

Outline of Talk by Henry Loble,  
Chairman, Reserved Water Rights Compact Commission,  
on the subject  
"What Progress is the Indian Compact Commission Making?"

WATER RIGHTS FROM THE MURKY DEPTHS  
Sheraton Hotel  
Great Falls, Montana  
October 4, 1980

- I. The statutory authority for the Reserved Water Rights Compact Commission is Sections 85-2-701 through 85-2-704, MCA, as well as Title 3, Chapter 7; and Section 2-15-212
- A. Background--This effort to compromise and negotiate Indian and federal reserved water rights was brought about by on-going litigation between the various Montana Indian tribes and the federal government on the one hand and the State of Montana on the other hand. Currently, the actions brought by the tribes and the federal government in United States district courts have been dismissed and that decision is on appeal to the Ninth Circuit. The Commission was created with the hope of eliminating the litigation and negotiating a settlement of these water rights.
- B. The Reserved Water Rights Compact Commission was created and authorized "to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved waters within the state" and, also, similar compacts with the federal government claiming non-Indian reserved water. The reserved water is that claimed by the Indian tribes and the federal government under the "Winters Doctrine" whereby waters were reserved for the tribes and the federal government to develop lands within Indian and federal reservations within the state of Montana.
- C. The RWRCC is a nine-member commission of which four were appointed by the Governor, two by the State Senate, and two by the State House of Representatives, and one by the Attorney General. The current membership is as follows: Henry Loble--Chairman, Steve Brown--Vice Chairman, William Day, Everett C. Elliot, Jack Galt, Fred Johnston, Dan Kemmis, A. B. Linford and Audrey Roth.
- D. Negotiations are commenced when authorized representatives are named by the respective tribes and, for the federal government, when named by it.
- E. When compacts are decided upon, they are effective and binding upon ratification by the Legislature, the tribal governing body, and the Congress.

- incorp into P-decree*
- F. Also the compact becomes part of the preliminary decree in the on-going adjudication of water rights within the state.

II. Progress in conducting negotiations:

- A. There are seven tribes:
1. Blackfeet--Browning
  2. Confederated Salish and Kootenai (Flathead)--Pablo
  3. Assiniboine and Gros Ventre--Fort Belknap
  4. Chippewa Cree-Rocky Boy
  5. Assiniboine and Sioux--Fort Peck
  6. Crow--Crow Agency
  7. Northern Cheyenne--Lame Deer
- B. Two tribes, Flathead and Northern Cheyenne, have named representatives and negotiations are in progress.
- C. For the federal government, the Department of Interior and the Department of Agriculture have named representatives and negotiations are in progress.
- D. Possibly the Crow, Fort Peck, and ~~Fort Belknap~~ tribes will name ~~representatives in the not too-distant future~~. The Blackfeet have not shown any inclination to negotiate as yet, and ~~the Rocky Boy~~ have not responded to correspondence.
- E. Current staff of the RWRCC
1. Project Manager--Scott Brown
  2. Attorney--Dave Ladd
  3. Hydrologist--Steve Holnbeck
  4. For other staff and assistance, the RWRCC utilizes the Department of Natural Resources and Conservation.
- F. The Flathead and Northern Cheyenne: *& Ft. Peck*
1. Several meetings with each tribe have covered preliminary and procedural matters. Both sides are now gathering factual material for substantive negotiations. Further meetings will occur in the near future.

*have covered most procedural matters at point where to begin discussing tech. material*

G. The federal government:

1. Several meetings have been held with representatives of the Department of Interior and Department of Agriculture and ~~another is scheduled for October 21.~~ ~~So far, preliminary and procedural matters only have been covered.~~

III. Points at issue in negotiations:

legis proposal

- A. Priority date for water rights. Possible bases of priority date are the date of establishment of the reservations in question. Claim may be made for aboriginal rights.
- B. Quantities. This is an open issue. For agriculture, ~~quantities~~ needed for irrigation may not be difficult to establish, but for other uses, there may be problems.
- C. Purposes and uses. In addition to irrigation, claim may be made for water for industry, municipalities, instream purposes, recreation, aesthetic purposes, etc.
- D. Do the negotiations include both surface and groundwater?
- E. Once water rights have been decided upon by whom are they administered and regulated.

IV. Prognosis for the future:

- A. The Commission feels that it has made a promising beginning. Negotiation leading to compromise and settlement appears to be a better solution than litigation.
- B. The issues involved are weighty, comprehensive, and not easy to resolve. Certainly, they will be time-consuming and involve water experts of all kinds to solve the many technical and scientific matters in dispute.
- C. This is an issue which must be solved before those with water rights in the areas in question will know the standing of their water rights for future planning.

- V. For definitions of Indian and federal reserved rights, see attached excerpts from pages 464, 473 and 474 of the 1973 National Water Commission Report.

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advantages of negot.  
consent vs ct decree  
flexibility