just printed out these maps and you can kind of overlay it and support your technical analysis with it and it's pretty much the basis of your technical analysis, your ability to take the data, print it out on maps and use it as one form of your technical presentation. We're looking at irrigable soils here on the reservation and that might be overlaid on what we're looking at here, proposed irrigation projects.

MR. DAVIS: The Hopi didn't get much did they?

MR. AMES: The next example we're going to look at is the Alben's Bay Watershed in Vermont. They used the same type of hardware software that we're proposing here and they looked at three criteria, land use, soils, development, suitability soils, and agricultural soils capability. Here is landuse in this particular area that they were interested in. It varies from agricultural to wooded to residential. The next one is here is the soil capability classes mapped out by the computer, classes 1-6. That could be overlaid with your soils map to determine or say your topography map to determine the slope and aspect and here is the soils data information overlay and I guess their final result is they were interested in suitability and unsuitability of the particular areas within this watershed. They were interested for construction purposes, obviously our purposes will be for potential irrigable soils. Like we would be looking at achieving the same types of results that they have here. Two companies that we have thoroughly researched, we looked at probably a dozen companies to begin with, we narrowed it down to 3 or 4 and we have selected 2 companies that work together on hardware software configurations that we have proposed to you in your packet. This company is called Earth Resources Data Analysis Systems and they are out of Atlanta, Georgia and the other company is this ESRI Company in Redlands, California. They are two separate companies, they work together, they have corporate agreements between the two, they support each others hardware software and they put together single packages from two separate companies in one envelope, one proposal.

MS. SAUL: If I could interject, this system that we're proposing is IBM PC computer based and currently we do not have an IBM PC for the use of the Commission's staff. There are several in the Department but they are overused already as is and we're kind of on a wait-in-line and use when it's available basis. But, we've already been, we have done some work on the PC. Gordon, the Forest Service graphs that were in the latest proposal that I gave you were done on a personal computer. There's other sort of data management statistical analysis that we'll need to do, some flood routing and flood evaluation analysis. With a personal computer we'll also be able to do some modeling like a stream dewatering study modeling for Forest Service analysis

or use the IRRYSIS practical irrigation systems analysis work on a personal computer. So, these systems that we're proposing to you are PC based and will have many other functions in addition to managing just a natural resource data and map overlay that we're proposing.

MR. AMES: I guess in summary, after looking what the other agencies have taken a look at and what they're doing with their analysis, for example the Idaho State Water Resources Department, 80% of their technical analysis is done on their computer based resource management system. Very little of their work is anymore being done by hand or generated by laborous manhours of working on a single project for extended periods of time by hand. It's all, for the most part, computer generated. The computer information is then stored permanently. You can update it, analyze it, change it, without having to manually go back through all your maps and all your data and do these things by hand and they've found it's been a very effective and cost savings measure for their technical analysis. We think that this proposal before the Commission would approve our abilities to handle digitized information that we currently don't have access to with our current system and we'll be able to access information that is being digitized on computer that would be utilized with the new system and the primary reason for this proposal was to increase our accuracy, to utilize data that isn't being used and to center our technical analysis around computer based resource management system.

MS. RUNDLE: The maps on the wall behind you were sent to us courtesy of the Water Resources Department in Idaho and this is part of the analysis that they've done on the Fort Hall Indian Reservation. Greg, if you could take just a second to show what the different kinds of things are up there.

MR. AMES: The shaded area in orange, the two different colors, is the Fort Hall Indian Reservation. This is American Falls Reservoir and here is Pocatello, Idaho. The Fort Hall main canal runs right through here and then Bannack Creek runs through this portion of the reservation. This is just a portion of what they put together on their Data Resource Management System and it's the same software that we're proposing to the Commission, similar hardware that we're proposing to the Commission. They put together this map that shows irrigated agricultural and dryland agriculture within the reservation. All this information was digitized manually or else it was downloaded onto the computer on computer tape. Digitized just means it was put into computer language. We understand it on a map and we need to take that information off the map and put it into the computer and so what it generated was it shaded in these areas of irrigated agricultural land on varying slopes and that was one level of their analysis. Another level was they showed areas within two, four and six hundred feet vertical lift of surface water sources on the reservation. So, here is the Fort Hall main canal and they identified areas of land that were in two hundred, four hundred and six hundred feet of this water source and then Bannack Creek came down here. This is shaded in red to differentiate the two sources of water and they showed it two, four and six hundred feet of vertical elevations in the water source.

MS. RUNDLE: I guess what I would just point out is that then of course you could go back in and look at one, three and five or any other combination of distances and lift from the water source. You could change those variables at will and compare the results.

MR. AMES: These are the kind of working maps that they use along the way and when they get all done you print these out on mylar which is kind of a clear plastic. These maps stretch and shrink when they're stored and mylar will conform to its original size and then you have a permanent copy and you can file it for future staff to take a look at. This depiction here is just land on slopes, left is 12%, 13 to 19 percent, greater than 20 percent, aerable soils on the Fort Hall Reservation and you can just go down to the key here and you can take a look at the slopes of the land and overlay that perhaps on top of the elevation criteria and you can quickly and when dry you just kind of take a look at what you're looking at and you'll get a good visual concept of the area and the amount of land that you're taking a look at. The computer generated all this map on that plotter that we saw on those slides.

END OF TAPE #1

MR. AMES: Nothing that's been done in the past, there wasn't very much stored on the computer tape or on these discs. It's pretty much all done manually on maps and we have those maps ...

MR. ELLIOTT: Mr. Chairman? Would any of the cost of this come out of the present budget?

MS. RUNDLE: The bulk of it would come out of the present budget. We would propose, on the second page of this proposal it lines out the money. We looked at several different options of combinations of purchasing hardware or purchasing software. After the experience that we've had with the Apple II and the LMS, I had concern about purchasing equipment that four years or three years or six years down the road would be obsolete even though the Commission has a six year life now, I have real hesitancy to get into computer equipment that's changing that fast. So, we looked at alternative scenarios of purchasing and leasing and the recommendation would be that we purchase the software at this point and that we lease the hardware on a four year lease with an option to buy or to upgrade the equipment at the end of that time. The expenditures for this fiscal year would be \$46,000 and then we would lease the hardware at a cost of \$11,000 a year for the next three years. There would be three more payments.

VICE-CHAIRMAN TWEETEN: Marcia, where do you propose the budget ...whatever the cost to lease the...INAUDIBLE.

MS. RUNDLE: In the contracted services portion of our budget.

VICE-CHAIRMAN TWEETEN: And how much is that per year?

MS. RUNDLE: It's \$19,000 for FY 88 and 89.

VICE-CHAIRMAN TWEETEN: Would the acquisition of this system decrease our need to rely on contracted services?

MS. RUNDLE: The contracted services that the Commission has had in the past has been primarily for legal counsel. And I don't think that this equipment effects that one way or the other.

MR. DAVIS: My God, that's good. We don't want a computer that replaces lawyers.

LAUGHTER

MR. McOMBER: Following up on Gene's comment there, I assume that this equipment will be compatible with the source of your information. Are you going to have any trouble with compatibility, moving information from someone else's source to this computer?

MR. AMES: Good question. Looking at digitizing geographic information for the state of Montana has been looked at by a number of agencies. Currently, there is a program or a group put together called NRIS and that's the National Resource Inventory System for the state of Montana and what they're trying to do is and they're becoming fairly close to doing it is putting together a geographic information system for the state of Montana. The system that we're proposing, at least based on their preliminary suggestions of using ARC info software on their mini-based system for the state, would be compatible with what we're proposing for the Compact Commission. The software package here includes ARC info software for our micro computer. In other areas, in other agencies, ARC info throughout the Pacific northwest is primarily what they're using for software so we'd be able to speak and handle that type of information that other states have used, Washington, Idaho, Utah, Wyoming, North Dakota, so in our area this is kind of the type of hardware software configurations that they're going to. What this is basically is just a work station off of a, someday the state will have a mini computer based system and this is going to be a work station that would tie into that larger system someday when the state puts that onboard and we'd be able to access and work with that. The type of input information Gordon, we've taken a look at that. We've identified, Lynda spent some time looking at what we could digitize and download on to our system and what we're proposing is compatible with everything that we're interested in looking at and downloading onto our system.

