

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE STATE OF MONTANA  
RESERVED WATER RIGHTS COMPACT COMMISSION  
AND  
THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD NATION  
AND  
THE UNITED STATES OF AMERICA**

This Memorandum of Understanding is entered into by and between the State of Montana Reserved Water Rights Compact Commission, the Confederated Salish and Kootenai Tribes and the United States Department of Interior, Flathead Federal Negotiation Team, to establish certain rules and procedures governing negotiations between the parties.

**WHEREAS**, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all Indian aboriginal, reserved and appropriative water rights;

**WHEREAS**, the Montana Code Annotated, at §§ 85-2-217 and 701, et seq., provide that the State of Montana may negotiate settlement of claims by the federal government and Indian tribes to waters within the State of Montana;

**WHEREAS**, the United States Attorney General, or any duly designated official of the United States Department of Justice, has authority under 28 U.S.C. §§ 516-517, to settle litigation on behalf of the United States;

**WHEREAS**, the Secretary of the Interior, or any duly designated official of the United States Department of the Interior, has authority to execute this Memorandum of Understanding on behalf of the United States Department of Interior pursuant to 43 U.S.C. § 1457; 25 U.S.C. § 2; and 55 Fed. Reg. 48, 9223-9224 (1990);

**WHEREAS**, the Confederated Salish and Kootenai Tribes have passed a resolution naming a Tribal Team for the purpose of negotiating with the Reserved Water Rights Compact Commission on behalf of the Tribes.

**NOW, THEREFORE**, the State of Montana Reserved Water Rights Compact Commission ("Commission"), the United States Department of Interior, Flathead Federal Negotiation Team ("United States" or "Federal Negotiation Team"), and the Confederated Salish and Kootenai Tribes ("Tribes") hereby agree to the following in order to facilitate negotiations:

1. To the extent possible, it is the goal of the parties to hold negotiations at the following locations on a rotating basis: Helena, Pablo and Missoula. The meetings will be chaired on a rotating basis by a State, Federal and Tribal representative.
2. Negotiations will be open to the general public and the meetings will be recorded. Negotiations will be closed and held in executive session whenever the parties agree that there is a need to protect confidential or privileged information and to the extent that such closure is consistent with State, Tribal and Federal law. The chair of the negotiation session may impose such restrictions on non-party attendees as is deemed necessary to facilitate the negotiation process consistent with State, Tribal and Federal law.
3. No statements made or positions taken in the negotiations shall be admissible in any trial or other proceeding pertaining to the protection, establishment, quantification or administration of the Tribes' reserved, aboriginal and appropriative water rights, regardless of whether that statement or position constitutes an offer to compromise under Rule 408 of the Montana Rules of Evidence or Rule 408 of the Federal Rules of Evidence. However, the parties shall not be prohibited by this paragraph from utilizing and presenting as evidence at trial any factual data or technical material created, compiled, or utilized by the party generating such material solely on the ground that the

data or material was discussed in the negotiations. This paragraph shall not enlarge or diminish the rights of any party to seek discovery under the State or Federal rules of civil procedure.

4. The parties agree that all press releases and other statements to or discussions with the press regarding negotiations shall be made jointly by the Commission and the Tribes. Any press contact outside of these conditions will be reported to the other parties promptly after it occurs.


5. When appropriate, the Commission, the United States, and the Tribes will appoint subcommittees to analyze technical or other designated issues and make recommendations to the Federal Negotiation Team, the Commission, and the Tribes.

6. The parties to these negotiations shall be limited to the Tribes, the Compact Commission, and the United States. The Commission, the United States and the Tribes acknowledge that attendance of the public, including potentially affected water users, at negotiating meetings is appropriate for a full resolution of the Tribes' claims to reserved, aboriginal and appropriative water rights on and off the Flathead Indian Reservation. Comments from the non-party attendees at negotiation meetings will be received during designated public comment periods to be included in the agenda of each meeting which is open to the public, and at such other times as the chair may direct with the concurrence of the parties. Although it shall be the responsibility of the Commission to maintain communication with and solicit information from state-based water users and other interested persons and the responsibility of the Tribes and the United States to maintain communication with and solicit information from members of the Tribes, for public meetings or presentations done jointly by the parties, the agenda and the appropriate structure will be agreed to in advance by all three parties.

This Memorandum of Understanding shall take effect when signed by the Chairman of the Federal Negotiation Team, the Chairman of the Commission and of the Chairman of the Tribes. If less than all parties sign this Memorandum, it shall be deemed binding as between the actual signatories. This Memorandum may be amended in writing by joint agreement of the parties at any time.

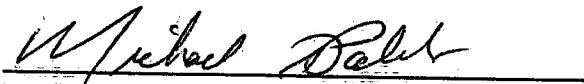
Dated this 23<sup>rd</sup> day of October, 1998.

**STATE OF MONTANA RESERVED  
WATER RIGHTS COMPACT COMMISSION:**



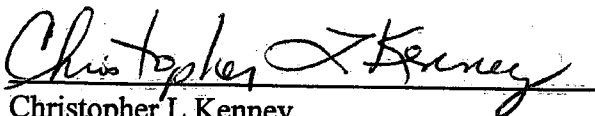
Chris D. Tweeten, Chairman  
Montana Reserved Water Rights  
Compact Commission

**THIS CONFEDERATED SALISH & KOOTENAI TRIBES  
OF THE FLATHEAD NATION:**



Michael T. Pablo, Chairman  
Tribal Council of the Flathead Nation

**UNITED STATES OF AMERICA:**



Christopher L. Kenney  
Flathead Federal Negotiation Team  
U.S. Department of the Interior