MR. McOMBER: Will any additional training be necessary?

MR. AMES: Yes. Thrown into the package, they'll train us for three days when they initially install it and then within six months they will train us for an additional three days after we've had a chance to work on it. Working with LANDSAT imagery is a field all in itself. And we've identified to Marcia the additional schooling that would be necessary for us attend, perhaps one or two seminars of three or four days in length to come up to snuff on working with LANDSAT imagery because it involves working with different types of information and data, primarily, statistical information.

MR. DAVIS: Will it require any additional personnel?

MS. RUNDLE: No, but we may want to revisit the job description for the sixth FTE which the Commission approved to be hired as a civil engineer, grade 14. We may want to add some skills in that position about remote sensing specialists, they're usually geographers, more along that line.

MR. ELLIOTT: What's the backup if there is a problem?

MR. AMES: The maintenance agreements, you mean a problem with the hardware?

MR. ELLIOTT: No, on your software, when you're making your problem.

MR. AMES: We've, as part of their packages to us, and most the other companies included the same thing, they have what they call a software support service and you subscribe to that when you've purchased the software from the company so we will be subscribing to two software support services, one from ERDAS and one from ARC Info or ESRI. And what that does is that entitles you to all the new releases of software that come out while you're subscribing to software support service. They give you toll free numbers that you can call if you're having problems and if it's something that you just can't work out then they'll come up during the warranty period at least and work those out and take care of your problems free of charge. Outside the warranty period then there will be a charge involved with fixing whatever your problems are. These systems, at least the ones that we're proposing here, nothing is brand new in terms of we're just getting something brand new on the market and the bugs haven't been worked out. We looked at systems that are currently in use and we talked to the customers, the Departments in Idaho and they said that they did have problems in a few areas and the companies that they'd worked with were really good about getting back to them and taking care of their problems right away.

MR. McOMBER: Well, Mr. Chairman, I undertook to do this, to computerize the Department of Agriculture while I was there and I bought one of those term G systems and I can tell you it never come out like that by a hell of a long ways and there was considerable problems involved with it and so I think we should be aware of the potential there. As a matter of fact it took nearly a year before the damn thing was really working and I'm not throwing rocks at anybody but I'd just like to make that point. What about charging the thing up to begin with, do you have to start out with a whole bunch of, do you have to purchase other software and that sort of thing to put into the machinery to keep it going and do you have to, is there an annual cost for supplies to keep the system going?

MS. SAUL: It's all kind of included in the packet here that we gave you on the Resource Management System.

MR. AMES: We talked to the people in Idaho and they said that they spend anywhere from \$1500 to \$2000 a year just on paper and ink and printer and that type of stuff just to output the information that they had. Again, their system has been in full operation for a number of years and they're putting out, vast amounts of information for the entire state.

MR. McOMBER: Okay, so that would be in addition to the \$11,280 a year you're looking at?

MR. AMES: Yes.

MR. McOMBER: I have a question for the legislators who did such a fine job for us in the last session in getting those bills in the appropriation through, do you anticipate any kind of a problem in the next

session, I'm assuming this wasn't presented to the legislature as an item in the budget, was it? I wouldn't want to leave you people hanging out on a limb if your fellow legislators were changing the use.

CHAIRMAN GALT: I imagine we'll have the same problem two years from now as we did this year. We're going to present a budget and of course, luckily we had no problem but it will certainly be scrutinized by the Finance Committee. I'd like to ask the Director of the Department of Natural Resources if your Department has any comments on this?

MR. FASBENDER: Mr. Chairman, when Marcia first proposed the possibility of buying an LMS, not knowing anything about computers and not saying I know anything about them now, I've learned a lot of the acronyms and the language on a very temporary basis believe me. When we were looking at this, I thought it was important that the rest of the Department, people who would be dealing with it who had in the past dealt with the LMS that we currently have, take a look at it and give their opinion on the whole thing and see what uses they might make of it. Initially, to be quite honest with you, the response was not that good within the Department. Part of the problem that they had with the LMS was that the base data that they have available to work with right now is not what they would think is of a caliber that would give you the kind of outputs that you should have on it. A lot of that is in the process of changing however and the more that it was discussed the more that the system was looked at, the longer people had a chance to find out what it's capabilities were, the more they found ways or felt that there were ways of utilizing it. Initially, this particular system, if it's purchased, would probably have very little usage with the Department of Natural Resources itself. I think that most of its time is going to be tied up with the Compact Commission doing the sort of things that have been explained to you here today. Ultimately, any negotiation that you get involved in and I found out that as far as the Missouri Basin States were concerned, it is going to be based on the information that you have. Your ability to respond to a proposal or to present a proposal is directly related to the amount of information that you can generate and how well you can back that up. One of the things that we found that was really disappointing as far as the Missouri Basin States negotiations were concerned was that, believe it or not, Montana had more information about the Missouri River and its usage in Montana and how it was going to be effected downstream than a lot of the other states did. That was because a lot of the work that Rich Moy and Gary Fritz and people with quite a lot of foresight have been putting together that information for some time. Our ability to deal with those other states was dramatically improved because of the information that we had. The particular system that you're looking at, at least that's my understanding is probably in excess of our ability to utilize it completely right now. But, the only way that you ever reach a point of being able to handle a system like this is to be able to work with it. If you're going to be looking at negotiations and eventually looking at litigation the work that you're going to have to do is probably going to require that you respond very quickly to whatever is presented especially in a litigative situation. If we are going to crank up three years from now or two years from now to go through litigation and you have to buy the equipment and teach people how to use it your ability to use that in court on a somewhat immediate basis is greatly reduced. It's important I think that the Department and that the State generally begin to move a little more rapidly in some of these areas where technology has far

outstripped us. I would say that the State of Montana is at least ten years behind some of the other states as far as utilizing the technology that is available. This would bring us up to current level as far as that capability. The Department would like to be able to access this particular system. As we learn more about it we would be training our people at the same time that the Compact Commission would be training theirs so that we would develop that capability within house. I think that the institutional knowledge that you build up is extremely important so that as commissions change, as directors change, as things move on at least that capability remains in tact within the Department and that's only going to occur if we begin to train people and educate people how to use these systems. I guess what it all comes down to is that while I think it is a substantial amount of money that's being spent for this particular piece of hardware we can utilize it and the only way we're going to be able to take advantage of the technology and the information that's available is to begin working with it right now rather than have to put on a crash program a few years from now and develop or generate that information. As far as the Compact Commission is concerned it's going to have some immediate benefits for you as has been pointed out with the information that they can generate here. I know when we were, when I was on the Compact Commission initially for a very short period of time, information was being generated as far as Fort Peck was concerned, it was all turned out manually. It didn't really give you an opportunity to ask a lot of "what ifs". If you change things a little bit, change the lift distance, change the amount of area, all of that had to be done manually and it took a long time to do that. But, with a system like this you can get the same information manually, but you can get it so much faster and you can test it for sensitivity to various changes so much more quickly that it dramatically improves your ability to respond or to make changes and to negotiate in instances where there is a shortage of information. It really is a shortage of information or at least access to it as far as the Compact Commission is concerned because the federal government is keeping all of the information that they've generated to themselves for potential litigation and in many instances the Indians won't let you get on the reservations, you're basically dealing with information that is either old or has not been manipulated to the point that you completely understand what the situation is on the reservation. This will improve dramatically your ability to have knowledge about the reservation, about water usage, about water availability, about acreages that are there, all of that will be substantially improved by going to a system like this.

MR. ELLIOTT: Mr. Chairman? Are you ready for some action on this?

CHAIRMAN GALT: Yes, we're going to take some action before we go to lunch.

MR. ELLIOTT: I'd move that we move forward on the proposal.

CHAIRMAN GALT: Pardon?

MR. ELLIOTT: I would move that we move forward on the proposal.

CHAIRMAN GALT: Does everyone share exactly what the proposal was? It's in your packet here and it's right in front of you.

VICE-CHAIRMAN TWEETEN: Option 1?

MR. ELLIOTT: Yup. It's the renting of this hardware and purchasing of the software and I presume that software, all we're purchasing is the right to use it.

MR. AMES: Yeah, the license.

CHAIRMAN GALT: You're talking in dollars then roughly what was mentioned here, \$46,243.32 prior to July 1 of this year.

VICE-CHAIRMAN TWEETEN: I'll second the motion.

CHAIRMAN GALT: It's been moved and seconded, any further discussion? And this will also commit the Commission to \$11,000 per year for the next four years?

MS. RUNDLE: Three.

CHAIRMAN GALT: Three.

REP. SPAETH: Okay, yeah Mr. Chairman, I do have a question on that. Can we really commit that long or can we just commit for the next biennium.

CHAIRMAN GALT: Good question.

VICE-CHAIRMAN TWEETEN: Well, it's not a contractual commitment as I understand it. I mean we can cease making payments on a lease and the lease is then broken and they take back their equipment. So, we're not obligated to spend the money in the sense that they can sue us for specific performance and collect the \$11,000 I don't think. My understanding of the proposal is that we are entering into this lease and we can continue to make the payments but we can essentially break it and get out any time we want if the money is not there and I think there is a specific provision in the lease that speaks to that question isn't there?

MR. AMES: Yes, there is.

MR. McOMBER: It should be understood if it isn't they're apt to sue us.

MR. AMES: If the payment isn't made the leasing company will secure the equipment. And that's stated in the lease proposal.

VICE-CHAIRMAN TWEETEN: Right, but, the point is that they understand that they're dealing with a government agency and our ability to continue with this is dependent on appropriations. Right?

REP. SPAETH: Yeah, do we have, normally there is a boiler plate and that should be included in the contract if the lease is dependent upon future funding. I know the federal government has that and I know most of the state agencies used to include that in their boiler plates.

VICE-CHAIRMAN TWEETEN: Well, Mr. Chairman, I remember seeing something like that in some of the material that I reviewed on this proposal. So, it's in there.

MS. RUNDLE: The requisition request was sent through the Department and sent to the Department of Administration and they are in the process of reviewing it, so I assume that both that provision and any other standard provisions that should be included in that long-term lease would be inserted by D of A if we forgot anything.

CHAIRMAN GALT: Any further discussion? Ready for the question? Question being called. All those in favor signify by saying Aye?

UNISON: Aye

CHAIRMAN GALT: Opposed? Well, I guess we're getting in the data gathering business, but I would like to remind the staff and the Commission members that that's not our purpose in life is to gather data. Our purpose with life is to come to compacts.

VICE-CHAIRMAN TWEETEN: So, you can use the computer but you can't have fun with it.

(Laughter)

CHAIRMAN GALT: Let's don't get so covered up with gathering up data that we forget our original intention is to quantify water rights with federal agencies.

MR. DAVIS: That was my question. The water rights have all been filed with the Department now, will they be placed on your computer or do they have a list by watershed and of all the water rights. I mean say you want to plug in, we're going to go look at Forest Service, one of these creeks on the Forest Service and we want to know what the water rights are.

MR. AMES: That information is not on computer tape presently. We would enter that once and then we'd have that information.

CHAIRMAN GALT: But it is available?

MR. AMES: It's available.

MS. COTTINGHAM: It's on Department computer.

MR. DAVIS: The Department has it on their computer.

CHAIRMAN GALT: You bet.

MR. AMES: Yes.

MR. MOY: But see that's the biggest advantage of this system is that all the other western states are using it primarily for the adjudication and the identification of water rights on maps as well as having them filed in the data base system.

MR. DAVIS: Well, we're going to discuss after lunch about these other things I guess.

CHAIRMAN GALT: Yes, we're coming back for a short meeting after lunch because three or four of us have got to go to another meeting prior to 2:30. So, let us not formally adjourn but let us break until a quarter after one and come back. Is that alright with everyone? Gordon?

MR. McOMBER: Unless you want to do it now?

CHAIRMAN GALT: Okay. We'll do it now. Good enough. Alright.

MS. RUNDLE: What do we want to do?

VICE-CHAIRMAN TWEETEN: Finish.

CHAIRMAN GALT: Well, all we had left to do I believe was go into Executive Session for the discussion of Fish and Wildlife and I remind the committee again that there is a handout in your packet from Lynda and Greg, I've got it here somewhere, oh, this is a new one. Here it is. Do we have to kick these people out for Executive Session?

MS. RUNDLE: No.

CHAIRMAN GALT: No, I don't think so either. Here's some more. You don't have enough paper, here is some more. There are some new ones. This is dated May 9th from Marcia. Mark and Mitch Etchart are on it. Mark and Mitch Etchart are quite prominent. Have you got this latest release marked May 9, 1987, conflicting claims on the CMR National Wildlife Refuge? Okay, we're in session to discuss the Fish and Wildlife Service and where we stand with them and to get some orders from the Commission as to where the negotiating committee will go.

MS. RUNDLE: Mr. Chairman, at the last Commission meeting it was the issue of approval or a delegation of authority to the negotiating team was discussed and at that time the Commission direction was that the negotiating team should meet with the U.S. Fish and Wildlife Service team and after that meeting come back to the Commission for approval. We discussed with Cheryl Willis a number of questions, identified some areas of concern for her and asked if we could set up a negotiating team meeting during the legislative session and could it be in Helena. She declined to meet with us at that point because she is of the opinion that before they want to meet with us they want written notice from the Commission as to where they stand. That is, they want the Commission to either say we accept your claims with these exceptions, we reject your claims for these reasons, we have these problems, whatever. They're just not willing to meet not knowing what they're coming into and they believe that it will be most productive if the issues are identified ahead of time so that both sides can respond with their supporting documentation. Therefore, Senator Galt asked that this be on the agenda for this Commission meeting. Essentially, when we were first discussing U.S. Fish and Wildlife Service Gordon was chairman at that time and set out three issues that we should look at, they have many sub-issues, but first of all to look at the entitlement to the land. That is, are the lands reserved and if they are reserved what is the priority date. We have previously presented information

to the negotiating team that we are comfortable that all the lands are reserved with the exception, there's an issue with regard to the National Bison Range. I included in the packet, mailing packet last time a two page memo which at the end says there is a ten page memo on this issue if you like, but it's easier to talk about. Essentially on the National Bison Range what happened was that the Flathead Reservation was identified in 1904 that it would be open to allotment and that the lands would be surveyed, they would be allotted to individual tribal members and that it would be open to homesteading. In all the cases that the United States Supreme Court has so far addressed the issue of reserved water rights it has been with regard to reservations from the public domain. That is, they've never had a case before them where the reservations were from a prior reservation. In this case a number of reservations occurred on the Flathead Reservation before it was officially reverted to the public domain and open for homesteading. That is, in the Allotment Act of 1904 lands were reserved for school trust purposes to the state. They were reserved for church purposes to the various orders that had missions up there. They were reserved for power site purposes and in 1909 they were reserved for the National Bison Range. Now, the issue of can you technically reserve lands when they're not in the public domain has come before the Ninth Circuit, before the Colorado Supreme Court, and before a federal district court in Colorado. It was also before the Supreme Court in the Arizona v. California case but the issue was never raised to any explicit level. But the Supreme Court did identify and grant reserved water rights for national wildlife refuges. That had previously been reserved for reservoir purposes and power site purposes. So, the long and short of that is that I believe these lands, although technically not in the public domain at the time the National Bison Range was established, are reserved lands within the meaning of the federal reserved water rights doctrine. I do quarrel though with their presentation of 1855 as the priority date. I think that it's specious for them to argue that the purposes of the Indian reservation encompass reservation of those lands to protect a national bison herd or bison at all because at that point there were no bison in the valley. The bison didn't come until 1873 when Walking Coyote brought them over from the Milk River. In addition, the inclusion of broad, broad purposes like that would eliminate the distinction that the Supreme Court has carefully drawn between primary and secondary purposes of reservations. So, the short of that is that I would propose that we take 1909 as the priority date. Even though there were two acts prior to that which said to the president essentially go reserve lands for a National Bison Range. They said in the general area of the Jocko and the Pondera rivers. The next one further authorized reservation of another 12,000 acres and didn't specify location. It wasn't until the third document that the president specifically approved a schedule of lands where lands were identified by township and range. My argument is that reserved water rights couldn't attach until the lands had been specifically identified so that you would know what lands they were appurtenant to. So, I would argue for a 1909 priority date. That is and will be subject of discussion though. They assert 1855. I don't know how strongly they feel that. I would not recommend that you accept 1855. It could potentially create conflicts with the Confederated Tribes because that is their reserved water right date. The one thing that I would suggest that we might want to do is contact the Confederated Tribes and see where they are at on this issue.

MR. McOMBER: May I add Mr. Chairman that during our visits to the range the Indians stated, one of the officials stated that didn't, they had no problem with it but I agree with Marcia that under the circumstances we should have some written confirmation from them that there's no problem.

MS. RUNDLE: Any other questions? Then on the issue of priority dates there's one other. CMR has three priority dates. The CMR UL Bend group of refuges has three priority dates. The CMR was reserved as the Fort Peck game range in 1936. The UL Bend was reserved separate from that at a later date. In addition, there are public water hole reserves, public springs that were reserved in 1926. So, some of the reserved water rights in the Fish and Wildlife Service actually predate the establishment of the reservation. They were made by explicit reservation of the watering places and it was done on a blanket basis and then specific sites were identified in each of the western states. And the purpose of that was just to make sure that no one private party could monopolize a water source on the open range, that access for other users would be guaranteed. That's why there are three priority dates on their rights on the CMR. As for quantification, of course the purpose of the Commission is to identify the minimum amount needed to fulfill the purposes of the reservation and so the staff has done extensive technical work as to the technical validity of the claims and I would like Lynda to address that if you would. You have a handout that's entitled "Reserved Water Right Recommendation". There's a separate page for each of the wildlife refuges.

MS. SAUL: Does everyone have a copy of that? I guess currently the staff has reviewed the technical claims that were put before us by the national wildlife refuges on the five different wildlife refuges and currently no claims have been deemed technically unacceptable. All the claims that we've looked into, either we proposed to the Commission or recommend to the Commission to either accept them or that we need some further information to validate those claims or to actually review them. Maybe what's best, we've got the five different refuges across the board in the front. I'll just go up and briefly talk about them. This one is the CMR UL Bend National Wildlife Refuge. It's in eastern Montana. There are claims for intermittent and perennial streams. They are wildlife drinking water claims. There are springs, wells, 212 reservoirs and then some future use claims, both surface water and groundwater. All of those the staff recommends that you accept those claims. The one claim that we need further verification on is the Missouri River claim. They have not given us the quantification on that. The streams are outlined in blue. There's 212 little reservoirs, stock pond reservoirs scattered all out throughout CMR. Do you have any questions on CMR?

MR. ETCHART: Well, I've got a couple of questions Mr. Chairman. For example, I think the first handout she had here had to do with conflicting claims. And a lot of the conflicting claims on those reservoirs, many of those reservoirs were built by the government, BLM, specifically prior to the time that Fish and Wildlife Service took over. And I think that the livestock owners that are filing on them, they are asserting some kind of claim based on use and probably some input in terms of maybe matching the cost of building it or at least maintaining it over the years. But, I specifically, there's two items here on this deal here. They've got, there are two wells and I see they're conflicting claims, but I know in the case of these wells, I know something about them because I drilled them and these were drilled for

livestock water at no expense to the government and they are specifically for livestock use. And I'm wondering by what basis the feds can come in on some kind of a reserved water right on a well that they had no use for the water in the first place and didn't have anything to do with getting it there. Does anybody have a reaction to that?

MS. RUNDLE: Well, there are a couple and one is sort of legal and one is sort of technical but Susan went through and first of all we went through and looked at the claims the U.S. Fish and Wildlife Service filed. Originally they filed all of their claims including for reserved water rights in the Water Court. Then when the temporary decrees came out they had, the Court had failed to recognize water rights for livestock purposes or they did it in a way that the Fish and Wildlife Service wasn't happy with. It was a remark that said this claim will also be used for wildlife drinking in addition to livestock drinking. Those kinds of statements were made on the remarks. So, originally what we did was look at the claims that they had filed and checked to see if any private persons had objected to their claims and no one had. But, then we went back through and looked at whether or not the Fish and Wildlife Service had objected to any private party's claims and Susan took a look at that and I'd like you to comment.

MS. COTTINGHAM: What I did was take a look at the objection lists that the Water Court published for Basin 40E which covers this land area involved and there were 72 objections filed by the U.S. Fish and Wildlife Service against private stockwater claims in that basin. So, what I did is go down to the microfilm and make a copy of each one of those claims then what Lynda did was take the BLM land ownership map or the CMR Wildlife Refuge ownership map and plotted each one of those claims and the legal land description on that to see whether there were any conflicts with, to actually look at the land ownership and then what I did was compare every, we have a proposal from Fish and Wildlife Service for all these different claims and things and what I did was take the legal land description on each one of those private stockwater claims that were objected to by Fish and Wildlife Service and plot the township and range against all the ones that the Fish and Wildlife Service has actually proposed we compact for. So, what this sheet here shows you is which one of the ones that we looked at are private stockwater claims that have been objected to by Fish and Wildlife Service that are also on their proposal for compact because we assume that those are the ones that we need to worry about if we're going to finally get to a compact. And so that's what you're seeing here. And what you have here on this chart is how they were claimed by the private party, the legal land descriptions and then as what Lynda plotted on the land ownership maps, what the actual land ownership issue is. I didn't look at any of the legal issues involved or some of the concerns that you have Gene, but basically just technically looking to see and so what we have are 19 private stockwater claims that have been objected to by Fish and Wildlife Service that are a part of what's been proposed for compact. Now I should note that these don't include any of the claims for use of Fort Peck water directly out of the lake because we haven't yet had a proposed quantification from the Fish and Wildlife Service. If there was any information on the private claim like sometimes there's an affidavit filed with a claim that it might have said the BLM built the well or this spring or whatever I noted that. Otherwise there wasn't any history necessarily on that particular claim about who built it or whatever and I have noted different priority dates that were claimed by the claimants on there so

that we can compare. There are only three out of those that we listed that have actually claimed a senior priority date to the Fish and Wildlife Service priority date.

MR. ETCHART: Well, I guess I just have one other question and that is whether or not these people would have been notified that Fish and Wildlife Service had in fact objected to their filing so they have a chance to respond?

MS. COTTINGHAM: Yes. The way the Water Court system works and this was all going on in 1985 and I noted that in the cover memo, they issue a decree, they have a 90 day deadline for filing objections, then what they do is they take all the objections and they publish a complete list and then when they publish the objection list they send each claimant a notice and they'll fill in the blanks and it will, your brother probably got a notice saying the U.S. Fish and Wildlife Service has objected to your claim for the following reasons, ownership or whatever. So, then those issues and then your brother has a chance or whatever claimant has a chance to file Notice of Intent to Appear in front of the Water Court. So, eventually the Water Court will have a hearing on that particular issue because objections have been raised and they should have all gotten a notice from the Water Court in Bozeman that those objections were made.

MR. DAVIS: Inturrent were there objections filed like by Mr. Etchart as to the federal filing?

MS. COTTINGHAM: No, that was the first thing we looked at. I went and looked at all the Fish and Wildlife Service claims in that basin and none of the private parties objected to Fish and Wildlife Service. They objected to their own because of this issue that Marcia mentioned before about wildlife use for water. But, then it turned out that Fish and Wildlife Service had objected to a number of these private claims for stockwater so that's what this summary is designed to let you know about.

MR. ETCHART: Well, one thing that might be of interest to that, I think for example that BLM has objected to every filing on BLM Reservoir and in the case, and they did it on some that we filed on, in every case where the original operator would come back and say we'll meet you in court they've dropped their objections. But, they're getting a lot of them by default as I understand it. A lot of guys say well the government is objecting so what can I do so they don't do anything about it. It's the people that have responded and said okay we'll see you in court then the government has backed down and I'm sure that's not a matter before this Commission but I think it's kind of interesting. In other words they're kind of bluffing.

MR. DAVIS: Well, in other words did Mark file an objection then to their claim?

MR. ETCHART: I have no way of knowing.

MS. RUNDLE: No, he didn't.

MR. DAVIS: In other words in the situation you're talking about if he had they might have backed down or is that different agencies?

MR. ETCHART: Well, in the case of BLM, the BLM has backed down every time.

MS. RUNDLE: The legal issue is a really interesting one and essentially it's just who owns the rights for stockwater claims on federal lands. Is it the private lessee or is it the federal government. And the federal government I believe is probably relying on the 1985 state case where State Lands filed an appeal to the Powder River Decree, the Pettybone decision, and John North just happened to represent State Lands in that case, no, didn't you?

MR. NORTH: No, I didn't. Lyle Manley did.

MS. RUNDLE: I thought you were listed. But, you would know what the, essentially the ruling was, correct me though John, that the state government owns the water right on state lands and the lessee is entitled to compensation for his improvements once he loses his lease but he's not entitled to the water rights. You can't have successive lessees walking off with water rights. The reasoning of the Pettybone case is persuasive for the federal government as well. That is if you have a revokable lease to graze on lands and say you lose that lease and a new lessee comes in he would be in a position essentially of leasing the land from the federal government but needing to get the water through a lease with the private party. So, I think the federal government can come in and make some strong arguments. I think though that in the Pettybone case there were a lot of distinctions that go just to state lands, to the nature of state lands, the purposes for state lands. But, all those issues of conflicting ownership and the whole argumentation will be decided by the Water Court and ultimately I suspect by the Montana Supreme Court.

MR. ETCHART: So, it really doesn't effect us to that extent?

MS. RUNDLE: Well, it really doesn't. I mean other than for the Commission to know that those issues are out there and that it will come up. Once the reserved water rights are entered into a compact that goes into the Water Court process and it will essentially go back through this process. A preliminary decree will be issued. It will be opened up for objections then all the parties who were involved before can come back in and object to the terms of the compact and presumably they will be able to object on the basis of ownership, quantification, all of those objections that they can make to any other water right. So, it will be decided by the Water Courts.

VICE-CHAIRMAN TWEETEN: Mr. Chairman, Marcia we essentially compacted that process away in Fort Peck didn't we?

MS. RUNDLE: Yes, by saying that if the Water Court makes any changes. Well, that's not just, that's also in the law. That's not just in a compact.

VICE-CHAIRMAN TWEETEN: Okay, do you contemplate a similar arrangement in this compact or are we going to specifically reserve the possibility that the Water Court may come in and enter a decree that gives Fish and Wildlife Service less water than were compacted?

MS. RUNDLE: Well, by statute, the Court can't make any changes without, I mean, if the Court makes changes the compact is void. It can be changed only with the written agreement of both parties.

VICE-CHAIRMAN TWEETEN: Then you contemplate a similar provision in this compact?

MS. RUNDLE: Well, it's in the statute. You'd have to waive that statutory provision I guess in the compact to do what you're suggesting.

VICE-CHAIRMAN TWEETEN: Right, well, it seems to me that if the legislature ratifies a compact that has a different provision in it the statute is amended by implications then. Okay.

MS. RUNDLE: Right. The whole issue of subordination though we will get to a little bit later after we go through the rest of the technical recommendations if you like. Any more questions on CMR?

CHAIRMAN GALT: Your last sentence here saying that the issue of ownership of these rights is before the Water Court. How can they be in front of the Water Court concerning these rights and then in the same area be in front of, trying to get a compact on them? They've first filed in the Water Courts and then they requested to come in and compact. How can they be in two arenas?

MS. RUNDLE: Well, if they successfully compact with the Compact Commission they will withdraw those filed claims but the issue will remain because it wasn't that private parties objected to the U.S. Fish and Wildlife, it's that they've objected to private parties and that will stay there and that issue will be decided in that context separate from the reserved water issue.

CHAIRMAN GALT: Okay.

MS. SAUL: The second Fish and Wildlife refuge that I'd like to talk about briefly is Benton Lake. It's north of Great Falls. It's about 12,000 acres and the list of claims is hopefully before you. We, I guess basically what the supply they want are all these little unnamed tributaries which mainly contribute water just from returning irrigation flows and then also the big claim is from Lake Creek. This is a closed basin by the way. There is no out drainage. The Lake Creek, they get water from that, 14,000 acre-feet I believe. Mainly it is pumped over a divide from Muddy Creek which is irrigation, water from the Greenfields Irrigation project. We recommend to the Commission that you accept all these little tributary flows and we yet need to verify the Lake Creek flow because of the way they went ahead and quantified what this amount was. They said they'd quantified it by changes in that water level elevation of the refuge. So, we just need to check out their figures on that.

CHAIRMAN GALT: Any questions?

REP. SPAETH: Mr. Chairman I have, just in each of those, in the technical recommendations or whatever, are talking about any major private uses in that area?

MS. SAUL: We've looked into that and private uses would not be affected by accepting the issues here.

REP. SPAETH: Okay, because that's an important criteria for me anyway.

MR. DAVIS: What do they ground their water rights claims on, I mean what's the language they use?

CHAIRMAN GALT: Reserved water rights for the purpose of the reservation?

MR. DAVIS: But, I mean they have to have whatever is the minimum amount they need for a particular use.

MS. RUNDLE: Well, because this is a closed basin and essentially what they get is all the water that comes down those little tributaries every year, there's no out flows, so just whatever nature provides they get. Therefore, they quantified it sort of by estimating the runoff through precipitation, modeling methods for the basin.

MR. DAVIS: As a practical matter whether you've granted some or whether you didn't the world wouldn't change at all would it?

MS. RUNDLE: No.

MR. DAVIS: I mean you are going through all this exercise but the water is still going to be there, no one else can use it accept...

MS. RUNDLE: There are some users on those little tributaries that I believe they are senior.

MS. SAUL: Here's their refuge boundary so they could pull water out here, other private users.

MS. RUNDLE: Acceptance of the claims would sort of freeze the status quo as it is now and would probably preclude future development on these little tributaries, but these are tiny tributaries.

MS. SAUL: We're talking 23 acre-feet, 50 acre-feet of water a year. Annual precipitation out here is 12 inches a year. Annual evaporation is 58 inches a year. So, there's not a whole lot of water.

MR. DAVIS: Would the affect of that prevent someone from developing a upstream stockwater pond?

MR. ETCHART: I think it could.

MS. SAUL: Um-hmm.

MR. DAVIS: Well, that might be something a person should consider.

MR. AMES: Taking a look at that the construction costs of putting in a stockwater impoundment on any of those tributaries, we haven't really gone into real great detail, but the amount of water and since they're just, they don't flow year around, they're just temporary streams, they just don't have much water, to put an impoundment in there would only store water for like 2 or 3 weeks out of the year because it would evaporate quicker than any water that comes into it. There isn't very much flow in those except for in the spring time and with evaporation so much greater than the inflow they're going to dry up in a short period of time anyway without say, a well in the area to supplement the evaporation off the reservoir. The effect in the surrounding areas since they're just a small flow in such an arid place, they're such short term it really wouldn't be a very economically feasible place to put in a reservoir site even though it's a thing that we addressed or we took a look at when we analyzed the claims, but there really wasn't much potential for that to occur in this particular area.

CHAIRMAN GALT: Well, they'd have to go to the Department to get a water right for that and these would be senior to them.

MR. AMES: They'd have to file a claim.

MR. McOMBER: Under state law if they wanted to go the other route, they'd still have an effective date that would preclude a major diversion is that what you're saying?

CHAIRMAN GALT: Yeah, that's what I'm saying.

MS. RUNDLE: Right. They're entitlement is to as much of the unappropriated water as of 1936 as is necessary to fulfill the purposes of that reservation and in any court I'm convinced they could easily make the case that they need all the water that's coming down those little tributaries for that refuge for breeding grounds for ducks. It's a federal project that was built pursuant to the Migratory Bird Act with Canada and I think you'd be pretty hard pressed to persuade any court that they didn't need that water. There's not that much water there and in fact they supplement what does come down by this contract that they have with Greenfields Irrigation District which just says that what's provided naturally isn't enough to fulfill the purposes of the reservation, they have to supplement it for contracted water.

MR. DAVIS: Could it in anyway, Marcia, have any effect on stockwater rights in the future since stockwater rights were not required to be filed up to date? I don't know.

CHAIRMAN GALT: Well, when those creeks run through, when they run through the private land of course the cattle can water at it, but I would say it would preclude perhaps getting a permit to build a stockwater reservoir.

MR. DAVIS: Well, could you put a limitation on your negotiation, some limitations on how they can use the right as well. They have all the unappropriated water subject to the fact that they won't change the stream or interfere with prior stockwater rights or something like that. Where they couldn't force you to keep the livestock off. That's what I'm concerned about and in some of these negotiations like the Forest Service and those people because they continually want to get you off the forest anyway for one reason or another, you know.

MS. RUNDLE: I think you could propose something like that, but our analysis suggests that they are making very minimum claims and they've already made the claims in the Water Court without anyone objecting to them. So, I would assume that if they have any major problems or we try to insert any major provisions of a subordination kind that what they'll do is just what the Water Court gives them and argue the legal issue about fish and wildlife drinking rights in the Water Court. They just won't fool around with it which is fine if that's the route we want them to take.

MR. DAVIS: The Water Court now isn't really taking up drinking rights.

MS. RUNDLE: Well, what the Water Court did was they said, they identified 30 gallons per animal per day drinking water on the streams and they granted them that right in the temporary preliminary, but then in the remarks they said this water is also used, or this claim is also used for wildlife drinking.

MR. DAVIS: I'm not thinking so much in terms of this right here and I have no statement to make at all except whether this will be used as a precedent and when we get to the Forest Service or we get to somebody else. That's my only observation on that as to whether, where we're position is. In other words it's not going to affect this I can see that very easily. However, whether it affects something else...

MS. RUNDLE: Well, the claims that have been made by the Forest Service to date haven't included drinking water claims for stock and they have left water in the stream. That is, they're not claiming the entire amount so there is water there that can be appropriated under state law or whatever.

MS. SAUL: The third refuge is Black Coulee National Wildlife Refuge. It's north up above Harlem, Dodson, that area. It's a closed basin as well. I can't remember the exact size, it looks like about 6 sections. Let's see, Black Coulee, this one stream, that's their only claim on it, 991 acre-feet of water a year.

REP. IVERSON: Is that a natural pond...

MS. SAUL: No, it was actually created.

MS. RUNDLE: It's another fixed elevation dam that whatever flows in stays. This was the one that we discussed before where Gene suggested that maybe the only issue that we had identified was something that neighbors ought to work out between themselves. There are three stock ponds that have been built after the refuge was created and they were all built by the same individual. They're upstream on the tributaries and they do prevent the refuge from filling to capacity every spring.

MS. SAUL: Basically the birds go there though. The birds go up to those other stock ponds if there is not water down here and the refuge doesn't seem to have a problem. They kind of feel that good relations with their neighbor is more important than them getting the water.

MR. ELLIOTT: What year was that established?

MR. McOMBER: Were they all about the same time?

MS. RUNDLE: I think about 39. They were all pursuant to the Migratory Bird Treaty with Canada.

MR. AMES: January 28, 1938.

VICE-CHAIRMAN TWEETEN: So their position essentially has been as long as there is impounded water somewhere for the ducks to land on they don't care if it's in their reservoir or the stockpond?

MS. SAUL: Yes.

MS. RUNDLE: It's also a refuge that is managed from a distance. The manager of Bowdoin is also responsible for Black Coulee. Those are pretty small communities up there and that's the attitude that they've taken that they can live with the status quo the way it is now. They haven't initiated any action against Mr. Billmeyer although they could have, prior to this date. They would continue to have that ability.

VICE-CHAIRMAN TWEETEN: Did anyone object to the claim that was filed on this?

MS. COTTINGHAM: I don't think that there's been a decree yet.

MS. RUNDLE: I don't think it is.

VICE-CHAIRMAN TWEETEN: So, objections wouldn't have been filed yet?

MS. COTTINGHAM: Right.

MS. SAUL: The next refuge is the Bowdoin National Wildlife Refuge. This is located near Malta. Let's see, issues on the next one. Bunch of little tributaries here that are intercepted by the Bowdoin Canal. The reason we have yet to verify these is we're requesting that the Fish and Wildlife Service present us with new volume or acre-foot, I guess, volume calculations of the water they're requesting from these streams because it is intercepted by this canal. We're expecting the volume of water to decrease from what they claimed originally. So, we've got that listed as a verify. They've got a couple of wells that we're recommending that you accept. A spring fed pond and, I guess the major issue is, here is Beaver Creek that flows, starts up in the Little Rocky Mountains and flows into the Milk River. When it passes the refuge at this point there's enough flood flows in this stream to backup this ditch that will go in a, I guess, a manmade ditch and flood the refuge, flush and flood the refuge. That's an issue that we still need to verify and talk over with our technical staff. Mainly the issue on that is how often, we know it occurs I guess about 3 years out of 10 or so but we just need to get some more information confronting that also to determine if a flood flow is a legal claim for a flow.

MR. ETCHART: Another thing Lynda, they also get water out of the irrigation canal in there.

MS. SAUL: Right, they do get water from Nelson Reservoir which they purchase.

MR. ETCHART: No, it's not from Nelson. It's from the Dodson Dam and it's the same canal that fills Nelson. They take part of that off and drop it into Bowdoin, but not a high percentage of it I don't think.

MS. SAUL: Right and that's not a reserved.

MR. ETCHART: I don't know the status of the arrangement at all.

REP. SPAETH: Yeah, on that flood where you, was that constructed after the reservoir or the reserve was set aside?

MS. SAUL: Yeah, it was. It's not a natural channel.

REP. SPAETH: It seemed to me that that wouldn't be a reserved right that that would be a use right that they'd have to claim either under state law.

MS. RUNDLE: Well, the entitlement again is to as much of the unappropriated water that's available as is needed to fulfill the purposes of the reservation. We've looked at what kind of amounts are necessary to get water in there and certainly the flood flows that they're getting every two or three years are the flows that come in and flush that out. They literally need those flows to fulfill the purposes of that reservation. Because there isn't enough natural flow they also do contract with Fresno. They participate in the construction costs of Fresno Reservoir and as a result get, are entitled to a certain amount of water. That entitlement though that is contractual is subject to irrigation rights. Irrigation rights have a priority over their contracted rights here. I guess we figured out that the amount that they bring in every year is just about enough to cover the evaporation losses. So, the basic flows that they get are those flood flows and without them they literally don't have a reservoir. Now, in effect what you would be doing by accepting that flood flow as a reserved water right claim would probably be assuring that they would have the ability to challenge any substantial new impoundments upstream that would preclude them getting those spring flood flows. Beaver Creek is a huge drainage and it has mega problems of its own. Susan looked at the claims up there because the Commission has always been interested in trying to protect existing uses. Existing uses, actual uses, are going to be able to continue and they will continue to get these flood flows. But, claimed uses, as filed in the Water Court, are absolutely out of control on this basin. On this handout which says 'Subordination of U.S. Fish and Wildlife Service Claims' that was the one we gave you as an example of some of the reasons why it would be very difficult to insert subordination into this compact. Would you like to comment on Beaver Creek on what you did there?

MS. COTTINGHAM: Just real simply. Again, this is a basin that hasn't gone to temporary preliminary decree so we don't necessarily have a lot of field work and verification work, so all we can do is go to what was actually claimed in the SB 76 claims. What I did was, and here is another thing that is on the computer in the Department is you can go to the computer, you can give them a priority date and say punch out all the senior claims to that and then we can take a look at what conflicts we have. What I did was go and look at that computer printout and there were a couple of immediate problems that jumped out at me. One was one particular individual that

claimed 2,500,000 acre-feet for stockwater. I don't remember the names. And then there was another claim that essentially had 14 duplicate claims for the same acreage which is fine. They're not illegal claims or anything like that. They might be different priority dates, different points of diversions, but they essentially were different claims to water the same 2,000 acres. So, what I did was just drop out and do some calculations based on the Water Court standards for that particular stockwater claim and also do some volume calculations for those 2,355 acres. Once those two really obvious duplications or overclaims were taken out then what I did was total the senior filed claimed on Beaver Creek and then Lynda plotted it on the computer. As you can see on here, just the filing for SB 76 totaled 190,000 acre-feet a year. This is the estimated mean annual flow of the creek. So, I guess to me this is a very graphic illustration of how people have claimed things that they're not actually using and you couldn't possibly be using this amount of water because this is the actual flow of Beaver Creek. So, there is some difficulty for us as a technical staff to take just the claims and use those as a basis and I think that's maybe why some of the computer modeling can help us in the future because it's very difficult to say these are the actual conflicts just by using the paper, the claims that were filed on SB 76.

MR. McOMBER: That fellow must have come from Dillon. They file as many rights on the Beaverhead up there as runs out of the state at the Missouri River, in the Missouri River, isn't that about right Carl?

MR. DAVIS: We'll use it all too. Use it or lose it. How many acre-feet do you allow per acre when you base it on acreage basis?

MS. COTTINGHAM: It depends on the water. What I went by was the Water Court standard has a standard for climatic area around different areas in the state. I can't remember what this one was. I have all my calculations somewhere. But, in different basins they have allowed certain "duties" of water and that's what I simply calculated for and then of course the stockwater claim is 30 gallons per AUM per day, so what I did was go and look on the guy's claim and see how many AUM's he had claimed and then calculate that volume and plugged it in. So, those claims aren't just dropped out of here. They're included in here, but they're reduced somewhat hypothetically.

MR. McOMBER: A question Lynda. What do you mean by Senate Bill 76 claims? I may have missed something along the way there, but in reference to Beaver Creek here you refer to senior Senate Bill 76 claims on Beaver Creek. What's a Senate Bill 76 claim?

MS. COTTINGHAM: Well, that's simply the claims that were filed pursuant to the passage of the 79 Act. I call it Senate Bill 76, but the claims that were filed in the Water Court by 1982.

VICE-CHAIRMAN TWEETEN: Claims in the Water Court.

CHAIRMAN GALT: Pre 1973 claims.

MR. McOMBER: I've never heard them referred to as Senate Bill 76 claims.

CHAIRMAN GALT: That's what set us up, that's what created us.

MR. McOMBER: I know, but I just haven't heard those claims referred to that way.

MS. RUNDLE: That's probably internal Department jargon. It's a S.B. 76 claim.

MS. COTTINGHAM: I guess it distinguishes it from the 73 Act and you know, just instead of referring to it as the water user.

REP. IVERSON: Pre 73 claims filed with the Water Court.

MS. RUNDLE: One other complication on Beaver is that the Fort Peck Tribe has claimed an 11,150 acre-foot claim as a use right for some irrigation that's being done on Beaver Creek. That would have presumably an 1888 priority date. It's up at the headwaters on Big Warm Creek, some such.

CHAIRMAN GALT: Which tribe, not Fort Peck, that must be Fort Belknap.

MS. RUNDLE: Fort Belknap, I'm sorry.

MR. McOMBER: Mr. Chairman, in regard to these exaggerated claims and subordination, I think we've, with a couple of other entities, we've suggested instead of the Commission trying to quantify those claims and sort them out language to the effect that the amount of water specified in the final decree will be subordinated. Have they been approached, Fish and Wildlife Service been approached with that approach?

MS. RUNDLE: I don't believe that's been the subject of discussion.

CHAIRMAN GALT: I don't think its been discussed.

MS. RUNDLE: The point of this memo was to point out how difficult it would be for us to give them any kind of assurance as to even the ball park that those claims are going to be in. You remember on Fort Peck where the tribal right was subordinated to existing water uses, the Commission staff went out and did field verification and tried to identify as closely as it could the amounts of water that are being used on the Fort Peck. If you want to do that kind of thing even just with Beaver Creek it would be a substantial undertaking and considering the amounts of water that we're talking about I don't, I mean that's up to you to say whether that's a good use of time. These are just senior not even junior ones. I guess the point on Beaver Creek is that the water that's being used is nowhere near this amount, the water does come down, they do get the flood flows every 3 to 5 years. Recognizing that right might preclude future large scale stock diversion ponds or irrigation too potentially.

MS. SAUL: The only water they take from Beaver Creek is when it reaches this point at flood stage and floods back up this channel. They don't pull any water out unnaturally. It just naturally diverts back this channel and only when the Beaver Creek floods which is once every 3, 4 or 5 years.

MS. RUNDLE: Any more questions?

MS. SAUL: Okay, and the last one is the National Bison Range. It's near St. Ignatius. Let's see, there's a number of little streams that originate on the Bison Range and flow off and those they have not quantified. They just claim those as wildlife drinking claims. So those yet need to be verified, find out if they are intending to quantify them.

MS. RUNDLE: As a practical matter, it doesn't matter. The water originates on the bluffs.

REP. IVERSON: Starts there and runs off and nobody can use any of it anyway.

MS. SAUL: Right, until it leaves the refuge, right. They've got a bunch of little glacial potholes up there and a bunch, like 86 springs within this small area and we've recommended that the Commission accept those claims. There's a couple of questions we still have remaining on the display ponds and natural trail ponds.

MR. DAVIS: Did you want a motion to sign this compact with them or would that be premature?

CHAIRMAN GALT: Yes, that would be premature.

VICE-CHAIRMAN TWEETEN: Mr. Chairman, Marcia, where are we now in terms of what we have to get back to them to keep the ball rolling on this compact?

MS. RUNDLE: My recommendation would be that the Commission decide the extent to which it's willing to accept the claims as recommended. That is, that we verify certain ones, that we ask for clarification on other ones, but that in the main we're recommending that they be accepted as proposed. If we can send a letter of general acceptance of the claims noting the exceptions, identifying the issues that remain and sending them a list of questions and clarifications, then I think we can meet with them as soon as possible.

VICE-CHAIRMAN TWEETEN: Mr. Chairman, I move we adopt the staff recommendations.

MR. DAVIS: Second.

CHAIRMAN GALT: Any further discussion?

MR. McOMBER: Well, I really haven't followed this too closely. I guess I just had one question. Does this in any way jeopardize legitimate claims of non reservation users? That hasn't been resolved yet. We haven't really addressed it. By making this commitment?

MS. RUNDLE: Well, accepting their claims with those priority dates conceivably could impact some users if and when the Fish and Wildlife Service felt that they needed to go in and get an injunction against someone building a new stockwater pond or maybe to get Mr. Billmeyer to breach his, one of his reservoirs up there or something. That potential is there. But that potential exists right now. If they want to they can go in tomorrow and say Billmeyer breach your dam, we have a superior right.

REP. IVERSON: We want our ducks to stay home.

MS. RUNDLE: Yeah, then they're issued. Then the issue would be before the Water Court or before a district court. I guess they'd be going in before a district court, probably a federal district court to enforce their right.

MR. McOMBER: Well, I guess in this case we kind of abandoned our philosophy of attempting to protect other rights, non federally reserved rights?

MS. RUNDLE: It's certainly up to the Commission to decide.

MR. McOMBER: I know, I know, I'm just asking for a clarification.

CHAIRMAN GALT: Well, as chairman of this negotiating committee no, that will not be abandoned.

MR. McOMBER: When you recognize these rights if there's a conflict ahead that you would affect...

CHAIRMAN GALT: I don't think the motion was just accept these as is. I think she also said with these questions about some of these ones that had to be verified, is that?

MS. RUNDLE: Well, the extent to which the Commission wants to pursue subordination is certainly up to you. All that we have pointed out is that the only potential conflict is in a very few isolated cases like Mr. Billmeyer and on Beaver Creek if you, that conceivably you could prevent any large pond in the future but our purpose was to say...

CHAIRMAN GALT: But the existing rights Gordon...

MS. RUNDLE: The only existing one that we can identify is probably Mr. Billmeyer. Other than that the impact is only on future.

CHAIRMAN GALT: But they never, oh, we don't know whether they objected to Billmeyer's?

MS. RUNDLE: No, it's not in decree.

MS. COTTINGHAM: See, that's the problem, the only one that's gone to decree is 40E and we can't get any sense of...

CHAIRMAN GALT: Well, I'm sure that that objection would be in the Water Judge's computer somewhere.

VICE-CHAIRMAN TWEETEN: It's not at the objection stage yet. You don't have to object until the preliminary decree comes out and it hasn't gotten that far yet.

MS. COTTINGHAM: Now, the Sun River has gone to decree and the objections are in the computer but the objection list has never been published and that's not usually available for public use until they get to it. So, that's, now I don't know whether that's...

MS. RUNDLE: And that would be Benton Lake?

MS. COTTINGHAM: Benton Lake.

CHAIRMAN GALT: Well, the motion is before you that we can proceed basically with the staff's recommendation in proceeding with the Fish and Wildlife recognizing that this doesn't tie us right down to everything that was in there.

MS. RUNDLE: And there may be technical issues that will come up in the negotiating session too that the staff might want to look at further but, my sense of where Cheryl is at is that they want to know basically if the Commission is accepting or rejecting their claims and....

VICE-CHAIRMAN TWEETEN: Mr. Chairman, what we're basically telling them is that in principle we don't have any problem with the claims that you're giving us, we need some more information about some of them, right?

CHAIRMAN GALT: Yes.

MR. DAVIS: If that's a motion I second it too.

REP. IVERSON: And you know what you're going to ask them I guess.

CHAIRMAN GALT: Yes, we will. But, I imagine the motion also sort of gives the negotiating committee the permission to go ahead based on these figures to start negotiating with them. Question being called for. All those in favor signify by saying Aye?

UNISON: Aye.

CHAIRMAN GALT: Opposed? Any further business to come before the...

VICE-CHAIRMAN TWEETEN: Well, Mr. Chairman I'm just disappointed that Rep. Spaeth isn't here since we took some positive action on something and he missed it.

(LAUGHTER)

CHAIRMAN GALT: I wonder, I hope he never went too far.

MS. COTTINGHAM: We'll note that for the record.

VICE-CHAIRMAN TWEETEN: And maybe that's the reason why he doesn't think we ever act on anything. He's just never around when we do.

MS. RUNDLE: I have a couple of other things that I will give you. This does not have to be on the record though.

OFF THE RECORD

CHAIRMAN GALT: ...positive date as of every two months I believe?

MS. RUNDLE: Yes we did, every other third Friday.

REP. IVERSON: Every other third Friday?

(LAUGHTER)

MS. RUNDLE: Well, we needed to get rolling here.

MR. DAVIS: You're going to have to do that more often during the short summer if you're going to go look at things or not.

CHAIRMAN GALT: Well, we're subject to meet anytime but just for the, to get something down that is certainly not written in stone could we plan on a meeting on say toward the end of June?

MS. RUNDLE: 19th is the third Friday.

CHAIRMAN GALT: 19th? Does that?

VICE-CHAIRMAN TWEETEN: Well, I'll be on vacation that week.

CHAIRMAN GALT: Well, you can come to a meeting, you can come to a meeting when you're on vacation.

REP. IVERSON: Seems like it to me.

VICE-CHAIRMAN TWEETEN: I don't know if I want to drive back from Flathead.

MR. DAVIS: A meeting is a vacation to me.

MR. ELLIOTT: Maybe we could have a meeting in Flathead.

MS. RUNDLE: Actually, that's the week I thought we'd meet on the Wild and Scenic River.

MR. DAVIS: Why can't we meet wherever Chris is if he has accommodations.

REP. IVERSON: Stay at his place.

CHAIRMAN GALT: Well, let's tentatively make it for around the 19th of June and that's not written in stone.

VICE-CHAIRMAN TWEETEN: Things have been accomplished in my absence before. I'm sure you could do the same thing again.

REP. IVERSON: It could be positive action.

CHAIRMAN GALT: Well, I think Gordon will have made his trip and I hope that we'll have an answer back from the Fish and Wildlife by then. You are going to contact them quite soon?

MS. RUNDLE: I will contact them and I think that they're ready to meet with us at any time. As I mentioned to you this morning, if we want to take a trip to Denver in this fiscal year to take advantage of this budget and

take advantage of the fact that you, several members of the Commission were invited to that conference, we could maybe schedule something back to back if you want me to check on that.

CHAIRMAN GALT: Well, you can check on it yes.

MR. DAVIS: One brief question and I can ask it, excuse me Chris.

VICE-CHAIRMAN TWEETEN: We only have \$3500 left in this fiscal year remember.

MS. RUNDLE: Just enough to go to Denver.

MR. DAVIS: Outside of the meeting, but where are we on Park Service, I mean have we dropped that?

MS. RUNDLE: You're the chairman sir.

MR. DAVIS: Well, I know, but that was one that was omitted from the agenda and I just wondered where we, if we....

CHAIRMAN GALT: I'm sorry, I forgot it.

MR. DAVIS: No problem.

MS. RUNDLE: Well, I wanted to talk to you about that.

MR. DAVIS: Well, we can talk later then, okay. We're not ready to sign anyway.

MR. McOMBER: One more thing Mr. Chairman and I promise to be quiet. I'd like to make a motion that hereafter the secretary be instructed hereafter to maintain a list of motions, actions taken, assignments made, at each session, each meeting, with a followup on which motions, actions, assignments have been completed and which ones are still pending.

REP. IVERSON: Are you talking about a summary of the minutes?

MR. McOMBER: I want the specific items at the end of the minutes on the actions we've taken, motions made or assignments and that sort of thing, so you know, Gary made a pretty good point there. I thought we just kind of forget about these things and they drift off into the distance.

VICE-CHAIRMAN TWEETEN: I'll second that.

MR. ELLIOTT: Mr. Chairman, that could be put on computer couldn't it?

CHAIRMAN GALT: Any further discussion? All those in favor signify by saying Aye?

UNISON: Aye

CHAIRMAN GALT: Opposed? Motion carried. I would entertain a motion to adjourn.

VICE-CHAIRMAN TWEETEN: I move we adjourn.

MR. DAVIS: Second.

CHAIRMAN GALT: Thank you.

REP. IVERSON: I'd like to thank you for all this additional paper.